

**DISTRICT COURT IN GJILAN/GNJILANE**

**KA.nr.1/12**

**Date: 1<sup>st</sup> of March 2012**

The Confirmation Judge of the District Court of Gjilan/Gnjilane, EULEX Judge Cezary Dziurkowski, acting in the criminal case against:

**I.**

<b>Name</b>	Begzad
<b>Surname</b>	Sinani
<b>Father's name</b>	Qamil
<b>Date of Birth</b>	10.08.1963
<b>Place of Birth</b>	Village Kopernicë, Kamenice Municipality
<b>Gender</b>	Male
<b>Address</b>	Village Kopernicë, Kamenice Municipality
<b>Nationality</b>	Albanian
<b>Citizenship</b>	Kosovo
<b>Whereabouts</b>	
<b>ID number</b>	1003556405

**II.**

<b>Name</b>	Hasan
<b>Surname</b>	Keqmezi
<b>Father's name</b>	Muharrem
<b>Date of Birth</b>	20.04.1965
<b>Place of Birth</b>	Village Koretin
<b>Gender</b>	Male
<b>Address</b>	Village Koretin, Kamenice municipality
<b>Nationality</b>	Albanian
<b>Citizenship</b>	Kosovo
<b>Whereabouts</b>	
<b>ID number</b>	

because there is a grounded suspicion that they have been involved in the commission of the following criminal offence, which is prosecuted *ex officio*:

**Abusing Official Position or Authority**, in violation of Article 339, paragraph 1, 2 and 3 of the Criminal Code of Kosovo (CCK) in conjunction with Article 23 of the CCK.

After the confirmation hearings held on the 7<sup>th</sup> of February and 1<sup>st</sup> of March 2012, in the presence of the defendants Begzad Sinani and Hasan Keqmezi and their Defense Counsels, Shemsedin Piraj and Visar Musa, and the Special Public Prosecutor, Faik Halili as well as the representative of the injured party Shaip Surdulli the Mayor of Kamenice/Kamenica municipality.

Pursuant to Article 316, par. 4 of the KCCP,

Issues the following:

### **RULING**

- 1. The Indictment PP. No. 57/2011, dated 22<sup>nd</sup> of December 2011, filed against the defendants Begzad Sinani and Hasan Keqmezi, for the criminal offence abusing official duties or authority, committed in co-perpetration in violation of Article 339, par. 1, 2, 3 in conjunction with art. 23 of CCK, is CONFIRMED.**
- 2. All the evidence referenced in the Indictment is admissible. All the documents attached to the file were collected lawfully.**
- 3. After the Indictment becomes final, the Indictment and the case record shall immediately be sent to the Presiding judge of this Court for the main trial.**
- 4. A copy of this Ruling with the reasoning shall be served to the parties by mail in upcoming days.**

### **Reasoning**

#### ***1. Findings of the confirmation hearing and admissibility of evidence***

On the 22<sup>nd</sup> of December 2011 the Special Prosecutor of SPRK, filed the indictment PPS No. 57/11 against the aforementioned defendants.

Following a decision of the Focal Point of EULEX Judges Team of Gjilan/Gnjilane, issued on the 16<sup>th</sup> of January 2011 to assign EULEX Judge Cezary Dziurkowski as a confirmation judge, a confirmation hearing was held in front of this Judge.

All the parties had fulfilled the obligation related to the disclosure of evidence, as provided by Articles 307 and 308 of the KCCP.

The Special Prosecutor did read the indictment and asked the Court to confirm in its entirety because there is enough evidence to support the well grounded suspicion that the defendants Begzad Sinani and Hasan Keqmezi have committed the criminal offence of abusing official position or authority, in violation of Article 339, paragraph 1, 2 and 3 of the Criminal Code of Kosovo (CCK) in conjunction with Article 23 of the CCK.

The defendants Begzad Sinani and Hasan Keqmezi were fully aware of the content of the indictment and pleaded not guilty on the count of the indictment.

