

**DISTRICT COURT OF MITROVICA**

**P. nr. 34/10**

**28 January 2011**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF MITROVICA**, in the trial panel composed of EULEX Judges Christine Lindemann-Proetel as Presiding Judge, and Klaus Jung and Hajnalka Karpati as panel members, with the participation of EULEX Legal Officer Noora Aarnio as Recording Officer, in the criminal case against;

**Visar Tahiri**, charged with

**Aggravated Murder**, under Article 147 item 7 of the Criminal Code of Kosovo (CCK),

After having held the main trial in public on 18, 19, 25, 26 and 28 January 2011, in the presence of the accused Visar Tahiri, his Defence Counsel Agim Lushta, Injured Party Gynej Rexhepi and his authorized representative Avni Gjakova, and EULEX Public Prosecutor Antonio Pastore, after the deliberation and voting held on 28 January 2011, pronounced - on the same day - in the presence of all the Accused Visar Tahiri, his Defence Counsel Agim Lushta, the Injured Party Gynej Rexhepi and his authorized representative Avni Gjakova, and the EULEX Public Prosecutor, the following

**JUDGEMENT**

I. The accused **Visar Tahiri**, no nickname, son of Ali Tahiri and Luljeta Havolli, born on 7.11.1979 in Mitrovica, Kosovo, of Albanian ethnicity, resident of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, construction worker, \_\_\_\_\_, no known previous conviction, in detention on remand from 15.5.2010 until 21.12.2010,

**is FOUND NOT QUILTY**

**because** it has not been proven that on 2.10.2001 in Rruga e hekurudhes (Railway Street) in Mitrovica, in the car of Arif Rexhepi (Zastava 128-Skala 55" with registration plates 289-KS-009) at approximately 23.00 hours, he intentionally deprived Arif Rexhepi of his life after he had understood that Rexhepi had 3.500 – 4.000 DM, for the purpose of obtaining material benefit, by shooting two bullets from a close distance with a fire weapon of 7.65 mm caliber and unidentified make at the right side of Rexhepi's head, one hitting the neck of Arif Rexhepi and other the vicinity of the ear.

Therefore, pursuant to Article 390 Item 3) of the Criminal Procedure Code of Kosovo (CPCK) the accused Visar Tahiri **is acquitted** of the charge of **Aggravated Murder**, under Article 147 item 7 of the Criminal Code of Kosovo (CCK),

II. Pursuant to Article 103 Paragraph (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the CPCK, the necessary expenses and the remuneration and necessary expenditures of his defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

## **Reasoning**

### **A.**

The District Court of Mitrovica is competent to hear this case, Article 23 item 1) i) and Article 27 paragraph (1) of the CPCK.

EULEX Judges were assigned to the case by Decision of the President of the Assembly of EULEX Judges, dated 2 December 2010, based on Articles 3.3 and 3.5 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

### **B.**

The Court acquitted the Accused, because it has not been proven that he has committed the act with which he has been charged, Article 390 item 3 of the CPCK.

## I.

With the indictment PP Nr 174/01, dated 21 June 2010, the Accused was charged with Aggravated Murder contrary to Article 147 item 7 CCK for having intentionally deprived Arif Rexhepi of his life for the purpose of obtaining material benefit on 2 October 2001.

During the proceedings the Court - and apparently the parties as well - overlooked that the applicable law at the time the criminal offence was committed, was the Criminal Law of the Socialist Autonomous Province of Kosovo (CLK 1977)<sup>1</sup>. Consequently, the Accused should have been charged with Murder contrary to Article 30 paragraph 1 read with paragraph 2 item 3 CLK<sup>2</sup>, while the Court would have had to determine, whether the new law would be more favourable to the Accused and if so, would have to be applied according to Article 2 paragraph 2 CCK. However, the elements constituting the criminal offence of Aggravated Murder contrary to Article 147 item 7 CCK and of Murder contrary to Article 30 paragraph 1 read with paragraph 2 item 3 first alternative CLK, respectively, are exactly the same and the Accused has been found not guilty. Thus, the oversight has not had any influence on the judgement.

