

IN THE NAME OF THE PEOPLE

DISTRICT COURT OF GJILAN/GNJILANE

P. no 118/11

Date: 2nd December 2011

The three-judge panel of District Court of Gjilan/Gnjilane, composed of EULEX Judge Mariola Pasnik as Presiding Judge, EULEX Judge Dariusz Sielicki and Kosovo Judge Rasim Rasimi as panel members, assisted by Stephen Parkinson as recording clerk, in the criminal case against:

Shefqet Musliu, born on 12.02.1963 in Konculj, Bujanovac, Serbia, of Albanian nationality, resident of Gjilan/Gnjilane, UCK Brigade, 4th floor, father's name Esat, mother's name Xhemile, occupation mechanic, married with children, finished eight years in school, former commander of the general headquarters of UCPMB and,

Besim Tahiri, (aka Cecen), born on 18.08.1980, in village Vranje, of Albanian nationality, father's name Nijazi, mother's name Emine, single, completed high school, farmer, of poor economic status, currently residing in the village Doberqan/Dobercane, Kosovo,

both 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 2 and 7 September and 25 October and 2 December 2011,

In the presence of both defendants, together with Public Prosecutor Fahri Nuhiu from Gjilan/Gnjilane DPPO and EULEX Prosecutor Elisa Moretti and the 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, which was orally reconfirmed by the Prosecutor Fahri Nuhiu Gjilan/Gnjilane DPPO and EULEX Prosecutor Elisa Moretti on 25th of October 2011 and 2nd December of 2011, 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 351/2010, dated 25 May 2011 regarding the aggregate sentence of both defendants for the criminal offences of kidnapping of the witness 3, witness 4, witness AK, and for the criminal

offence of attempted extortion of the witness 1 (all confirmed by Verdict of Supreme Court of Kosovo AP 470/2004 dated 27 March 2007)

Issues the following:

JUDGMENT

I.

Acting pursuant to Article 349, paragraph 3 of the Law on Criminal Proceedings (LCP), Official Gazette 26/1986,

The criminal charge against the defendants SHEFQET MUSLIU and BESIM TAHIRI for the criminal offence of Kidnapping of witness FY (Count C of the amended indictment) is REJECTED.

Because,

On the 17th of August 2001, the defendants SHEFQET MUSLIU and BESIM TAHIRI, forced the witness FY at gun point and took him to a location in a forest near artificial lake where he was beaten up and maltreated. Later he was taken to a location in Gjilan where he was subjected to electroshock and as a result of which he lost consciousness. The objective of the kidnapping was to force FY to give information about a pamphlet and to get him to sign a paper which could be used against him.

By which they would have committed the criminal offence of kidnapping acting in complicity contrary to Article 64, par. 1 and 2 of CLS read with Article 22 of CLRFY (Count C of the amended indictment).

II.

Pursuant to Article 2, subpar. 2 of the Criminal Code of Kosovo (CCK) and Article 390 and Article 357, paragraph 5 of LCP

1. Defendant SHEFQET MUSLIU (with the personal data mentioned above) has been previously found guilty and 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, to eight (8) years for each of the criminal offences of kidnapping witness 3, and witness 4,

and

2. BESIM TAHIRI (with the personal data mentioned above) has been previously found guilty and 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, to five (5) years for each of the criminal offences of kidnapping witness 3, and witness 4.

Because,

On a date unknown in September 2000, Besim Tahiri took two persons who are referred as witness 3 and witness 4 in the record from the spot in the village of Dobercan to a building in Dobrosin, the headquarters of Shefqet Musliu, by deception with a view to make contribution to the UCPMB and to force them to part with some property. At the building they were maltreated, threatened and beaten up. Witness 3 was released upon the intervention of his mother after three days of detention and witness 4 was released after four days of detention and documents relating to the Van belonging to him and a shop where he was carrying on the business as a butcher were handed over to Shefqet Musliu and his associates.

III.

