

**DISTRICT COURT OF PEJË/PEĆ**

**P. Nr. 141/01**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF PEJË/PEĆ**, in the trial panel composed of the EULEX Judge Ingo Risch as Presiding Judge, the EULEX Judge Gunnar Oyhaugen and the Kosovo Judge Lumturije Muhaxheri as panel members, assisted by the Recording Officer Robina Struthers, in the criminal case against the accused:

**AGIM SYLEJMANI**, son of father Amrush and mother GjJulunaze, née Kozniku, born on 19 January 1948 in Pernoc, Rahovec, resident of Gjakova/Djakovica, no 16 Ibrahim Fehmiu Street, Married father of four children (three surviving), Kosovo Albanian, graduated from secondary school, auto electrician, completed compulsory military service in 1970 in Pozharevc, of poor circumstance, no known previous convictions.

Charged according to the Indictment PP. Nr.111/00, dated 23 November 2000, with the following criminal offence:

**Murder** contrary to Article 30 paragraph 1 of the Criminal Law of Kosovo (CLK):

According to which, he, on 27 June 2000, at about 1700, at Ibrahim Fehmiu Street in Gjakova/Djakovica, wilfully took the life of Berat Mushoviq, from Gjakova/Djakovica, together with his son Ilir, after several misunderstanding that had taken place between them as neighbours, in the manner that on the critical day after a verbal quarrel with the victim, he went to his house together with his son and armed himself with a machine gun AK-47, thereafter they both went to the house of the victim and while the victim opened the door, they both fired the gun several times on him thus shooting him on the right side of the head from behind, and further causing him two other wounds of the left knee, due to which the victim lost his life instantaneously.

After having held the main trial hearings in public on 10 and 11 January 2011, in the presence of:

- The defendant and his defence counsel Mr Teki Boshi;
- The EULEX Public Prosecutor Mr Peter KORNECK;

The trial panel, following deliberation and voting on 11 January 2011 and in accordance with Article 350 Law on Criminal Proceedings 1986 (LCP), pronounces in public and in the presence of the accused, his legal representative and the Public Prosecutor that:

**AGIM SYLEJMANI**

**is**

**ACQUITTED**

*of committing the criminal offence of Murder, in violation of Article 30(1) of the Criminal Law of Kosovo, committed in Gjakova/Djakovica on 27 June 2000, because it has not been proven that the accused has committed the act which he has been charged with.*

According to Article 99 par 1 LCP, the costs of the proceedings as well as the accused's necessary expenses are to be covered out of the Court's budget.

## **REASONING**

### **A. PROCEDURAL BACKGROUND**

On 23 November 2000 the District Prosecutor submitted the indictment PP nr 111/00 against Agim Sylejmani charging him with murder contrary to Article 30 paragraph 1 of the CLK. There followed from this a main trial and on 26 March 2001 the trial panel acquitted Agim Sylejmani of the charge on the indictment.

The District Public Prosecutor filed an appeal to the Supreme Court. Following a hearing on 13 September 2001 the court issued the decision Ap. No. 166/2001. In this decision the Supreme Court upheld the appeal of the prosecutor and remitted the case to the first instance court for re-trial.

Subsequently there were attempts to hold a retrial in Peje/Pec on 17 November 2004. These attempts were aborted due to difficulties securing the attendance of the Mushoviq witnesses, who at the time were residing in Montenegro.

On 21 January 2010 following a request from the president of Pejë/Pec District Court the President of the Assembly of EULEX Judges issued a decision that EULEX Judges would take over the case.

Upon the request of the Presiding Judge Ingo Risch the Ministry of Justice issued an international legal assistance request to Montenegro to locate and serve a summons on the injured party Ajdin Mushoviq and the witness Bujar Mushoviq. A witness summons was also issued for Naser Mushoviq. When it was discovered that this could not be delivered through the normal post an order to the police was issued, to search for the witness and if found, serve the summons on him.

On 10 January 2011, the day the case was listed for trial, the Kosovo Police filed a written report stating that Naser Mushoviq could not be located. On the same day a report came back from the Montenegrin authorities through the international legal assistance division of the Ministry of Justice that the Montenegrins could not locate the Mushoviqs.

