

DISTRICT COURT OF PEJA/PEC

P.nr. 5/10

Dt. 24 May 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 Malcolm Simmons and the Kosovan Judge Gezim Pozhegu as panel members, assisted by the Recording Officer Jacqueline Ryan, in the criminal case against the accused

HALIM BAJRAKTARI, son of Ethem and Hola – maiden name Rrustemi, born on 03 November 1957 in the village Kline e Eperme, Skenderaj Municipality, married, father of six children, has finished the economic secondary school, economic technician by profession, of average economic condition, Kosovo Albanian, has been in detention from 23 March 2006 until 10 November 2006, charged according to the Indictment PP. nr. 147/06 dated 13 July 2006, as amended on 19 May 2011 with the criminal offence of *Murder* contrary to Article 146 of the Criminal Code of Kosovo.

After having held the main trial hearings in public on 21 March, 19 and 24 May 2011 in the presence of the accused Mr. Halim Bajraktari and his defense counsel Mr. Mustafa Radoniqi (absent on the announcement of the judgment), the Public Prosecutor Mr. Ali Uka and the injured party Valmira Sejdiu, present on 21 March 2011 and 24 May 2011, after the trial panel deliberation and voting held on 24 May 2011, based on Article 391 Paragraph 1 of Kosovo Criminal Code of Procedure (KCCP), on 24 May 2011, pursuant to Article 392 Paragraph 1 of KCCP, pronounces in public, the following

VERDICT

Pursuant to Article 390 (3) of the Criminal Procedure Code of Kosovo Halim Bajraktari, is

ACQUITTED

Because it has not been proven that the accused has committed the act with which he has been charged in the Indictment.

The cost of the criminal proceedings under article 99 par. 2 sub par. 1 through 5 of the Criminal Procedure Code of Kosovo (hereinafter "the KCCP"), the necessary expenses of the defendant and the remuneration and necessary expenditures of defense counsel shall be paid from budgetary resources.

Reasoning

Procedural Background

On 14 July 2006 the District Public Prosecution in Peja has filed an indictment PP.nr.147/06 dated 13 July 2006 against Halim Bajraktari, accusing him of *Murder* pursuant to Article 146 of CCK, in relation to the murder of Bedri Sejdiu. The indictment was confirmed on 14 September 2006.

The main trial was held on 06, 07, 08, 09 and 10 November 2006 in case number P.nr.499/06. After the trial was concluded, on 10 November 2006 the defendant was found guilty of *Murder* committed in excess of self-defense pursuant to Article 146 in conjunction with article 8 par. 3 of CCK and sentenced to four (4) years of imprisonment.

The Supreme Court of Kosovo, deciding upon the appeals of the Public Prosecutor, Defense counsel and the injured party, annulled the first instance judgment and reversed the case for a re-trial, through the ruling AP.nr.178/07 dated 22 August 2007.

In the re-trial the case was proceeded with number P.nr.625/07. The re-trial was held on 11, 12 and 13 June 2008. After the trial was concluded, on 13 June 2008 the defendant was found guilty of *Murder* committed in excess of self-defense pursuant to Article 146 in conjunction with Article 8 par. 3 of CCK and sentenced to three (3) years and six (6) month of imprisonment.

The Supreme Court of Kosovo, deciding upon the appeal of the Public Prosecutor, Defense counsel and the injured party, annulled the first instance judgment and reversed the case for a re-trial, through the ruling AP.nr.36/09 dated 25 November 2009.

The case was re-registered in the District Court of Peja under number P.nr.5/10.

On 22 December 2010 the President of the Assembly of EULEX Judges, deciding upon the request of the President of the District Court of Peja, after the hearing, 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 the 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 accused was charged with Murder, in violation of Article 146 of the KCC, punishable by imprisonment of at least five (5) years of imprisonment.

Therefore, District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offence, according to the indictment, was committed in Istog, 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 with the decision of the President of the Assembly of EULEX Judge dated 22 December 2010, 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 21 March, 19 and 24 May 2011 in the presence of the accused Halim Bajraktari and his defense counsel Mustafa Radoniqi (absent on the announcement of the judgment), the Public Prosecutor Ali Uka, the injured party Valmira Sejdiu (present on 21 March and 24 May 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, on 19 May 2011 the expert witness/pathologist Dr. Arsim Gërxhaliu was examined.

