

District Court of PEJA/PEC  
P.nr.143/05

**IN THE NAME OF THE PEOPLE**

The District Court of Peja/Pec, in the trial panel composed of Judge Malcolm Simmons as Presiding Judge and Judges Riku Jaakkola and Shaban Shala as Panel members and Court Recorder Robina Struthers in the criminal case against Arsim Gashi, Mirsat Ibrahimimi and Halim Krasniqi (hereinafter "the Defendants"), charged pursuant to Indictment PP. number 73/2001 dated 5 July 2001, as amended orally by the Prosecutor on 15 January 2002 and 11 November 2010 with *Unlawful possession of a large quantity of weapons* contrary to Article 199 paragraph 1 and 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia, after holding a public trial on 3 and 11 November 2010 at which Mr. Peter Korneck appeared for the Prosecution and Mr. Besnik Berisha appeared for the defendants Arsim Gashi, Mirsat Ibrahimimi and Halim Krasniqi who were also present, on 11 November 2010 took and publicly announced the following

**JUDGMENT**

The Defendant Arsim Gashi, ID number 100986578, born on 27 November 1977 in Peja/Pec, father's name Shaban, mother's name Halime Kelmendi, Kosovo Albanian, single, medium economic status, literate, student, in detention from 10 May 2001 until 6 March 2002;

The Defendant Mirsat Ibrahimimi, ID number 1009455201, born on 15 May 1962 in Peja/Pec, father's name Isuf, mother's name Pesen Kelmendi, Kosovo Albanian, residing in Peja/Pec, poor economic status, literate, unemployed, married, father of 3 children, in detention from 10 May 2001 until 19 December 2001 and

The Defendant Halim Krasniqi, ID number 1004986767, born on 20 April 1971 in the village of Drenoc, Malisheve/Malisevo municipality father's name Avdyl, mother's name Fahrie Paqarizi, Kosovo Albanian, married, father of 2 children,

unemployed, poor economic status, literate, in detention from 10 May 2001 until 10 November 2001, are

### GUILTY

Because on 10 May 2001, at diverse places, the said Arsim Gashi, Mirsat Ibrahim and Halim Krasniqi were observed by members of the Italian Carabinieri, as part of a organized group that made contact with the driver of a MAN truck registration number 816 M 690 with trailer registration number 719 M 226 in a parking area opposite the Peja/Pec customs. Thereafter, the said Arsim Gashi and Mirsat Ibrahim drove in a BMW 325 motor vehicle registration number 124 KS 552 in front of the truck and Halim Krasniqi together with another individual drove in a black Mercedes 250 motor vehicle registration number 128 KS 533 behind the truck, as part of a convoy which escorted the truck to a private residence in Peja. They were followed and subsequently detained by the Carabinieri in front of a private house in Peja/Pec. During a search of the said lorry officers discovered a large quantity of weapons comprising 52 former Yugoslavian made anti-tank rocket-launchers cal. mm 44 mod. "M-80"; 20 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 mod. "M-69" with adjustable fuses for immediate or delayed action; 4 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 mod. "M-74" with adjustable fuses for immediate or delayed action; 1 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 with adjustable fuses in Bakelite for immediate action without serial number; 1 former Yugoslavian made cannon without recoil shell cal. mm. 81/82 mod. "M-61"; 10 black carton cylinders containing former Yugoslavian made cannon shells cal. mm. 82 mod. "M-60A"; 2 Green cases containing nr. 1 wire-guided anti-tank missile mod. "AT-3 Sagger" each without control consoles; 12 anti-tank rocket-launchers mod. "M-79" cal. mm. 90, out of them nr. 10 complete, nr.1 without firing and sighting devices and Nr. 1 without shoulder support, firing and sighting devices; 12 anti-tank rocket-launchers mod. "M-79" cal. mm. 90; 1 Mortar mod. "M-57" cal. mm. 60 without support plate; 1 sighting device for mortar mod. "M-57" cal. mm. 60; 1 mortar mod. "M-69" cal. mm. 81/82 without biped, provided with swab for cleaning; 1 cannon without recoil mod. "M-60A" cal. mm. 82 mounted on a wheeled gun-