## II.

The Court found proven the following facts:

On 2 October 2001, between 21.00 and 22.00 hrs the Accused and the late Arif Rexhepi together entered the coffee bar owned by Enver Osmani in the city centre of Mitrovica, where they sat down at a separate table, ordered some beers and talked to each other. At or shortly after 22.30 hrs they left the coffee bar together. Arif Rexhepi then drove with his car "Zastava 128-Skala 55" with registration plates 289-KS-009, as he usually did, towards his home in the "Lagja e Boshnjakeve"(in Mitrovica North). When he passed by the shop of his brother Fadil Rexhepi close to the City Museum, he honked the horn as a greeting. At that time he had one passenger sitting on the front passenger seat and another one on the back seat behind the driver.

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<sup>1</sup> To be read with the Criminal Code of the former Socialist Federal Republic of Yugoslavia (CC-SFRY 1976)

<sup>2</sup> Article 30 CLK:

- (1) Whoever takes another person's life shall be punished with at least five years of imprisonment.
- (2) The term of imprisonment of at least ten years or a death penalty shall be pronounced against:  
... [3] a person who takes another person's life for personal gain, ....

In the Rruga e hekurudhes (Railway Street) between shortly after 22.30 and shortly before 22.45 hours, Arif Rexhepi sitting on the driver's seat in his car was shot at with a fire weapon of 7.65 mm caliber unidentified make with two bullets to the right side of his head. One bullet hit his neck, the other the vicinity of his right ear. The bullets caused fatal wounds which resulted in his instant death.

After the incident investigative authorities could not locate the Accused.

However, the Court found not proven beyond reasonable doubt:

- that it was the Accused who sat on the front passenger seat, when Arif Rexhepi with his car passed by the shop of his brother and
- that it was the Accused who shot dead Arif Rexhepi.

### III.

During the evidentiary proceedings evidence was taken as follows:

The Court heard

- (1) Witness (and Injured Party) Gynej Rexhepi
- (2) Witness (and Injured Party) Fadil Rexhepi
- (3) Witness Myzejene Rexhepi
- (4) Witness Adnan Rudniku
- (5) Witness Fatmir Deda
- (6) Expert Witness Dr. Tefik Gashi

The following documents were read and entered into evidence:

- (7) Statement of Enver Osmani given to the IRU in Mitrovica on 04.10.2001
- (8) Statement of Enver Osmani given to the investigative Judge on 15.04.2003
- (9) Order of the search of the suspect's house, issued by the investigative Judge issued on 07.11.2001
- (10) Order for the arrest of the suspect issued by the investigative Judge on 26.12.2001
- (11) Forensic report, dated 20.12.2010, concerning the comparison of finger prints,
- (12) Initial incident report dated 03.10.2001
- (13) Police report signed by UNMIK Police Officer Ungureanu Florin, undated

- (14) Report of Italian Carabinieri Giuseppe de Natale and Carabinieri Sebastian Vincenzo given to IRU in Mitrovica on 03.10.2001
- (15) Statement of French Member of KFOR Julien Pruner given to IRU Mitrovica on 16.10.2001
- (16) Statement of French Member of KFOR Tafilagi Vakuliafa given to IRU Mitrovica on 16.10.2001
- (17) Forensic identification report dated 03.10.2001
- (18) Autopsy report and attached photographs
- (19) The ballistic report
- The Accused exercised his right to remain silent.

#### IV.

The Court has evaluated the evidence as follows:

1. *On 2 October 2001, between 21.00 and 22.00 hrs the Accused and the late Arif Rexhepi together entered the coffee bar owned by Enver Osmani in the city centre of Mitrovica, where they sat down at a separate table, ordered some beers and talked to each other. At or shortly after 22.30 hrs they left the coffee bar together.*

This is proven mainly by the testimony of the now late Enver Osmani, who gave a statement to the police on 4 October 2001 [7] and to the Investigating Judge on 15 April 2003 [8]. In both statements he consistently stated that he knew the Accused and Arif Rexhepi well, they had never before been together at his coffee bar, but on 2 October 2001, they had entered together, sat at a separate table talking to each other, ordered beer and left together. In the statement given to the police he said they stayed from 22.00 hrs until 22.30 hrs. In the statement to the Investigating Judge, he said they arrived around 21.00 - 21.30 hrs and left about 22.30 – 22.40 hrs.