1. Defendant SHEFQET MUSLIU (with the personal data mentioned above) has been previously found guilty and 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, to eight (8) years for the criminal offence of kidnapping injured party/witness AK.

Because,

On the 8th of September 2001, the accused Shefqet Musliu who was accompanied by other persons ordered a person who was identified as AK in the investigative proceedings (who did not testify but whose statement was read in court) to accompany them in a car. AK was taken to a garage where he was threatened and maltreated and forced to give information in relation to a warrant of arrest that had been issued against the accused, Shefqet Musliu. AK was released after about thirty (30) minutes on the condition that he provided the information.

2. Defendant SHEFQET MUSLIU (with the personal data mentioned above) has been previously found guilty and 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, to two (2) years for the criminal offence of attempted extortion of witness 1.

Because,

On the 24th of April 2002 Shefqet Musliu accosted a person identified as witness number 1, who was in her car and asked her for money. On her refusal he threatened her and told her it's either your blood or money. The witness was very scared and told him she did not owe him money and that she did not have money.

Wherefore

Pursuant to Article 48, Paragraph 2, subpar. 3 of the Criminal Law of SFRY (1976) the Court imposes an AGGREGATE SENTENCE OF NINE YEARS for defendant SHEFQET MUSLIU.

Pursuant to Article 48, Paragraph 2, subpar. 3 of the Criminal Law of SFRY (1976) the Court imposes an AGGREGATE SENTENCE OF SIX YEARS AND NINE MONTHS for defendant BESIM TAHIRI.

The time spent by them in detention and the time already served in prison as per the Verdict of the Supreme Court Ap. 470/2004 (from 7 July 2003 until 25 May 2011 for Shefqet Musliu and from 19 June 2003 until 18 March 2010 for Besim Tahiri) shall be credited against the aggregate sentence pursuant to Article 351, paragraph 6 of LCP.

REASONING

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).

Procedural background of the case:

On 20 June 2003, the International Public Prosecutor initiated investigation against the defendant Besim Tahiri and, on 9 July 2003 against the defendant Shefqet Musliu.

On 9 December 2003, the International Public Prosecutor filed the Indictment, PP. No. 107/03, against the defendants Shefqet Musliu and Besim Tahiri, which was amended on 21 January 2004.

Defendant Shefqet Musliu was accused of four kidnappings witnesses **FY, AK, 3** and **4** contrary to Article 64 paragraph 1, 2 and 4 of the Criminal Code of Serbia (CLS) (*Official Gazette* of SR Serbia, No. 26, 1977 with amendments) as read with Article 22 of the Criminal Law of the Socialist Federal Republic of Yugoslavia [CLSFY] (*Official Gazette* SFRJ No. 44 of October 8, 1976 with amendments), attempted extortion of a witness **1** contrary to Article 180 of the CLS as read with Article 19 and 22 of the CLSFY, unauthorized possession of a weapon contrary to Article 8.2 and 8.3 of UNMIK Regulation No. 2001/7 On the Authorization of Possession of Weapons in Kosovo from 21 February 2001 (UNMIK/REG/2001/7) and criminal association contrary to Article 227 of the CLS.

Defendant Besim Tahiri was accused of three kidnappings witnesses **FY, 3 and 4** contrary to Article 64 paragraphs 1, 2 and 4 of the CLS as read with Article 22 of the CLSFRY, unauthorized possession of weapon on 17 August 2001 contrary to Article 8.2 and 8.3 of UNMIK Regulation No. 2001/7 and criminal association contrary to Article 227 of the CLS.

The District Court of Gjilan/Gnjilane, on 25 June 2004 after conducting the main trial announced the Judgment P. No. 199/2003¹ and found guilty the defendant **Shefqet Musliu** on four counts of kidnapping witnesses **FY, AK, 3 and 4** and, one count of attempted extortion of a witness **1**. The defendant Shefqet Musliu was sentenced to a term of imprisonment of **8 years** in respect of each of the offences of kidnapping of witnesses **FY, AK, 3 and 4**, and **2 years** for the criminal offence of attempted extortion of witness 1. The District Court in Gjilan/Gnjilane sentenced defendant Shefqet Musliu to an aggregate sentence of **12 years of imprisonment**. With the same Judgment defendant Shefqet Musliu was acquitted from two counts of unauthorized possession of a weapon and one count of criminal association.

