

**DISTRICT COURT OF PEJA/PEC**

**AP.nr.93/2010**

**Date 07 September 2010**

**IN THE NAME OF THE PEOPLE**

The Three-Judges panel of the District Court of Peja composed of EULEX Judge Ingo RISCH as Presiding Judge, EULEX Judge Riku JAAKKOLA and Local Judge Salih MEKAJ as panel members,

In the criminal case against

ABEDIN MUZLIJAJ, son of Muharrem Muzlijaj and Ajshe Pecaj, born on 22.12.976 in the village Banje e Pejes, Istog Municipality, residing in the same place, Personal ID number 1003239256, married, investigator in the Police Station in Peja – ID no. 1048, Kosovan-Albanian

Convicted to one (1) year and six (6) months of imprisonment, which conviction is suspended on the condition that the accused compensates the damage caused to and to an amount of 4.500,00 euro and 700 Swiss Francs, through the Judgment on the Municipal Court of Klina P.nr.36/10 dated 25 March 2010,

for the criminal offence of *Abuse of official position or authority*, contrary to Article 339 par. 2 of CCK,

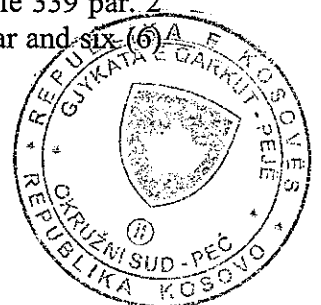
Deciding upon the appeal of the Special Prosecutor filed on 10 June 2010, the two appeals of the defendant's defense counsels Orhan Basha and Ferid Gjikolli, both filed on 14 June 2010 and a reply to the appeal of the Special Prosecutor filed by lawyer Orhan Basha on 18 June 2010,

in a session held on 07 September 2010, in the presence of the defendant Abedin Muzlijaj and his defense counsels

After voting and deliberating on the 07 September 2010, announces in public the following

**VERDICT**

The appeal of the Special Prosecutor is partially APPROVED and the Judgment of the Municipal Court of Klina P.nr. 36/10 dated 25 March 2010 is hereby MODIFIED as to qualification of the criminal offence, whereby the defendant is found guilty for the criminal offence of *Abuse of official position or authority* pursuant to Article 339 par. 2 in conjunction with par. 1 of CCK, and therefore is sentenced to one (1) year and six (6) months of imprisonment.



The appeal of the Special Prosecutor is REJECTED as to the acquittal for the criminal offence of *Fraud* pursuant to Article 261 par. 1 of CCK, and the judgment as to this part is CONFIRMED.

The appeals of the defense counsels Orhan Basha and Ferid Gjikolli are hereby REJECTED as unfounded.

## REASONING

### 1. Procedural Background

With the ruling on initiation of investigation of the Special Prosecution Office PPS.nr.2/2010 dated 15.01.2010, the investigation against Abedin Muzlijaj, an investigative police officer of the investigation unit of Peja regional Police commenced, for the criminal offence of *Abuse of official position or authority* pursuant to Article 339 par. 3 in conjunction with Article 1 of CCK and the criminal offence of *Accepting Bribes* pursuant to Article 343 par. 1 of CCK.

On the same day the Special Prosecutor had issued an order for covert measures in form of photographic and video surveillance in public places, and monitoring of conversations in public places.

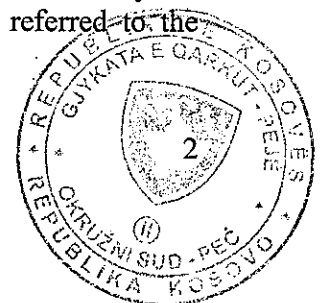
Additionally, on the same day the Special Prosecutor had requested by the Pre-Trial Judge of the District Court of Peja to issue and order for covert measures in form of interception of telecommunications. The Pre-Trial Judge issued the order on 15.01.2010.

On 19.01.2010 the Special Prosecutor filed an application for detention on remand against the defendant. The defendant was arrested on the same day.

On 20.01.2010 a detention hearing was conducted in front of the Pre-Trial Judge. After the hearing the judge ordered detention on remand for a period of one month, through the ruling PPQ.nr.4/10.

On 21.01.2010 the defendant's defense counsels filed two appeals against the detention ruling. Reply to the appeal of the defense counsels was filed by the Prosecutor on the same day.

