

DISTRICT COURT OF PEJA/PEC

AP.nr.130/2010

Date 22 August 2011

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 Dariusz SIELICKI and Local Judge Elmaze SYKA as panel members, with the assistance of EULEX Legal Officer Thomas FLANAGAN, in the criminal case against

KOLE KRASNIQI, father's name Gjon, mother's name Gjyste, maiden name Skeli, born on 24 June 1950 in Nepole, ID number 1003357119, Kosovar Albanian, currently residing in the village of Nepole, Peja Municipality, married, father of 5 children

Sentenced to five (5) months imprisonment by Judgment of the Municipal Court of Peja P.nr.685/09 dated 05 August 2010, for the criminal offence of *False Statement*, contrary to Article 307 of CCK,

Deciding upon the appeal of the defendant filed on 22 October 2010, in a session held open to the public on 22 August 2011, pursuant to Article 410 par. 3 of KCCP, in the absence of the Public Prosecutor and the defendant Kole Krasniqi, even though both were duly summoned,

After voting and deliberating on 22 August 2011, issues the following

VERDICT

The appeal of Kole Krasniqi (the "Appellant") is REJECTED as ungrounded and the Judgment of the Municipal Court of Peja/Pec P.nr.685/09 dated 08 August 2010 is hereby CONFIRMED.

REASONING

1. Procedural Background

The Appellant appealed to the District Court of Peja from a decision of an Eulex Judge at the Municipal Court of Peja on 5 August 2010 (Case P No. 685/09). The main trial hearings in the Municipal Court were held on 14, 21 and 22 July and 5 August 2010. On those dates the Appellant (and a co-accused, Gjergj Luli) were charged with giving a False Statement contrary to Article 307 of the CCK. The offences were alleged to have

occurred on 31 March 2009 during the main trial of Gjeloš Krasniqi for the offences of war crimes. The Judge of First Instance convicted both Gjergj Luli and Kole Krasniqi of the offence of False Statement and sentenced Gjergj Luli to a term of five months imprisonment suspended for a period of two years and Kole Krasniqi to a period of five months unconditioned imprisonment. Kole Krasniqi filed an appeal on 22 October 2010.

2. First Instance Judgment P.nr.685/09

The Appellant stated prior to the main trial that the evidence he gave at the trial of Gjeolsh Krasniqi on 31 March 2009 was true. On that date, he stated that on the night of 24 March 1999 and into the morning of 25 March 1999 he was present with Gjeloš Krasniqi and other KLA soldiers in the house of Pashk Krasniqi in the village of Nepole. He stated that he was in command and that he assigned Gjeloš Krasniqi to kitchen duties and specifically instructed him to slaughter a calf to celebrate the fact that the NATO bombings had begun that night. The Appellant could not recall the names of the other soldiers present. He stated that after dinner the group (including Gjeloš Krasniqi) was awake celebrating together until approximately 7am. The Appellant stated further that he went to bed then and when he awoke Gjeloš Krasniqi was no longer present. The Appellant also stated that he did not see Gjeloš Krasniqi again nor did he make any enquiries as to his whereabouts notwithstanding the fact that the Appellant was in command of the KLA in the village. The assertion that Gjeloš Krasniqi had left the village was also contradicted by a defense witness. The Appellant attempted to portray to the Court an unequivocal recollection of events of the night in issue. However, the Appellant contradicted himself in relation to numerous important events and his explanations were simply untenable. He knew that the testimony he gave was false and that he had concocted it in order to provide a false alibi for Gjeloš Krasniqi.

3. The Appeal

The Court of Second Instance received written submissions from the Appellant on 18 October 2010. These submissions were divided into four main categories of grounds each of which was sub-divided into numerous points. The Appellant submitted that the Court of First Instance had violated provisions of KCCP and CCK, had drawn erroneous conclusions in relation to issues of fact and had also mis-applied a number of other legal principles.

In order to avoid repetitions the Court of Second Instance refers to the content of the appeal.

4. Findings of the District Court

a) Factual findings

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 31 March 2009, while giving evidence during the trial of Gjeloš Krasniqi, the Appellant, Kole Krasniqi made a false statement namely that Gjeloš Krasniqi had been with him in the house of Pashk Krasniqi in the village of Nepole on the night of 24 March 1999 and into the morning of 25 March 1999. The Court of Second Instance also found, as a matter of fact, that the Appellant, Kole Krasniqi, made this statement in order to provide a false alibi for the accused person, Gjeloš 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 18. 10. 2010, and finds the following:

1.