On 10 January 2011 the trial commenced after the court received the report from the police and notification from the Ministry of Justice of the response from the Montenegrin Authorities.

On 11 January 2011 closing speeches were heard and the verdict announced. The prosecution in its closing speech invited the court to acquit the defendant, as did the defence.

## **B. THE COMPETENCE OF THE COURT**

### **Applicable Law, competence and Panel Composition of the District Court of Pejë/Pec.**

The indictment was filed on 23 November 2000. According to Article 550 of the KCCP, the criminal proceedings at first instance where the indictment has been filed before the date of entry into force of the PCPCK (6 April 2004), but which have not been completed by this date, shall be continued according to the provisions of the previous applicable law, the Law on Criminal Proceedings 1986 (LCP).

In accordance with Article 23, paragraph 1 of the LCP in conjunction with Article 29 paragraph 2 sub paragraph 1 of the Law on Regular Courts of 1978, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of more than five years.

In the present case the accused was charged with Murder contrary to article 30(3) of CLK, this criminal offence is within the competence of the District Court.

The criminal offence, according to the indictment, was committed in Gjakova/Djakovica and therefore the case falls under the territorial competence of the District court of Pejë/Pec.

The present case was assigned to EULEX Judges authority through a decision of the President of the Assembly of EULEX Judges issued on 21 January 2010, pursuant to article 3.3 and 3.4 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

## **The Main Session**

The main trial was held in public within the premises of the District Court of Pejë/Pec on 10 and 11 January 2011 in the presence of the Public Prosecutor, the defendant and his defence counsel.

In accordance with Article 7 of LCP, international interpreters translated court proceedings and all court documents relevant to the trial, from English into Albanian and vice-versa, as necessary. At the beginning of the hearing on 10 January 2011 a Serbian translator was present however she was released after the presiding judge ascertained in open court that no-one present required her services.

## **B. SUMMARY OF EVIDENCE PRESENTED**

During the proceedings of the main trial, the defendant and the following witnesses were examined:

Bekrije Vosha (the defendant's current wife).

**Statements, police reports and other documentary evidence read out during the trial.**

### *a) Documentary evidence and reports*

During the main trial, the following documents were read as evidence, pursuant to Article 332 of LCP.

- i) The KFOR Police report dated 29.06.00 by Eros Luciano Sto.
- ii) The photographs of the deceased attached to the above report.
- iii) The report written by Dr Maurizio Tommaselli dated 11.08.00.
- iv) The KFOR Police report dated 11.08.00 by Eros Luciano Sto.

*b) Statements*

During the main trial the following statements were read out as evidence, replacing the direct examination of the witnesses, on the basis of the consensus of the parties (see the minutes of the hearing held on 10 January 2010) pursuant to article 333, paragraph 2 of the LCP:

- i) Bekrije Bosha taken on 08.08.00
- ii) Ramadan Jetishi taken on 06.09.00
- iii) Sadik Koci taken on 6.9.00
- iv) Sahar Shkodra taken on 6.9.00
- v) Selajdin Rugova taken on 13.9.00
- vi) Bujar Mushoviq taken on 28.9.00
- vii) Ajdin Mushoviq taken on 28.9.00
- viii) Alta Mushoviq taken on 28.9.00
- ix) Nexhmije Zena taken on 17.10.00

The testimony of the following witness, given at the first trial in 2001 was also read pursuant to article 333, paragraph 2 of LCP on the basis of the consensus of the parties (see the minutes of the hearing held on 10 January 2010):

- i) Ramadan Jetishi
- ii) Bekrije Bosha
- iii) Selajdin Rugova
- iv) Sajar Sjkodra
- v) Nexhimie Zena
- vi) Ardita Kelemendi
- vii) Vjollca Zena
- viii) Sanije Lluhani
- ix) Ilirjana Lluhani
- x) Sto Eros Luciano

### **C. THE ABSENCE OF THE INJURED PARTY**

The absence of the injured party has impeded the retrial of this case at least since the aborted re-trial in 2004. The court made considerable efforts to attempt to locate the injured party or another member of his family; all of these efforts were unsuccessful. The trial was only commenced after all reasonable lines of enquiry were exhausted. In particular the court was unable to locate any of the injured parties – members of the Mushoviq family – either via the international legal assistance division of the Ministry of Justice Kosovo who liaise with Montenegrin authorities or through the UNHCR who were in contact with the Mushoviq family years ago. Therefore the only option was to read out the previous statements of the injured parties.

