

DISTRICT COURT OF PEJA/PEC

KA.nr.40/11

Date 01 March 2011

EULEX Confirmation Judge Vladimir Kanev, in a criminal case against

ATDHE BEKAJ, son of father Bajram Bekaj and mother Rushe maiden name Ahmetaj, born on 26 April 1979, in Peja, Albanian, citizen of Republic of Kosovo.

Charged with the Indictment PPS.no.109/10 dated 25 January 2011, filed in the court of 04 February 2011, for the criminal offence of *Aggravated Murder* pursuant to article 147 item 9 of CCK

After a hearing on confirmation of the indictment held on 01 March 2011 in accordance to article 313 and 314 of KCCP, in the presence of the Public Prosecutor, the defendant and his defense counsels Ali Rexha, Haxhi Cekaj and Gafurr Elshani, and in accordance to article 316 par. 4 of KCCP issues the following

RULING

The indictment of the Special Prosecution Office PPS.nr.109/10 dated 25 January 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.

Reasoning

Procedural Background

On 04 February 2011 the Special Prosecution Office has filed an Indictment PPS.nr.109/10 against the defendant Atdhe Bekaj accusing him of the criminal offence of *Aggravated Murder* pursuant to article 147 item 9 of CCK, as to the murder of Sadik Musaj on 31 January 2005.

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

The confirmation judge has scheduled the confirmation hearing for 01 March 2011, for which the Public Prosecutor, the defendant Atdhe Bekaj, his defense counsel Haxhi Cekaj

were summonsed. Also the injured party Sami Musaj was invited for the hearing. The hearing was open for the public.

After the Public Prosecutor read the indictment and after the judge was satisfied that the defendant has understood the indictment, the defendant was given the opportunity to plead guilty or not guilty.

The defendant Atdhe Bekaj pleaded not guilty.

In their submission, the defense counsels objected the qualification of the criminal offence, specifically as to the motive and the intent. Additionally, they objected in general as to the evidentiary procedure during the pre-trial stage and to the relevance of the testimony given by the eye witnesses.

The defendant supported his lawyer's submission.

Findings of the Court

Article 316 par. 1 of KCCP provides that the indictment can be dismissed if the act charged is not a criminal offence, there are circumstances which exclude criminal liability, the statutory limitation has expired, or there are other circumstances which bar the prosecution and if there are not sufficient evidence to support the well-grounded suspicion that the defendant has committed the criminal offence.

The judge finds that none of the above circumstances can be applied at the current procedure. In fact, according to the case file and the evidence contained in it, there is sufficient evidence to support the well-grounded suspicion.

According to the case file it comes out that an eye witness who was walking together with the victim when the victim was attacked, identified the attacker being the defendant Atdhe Bekaj. The witness _____ has stated that the defendant, Atdhe Bekaj, shot towards Sadik Musaj, while the latter was walking together with the witness in the street.

The witness _____ was in the company with the defendant Atdhe Bekaj – helping him start his vehicle engine. At one moment, the defendant headed towards an auto-parts store, while the witness remained in the vehicle waiting. After only two minutes, the witness heard shots. The witness turned towards where he heard the shots. He observed the defendant with a pistol in his hand – and that the victim was holding him by the hand.

Both these witnesses have stated that they knew about the bad relationship between the defendant and the victim, mainly because of the testimony of the late in the trial against "Dukagjini Group".

When the defendant was arrested in 21st October 2010, a pistol – "Browning" – was found in his possession. This pistol was handed over to lab to be examined. The Expertise Report by the Forensic Lab no 2010-2448, dated 6th January 2011 established that four

shell cases and two bullets of 9 mm caliber found on the crime scene and one bullet taken out of the victim's body, have the same characteristics as the defendant's pistol.

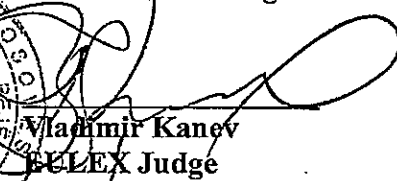
Therefore, based on these circumstances provided by the indictment, the confirmation judge finds that there is sufficient evidence to support the well-grounded suspicion that the defendant has committed the criminal offence which he is charged with and herein confirms the indictment.

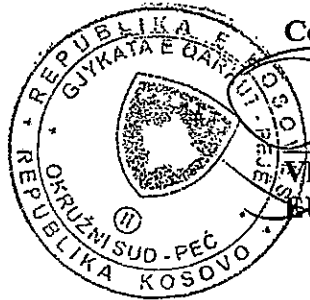
In the end it is noteworthy that all the evidences obtained during the investigations are admissible and therefore there is no need to declare any specific evidence as inadmissible.

All the issues as to how relevant evidences is and it should be weighed against the indictment shall be subject in 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.40/11 dated 01 March 2011.

Confirmation Judge

Vladimir Kanev
PELEX Judge



LEGAL REMEDY:

No appeal is permitted against this ruling.