Upon the agreement of the parties the witness statements given in previous proceedings were considered as read, pursuant to article 367 of KCCP. Witness statements are the following:

1. Feriz Fejza
 - 23 March 2006 (Statement in front of the Police),
 - 11 April 2006 (Statement in front of the Prosecutor),
 - 09 November 2006 (Testimony during the First Main Trial);
2. Mane Januzaj
 - 23 March 2006 (Statement in front of the Police),
 - 13 June 2006 (Statement in front of the Prosecutor),
 - 08 November 2006 (Testimony during the First Main Trial);

3. Agim Fejza
 - 23 March 2006 (Statement in front of the Police),
 - 11 April 2006 (Statement in front of the Prosecutor),
 - 09 November 2006 (Testimony during the First Main Trial),
 - 12 June 2008 (Testimony during the Second Main Trial);
4. Bislim Sejdiqaj
 - 23 March 2006 (Statement in front of the Police),
 - 11 April 2006 (Statement in front of the Prosecutor),
 - 06 November 2006 (Testimony during the First Main Trial),
 - 11 June 2008 (Testimony during the Second Main Trial);
5. Kadri Pepaj
 - 23 March 2006 (Statement in front of the Police),
 - 11 April 2006 (Statement in front of the Prosecutor),
 - 07 November 2006 (Testimony during the First Main Trial),
 - 11 June 2008 (Testimony during the Second Main Trial);
6. Faik Sejdiu
 - 23 March 2006 (Statement in front of the Police),
 - 11 April 2006 (Statement in front of the Prosecutor),
 - 06 November 2006 (Testimony during the First Main Trial);
7. Blerim Rama
 - 23 March 2006 (Statement in front of the Police),
 - 11 April 2006 (Statement in front of the Prosecutor),
 - 06 November 2006 (Testimony during the First Main Trial),
 - 11 June 2008 (Testimony during the Second Main Trial);
8. Osman Aliqaj
 - 23 March 2006 (Statement in front of the Police),
 - 11 April 2006 (Statement in front of the Prosecutor);
9. Sofi Haxhiqaj
 - 23 March 2006 (Statement in front of the Police),
 - 13 June 2006 (Statement in front of the Prosecutor),
 - 08 November 2006 (Testimony during the First Main Trial)
10. Gani Rugova
 - 29 March 2006 (Statement in front of the Police),
 - 21 April 2006 (Statement in front of the Prosecutor),
 - 06 November 2006 (Testimony during the First Main Trial);
11. Valmir Loshi
 - 29 March 2006 (Statement in front of the Police),
 - 21 April 2006 (Statement in front of the Prosecutor),
 - 07 November 2006 (Testimony during the First Main Trial);
12. Bajram Sejdiu
 - 01 April 2006 (Statement in front of the Police),
 - 05 May 2006 (Statement in front of the Prosecutor),
 - 06 November 2006 (Testimony during the First Main Trial),
 - 11 June 2008 (Testimony during the Second Main Trial);

13. Valmira Sejdiu
 - 13 April 2006 (Statement in front of the Police),
 - 06 November 2006 (Testimony during the First Main Trial),
 - 11 June 2008 (Testimony during the Second Main Trial);
14. Rrahim Shatri 05 May 2006 (Statement in front of the Prosecutor)
15. Adem Dervishaj
 - 05 May 2006 (Statement in front of the Prosecutor),
 - 12 June 2008 (Testimony during the Second Main Trial)
16. Dr. Arsim Gerxhaliu
 - 23 July 2006 (Statement in front of the Prosecutor),
 - 08 November 2006 (Testimony during the First Main Trial)
17. Hava Sejdiu 01 April 2006 (Statement in front of the Police);
18. Armend Tahiri 09 May 2006 (Statement in front of the Police);