Defendant **Besim Tahiri** was found guilty on three counts of kidnapping of witnesses **FY, 3 and 4** and was sentenced to a term of 5 years in the respect of each offences of kidnapping of witnesses **FY, 3 and 4**. The District Court in Gjilan/Gnjilane sentenced defendant Besim Tahiri to an aggregate sentence of **7 years** imprisonment. Defendant Besim Tahiri was acquitted of one count of unauthorized possession of a weapon as well as criminal association.

On 27 March 2007, upon deciding on the appeals filed by the Defence Counsels defendants, the Supreme Court of Kosovo with the Verdict AP. 470/2004, partially annulled the Judgment P. No. 199/2003, and returned the case to the District Court in Gjilan/Gnjilane for retrial in relation to the kidnapping of witness **FY**, contrary to Article 64, paragraphs 1 and 2 of the CLS read with Article 22 of the CLSFRY and in relation to the aggregate sentence of 12 years against the defendant **Shefqet Musliu** and, to the aggregate sentence of 7 years against the defendant **Besim Tahiri**.

With the same Verdict the Supreme Court of Kosovo upheld the Judgment P. No. 199/2003, concerning the convictions and the sentences of **eight years** in respect of each of the offences of kidnapping the witnesses 3 and 4 as well as **AK**, and **two years** for the attempted extortion of witness 1, against the defendant Shefqet Musliu. The 1st Instance Court Judgment was also upheld concerning the convictions and sentences of **five years** in respect of each of the offences of kidnapping the witnesses 3 and 4 against the defendant Besim Tahiri².

¹ With the same Judgment the Court also found guilty the defendant Feriz Qerimi (now late) for the criminal offence of kidnapping witness **FY** and sentenced him to 5 years of imprisonment.

² As corrected by the Ruling of the Supreme Court AP. 470/2004, dated 10 March 2010

With the Ruling AP no. 470/2004 dated 10 March 2010 the Supreme Court of Kosovo corrected its verdict AP. 470/2004, dated 27 March 2007, concerning an obvious material mistake regarding the sanctions of defendants Shefqet Musliu and Besim Tahiri in the confirmed part of the verdict.

1st Re-trial proceedings before the District Court of Gjilan/Gnjilane

Following the instruction of the Supreme Court of Kosovo, the District Court of Gjilan/Gnjilane, conducted re-trial sessions on 1 September and 5 October 2010.

With the 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.

On 4 October 2010, the Public Prosecution Office in Gjilan/Gnjilane submitted to the Court a notice for withdrawal from prosecution against the two defendants for the criminal offence they were 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. Thus the District Court of Gjilan/Gnjilane, with the Judgment P.nr. 181/07, dated 5 October 2010, rejected the 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.

As instructed by the Supreme Court of Kosovo, the District Court of Gjilan/Gnjilane decided also on the aggregate sentences and imposed the aggregate sentence of 10 years and 6 months of imprisonment for the defendant Shefqet Musliu for already affirmed criminal offences of kidnapping of witness 3, 4 and AK and the criminal offence of attempted extortion of witness 1. The District Court of Gjilan/Gnjilane also imposed an aggregate sentence of 6 years and 9 months of imprisonment for the defendant Besim Tahiri for already affirmed criminal offences of kidnapping of witness 3 and 4.

