

DISTRICT COURT OF MITROVICË / MITROVICA

P No. 84/08

31 March 2011

IN THE NAME OF THE PEOPLE

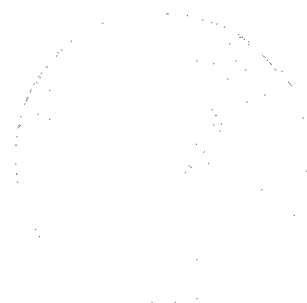
THE DISTRICT COURT OF MITROVICË/MITROVICA, in the trial panel composed of EULEX Judges Klaus Jung, as a presiding judge, and Christine Lindemann-Proetel and Hajnalka Veronika Karpati as panel members, with the participation of EULEX Legal Officer Anu Juho as Recording Officer, in the criminal case against:

HYRJET ISLAMI, charged with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 Paragraph (2) as read with Paragraph (4), item i) of the Criminal Code of Kosovo (CCK) [count I], Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 Paragraph (1) of the CCK [count II.1] and Unauthorized ownership, Control, Possession or Use of Weapons contrary to Article 328, Paragraph (2) of the CCK [count II.2], and

BASHKIM IMERI, charged with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 Paragraph (2) as read with Paragraph (4), item i) of the CCK [count I], and Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 Paragraph (2) of the CCK [count III],

After having held the main trial hearings open to the public on 30 March 2011, in the presence of the Accused Hyrjet Islami, his Defense Counsel Bashkim Mehana, the Accused Bashkim Imeri, his Defense Counsel Jetullah Mehaj and EULEX Public Prosecutor Adebayo Kareem, after having accepted the plea agreement regarding Count I, Count II.1 and Count III at the main trial hearing on 30 March 2011, after the trial panel's deliberation and voting held on 30 March 2011, on 31 March pursuant to Article 392 Paragraph (1) of the CPCK, pronounced in public and in the presence of the Accused parties, their Defense Counsels, and the EULEX Public Prosecutor, the following

JUDGMENT



I.
The Accused

HYRJET ISLAMI, no nickname, date of birth 18.7.1977, born in Mitrovica, father's name Behram, mother's name Hana Selmani, residing in Mitrovica, Shefq Ahmeti – Street 61, Kosovo Albanian, working with repairing cars, married, two children,

is

FOUND GUILTY

A. - because on 21 May 2008 around 15:30 hrs, acting as a group, in the parking lot of EMONA Market in Vushtrri/Vučitrn, delivered without an authorization, dangerous narcotic substance marihuana with the aim of selling it, so that following the meeting that the defendant Bashkim Imeri together with Berat Krasniqi had with the buyer named Genc in Dardani neighborhood, namely at Santea bars, they agreed to carry out the sales at EMONA Market. When they arrived at EMONA Market, Berat Krasniqi and Bashkim Imeri met with Genc again and Genc gave 1800 EURO to the defendant, so he could bring him two kilograms of marihuana. Then Bashkim Imeri contacted the Hyrjet Islami by phone and, no later than after five minutes, having taken a cab, Hyrjet Imeri and Samed Sylejmani arrived at Restaurat Emona. Then Samed used the same cab to go to he Municipality Assembly Building in Mitrovicë/Mitrovica, stepped out of the car and received a black bag from unknown people, which contained two kilograms of narcotic substances (marihuana) and 6 plastic bags weighing 22,2 grams. Using the same cab, Samed returned to EMONA Restaurant in Vushtrri/Vučitrn, and handed the bag containing the narcotics over to the defendant Hyrjet Islami, who forwarded it to the buyer Genc, from whom he received 1800 EURO. The police intervened immediately during the exchange and apprehended the defendants. The police confiscated two kilos and 6 small plastic bags of marihuana from the defendant Hyrjet Islami and 3 small bags of marihuana from the defendant Bashkim Imeri.

By doing so, the Accused Hyrjet Islami committed and is criminally liable for the criminal offence of

A. Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 Paragraph (2) as read with Paragraph (4), item i) of the CCK.

B. - because on 21 May 2008 around 15:30 hrs the Accused Hyrjet Islami had a weapon COLT Pistol 7.65 mm, serial number 42340, made in Germany, containing 5 bullets, with him in the parking lot of EMONA Market in Vushtrri/Vučitrn,

By doing so, the Accused Hyrjet Islami committed and is criminally liable for the criminal offence of

B. Unauthorized ownership, Control, Possession or Use of Weapons contrary to Article 328, Paragraph (2) of the CCK.

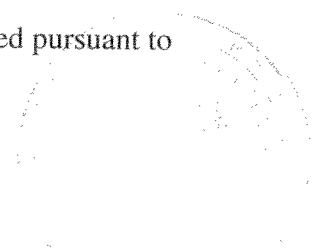
THEREFORE, the accused **HYRJET ISLAMI** is

SENTENCED

- to 3/three/years of imprisonment for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances,
- to 1/one/year of imprisonment for the criminal act of Unauthorized ownership, Control, Possession or Use of Weapons

The aggregate punishment is determined in 3/three/years and 6/six/months of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) item ii) of the CCK.

