

# Report on enhancing accountability in written judgments

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# Executive Summary

Lëvizja FOL has been monitoring the publication of judgments on the official portal of judiciary for several years. Undoubtedly, this initiative has promoted increased transparency and accountability within the judicial system. However, as time progresses, it becomes evident that this effort alone is insufficient.

During the monitoring of judgment activity, it was observed that courts are not consistently adhering to legal requirements regarding the publication and anonymization of judgments. As a result, Lëvizja FOL prepared a brief report emphasizing the importance of judgment publication and anonymization in accordance with the new legal requirements outlined in the Criminal Procedure Code. This report provided detailed recommendations to the Kosovo Judicial Council.

Following that, Lëvizja FOL has prepared this report which, focuses on another critical aspect: ensuring that the published judgments are clear and informative, facilitating a comprehensive understanding of judicial data.

So, while in its previous report, Lëvizja FOL addressed the requirement for publication and, in certain cases, anonymization of judgments, as mandated by the new legal provisions, in this current report, the focus shifts towards ensuring that publicly available judgments offer clarity and facilitate the proper presentation of judicial data.

This enables readers to easily grasp the full scope of the case through the judgment. A well-structured judgment with accurate data not only enhances transparency and accountability but also contributes to more informed policymaking when legislators seek to advance the legal framework in Kosovo.

Through this report, Lëvizja FOL aims to initiate new discussions among representatives of the legal community regarding whether the structure of judgments should undergo changes to accommodate metadata, enabling various calculations. Particularly in the era of Artificial Intelligence (AI), such changes could yield significant benefits.

# Introduction

In Kosovo, the drafting of court judgments is a process guided by the strict legal framework, which includes the Criminal Procedure Code and the Law on Contentious Procedure. These laws establish the procedural rules and standards that govern how judgments are drafted in Kosovo's courts.

Under the Criminal Procedure Code, judges are required to analyze profoundly the evidence presented during trial, apply relevant legal principles, and provide clear reasoning for their decisions. This process ensures that judgments are well-founded in law and supported by the facts of the case. Similarly, the Law on Contentious Procedure outlines the procedural requirements for civil cases, emphasizing the importance of thorough analysis and legal reasoning in judgment drafting. In practice, judges in Kosovo strive to adhere to these standards, drawing upon their legal expertise and the guidance provided by the legal framework. They undergo continuous professional development to refine their judgment drafting skills and stay abreast of developments in domestic and international law.

Despite these efforts, challenges may persist, particularly regarding certain procedural aspects reflected in judgments. These challenges involve ensuring the comprehensive inclusion of all procedural aspects within judgments, providing precise details of the case's progression through various judicial instances, promoting clear understanding by documenting all components of the case chronologically, and ensuring comprehensive coverage of all dimensions of the case, regardless of the level at which the judgment was issued. For instance, fully understanding a Supreme Court judgment may necessitate prior examination of the first-instance court judgment to gain insight into the complete context of the case.

For this reason, FOL has embarked upon this significant initiative to review a number of criminal judgments in order to identify and recommend actions that may address the current shortcomings in the drafting of judgments in Kosovo.

# 1. Methodology

This report is based upon a methodology focused on a qualitative examination of data obtained from judicial rulings publicly available on official court websites, complemented by comprehensive desk research delving into both international standards and Kosovo's legal framework.

Lëvizja FOL conducted a comprehensive review of several cases but eventually focused its efforts in one case that garnered public attention and it aligned with their analysis criteria. This specific case underwent multiple retries, received a ruling from the Supreme Court, experienced changes in trial panels, and is known for its long period within the legal system.



## 2. Legal Framework

Drafting court judgments is a critical aspect of the legal process, ensuring that decisions are clear, reasoned, and in accordance with the law. In Kosovo, as in many other legal systems, the quality of court judgments can vary depending on various factors such as the expertise of the judges, resources available to the court, and adherence to legal standards and procedures. Kosovo's legal system is based on civil law principles, with influences from both continental European and common law systems. The drafting of court judgments is guided by the applicable laws, codes, and procedural rules in Kosovo.

There are two main procedural laws that regulate the issue of drafting judgments: the Criminal Procedure Code and the Law on Contentious Procedure. Given that this report will focus on judgments of criminal procedure, it will not examine the requirements pertinent to civil cases, but solely to criminal cases and judgments issued therein.

## 3. Criminal Procedure Code - Article 369

Article 369 of the Criminal Procedure Code defines the criteria enabling the formulation of written judgments in criminal proceedings within Kosovo courts. These provisions are instrumental in fostering transparency and accountability, emphasizing the necessity of clear and coherent argumentation, comprehensive evidentiary support, and rigorous justification within the judicial decision-making process.

This section of the report aims to review the key components of Article 369, highlighting its significance in ensuring the integrity and fairness of the justice system.

The introduction section of Article 369 serves as a comprehensive repository of essential details, ranging from the identification of pertinent individuals, including defendants and other trial parties, to the specifics of the trial proceedings. The enacting clause summarizes the essence of the court's decision, defining crucial elements such as the accused's conviction status and disposition of costs.

Finally, the statement of grounds provides for a detailed rationale proving the basis for the court's decision-making process, fostering transparency and accountability.

In cases involving multiple criminal offenses, Article 369 mandates clarity in delineating the punishment for each offense and the aggregate punishment resulting from all offenses. This provision ensures precision and coherence in sentencing, mitigating the risk of ambiguity or inconsistency.

