

DISTRICT COURT OF PEJA/PEC

Case P.no.215/11

Date 09 November 2011

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 Dariusz Sielicki and Lumturie Muhaxheri as Panel members and Court Recorder Robert Abercrombie in the criminal case against Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj, charged pursuant to Indictment PPS. number 102/10 dated 31 March 2011, each charged under Article 328 paragraph 2 of the Criminal Code of Kosovo with one count of Unauthorized Ownership, Control, Possession or Use of Weapons, after holding a public trial on 9 November 2011 at which Mr. Reshat Millaku appeared for the Prosecution and Mr. Isa Osdautaj appeared for Muhamet Bojkaj, Mr. Ylli Mekaj appeared for Ali Bojkaj and Mr. Gafurr Elshani appeared for Gazmend Sylaj and at which the defendants were present, on 09 November 2011 took and publicly announced the following

V E R D I C T

1. The Accused **Muhamet BOJKAJ**, fathers name Ali, born on 17 June 1976 in Isniq Village, Decan Municipality, ID Number 1007009018, Kosovar Albanian, citizen of the Republic of Kosovo is

GUILTY

Because

On 6 November 2010 during a search of the defendants house in the village of Isniq, Municipality of Deçan, Kosovo Police found in his possession an AK47 automatic rifle, serial number 3443 for which he did not have a valid Weapon Authorization Card and six magazines and 180 bullets of cal.7.62 x 39 mm,

Thereby committing the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the Criminal Code of Kosovo

2. The Accused **Ali BOJKAJ**, fathers name Ali, born on 1 November 1978 in Isnig Village, Decan Municipality, ID Number 1030301257, Kosovar Albanian, citizen of the Republic of Kosovo is

GUILTY

Because:

On 6 November 2010 during a search of the defendants house in the village of Isnig, Municipality of Deçan, Kosovo Police found in his possession a revolver serial number 10010 for which he did not have a valid Weapon Authorization Card and 5 bullets,

Thereby committing the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the Criminal Code of Kosovo

3. The Accused **Gazmend SYLAJ**, fathers name Gani, born on 25 February 1982 in Grabanice Village, Klina Municipality, ID Card Number 03238850, residing at "Tirolli" neighborhood, Peja, 2 and 3 floor, Kosovar Albanian, citizen of the Republic of Kosovo is

GUILTY

Because:

During the period May 2010 to 10 October 2010 in Peja, the defendant owned and possessed without a valid Weapon Authorization Card a "Zastava" revolver, cal.635 mm, series number T647356 and four bullets,

Thereby committing the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraph 2 of the Criminal Code of Kosovo

Therefore, pursuant the provisions of Articles, 6, 11, 15, 31, 32, 33, 34 items 1 and 2, 38, 64 par 1, 65 par 1, 66 par. 1 sub-par. 2, 73 par 1, 99 par 1, Article 328 par. 2 of CCK and Articles 99 par 1, 2 items 3, 4, 6, par 3, 102 par. 1, 328 par 1, 385 par. 1 and 2, 386 par 2, 387 par 1 and 2, 391 and 392 of the KCCP, the accused are

SENTENCED

Muhamet Bojkaj to 8 (eight) months of imprisonment

Ali Bojkaj to 3 (three) months of imprisonment

Gazmend Sylaj to 3 (three) months of imprisonment

Pursuant to article 391 par. 1 sub-par. 5 of KCCP, the time spent in detention by the accused Gazmend Sylaj from 10 October 2010 until 30 December 2010 shall be credited in the punishment.

Pursuant to article 328 par. 5 of CCK, the AK47 automatic rifle, serial number 3443 and six magazines and 180 bullets, cal.7.62 x 39 mm seized from Muhamet Bojkaj shall be confiscated and destroyed.

Pursuant to Article 328 par. 5 of CCK, the revolver, serial number 10010 and 5 bullets seized from Ali Bojkaj shall be confiscated and destroyed.