On 22.01.2010 deciding upon the appeals, the three judge panel of the District Court of Peja through ruling KP.nr.5/10 partially granted the appeals and amended the ruling of the pre trial judge. The three-judge panel decided that defendant's criminal conduct must be qualified as contrary to Article 339 par. 2 of CCK, since the money received by the defendant does not exceed 5000 €. And therefore the case had to be referred to the



Municipal Court of Klina as a subject-matter jurisdiction, since the criminal offence was committed in a surrounding village of Klina. And since, the criminal offence falls under Art. 339, par. 2, of the CCK, which envisages a punishment up to three years of imprisonment, a summary proceeding shall be conducted.

On 01.02.2010 the Special Prosecutor filed a Summary Indictment against the defendant Abedin Muzlijaj, accusing him of criminal offence of *Abuse of official position or authority* pursuant to Article 339 par. 2 in conjunction with Article 1 of CCK and criminal offence of *Fraud* pursuant to Article 261 par. 1 of CCK.

The main trial was held on 05.03.2010 and 25.03.2010.

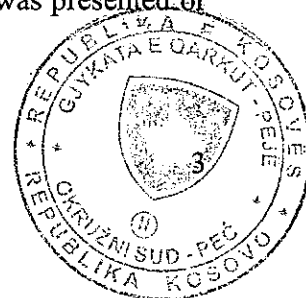
On 25.03.2010 the First Instance Court issued the judgment P.nr.36/10 by which the defendant was acquitted as to the criminal offence of *Fraud* pursuant to Article 261 par. 1 of CCK, while as to the criminal offence of *Abuse of official position or authority* pursuant to Article 339 par. 2 in conjunction with Article 1 of CCK, the defendant was found guilty and sentenced to one year and six months of imprisonment, which sentence shall be suspended on the condition that the defendant compensates the damage caused to the injured party.

According to the first instance judgment the defendant Abedin Muzlijaj was acquitted of having committed the criminal offence of *Fraud* pursuant to Article 261 par. 1 of CCK. As to the criminal offence of *Abuse of official position or authority* pursuant to Article 339 par. 2 in conjunction with Article 1 of CCK, the defendant was found guilty and sentenced to one year and six months of imprisonment, which sentence shall be suspended on the condition that the defendant compensates the damage caused to the injured party.

## **2. First Instance Judgment P.nr.36/10**

The First Instance Court while assessing the evidence concluded that the statement's given by two injured party/witnesses and 's in the investigative stage, where confirmed during their testimony in the main trial. It was confirmed that the money given by the injured party/witnesses to the defendant, in a sum of 4500 € and 700 Swiss Franks, was in order to reveal the perpetrator of the murder of their son, respectively brother, which occurred on 2006, since the defendant was in charge of the investigation of the murder case, as a Police Investigator in Peja Police.

The First Instance Court had also considered the allegations of the defendant that the money was requested as a loan. But, this alleged loan was not taken as a fact, since there was no corroboration evidence to support it. Additionally, during the examination of the witnesses (who clearly said that the money was given in order to reveal things) there was the possibility for the defendant and his defense counsels to present this circumstance and to cross-examine the witnesses as to the issue of the loan. But, nothing was presented or asked to the injured party/witnesses.



Moreover, from the extract of the conversation which was monitored in a public place between the injured party and the defendant on 17.01.2010, the issue of the loan was never mentioned.

Therefore, the first instance court considered that the defendant abused his official position when asked and received the money from the injured party.

As to the criminal offence of *Fraud* (Article 261 par. 1 CCK), the court considered that criminal offence was committed the day the defendant asked for the money (the 10.000,00 €) and received 3.000,00 €. In the following months, the money which was given on the second and the third occasion was only the execution of the promise given on the day the money was asked by the defendant. Therefore, the fraud could not be recognized and the defendant was acquitted from this charge.

### 3. Appeals

#### a) Appeal of the Special Prosecutor

According to the appeal of the Special Prosecutor the first instance judgment has violated the Kosovo Code of Criminal Procedure as to the criminal sanction. To the opinion of the prosecutor the purpose of the punishment, which is to prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator can not be reached with the suspended sentence. Also the purpose is to deter the others from committing criminal offences.

Taken into consideration that the defendant was one of the investigative officers in charge of fighting crime, and considering that in Kosovo the criminal offence of abuse of official position or authority and corruption is highly present, and that the defendant should also be fighting the criminal offence that he is found guilty, the suspended sentence in this case will not reach the purpose of the punishment, moreover it will encourage other perpetrator to commit similar offences.