Transparency is at its highest consideration in Article 369's stipulation that the court must explain the grounds for each individual point of the judgment. By providing a comprehensive rationale for every aspect of the decision, this provision ensures clarity and facilitates understanding among stakeholders.

### Article 369

#### Content and Form of Written Judgement

1. The judgment drawn up in writing shall be fully consistent with the judgment as it was announced. It has an introduction, the enacting clause and a statement of grounds.
2. The introduction includes: an indication that the judgment is rendered in the name of the people; the name of the court; the first name and surname of the single trial judge or presiding trial judge, members of the trial panel and the recording clerk; the first name and surname of the accused; the criminal offense of which the accused was convicted and an indication as to whether he was present at the main trial; the day of the main trial; whether the main trial was public; the first name and surname of the state prosecutor, defense counsel, victim advocate or victim's representative present at the main trial; the day of the announcement of the judgment that has been rendered; and the date when the judgment was drawn up.
3. The enacting clause of the judgment includes the personal data of the accused and the decision by which the accused is pronounced guilty of the criminal offense of which he is accused or by which he is acquitted of the charge for that offense or by which the charge is rejected.
4. If the accused has been convicted, the enacting clause of the judgment contains the necessary data specified in Article 364 of the present Code, and if he was acquitted or the charge was rejected, the enacting clause contains a description of the offense with which he was charged and the decision concerning the costs of criminal proceedings and the property claim if such claim was filed.
5. In the event of concurrent criminal offenses the court indicates in the enacting clause, the punishment determined for each separate offense, whereupon it indicates the aggregate punishment.
6. In the statement of grounds for a judgment, the court presents the grounds for each individual point of the judgment.
7. The court states clearly and exhaustively which facts it considers proven or not proven, as well as the grounds for this. The court also, in particular, makes an evaluation

Central part of the accountability is Article 369's mandate for the court to precisely and diligently evaluate the credibility of evidence and transparently delineate proven and unproven facts. Furthermore, the court is required to justify its decisions regarding the approval of motions, establishment of criminal offenses, determination of liability, and application of legal provisions, fostering confidence in the judicial process.

Further on, Article 369 ensures accountability in sentencing by requiring the court to interpret the circumstances considered in determining punishment. Whether the case is deemed especially serious or warrants deviation from prescribed sentencing guidelines, the court is obligated to provide a reasoned explanation, thereby enhancing transparency and legitimacy.

In matters pertaining to the confiscation of property, Article 369 mandates clarity and justification in the court's decision-making process. Whether confiscation is warranted, the judgment must provide reasoned justifications, ensuring fairness and adherence to legal principles.

Finally, Article 369 extends its scope to clarify matters concerning the publication of personal data, thereby asserting its supremacy over the Law on Data Protection in the context of criminal judgments.

of the credibility of conflicting evidence, the grounds for not approving individual motions of the parties, and the reasons by which the court was guided in settling points of law and, in particular, in establishing the existence of a criminal offense and the criminal liability of the accused, as well as in applying specific provisions of criminal law to the accused and his offense.

8. If the accused has been sentenced to a punishment, the statement of grounds indicates the circumstances the court considered in determining the punishment. The court, in particular, explains by which grounds it was guided if it found that it was an especially serious case or that it is necessary to impose a sentence which is more severe than what has been prescribed, or if it found that it was necessary to reduce the sentence or to waive the sentence, or to impose an alternative punishment or to impose a measure of mandatory rehabilitation treatment or confiscation of the material benefit acquired by the commission of a criminal offense.
9. If the indictment lists specified property subject to confiscation or if the state prosecutor has notified the parties of new specified property discovered after the filing of the indictment pursuant to Article 278 paragraph 5 of this Code, or if the court has ordered the confiscation of value substitution property pursuant to Article 273 of this Code, the judgment indicates whether the specified property and/or value substitution property is confiscated or not. The judgment provides reasoning for the confiscation of each item that is ordered to be confiscated, and the judgment provides reasoning for each asset which is not being ordered to be confiscated.
10. If the accused is acquitted of a charge, the statement of grounds states, in particular, on which of the reasons provided for in Article 363 of the present Code it is acting.
11. In the statement of grounds for a judgment rejecting a charge, the court does not evaluate the principal matter but confines itself only to the reasons for the rejection of the charge.
12. For purposes of this Article, the term "personal data" includes following personal information: First Name, Last Name, Name of the Hometown or Town of Residence, Public Function of the defendant if any, and Personal Number. When the Personal Number is not available, date of birth, name of one parent and place of birth can be used instead. Additional personal data, as this term is understood by other laws, may be added only if necessary to explain contextual circumstances of the offenses.
13. Save for the Personal Number, date of birth and names of parents and place of birth, publication of other personal data from paragraph 12 of this Article is not deemed a breach of privacy due to the interest of the public in an open and public judiciary.

## 4. European Legal Framework and Standards

Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) both ensure the right to a fair trial.

Within this framework, a key aspect is the provision of reasoned and well-structured decisions. The European Court of Human Rights (ECtHR) emphasizes the importance of courts and tribunals clearly stating the reasons behind their decisions to facilitate effective appeals. While Article 6 ECHR does not mandate exhaustive responses to every argument, it necessitates addressing submissions central to the case.

Two cases that can be mentioned, the case of *Savov v. Bulgaria* (2009) and *Balázs v. Hungary* (2016) serve as prime examples illustrating the significance of both the structural organization and the substantive clarity of judgments.

