

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in the panel session composed of judges Patrice de Charette, international judge as presiding judge, Agnieszka Klonowiecka-Milart, international judge, and judge Zait Xhemajli as members, and in presence of the professional collaborator Suat Kuraja as the recording clerk, in criminal case against the defendants Andjelko Kolasinac, from Rahovec, and Cedomir Jovanovic, from the village of Zociste, municipality of Rahovec, charged for the criminal offence of war crimes as per article 142 of the YCC, deciding upon the appeal lodged by the District Public Prosecutor of Prizren and the appeals lodged by the defense counsels Mr.Zivojin Jokanovic and Mr.Milan Vujin against the verdict of the District Court of Prizren , P.nr.44/2000 dated 14.06.2001, in the session held on 02.11.2001 brings this:

VERDICT

The appeals of the defense counsels of the accused Cedomir Jovanovic are REJECTED and the verdict of the District Court of Prizren P.nr.44/2000 dated 14.06.2001 regarding the accused Cedomir Jovanovic is UPHELD

The appeal of the District Public Prosecutor is APPROVED regarding the accused Andjelko Kolasinac, the verdict of the District Court of Prizren P.nr.44/2000 dated 14.06.2000 regarding the accused Andjelko Kolasinac is OVERRULED and the case is returned to the same court for retrial.

The detention of the accused Andjelko Koslasinac is extended.

REASONING

The District Court of Prizren in its verdict number P.nr.44/2000, dated 14.06.2000 has found the accused Andjelko Kolasinac guilty of committing the criminal offense of giving help to the offender after the commission of a crime as per Article 174, paragraphs 1 and 3 of the CLK and has sentenced him to five (5) years of imprisonment in which the period spent in detention since 20.08.1999 shall be included.

The defendant Cedomir Jovanovic has been found guilty of criminal act of war crime against the civilian population as per Article 142 of the CLY and sentenced to twenty (20) years of imprisonment in which the period spent in detention since 27.09.1999 will be included.

An appeal has been lodged against the verdict of the Court of the first instance by the District Public Prosecutor because of violation of the law on criminal procedure,

violation of the criminal law and wrong and incomplete establishment of facts, proposing to the Supreme Court to alter the verdict in the part related to the accused Andjelko Kolasinac and to find him guilty of war crime by imposing forced labor and looting and destroying property of the population, or to overrule the verdict and to send the case to the first instance court for a new trial.

Against the verdict, a joint appeal has been lodged by the defense attorneys of the accused as well, because of essential violations of provisions of the criminal procedure, violation of the criminal law, wrong and incomplete ascertainment of the factual situation, and of decision on punishment, proposing to the Supreme Court either to amend the challenged verdict and to acquit the accused or to overrule the challenged verdict and to return the case to the Court of the first instance for a retrial or lastly to amend the verdict and to pronounce a more lenient sentence for the accused.

The Public Prosecutor of Kosovo has by means of motion PPA.Nr.219/2001 dated 11.09.2001 proposed that the appeal lodged by the defense counsels of the accused be rejected as ungrounded while the appeal of the District Public Prosecutor in Prizren be approved and the verdict of the District Court in Prizren be altered only as concerns the accused Andjelko Kolasinac in that he is pronounced guilty for the criminal act of war crime pursuant to Article 142 CLY or the case be sent back to the Court of first instance for re-trial and decision, while as concerns the accused Cedomir Jovanovic the challenged verdict to be upheld.

At the panel session, participated the defense counsels Milan Vujin and Zivojin Jokanovic who remained in their appeals, the Public Prosecutor of Kosovo who remained in his proposals and the accused Cedomir Jovanovich and Andjelko Kolasinac who presented their comments.

The Supreme Court examined all the case materials, deliberated the appealed verdict pursuant to Article 376 paragraph 1 of the LCP, estimated the appeals and asserted:

I – The appeals of the defense counsels of the accused Cedomir Jovanovic are not grounded.

The Supreme Court finds ungrounded the claim of the defense according to which the first instance court violated the criminal procedure law by using the English language to conduct the proceedings and the Albanian language to record the minutes of the main trial.

Indeed, according Regulation 2000/46 of 15 August 2000, both languages, and Serbian language as well, are official languages in court proceedings when an international judge or prosecutor is participating on them. On the other hand, the defense counsel did not explain what could have been the damage put up with the accused because the use of these two languages, while all documents were translated into Serbian.

According to the Supreme Court, the verdict does not contain violations of the criminal procedure law, which the defense counsels refer to, regarding the enacting clause of the verdict. The defense of the accused stated that the enacting clause is

incomprehensible and incomplete since it does not contain either the description of the criminal acts or the manner of the participation of the accused.

Actually, the Supreme Court asserts that the first instance court explained completely and in a very precise manner in the reasoning of the decision the different elements of each criminal act, so that there is no doubt on the acts the accused were charged with.

The Supreme Court finds ungrounded the argument of the defense according to which there was no armed conflict at the time of the alleged crimes. The defense counsel stated that actions taken against a terrorist organization, so-called KLA, cannot be considered as an armed conflict.

In reality, the first instance court asserted completely and properly that from the summer of 1998 existed in Kosovo an armed conflict, defined as resort to armed force or protracted violence between governmental authorities and organized armed groups within a State. In this regard, the verdict referred correctly to the definition of armed conflict addressed by the ICTY Statute and analyzed properly the situation in Kosovo during 1998 and 1999. On the other hand, from the beginning of the NATO bombardments on 23 March 1999, the armed conflict was acute, and led the FRY to declare the state of war on 24 March 1999.