Additionally, the Special Prosecutor argues that the first instance court has violated the criminal law on acquitting the defendant as to the criminal offence of Fraud. According to the appeal the first instance court erred on determining that the defendant had already filed the criminal report with the District Prosecution Office regarding the case he was investigating (murder case of \_\_\_\_\_), and for this circumstance he did not inform the injured party and took further 1500 Euros from them, making it an unlawful benefit for himself. Moreover, the defendant misleads the injured party as to the persons who committed the murder which is proven from the content of the transcribed conversation between \_\_\_\_\_ (one of two injured parties) and the defendant:

: *But you did not show me all the persons, this is the problem?*

Abedin: \_\_\_\_\_, *I can not tell you that before being 100% sure.*

Therefore, the Special Prosecutor proposes to the District Court of Peja to:



- Announce the defendant guilty for the criminal offence of fraud and sentence him for this criminal offence, hence to modify the first instance judgment and to convict the defendant to a unified prison sentence;
- Annul the first instance judgment in regard to the acquittal and to reverse the case for a retrial; whereas to amend the judgment in regard to the suspended sentence, thus to sentence the defendant with imprisonment.

#### **b) Appeal of the defense counsel Orhan Basha**

The appeal of the defense counsel Orhan Basha, attacks the first instance judgment on the grounds of substantial violation of the provisions of the criminal procedure, violation of the criminal law, erroneous or incomplete determination of factual situation and of the decision on criminal sanction.

According to the appeal the injured party has been interviewed by the police, two days before the prosecutor issued the ruling on initiation of investigation, and on those statements, the name of the prosecutor that authorized the interview, the time and the manor how the prosecutor trusted the police to conduct the investigation, is missing. In addition the prosecutor has questioned the injured party, but did not bother to summon and question the defendant at all, which is an obligation of the prosecutor to provide the defense and the defendant with all the evidences which are favorable to the defense. Since the defendant in the police remained silent the prosecutor did not even bother to summon the defendant to provide his version of facts and to confront with the injured party in order to explain that the money was asked and received as a loan. This circumstance was also violated during the main trial.

As a violation of the criminal law it should be considered because the judgment lacked the explanation as to the criminal offence, if it is a criminal offence at all.

According to the appeal the criminal offence of abuse of official position or authority can be manifested in two forms:

First form – when an official person has the intent to obtain an unlawful material benefit

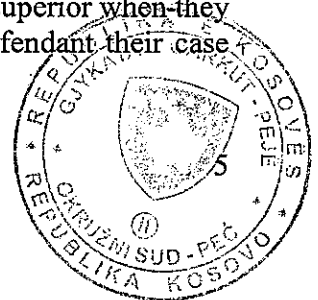
Second form – when an official person has the intent to cause any damage.

In both cases the following actions are required: the abuse of official position, excess of the limits of the authorizations and non-execution of the official duties.

The appealed judgment according to the appeal, failed to provide answers as to these issues. The judgment described that the defendant “*with the intent to obtain unlawful benefit, he abused his official position*”; if this was the case, than paragraph 2 of Article 339 of CCK could not stand, since paragraph 2 was only possible when an official person causes damage and not to obtain unlawful benefit.

In addition, the court did not determine the factual situation also as to the statement of the defendant that the money was asked and received for a loan and based it’s decision on non-supported evidence.

The first instance court did not mention anything as to the defendant’s superior when they had threatened the injured party that if they did not denounce the defendant their case



would remain unsolved and the case would be closed. So, this additional circumstance was left un-explained by the first instance court.

According to the appeal the violations done by the first instance court resulted in pronouncing a wrong criminal sanction. The defendant as soon as he became financially capable to return the loan that he got from the injured party he did so, and the bank transaction confirmation was attached to the appeal.

Therefore the defense counsel proposes the District Court of Peja, to amend the judgment of the Municipal Court of Klina and acquit the defendant from all the charges as there is not enough evidence to support the charges.

### **c) Appeal of the defense counsel Ferid Gjikolli**

According to the appeal of Ferid Gjikolli the first instance court had issued its decision solely based on the partial statements of the injured party and ; only the part that goes on the detriment of the defendant. In this regard the court did not take into account the part of the statement where the injured party explained that after the pressure that they had from the defendant's superiors, the injured party had denounced the defendant.