In both the *Savov v. Bulgaria* (2009) and *Balázs v. Hungary* (2016) cases, the ECtHR found violations of human rights due to poorly structured judgments in domestic courts. These cases underscore the importance not only of clear and coherent judgment structures but also of the substantive clarity and coherence of the judgments themselves in upholding the right to a fair trial under Article 6 of the European Convention on Human Rights.

In the case of *Savov v. Bulgaria* (2009), the applicant, Mr. Savov, alleged a violation of his right to a fair trial under Article 6 of the European Convention on Human Rights. The case stemmed from criminal proceedings against Mr. Savov in Bulgaria, where he was convicted of murder and sentenced to life imprisonment. Mr. Savov contended that his trial did not meet the requirements of fairness due to various shortcomings, including inadequate legal representation and procedural irregularities.

The ECtHR found that Bulgaria had indeed violated Mr. Savov's right to a fair trial. The Court highlighted deficiencies in the conduct of the trial, including the lack of proper legal representation and failure to provide adequate reasoning in the domestic court's judgment. The ECtHR emphasized the importance of clear and reasoned judgments in ensuring effective access to justice and upheld Mr. Savov's complaint under Article 6 of the Convention.

In the case of *Balázs v. Hungary* (2016), the applicant, Mr. Balázs, alleged a violation of his right to a fair trial under Article 6 of the European Convention on Human Rights. The case concerned Mr. Balázs's complaint regarding the length and lack of reasoning in judicial proceedings in Hungary. Mr. Balázs argued that the domestic courts' judgments lacked clarity and coherence, and their failure to provide reasoned decisions violated his right to a fair trial. He contended that this lack of clarity hindered his ability to effectively challenge the decisions against him.

The ECtHR held that Hungary had violated Mr. Balázs's right to a fair trial under Article 6 of the Convention. The Court emphasized the importance of well-structured and reasoned judgments in safeguarding the right to a fair trial and effective access to justice. These cases highlight the ECtHR's role in scrutinizing the quality and coherence of judgments in domestic courts to ensure compliance with the European Convention on Human Rights.

In recent cases reviewed by the ECtHR, the judgements showcase a well-structured format. This structured approach enables readers to comprehensively understand all details of the case, thereby enabling informed conviction regarding the court's decision-making process and its level of thoroughness. The structure of ECtHR judgments is strictly governed by the recent enactment

of the ECtHR Rules of Court<sup>1</sup>, which mandate that judgments adhere to these guidelines. These guidelines require that all judgments include:

- the names of the President and the other judges constituting the Chamber or the Committee concerned, and the name of the Registrar or the Deputy Registrar;
- the dates on which it was adopted and delivered;
- a description of the parties;
- the names of the Agents, advocates or advisers of the parties;
- an account of the procedure followed;
- the facts of the case;
- a summary of the submissions of the parties;
- the reasons in point of law;
- the operative provisions;
- the decision, if any, in respect of costs;
- the number of judges constituting the majority;
- where appropriate, a statement as to which text is authentic.

The ECtHR Rules of Court mandate a specific structure for judgments to ensure clarity and transparency. Key components include identifying the judges involved, specifying adoption and delivery dates, describing the parties and their representatives, detailing the procedural steps, presenting the case facts, summarizing party submissions, articulating legal reasons, outlining operative provisions, addressing costs, specifying the majority decision, and clarifying text authenticity.

Adherence to this format promotes consistency and transparency in ECtHR judgments, reinforcing fairness and justice in the legal system.

In contrary to ECtHR Rules of Court requirements, in Kosovo instances of inconsistent reasoning and poor structuring in judgments from courts are not uncommon. This lack of coherence misguides readers and make it difficult for their ability to understand the case's progression easily. Observing this issue within the case monitoring process, Lëvizja FOL has initiated efforts to trigger discussions aimed at restructuring Kosovo court judgments.

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1 ECtHR, Rules of Court, 28 March 2024, [https://www.echr.coe.int/documents/d/echr/rules\\_court\\_eng](https://www.echr.coe.int/documents/d/echr/rules_court_eng)

## 5. Kosovo case review against the requirements of Article 369

This section will try to examine the structure of public judgments pertinent to single case in light of the provisions outlined in Article 369.

Paragraph 1 of this Article sets that the judgment is divide into three sections: introduction, enacting clause and the statement of grounds.

- The introduction part of the written judgment includes the court's name, the names of the parties involved, the case number, and possibly a brief summary of the case or the issues at hand. The introduction helps orient readers to the context of the judgment.
- Enacting Clause, also known as the dispositif or operative part, this is the core of the judgment. It contains the court's decision on the case. It clearly states what the court orders or declares, such as who wins the case, who pays damages, or what actions need to be taken.
- Statement of Grounds provides the reasoning behind the court's decision. It explains the legal principles, evidence, and arguments that led the court to its conclusion. It addresses the relevant facts of the case and applies the law to those facts, demonstrating why the court reached the decision it did. The statement of grounds is crucial for understanding the rationale behind the judgment and for potential appeals or further legal proceedings.

The requirement for the written judgment to be fully consistent with the oral announcement means that there should be no discrepancies or contradictions between what was said in court when the judgment was announced and what is written in the official document. This ensures transparency, fairness, and clarity in the legal process, as it allows parties involved and any interested parties to understand the court's decision fully.

The section below will examine specific judgments against the criteria outlined in Article 369 of the Criminal Procedure Code, focusing on decisions from higher-level courts rather than trial courts.

