

DISTRICT COURT OF PEJA/PEC

P.nr. 229/11

Date 22 December 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of the EULEX Judge Ingo Risch as Presiding Judge, the EULEX Judge Gunnar Oyhaugen and the Kosovan Judge Elmaze Syka as panel members, assisted by the Recording Officer Nexhmije Mezini, in the criminal case against

MUHAMET VISHAJ, born on 16 March 1968 in the village of Beleg, Decan Municipality, son of father Ali and mother Tigje-maiden name Rama, Albanian, resident of Republic of Kosova,

Charged with the Indictment of the District Prosecution Office in Peja PPHQ-no. 30/06 PP.no.141/06 dated 08 April 2011 with the criminal offence of *Murder out of blood feud* from Article 30 par. 2 item 4 of CLK and the criminal offence of *Murder* from Article 30 paragraph 1, both criminal offences punishable pursuant to Article 30 par. 3 of CLK,

After having held the main trial hearings in public on 10, 20, and 21 October, 18 November, 05, 06 and 22 December 2011 in the presence of:

- the Public Prosecutor Ali Uka,
- the accused Muhamet Vishaj,
- the defense counsel Haxhi Cekaj,
- the injured party Drita Vishaj (present on 10 and 20 October 2011),
- the injured party Cene Kilaj (present on 10 October 2011)

after the trial panel deliberation and voting held on 22 December 2011, based on Article 383 Paragraph 2 of Kosovo Code of Criminal Procedure (KCCP);

on 22 December 2011, pursuant to Article 392 Paragraph 1 of KCCP, pronounces in public, the following

V E R D I C T

The accused **Muhamet Vishaj** is

FOUND GUILTY

Because

On 23 October 1999, at around 18:00 hours, on the road from Decani to Lluke, near the parquet store, with the direct intention and driven by the motive of blood feud, killed Luan Vishaj 43 years of age, since the deceased Luan Vishaj eleven years ago had killed the father of the defendant, the late Ali Vishaj. On the critical day, the defendant Muhamet Vishaj had ambushed the deceased Luan Vishaj on the abovementioned place, and armed with an automatic rifle, fired a burst of shots in the direction of Luan Vishaj, who was on a motorbike together with Dan Kilaj, hitting Luan near the fifth rib and near the wrist, where the penetration wound goes from the front to behind, causing external and internal bleeding, as a result the deceased Luan Vishaj died immediately. With this action the defendant, with the eventual intent, seeing that his target Luan Vishaj was with another person on a motorbike, nevertheless he decided to shoot on the direction of Luan, and on this occasion also shot at the other victim Dan Kilaj, hitting him on the abdomen on the right, near the lumbar and on the left arm and right wrist by inflicting him external and internal wounds, as a result the deceased Dan Kilaj died immediately,

- By which the defendant committed the criminal offence of *Murder* pursuant to Article 30 par. 1 and 2 item 4 and par. 3 of CLK,

Therefore, pursuant the provisions of Articles 5, 8, 11, 33, 38, 41, 50 of the Criminal Code of SFRY, Article 30 par. 2 item 4 and par. 3 of Criminal Law of Kosovo, UNMIK Regulation 1999/24 on the Applicable Law on Kosovo, and Articles 99 par 1, 2 item 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 Kosovo Code of Criminal Procedure, the accused is

SENTENCED

To **15 (fifteen) years** of imprisonment

Pursuant to Article 391 par. 1 sub-par. 5 of KCCP, the time spent in detention by the accused Muhamet Vishaj from 09 February 2011 until 22 December 2011, shall be credited in the punishment.

Pursuant to Article 99 par. 2 item 6 of KCCP, the defendant Muhamet Vishaj shall pay the costs of these criminal proceedings in the amount of 700 (seven hundred) Euros, counting 100 (one hundred) Euros for each hearing and a scheduled amount of 150 (hundred and fifty) Euros.

R e a s o n i n g

Procedural Background

On 08 April 2011 the District Prosecution Office in Peja has filed an indictment PPHQ.no.30/06 PP.no.141/06 dated 08 April 2011 against Muhamet Vishaj for the criminal offence of *Murder out of blood feud* from Article 30 par. 2 item 4 of CLK and the criminal offence of *Murder* from Article 30 paragraph 1, both criminal offences punishable pursuant to Article 30 par. 3 of CLK.

The indictment was confirmed on 18 May 2011 by the confirmation judge of the District Court of Peja/Pec, through the ruling KAQ.nr.144/11.