The time spent in detention on remand from 21 May 2008 until 10 September 2008 and in house arrest from 10 September 2008 until 03 July 2009 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.



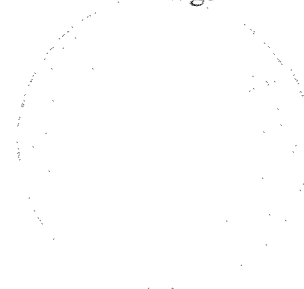
The Accused

BASHKIM IMERI, nickname Bizha, date of birth 25.8.1981, born in Pristina, father's name Idriz, mother's name Mihrije Zhegrova, residing in "Vllezërit Frashëri" –Street 9, Vushtrri, Kosovo Albanian, working as a security staff in discos and night bars, not married, no children, medium financial status

is

FOUND GUILTY

Because on 21 May 2008 around 15:30 hrs, acting as a group, in the parking lot of EMONA Market in Vushtrri/Vučitrn, delivered without an authorization, dangerous narcotic substance marihuana with the aim of selling it, so that following the meeting that the defandt Bashkim Imeri together with Berat Krasniqi had with the buyer named Genc in Dardani neighborhood, namely at Santea bars, they agreed to carry out the sales at EMONA Market. When they arrived at EMONA Market, Berat Krasniqi and Bashkim Imeri met with Genc again and Genc gave 1800 EURO to the defendant, so he could bring him two kilograms of marihuana. Then Bashkim Imeri contacted the Hyrjet Islami by phone and, no later than after five minutes, having taken a cab, Hyrjet Imeri and Samed Sylejmani arrived at Restaurat Emona. Then Samed used the same cab to go to he Municipapl Assembly Building inn Mitrovicë/Mitrovica, stepped out of the car and received a black bag from unknown people, which contained two kilograms of narcotic substances (marihuana) and 6 plastic bags weighing 22,2 grams. Using the same cab, Samed returned to EMONA Restaurant in Vushtrri/Vučitrn, and handed the bag containing the narcotics over to the defendant Hyrjet Islami, who forwarded it to the buyer Genc, from whom he received 1800 EURO. The police intervened immediately during the exchange and apprehended the defendants. The police confiscated two kilos and 6 small plastic bags of marihuana from the defendant Hyrjet Islami and 3 small bags of marihuana from the defendant Bashkim Imeri.



By doing so, the Accused Bashkim Imeri committed and is criminally liable for the criminal offence of

Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 Paragraph (2) as read with Paragraph (4), item i) of the CCK.

THEREFORE, the accused **BASHKIM IMERI** is

SENTENCED

to 1/one/year and 4/four/months of imprisonment for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances pursuant to Article 67 Paragraph (1) item ii).

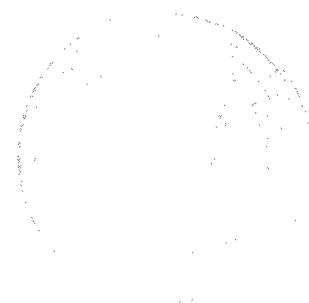
The time spent in detention on remand or in house arrest from 21 May 2008 until 23 September 2009 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

II.

The charge of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 Paragraph (1) of the CCK (Count II.1), against the Accused **HYRJET ISLAMI, IS REJECTED**, following the withdrawal of the charge by EULEX Public Prosecutor, pursuant to Article 389 item i) of the CPCK.

III

The charge of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 Paragraph (2) of the CCK (Count III), against the Accused **BASHKIM IMERI, IS REJECTED**, following the withdrawal of the charge by EULEC Public Prosecutor, pursuant to Article 389 Item i) of the CPCK.



IV The COLT Pistol 7.65 mm, serial number 42340, made in Germany, containing 5 rounds of bullets is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

V Two kilograms of marihuana, 6 plastic bags contained 22,2 grams of marihuana, 3 plastic bags containing 3,7 grams, 3,6 grams and 3,1 grams of marihuana and 20 seeds of marihuana are hereby confiscated pursuant to Article 60 Paragraph (1) and Article 229 of the CCK.

VI The 1800 EURO seized from Hyrjet Islami is hereby confiscated pursuant to Article 60 Paragraph (1) of the CCK and Article 494 CPCK.