The Judgment P.nr. 181/07 was appealed on 15 October 2010 and 2 November 2010 by the defense counsels of both defendants. Upon deciding on the appeals on 25 May 2011 the Supreme Court of Kosovo, with the Ruling AP. No. 351/2010, annulled the Judgment P.nr. 181/07 and returned the case to District Court of Gjilan/Gnjilane for retrial because the Judgment did not contain a detailed description of the rejected charge (concerning kidnapping of witness FY) and the aggregate sentence. It was further stressed that the Court of first instance did not explain how the individual sentences were combined before deciding to impose the aggregate sentences. That lacks constitutes an essential violations of the provisions of criminal procedure as stipulated in Article 364 paragraph 1 item 11 Law on Criminal Proceedings.

2nd Re-trial proceedings before the District Court of Gjilan/Gnjilane

Applicable Procedural Law and Substantial 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 and the aggregate sentences following the Ruling 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. This is also confirmed with the Supreme Court's Verdict AP. 470/2007, dated 27 March 2007, page no. 24, "*Supreme Court assessment*" as well as with the Ruling of the Supreme Court AP. 351/2010, dated 25 May 2011, page no. 6 *item C* "*the applicable law*".

Findings of the Court

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 were charged with (Kidnapping witness FY), pursuant to Article 51 of LCP. The withdrawal was verbally confirmed by the Public Prosecutor at the hearing on 25 October 2011 and on 2 December 2011. 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 had to be rejected.

In his closing statement the District Prosecutor of Gjilan/Gnjilane, Mr. Fahri Nuhiu reiterated the withdrawal from prosecution concerning the criminal offence of kidnapping of witness FY and asked the Court to carefully follow instructions of Supreme Court of Kosovo concerning the aggregate sentences for the defendants. EULEX Prosecutor, Mrs. Elisa Moretti agreed with the closing statement of her colleague.

In his closing statement the Defence Counsels Masar Morina and Nike Shala challenged the already confirmed parts of the offences (concerning witness 3, 4 and AK) as well asked the Court not to apply the former Law of Yugoslavia and the Criminal Law of Serbia.

In his closing statement the defendant Shefqet Musliu agreed with the closing statement of his defence counsel and asked the Court to return a document "The Agreement of

Konculj” because it presents a valuable item for him since he was one of the parties who signed it.

The defendant Besim Tahiri had nothing to say in his closing statements.

As for the applicable law this issue is clearly explained before and already confirmed by the Supreme Court of Kosovo thus the Court did no further discussed this issue.

Regarding the aggregate sentences

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

Regarding Shefqet Musliu – for the already affirmed part of the punishment for criminal offences of kidnapping witnesses 3, 4 and AK, for each one of which he has been sentenced to eight years of imprisonment and for criminal offence of attempted extortion of witness 1 for which he has been sentenced to two years of imprisonment and

Regarding Besim Tahiri – for the already affirmed part of the punishment for criminal offences of kidnapping the witnesses 3 and 4, for each one of which he has been sentenced to five years of imprisonment.

Since the commission of the already affirmed criminal offences by the defendants Shefqet Musliu and Besim Tahiri in 2000-2002, there is a new Criminal Code into force from 2004, the Criminal Code of Kosovo (CCK), for this reason and pursuant to Article 2, subpar. 2 of CCK (Article 4 of the Criminal Law of SFRY (1976) applicable by the time of commission of the criminal offences) the panel must establish which of them is more favorable for the defendants.

The aggregate sentence is regulated by Article 48 of the Criminal Law of SFRY and by Article 71 of CCK.

The Article 48, paragraph 2, subparagraph 3, provides “*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*”.

The Article 71, paragraph 2, subparagraph 2 of CCK provides “*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, it is obvious that Article 48 of the Criminal Law of SFRY is more favorable criminal law to be applied while determining the aggregate sentence for both defendants.

Since the Supreme Court has annulled also the aggregated sentence imposed with the Judgment P. no. 181/2007 dated 5 October 2010 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 10 years and 6 months for Shefqet Musliu and 6 years and 9 months for Besim Tahiri.

Before deciding for the aggregate sentences, on 8 November 2011 the Court *ex-officio* requested information from the Municipal Court in Gjilan/Gnjilane about the criminal background of the both defendants Shefqet Musliu and Besim Tahiri and detailed Reports from Dubrava Prison concerning the behavior of the both defendants.