### **D. FACTUAL RECONSTRUCTION OF THE EVENTS**

Until the critical day the defendant Agim Sylejmani, a Kosovo Albanian, and the later deceased Berat Mushoviq of Bosnian ethnicity, were neighbours in Gjakova/Djakovica. Before the war the family of the defendant and the Musheviq family lived on amicable terms as neighbours despite their different ethnic backgrounds.

After the war the accused had on several occasions threatened members of the Musheviq family. This led to the event in the afternoon of the critical day, before the shooting occurred, that Berat Musheviq while passing by on a bicycle stopped the accused on the street and a verbal quarrel started, escalated and Berat Musheviq dealt the accused at least one blow into his face. The accused headed home, cleaned his face and informed his wife that he would go now to the house of the Mushoviq family in order to have a word with Berat's father. The accused left his home by using a white truck which belonged to his employer, a Swiss NGO and drove to the house of the Musheviq family. The question, if his son Ilir, who was 17 years old that time, accompanied his father in the truck while driving to the Musheviq's house, was unclear to panel of the main trial dealing this case in 2001 and remained unsolved also to the re-trial panel. Shortly after the accused arrived at the front yard of the Musheviq's house Mark Malota Street No 15 Berat Musheviq approached the entrance door carrying a handgun "Tocarev", which was

loaded with at least four cartridges. The court - of the first main trial in 2001 and of the re-trial as well – could not be sure, if the accused was also armed. The panel had to leave unresolved the question of whether the accused was armed with an automatic gun AK 47, even though it was clearly established that the accused was present when Berat Musheviq was lethally shot in the head by a bullet from the said AK 47, which belonged to the family of Agim Sylejmani. The panel cannot exclude the possibility that Ilir Sylejmani took the AK 47, without the consent of the accused, from their home, went separately to the Musheviq's house and used the machine gun after the late Berat Musheviq opened fire by firing his revolver. Beyond all reasonable doubt Berat shot from his hand gun twice. At least to the utmost probability it was Berat who shot first, because it would be against all experience of life that he only responded to the fire directed at him with two shots after having been hit by a machine gun round into his head from which he soon died. The court is unable to establish the precise time at which Berat died, but it is beyond all reasonable doubt that one machine gun round hit and damaged his brain seriously, with the consequence that he had already passed away as a result of the wound to his head, when the doctor in the hospital tried to give him medical aid. The panel is experienced enough by comparable proceedings to assess that the late Berat having such a lethal injury would be unable to fire twice from his revolver after being shot to his head. It however appears feasible to the panel that Berat opened the fire with one shot from his revolver, his fire was returned by several shots and one of them hit him to the head, and after this lethal shot, Berat fired a second time, before he died, and hit most probably his own leg.

Ilir Sylejmani fled after the event from the crime scene and has still not been located. The AK 47 from which Berat Musheviq was shot was confiscated during a house search of the house of the accused who voluntarily went to police when he learnt that he was wanted. The gun was examined and it is also beyond all reasonable doubt that this weapon was the one from which the fatal shot was fired. Close to the spot where Berat was lethally shot and fell to the ground inside the house near the entrance, the Italian police officer Eros Luciano, who inspected the crime scene, found two bullet shells which were spattered with the blood of Berat and smelt of gun powder. They both were of calibre 7,65 mm and were fired from the handgun "Tocarev". In the early morning

after the event when members of the Musheviq family had already started to clean up the blood of Berat – there was a large puddle of blood in the foyer/laundry room - Berat's brother Bujar handed over this handgun wrapped up in a blood-stained towel to the police commander Eros Luciano upon his request to give him that very handgun which was used during the night before inside the Mushoviq house. There were two bullets in the gun, one in the magazine and one in the barrel.

Both the confiscated weapons, the Kalashnikov and the Tocarev, were consigned by UNMIK Police to KFOR and destroyed by a special KFOR unit in July 2000.

#### **E. EVALUATION OF PRESENTED EVIDENCE**

1.) There is insufficient evidence to find the accused guilty of the indicted crime. He is charged with the criminal offence of having killed Berat Musheviq intentionally and in co-perpetration with his son Ilir.

