

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 Riku Jaakkola and Shaban Shala as Panel members and Court Recorder Robina Struthers in the criminal case against Hakif Hamiti (hereinafter "the Defendant"), charged pursuant to Indictment PP. number 73/2001 dated 5 July 2001, with *Unlawful possession of large quantity of weapons* contrary to Article 199 paragraph 1 and 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia, after holding a public trial on 2 March 2011 at which Mr. Peter Korneck appeared for the Prosecution and Mr. Besnik Berisha appeared for the defendant who was present, on 2 March 2011 took and publicly announced the following

JUDGMENT

The Defendant Hakif Hamiti, ID number 1014829837 born on 13 February 1943 in Svegël, municipality of Podujevo, father's name Shaban, mother's name Shahe, Kosovo Albanian, married, three children, average economic status, literate, unemployed, in detention from 10 May 2001 to 5 February 2002; is

GUILTY

Because:

On 10 May 2001, at diverse places, the said Hakif Hamiti was observed by members of the Italian Carabinieri, as part of a organized group that made contact with the driver of a MAN truck registration number 816 M 690 with trailer registration number 719 M 226 in a parking area opposite the Peja/Pec customs. The Defendant in a grey AUDI with registration plates 114 KS 030 then followed the truck when

it departed the parking area heading to Peja, together with two other vehicles. The three vehicles and the truck were followed and their drivers subsequently detained by the Carabinieri in front of a private house in Peja/Pec. During a search of the said lorry officers discovered a large quantity of weapons, including 52 former Yugoslav made anti-tank rocket launchers, 20 mortar shells with adjustable fuses for immediate or delayed action, one anti-aircraft missile and other items. The Court finds that at all material times the defendant was in possession of the said weapons.

Therefore,

The said Hakif Hamiti committed the criminal offence of unlawful possession of a large amount of weapons under Article 199 paragraph 1 and 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia

Having been convicted of the said offences:

Hakif Hamiti is sentenced to a term of imprisonment of 271 days.

Pursuant to Article 50 of the Criminal Code of the Socialist Federal Republic of Yugoslavia and Article 351 of the Law on Criminal Proceedings, the time already spent in detention shall be credited.

The Court makes no order for costs.

In terms of aggravating features, the court has taken into account the quantity of weapons seized.

In determining an appropriate sentence the Court has taken into account the fact the offences occurred in 2001, the Defendant's role in the offences, the fact that since the offence, the Defendant has not been indicted for any further offence. Further, the Court has given maximum credit for the Defendant's early guilty plea.

The final Judgment may be announced in the public media.

The Court will deliver the written Judgment within 15 days.

The parties have the right to appeal this judgment.

The Defendant is obliged to report to the court any change in address until the Judgment becomes final.

REASONING

A. Procedural background

A bill of indictment was filed on 5 July 2001 in the District Court of Peja/Pec against Hakif Hamiti, Arsim Gashi, Mirsat Ibrahim, Halim Krasniqi, Agron Hamiti, Gjezair Miftari and Xheladin Gashi.

The indictment originally contained three grounds:

- *unlawful possession of a large quantity of weapons* contrary to article 199 paragraph 1 and 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Articles 8 and 19 of the Law on Acquisition, Possession and carrying of Weapons and Ammunitions 9Law No. 40 of 1980) and Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia for the defendants Hakif Hamiti, Arsim Gashi, Mirsat Ibrahim, Halim Krasniqi, Agron Hamiti, Xhezair Miftari and Xheladin Gashi.

- *Legalising untrue contents in official documents* contrary to Article 205 of the Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of Criminal Code of the Socialist Federal Republic of Yugoslavia for the defendants Hakif Hamiti, Arsim Gashi, Mirsat Ibrahim, Halim Kreansiqi, Agron Hamiti, Xhezair Miftari and Xheladin Gashi.

- *unlawful possession of weapons* contrary to Article 197 paragraph 1 of Criminal Law of the Socialist Autonomous Province of Kosovo as read with Article 22 of Criminal Code of the Socialist Federal Republic of Yugoslavia for the defendants Xhezair Miftari, Xheladin Gashi and Halim Krasniqi.