Documentary Evidence

- Police Report dated 23 March 2006 drafted by Officer Fehmi Fazliu
- Police Report dated 23 March 2006 drafted by Officer Mehmet Fetahaj
- Police Report dated 08 February 2005¹ drafted by Officer Ismet Dervishaj
- Police Report dated 23 March 2006 drafted by Officer Ajet Halimaj
- Police Report dated 23 March 2006 drafted by Dzevahira Huremovic
- Police Report dated 24 March 2006 drafted by Officer Xhavit Abdylil
- Police Criminal Report case number 2006-DI-097 dated 24 March 2006 with the addendum's of 31 March 2006, 19 April 2006 and 11 May 2006
- Police Report dated 09 May 2006 drafted by Office Enis Boshtrakaj
- Crime Scene Report, sketch of the crime scene, legend and photographs from the crime scene
- Autopsy report MA 06 – 058 dated 24 March 2006 and the photographs of the autopsy examination
- Vehicle Examination Report dated 31 March 2006 drafted by Office Blerim Tigani

¹ The date on this report is clearly a typing mistake, since the content of the report speaks about the event occurred on 23 March 2006.

- Photographs of the knife handed over by the defendant
- Photographs of the defendants trousers prepared by Officer Elhamedin Nallbani
- Medical Report of the defendant Halim Bajraktari dated 23 March 2006 issued by Emergency Center of the University Clinic Center in Prishtina
- Report of the panel of three forensic medical experts dated 29 April 2008, on the examination and analyze of the autopsy report.

Factual Situation

After taking the evidence the panel is convinced that the following factual situation has occurred.

On 23 March 2006, at about 12:45 p.m. at the Street “Rruga e Koshares” in Istog, the accused Halim Bajraktari met by chance the late Bedri Sejdiu and they walked together towards the car of the accused. At first they talked about business issues in the past which led to a dispute about mutual financial claims. The accused intended to leave the scene, entered his parked car on the side of the driver’s seat and was about to drive away. Before he started to move, the late Bedri entered the co-driver’s seat. Inside the car the dispute escalated and developed into a physical fight between the accused and the late Bedri, resulting in mutual injuries. During this fight Bedri Sejdiu pulled out his pocket knife and stabbed the accused in his left leg twice and caused bleeding wounds.

The accused reacted by wrestling the knife from Bedri’s hand, gained a knife cut in his right thumb, but succeeded in getting the knife into his hand and stabbed with it four times at the body of the late Bedri, causing also bleeding wounds: 1) on the abdomen, 2) on the front of the left lower leg, 3) on the outer aspect of left upper arm and 4) on the back of the left elbow. These injuries on the late Bedri were caused inside the car of the accused during the fight.

Furthermore, the late Bedri received injuries in his face as Grazed Abrasion, see page 2 of the Autopsy Report MA-06-058 under point A) 1 to 5 and pictures 04 and 05 of the MPF medical examiner’s office dated 24 March 2006, and point B) under item 7 on the page three of the Autopsy Report and corresponding picture number 16 and 17 regarding vertical elongated grazed abrasion.. When he testified, the pathologist could not exclude the possibility those injuries were caused when the deceased fell to the ground or when he was picked up off the ground prior to his being taken to hospital. The panel had to leave the question undecided how the late Bedri gained his injuries in his face and the 7 cm long grazed abrasion on the back of the right chest (injury no. 6 of the autopsy report). But none of them was caused by the use of a metal bar or a similar instrument by the accused.

When Bedri Seidiu fell to the ground, the accused left the scene by foot. Passers-by took care of Bedri Seidiu, placed him in a recovery position and called for police who ordered his transport to the hospital. When arriving there, the physicians established that he had already passed away.

None of the injuries of Bedri Sediu including the bleeding caused by the accused was lethal and led to the death of Bedri Sediu, not even if the result of all the injuries are assessed cumulatively. No vital organ or blood vessels of the deceased were involved by the injuries and also no sudden severe blood loss contributed to the death.

The cause of death was heart abnormalities, in particular anomalies of coronary arteries of the deceased. There is no indication that the accused knew or had to have knowledge about this kind of abnormal contraction of the heart of Bedri Sediu.

Assessment of evidence and legal findings

The panel did **not** find the accused guilty of the **criminal act of murder, Article 146 CCK**, because the requirements of this provision are not met.