The witness Gynej Rexhepi [1], son of Arif Rexhepi, confirmed that he had heard from Enver Osmani that his father and the Accused had been in his coffee bar and maybe also about the time when they left. Gynej Rexhepi was certain that he had been told by Adnan Rudniku, who was present in the coffee bar that evening, that Arif Rexhepi and the Accused left at 22.30 hrs.

The witness Fadil Rexhepi [2], brother of Arif Rexhepi, stated that they had learned from Enver Osmani that his brother and the Accused had been in his coffee bar and had left at 22.40 hrs; in his statement to the police on 04 October 2001 he had said Enver Osmani had told him they had left between 22.30 and 22.45hrs.

The witness Adnan Rudniku [4] confirmed the presence of Arif Rexhepi, whom he knew, in the coffee bar at that evening and that he was accompanied by a young man in his early twenties, whom the witness did not know. He said they arrived at around 21.30 hrs and they were still there, when he left before 22.00 hrs.

The witness Fatmir Deda [5], who worked as a waiter at the coffee bar, testified that Arif Rexhepi and a young guy had been together in the coffee bar for around half an hour on the day of the incident, in the afternoon around 17.00 hrs. He knew the young guy by face, because he had come to the coffee bar several times before with Enver Osmani's son. When asked if he could identify this person in the court room, he pointed at the Accused<sup>3</sup> although adding, he could not be quite sure.

The slight differences in and between the testimonies of the witnesses Enver Osmani, Gynej Rexhepi, Fadil Rexhepi and Adnan Rudniku with regard to the exact time, when Arif Rexhepi together with the Accused entered and left the coffee bar do not question the credibility of any of these witnesses. Enver Osmani and Adnan Rudniku had no reason to pay attention to the exact time when Arif Rexhepi together with the Accused left the coffee bar. Only, when they learned about the murder, this became an important issue and they had to determine the time based on their memory. Gynej Rexhepi and Fadil Rexhepi could only rely on what they heard and that may also have varied to a certain extent.

Only the statement of Fatmir Deda strongly differs from the others with regards to the time of the day, when the Accused and Arif Rexhepi were in the coffee bar. Although this witness displayed a surprisingly detailed memory even as to the brand of beer they had ordered, the Court is convinced that the witness was mistaken as to the time. Almost ten years have passed since the incident; this was the first time he was asked to testify about it and because of difficulties with the delivery of the summons he had no time to prepare for his statement. Thus, it is understandable that he may have mixed up something as to the time of the event he described.

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<sup>3</sup> The Accused was at that time sitting amongst the public and before he had been seated behind the witness.

Therefore, with regard to the time, when the Accused and Arif Rexhepi were in the coffee bar, the Court fully relies on the concurring statements of the other four witnesses.

As to the atmosphere between the Accused and Arif Rexhepi, nothing of relevance has been proven. The witness Enver Osmani in his statement, dated 4 October 2001, said "Arif was talking, as if he was justifying himself", but in his statement, dated 15 April 2003, he said "they entered laughing" and "I was unable to observe any change or anxiety neither to Arif nor to Visar". Similarly, the witness Adnan Rudniku in his statement, dated 10 November 2001, said "Arif was trying to justify himself" and described the young man, who was with Arif Rexhepi in the coffee bar, as "like he didn't want to be observed", and "trying to hide his face". However, heard in front of the Court, he stated that from his position he could hardly see the face of the guy, they were talking normally and he didn't see any threats. The witness Fatmir Deda testified "they did not have a disagreement with each other, they had a normal conversation." In view of these contradicting statements, the Court cannot rely on either version.

All these witnesses noted that they had never before seen the Accused and Arif Rexhepi together. Thus, the Court accepts that their being together at the coffee bar was something unusual.