carriage with swab for cleaning and without sighting device; 4 portable anti-aircraft missiles mod. "SA-14" cal.mm.7, out of them nr. 1 with firing device; 7 disposable batteries for portable anti-aircraft missiles mod. "SA-14" cal.mm.75 without serial number; 1 firing device for portable anti-aircraft missiles mod. "SA-14" cal.mm.75; 1 portable anti-aircraft missiles mod. "SA-16" cal.mm.70, without firing device and battery; 2 Zastava machine guns mod "M-84" cal. mm. 7,62; 1 box containing a machinery gun-belt with nr. 98 shells, for Zastava mod "M-84" cal. mm. 7,62; 1 Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39; 4 magazines for Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39; 86 various shells (tracer, ordinary and punching bullets) for Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39; 5 semiautomatic Zastava rifles mod. "M76-A" cal. mm.7,9 with precision sighting device and magazines; 20 shells cal. 7.9 for semiautomatic Zastava rifles mod. "M76-A". The Court finds that at all material times the defendants Arsim Gashi, Mirsat Ibrahim and Halim Krasniqi were in possession of the said weapons.

Therefore, the said Arsim Gashi, Mirsat Ibrahim and Halim Krasniqi, in complicity, committed the criminal offence of Unlawful possession of a large quantity of weapons under Article 199 paragraph 1 and 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia.

Having been convicted of the said offences:

Arsim Gashi is sentenced to a term of imprisonment of 300 days.

Mirsat Ibrahim is sentenced to a term of imprisonment of 223 days.

Halim Krasniqi is sentenced to a term of imprisonment of 185 days.

Pursuant to Article 50 of the Criminal Code of the Socialist Federal Republic of Yugoslavia and Article 351 of the Law on Criminal Proceedings, the time already spent in detention shall be credited.

The Court makes no order for costs.

The final Judgment may be announced in the public media.

The Court will deliver the written Judgment within 15 days.

The parties have the right to appeal this Judgment.

The Defendants are obliged to report to the court any change in address until the Judgment becomes final.

## REASONING

### *A. Procedural background*

A bill of indictment was filed on 5 July 2001 in the District Court of Peja/Pec against Hakif Hamiti, Arsim Gashi, Mirsat Ibrahim, Halim Krasniqi, Agron Hamiti, Gjezair Miftari and Xheladin Gashi.

The indictment contained three grounds:

- *unlawful possession of a large quantity of weapons* contrary to article 199 paragraph 1 and 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Articles 8 and 19 of the Law on Acquisition, Possession and carrying of Weapons and Ammunitions 9Law No. 40 of 1980) and Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia for the defendants Hakif Hamiti, Arsim Gashi, Mirsat Ibrahim, Halim Krasniqi, Agron Hamiti, Xhezair Miftari and Xheladin Gashi.

- *Legalising untrue contents in official documents* contrary to Article 205 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of Criminal Code of the Socialist Federal Republic of Yugoslavia for the defendants Hakif Hamiti, Arsim Gashi, Mirsat Ibrahim, Halim Kreanskiqi, Agron Hamiti, Xhezair Miftari and Xheladin Gashi.

- *unlawful possession of weapons* contrary to Article 197 paragraph 1 of Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of Criminal Code of the Socialist Federal Republic of Yugoslavia for the defendants Xhezair Miftari, Xheladin Gashi and Halim Krasniqi.

The first main trial started on 19 December 2001 in front of an international panel and was concluded on 6 March 2002. In its judgment, the panel decided to acquit Agron Hamiti of all the charges. It further decided that the defendants Arsim Gashi, Mirsad Ibrahim, Halim Krasniqi and Xheladin Gashi were found guilty of unlawfully *possessing a large amount of weapons* as per Article 22 of the CCY and Article 199 paragraph 1 and 3 of CCK but acquitted of *legalizing untrue contents in official documents, in complicity, contrary to Article 205 of the CCK as read with Article 22 of the CCY and of the offence of organising a group, in complicity, for the commission of the offence of unlawful possession of weapons* as per Article 197 paragraph 1 of the CCK as read with Article 22 of the CCY as the elements of the offence were consumed under the Count One.