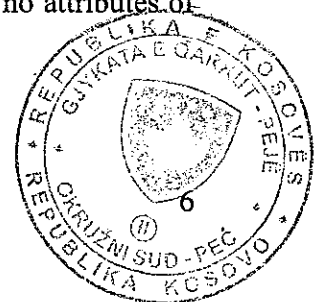
According to the appeal the court found the statements of the injured party liable without confronting with the statement of the defendant where he stated that the money was asked as a loan. Hence, the judgment did not provide a strong explanation why the Court did not believe the defendant's version and moreover it lacked the evaluation of the evidence in general. In this sense, the court did not take into account the amortization plan of the loan taken from the bank, the end of the loan paid and the leaflet with the name and the bank account of . Furthermore, according to the appeal, it was strange why the prosecutor did not propose the superiors of the defendant to be summoned as witnesses who already gave their statements in front of the prosecutor. Also the lawyer questions the fact why the prosecutor ordered the covert measures when the injured party had already admitted that the defendant asked for money to reveal the murder of their family member.

The appeal also considers a violation of the court regarding the fact that the defendant remained silent before the police, and took this as evidence against him. And further the court did not give the opportunity to the defendant to plead guilty or not guilty. Therefore it is strange that despite the violations of the defendant's rights, his defense is taken in his detriment.

The request of the money as a loan is a very important fact which the court did not bother to verify thoroughly. In this regard the court had to summon again the injured party and to confront them with the defendant as to this very important point.

Also the fact of the pressure done by the defendant's superiors to the injured party, the court had to summon them ex-officio in order to explain the above circumstance.

From the above it results that from the actions of the defendant there are no attributes of the criminal offence of abuse of official position or authority.



On the following part of the appeal, lawyer Ferid Gjokolli assesses the provision of Article 339 of CCK, the same as the lawyer Orhan Basha as to the unlawful material benefit and caused damage.

Finally, the lawyer proposes the District Court of Peja to approve his appeal, quash the appealed judgment and to reverse the case for a retrial; or alternatively to amend the first instance judgment and to sentence the defendant with a fine.

#### **d) Reply to the appeal of the Special Prosecutor by lawyer Orhan Basha**

According to the reply to the appeal of the defense, the prosecutor has challenged the judgment as to the violation of the law, specifically as to the acquittal, and gave further explanations which the panel also took into consideration.

Therefore, proposes the second instance court to reject the prosecutors appeal and to acquit the defendant.

#### **4. Findings of the District Court**

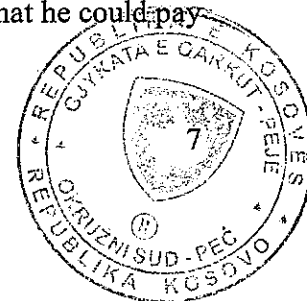
After viewing the first instance judgment, the appeals and all the necessary documents of the case file, concludes that the appeal of the Special Prosecutor is to be partially approved, while the appeals of the defense counsels filed on behalf of the defendant is to be rejected as unfounded.

##### **a) Factual findings**

The appeal court panel is convinced that the court of first instance established the correct fact findings without violating procedural regulations, after having checked *ex-officio* whether a violation of any of the provisions mentioned in Article 403 of KCCP, was done. For this reason the panel decided in its session on 07 September 2010 not to conduct a hearing, see Article 411 (1) and (2) KCCP, since – in compliance with Article 412 (1) KCCP – there is no necessity to take new evidence on one hand nor is it necessary to repeat evidence already taken, because an erroneous or incomplete determination of the factual situation can be excluded.

Therefore the decision of the court of second instance is based on the same facts as they were already established by the court of first instance, which are:

The defendant was a police investigator in Peja Police. He was in charge of investigating the murder of (the son of and brother of ). On February or March 2008 the defendant went to the house of , father of the deceased, in Pogradje and in the presence of he asked the sum of 10.000 €, to discover the author of the murder of , with the justification that he had to pay the information sources. So, he did although he knew that he could pay



informants from the designated budget for Kosovo Police. In this way, he received the payment of 4.500,00 euro and 700 Swiss francs from [redacted] and [redacted], in three different occasions. First occasion, on the day that he requested 10.000,00 € at he house of the injured party he received 3.000 €; on the second occasion three weeks later he received 700 Swiss Francs at the same place and on the third occasion at an uncertain day of June 2008 he received 1500 €, during a meeting he had with the injured party in the Restaurant “Astro” in the village Zllakuqan.