On 09 September 2011 the President of the Assembly of EULEX Judges, deciding upon the request of the President of the District Court of Peja, after the hearing held on 07 September 2011, decided to take over the case and allocate it to the competence of EULEX Judges for further proceedings.

Competence and Panel Composition of the Court

In accordance with Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the charges against the defendant Muhamet Vishaj is *Murder out of blood feud* from Article 30 par. 2 item 4 of CLK and the criminal offence of *Murder* from Article 30 paragraph 1, both criminal offences punishable pursuant to Article 30 par. 3 of CLK, by imprisonment of at least ten (10) years. Therefore, the District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offence, according to the indictment, was committed in the road between Decani and village Lluke, which is within the territory of the District of Pejë/Peć. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Since the present case was allocated to the competence of EULEX Judges by the decision of the President of the Assembly of EULEX Judge dated 09 September 2011, the panel was composed of two EULEX Judges and one Kosovan Judge pursuant to Article 3.7 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

None of the parties objected to the panel composition.

The Main Trial Sessions

The main trial was held in public on 10, 20, and 21 October, 18 November, 05, 06 and 22 December 2011 in the presence of the Public Prosecutor Ali Uka, the accused Muhamet Vishaj and his defense counsel Haxhi Cekaj. The injured party Drita Vishaj was present on 10 and 20 October 2011 and the other injured party Cene Kilaj was present on 10 October 2011.

In accordance with Article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary.

Evidence administered during the main trial

During the course of the main trial, the trial panel examined the following witnesses:

Injured party/Witness *Cene Kilaj* examined on 10 October 2011
Witness *Mirushe Loshaj* examined on 10 October 2011
Witness *Dervish Rama* examined on 10 October 2011
Witness *Valdet Vishaj* examined on 10 October 2011
Injured Party/Witness *Drita Vishaj* examined on 20 October 2011
Witness *Hasan Vishaj* examined on 20 October 2011
Witness *Riza Kilaj* examined on 20 October 2011
Witness *Naim Memaj* examined on 20 October 2011
Witness *Zenel Loshaj* examined on 20 October 2011
Witness *Arianit Vishaj* examined on 21 October 2011
Witness *Rexhe Kilaj* examined on 21 October 2011
Witness *Ardian Martinaj* examined on 21 October 2011
Witness *Skender Vishaj* examined on 18 November 2011
Witness *Ismet Neziraj* examined on 18 November 2011
Witness *Bardhyl Vlladi* examined on 18 November 2011
Witness *Binak Vishaj* examined on 05 December 2011
Witness *Fahrije Vishaj Osdautaj* examined on 05 December 2011
Witness *Qaush Vishaj* examined on 06 December 2011.

The defendant Muhamet Vishaj was examined on 06 December 2011.

Documentary Evidence

1. Initial Report of UNMIK Police DI-2017-00011-99 dated 24 October 1999 and a handwritten report of the UNMIK Police Office Carl Wilcox
2. KFOR Report number 177/22-1 dated 15 November 1999
3. KFOR Report number 177/22 dated 25 October 1999

4. Minutes of cadaveric examination drafted by Medical Officer Lieutenant Colonel Paolo Paolini of Compagnia Carabinieri – Polizia Militare Peja/Pec
5. Police Report drafted by Office Shkelzen Kabashi, case number DI-2017-011-99 dated 09 December 2004
6. Case Summary drafted by Police Officer Shkelzen Kabashi case number DI-2017-011-99 dated 12 March 2006

Factual Findings

The trial panel is convinced that the following factual situation had occurred:

On 23 October 1999, at around 18:00 hours, on the road from Decani to Lluke, near the parquet store, the defendant with the direct intention and driven by the motive of blood feud, killed Luan Vishaj 43 years of age, since the deceased Luan Vishaj eleven years ago had killed the father of the defendant, the late Ali Vishaj. On the critical day, the defendant Muhamet Vishaj had ambushed the deceased Luan Vishaj on the abovementioned place, and armed with an automatic rifle, fired a burst of shots in the direction of Luan Vishaj, who was on a motorbike together with Dan Kilaj, hitting Luan near the fifth rib and near the wrist, where the penetration wound goes from the front to behind, causing external and internal bleeding, as a result the deceased Luan Vishaj died immediately. With this action the defendant, with the eventual intent, seeing that his target Luan Vishaj was with another person on a motorbike, nevertheless he decided to shoot on the direction of Luan, and on this occasion also shot at the other victim Dan Kilaj, hitting him on the abdomen on the right, near the lumbar and on the left arm and right wrist by inflicting him external and internal wounds, as a result the deceased Dan Kilaj died immediately,

The panel established the above factual situation based of the following evidence:

Assessment of evidence

Based on the testimonies of the following witnesses the panel is convinced that the accused has committed the crime which he is charged with and he had to be found guilty.