The trial panel had previously ruled that the proceedings against Xhezair Miftari and Hakif Hamiti be separated from the other defendants due their medical status.

The Supreme Court in a ruling dated 06 March 2005 decided to annul the judgment of the first instance court and sent the case back for re-trial.

In December 2009, the president of the District Court of Peja/Pec requested to the president of the Assembly of EULEX judges that EULEX judges take over this case due to the procedural obstructions. The case was handed over to EULEX judges in District Court of Peja/Pec on 24 February 2010. The case started in 3 November 2010 and ended on 11 November 2010.

#### *B. Second Main Trial*

The main trial was held in public on 3 and 11 November 2010 in the presence of the accused Arsim Gashi, Mirsat Ibrahim, Zheladin Gashi and Halim Krasniqi. The case was formally opened on 11 November 2010. Before the opening of the case, the Public Prosecutor amended the indictment of 5 July 2001 proceeding as to Count 1 only. Furthermore, the public prosecutor withdrew the Indictment against defendant Xheladin Gashi because this defendant was, at all material times, in hospital.

The parties raised no objection as to the jurisdiction of the court nor as to the composition of the trial panel.

The three defendants all pleaded guilty to the criminal offence of possession of a large quantity of weapons, after consultation with their defence counsel.

International interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary.

### *C. Summary of the evidence*

During the main trial, the trial panel did not hear any witness, as none were proposed by the Public Prosecutor or the defence. The public prosecutor referred to the prosecution evidence presented to the Court during the defendants first trial.

After having reviewed the case file and the previous evidence presented during the first main trial, the trial panel concluded that on 10 May 2001, the three defendants Arsim Gashi, Mirsat Ibrahimimi and Halim Krasniqi were part of an organized group which made contact with the driver of a MAN truck registration number 816 M 690 with trailer registration number 719 M 226 in a parking area opposite the Peja/Pec Customs. This comes from the observations made by the Italian carabinieri officers and in particular Mario Schiariti who was called as a witness during the first main trial in 2002. The carabinieri suspected the said vehicle were being used in the illegal transport of weapons at the Kula pass border area and were therefore particularly monitoring all the trucks that were passing through the Customs office in Peja/Pec.

Thereafter, Arsim Gashi and Mirsat Ibrahimimi were observed driving in a BMW 325 motor vehicle registration number 124 KS 552 in front of the truck and Halim Krasniqi together with another individual drove in a black Mercedes 250 motor vehicle registration number 128 KS 533 behind the truck, as part of a convoy which escorted the truck to a private residence in Peja.

They were followed and subsequently detained by the Carabinieri in front of a private house in Peja/Pec. During a search of the truck, the Italian officers discovered a large quantity of weapons hereby listed:

1. 52 former Yugoslavian made anti-tank rocket-launchers cal. mm 44 mod. "M-80";
2. 20 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 mod. "M-69" with adjustable fuses for immediate or delayed action;
3. 4 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 mod. "M-74" with adjustable fuses for immediate or delayed action;
4. 1 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 with adjustable fuses in Bakelite for immediate action without serial number;
5. 1 former Yugoslavian made cannon without recoil shell cal. mm. 81/82 mod. "M-61";
6. 10 black carton cylinders containing former Yugoslavian made cannon shells cal. mm. 82 mod. "M-60A";
7. 2 Green cases containing nr. 1 wire-guided anti-tank missile mod. "AT-3 Sagger" each without control consoles;
8. 12 anti-tank rocket-launchers mod. "M-79" cal. mm. 90, out of them nr. 10 complete, nr.1 without firing and sighting devices and Nr. 1 without shoulder support, firing and sighting devices;
9. 12 anti-tank rocket-launchers mod. "M-79" cal. mm. 90;
10. 1 Mortar mod. "M-57" cal. mm. 60 without support plate;
11. 1 sighting device for mortar mod. "M-57" cal. mm. 60;
12. 1 mortar mod. "M-69" cal. mm. 81/82 without biped, provided with swab for cleaning;

