

DISTRICT COURT OF PEJA/PEC**KA.nr.143/11****Date 20 May 2011**

EULEX Confirmation Judge Gunnar Oyhaugen, in a criminal case against

Bedri Krasniqi Dervish Idrizaj, Hamdi Krasniqi, Ahmet Neziraj, Ilmi Lufaj, Hime Krasniqi, Selman Gashi, Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj

Charged with the Indictment PPS.no.102/10 dated 31 March 2011, filed in the court of 07 April 2011, for the criminal offence of *Organized Crime* in violation of article 274 par. 1 of CCK related to the criminal offence of *Kidnapping* as per article 159 par. 2 of CCK (Bedri Krasniqi Dervish Idrizaj, Hamdi Krasniqi, Ahmet Neziraj, Ilmi Lufaj, Hime Krasniqi and Selman Gashi), *Unauthorized ownership, control, possession or use of weapons* in violation with article 328 par. 3 of CCK (Bedri Krasniqi), and *Unauthorized ownership, control, possession or use of weapons* in violation with article 328 par. 2 of CCK (Dervish Idrizaj, Hamdi Krasniqi, Himë Krasniqi, Gazmend Sylaj, Muhamet Bojkaj and Ali Bojkaj).

After a hearing on confirmation of the indictment held on 20 May 2011, in accordance to article 313 and 314 of KCCP, in the presence of the Public Prosecutor, the defendants and their defense counsels, and in accordance to article 316 par. 4 of KCCP, issues the following

R U L I N G

The waiver from the review of the indictment and of the evidence filed by the defendant Gazmend Sylaj, is **accepted**.

The guilty plea entered by the defendants Muhamet Bojkaj and Ali Bojkaj is **accepted**.

The indictment of the Special Prosecution Office PPS.nr.102/10 dated 31 March 2011, is hereby **CONFIRMED**.

The criminal proceedings against Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj shall be separated from the present case and will be proceeded with a different number at the main trial.

The Indictment, together with all the records of the case file, shall be sent to the Presiding Judge for the main trial, immediately after this ruling becomes final.

Reasoning

On 07 April 2011 the Special Prosecution Office filed an Indictment PPS.nr.102/10 against the defendants Bedri Krasniqi Dervish Idrizaj, Hamdi Krasniqi, Ahmet Neziraj, Ilmi Lufaj, Hime Krasniqi, Selman Gashi, Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj for the criminal offence of *Organized Crime* in violation of article 274 par. 1 related to the criminal offence of *Kidnapping* as per article 159 par. 2 of CCK, and *Unauthorized ownership, control, possession or use of weapons* in violation with article 328 par. 2 and 3 of CCK. Above it is indicated which criminal offences are linked to the each of the defendants.

After the indictment was filed the confirmation judge, after assessing it pursuant to article 306 par. 2 of KCCP, finds that the indictment has been drawn up in accordance with article 305 of KCCP.

The confirmation judge scheduled the confirmation hearing for 20 May 2011, for which the Public Prosecutor, the defendants and their defense counsels were summoned. Also the injured party was invited for the hearing. The hearing was open for the public.

On 13 May 2011 the defendant Gazmend Sylaj filed a waiver from the review of the indictment and of the evidence pursuant to article 310 par. 1 of KCCP.

During the confirmation hearing the public prosecutor read the indictment and also proposed to the court that the proceedings against Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj to be separated. After the Public Prosecutor read the indictment and after the judge was satisfied that the defendants have understood the indictment, the defendants were given the opportunity to plead guilty or not guilty.

The defendants Bedri Krasniqi, Hamdi Krasniqi, Ahmet Neziraj, Ilmi Lufaj, and Selman Gashi pleaded not guilty to all the charges.

Dervish Idrizaj and Hime Krasniqi pleaded not guilty regarding organized crime related to the criminal offence of Kidnapping. Both of them pleaded guilty regarding "Unauthorized ownership, control, possession or use of weapons".

The defendants Muhamet Bojkaj and Ali Bojkaj pleaded guilty.

In their submission, the defense counsels objected the indictment, proposing to the court that the indictment is dismissed as there are no sufficient evidence to support the well-grounded suspicion that the defendants have committed the criminal offence in the indictment (KCCP article 316 (1) – 4).

The defendants supported their lawyers' submissions.