According to the Supreme Court, the first instance verdict does not contain violations of the criminal procedure law which the defense counsels refer to, regarding the establishment of the state of facts. The defense stated that the alleged killings at Ura e Bellajes and Celina on 25 March 1999 are not established by the testimonies, since there are significant differences in the statements, and since identification only from photographs is unacceptable. Conversely, the defense argued that there are no differences in the statements of the witnesses summoned by the defense regarding the alibi of the accused.

Actually, the first instance court assessed the different testimonies in a detailed and precise manner. The verdict analyzed properly the statements made by the eyewitnesses Dashnor Popaj, Krenare Popaj, Shukrije Popaj, Sabri Popaj and Salajdin Shterbani and concluded correctly that they are reliable and credible.

On the other hand, the verdict underlined rightly that the "alibi" witnesses are not trustworthy, saying that the witness Milenko Jovanovic is not reliable when stating, two years later, that he has a precise remembering of the presence of the accused at 8:30 in the morning on 25 March 1999, and is in contradiction with another witness, Vesto Stojanovic. The court asserted correctly that the testimonies of Stanko Stankovic and Krsta Misic lack of credibility and are inconsistent.

Therefore, the Supreme Court finds that the state of facts is correctly and completely proved by the verdict of the first instance court, which has correctly concluded that the acts of the accused Jovanovic contain all the crucial elements of the criminal act of war crime for which he was found guilty.

Evaluating the decision on punishment, the Supreme Court, assessing all the elements of the case, finds that the verdict is grounded. The first instance court rightly applied Article 142 of the CLY and asserted correctly, after having evaluated

all mitigating and aggravating aspects, that only the maximum punishment of twenty years of imprisonment was appropriate. (A R/Rev/158)

II – The appeal of the Public Prosecutor is grounded regarding the accused Andjelko Kolasinac

The Supreme Court found that the appealed verdict did not establish correctly and completely the state of fact regarding the existence of the criminal offence and the criminal responsibility of the accused.

The first instance court found the accused Kolasinac guilty of giving help to the offender after the commission of a criminal act under Article 174 of the CLK by organizing the concealment of the traces of the war crime of expulsion of Kosovar Albanian citizens and by organizing destruction and disposal of remains of their properties and personal belongings.

However, from the verdict is not possible to assert certainly which of the acts of the accused could constitute such a criminal act. At the same time the court describes the work executed by a group of inhabitants after a meeting chaired by the accused as a sanitation work, in order to clean the road of a large quantity of valuables abandoned by the population, with aim to hide the traces of the crime. The Supreme Court observes that, even if the road had not been cleaned, the proof of the alleged war crime could have been found, since it is not disputable that the Kosovar Albanian citizens were expelled and displaced.

The first instance court did not find adequate evidence to convict the accused of forced labor under Article 142 of the CLY.

However, according to the Supreme Court, the Public Prosecutor's appeal correctly observed that the first instance court wrongly assessed the statements of the witnesses Hilmi Derguti, Fejzulla Sokoli, Muhedin Bekeri, Hasan Sokoli, Gjemali Jaha, Mizair Shabani and Radomir Simic, who in a concrete and precise manner described how the accused Kolasinac gave them personally orders to execute the work in question that lasted several days, during which they were guarded by police and military forces.

The first instance court considered that the accused did not order that the abandoned properties be destroyed. However, the witnesses quoted by the Public Prosecutor in his appeal clearly stated that the valuable were thrown in a ditch. The Supreme Court observes as well that the reasoning of the verdict is contradictory, since it decided in the enacting clause that the accused is guilty of giving help to the offender after the commission of a criminal act "by organizing destruction and disposal of remains of their properties and personal belongings".

Regarding the registrations of civilians, the Supreme Court finds that the verdict is contradictory. Indeed, the first instance court expressed its opinion that these registrations efforts were the first step in the widespread and systematic persecution and expulsion of Kosovar Albanians. Nevertheless, it decided that there was no evidence that registration lists were used for calculated attacks against Kosovar Albanians, in particular because there was little need for a registration list to locate Albanians.

During the new trial, the first instance court should assess precisely the testimonies regarding the existence of a forced labor under Article 142 of the CLY, and evaluate in particular the existence of coercion, the link with war effort of the parties in conflict and the duration of the work in question, in order to determine if it lasted enough to be qualified forced labor as an element of war crime.

The first instance court should assess the testimonies regarding the looting and destruction of the properties, under Article 142 of the CLY, evaluating in particular the role of the accused Kolasinac regarding orders given by him and or received from other police or military authorities.

The first instance court should assess as well the consequences of the two registration drives regarding their possible connection to criminal acts considered as elements of war crime under Article 142 of the CLY.

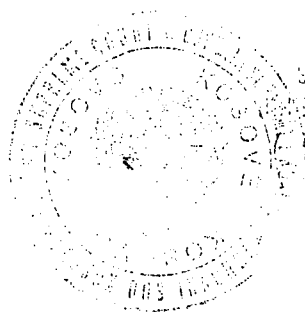
The Supreme Court found that still exist the legal reasons to extend the detention against the accused Andjelko Kolasinac according to Article 191, paragraph 2, item 1,2,3,4 of the LCP and decided that the detention of the accused is extended.

Based on the aforementioned and based on Article 384 and 385 of the LCP, it was decided as the enacting clause of this verdict.

SUPREME COURT OF KOSOVO IN PRISTINA
AP.Nr. 217/2001 dated 02.11.2001

Recording clerk
Suat Kuraja

Presiding judge
Patrice de Charette



SAETEMINE E KOPJES E VERETIT
NENEFAL DOMINONRES
KOSOVA E RE