

**DISTRICT COURT OF PEJA/PEC**

**AP.nr.128/2011**

**Date 28<sup>th</sup> February 2012**

**IN THE NAME OF THE PEOPLE**

The Three-Judge panel of the District Court of Peja composed of EULEX Judge Ingo RISCH as Presiding Judge, EULEX Judge Gunnar Øyhaugen and Local Judge Elmaze SYKA as panel members, with the assistance of EULEX Legal Officer Thomas FLANAGAN, in the criminal case against

PASHK KRASNIQI, father's name Zef, mother's name Zoje, born on 18<sup>th</sup> April 1955 in Nepole, ID number 1003355337, Kosovar Albanian, currently residing in the village of Nepole, Peja Municipality, married, farmer, father of 11 children,

Convicted and sentenced to five (5) months of imprisonment, by Judgment of the Municipal Court of Peja, P.nr. 580/10, dated 29<sup>th</sup> September 2011, for the criminal offence of *Giving a False Statement*, contrary to Article 307 (1) of CCK,

Deciding upon the appeal of the defendant, filed on 19<sup>th</sup> October 2011, in a session held open to the public on 28<sup>th</sup> February 2012, pursuant to Article 410 par. 3 of KCCP, in the presence of the Public Prosecutor and the defendant, Pashk Krasniqi, both having been duly summoned,

After voting and deliberating held on 28<sup>th</sup> February 2012, issues the following

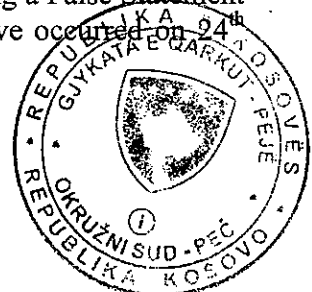
**VERDICT**

The appeal of the Defendant Pashk Krasniqi is REJECTED as ungrounded and the Judgment of the Municipal Court of Peja/Pec P.nr. 580/10, dated 29<sup>th</sup> September 2011, is hereby CONFIRMED.

**REASONING**

**1. Procedural Background**

The Appellant, Pashk Krasniqi, appealed to the District Court of Peja from a decision of a Eulex Judge at the Municipal Court of Peja on 29<sup>th</sup> September 2011 (Case P. No. 580/10). The main trial hearings in the Municipal Court were held on 26<sup>th</sup> and 29<sup>th</sup> September 2011. On those dates the Appellant was charged with giving a False Statement contrary to Article 307 of the CCK. The offence was alleged to have occurred on 04<sup>th</sup>



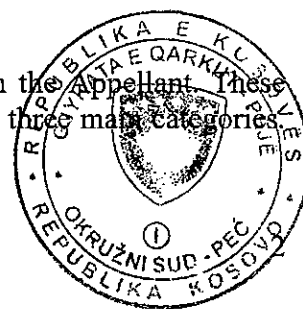
April 2009 during the main trial of Gjelosh Krasniqi for the offences of war crimes. The Judge of First Instance convicted the Appellant of the offence of giving a False Statement and sentenced him to a term of five months imprisonment. Pashk Krasniqi filed an appeal on 19<sup>th</sup> October 2011.