13. 1 cannon without recoil mod. "M-60A" cal. mm. 82 mounted on a wheeled gun-carriage with swab for cleaning and without sighting device;
14. 4 portable anti-aircraft missiles mod. "SA-14" cal.mm.7, out of them nr. 1 with firing device;
15. 7 disposable batteries for portable anti-aircraft missiles mod. "SA-14" cal.mm.75 without serial number;
16. 1 firing device for portable anti-aircraft missiles mod. "SA-14" cal.mm.75;
17. 1 portable anti-aircraft missiles mod. "SA-16" cal.mm.70, without firing device and battery;
18. 2 Zastava machine guns mod "M-84" cal. mm. 7,62;
19. 1 box containing a machinery gun-belt with nr. 98 shells, for Zastava mod "M-84" cal. mm. 7,62;
20. 1 Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39;
21. 4 magazines for Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39;
22. 86 various shells (tracer, ordinary and punching bullets) for Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39;
23. 5 semiautomatic Zastava rifles mod. "M76-A" cal. mm.7,9 with precision sighting device and magazines;
24. 20 shells cal. 7.9 for semiautomatic Zastava rifles mod. "M76-A";

The Court finds that at all material times the defendants Arsim Gashi, Mirsat Ibrahim and Halim Krasniqi, in complicity, were in possession of this large quantity of weapons.

In reaching its verdict, the trial panel carefully reviewed the evidence presented at the first main trial.

This main trial is a re-trial. The events the subject of these criminal proceedings occurred in May 2001. The Prosecution faced obvious difficulties in bringing before the court witnesses - including members of the Italian carabinieri who have since left Kosovo - who could assist the Court in its determination of the allegations the subject of the amended Indictment. Further, the passage of time will have inevitably had an adverse effect upon the quality of testimonial evidence.

*D. Determination of sentence.*

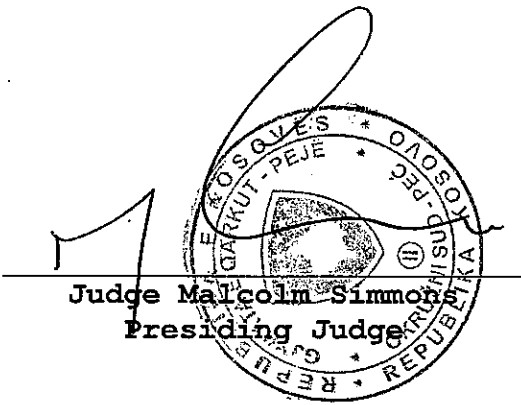
When deciding on an appropriate sentence for the three defendants the trial panel took into consideration that a guilty plea was entered by each of the defendants at the commencement of the main trial, that 10 years have elapsed since the commission of the criminal offence and that the defendants are now fully integrated members of society who for two of them are married with children they are still supporting. Further, there is no record of any of the defendants having committed any subsequent criminal offences.


Therefore, the trial panel decided to issue imprisonment sentences of 300 days for Arsim Gashi, 223 days for Mirsat Ibrahim and 185 days for Halim Krasniqi. The time already spent in detention will be credited to the sentence, as per Article 50 of the Criminal Code of the Socialist Federal Republic of Yugoslavia and Article 351 of the Law on Criminal Proceedings.

*E. Costs*

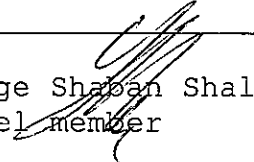
Even though the defendants were found guilty by the trial panel, the court shall make no order for costs due to the fact this case was concluded quickly and efficiently as a result of the defendants' early guilty pleas.

Dated this 11 day of November 2010.

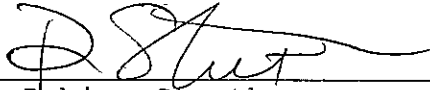




Judge Riku Jaakkola  
Panel member



Judge Shaban Shala  
Panel member



Robina Struthers  
Court Recorder

**LEGAL REMEDY:** Authorized persons may file an appeal against a verdict rendered in the first instance within 15 days from the day when the transcript of the verdict was delivered, pursuant to Article 359 of the Law on Criminal Proceedings.