1.) Witness Cene Kilaj

Prior to the main trial this witness had testified three times and the core part of his testimony was that Dervish Rama, the uncle of the defendant, had informed him, that the defendant had killed the two persons – Luan Vishaj and Dan Kilaj – both from Beleg village, but he had killed Dan Kilaj without intention, and Luan Vishaj – as everybody knew was the murderer of Muhamed Vishaj's father.

Although witness Cene Kilaj disavowed from his previous statements when confronted with them during his interrogation in the main trial the panel is beyond reasonable doubts

convinced that his statements given prior to the main trial were true and he gave false testimony during the main trial.

This has to be established from the factual situation and the motivation of the defendant. With one burst of several shots from an AK 47 two persons were killed: One of them was Luan Kilaj, who had killed before the father of the defendant. This fact is undisputable and can be seen as common knowledge. The same applies to the motivation of the defendant. His intension was to take the life of the murderer of his father, common known as blood revenge or feud.

And the second killed person, Dan Kilaj, became victim of the action of blood revenge "by coincidence", because he was pillion passenger on the motorcycle used by Luan Kilaj, the target of the action of blood revenge. His death was not motivated by blood revenge, but he also did not lose his life by mere negligence, because the defendant took as well his life, with eventual intention ("*dolus eventualis*"). Although the defendant did not want in first line to take Dan Kilaj's life as well, he was fully aware of the fact that his burst of shootings which were targeted at Luan Vishaj did not only endanger the life of the co-driver and although he did not want the co-driver to die he was aware that his shootings at Luan Vishaj as a necessary result would also lead to the death of the co-driver, and this occurred also.

The previous statements of witness Cene Kilaj, contrary to his testimony given during the main trial, are fully comprehensible, because it is more than obvious that he as the uncle of the perpetrator acted in the role of a mediator in order to limit the liability of the defendant. Dervish Rama and the defendant himself could expect the understanding of Luan Visahj's family after having taken the life of his father's murderer. The issue of blood revenge is deep seated in this society. But the further killed Dan Kilaj was not involved in the issue of blood feud of the two Vishaj families and had to be explained in order to achieve "besa" and/or reconciliation. This was the aim and purpose of Dervish Rama's mission, who talked to Mirushe Loshaj and Cene Kilaj about this. Dervish Rama intended to minimize the guilt of his nephew regarding the death of Dan Kilaj by explaining this as an accident, which had occurred without Muhamed Vishaj's intention.

The reason why the panel is convinced that Cene Kilaj in his previous statements told the truth and not during the main trial is on one hand based on logic and on the other hand his previous statements coincide with all statements of Merushe Loshaj who has not changed her testimony.

The first logical aspect is that Dervish Rama's approach as reported by Cene Kilaj previously was absolutely rational. The second aspect is related to the consistency of his previous description when testifying congruently three times to police and public prosecutor. The further logical element regarding the truth of his previous statements is based on the fact that Cene Kilaj when confronted with his three earlier statements during the main trial did not explain, why he disavowed from his previous statements and the panel also excludes the existence of a reason why Cene Kilaj could have lied or erred when testifying to police/public prosecutor.

And finally the previous statements of Cene Kilaj are fully supported by Mirushe Loshaj's statement.

2.) Witness Mirushe Loshaj

This witness has described during her interrogation at the main trial as well as prior to it consistently and without the slightest contradiction that Dervish Rama had approached her after the killings and had frankly explained to her that his nephew Muhamed Vishaj had killed Luan Vishaj and Dan Kilaj as well, but the killing of Dan Kilaj had occurred unintentionally.

There are no doubts that she told the truth. And there are also no doubts that Dervish Rama could have erred when he spoke with Cene Kilaj and Mirushe Loshaj, because he acted for the comprehensible reason as a mediator.

3.) Witness Ardian Martinaj

As far as witness Ardian Martinaj, in his testimony given in front of the panel has given an alibi to the defendant the panel has no doubts that this witness did not tell the truth. He testified for the only reason to avoid that the defendant could be found guilty although the witness knows that the defendant was not in Albania when the crime in question was committed.

4.) Further witnesses

The statements of all the other witnesses are irrelevant regarding this case. As far as they have reported on meetings related to "Besa" and/or reconciliation issues the irrelevance results on the fact that any consultations/negotiations on "Besa"/reconciliation matters are not touching or influencing the matter of the guilt of the defendant.