The witnesses Gynej Rexhepi further stated that on the day of the incident Arif Rexhepi carried an amount of around 3.500 to DM with him in order to pay the rent for two shops for some time in advance. However, there is no evidence indicating that the Accused knew about that money and no evidence that Arif Rexhepi still had that money with him, when he was murdered.

## 2.

*Arif Rexhepi then drove with his car "Zastava 128-Skala 55" with registration plates 289-KS-009 the usual way towards his home in the "Lagja e Boshnjakeve" (in Mitrovica North). When he passed by the shop of his brother Fadil Rexhepi close to the City Museum, he honked the horn as a greeting. At that time he had one passenger sitting on the front passenger seat and another one on the back seat behind the driver.*

These facts are proven by the testimonies of the witnesses Gynej Rexhepi, Fadil Rexhepi and Myzejene Rexhepi, as far as they concur.

The witness Fadil Rexhepi stated that the night his brother was killed, his brother had passed by his shop by vehicle between 22.40 and 22.50 hrs and honked to greet him. The Accused was sitting on the front seat of the vehicle and there was also a male person sitting at the back. Fadil Rexhepi himself was inside the shop, by the window and the distance to the car was around 15 meters. About 10 minutes later a customer informed him that his brother was killed. He told his nephew Gynej Rexhepi the same night that he had seen his brother passing by in his car with the Accused on the front passenger seat and another person behind the driver. He could not really see his brother and the third person, but he recognized Visar Tahiri, who was his customer. It was not unusual to see his brother going to Mitrovica North with other people in the car, as his brother often gave a lift to young people.

The witness Gynej Rexhepi confirmed that his uncle Fadil Rexhepi had told him about having seen Arif Rexhepi passing by with the Accused in his car and honking at 22.45 hrs. His uncle also told him about another person being present in the car that he could not see well.

Myzejene Rexhepi, the wife of Fadil Rexhepi, testified [3] that on the day of the incident in the evening she was helping her husband in the shop. As they were preparing to close, she was outside in order to take some boxes in, while her husband was inside at the cash desk close the window. She just saw the car of Arif Rexhepi passing by and heard him honking, but did not see him. Nor did she see whether there was anyone else in the car. About ten to fifteen minutes later they learned that Arif Rexhepi had been killed. Thereafter her husband told her he was convinced there was someone in the car with Arif Rexhepi. He might have had his suspicions about the identity of that person and after a while, when everybody in Mitrovica was referring to Visar Tahiri, she and her husband also spoke about him. She asked him a few times if he was sure that he saw Visar Tahiri in the car and he was not sure, "but since people in Mitrovica were talking....".

The Court has no doubt that Arif Rexhepi passed by his brother Fadil Rexhepi's shop honking, as described by Fadil Rexhepi and Myzejene Rexhepi, and confirmed by Gynej Rexhepi's statement. As to the time of the passing by, it is logical that it must have been after Arif Rexhepi had left the coffee bar and before he was shot dead. However, the Court does not rely on the time rather precisely determined by Fadil Rexhepi, as he had no reason to check the exact time at the moment, neither when Arif Rexhepi passed by nor when he was informed about the murder of his brother; this became important only

afterwards, when he tried to understand what had happened and even more so when he was questioned by the police.

The Court is satisfied that Fadil Rexhepi saw two other persons with his brother in the car, because Gynej Rexhep mentioned already in his first statement given to the police on 4 October 2001, that his uncle Fadil had told him so, and Fadil Rexhepi maintained the same in all his later statements (8 June 2002, 14 February 2003 and in front of the Court). Myzejene Rexhepi confirmed that her husband had talked to her about other persons in the car.