## 6. Supreme Court judgements

The Supreme Court typically assumes jurisdiction over cases as a third-instance court, often triggered by the submission of an extraordinary legal remedy known as the Request for Protection of Legality.

This report examines a number of rulings with an aim to reveal whether the Supreme Court, in addition to mandating retrials, has also mandated changes in the composition of trial panels, and to determine if the chronological progression of the case was adequately reflected in the Supreme Court judgments.

A brief analysis of Supreme Court rulings relevant to cases requiring retrial unveils intriguing trends. Generally, these cases involve criminal proceedings initiated through the Request for Protection of Legality.

However, as it is widely known the Supreme Court does not hear witnesses or introduce new evidence, which are responsibilities reserved for the initial fact-finding court, and as a result violations of criminal procedure regulations are rectified through retrials. However, in instances where similar legal infractions are identified in other criminal cases reviewed by the Supreme Court, it tends to make merit-based decisions, either acquitting or dismissing charges without ordering a retrial.

It's worth noting that this analysis primarily includes rulings endorsing requests for legality protection resulting in retrials. However, it's uncommon for higher courts to mandate changes in the judicial panel or the presiding judge, as evidenced by the ineffective application of Article 389.2 of the Criminal Procedure Code. Instead, changes in the panel composition often occur due to internal factors, such as retirements, promotions, or transfers within the judiciary hierarchy. The cases reviewed for this particular review include cases of Naser Pajazitaj and G.E, as two widely known cases.

It's important to clarify that this report does not aim to evaluate or critique the merits of the judgments made by the courts. Instead, its focus is solely on examining the structure and the comprehensibility of the judgments, with the intention of presenting information that can be easily understood by a lay reader.

## 7. Naser Pajazitaj case

The Naser Pajazitaj case involved a serious murder involving the victim Donjeta Pajazitaj, a woman killed in Decan. The Supreme Court, in a session held on April 6, 2023, acquitted N.P. of the charge of murder, which was previously sentenced with lifetime imprisonment.

On June 2022, the Basic Court in Ferizaj, held a retrial as a result of which sentenced Naser Pajazitaj to life imprisonment for the murder of Donjeta Pajazitaj in November 2015. Against this verdict, Pajazitaj's defense attorneys, filed an appeal, claiming essential violations, erroneous determination of facts, and the decision on the sentence, while, the prosecution proposed that the appeal by defense attorneys be dismissed as unfounded, while the appealed verdict be upheld.

However, the Court of Appeals, after reviewing the defense appeals, made a decision to reduce Naser Pajazitaj's sentence from life imprisonment to 35 years in prison for the murder of Donjeta Pajazitaj in November 2015.

It is worth noting that this case had two epilogues in the Basic Court in Peja, where after the first trial, Pajazitaj was acquitted, while after the second trial, he was sentenced to life imprisonment. However, in both cases, the verdicts were annulled by the Court. Initially, the Basic Court in Peja, in March 2018, acquitted the defendant Naser Pajazitaj due to lack of evidence in the murder of Donjeta Pajazitaj, but after the prosecution's appeal, the Court of Appeals remanded the case for retrial. After the retrial, the Basic Court in Peja, in March 2019, found the defendant guilty and sentenced him to life imprisonment. This sentence was later confirmed by the Court of Appeals in July 2019.

However, in November 2019, the Supreme Court annulled both verdicts of the Basic Court in Peja and the Court of Appeals and remanded the case for retrial.

After the retrial of the case, the Basic Court in Peja was excluded from this case, and it was delegated to the Basic Court in Ferizaj, with the reasoning to avoid doubts about the justice system. The decision to delegate the case to Ferizaj was made by the Court of Appeals.

According to the indictment filed on June 8, 2017, Naser Pajazitaj was accused of deliberately and cruelly depriving Donjeta Pajazitaj of her life with a firearm on November 9, 2015, in the mountains of Strelca, Deçan Municipality.



## 8. Supreme Court judgment in Naser Pajazitaj case

The Supreme Court issued a judgment on April 6, 2023, acquitting the defendant of the charges. This judgment sparked public debate due to the contrasting sentencing outcomes it produced.

When looking into the judgement, from lay perspective, it is evident that this judgement completely overlooked the chronological progression of the case.

It should have at least acknowledged the first trial where the defendant was acquitted, followed by the second trial (retrial) where the defendant was found guilty and sentenced to life imprisonment, representing two drastically different outcomes – from innocence to life imprisonment, which constitutes a capital punishment in Kosovo.

## 9. G.E. Case

The case involving G. E. is a longstanding legal matter that has navigated multiple levels of the judicial system, from the Basic Court through to the Court of Appeals and ultimately to the Supreme Court, undergoing several retrials along the way, and is still ongoing. Despite the criminal offense occurring in 2010, the official initiation of the case dates back to 2016 when the Special Prosecutor's Office of the Republic of Kosovo (SPRK) filed indictment No. on 24 November 2016. Subsequent to this filing, the indictment was further supplemented and specified on 23 February 2022.<sup>2</sup>

As the case progressed, it moved through various courts. Initially, it fell under the jurisdiction of the Basic Court in Peja. However, following an appeal, the Court of Appeals of Kosovo annulled the initial judgment and referred the case back to the Basic Court in Peja for retrial. Subsequently, due to objective reasons, jurisdiction was transferred to the Basic Court in Gjakova.

Throughout its legal journey, the case underwent retrials to address legal issues and ensure fair proceedings. The Basic Court in Peja conducted a retrial after the annulment by the Court of Appeals. Additionally, the Basic Court in Gjakova also conducted its own retrial upon assuming jurisdiction. In total there were four conducted retrials, but only three formally completed.