## **2. First Instance Judgment P.nr.580/10**

Pashk Krasniqi did not give evidence to the Court of First Instance. Prior to the main trial he stated that the evidence he gave at the trial of Gjeolsh Krasniqi on 24<sup>th</sup> April 2009 was true. On that date, he stated that on the night of 24<sup>th</sup> March and into the morning of 25<sup>th</sup> March 1999 he was present with Gjelosh Krasniqi and other KLA soldiers in his own house in the village of Nepole. He stated that Gjelosh Krasniqi was assigned to kitchen duties. Pashk Krasniqi testified that it was his responsibility to organize the guarding of the village. He testified that Gjelosh Krasniqi could only leave the village with his permission. In fact he testified that during the period 20<sup>th</sup> March to 4<sup>th</sup> April 1999 Gjelosh Krasniqi did not leave the village at all. He testified that there were six persons including Gjelosh Krasniqi present with him in his house on the night of 24<sup>th</sup> March 1999. He said that they stayed awake until 2am celebrating the beginning of the NATO bombing. He testified that Gjelosh Krasniqi and Kole Krasniqi remained with him until 10am on 25<sup>th</sup> March 1999. Pashk Krasniqi was cross-examined on 24<sup>th</sup> April 2009. It was put to him that during the main trial of Gjelosh Krasniqi prosecution witnesses had testified that he, together with other KLA soldiers had been in the village of Doblibare/Doblibare, Gjakova/Dakovica Municipality on the night in issue. Pashk Krasniqi could not explain this. Pashk Krasniqi stated that the group was awake celebrating in his house until 2am. This was contradicted by the evidence of Kole Krasniqi who stated that the group was awake until 7am. Pashk Krasniqi could not explain this. Pashk Krasniqi testified that Gjelosh Krasniqi was present in the village when he went to inspect the guard the following morning. This was contradicted by the testimony of Kole Krasniqi who testified that Gjelosh Krasniqi disappeared during the night and he did not see him again. Pashk Krasniqi could not explain this. Pashk Krasniqi testified that Gjelosh Krasniqi was not wearing a uniform on the night in question. This was contradicted by a prosecution witness who described Gjelosh Krasniqi wearing a uniform. Again, Pashk Krasniqi could not explain this. Pashk Krasniqi attempted to portray Gjelosh Krasniqi as a simple cook. The evidence established that he was anything but. In several important respects Pashk Krasniqi's evidence before the court on 24<sup>th</sup> April 2009 was contradicted by both prosecution and defence witnesses. Pashk Krasniqi's could not explain any of these contradictions and his evidence overall was a tissue of lies, concocted to provide a false alibi for Gjelosh Krasniqi.

## **3. The Appeal**

The Court of Second Instance received written submissions from the Appellant. These were dated 17<sup>th</sup> October 2010. The submissions were divided into three main categories.



Firstly, the Appellant submitted that the Court of First Instance had violated provisions of KCCP. Secondly, he argued that the Court had violated provisions of CCK and finally he argued that the court had drawn erroneous conclusions in relation to issues of fact which were not justified based on the evidence it had heard. In order to avoid repetition the Court of Second Instance refers to the content of the appeal. At the Second Instance hearing the Appellant did not expand on his written submissions. Instead he made lengthy submissions in relation to his involvement in the war in Kosovo, his activities since then and his current economic status. These submissions were not related to the facts in issue. The panel asked if he wished to appeal against the severity of the sentence alone or if he wished to appeal against conviction and sentence. The Appellant stated that he was not guilty and wished to appeal against conviction and sentence. In relation to his conviction, his only submission was that he had kept a diary throughout the war. He stated that this contained an entry about the events of the night of 24<sup>th</sup> March 1999 made within twenty four hours. However, he stated that he did not refer to this diary when giving evidence on 24<sup>th</sup> April 2009 as the events of the night of 24<sup>th</sup> March 1999 were so important that he recalled them very clearly and would never forget them.

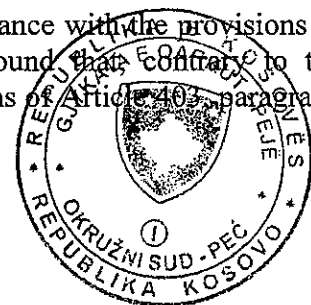
#### **4. Findings of the District Court**

##### **a) Factual findings**

Firstly, the Court of Second Instance found that the Appellant's only arguments were contained in his submissions dated 17<sup>th</sup> October 2010. The Appellant did not make any relevant arguments in the session before the Court of Second Instance on 28<sup>th</sup> February 2012. The Court of Second Instance found that none of the arguments made by the Appellant in relation to matters of fact were sufficient to overturn the findings of the Court of First Instance. The Court of Second Instance found that the Appellant's arguments were poorly reasoned, did not address the findings of the Municipal Court in any substantive way and were ultimately unconvincing. The Court of Second Instance confirmed the finding of the Municipal Court that, as a matter of fact, on 24<sup>th</sup> April 2009, while giving evidence during the trial of Gjelosh Krasniqi, the Appellant, Pashk Krasniqi made a false statement namely that Gjelosh Krasniqi had been with him in his house in the village of Nepole on the night of 24<sup>th</sup> March 1999 and into the morning of 25<sup>th</sup> March 1999. The Court of Second Instance also found, as a matter of fact, that the Appellant, Pashk Krasniqi, made this statement in order to provide a false alibi for the accused person, Gjelosh Krasniqi.

##### **b) Legal findings**

The Court of Second Instance examined the appeal in accordance with the provisions of Article 415, paragraph 1, (1) to (4) of the KCCP and found that, contrary to the Appellant's submissions, there was no breach of the provisions of Article 403, paragraph



1, item 12 or Article 403, paragraph 2, items 1 and 2 of the KCCP during the course of the Appellant's main trial before the Court of First Instance.