As far as witnesses have reported on the presence of the defendant at wedding parties and other occasions their testimonies are irrelevant, because there was no reference to the time of the offence nor to the crime scene to be realized.

Legal Findings – Applicable Law

According to the bill of indictment the accused is charged with two criminal acts. Contrary to this the panel had to re-qualify the number of criminal acts with the result that the accused has to be charged only with one criminal act, because the criminal offence that has occurred on the critical day has to be seen as only one act. Although two people were killed there is only one action in question. The perpetrator used once the AK47, an automatic gun, by shooting a burst of gunfire at the two persons on a motorcycle. This action has to be seen as one criminal act of *Murder* pursuant to article 30 par. 1 and 2 item 4 and par. 3 of CLK, a requalification which is an alternative in favor of the accused.

As to the applicable law the panel applied the former Criminal Law of Kosovo (CLK) and Criminal Code of Former Yugoslavia (CCY).

The criminal offence was committed on October 1999, when the former law was in force.

The highest punishment foreseen on the former Criminal Code of SFRY (CCY) in article 38 par. 1, was 15 years of imprisonment. In paragraph 2 of the same article reads, *the court may impose a punishment of imprisonment for a term of 20 years for criminal acts eligible for the death penalty*. In the present case the punishment was eligible for a death penalty.

However, since the death penalty was abolished with the UNMIK Regulation 1999/24 on the Applicable Law on Kosovo, the maximum penalty for the criminal offence in the present case must be seen as 20 years of imprisonment.

Since the present law in article 37 of CCK, foresees the maximum punishment of forty (40) years of imprisonment, the most favorable law had to be applied, which is the former Criminal Law of Kosovo and Criminal Code of Yugoslavia in conjunction with the UNMIK regulation 1999/24.

Determination of Punishment

The trial panel has evaluated all the mitigating and aggravating factors when decided upon the determination of punishment.

As for the mitigating circumstances the panel finds that time elapsed since the crime was committed is a long period and that the defendant was never convicted of any other criminal offence before. Furthermore, the panel has taken into consideration that the defendant, in regards to the victim Dan Kilaj, did not act with direct intent, but only with eventual intent.

As for the aggravating circumstance the panel finds that the defendant planned well the murder of Luan Vishaj. He found an appropriate spot to ambush the victim. As a result of this ambush, the defendant murdered Luan Vishaj and Dan Kilaj, who was a co-driver of Luan Vishaj. The defendant had seen Luan Vishaj accompanied by another person and did not change his plan.

Herein, considering the mitigating and aggravating circumstances, the punishment of 15 years of imprisonment is an appropriate punishment within the legal frame of a minimum punishment of ten (10) years and a maximum of twenty (20) years of imprisonment.

By this punishment, in the conviction of the panel, the purpose of preventing the defendant on committing other criminal offences and to deter other persons from committing criminal offences has been fulfilled.

Costs of the criminal proceedings

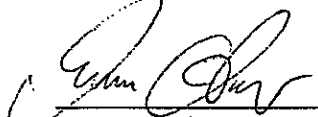
Since the defendant Muhamet Vishaj was found guilty, pursuant to Article 99 par. 2 item 6 of KCCP, the defendant shall pay the costs of these criminal proceedings in the amount of 700 (seven hundred) Euros, counting 100 (one hundred) Euros for each hearing and a scheduled amount of 150 (hundred and fifty) Euros.

DISTRICT COURT OF PEJA/PEC

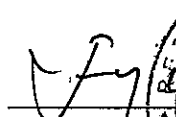
P.nr.229/11

Dated this 22nd day of December 2011

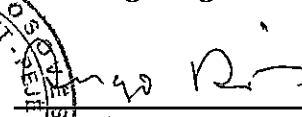
Panel Member

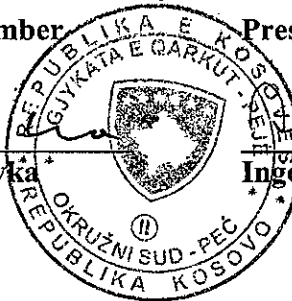

Gunnar Øyhaugen

Panel Member

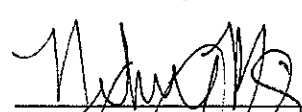

Elmaze Syka

Presiding Judge


Ingo Risch



Court Recorder


Nexhmije Mezinj

Legal Remedy

Authorized 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 (15) days from the date the copy of the judgment has been served, pursuant to Article 398 Par. 1 of the KCCP.