Evaluating the evidence the court is convinced that the accused at no time acted with the intent to kill the victim Bedri Seidiu. Although it is established that the accused stabbed several times the victim with a knife at the critical day, he did not use the knife with the intention to kill the victim, neither with direct intention (“dolus directus”) nor with eventual intention (“dolus eventualis”), because he had no intention to kill Bedri Seidiu nor did he act considering that the victim might die from his stabbing. To the contrary the panel is convinced that the accused wanted to avoid at all account that Bedri died as a result of his use of the knife. The exclusion of any intention to kill has to be established from the character of the particular wounds which the accused placed at the body of the victim by stabbing him. The autopsy report demonstrates without the slightest doubt that the four cuts which were caused by knife did not touch any vital organ, blood vessel or vital nerve of the victim. One of them hit the left lateral arm, another one is located below the right ribcage, a further one below the left knee and one below the left elbow. All the stab wounds damaged only the skin, the hypodermic tissue and the fleshy tissue, but none of them was life threatening, even if the four cuts as a whole are assessed by considering the reciprocal and cumulating effect of the four injuries altogether.

The court took into consideration the option that the accused had tried to target his disputant more seriously and had failed by coincidence to injure the victim life threatening, but such possibility exists only in theory and has to be excluded. The fight of the accused with the late Bedri Sejdiu occurred when they were very close to each other, mainly inside the car. This short distance proves that the accused could easily have hit him at those parts of his body where stabbings could have a lethal effect - for example by stabbing him into the head, neck or chest - if the accused was willing to kill Bedri. The fact that none of the four stabbings caused serious wounds cannot be explained as coincidental in the way that the accused acted with the intent to hit a vital organ, but failed to do so four times. Such assumption would be against all life experience. The fact

that all the four stabbings hit non vital parts supports the assumption that the accused aimed on purpose at non vital parts of the body as a response to the stabbing of Bedri at the left leg of the accused.

The court has also taken into consideration, if the accused committed a crime of **Negligent Murder**, contrary to **Article 149 CCK**, but also this alternative has to be excluded.

The medical expert Dr. Arsim Gerxhaliu, when interrogated during the main trial on 19 May 2011 has comprehensively explained that none of the individual stabbing wounds and also not the entity of all the injuries caused by the accused led to the death of the victim. Due to his analyze the victim died because of his congenital defect of his heart. The panel joins the appraisal of the expert that the injuries caused by the accused did not lead to the death and the victim did also not die from the bleeding caused by the accused. A different juridical result could only be considered, if the accused prior to the fight had been aware of the heart deficiencies of the victim. But there is not the slightest indication that the accused could have had knowledge about these circumstances, since it appears that not even the family members of the late or even he himself knew about this abnormality.

As a result it has to be established that the accused is also not guilty of a crime of negligent murder.

As far as the Autopsy report has taken into consideration that the stabbing might have caused an emotional involvement and in this way could have contributed to the death this option will also not lead to find the accused guilty.

Even if such emotional involvement contributed to the death of the late Bedri, the court does not find the accused guilty of causing this emotional involvement of the deceased, because it was him who initiated the quarrel and also stabbed the accused first by using his pocket knife.

Furthermore the panel considered, if the accused has to be found guilty of a crime of **Grievous Bodily Harm**, contrary to **Article 154 CCK** or at least **Light bodily Harm**, contrary to **Article 153 CCK**. And the court has also denied this possibility.

All the injuries of the late Bedri which were caused by the accused inside his car are justified by **Necessary Defense – Article 8 CCK** and don't constitute a criminal offence.

There are no witnesses who gave testimony by whom the fight inside the car was initiated and how they contributed to the development of the fight. But, from the factual situation the panel is convinced beyond any doubts that it was the late Bedri who used his pocket knife first to stab the accused. This is established due to the statement of the accused which corresponds with the blood stains in the driver's seat in the car of the accused. These blood stains can easily explained by the two knife cuts in his leg which the accused could not cause to himself. The only logical explanation is that the late Bedri has stabbed the accused twice. The further statement of the accused that he had wrestled the knife

from the deceased hand is established with his cut-wound in his right thumb. From common sense such injury is reasonable when someone grabs to pull a knife out of the hand of somebody else.

Beyond any reasonable doubts it was the late Bedri who initiated the oral dispute by claiming that the accused owed him money. And it is also indisputable that the victim entered the car of the accused when leaving the parking position, and continued to ask money from the accused, the dispute escalated and the late Bedri stabbed at the accused and hit his left leg. The blood spot at the driver's seat of the accused's car proves this fact. The cut wound on the finger of the accused at least *prima facie* establishes evidence that the accused wrested the knife from the victim and got injured by this occasion at his hand.