This legal process has spanned a significant period, commencing with the indictment in 2016 and continuing through various judicial phases, including retrials and appeals. The exact duration of the case can be calculated from its initiation to the present, considering the multiple phases it has undergone.

Overall, the case has seen substantial movement between courts and legal proceedings, including appeals and retrials. It traversed from the initial indictment by the SPRK to the Basic Court in Peja, then to the Court of Appeals, and finally to the Basic Court in Gjakova. However, despite this progress, the case remains unresolved due to procedural issues and ongoing judicial review.

The decision to prioritize this case arises from significant uncertainties surrounding the progression and duration of the case, as well as the clarity of judgments issued thus far.

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<sup>2</sup> <https://lojmi.net>  
<https://betimiperdrejtesi.com>

## 10. Supreme Court Judgment in the G. E. Case

The Supreme Court's judgment, particularly when contrasted with the subsequent ruling in the retrial process by at the Basic Court of Gjakova, lacks the procedural details necessary for readers to grasp the full picture. It's noteworthy to acknowledge Basic Court of Gjakova for the commendable structure and clarity demonstrated in the latest judgment concerning this case.

The judgment from the Supreme Court exhibits lack of strong explanation regarding how the case has progressed through different levels of the judicial system, including transitions between courts and the reasons for these transitions. In absence of such information, the judgments do not elucidate the reasons for retrials or specify the exact number of retrials that have occurred during the legal proceedings.

The judgment (Pml.nr.88/2023) exclusively focuses on the last retrial conducted by the Basic Court of Gjakova in 2023. Indeed, the judgment (Pml.nr.88/2023) fails to include details concerning the initial retrial and the Court of Appeal's request for retrial. This omission deprives readers of in-depth information that could educate others and potentially prevent similar issues in the future. Including information about why the case was retried initially could offer valuable insights for improving judicial processes and avoiding similar situations in the future.

Thirdly, there's a noticeable absence of clear information about the age and current status of the case within the judicial system. This absence makes it difficult to understand the true timeline and status of the case without extensive analysis of case files. This case has

been ongoing for a significant period, spanning eight (8) years.

The Supreme Court judgment, particularly considering its role in setting the ultimate judicial practice for all Kosovo courts, should be structured to precisely and structurally describe all the processes and movements of the case within the judicial system, similar to the Constitutional Court judgments.

In this case, the Supreme Court should have encompassed all pertinent information, including: i) the referral of the indictment to the Basic Court of Peja, ii) details regarding the judicial proceedings at the Basic Court of Peja, iii) the appeal filed with the Court of Appeals, iv) the Court of Appeals' judgment ordering retrial, v) the retrial at the Basic Court of Peja, which remained formally incomplete, vi) the Basic Court of Peja President's request to transfer the case to another court due to its sensitivity in the local context, vii) the acceptance of the case by the Basic Court of Gjakova, and viii) the judgment rendered by the Basic Court of Gjakova.

Including all this chronological information would have assisted lay readers and peers in understanding the overall picture of the case solely by reading the Supreme Court judgment, without the need to delve into judgments from other instances.

In general, Supreme Court judgments tend to be brief<sup>3</sup> and often lack all the pertinent information regarding the case's progression within the judicial system.

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<sup>3</sup> Supreme Court, Case: 2024:049109, [https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/SUP\\_PML\\_2024-049109\\_SQ.pdf](https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/SUP_PML_2024-049109_SQ.pdf)  
Supreme Court, Case: 2024:023339, [https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/SUP\\_PML\\_2023-165468\\_SQ.pdf](https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/SUP_PML_2023-165468_SQ.pdf)  
Supreme Court, Case: 2019: 179499, [https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/SUP\\_PML\\_83\\_24\\_SQ.pdf](https://www.gjyqesori-rks.org/wp-content/uploads/verdicts/SUP_PML_83_24_SQ.pdf)

# 11. Basic Court Judgment in the G. E. Case

Following the retrial order outlined in the Supreme Court judgment, the Basic Court of Gjakova, under a different trial panel, as the previous judge Mentor Bajraktari who was in charge of the previous trial panel had been reassigned to the Special Department of the Basic Court of Pristina, rendered the judgment in the G. E. case. As mentioned earlier, it is not common for judgments to include all relevant data regarding the case's movement within the judicial system. This is evident in this judgment, where all the information on how the case progressed between instances and all the retrials that occurred were included, and for this the Basic Court of Gjakova trial judge is to be acknowledged.

The judgement includes the following information:

## The Criminal Procedure Process:

1. The Special Prosecutor's Office of the Republic of Kosovo (SPRK) has filed indictment No. PPS.nr.150/2014, dated 24.11.2016, supplemented and specified by the supplement of 23 February 2022, against the accused G.E., from the village of ..., Municipality of Peja, for the criminal offense of Aggravated Murder under Article 147 para.1 points 4 and 9 of the CPC, two criminal offenses of Attempted Aggravated Murder under Article 147 para.1 points 4 and 9 in conjunction with Article 28 of the CPC, the criminal offense of Attempted Aggravated Murder under Article 147 para.1 point 10 in conjunction with Article 28 of the CPC, Endangerment of General Safety under Article 291 para.3, 5, and 6 of the CPC, and the criminal offense of unauthorized possession or control of firearms under Article 374 para.1 of the CC.
2. By the judgment of the Basic Court in Peja - Serious Crimes Department, Case No. 253/2016, dated 26.06.2018, the accused G.E., was found guilty of the criminal offenses of Aggravated Murder under Article 147 para.1 points 4 and 9 of the CPC, Endangerment of General Safety under Article 291 para.1 in conjunction with para.5 of the CPC, and the criminal offense of

unauthorized possession or control of firearms under Article 374 para.1 of the CC, and was sentenced to long-term imprisonment for twenty-five (25) years for the above-mentioned criminal offenses. However, according to Article 389 para.1 point 1.4 of the CCP, the accused was acquitted of two criminal offenses of Attempted Aggravated Murder under Article 147 para.4 and 9 in conjunction with Article 20 of the CPC and the criminal offense of Endangerment of General Safety under Article 291 para.3, 5, and 6 of the CPC.