Reasoning

A. Procedural Background

Indictment PP nr. 66/08 filed with the District Court of Mitrovica by Public Prosecutor Jusuf Mejzini on 19 June 2008, charged

- Hyrjet Islami with charged with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4, item 1 of the Criminal Code of Kosovo (CCK) [count I], Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 paragraph 1 of the CCK [count II.1] and with Unauthorized ownership, Control, Possession or Use of Weapons contrary to Article 328, paragraph (1) of the CCK [count II.2],

- Bashkim Imeri with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4, item 1 of the CCK [count I], and Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 paragraph 1 of the CCK [count III],

- Isamed Sylejmani with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4, item 1 of the CCK [count I],

- Berat Krasniqi Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4, item 1 of the CCK [count I].

EULEX Judges took over the case on 2 August 2009. The Indictment was confirmed by EULEX Judge Nikolay Entchev against Hyrjet Islami and Bashkim Imeri on 22 November 2010. Confirmation Judge dismissed the Indictment against Berat Krasniqi and severed the indictment against Isamed Sylejmani because of his absence.

The main trial commenced on 30 and 31 March before the panel of EULEX Judges. The EULEX Prosecutor Adebayo Kareem amended the charge against Hyrjet Islami Unauthorized ownership, Control, Possession or Use of Weapons contrary to Article 328, *Paragraph (2)* of the CCK [count II.2]. Hyrjet Islami and Bashkim Imeri pleaded guilty to the charge in count I and Hyrjet Islami to the charge in count II.2. EULEX Prosecutor Adebayo Kareem withdrew charge in count II.1 against Hyrjet Islami and charge in count III against Bashkim Imeri. The Trial Panel accepted the guilty pleas and the verdict was orally rendered on 31 March.

B. Competence of the Court

Under Article 23 Item 1) i) of the CPCK, District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 Paragraph (1) of the CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The grievous charge against the Accused Hyrjet Islami and Bashkim Imeri is Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4, item 1 of the CCK, which allows for the imposition of a sentence of three to fifteen

years. The Indictment alleged that the Accused committed the criminal act in Vushtrri, which lies within Mitrovica District.

Therefore, the District Court of Mitrovica is the competent judicial body to hear this criminal proceeding.

On 2 August 2010, the President of the Assembly of EULEX Judges exercised her right to assign EULEX Judges to cases falling under the subsidiary competence of EULEX Judges pursuant to Article 3.3 of the “Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo” and assigned this case to the EULEX Judges in the District Court of Mitrovica.

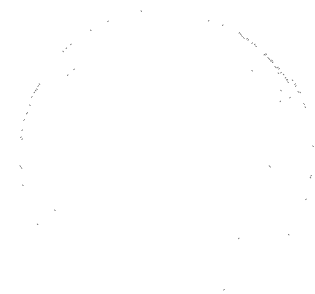
C. Evidence

The Trial Panel is satisfied that the guilty plea was entered knowingly and voluntarily, after sufficient consultation with their Defense Counsel, in accordance with Article 359 Paragraph (20) as read with Article 315 Paragraph (1) of the CPCK. The Trial Panel is also satisfied that the guilty plea is supported by the facts of the case stated above, pursuant to Article 315 Paragraph (1) Subparagraph (3). The case file contains police reports that on 21.5.2008, Kosovo Police discovered at EMONA Market in Vushtrri two kilos of green plant matter. This green plant matter was analyzed by the Central Criminology Laboratory and was verified to be Cannabis containing tetrahydrocannabinol (THC) on 15 September 2008.

D. Legal Qualifications

1. Legal qualifications of the acts of the accused parties

Hyrjet Islami and Bashkim Imeri were charged with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances as codified in Article 229 Paragraph (2) as read with Paragraph (4), item i) of the Criminal Code of Kosovo (CCK) [count I], which state:



Whoever, without authorization, distributes, sells, transports or delivers substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances, with the intent that they shall be distributed, sold or offered for sale shall be punished by a fine and by imprisonment of one to eight years.

When the offence provided for in paragraphs 1, 2, or 3 of the present article is committed under one or more of the following circumstances, the perpetrator shall be punished by a fine and by imprisonment of three to fifteen years.

“Dangerous drugs and psychotropic substances” are defined in Article 107 Paragraph (29) of the CCK as the substances which are listed in the Official Gazette of the Socialist Federal Republic of Yugoslavia nrs. 70/78, 14/81, 39/82, 28/85, 10/87, 53/88 and 2/89. The Decision on the Establishing of the List of Narcotics published in the Official Gazette nr. 70/78 lists “Cannabis (Indian Hemp)” as a narcotic (item nr. 69). The similar definition is decreed in “Law on narcotic medicaments, psycho-tropes and precursors”. Pursuant to Article 9.1 Plants, narcotic medicaments, psycho-trope substances and their preparations, and precursors based on this Law are listed in Table I, II, III and IV. Table I is regarding plants, narcotic medicaments and psycho-trope substances of high dangerousness which are not used in medicine and veterinary, and whose activity is prohibited in Kosovo. Cannabis and cannabis resin and extracts and tinctures of cannabis, chemical name Indian hemp and resin of Indian hemp are defined as a narcotic drug.

