

**DISTRICT COURT OF PEJA/PEC****KA.nr.211/11****Date 26 July 2011**

EULEX Confirmation Judge Gunnar Øyhaugen, in a criminal case against

- ISUF IDRIZAJ, son of father Skender and mother Shukrije, born on 27 September 1979, in village Kodrali, Decani Municipality, Kosovo Albanian, in detention since 13 June 2010,
- DERVISH IDRIZAJ, son of Skender, born on 04 May 1984 in village Kodrali, Deçani Municipality, Kosovo Albanian, in detention since 17 December 2010,
- BEDRI KRASNIQI, son of Nezir, born on 10 September 1979 at village Turjakë, Pejë/Pec Municipality, Kosovo Albanian, in detention since 17 December 2010

Charged with the Indictment PP.no.217/10 dated 9 June 2011, for the criminal offences of *Attempted Murder* in violation of Article 146 in conjunction with Articles 20 and 23 of CCK against Dervish Idrizaj and Bedri Krasniqi and *Attempted Aggravated Murder* in violation of Article 147 items 4 and 9 in conjunction with Articles 20 and 23 of CCK against Isuf Idrizaj, Dervish Idrizaj and Bedri Krasniqi,

After a hearing on confirmation of the indictment held on 25 July 2011, in accordance with Articles 313 and 314 of KCCP, in the presence of the Public Prosecutor, the defendants and their defense counsels Gezim Kollcaku, Gezim Baloku and Klaus Kirchner, and in accordance with Article 316 par. 4 of KCCP, the Confirmation Judge issues the following

**R U L I N G**

The indictment of the District Prosecution Office PP.nr.217/10 dated 09 June 2011, is hereby **CONFIRMED**.

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.

**R e a s o n i n g**

On 09 June 2011 the District Prosecution Office filed an Indictment PP.no.217/10 against the defendants Isuf Idrizaj, Dervish Idrizaj and Bedri Krasniqi for the criminal offence of *Attempted Murder* in violation of Article 146 in conjunction with Article 20 and 23 of CCK and *Attempted Aggravated Murder* in violation of Article 147 items 4 and 9 in conjunction with Articles 20 and 23 of CCK. It is indicated above which criminal offences are linked to 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 25 July 2011, to which the Public Prosecutor, the defendants and their defense counsels were summoned. The injured party Valon Zukaj was also invited to the hearing. The hearing was open to the public.

During the confirmation hearing the public prosecutor read the indictment to the court. 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 Isuf Idrizaj, Dervish Idrizaj and Bedri Krasniqi pleaded not guilty to all of the charges contained in the indictment.

In a preliminary submission, counsel for Dervish Idrizaj objected to Judge Øyhaugen as confirmation judge on the basis that he had previously presided in a confirmation hearing involving his client. He therefore made a request for disqualification of Judge Øyhaugen. However, the President of the Assembly of EULEX Judges – Charles L. Smith III – made a ruling rejecting this request.

In their submissions, all three defense counsels objected to the indictment, proposing to the court that the indictment be dismissed as there was not sufficient evidence to support the well-grounded suspicion that the defendants have committed the criminal offences in the indictment (KCCP article 316 (1) – 4).

The defendants supported their lawyers' submissions.

### **Findings of the Court**

The Confirmation 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 is sufficient evidence to support the well-grounded suspicion that the defendants have committed the criminal offences mentioned in the indictment.

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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, Cambell 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 Supreme Court of Kosovo (Mehmet Morina) express the following:

*“Thus, the standard must be such evidence that – accepted – may lead to a conclusion that it is more probable than not that a specific offence was committed. In this regard, the evidence submitted by the prosecution should be able to suggest that all elements of the offence have been committed”.*

The judge finds, according to the case file and the evidence contained in it, that there is sufficient evidence to support such “well-grounded suspicion” regarding all the charges in the indictment. The victim survived both attacks. Therefore CCK article 20 is to be applied. The defendants acted jointly in connection with these murder attempts. Therefore CCK article 23 is to be applied.