The first main trial started on 19 December 2001 in front of an international panel and was concluded on 6 March 2002. In its judgment, the panel decided to acquit Agron Hamiti of all the charges. It further decided that the

defendants Arsim Gashi, Mirsad Ibrahim, Halim Krasniqi and Xheladin Gashi were guilty of unlawfully possessing a large amount of weapons as per Article 22 of the CCY and Article 199 paragraph 1 and 3 of CCK but acquitted of *legalizing untrue contents in official documents, in complicity, contrary to Article 205 of the CCK as read with Article 22 of the CCY and of the offence of organising a group, in complicity, for the commission of the offence of unlawful possession of weapons* as per Article 197 paragraph 1 of the CCK as read with Article 22 of the CCY as the elements of the offence were consumed under the Count One.

The trial panel had previously ruled that the proceedings against Xhezair Miftari and Hakif Hamiti be separated from the other defendants due their medical status.

The Supreme Court in a ruling dated 06 March 2005 decided to annul the judgment of the first instance court and sent the case back for re-trial. This ruling only related to the defendants Mirsat Ibrahim, Arsim Gashi, Halim Krasniqi and Xheladin Gashi.

In December 2009, the President of the District Court of Peja/Pec requested to the president of the Assembly of EULEX judges that EULEX judges take over this case due to the procedural obstructions. The case was handed over to EULEX judges in District Court of Peja/Pec on 24 February 2010. The case against Mirsat Ibrahim, Arsim Gashi, Halim Krasniqi and Xheladin Gashi was concluded on 11 November 2010.

On 22 February 2011, the Presiding Judge issued an Order to the registry office of the District Court of Peja/Pec to assign a new case number to the case against Hakif Hamiti and to delete his name from the case file P. Nr. 143/05.

B. Second Main Trial

The main trial of Hakif Hamiti was held in public on 2 March 2011 in the presence of the Defendant, his defence lawyer Besnik Berisha and the EULEX prosecutor. The trial was concluded the same day. The EULEX prosecutor specified that only Count 1 of the original indictment remains for the defendant.

The parties raised no objection as to the jurisdiction of the court nor as to the composition of the trial panel.

The defendant pleaded guilty to the criminal offence of possession of a large quantity of weapons, after consultation with their defence counsel.

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

C. Summary of the evidence

During the main trial, the trial panel did not hear any witness, as none were proposed by the Public Prosecutor or the defence. The public prosecutor referred to the prosecution evidence present in the case file.

After having reviewed the case file, the trial panel concluded that on 10 May 2001, the defendant Hakif Hamiti was part of an organized group which made contact with the driver of a MAN truck registration number 816 M 690 with trailer registration number 719 M 226 in a parking area opposite the Peja/Pec Customs. This comes from the observations made by the Italian carabinieri officers and in particular Mario Schiariti who was called as a witness during the first main trial against Mirsat Ibrahim, Arsim Gashi, Halim Krasniqi and Xheladin Gashi in 2002. The carabinieri suspected the said vehicle were being used in the illegal transport of weapons at the Kula pass border area and were therefore particularly monitoring all the trucks that were passing through the Customs office in Peja/Pec.

Thereafter, the defendant Hakif Hamiti was observed in a grey AUDI with registration plates 114 KS 030, as part of a convoy of three vehicles which escorted the truck to a private residence in Peja.

The three vehicles were followed and subsequently detained by the Carabinieri in front of a private house in Peja/Pec. During a search of the truck, the Italian officers discovered a large quantity of weapons hereby listed:

1. 52 former Yugoslavian made anti-tank rocket-launchers cal. mm 44 mod. "M-80";