The defendant Begzad Sinani said to have not committed the criminal offence and challenged the evidence provided by the SPRK Prosecutor. Further, the defendant said that during his term all activities were undertaken in accordance with the laws and regulations.

The defendant provided the Court with the counter evidence proposing the dismissal of the Indictment. He also, claimed to have had impediments by the current Mayor of Kamenice/Kamenica municipality to have access in the public documents by which he could have been able to prove his innocence. However, when asked, he confirmed to have not submitted any request in writing as required by the Law on Access to Official Documents, but the persons in charge from the Archive of Kameince/Kamenia municipality told him they do not dare to give the requested document.

The defendant Hasan Keqmezi said to have not committed the criminal offence and challenged the evidence provided by the SPRK Prosecutor. The defendant provided the Court with counter evidence in order to prove his innocence and proposed the dismissal of the Indictment.

The Defense Counsel Shemsedin Piraj challenged the legal qualification of the criminal offence stressing that the enacting clause provides only a general description of the alleged damage caused and the actions undertaken by the defendants - in consequence the Defense Counsel proposed the Court to dismiss the indictment.

The Defense Counsel Visar Musa declared that the Indictment should not be confirmed because his client has not committed the criminal offence as charged for.

Therefore, in the light of all the above considerations and scrupulous examination of the case file, the Court finds that all the evidence proposed is admissible as well as other documents contained in the file are collected lawfully.

The indictment satisfies all of the requirements of Article 305, Paragraph 1, of the KCCP.

## ***2. The well-grounded suspicion of guiltiness for the count of the indictment***

Confirmation Judge is in the opinion that there exists a well-grounded suspicion that the defendants Begzad Sinani and Hasan Keqmezi have committed the criminal offence as

charged for in the indictment, and all the other circumstances listed under article 316 paragraphs 1 through 3 of KCCP, which could have motivated the dismissal of the indictment, were not found.

The defendant Begzad Sinani, in capacity of the Mayor of Kamenice/Kamenica municipality and the defendant Hasan Keqmezi, in capacity of Procurement Manager in Kamenice/Kamenica municipality, exercised in the events described in the Indictment specific official duties based on authorization provided for by law. Therefore, pursuant to Article 107, par. 1, sub.3 of the Criminal Code of Kosovo (CCK) both of them shall be considered to act in a position of the official persons.

The confirmation Judge has analyzed all case files in such a way as not to prejudice the outcome of the main trial as requested by the Article 317, par. 2 of KCCP,

Based on the statements of the defendants Begzad Sinani and Hasan Keqmezi given in front of the SPRK Prosecutor as well as other evidence in the case files gave a picture of the factual situation which meets the standard of well-grounded suspicion as required for by law.

In conclusion, all the considerations mentioned in the Indictment and proposed evidence are admissible and sufficient to support a well-grounded suspicion that the abovementioned defendants have committed the criminal offence as charged in the indictment.

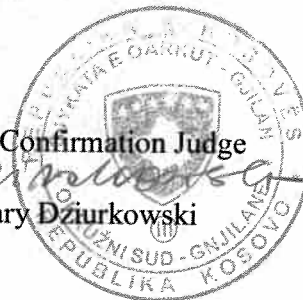
The legal qualification suggested by the Public Prosecutor in the indictment is also correct, as the described criminal act rightly fall under the legal designation and the provisions of the KCCP as referred in the indictment.

Based on the aforementioned reasoning, it was decided as at the enacting clause of this Ruling.

**DISTRICT COURT IN GJILAN/GNJILANE**  
**On 1<sup>st</sup> of March 2012**

The Confirmation Judge

*Cezary Dziurkowski*  
Cezary Dziurkowski



Legal Remedy:

Pursuant to article 432 and article 434 (2) of the KCCP an appeal against this ruling may be filed within three (3) days from the date and time of its service by the parties and persons whose rights have been violated to the Three-judge Panel of this Court.