Findings of the Court

The judge does not find any reason to dismiss the indictment under Article 316 paragraph 1 and 2, considering that the criminal acts mentioned in the indictment are criminal offences, that there is no circumstance to exclude criminal liability, that the statutory limitations have not expired, that the indictment was filed by an authorized prosecutor, that there are no circumstances which bar the prosecution and that there are sufficient evidence to support the well-grounded suspicion that the defendants have committed the criminal offences mentioned in the indictment.

A “grounded suspicion” can be defined as *“the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence”* – (ECHR, Fox, Cmbell and Hartley v. United Kingdom, 30 August 1990, par.32). A “well-grounded suspicion” requires more certainty than a grounded suspicion – without reaching the threshold of a proven fact.

The judge finds, according to the case file and the evidence contained in it, that there is sufficient evidence to support the “well-grounded suspicion” regarding all the charges in the indictment.

According to the case file the victim _____ was kidnapped by armed persons on the early morning of 21 September 2010 and he was released from his kidnappers 30 October 2010.

Bedri Krasniqi:

The basis for the judge to establish “well-grounded suspicion” regarding Bedri Krasniqi is – among other things - the following elements:

Kidnapping – article CCK 159 (2):

- The testimony from the victim _____ . He has from photos identified Bedri Krasniqi as the person – while he was near the highlands – who arrived in a black caravan vehicle. And furthermore that Bedri Krasniqi told him that his family needed to pay 30 million Euros for his release.
- The different SMS and telephone-contacts from Bedri Krasniqi’s phones as described in the indictment – and also in which way one of his phones was identified, based on the witness _____
- The movements of Bedri Krasniqi. The cartography of number _____ belonging to the defendant Bedri Krasniqi, shows his movements on 21 September 2010.
- The victim _____ seem to have used Bedri Krasniqi’s phone to inform his family about his kidnapping.

Unauthorized ownership, control, possession or use of weapons in violation with article 328 par. 3 of CCK:

- The result of the search of Bedri Krasniqi's house where they found a large quantity of weapons and ammunitions.
- He did not have a valid Weapon Authorization Card.

Attacking official persons – article 317 par. 1 of CCK:

- Testimony of witness

Dervish Idrizaj:

The basis for the judge to establish “well-grounded suspicion” regarding Dervish Idrizaj is – among other things - the following elements:

Kidnapping – CCK article 159 (2):

- The victim has identified Dervish Idrizaj from photos and has explained that Dervish Idrizaj – when he was in the uninhabited house – recorded him and gave him 3 newspapers to read in order to prove that the victim was alive.
- Dervish Idrizaj – according to the cartography – had often movements from Kacanik, Viti, Ferizaj etc., which indicates that he went to places where the victim was kept kidnapped.

Unauthorized ownership, control, possession or use of weapons in violation with article 328 par. 2 of CCK:

- The result of search of Dervish Idrizaj's house.
- He did not have a valid Weapon Authorization Card.
- Supported by the fact that he has pleaded guilty for this charge.

Hamdi Krasniqi:

The basis for the judge to establish “well-grounded suspicion” regarding Hamdi Krasniqi is – among other things - the following elements:

Kidnapping – CCK article 159 (2):

- The victim has identified Hamdi Krasniqi from photos. He has explained that Hamdi Krasniqi guarded him with an automatic rifle while he was at “sheperds hut” in the mountains of Milishevc.
- Witness D1 has testified that he on 22 September 2010 in the mountains of Milishevc – at a wooden hut “sheperds hut” at a place called Stani I Bojkave, saw two persons. One of them has been identified by the witness from photos to be Hamdi Krasniqi.

Unauthorized ownership, control, possession or use of weapons in violation with article 328 par. 2 of CCK:

- The victim testimony about Hamdi Krasniqi as guard with automatic rifle.
- He did not have a valid Weapon Authorization Card.

Ahmet Neziraj:

The basis for the judge to establish “well-grounded suspicion” regarding Ahmet Neziraj is – among other things - the following elements:

Kidnapping – CCK article 159 (2):

- The victim has testified that he is 70 % sure that Ahmet Neziraj is the person who with a white 4-wheeler, took him from the hut and descended him at the mountain edge. He has made this identification based on photos shown to him.
- The witness D1 has identified Ahmet Neziraj as the driver of the white vehicle in the mountains of Milishevc on the 22.09.2010.
- Ahmet Neziraj was at that time owner of a white Jeep Toyota.