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

1.2

As far as the Appellant claims, he had not given a statement during his main trial 'except he had admitted that his statement given on 31 March 2009 was true', the Court of Second Instance finds that a statement which refers to previous statements is also a statement of its own. And since the statement he referred to was wrong, he gave wrong testimony by making this reference, and the referring statement constituted also a wrong statement.

1.3

As far as the Appellant argues he had only given a description of the night of 24. 03. 1999, he might interpret his statement as a description, but the decisive point, that his 'description' was wrong.

1.4

As far as the Appellant raised the issue between military and civil unit, claiming not having been questioned on this issue, his argumentation is irrelevant, because the wrong statement was only related to the wrong alibi that he gave. The kind of uniforms used or not used, was in terms of the alibi of no relevance.

1.5.

As far as the Appellant raised the issue of the age of those people who were unable to carry weapons, this aspect is with regards of the wrong alibi also irrelevant.

1.6

The question of 'non-uniformed soldiers', to whom the Appellant refers, is also irrelevant with regards of his wrong alibi.

1.7

In this part of his appeal the Appellant tries to defend himself by stating that his statement was based on the truth and Gjelosh Krasniqi had been present in the house of Pashk that very night, but the Court of Second Instance finds that the opposite is proven and his alibi was wrong.

1.8

As far as the Appellant takes into consideration that other witnesses had not been found guilty like him, such argumentation is irrelevant, because the Court of Second Instance has solely to assess the guilt of the Appellant.

2.

As far as the Appellant claims erroneous or incomplete determination of the factual situation, the Court of Second Instance is convinced that all requirements of Article 405 are fulfilled.

2.1

Again in this part of the reasoning of his appeal the Appellant refers to uniform matters. As already explained under 1.4 solely the issue of the alibi itself is decisive, not the question of uniform.

2.2

Under this subsection the Appellant again refers to the age of other individuals, although – as explained above – the age is irrelevant.

2.3

As far as the Appellant raised the issue of recalling names of specific individuals, this does not influence the question, if the alibi was right or wrong. For this reason his argue is irrelevant.

2.4

Here the Appellant distinguished between the 'start of the dinner' and the time 'when the participants of the dinner started to eat'. This question is also of no relevance regarding the qualification of the alibi to be wrong.

2.5

As far as the Appellant again refers to the wearing of uniform, it has to be seen as an irrelevant repetition of his arguments. And the further argument, there were different descriptions regarding the time of starting and finishing with the supper, is also irrelevant, because solely the fictitiousness of the alibi has to be taken into consideration.

2.6

As far as the Appellant considered that someone might have got drunk and such potential fact was not discussed by the Court, such argument is only a speculative consideration without any relevant substance. The core aspect was not the drinking of alcohol, but the question, where was Gjelosh Krasniqi present when the crime was committed.

2.7

As far as the Appellant put into question, if there was a functioning hierarchy inside the KLA there is no relevance with regards to the alibi.

2.8

As far as the Appellant complains that in the reasoning two statements were mentioned although he had only made a reference to his previous statement, the Court of Second Instance has to point out again that a witness, who is interviewed by a court and makes a reference to his previously given statement, like the Appellant has done, he then gives further testimony.

4.

Under this subsection the Appellant failed to present a further argument and purely asks for an acquittal, which to the conviction of the Court of Second Instance cannot be issued, because the Appellant's guilt is established.

With regards to the degree 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 war crime and the Appellant, by providing a wrong alibi, intended to prevent the accused from being found guilty of a crime of such gravity.

And with regards to the further purpose of punishments, to deter other persons from committing criminal offences, see Article 34 (2) CCK, a conditioned punishment would be an inequitable decision, because the court, who is in most the criminal proceedings at a great extent dependent on reliable witnesses, would send a wrong signal to the public. Also a comparison with the co-accused of the Appellant, who received a conditioned 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.

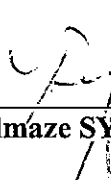
DISTRICT COURT OF PEJA/PEC, AP.nr.130/10 date 22 August 2011.

Panel Member



Dariusz SIELICKI

Panel Member



Elmaze SYKA

Presiding Judge



Ingo RISCH