Due to Article 22 Criminal Code of Socialist Federal Republic of Yugoslavia from 1976 (CCSFRY) – Complicity - a **jointly** committed killing is a precondition to finding the accused guilty. It has remained unproven that the accused himself shot at Berat Mushevic or that anyone else, in particular his son Ilir shot him with the prior consent of the accused.

a) The accused himself denied any responsibility regarding the shooting of Berat and stated that he had not used a firearm himself nor did he plan and/or agree to the shooting of Berat by his son or by somebody else.

The panel is aware of the fact that the plea entered to the charge when the accused denies having committed a crime can only be seen as a slight indication of his innocence, because the accused has the right to lie. The acquittal is not simply based on the statement of the accused. Decisive in the panel's decision was the lack of sufficient evidence to convict.

b) The statement of the accused is supported by the testimony of his wife who confirmed already during the pre-trial phase that her husband left the house unarmed and who gave

testimony to the court during this re-trial that the accused left their house on the critical day alone and was in particular not accompanied by his son Ilir on the way to the Musheviq house.

The court knows from many other criminal proceedings that relatives at trial as a rule tend to give testimony to the favour of an accused who is a close family member like in this case of the wife of Agim Sylejmani. However this argument applies equally to the statements given by the injured parties who in general will be led by the tendency to testify to the favour of the victim and to the disfavour of the accused.

c) The injured parties themselves could not be interviewed by the court, because all attempts to locate and summon them failed. The entire Mushoviq family obviously has left Kosovo and resides now at an unknown place. Even if it had been possible to interview them during this main trial, a witness in general will be unable to produce stronger evidence 10 years after he was interviewed by the court about the same event than the first time he was so interviewed.

In order to find out the truth and to preserve the interests and rights of the injured parties the panel decided on the agreement of all parties present to read out the statements of all witnesses who have testified at an earlier stage of these proceedings, including the injured parties. But an assessment of all these testimonies leads to the same conclusion by this panel: There is insufficient evidence to find the accused guilty.

A conviction of the accused for the killing of Berat Musheviq could not be based on the statements of the injured parties Alta Musheviq, the mother of the victim, Ajdin Musheviq, the father of the victim and Bujar Musheviq, one of his brothers. They all have been interviewed and given statements which are not reliable. All three witnesses have testified that the accused was accompanied by his two sons Ilir and Adonis and each of them was armed with a Kalashnikov. Apart from the fact that there are no indications or traces that more than one Kalashnikov was carried at the crime scene, it is established that Adonis Sylejmani, the older son of the accused, did not have a hand in the matter.

Due to his verified alibi Adonis is innocent. At the time of the offence Adonis was in Pristina working in a company. This fact was established by police immediately after the shooting beyond all reasonable doubt.

The panel found further reasons, why the testimonies of the injured parties were to be considered unreliable.

- Alta Musheviq categorically excluded any shooting from inside their house when she stated that none of them shot at the attackers. It is well established that Berat Musheviq fired inside the house twice from his "Tocarev" handgun.
- The statement of Ajdin Musheviq, father of Berat, is at least misleading when he stated the accused and his two sons were all armed with automatic weapons, because at the end of his testimony, given in the hearing on 28. 09. 2000 before the investigative judge, he claimed to have seen an automatic weapon in Agim's car.
- Also Bujar Musheciq's description of the events are unconvincing. He stated, in the before mentioned hearing, that he had seen the accused and his two sons each armed with a Kalashnikov, had heard bursts of fire from three automatic guns and saw all three shooting in the direction of the door, where his brother Berat appeared, and saw them shoot Berat down. Then Bujar claims that he saw the accused, still armed with a Kalashnikov enter the yard shouting that he had come there to kill all of them and the accused approached Bujar and Naser Musheviq, who remained a little behind Bujar, but was only about 7 m away from the accused, and when he, Bujar, came closer he no longer saw the weapon in the accused's hands; the accused then had caught his, Bujar's, neck and had started beating him. Bujar responded and Ramadan Jetishi had separated them. Finally the accused left after a screaming in the house could be heard; the sons of the accused had already left the scene earlier.