The panel has taken into consideration the possibility that the accused had exceeded the limit of necessary self-defense. This would be the case, if the accused had injured the victim by using an instrument like a metal bar and/or he had beaten him up while the victim was already physical unable to continue the fight with the accused, in particular, if he was lying more or less unconscious on the ground.

The statements of the witnesses Sofije Haxhijaj, Mone Januzaj, Osman Alijaj and Agim Fejza might lead to such conclusion, but their testament is diametrical in contradiction with the autopsy report and the convincing explanations of the medical expert for pathology, Dr. Arsim Gerxhaliu, who has pointed out that any use of a metal bar or comparable instrument would have caused to the injured person a hematoma. According to the medical expertise the late Bedri did not have any hematoma which could be caused by a metal bar or a comparable instrument on his body. In particular as far as the injury described in the photo documentation of the autopsy report by the photo number 16 and 17, is concerned, the explanation of the medical expert Dr. Arsim Gerxhaliu, has excluded that it was caused by a metal bar or a comparable instrument and due to his assumption this injury has characteristics of a scratch, which can be caused when a person falls to the ground.

The panel has no doubts that the description of the physician and follows his conclusion, because the above mentioned witnesses will have been miss led when describing the use of a metal bar. Due to the medical report, dated 23 March 2006 of the University Clinical Centre Pristina, Prot. No. 8098, there was a hematoma on the left side of the body of the accused under the armpit. This very injury of the accused might be caused by a metal bar or a comparable instrument and witnessed by the above mentioned witnesses who obviously have mixed up who was beating whom. At least the statements of these witnesses don't give reason to doubt what the medical expert Dr. Arsim Gerxhaliu has elaborated and explained and the panel follows his findings as credible.

As far as the statements of all the other witnesses are concerned, none of their testimony is qualified to challenge the above mentioned evaluation and cannot lead to find the accused guilty. The statement of Kadri Pepaj who was engaged by the accused as a taxi driver after the incident had occurred, who stated hearing the accused talking to someone

on the phone, saying "...I have screwed up...", might be seen as an indication of an excess of self-defense, but it cannot be considered as a substantial element which would lead to the guilt of the accused.

With regard to the question why the accused changed his trousers in the toilet of a petrol station, to the conviction of the panel he did so because his trousers were full of blood and he found other trousers or other pair of trousers were offered to him, to make this change possible. To the further question why also these other pair of trousers were blood stained, and this was noticed by the police when he surrendered, this was not unusual because the stabbing wounds of the accused kept bleeding and caused also blood stains to the other pair of trousers.

The court considered also the criminal offence of *Abandoning Incapacitated Person* – Article 157 of CCK, but in this case it was unreasonable for the accused to remain at the crime scene. Taking into consideration the entire situation, the accused was entitled to leave the scene and to give priority to the medical care to his own wounds, given the fact that there were further persons around who could help the late Bedri.

Cost of the proceedings

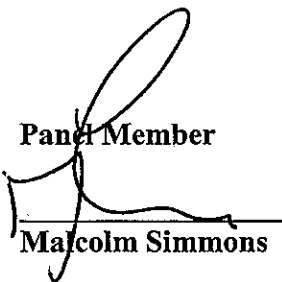
Since the accused is acquitted from the charge, the cost of the criminal procedure shall be paid from the Kosovo budget. Moreover, the defendant's necessary expenses and the remuneration and necessary expenditures of defense counsel shall be paid from budgetary resources, pursuant to Article 99 par. 2 of KCCP.

DISTRICT COURT OF PEJA/PEC

P.nr.5/10

Dated this 24th day of May 2011

Panel Member


Malcolm Simmons

Panel Member


Genim Pozhegu

Presiding Judge


Ingo Risch

Court Recorder


Jacqueline Ryan

on behalf of the absent Court Recorder

Ry (Risch)

Legal Remedy

An appeal must be announced within 8 days from the announcement of this verdict and shall be filed with the court of first instance, pursuant to Article 400 par. 1 of the KCCP.

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