

IN THE NAME OF THE PEOPLE

DISTRICT COURT OF GJILAN/GNJILANE

P. no 181/07

Date: 5 October 2010

The three-judge panel of District Court of Gjilan/Gnjilane, composed of EULEX Judge Dragomir Yordanov as presiding, EULEX Judge Vitor Pardal and Kosovo Judge Zyhdi Haziri as panel members, assisted by EULEX Legal Officer Juhani Paiho as court clerk, In the criminal case against Shefqet Musliu and Besim Tahiri, charged with the criminal offence of Kidnapping witness FY as per Article 64, paragraphs 1 and 2 of the Criminal Law of Serbia in relation to Article 22 of the Criminal Law of SFRY (Count C of the amended indictment),

After public main trial hearings that took place on 1 September and 5 October 2010, when the verdict was announced,

Both defendants being present at the hearings, together with Public Prosecutor Fahri Nuhju from Gjilan/Gnjilane DPPO and Defense Counsels Masar Morina and Nike Shala, Following the Notice of the Chief EULEX Prosecutor, filed at the District Court of Gjilan/Gnjilane on 4 October 2010, for withdrawal from prosecution against defendants Shefqet Musliu and Besim Tahiri for the criminal offence mention above,

Following the instructions of the Supreme Court of Kosovo in Verdict AP 470/2004, dated 27 March 2007,

Acting pursuant to Article 349, paragraph 3 of the Law on Criminal Proceedings (LCP), Official Gazette 26/1986, and pursuant to Article 357, paragraph 5 of LCP read together with Article 48, Paragraph 3 of the Criminal Law of SFRY (1976),

Issues the following

VERDICT

1. Criminal charge is rejected against the defendants:
 - SHEFQET MUSLIU, born on 12.02.1963 in Konculj, Bujanovac, Serbia, of Albanian nationality, resident of Gjilan/Gnjilane, [REDACTED] former commander of the general headquarters of UCPMB, currently serving a sentence in Dubrava prison, and
 - BESIM TAHIRI (aka Cecen), born on 18.08.1980, of Albanian nationality, [REDACTED] currently residing in the village Doberqan/Dobercane, Kosovo, for the criminal offence of Kidnapping of witness FY as per Article 64 paragraphs 1 and 2 of the Criminal Law of Serbia in relation to Article 22 of the Criminal Law of SFRY (Count C of the amended indictment).

2. Defendant SHEFQET MUSLIU (with the personal data mentioned above) is sentenced to an **AGGREGATE SENTENCE OF TEN YEARS AND SIX MONTHS OF IMPRISONMENT** for the criminal offences of kidnapping witnesses 3, 4 and AK as well as for the attempted extortion of witness 1, for which he has been previously sentenced by verdict of the District Court of Gjilan/Gnjilane in case P no. 199/2003 dated 25 June 2004 and confirmed by verdict of the Supreme Court of Kosovo AP 470/2004 dated 27 March 2007.
3. Defendant BESIM TAHIRI (with the personal data mentioned above) is sentenced to an **AGGREGATE SENTENCE OF SIX YEARS AND NINE MONTHS OF IMPRISONMENT** for the criminal offences of kidnapping witnesses 3 and 4, for which he has been previously sentenced by verdict of the District Court of Gjilan/Gnjilane in case P no. 199/2003 dated 25 June 2004 and confirmed by verdict of the Supreme Court of Kosovo AP 470/2004 dated 27 March 2007.

REASONING

1. Competence of the Court

The case falls under the territorial and subject matter jurisdiction of the District Court of Gjilan/Gnjilane to which it has been sent for retrial by the Supreme Court of Kosovo. The case further falls under the competence of EULEX judges in accordance with Article 15 of the Law on Jurisdiction (Law No 03/L-053).