Pursuant to Article 328 par. 5 of CCK, the "Zastava" revolver, cal.635 mm, serial number T647356 and four bullets seized from Gazmend Sylaj shall be confiscated and destroyed.

The defendants shall each pay the Scheduled Amount in the sum of 100 (hundred) Euros.

REASONING

1. Procedural Background

i. The indictment

On 07 April 2011 the Special Prosecution Office filed 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.

On 20 May 2011 the confirmation judge of the District Court of Peja confirmed the aforementioned Indictment through Ruling KA.nr.143/11.

With the same Ruling the confirmation judge decided that the criminal proceedings against Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj should be severed, since those defendants had been charge only with *unauthorized ownership, control, possession or use of weapons* in violation with Article 328 par. 2 of CCK.

During the confirmation hearing the defendants Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj pleaded guilty.

ii. Competence of the Court and Panel Composition

In accordance with Article 23 (1) of KCCP, District Courts shall have jurisdiction to adjudicate at first instance

criminal offences punishable by imprisonment of at least five years or those offences punishable by long-term imprisonment.

In the present case the defendants were charged with *unauthorized ownership, control, possession or use of weapons* in violation with article 328 par. 2 of CCK, an offence punishable by a fine or by imprisonment from one to eight years.

The criminal offences, according to the Indictment, were committed in Peja and village Isnig, Decani Municipality, which is in the territory of the District of Peja. Therefore, in accordance with Article 27 (1) of CPCK, the District Court of Peja has territorial jurisdiction to adjudicate this case.

No issue was raised by the parties regarding the jurisdiction of this Court.

Furthermore, pursuant to the Article 3 of the Law on Jurisdiction Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (hereinafter "the LoJ"), EULEX Judges assigned to criminal proceedings have the jurisdiction and competence over any case investigated or prosecuted by the Special Prosecutors of Republic of Kosovo.

Since the present case was investigated and the Indictment filed by the Special Prosecutor of Kosovo the Trial Panel of the District Court of Peja/Pec was correctly composed of a mixed panel of two EULEX Judges and one Local Judge in accordance with the article 4.7 of LoJ.

No issue was raised by the parties regarding the composition of this Court.

iii. Main Trial

The main trial was held in public on 09 November 2011 in the presence of the Special Prosecutor Reshat Millaku, the accused Muhamet Bojkaj, Ali Bojkaj and Gazmend Sylaj and their defense counsels Isa Osdautaj, Ylli Mekaj and Gafurr Elshani.

In accordance with Article 15 of KCCP, international

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

2. Factual Situation

On 10 October 2010, during their investigation into the kidnapping of Azem Morina, police searched the house of Gazmend Sylaj. During that search police seized a weapon "Zastava" revolver, caliber 635 mm, serial number T647356 and four bullets.

The defendant admitted he had that weapon without an authorization card, during his interview at the Special Prosecution Office on 28 October 2010. The Court finds that at all material times the said weapon and ammunition was in the defendants possession, custody and control.

On 6 November 2010 the police searched the house of Muhamet Bojkaj and Ali Bojkaj in the village of Isniq, Municipality of Deçan. The two defendants are brothers. During this search the police seized an AK47 automatic rifle, serial number 3443, six magazines and 180 bullets, cal.7.62 x 39 mm, and revolver serial number 10010 with 5 bullets.

The defendant Muhamet Bojkaj admitted that he owned the AK47 automatic rifle with the 180 bullets, since the war, during his interview at the Special Prosecution Office on 07 December 2010. The Court finds that at all material times the said weapon and ammunition was in the defendants possession, custody and control.

The defendant Ali Bojkaj admitted that he owned the revolver during his interview by the police on 08 November 2010. He stated that the revolver and ammunition was given to him by his late father as a gift. The Court finds that at all material times the said weapon and ammunition was in the defendants possession, custody and control.