However, the Court is not convinced that Fadil Rexhepi recognized the Accused as the person on the front passenger seat. This does not mean that the witness Fadil Rexhepi intentionally gave wrong testimony to the Court. He himself may be convinced that he recognized the Accused at the moment when his brother's car passed by his shop, but this conviction can have resulted from the conclusion that "it must have been him". The witness Myzejene Rexhepi, who testified in a very clear and considerate manner, stated that her husband in the beginning was not sure about the identity of the passenger who sat in the car on the front passenger seat. She then described exactly the process how a conviction arises from a suspicion that is shared by many other people ("but since people in Mitrovica were talking..."). The Court cannot see any motive for this witness to give wrong testimony in favour of the Accused. Further, Fadil Rexhepi in his statement given to the police on 4 October 2001 said referring to the person with whom his brother had been in the coffee bar: "I think Mr. Enver knows that person, because he told me what was his name, but I could not remember." If he had indeed recognized the Accused two days earlier in his brother's car, it is not at all plausible that he would not remember the name of the Accused that was mentioned by Enver Osmani. Moreover, as according to Fadil Rexhepi's own statement his brother Arif Rexhepi took the same way every evening and he frequently gave a lift to young people, the passing by with two passengers in the car would not have raised special attention of Fadil Rexhepi. And in any event, as it was dark, the conditions to recognize someone passing by in a car were difficult.

### 3.

*Before reaching the "Lagja e Boshnjakeve", in the Rruga e hekurudhes (Railway Street) between shortly after 22.30 and shortly before 22.45 hours, Arif Rexhepi sitting on the driver's seat in his car was shot at with a fire weapon of 7.65 mm caliber unidentified*

*make with two bullets to the right side of his head. One bullet hit his neck, the other the vicinity of his right ear. The bullets caused fatal wounds which resulted in his death on the spot.*

*After the incident investigative authorities could not locate the Accused.*

The time and the place, when and where Arif Rexhepi was found shot dead in his car are proven by the report of the Italian Carabinieri Vincenzo Sebastiani and Giuseppe de Natale dated 03 October 2001 [14]. They noted that it was around 22.45 hrs on 2 October 2001, when they noticed the parked car with the left door open and the body of a man, later identified as Arif Rexhepi. Correspondingly, the members of French KFOR Julien Prunier [15] and Tafilagi Vakauliafa [16] confirmed in their statements given to UNMIK Police on 16 October 2001 that they were informed on 02 October 2001 at approximately 22.45 hrs about a murder and immediately went to the crime scene in order to secure it. The Regional Investigation Unit was then informed by them at around 23.00hrs, as noted in the initial incident report of KPS Officer Isak Jashari, dated 03 October 2010 [12], and UNMIK Police Officer Florin Ungureanu, undated [13].

The Forensic Identification Report [17] describes exactly the position of the body, namely the upper part with his head on the ground outside, while the lower part (the legs) were inside the car on the driver's seat. Two shot wounds were noticed on the right side of the head. Two cartridge shells (one marked PPU –cyrillic letters – 32 AUTO on the driver's seat and the other caliber 7.65 mm SBP behind the driver's seat on the floor) were found. The right door of the car was closed. These findings are supported by the photographs taken at the crime scene and attached to the report.

The Ballistic Report [19] proves that both cartridge shells were shot from one weapon of the same 7,65x17 mm caliber.

The Autopsy Report written by the expert witness pathologist Dr. Tefik Gashi [18] and the supplementary oral explanation provided by him to the Court, proves that the two wounds (at the neck and in the vicinity of the right ear, respectively) were caused by two firearm shots and entailed immediate death, as vital parts of the brain were damaged. He further explained that the features of the wounds show that the shots were not fired from a very close distance, but rather from around one meter (if shot from a pistol) to 1,5 meters (if shot from a rifle). Clarification if the distance could have been only 70-80 cm and if therefore the shots could have been fired from someone sitting inside the car, would require additional ballistic expertise and a crime scene reconstruction.

As the Forensic Identification Report does not mention any damage of the windows at the right side, it must be concluded that either a person standing outside opened the right front door and then shot at Arif Rexhepi and closed the door, or a person sitting inside the car shot at Arif Rexhepi and then left the car.

The fact that after the incident investigative authorities could not locate the Accused, is proven by the Order of the investigative Judge issued on 7 November 2001 [9] to search the Accused's house and to compel his appearance, and by the Arrest Order, dated 26 December 2001 [10]. However, the whereabouts of the Accused at that time remain unknown.