2. Procedural background

Defendants Shefqet Musliu, Besim Tahiri and Feriz Qerimi have been sentenced by the District Court of Gjilan/Gnjilane, UNMIK international judges, with a verdict P no. 199/2003 dated 25 June 2004, as follows:

- Shefqet Musliu – for four offences of kidnapping witnesses 3, 4, KA and FY to eight years of imprisonment for each of them and for one offence of attempted extortion of witness 1 to two years of imprisonment with an aggregate sentence of twelve years
- Besim Tahiri – for three offences of kidnapping the witnesses 3, 4 and FY to five years of imprisonment for each of them with an aggregate sentence of seven years
- Feriz Qerimi – for the offence of kidnapping the witness FY to five years of imprisonment

The Supreme Court of Kosovo, UNMIK international judges, with verdict AP no. 470/2004 dated 27 March 2007 rendered upon appeal of the defendants partially confirmed the verdict of the District Court regarding:

- Shefqet Musliu concerning three offences of kidnapping the witnesses 3, 4 and KA and the offence of attempted extortion of witness 1 with the respective sanctions for each of them;
- Besim Tahiri concerning two offences of kidnapping the witnesses 3 and 4 with the respective sanctions for each of them.

With the same verdict the Supreme Court of Kosovo partially annulled the verdict of the District Court regarding the three defendants concerning the criminal offence of kidnapping the witness FY and concerning the aggregate sentence of Shefqet Musliu and Besim Tahiri and sent the case back for retrial to the District Court of Gjilan/Gnjilane with instructions.

With decision AP no. 470/2004 dated 10 March 2010 the Supreme Court of Kosovo corrected its verdict concerning an obvious material mistake regarding the sanctions of defendants Shefqet Musliu and Besim Tahiri in the confirmed part of the verdict.

With a ruling P. No. 181/2007 dated 1 September 2010 the District Court of Gjilan/Gnjilane dismissed the criminal proceedings against Feriz Qerimi for the reason of his death.

3. Applicable Procedural Law

The amended indictment in this case has been filed to the District Court of Gjilan/Gnjilane on 21 January 2004, before the entry into force of the Provisional Criminal Procedure Code of Kosovo, now Kosovo Code of Criminal Procedure (KCCP) on 6 April 2004. The criminal proceedings are still pending at first instance regarding the criminal offence of Kidnapping witness FY following the verdict of the Supreme Court. For these reasons and pursuant to Article 550 KCCP the applicable procedural law is the Law on Criminal Proceedings (LCP), Official Gazette No. 26/86.

4. Findings of the Court

4.1. Regarding the withdrawal from prosecution

On 4 October 2010 the Public Prosecution submitted to the Court a notice for withdrawal from prosecution against the two defendants for the criminal offence they are currently charged with (Kidnapping witness FY), pursuant to Article 51 of LCP. The withdrawal was verbally confirmed by the Public Prosecutor at the hearing on 5 October 2010.

In this case the Court is bound by the provision of Article 349, paragraph 3 of the LCP and the pending criminal charge of Kidnapping of witness FY as per Article 64 paragraphs 1 and 2 of the Criminal Law of Serbia in relation to Article 22 of the Criminal Law of the Federal Republic of Yugoslavia (Count C of the amended indictment) against defendants Shefqet Musliu and Besim Tahiri shall be rejected.

4.2. Regarding the aggregate sentence

After the charges concerning the kidnapping of witness FY were dropped and following the instructions of the Supreme Court the panel has to decide on the aggregated sentence to be imposed on the defendants as follows:

- Regarding Shefqet Musliu – for three offences of kidnapping witnesses 3, 4 and KA, for each one of which he has been sentenced to eight years of imprisonment and for one offence of attempted extortion of witness 1 for which he has been sentenced to two years of imprisonment and
- Regarding Besim Tahiri – for two offences of kidnapping the witnesses 3 and 4, for each one of which he has been sentenced to five years of imprisonment

A new criminal law has entered into force in 2004, namely the Provisional Criminal Code of Kosovo, now Criminal Code of Kosovo (CCK), since the commission of the criminal offences by the two defendants in 2000-2002. For this reason and pursuant to Article 4 of the Criminal Law of SFRY (1976) applicable by the time of commission of the criminal offences, the panel shall first establish which of them is the less severe for the defendants.