All the defendants pleaded guilty to the criminal offence of *unauthorized ownership, control, possession or use of weapons* in violation with Article 328 par. 2 of CCK.

Having considered the Prosecution evidence the trial panel decided to accept the guilty plea.

3. Final Speech

During the final speech the prosecutor stood by the indictment and considering the guilty plea of the defendants, requested that the defendants be convicted in accordance to the law.

The defendants and their defense counsels requested that a lenient sentence is imposed against them, proposing a fine, since they had pleaded guilty and promised that they will never possess any weapons.

4. Determination of the Punishment

The trial panel, considering all the mitigating and aggravating circumstances, considers that the punishment as in the enacting clause of this judgment is appropriate.

The defendant **Muhamet Bojkaj** was unlawfully in possession of an AK47 Automatic Rifle and 180 rounds of ammunition. He had possessed the weapon since the war. However, despite at least one amnesty and every opportunity to voluntarily surrender the said weapon to the authorities he had failed to do so.

There was no legitimate, lawful reason why the defendant should have been in possession of the said weapon and ammunition.

Possession of an automatic weapon and a significant amount of ammunition posed a serious threat to public safety and security. Possession of an automatic rifle and a significant amount of ammunition requires the severest opprobrium of the Court.

The Court has considered and taken into account the fact the Defendant entered a guilty plea at the earliest opportunity. The defendant is a family man; he has three children who are below 10 years of age. The defendant is a sole family provider.

Considering all the above circumstances the sentence of 8

(eight) months of imprisonment is appropriate, having in mind that it is below the minimum prescribed by law.

The defendant **Ali Bojkaj** was unlawfully in possession of a revolver serial number 10010 for which he did not have a valid Weapon Authorization Card and 5 bullets. There was no lawful, legitimate reason for his being in possession of a handgun and bullets. The fact the weapon had been given to him by his late father was not a reasonable, justifiable or lawful reason for his being in possession of the said weapon and ammunition.

As a mitigating circumstance, the Court took into account the fact the defendant entered a Guilty plea at the earliest opportunity.

Taking into account the aforementioned facts, the punishment of 3 (three) months of imprisonment is appropriate and reasonable in the circumstances.

The defendant Gazmend Sylaj was unlawfully in possession of a handgun and four bullets.

As a mitigating circumstance, the Court took into account the fact the defendant entered a Guilty plea at the earliest opportunity. The Court also took into account the fact the defendant Gazmend Sylaj is newly married and has a small child.

Taking into account the aforementioned facts, the punishment of 3 (three) months of imprisonment is appropriate and reasonable in the circumstances.,

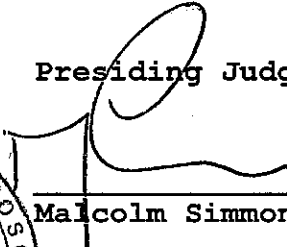
The punishments imposed for each of the three Defendants is below the minimum prescribed by law.

5. Costs

Pursuant to Article 102 paragraph (1) in conjunction with Article 99 paragraph (1) and (2) subparagraphs 6) of KCCP, the defendants shall each pay the Scheduled Amount in the sum of 100 (hundred) Euros.

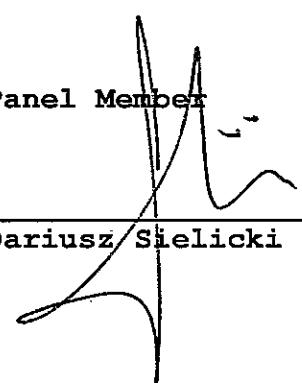
DISTRICT COURT OF PEJA/PEC
Dated this 09th day of November 2011
P.nr.215/11

Presiding Judge



Malcolm Simmons



Panel Member


Dariusz Sielicki

Panel Member


Lumturije Muhaxheri

Court Recorder


Robert Abercrombie

LEGAL REMEDY:

Authorized persons may file an appeal in written form against this judgment 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.