According to the case file the victim Valon Zukaj was the subject of two failed attempts on his life – the first on 23 September 2009 (Article 146 of CCK) and the second on 11 June 2010 (Article 147 of CCK it 4 and 9)). On both occasions a number of shots were fired at him.

On the second occasion he received three gunshot wounds to the head, but he survived. The second incident resulted in the charge of attempted aggravated murder - Article 147 items 4 and 9. The criminal act committed included putting to risk the life of his 10 years old son – and this act also seems to be a revenge for injury inflicted to Dervish Idrizaj.

#### **Bedri Krasniqi:**

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

##### Attempted Murder– article 146 of CCK – 23.09.200 at around 18.50:

- The most important element regarding “well-grounded suspicion” is the testimony of the victim – Valon Zukaj. He has identified Bedri Krasniqi as one of the persons who arrived at the supermarket “Tropikana”, located in front of the “Health House” in Decan/Decani, and who exited from a dark-coloured BMW vehicle while carrying a gun. Bedri Krasniqi then stood in front of Valon Zukaj and a demand for money was made. Valon Zukaj. The distance between them was approximately 5 meter. Bedri Krasniqi did not say anything and he hold a gun in his right hand. Bedri Krasniqi was known to the victim,

Bedri Krasniqi was together with Dervish Idrizaj and a third person outside “Tropikana”. Dervish Idrizaj made a shot from his gun. A bullet hit Dervish Idrizaj in his throat.

- The testimony of the witness – police officer Murat Gervalla. On the date in question he was in a restaurant close to the scene of the incident and heard gunshots and noticed one person who had fired shots making his escape from the scene in a BMW vehicle in the direction of Gjakove/Dakovica.
- The testimony of the witness – police officer Faruk Civovic. On the date in question he was in a restaurant close to the scene of the incident and heard gunshots and

noticed one person who had fired shots making his escape from the scene in a BMW vehicle in the direction of Gjakove/Dakovica.

- The testimony of the witness – Vedat Tahirsylaj. He has stated that on the relevant date he too was entering the supermarket “Tropikana” when he saw three men, two of whom were armed with revolvers, approach, Mr Zukaj and exchange words with him. He then heard two or three gunshots.

Attempted Aggravated Murder article 147 of CCK – 11.06.2010 at around 24.00:

- The most important element regarding “well- grounded suspicion” is the testimony of the victim – Valon Zukaj. He has identified Bedri Krasniqi as the person who was in the back seat of a vehicle as it overtook his vehicle on the road from Decan/Decani towards Pristine/Pristina on the approach to Kliqina village. Another occupant of this vehicle then fired a weapon at him hitting him three times in the head. He knew Bedri Krasniqi from before.
- The testimony of the witnesses Avni Shala, Avni Gashi and Hetem Gashi. They have described how they had been travelling on the same road as Valon Zukaj and how they came across the aftermath of the shooting incident. They assisted in making arrangements for the victim, Valon Zukaj to be conveyed to hospital.
- The testimony of the witness, police officer Ahmet Neziraj. He has described how on the evening of the incident he had met with the victim, Valon Zukaj in Decan/Decani at his request. Valon Zukaj said that he was having difficulties with Bedri Krasniqi and he asked Ahmet Neziraj to mediate on his behalf. The witness Ahmet Neziraj was subsequently informed of the attempt on Valon Zukaj’s life that same night and he visited him in hospital in Peja/Pec the following morning.

**Dervish Idrizaj:**

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

Attempted Murder-- article 146 of CCK – 23.09.2009 at around 18.50:

- The most important element is the testimony of the victim – Valon Zukaj. He has identified Dervish Idrizaj as one of the persons who arrived at the supermarket “Tropikana” located in front of the “Health House” in Decan/Decani and who exited from a dark-coloured BMW vehicle while carrying a revolver. Dervish Idrizaj then stood in front of Valon Zukaj and a demand for money was made. Valon Zukaj attempted to escape and several shots were fired from a gun at him without hitting him. The victim – Valon Zukaj – returned fire and one bullet hit Dervish Idrizaj in the throat. Dervish Idrizaj was known to the victim – Valon Zukaj – from their childhood in the village of Kodrali/Kodralija.
- The testimony of the witness – police officer Murat Gervalla. On the date in question he was in a restaurant close to the scene of the incident and heard gunshots. He

noticed one person who had fired shots making his escape from the scene in a BMW vehicle in the direction of Gjakove/Dakovica.