The aggregate sentence is regulated by Article 48 of the Criminal Law of SFRY and by Article 71 of CCK. According to the first one (paragraph 2, subparagraph 3), *“the integrated punishment shall consist of an aggravation of the most severe punishment assessed, but the aggravated punishment may not be as high as the total of all incurred punishments, and may not exceed a period of 15 years’ imprisonment”*. According to the second one (paragraph 2, subparagraph 2), *“the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of twenty years”*. Thus Article 48 of the Criminal Law of SFRY is the less severe criminal law that is to be applied while determining the aggregate sentence for both defendants.

Since the Supreme Court has annulled the aggregated sentence imposed with the verdict P no. 199/2003 dated 25 June 2004 upon appeal filed only on behalf of the accused, the Court is bound by the provision of Article 390, paragraph 4 read together with Article 378 of LCP, thus the maximum of the aggregate sentence shall not exceed twelve years for Shefqet Musliu and seven years for Besim Tahiri.

Considering the time elapsed since the commission of the criminal offences and the fact that the new aggregated sentence comprises one offence less than the previous one, the Court finds that the sentence shall be lower than twelve years for Shefqet Musliu and than seven years for Besim Tahiri. However the court considers also that the remaining criminal offences are of a very serious nature and represent particular public danger regarding the penalty imposed by the first instance and confirmed by the Supreme Court of Kosovo. Considering these factors in the light of Article 41 of the Criminal Code of SFRY, the Court imposes an aggregate sentence of ten years and six months on Shefqet Musliu and of six years and nine months on Besim Tahiri.

The time spent by them in detention and the time already served in prison as per the verdict of the Supreme Court (from 7 July 2003 for Shefqet Musliu and from 19 June

2003 for Besim Tahiri) shall be credited against the aggregate sentence pursuant to Article 351, paragraph 6 of LCP.

4.3. Regarding the alleged detention on remand of defendant Shefqet Musliu

The issue was raised several times by the defense and was properly answered by the court with a ruling during the hearing on 1 September 2010 and before that with a letter of the presiding judge dated 2 March 2010. According to the verdict of the Supreme Court of Kosovo AP no. 470/2004 dated 27 March 2007, page 3, paragraph 5. "*The custody of the defendants, Besim Tahiri and Shefqet Musliu will remain on the basis of the pronounced sentences of the affirmed verdicts.*"

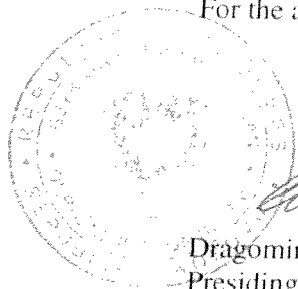
However, since for the first time it was brought to the attention of the trial panel that Shefqet Musliu, according to him, does not benefit of the rights of a convict in Dubrava Prison, the panel considers necessary to provide copies of documents it possesses (like Supreme Court of Kosovo decisions in case no. 470/2004, minutes of main trial hearings in the present case and others) to Dubrava Prison authorities in order to clarify his status as convicted person.


4.4. Regarding the request to return confiscated items to defendant Shefqet Musliu

The court considers that the detailed examination of the case file in order to evaluate which of the confiscated items are related to the criminal offences the defendants have been found guilty for will require additional time, regarding the size of the case file and the number of criminal offences. For this reason the court considers appropriate to render a separate ruling on the issue which will be duly communicated to the parties.

For the above reasoning it has been decided as in the enacting clause of the verdict.

District Court of Gjilan/Gnjilane, case P. no 181/07, 5 October 2010




Dragomir Jordanov
Presiding Judge


Juhani Pailho
Court Clerk

Legal remedy:

This Verdict can be appealed before the Supreme Court of Kosovo. The appeal addressed to Supreme Court of Kosovo must be submitted to District Court of Gjilan/Gnjilane within fifteen days from the delivery of this Verdict to parties (Article 359, paragraph 1 LCP).

The Injured Party, who has not been duly summoned to this Main Trial, may within eight days of the day of receiving the Verdict submit a petition for return to the *status quo ante* if in that petition he states his intention to resume the prosecution (Article 61, paragraph 2 LCP).