Ilmi Lufaj:

The basis for the judge to establish “well-grounded suspicion” regarding Ilmi Lufaj is – among other things - the following elements:

Kidnapping – CCK article 159 (2):

- The victim has identified Ilmi Lufaj to be a member of the kidnapping group. However the victim has not been able to recall where and when he saw him.
- Indications that Ilmi Lufaj's telephone – around the time Bedri Krasniqi exchanged SMS messages with s family – was near Bedri Krasniqi.
- Ilmi Lufaj's telephone, on the 1 October 2010, had the same movements as Bedri Krasniqi.

Himë Krasniqi:

The basis for the judge to establish “well-grounded suspicion” regarding Himë Krasniqi is – among other things - the following elements:

Kidnapping – CCK article 159 (2):

- The victim has identified Himë Krasniqi to be one of the persons in the uninhabited house. According to , Himë presented himself as Agron from Mitrovica.
- Results from investigations regarding telephones indicates clearly that Himë Krasniqi – in the early hours of the morning of 21 September 2010 (the kidnapping day) – has sent 7 SMS to the defendant Bedri Krasniqi – and received from him 3 SMS messages.
- The same morning there is also indication that Himë Krasniqi was in continuous contact with the defendant Selman Gashi.

Unauthorized ownership, control, possession or use of weapons in violation with article 328 par. 2 of CCK:

- When the police made a search in Himë Krasniqi's house – 15 October 2010 – they found one pistol Magnum 41 and two rounds for this weapon. He had no authorization for this pistol.

- Himë Krasniqi has pleaded guilty.

Selman Gashi:

The basis for the judge to establish “well-grounded suspicion” regarding Selman Gashi is – among other things - the following elements:

Kidnapping – CCK article 159 (2):

- On the critical day when the victim was kidnapped, Selman Gashi seems to have sent through the phone number to the defendant Bedri Krasniqi – using the phone number – 16 SMS messages in the period from 06.15 until 07.26 hrs.
- The same morning there are indications that Himë Krasniqi was in continuous contact with the defendant Selman Gashi.
- There are also indications that Selman Gashi is involved in this kidnapping due to cartography of his movements – compared to other defendants and the victims movements.
- From the content of the incoming and outgoing sms messages between Selman Gashi and Bedri Krasniqi, on the day of the kidnapping.

Muhamet Bojkaj:

The basis for the judge to establish “well-grounded suspicion” regarding Muhamet Bojkaj is the following elements:

Unauthorized ownership, control, possession or use of weapons in violation with article 328 par. 2 of CCK:

- Result from house search.
- He did not have a valid Weapon Authorization Card.
- He has pleaded guilty.

Ali Bojkaj:

The basis for the judge to establish “well-grounded suspicion” regarding Ali Bojkaj is the following elements:

Unauthorized ownership, control, possession or use of weapons in violation with article 328 par. 2 of CCK:

- Result from house search.
- He did not have a valid Weapon Authorization Card.
- He has pleaded guilty.

Gazmend Sylaj:

As mentioned above – the waiver from the review of the indictment and of the evidence filed by Gazmend Sylaj is accepted by the judge.

CCK article 274 (1) – organized crime:

The judge finds that there is a well-grounded suspicion that the above mentioned defendants acted/ participated regarding the kidnapping as part of an „organized group“. The court has in this connection noticed how the kidnapping itself was organized and the communications and movements of the group.

Therefore, based on these circumstances provided by the indictment, the confirmation judge finds that there is sufficient evidence to support the **well-grounded suspicion** that the defendants have committed the criminal offence which they are charged with and herein confirms the indictment.

Admissible – inadmissible evidence:

The judge finds that there is no clear indications that any of the evidences obtained during the investigations are inadmissible. Therefore there is no need to declare any specific evidence as inadmissible. If the defense counsels sustain that some of the evidences are inadmissible, this should be considered and decided in connection with the main trial.

It is therefore decided as in the enacting clause of this ruling, pursuant to article 316 par. 4 of KCCP.

DISTRICT COURT OF PEJA/PEC, KA.nr.143/11 dated 20 May 2011.