Bujar's description doesn't make sense, because it appears impossible that the witness was unable to observe from such short distance what had happened to Agim's weapon

and why the accused continued his attack suddenly without his weapon and why the also armed sons had at once disappeared.

The further witness of the Mushevic family, Naser Musheviq, the nephew of Ajdin Musheviq, could not be summoned for the main trial in 2001 or the pre-trial phase and so was never heard. Also this panel was unable to locate and summon him. There are no known indications as to his whereabouts.

d) None of the further witnesses who have given testimony during the proceedings are qualified to establish the guilt of the accused. Prevailing doubts in this regard remain even when all the witnesses' statements are evaluated.

This applies in particular in relation to the testimony of the witness Eros Luciano, the commander of the UNMIK investigation unit. The panel expressively shares the assessment of the first main trial panel that this witness is reliable and his statement is consistent, precise, impartial and entirely convincing.

According to the findings of Eros Luciano, who conducted the police investigations, it remained unclear to him, if the accused went unarmed to the Musheviq's house and consequently could not have shot.

As explained earlier it remains also to this panel unproven that the accused himself shot at Berat Musheviq. In spite of this uncertainty the accused could be found guilty of the killing, if he was an accomplice or at least an abettor of the shooter, most probably his son Ilir.

A prerequisite of such an assumption is an agreement with the actual shooter prior to the shooting.

In this regard witness Eros Luciano testified that the accused had told him that he saw at the crime scene either before or after the shooting his son Ilir armed with a Kalashnikov. Ilir had followed him when he went alone to the Musheviq's house.

If the accused and his son Ilir had together gone from their house to the Musheviq's house and one of them was armed with a Kalashnikov, this would be strong evidence to the disfavour of the accused. Also, if the accused had seen his son armed with a

Kalashnikov **before** this gun was fired, this could be seen as a strong indication of a prior agreement of the accused to the shooting.

Due to the testimony of witness Eros Luciano it is also possible that the accused saw son Ilir **after** the shooting and asked him: "Why did you do this?"

This option which cannot be excluded is a strong indication, that the accused was not involved in an agreement to the shooting prior to it. In particular, if he had asked his son Ilir, why he did this, in other words why he had shot, he could not have known of a planned shooting and cannot have agreed to it in advance.

For this reason the panel did not find enough evidence to accept a case of Complicity (Article 22 CCSFRY). And for the same reason there is a lack of evidence also regarding Aiding (Article 24 CCSFRY).

The testimonies of all further witnesses were circumstantial and not related to the main point namely the proof of the accused's guilt.

Apart from the lack of evidence regarding the issue of Co-Perpetration the panel by no means could exclude the possibility that the accused acted in self defence with the consequence that his action – due to Extreme Necessity, Article 10 CCSFRY)– could not be considered to be a criminal offence.

According to the reliable statement of witness Eros Luciano two shots from a handgun were fired from inside the house. This cannot be disputed, because the police officer found two cartridge shells from the Tocarev handgun at the spot where the late Berat Mushevic fell to the ground. It has to be taken as a fact that Berat fired twice, at least once before he died and most probably the second time when passing away. Even his brother Bujar Musheviq explained to police officer Luciano, that Berat had used the "Tocarev" at the critical day and it is self explanatory that he cannot have shot after he died.

## F. Legal Qualification

The panel has exhausted all obtainable pieces of evidence, but in spite of this there remains insufficient evidence to convict the accused. Consequently and due to the principle “in dubio pro reo” it was the panels duty to acquit the accused.

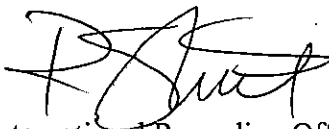
## G. COSTS

According to Article 99 par 1 LCP, the costs of the proceedings as well as the accused’s necessary expenses are to be covered out of the Court’s budget.

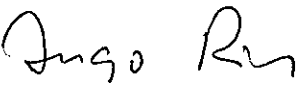
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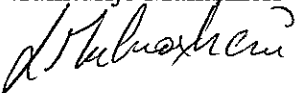
Prepared in English, an authorised language

  
International Recording Officer  
Robina Struthers



  
International Presiding Judge  
Ingo Risch

  
Panel Member/International Judge  
Gunnar Oyhaugen

Panel Member/Kosovo Judge  
Lumturije Muhaxheri  


## Legal Remedy

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