2. 20 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 mod. "M-69" with adjustable fuses for immediate or delayed action;
3. 4 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 mod. "M-74" with adjustable fuses for immediate or delayed action;
4. 1 black carton cylinders containing former Yugoslavian made mortar bombs cal. mm 81/82 with adjustable fuses in Bakelite for immediate action without serial number;
5. 1 former Yugoslavian made cannon without recoil shell cal. mm. 81/82 mod. "M-61";
6. 10 black carton cylinders containing former Yugoslavian made cannon shells cal. mm. 82 mod. "M-60A";
7. 2 Green cases containing nr. 1 wire-guided anti-tank missile mod. "AT-3 Sagger" each without control consoles;
8. 12 anti-tank rocket-launchers mod. "M-79" cal. mm. 90, out of them nr. 10 complete, nr.1 without firing and sighting devices and Nr. 1 without shoulder support, firing and sighting devices;
9. 12 anti-tank rocket-launchers mod. "M-79" cal. mm. 90;
10. 1 Mortar mod. "M-57" cal. mm. 60 without support plate;
11. 1 sighting device for mortar mod. "M-57" cal. mm. 60;
12. 1 mortar mod. "M-69" cal. mm. 81/82 without biped, provided with swab for cleaning;
13. 1 cannon without recoil mod. "M-60A" cal. mm. 82 mounted on a wheeled gun-carriage with swab for cleaning and without sighting device;

14. 4 portable anti-aircraft missiles mod. "SA-14" cal.mm.7, out of them nr. 1 with firing device;
15. 7 disposable batteries for portable anti-aircraft missiles mod. "SA-14" cal.mm.75 without serial number;
16. 1 firing device for portable anti-aircraft missiles mod. "SA-14" cal.mm.75;
17. 1 portable anti-aircraft missiles mod. "SA-16" cal.mm.70, without firing device and battery;
18. 2 Zastava machine guns mod "M-84" cal. mm. 7,62;
19. 1 box containing a machinery gun-belt with nr. 98 shells, for Zastava mod "M-84" cal. mm. 7,62;
20. 1 Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39;
21. 4 magazines for Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39;
22. 86 various shells (tracer, ordinary and punching bullets) for Zastava assault rifle mod. "M70-A" cal. mm. 7,63 x 39;
23. 5 semiautomatic Zastava rifles mod. "M76-A" cal. mm.7,9 with precision sighting device and magazines;
24. 20 shells cal. 7.9 for semiautomatic Zastava rifles mod. "M76-A";

The Court finds that at all material times the defendant Hakif Hamiti, in complicity with others, was in possession of this large quantity of weapons.

In reaching its verdict, the trial panel carefully reviewed the evidence presented at the main trial and present in the case file.

The events as to the subject of these criminal proceedings occurred in May 2001. The Prosecution faced obvious difficulties in bringing before the court witnesses - including members of the Italian carabinieri who have since left Kosovo - who could assist the Court in its

determination of the allegations the subject of the amended Indictment. Further, the passage of time will have inevitably had an adverse effect upon the quality of testimonial evidence.

D. Determination of sentence.

When deciding on an appropriate sentence for the defendant the trial panel took into consideration that a guilty plea was entered by the defendant at the commencement of the main trial, that 10 years have elapsed since the commission of the criminal offence and that the defendant is an integrated member of society. Further, there is no record of the defendant having committed any subsequent criminal offences.

Therefore, the trial panel decided to issue imprisonment sentences of 271 days. The time already spent in detention will be credited to the sentence, as per Article 50 of the Criminal Code of the Socialist Federal Republic of Yugoslavia and Article 351 of the Law on Criminal Proceedings.

E. Costs

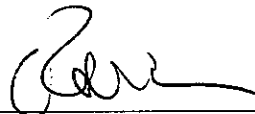
Even though the defendant was found guilty by the trial panel, the court shall make no order for costs due to the fact this case was concluded quickly and efficiently as a result of the defendant's early guilty plea.

Dated this 2nd of March 2011

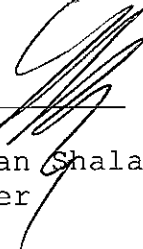


Judge Malcolm Simmons
Presiding Judge

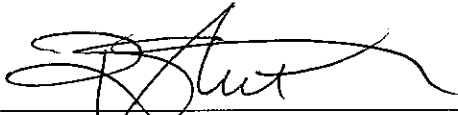




Judge Riku Jaakkola
Panel member



Judge Shaban Shala
Panel member



Robina Struthers
Court Recorder

LEGAL REMEDY: Authorized persons may file an appeal against a verdict rendered in the first instance within 15 days from the day when the transcript of the verdict was delivered, pursuant to Article 359 of the Law on Criminal Proceedings.