When deciding for the aggregate sentences the Court took into consideration several issues such as; the seriousness of the criminal offences, the time elapsed since the commission of the criminal offences, the fact that the amended Indictment contains one offence less than the previous one and the past and present behavior of the both defendants.

The Court administered as evidence and paid special attention to the received "Certificates on Criminal Backgrounds" from Municipal Court in Gjilan/Gnjilane, dated 9 November 2011, in the name of the defendants Shefqet Musliu and Besim Tahiri as well as Social Evaluation Reports dated 11 November 2011 from Dubrava Prison.

Concerning the defendant Shefqet Musliu, according to issued Certificate by Municipal Court of Gjilan/Gnjilane, there were no any other criminal pending cases against the defendant Shefqet Musliu. The received Social Evaluation Report was quite positive concerning the defendant Shefqet Musliu e.g. that the defendant Shefqet Musliu has been adapted to rules of correctional service, is well- behaved person and correct and after re-socialization process which has been going normally and in positive way does not present risk for the environment. Moreover defendant was motivated for his good behavior and for his future in society.

Considering these factors in the light of Article 48, paragraph 2, subparagraph 3 and Article 41 of the Criminal Code of SFRY, the Court imposed an aggregate sentence of 9 years of imprisonment on Shefqet Musliu and is convinced that the purpose of punishment is achieved as per Article 33 of the Criminal Code of SFRY.

Concerning the defendant Besim Tahiri, according to issued Certificate by Municipal Court of Gjilan/Gnjilane, the defendant Besim Tahiri has been sentenced for another criminal offence (Article 297 paragraph 3 subparagraphs 1 of CCK) and he has been punished with a fine in the amount of 150€.

The Social Evaluation Report received from Dubrava Prison was quite negative for defendant Besim Tahiri e.g., that the defendant Besim Tahiri, made no satisfied positive change in behavior and his re-socialization went slowly and he feels little bit more regretful. Finally correctional service made small positive effect as per his personality.

Further, the report indicates that the defendant Besim Tahiri made an attempt to escape from the Prison as well as that he was subjected to disciplinary measures for breaching

Prison's rules. Thus the Court did not find any mitigating circumstances concerning the defendant Besim Tahiri. Considering these factors in the light of Article 48, paragraph 2, subparagraph 3 and Article 41 of the Criminal Code of SFRY, the Court imposed an aggregate sentence of 6 years and 9 months of imprisonment on Besim Tahiri and is convinced that the purpose of the punishment is achieved as per Article 33 of the Criminal Code of SFRY.

The time spent by defendants in detention and the time already served in prison as per the Verdict of the Supreme Court Ap. 470/2004, from 7 July 2003 until 25 May 2011 for Shefqet Musliu and from 19 June 2003 until 18 March 2010 for Besim Tahiri shall be credited against the aggregate sentence pursuant to Article 50 of the Criminal Code of SFRY, and Article 351, paragraph 6 of LCP.

A separate Ruling concerning the costs of criminal proceedings shall be issued.

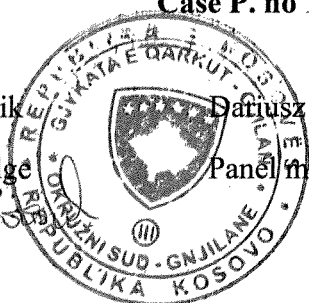
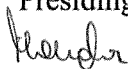
As for the request to return confiscated items from the defendants the Court shall render a separate Ruling after the Judgment becomes final.

DISTRICT COURT OF GJILAN/GNJILANE

Case P. no 118/11, 2 December 2011

Mariola Pasnik

Presiding Judge



Dariusz Sielicki

Panel member

Rasim Rasimi

Panel member

Stephen Parkinson

Recording clerk



Anila Shehu

Interpreter

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).