3. With the decision of the Court of Appeals of Kosovo, Case No. PAKR.nr.434/2018, dated 16.10.2018, it was decided at point I. Upon the approval of the defense's appeal, the judgment of the Basic Court in Peja - Serious Crimes Department, Case No. 253/2016, dated 26.06.2018 was annulled, and the case was remanded to the first instance court for retrial. At point II, as for the sentencing decision, it is currently non-jurisdictional. While at point III, the dismissive part of the judgment remains in preliminary form.
  4. The Basic Court in Peja - Serious Crimes Department, after being remanded by the Court of Appeals of Kosovo, has conducted judicial review proceedings in this criminal case, which commenced on 28.01.2019, where the judicial review was concluded with final statements from the parties. However, after the final statements during the deliberation and voting by the panel of judges of the aforementioned court on 21.09.2020, it was decided to reopen the judicial review session in this criminal case to complete the evidence procedure. The judicial review in this criminal case at the Basic Court in Peja remains unfinished, as it has not been concluded, due to the retirement of the chairman of the panel of judges in this case.
- The Chairman of the Basic Court in Peja had requested all Basic Courts in Kosovo to accept this case for trial in their jurisdiction, as, for objective reasons, another judicial panel could not be formed at the Basic Court in Peja to hear this case in the Serious Crimes Department.
6. The Basic Court in Gjakova, specifically the Chairman of the Court, has agreed to accept jurisdiction over this case for trial, so on 13.10.2020, the case was transferred from the Basic Court in Peja - Serious Crimes Department to the jurisdiction of the Basic Court in Gjakova - Serious Crimes Department.
  7. State Prosecutor from SPRK, Afrim Shefkriu, during the judicial review on 23 February 2022, has amended the indictment emphasizing that in line 6 of paragraph 1

after the words: "has taken out two guns," the words "one black-colored revolver and another bronze-colored revolver" should be noted, while the rest of this provision remains unchanged. Also, in point II regarding the legal qualification of the criminal offense Endangerment of General Safety under Article 291 para.1 in conjunction with para.5 of the CPC, a clarification is made, specifically changing the legal qualification so that in the future, the legal qualification is Endangerment of General Safety under Article 291 para.5 in conjunction with para.1 of the CPC, while the rest of the indictment remains unchanged.

8. The Basic Court in Gjakova - Serious Crimes Department, upon retrial, has rendered judgment No. PKR.nr.191/20 dated 14.03.2022, in which the accused has been found guilty of the criminal offense of Aggravated Murder under Article 147 para.1 points 4 and 9 of the CPC, the criminal offense of Endangerment of General Safety under Article 291 para.5 in conjunction with para.1 of the CPC, and the criminal offense of unauthorized possession or control of firearms under Article 374 para.1 of the CC, and has sentenced him to LONG-TERM IMPRISONMENT for twenty-four (24) years.
9. Against Judgment No. PKR.nr.191/20 dated 14.03.2022 of the Basic Court in Gjakova - Serious Crimes Department, an appeal has been lodged, and the Court of Appeals by judgment No. APS.nr.30/2022 dated 29.09.2022 has decided on this appeal and has upheld Judgment No. PKR.nr.191/2022 dated 14.03.2022 of the Basic Court in Gjakova - Serious Crimes Department.
10. Against the judgment of the Court of Appeals APS. nr.30/2022 dated 29.09.2022, the defense of the accused has filed a motion for legality protection. Regarding the motion for legality protection, the Supreme Court of Kosovo has decided by judgment No. Pml.nr.88/2023 dated 25.05.2023, where it has decided and annulled Judgment No. PKR.nr.191/2022 dated 14.03.2022 of the Basic Court in Gjakova - Serious Crimes Department and Judgment No. APS.nr.30/2022 dated 29.09.2022 of the Court of Appeals regarding the criminal offense of Aggravated Murder under Article 147 para.1 points 4 and 9 of the CPC and the criminal offense of Endangerment of General Safety under Article 291 para.5 in conjunction with para.1 of the CPC and has remanded the case for retrial, while regarding the criminal offense of unauthorized possession or control, the judgment of the Basic Court in Gjakova - Serious Crimes Department PKR.nr.191/2022 dated 14.03.2022 and the judgment of the Court of Appeals APS.nr.30/2022 dated 29.09.2022 has been altered, where the indictment has been rejected due to absolute prescription.
11. The Supreme Court, by judgment No. Pml.nr.88/2023 dated 25.05.2023, which has remanded this criminal case for retrial and in reinstatement, among other things, has considered that the first instance judgment did not provide sufficient and clear reasons regarding the legality of the actions of the police officers, both

