

DISTRICT COURT IN GJILAN/GNJILANE

KA.nr.181/11

Date: 9<sup>th</sup> November 2011

The EULEX Confirmation Judge, Criminal Judge Mariola Pasnik, acting in the criminal case against:

I.

<b>First name:</b>	Besim
<b>Surname:</b>	Tahiri
<b>Nickname:</b>	"Qeqen "
<b>Father's first name:</b>	Nijazi
<b>Father's surname:</b>	Tahiri
<b>Mother's first name:</b>	Emine
<b>Mother's maiden name:</b>	Azemi
<b>Place of birth:</b>	Vranje, Serbia
<b>Place of residence:</b>	Dobërqan village, Gjilan/Gnjilane municipality
<b>Date of birth:</b>	18/08/1980
<b>Personal identification number:</b>	n/a
<b>Nationality:</b>	Kosovo Albanian
<b>Citizenship:</b>	Republic of Kosovo
<b>Occupation:</b>	Sportsman
<b>Family conditions:</b>	Single
<b>Literate:</b>	Yes
<b>Education:</b>	n/k
<b>Personal income:</b>	n/k
<b>Financial position:</b>	Average
<b>Pending criminal proceedings:</b>	Pending trial in DC Gjilan/Gnjilane
<b>Detention status:</b>	In detention on remand since 24 September 2011

II.

<b>First name:</b>	Nijazi
<b>Surname:</b>	Tahiri
<b>Nickname:</b>	n/k
<b>Father's first name:</b>	Sabri
<b>Father's surname:</b>	Tahiri
<b>Mother's first name:</b>	Ajete
<b>Mother's maiden name:</b>	Sherifi
<b>Place of birth:</b>	Suharne, Bujanovac municipality, Serbia
<b>Place of residence:</b>	Dobërqan village, Gjilan/Gnjilane municipality
<b>Date of birth:</b>	19/01/1960

<b>Personal identification number:</b>	n/a
<b>Nationality:</b>	Kosovo Albanian
<b>Citizenship:</b>	Republic of Kosovo
<b>Occupation:</b>	Farmer, currently unemployed
<b>Family conditions:</b>	Married
<b>Literate:</b>	Yes
<b>Education:</b>	Elementary School
<b>Personal income:</b>	n/k
<b>Financial position:</b>	Average
<b>Pending criminal proceedings:</b>	n/k
<b>Detention status:</b>	Was in detention on remand since 29/04/2011 until 29/07/2011, after he has been under restrictive measures until 24/10/11

charged with the indictment PPS No. 41/11 filed on 20<sup>th</sup> of October 2011 by the Special Public Prosecutor, for the criminal of extortion in violation of Article 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK) in conjunction with Article 23 of the CCK.

#### **Because**

**The Defendants Besim Tahiri and Nijazi Tahiri** on 29<sup>th</sup> of April 2011, in Gjilan jointly with the intent to obtain unlawful material benefit for themselves or for each other used serious threat to compel brothers Qani and Shemsi Xhelili to do an act to the detriment of their property. Besim Tahiri approached Shemsi Xhelili in the parking lot near BKT bank in Gjilan, and demanded Shemsi Xhelili to give him 20.000 Euros or otherwise Shemsi Xhelili could forget Kosovo, his family and his work. On the same day Nijazi Tahiri went to the Office of Qani and Shemsi Xhelili in Gjilan and demanded Qani Xhelili to give 20.000 Euros for Besim Tahiri or otherwise it will be bad for Qani Xhelili and for his family. By their action the defendants intended to obtain great benefit material

**by doing so, they committed the criminal offence of extortion in co-perpetration in violation of Article 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK) in conjunction with Article 23 of the CCK.**

After the confirmation hearing held on the 9<sup>th</sup> of November 2011, in the presence of the defendants Besim Tahiri and his Defense Counsel Haxhi Millaku, Nijazi Tahiri and his Defence Counsel Masar Morina, and the Special Public Prosecutor, Olivier Beauvallet

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

Issues the following:

## RULING

1. The indictment PPS. No. 41/11, dated 20<sup>th</sup> of October 2011, filed against the defendants Besim Tahiri and Nijazi Tahiri, charged for criminal offence extortion, committed in co-perpetration in violation of Article 267, par. 1 and 2 in conjunction with art. 23 of CCK, is CONFIRMED.

2. All the evidence referenced in the indictment is admissible. All the evidence that is in the Court file or to which reference is made in documents that have been filed with the Court is admissible.

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.

## REASONING

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

On the 20<sup>th</sup> October 2011 the Special Prosecutor of SPRK, filed the indictment PPS No. 41/11 against the aforementioned defendants.

Following a decision of the Focal Point of EULEX Judges Team of Gjilan/Gnjilane, issued on the 1<sup>st</sup> of November 2011 to assign EULEX Judge Mariola Pasnik 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. In particular, all the previous statements of the witnesses/injured parties were made available to the Defence Counsels.

The Special Prosecutor did read the indictment and asked the Court to confirm it because there is enough evidence to support the well grounded suspicion that both defendants have committed the criminal offence they are charged in the indictment.

During the confirmation hearing held on the 9<sup>th</sup> of November 2011 both the defendants Besim Tahiri and Nijazi Tahiri were fully aware of the content of the indictment and pleaded not guilty on the count of the indictment.

The Defence Counsel Masar Morina challenged the legal qualification of the criminal offence stressing that there is no single evidence in the case files proving that the defendants have acted as a group. Further, the Defence Counsel Masar Morina declared

that all evidence mentioned in the Indictment was provided by SPRK except Orders for covert measures - interceptions of telephone conversations.

The Defence Counsel Haxhi Millaku challenged the way the Prosecution Office conducted investigation and put in question the statements of the injured parties because neither the Defence Counsels nor the defendants had a chance to challenge the statements of injured parties given in front of the Police and the SPRK as well. Also, the Defence Counsel Haxhi Millaku proposed to replace detention on remand for the defendant Besim Tahiri with alternative measures- Bail to be combined with the promise of the defendant not to change place of his residence.

The SPRK Prosecutor stressed that the Indictment is not based on the evidence gathered through interception of telephone conversation thus there is not need for further comments.

Therefore, in the light of all the above considerations, the Court finds that all the evidence contained in the case file is admissible.

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***

This Judge deems that there exists a well-grounded suspicion that the defendants Besim Tahiri and Nijazi Tahiri have committed the criminal offence at issue, as charged 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 present.

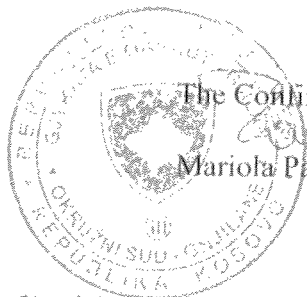
As for the motion of Defence Counsel Haxhi Millaku for replacing detention on remand with the alternative measures, the Confirmation Judge pursuant to Article 275, par. 2 and 286, par. 2 of KCCP, shall forward the cases files and the motion to the Presiding Judge for his consideration after the Indictment becomes final.

In conclusion, all the above mentioned evidence and considerations 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 9<sup>th</sup> November 2011



The Confirmation Judge

Mariola Pasnik

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.