- The testimony of the witness – police officer Faruk Civovic. On the date in question he was in a restaurant close to the scene of the incident and heard gunshots. He noticed one person who had fired shots making his escape from the scene in a BMW vehicle in the direction of Gjakove/Dakovica.
- The testimony of the witness – Vedat Tahirsylaj. He has stated that on the relevant date, he too was entering the supermarket “Tropikana” when he saw three men, two of whom were armed with revolvers, approach Valon Zukaj and exchange words with him. He then heard two or three gunshots.

Attempted Aggravated Murder article 147 of CCK – 11.06.2010 at around 24.00:

- The most important element is the testimony of the victim – Valon Zukaj. He has identified Dervish Idrizaj as the person who was in the front passenger seat of a vehicle as it overtook his vehicle on the road from Decan/Decani towards Pristine/Pristina on the approach to Kliqina village. Dervish Idrizaj opened the window of the passenger door, he was out of the window and had an automatic rifle – Kalashnikov. He fired at Valon Zukaj, hitting him three times in the head. Valon Zukaj has known Dervish Idrizaj since their childhood. Despite the fact that it happened in the night at 24.00 and it was dark, Valon Zukaj has explained in a logical way how he managed to identify Dervish Idrizaj and the others in car.
- The testimony of the witnesses Avni Shala, Avni Gashi and Hetem Gashi. They have described how they came had been travelling on the same road as Valon Zukaj and how they came across the aftermath of the shooting incident. They assisted in making arrangements for the victim, Valon Zukaj to be conveyed to hospital.
- The testimony of the witness, police officer Ahmet Neziraj. He has described how on the evening of the incident he had met with Valon Zukaj in Decan/Decani at Valon Zukaj’s request. Valon Zukaj said that he was having difficulties with the Idrizaj family and he asked Ahmet Neziraj to mediate on his behalf. The witness Ahmet Neziraj was subsequently informed of an attempt on Valon Zukaj’s life that same night and he visited him in hospital in Peja/Pec the following morning.

**Iusuf Idrizaj:**

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

Attempted Aggravated Murder article 147 of CCK – 11.06.2010 at around 24.00:

- The most important element is the testimony of the victim – Valon Zukaj. He has identified Iusuf Idrizaj as the person who was the driver of the vehicle that overtook his vehicle on the road from Decan/Decani towards Pristine/Pristina on the approach to Kliqina village. Another occupant of this vehicle then fired a weapon at Valon

Zukaj hitting him three times in the head. He has known Isuf Idrizaj since their childhood.

- The testimony of the witnesses Avni Shala, Avni Gashi and Hetem Gashi. They have described how they had been travelling on the same road as Valon Zukaj and how they came across the aftermath of the shooting incident. They assisted in making arrangements for the victim, Valon Zukaj to be conveyed to hospital.
- The testimony of the witness, police officer Ahmet Neziraj. He has described how on the evening of the incident he had met with Valon Zukaj in Decan/Decani at Valon Zukaj's request. Valon Zukaj said that he was having difficulties with the Idrizaj family and he asked Ahmet Neziraj to mediate on his behalf. The witness Ahmet Neziraj was subsequently informed of an attempt on Valon Zukaj's life that same night and he visited him in hospital in Peja/Pec the following morning.

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Based on these circumstances, the Confirmation Judge finds that there is sufficient evidence to support the **well-grounded suspicion** that the defendants have committed the criminal offences with which they are charged with and therefore confirms the indictment.


Admissible – inadmissible evidence:

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

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

**DISTRICT COURT OF PEJA/PEC, KA.nr.211/11 dated 26 July 2011.**

  
Confirmation Judge  
*Gunnar Øyhaugen*  
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EULEX Judge