before entering T.H.'s house and during their stay in this house, as well as their actions after seizing the "Sig Sauer" firearm, and all these actions of the police officers (before, during, and after the seizure of the aforementioned weapon) should have been evaluated in terms of the legal provisions in force at that time, including: the UNMIK Code of Criminal Procedure Regulation No.2003/26, dated July 6, 2003, and the Constitution of the Republic of Kosovo, therefore, it has recommended to the first instance court to clarify and sufficiently justify whether the actions of the police officers when they went to T.H.'s house, and after seizing the firearm from the accused G.E., were in accordance with the relevant legal provisions; to clarify and sufficiently justify whether the critical night concerns a control or any other institute of criminal procedure in relation to the accused G.E., and the seizure of the firearm; to analyze and evaluate all evidence one by one and all together, in order to then draw correct and legal conclusions, especially regarding the issue of examinations conducted at the Traceology Department in Zagreb in relation to other relevant evidence; once again, to invite expert I.K. to clarify regarding the number of firearms used on the critical night at the discotheque and the connection of the casings and bullets, as mentioned above, as well as other issues related to his field; to prepare the final decision in accordance with the legal provisions, presenting sufficient reasons for all decisive facts, as well as to assess the other claims of the parties based on necessity and reasonableness.

12. The Basic Court in Gjakova, based on the judgment of the Supreme Court of Kosovo No. Pml.nr.88/2023 dated 25.05.2023, its findings and recommendations, has scheduled and conducted judicial review (retrial) on 04.09.2023; 27.09.2023; 28.09.2023; 18.10.2023 and 27.11.2023 regarding the criminal offense of Aggravated Murder under Article 147 para.1 points 4 and 9 of the CPC and the criminal offense of Endangerment of General Safety under Article 291 para.5 in conjunction with para.1 of the CPC, where the accused, after reading the indictment, declared that he does not feel guilty of any of the criminal offenses he is accused of.
13. Since the accused has not accepted guilt during retrial, and based on the recommendations of the Supreme Court of Kosovo, the court has re-examined Ballistics expert I.K., witnesses R.M., and SH.B., administered material evidence, and, upon the proposal of the Special Prosecutor and with the consent of other parties such as the victims' defense counsel, attorney Kosovare Kelmendi - the defender of the accused, and the accused, has reviewed the statements of witnesses given in previous judicial proceedings and in the preliminary procedure.

The comprehensive approach to incorporating information and data regarding the procedure and the judicial process itself is highly commendable and the report included it to showcase it as an example of how Supreme Court judgments could benefit from including such details.

On another note, it's worth mentioning that in the second retrial, this judgment acquits G.E.,<sup>4</sup> which contrasts with the initial findings of the Basic Court of Peja upheld by the Court of Appeals with a 24-year imprisonment, and the other judgments of the Basic Court of Gjakova which found the defendant guilty. This time, the judgment differs by acquitting the defendant. As stated earlier, this report does not aim to discuss the merits of this case but merely is presents it as a matter of fact.

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4 <https://kallxo.com>

## 12. Recommendations

Lëvizja FOL recommends maintaining the content of the final judgments, especially when rendered by the Supreme Court, while advocating for their restructuring to enhance ease of navigation and facilitate efficient access to pertinent data and information.

What is important is that judgments include all the data, in a meta data format, that allow for easier calculation and measurement of data, as following:

1. Name of the courts where trials were carried out previously,
2. Article of the Criminal Offence in the Criminal Code
3. The Criminal Offence,
4. Case chronology
  - a. Date the indictment was submitted by prosecution and the grounds,
  - b. First trial (dates)
  - c. Appeal (dates)
  - d. Retrials (if any / dates)
5. Total of trials / retrials, name of all judges included, name of all prosecutors, included, name of all defence counsels included, etc)
6. Case timelines (the overall time of case tried in the system, not in one court only),
7. Court Exprts,
8. Sentencing (If it is within sentencing guidelines, if not why).

It's imperative to address these deficiencies to ensure transparency, accountability, and efficiency within the legal process. By enhancing the clarity and completeness of the judgments, all stakeholders involved in the case, including legal professionals, litigants, and the public, can gain a better understanding of the case's progression and status.

Furthermore, as mentioned at the executive summary section of this report, if the information is presented in metadata format, this would enable calculations and the utilization of various algorithms. Coupled with AI integration would allow for well-informed decision-making based on a wealth of data.

This report also demonstrates how judgments should be drafted - in a technical manner - according to the requirements of Article 369 of the Criminal Procedure Code. This is illustrated in Annex 1 of the report.

# 13. Annex 1 - Structure of Written Judgment

Article 369 of the Criminal Procedure Code requires the following to be observed and reflected in a written format. Lëvizja FOL recommends that all the case data and information be structured with divided parts rather than bundled together, to enhance readability and comprehension.

- A judgment drawn up in writing must be **fully consistent** with the judgment as it was announced during the trial.
- The written judgment comprises three essential components:
  - **Introduction:** This section includes specific details about the judgment, such as:
    - Indication that the judgment is rendered **in the name of the people**.
    - The **name of the court** where the judgment was issued.
    - Personal information of relevant individuals:
      - **Single trial judge** or **presiding trial judge**.
      - **Members of the trial panel**.
      - **Recording clerk**.
      - **Accused:** First name and surname.
      - **Criminal offense** for which the accused was convicted.
      - Indication of whether the accused was **present at the main trial**.
      - **Date of the main trial**.
      - Whether the main trial was **public**.
      - Names of other participants:
        - **State prosecutor**.
        - **Defense counsel**.
        - **Victim advocate** or **victim's representative**.
      - **Date of the announcement** of the rendered judgment.
      - **Date when the judgment was drawn up**.
  - **Enacting Clause:** This section contains:
    - **Personal data of the accused**.
    - The **decision**:
      - If the accused has been **convicted**, it specifies the necessary data as per **Article 364** of the present Code.
      - If the accused was **acquitted** or the charge was **rejected**, it includes:
        - A **description of the offense** with which the accused was charged.
        - The decision regarding the **costs of criminal proceedings**.
        - Any **property claim** filed.
  - **Statement of Grounds:** This part provides the **reasoning** behind the court's decision.