4.

*The Court found not proven beyond reasonable doubt that it was the Accused who shot dead Arif Rexhepi.*

There is no evidence that would directly link the murder of Arif Rexhepi to the Accused. No one has seen the Accused at the crime scene or moving away from there. The weapon, with which Arif Rexhepi was shot dead, has never been found. No traces of a possible fight with the Accused have been determined on the body of Arif Rexhepi and no traces (e.g. gunpowder residue, blood or DNA of Arif Rexhepi, injuries from a recent fight) on the Accused or on items in his possession could be determined.

A latent finger print was taken from the inside rear view mirror (E 12) and a latent palm print from the exterior front right door (E 11) of the car at the crime scene, as documented by the Forensic Identification Report [17]. However, the Forensic Report, dated 20.12.2010 [11] proves that these prints do not match with those of the Accused.

The circumstantial evidence as assessed above is not sufficient to find the Accused guilty of having murdered Arif Rexhepi, because the Court is not convinced beyond reasonable doubt of his guilt.

Certainly, the proven facts that on 2 October 2001 the Accused was together with Arif Rexhepi at least until 22.30 hrs and the latter was found dead at 22.45 hrs support a reasonable suspicion against the Accused, especially as their being together was something unusual and the Accused could not be located by the investigative authorities after the incident.

However, there are reasonable doubts remaining. Although the time span from the moment the Accused and Arif Rexhepi left the coffee bar until the moment Arif Rexhepi was found dead is no more than 15 minutes, there are different realistic possibilities as to what happened in between.

It is possible that the Accused and Arif Rexhepi separated immediately after they left the coffee shop or that the Accused sat on the passenger seat, when the car passed by Fadil Rexhepi's shop, but got out of the car before it reached the Rruga e hekurudhes. Other persons can have entered the car before or after it passed by Fadil Rexhepi's shop and then can have killed Arif Rexhepi. It is also possible that someone stopped the car in the Rruga e hekurudhes and standing outside shot dead Arif Rexhepi.

5.

There is no further evidence to be collected for the fair and complete determination of the case.

The Court rejected the Public Prosecutor's motion to hear Ferit Sahiti as a witness, because the fact he could testify on, has no relevance to the case. Ferit Sahiti gave a statement to the police on 10 June 2002, in which he reported having heard a young man at the gas station Universal saying on the phone "I cannot come home, I am going to Pristina, because Arif has been killed." This would have happened in the night, when Arif Rexhepi was murdered (wrongly quoted by the police officer as 24 October 2001). From such testimony no conclusion could be drawn whether or not the Accused deprived Arif Rexhepi of his life.

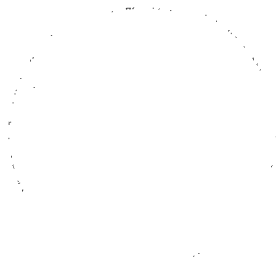
The Court also rejected the Public Prosecutor's motion to send for a DNA analysis, the exhibits E1 (a left glove found not far from the car), E7 (the cover of the front passenger seat and the cover of the head rest) and E9 (blanket found on the rear passenger seat), because from the result of the DNA analysis no additional new information could be obtained. If DNA traces matching with the DNA of the Accused were found, it would be proven that the Accused was in contact with those items and especially as to traces on the cover of the front passenger seat and the cover of the head rest, the conclusion could be drawn that the Accused sat on the passenger seat in the car of Arif Rexhepi at some time. However, the possibility that the Accused was seated in the car even before he entered the coffee bar together with Arif Rexhepi, or that he was in the car with Arif Rexhepi, when they left the coffee bar – and maybe also, when passing by Fadil

Rexhepi's shop -, but left the car before Arif Rexhepi reached the place of the incident, would still remain.

The Court does not see any further evidence to be taken ex officio.



**Recording Officer  
Noora Aarnio**



**Presiding Judge  
Christine Lindemann-Proetel**

**Legal remedy:**

Authorized persons may file an appeal in written form against this verdict through the District Court of Mitrovica to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.