It was confirmed from the Police Reports and the Central Criminology Laboratory analysis that Hyrjet Islami and Bashkim Imeri delivered a narcotic and psychotropic substance – cannabis (marihuana) containing THC with aim to sell it without any authorization to do so.

Hyrjet Islami was charged with Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328, Paragraph (2) of the CCK [count II.2]. Hyrjet Islami had a COLT Pistol 7.65 mm, serial number 42340, made in Germany, containing 5 bullets with him.

Weapon is defined in Article 107 Paragraph (28) of the CCK; the term weapon means an instrument designed, used or usable for inflicting bodily harm. Based on the police reports and analysis the COLT pistol is defined as a weapon.

Therefore, the legal elements of the criminal offences have been satisfied.

E. Sentencing

When imposing the criminal sanction the Court has to bear in mind both the general purpose of punishment – that is to suppress socially dangerous activities and deterring other from committing similar criminal acts, and the specific purpose – to prevent the offender from re-offending. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender. In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph of the CCK.

The Court considered as mitigating circumstances the fact that Hyrjet Islami and Bashkim Imeri admitted their criminal offence and pled guilty. Both of them have not been convicted previously. The Court also assumed in favour of the Accused a low concentration of THC in the confiscated marihuana (as the real concentration is unknown). Further, police intervened immediately at the crime scene seizing at least two kilos of marihuana and thus, these drugs did not reach the market of the consumers. With regard to Bashkim Imeri the Court took into consideration that he himself was a consumer of marihuana and did not expect any relevant personal gain.

For the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances in violation of Article 229 Paragraph (2) as read with Paragraph (4) Item i) of the CCK, the law foresees a punishment of fine and by imprisonment of three years fifteen years. The Court imposes a sentence of three year of imprisonment to Hyrjet Islami for this criminal offence.



For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328, Paragraph (2) of the CCK, the law foresees a punishment of imprisonment of one to eight years. The Court imposes a sentence of one year of imprisonment to Hyrjet Islami for this criminal offence.

The Accused Hyrjet Islami committed two criminal acts. Pursuant to the rules of calculation of compounded sentence, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishment. The panel imposed an integrated punishment of 3 years and 6 months imprisonment pursuant to Article 71 Paragraph (1) and (2) item ii) of the CCK.

Regarding to Bashkim Imeri, according to Article 66 of the CCK the court may impose a punishment below the limits provided for by law when the law provides that punishment of the perpetrator may be mitigated or when the court finds that there are particularly mitigating circumstances which indicate that the purpose of punishment can be achieved by imposing a lesser punishment. According to Article 67 Article (1) item i) of the CCK when the conditions provided for in Article 66 of the Code exists, the court shall mitigate the punishment within the following limits, if a period of at least three years is provided as the minimum term of imprisonment, for a criminal offence, the punishment can be mitigated to imprisonment of one year. The Court holds that above mentioned circumstances are such particularly mitigating circumstances required in Article 66 item ii) of the CCK, which allow the panel to impose a lesser punishment than the minimum prescribed by law in Article 67 of the CCK. The Court imposes a sentence of one year and four months of imprisonment to Bashkim Imeri for this criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances in violation of Article 229 Paragraph (2) as read with Paragraph (4) Item i) of the CCK.

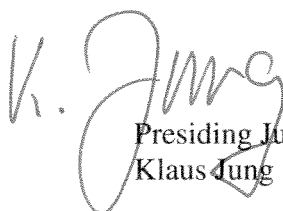
The Accused Hyrjet Islami has been in detention on remand from 21 May 2008 until 10 September 2008 and in house arrest from 10 September 2008 until 03 July 2009. The Accused Bashkim Imeri has been in detention on remand from 21 May until 20 June


2008, from 25 June 2008 until 25 August 2008, from 25 August until 25 October 2008, and from 23 July 2009 until 23 September 2009 and in house arrest from 20 June 2008 until 20 July 2008, from 17 September 2008 until 17 October 2008, from 17 October until 17 December 2008, from 17 December until 17 February 2009, from 17 February until 17 April 2009, from 17 April until 17 June 2009 and from 17 June 2009 until 17 August. These periods are to be credited in the imposed punishments of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.


District Court of Mitrovica

P. nr. 84/2008

Prepared in English, an authorized language.


Presiding Judge
Klaus Jung


Panel Member
Christine Lindemann-Proetel


Panel Member
Hajnalka Veronika Karpati


Recording Officer
Anu Juho

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.