**2. Concurrent Criminal Offenses:**

- If there are **multiple criminal offenses** involved, the court indicates in the enacting clause:
  - The **punishment determined** for each separate offense.
  - The **aggregate punishment** resulting from all offenses.

**6. Statement of Grounds for Each Point:**

- In the statement of grounds, the court presents the grounds for each individual point of the judgment. This ensures transparency and clarity regarding the reasoning behind each aspect of the decision.

**7. Evaluation of Facts and Credibility:**

- The court must state clearly and exhaustively which facts it considers **proven or not proven**.
- It evaluates the **credibility of conflicting evidence**.
- The court also explains the grounds for:
  - Not approving individual motions of the parties.
  - Establishing the existence of a criminal offense.
  - Determining the criminal liability of the accused.
  - Applying specific provisions of criminal law.

**8. Determining Punishment:**

- If the accused has been **sentenced to a punishment**, the statement of grounds indicates the circumstances the court considered in determining the punishment.
- The court explains its reasoning if:
  - It found the case to be **especially serious**.
  - It deemed it necessary to impose a **more severe sentence** than prescribed.
  - It decided to **reduce the sentence**, waive it, or impose an **alternative punishment**.
  - It considered **mandatory rehabilitation treatment** or **confiscation of material benefit** acquired through the offense.

**9. Confiscation of Property:**

- If the indictment lists specified property subject to confiscation or if new specified property is discovered after the filing of the indictment, the judgment indicates whether the specified property and/or value substitution property is **confiscated or not**.
- The judgment provides reasoning for the confiscation of each item ordered to be confiscated and explains the decision regarding assets not being confiscated.

## 14. Annex II - Sample of a front sheet of the judgment

This section illustrates how the front sheet of every judgment could appear with all the necessary information included. The data highlighted in grey represents metadata that can be used for various algorithms and calculations.

What is lacking is the part that could be included in the second section of the judgment pertaining to the movement of the case (appeals and retrials, changes of trial panel composition, etc.) that, again, could be used as metadata for different algorithms and calculations.

All this data could also be used for calculations of the following types:

1. The overall length of the case since the date of indictment.
2. The overall number of trials and retrials.
3. The overall number of sessions within a trial and the sequencing of the trials.
4. The sentencing (within or out of the sentencing guidelines).
5. The changes in the process pertinent to trial panel composition, prosecutors, and other parties, including experts.
6. Cross-analytical tools in terms of crimes, gender, socioeconomic status, regional background, ethnicity, etc.

The sample is found on the next page. All the highlighted text in grey is recommended to be included in descriptive metadata format.

**NË EMËR TË POPULLIT**

PKR - 56/14

GJYKATA THEMELORE NË PEJË - DEPARTAMENTI PËR KRIME TË RËNDA

**Trupi gjykues:** Besnik Robaj – Kryetar,  
Bislim Mustafaj, anëtar,  
Ilire Belegu – anëtar,

**Sekretare juridike:** Edis Agaj,

**ndaj të akuzuarit:** Sokol Nderimi

**i akuzuar për v.p.:** shpërdorim i pozitës zyrtare ose i autorizimit

**Neni:** 339 par. 3 të KPK-së,

**sipas aktakuzës së:** Prokurorisë Themelore në Pejë  
Departamenti për Krime të Rënda  
PP.nr.154/14 të datës 08.02.2014,

**në seancën publike të shqyrtimit gjyqësor**

**të mbajtur me datë:**

- 09.02.2016,
- 16.03.2016,
- 30.03.2016, dhe
- 05.04.2016,

**në praninë e:**

- Prokurorit të Shtetit, Asdren Hashani,
- përfaqësuesit të dëmtuarës, Komuna Decan, Driton Qehaja,
- të akuzuarit Sokol Nderimi ,
- mbrojtësit të tij avokatit Besnik Bokshi,

me datë 05.04.2016 murr dhe publikisht shpalli,

ndërsa me datë 23.04.2016 e përpiloj këtë:

**A K T G J Y K I M**

- I akuzuari Sokol Nderimi
- i lindur me datë 16.07.1976
- në fshatin Isniq, Komuna Decan, me banim në Pejë,
- rruga "Lidhja e Prizrenit", numër 2,
- i biri i Sherifit dhe Zahides, e gjinisë Gashi,
- me numër personal 29334949580,
- ka të kryer fakultetin ekonomik,
- i punësuar në:
  - i. Komunën e Decanit
  - ii. si Shef i Prokurimit,
- i martuar,
- baba i dy fëmijëve,
- i gjendjes së mesme ekonomike,
- i padënuar më parë nga ana e gjykatës,
- shqiptar,
- shtetas i Republikës së Kosovës,

Në kuptim të nenit 364 par. 1 nën par 1.3 të KPPRK-së,

**LIROHET NGA AKUZA**

