

## DISTRICT COURT OF PEJA/PEC

**KA.nr.426/11**

**Date 24 January 2012**

EULEX Confirmation Judge Ingo Risch, in a criminal case against

**Bekim Nikqi**, son of father Adbyl and mother Cube Iberdemaj, born on 09 September 1973 in Peja, residing in village Qyshk, Peja Municipality, Married, Albanian, citizen of Republic of Kosovo,

**Nysret Bici**, son of father Nazmi and Xhezide Dauti, born on 05 September 1986 in Podujeva, residing in village Godishnjak, Podujeva Municipality, not married, Albanian, citizen of Republic of Kosovo,

**Berat Bici**, son of father Nazmi and Xhezide Dauti, born on 20 March 1983 in village Godishnjak, Podujeva Municipality, married, father of two children, Albanian, citizen of Republic of Kosovo,

**Agim Berisha**, son of father Bajram and mother Fexhrije Ferati, born on 01 July 1969 in village Godishnjak, Podujeva Municipality, where he also resides, married, father of four children, Albanian, citizen of Republic of Kosovo,

**Azem Bytyqi**, son of father Avdyl and mother Gjyzide Kryeziu, born on 22 March 1985 in Prizren, residing in village Zojzë, Prizren Municipality, Albanian, citizen of Kosovo Republic,

**Mehdi Billaca**, son of father Halit and mother Shehide Shala, born on 21 July 1957 in village Krushevc, Obiliq Municipality, where he also resides, married, father of four children, Albanian, citizen of Kosovo Republic,

**Sefedin Bezeraj**, son of father Smajl and mother Fatmush Bezeraj, born on 20 February 1969 in village Rashiq, Peja Municipality, married, father of four children, Albanian, citizen of Kosovo Republic,

**Arben Preqi**, son of father Martin and mother Nica Preqi – Nokaj, born on 07 May 1978 in Gjakova, residing in village Fshaj, Gjakova Municipality, married, completed elementary school, Albanian citizen of Republic of Kosovo

**Zenun Zejnullahu**, son of father Mejdi and mother Shahe Shala, born on 22 December 1983 in Viti, residing in village Ramjan, Viti Municipality, married, father of two children, Albanian, citizen of Republic of Kosovo,

Charged with the Indictment of the Special Prosecution Office PPS.nr.11/11 dated 28 October 2011, filed in the court on 25 November 2011, for the criminal offences:

1. *Organized Crime* in violation of article 274 par. 2 in conjunction with article 23 of CCK
2. *Smuggling of Migrants* in violation of article 138 par. 6 in conjunction with article 23 of CCK

After a hearing on confirmation of the indictment held on 24 January 2012 in accordance to article 313 and 314 of KCCP, in the presence of the Special Prosecutor Besim Kelmendi, the above 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 indictment of the Special Prosecution Office PPS.nr.11/11 dated 28 October 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**

### **Procedural Background**

On 25 November 2011 the Special Prosecution Office has filed an Indictment PPS.nr.11/11 against the defendants Bekim Nikqi, Nysret Bici, Berat Bici, Agim Berisha, Azem Bytyqi, Mehdi Bllaca, Sefadin Bezeraj, Arben Preqi and Zenun Zejnullahu accusing them of the criminal offence of *Organized Crime* in violation of article 274 par. 2 in conjunction with article 23 of CCK and *Smuggling of Migrants* in violation of article 138 par. 6 in conjunction with article 23 of CCK.

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 24 January 2012, for which the Special Prosecutor, the defendants and their defense counsels were summoned. Also the injured parties were invited for the hearing; however none of them showed up. The hearing was open for the public.

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.

All of the defendants pleaded not guilty.

In their submission, the defense counsels objected the qualification of the criminal offence, specifically as to the motive, intent and the description of the individual contribution by the defendants. 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 witnesses.

The defendants supported their lawyers' 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 there is a well-grounded suspicion that the defendants working together as an organized structural group are involved in smuggling of migrants, citizens of Kosovo Republic, through the territory of Republic of Serbia, Hungary, Montenegro, Croatia and Slovenia, to various European countries. For this service the migrants had to pay from 1.500 and up to 3.000 Euro per person. From the police reports on covert measures ordered by the pre-trial judge it can be assumed that all the defendants have had different roles in the activity of smuggling of migrants. Considering that all the actors in this case had specific tasks and they were frequently in contact with each other, it appears that all the defendants have been acting as members of well-organized 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.

As to the complaint of the defense counsels that the public prosecutor has interviewed witnesses in the absence of the defense representatives, the confirmation judge refers to article 237 (4) of KCCP, which gives the rights to the public prosecutor to decide if he/she wants to invite the defendant or his defense counsel.

Furthermore, the confirmation judge rules that all the evidences obtained during the investigations are admissible. Pieces of evidence can only be declared to be inadmissible,

when a specific violation of the respective law can be established. However, this is not the case.

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.426/11 dated 24 January 2012.**



**Confirmation Judge**

---

**Ingo Risch**  
**EULEX Judge**

**LEGAL REMEDY:**

No appeal is permitted against this ruling.