The Court of First Instance was properly constituted and the Judge of First Instance was not disqualified.

With regards to the various counts of the appeal the Court of Second Instance follows the consecutive numbering of the appellant in his letter of appeal, dated 17<sup>th</sup> October 2010, and finds the following:

1.

As to the complaint of the Appellant, Article 403 paragraph 1 item 12 of KCCP was violated, the opposite is already explained, see above.

1.2

As far as the Appellant claims that the allegations contained in the indictment were not documented with any supporting evidence, the opposite is already explained. See above.

1.3

As far as the Appellant argues that the judgment of the court of First Instance does not related to the enacting clause of indictment PP. Nr. 1644/2009, dated 3<sup>rd</sup> March 2009, he is incorrect and the opposite is already explained. See above.

1.4

As far as the Appellant argues that there is no material or circumstantial evidence proving he had acted unlawfully or that none of his acts show any of the elements of the criminal offences with which he is charged he is incorrect and the opposite is already explained. See above.

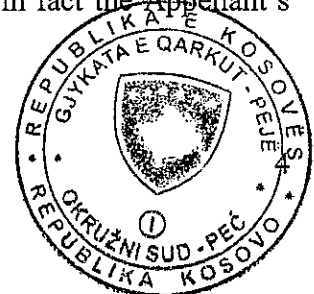
1.5.

As far as the Appellant argues that the Court of First Instance ignored the truth about the facts and evidence adduced at trial the opposite is already explained. See above.

1.6

As far as the Appellant has argued that the sentence imposed was not proportionate to the nature of the offence for which he was convicted the panel's reasons for declining to interfere with the sentence imposed by the Court of First Instance are set out hereunder. The panel has decided that the decision of the Court of First Instance did not offend against Article 64, 66 and 67 of CCK as alleged by the Appellant.

The Appellant's submissions did not address any of the specific findings of the Court of First Instance on which he was found guilty. He also failed to address any of these findings before Court of Second Instance. As he has failed to present a further argument and purely asks for an acquittal, which is not merited in law or in fact the Appellant's guilt is confirmed.



With regard to the severity of the penalty, the Court of Second Instance did not find sufficient reasons to commute the sentence of first instance and established *ex officio* the following:

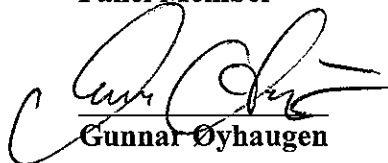
- a) The punishment of 5 months of imprisonment is within the frame of the law and the Court of Second Instance does not find this punishment too severe, because Article 307 CCK foresees a fine or a punishment up to one year. To fine the Appellant or to issue a more lenient punishment of less than 5 months imprisonment cannot be justified due to the purpose of punishments, since this would not prevent the perpetrator from committing criminal offences in the future. A reduction of the punishment could be seen by the Appellant as an invitation to repeat giving wrong testimony in the future.
- b) The Appellant does also not deserve a reduction of the punishment by ordering a suspension of the service of 5 months of imprisonment. In this regard the Court of Second Instance had to take into consideration that Gjelosh Krasniqi was charged with the serious crime of committing war crimes and the Appellant, by providing a false alibi, intended to prevent the accused from being found guilty of a crime of such gravity.

With regard to the further purpose of punishments, to deter other persons from committing criminal offences (see Article 34 (2) CCK), the panel has decided that a conditional punishment would be an inequitable decision in this case because the court is in most criminal proceedings dependent on reliable witnesses and imposing a conditional sentence would send a wrong signal to the public in this regard. Also a comparison with the co-accused of the Appellant, who received a conditional punishment, does not lead to a different consideration, because his statement was of minor importance compared with that one of the Appellant, who had not only given false evidence but had gone further and concocted a false alibi in an effort to protect Gjelosh Krasniqi.

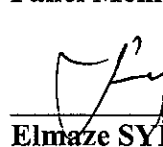
It is therefore decided as in the enacting clause of this judgment.

**DISTRICT COURT OF PEJA/PEC, AP.nr.128/11 date 28<sup>th</sup> February 2012.**

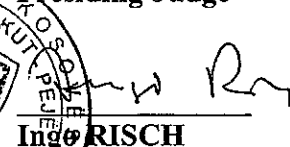
**Panel Member**

  
Gunnar Øyhaugen

**Panel Member**

  
Elmaze SYRI

**Presiding Judge**

  
Ingo RISCH