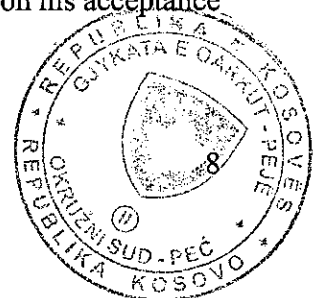
These facts are based on the statements given by the injured party and the panel has not the slightest doubt that the witnesses [redacted] and [redacted] testified the truth when they were interviewed on the 5<sup>th</sup> and on the 25<sup>th</sup> of March 2010. The content of their testimonies coincide with the fact findings of both courts of first and second instance. The court is convinced that the two before mentioned witnesses told the truth, because there are no contradictions in their statements and there is a fundamental consistency in their own statements and also when the two statements are compared to each other.

There are also no indications that one of the witnesses could have given false testimony by error, since their description is both: simple and realistic. The panel also excludes that one of these two witnesses could have charged the defendant wrongfully and untruly with the intention to put harm on them. There is no indication that there was at any time before the crime was committed a unfriendly or hostile relationship of the injured party to the defendant. On the opposite the witnesses both reported that their relation to the defendant was harmonic. And also their hesitation to report on the money transfer when interrogated by superior police officers of the defendant demonstrates that they had no intention to give false testimony in order to charge the defendant unlawfully.

Due to the witnesses statements it is indisputable excluded that the defendant asked them for money as a loan. Both witnesses reported that the defendant motivated his claim for money by giving the reason that he needed the money in order to pay informants. The panel is convinced that the defendant being an intelligent policeman used this legend in order to succeed with his plan to get unlawful benefit from the injured party. By not disclosing his real intention to get and keep the money for himself and in pretending to need and use the money in the interest and to the favor of the injured party the defendant established or at least increased the willingness of the injured party to pay money to him. And as an element of his plan the defendant wanted to appear in the eyes of the injured party not as a corrupt person rather than a policeman who was eager to support the reasonable and legal interest of the injured party to gain knowledge about the murder of their relative.

Based on the fact that the defendant motivated his wish to get money with the allegedly need to pay informants the allegation of the defendant regarding his wish to receive money as loan doesn't make any sense. This variant shapes up as a simple fairy tale invented by the defendant in order to appear in a less bad light.

And the loan version is also refuted by the covert monitoring of the conversation between the defendant and the injured party. Due to the transcript of the phone call the injured party reminded the defendant to unveil the murder of their relative since they had paid for this purpose money to the defendant and he himself did not put in question his acceptance



of the money for the reason of paying informants nor did he claim that the “deal” was of loan nature.

As far as the defense has tried to support the loan version by presenting a leaflet containing the name of \_\_\_\_\_ and bank account numbers of Raiffeisen Bank and an amortization plan of the Raiffeisen Bank it has to be stressed that these documents are inappropriate to challenge the fact finding that the defendant had asked the injured party to pay him 10.000 Euro in order to finance information resources. The panel is convinced that the “loan documents” were produced after the defendant was aware of the investigations against him. The panel also shares the opinion of the court of first instance that an experienced policeman like the defendant would not have waited to present the loan version until the end of the main trial, but would have claimed this point at an earlier stage of the procedure, if it had been a loan. Although it is at all to the suspect’s disposition, to give testimony or not and at what time their decision is taken. But it would be contrary to all criminalistic experience that a policeman who is charged with the claim of having taken unlawful benefits and who is ready to be interviewed would not report at the earliest stage about a loan. This version of the defense can only be assessed as the desperate attempt of the defendant to escape from his criminal responsibility, although the defendant would have created a criminal act of Abusing Official Position or Authority, Article 339 CCK, if he had demanded and received a loan from the injured party concerning a victim that he as a police officer was investigating on. This has not to be explained in further details since there are all reasonable doubts excluded regarding the fact that there is no loan in question.

Regarding the complaint of the defense that the superiors of the defendant, the two witnesses \_\_\_\_\_ and \_\_\_\_\_, were not heard in the main trial although having been interrogated by the investigating judge the panel has taken this into consideration. Fact is that none of the parties applied to summon one of these witnesses. And the panel denies the necessity to have them summoned *ex officio*, because on one hand there is no significant discrepancy between the statement of the witnesses \_\_\_\_\_ and \_\_\_\_\_ given in the pre-trial and the statements of the injured party. And on the other hand the allegation of the defense the injured parties were *compelled* to give answer to the superior of the defendant is a misinterpretation of the defense councils, because there is no indication that the injured parties were facing compulsion in order to talk to the superiors of the defendant. The only correct establishment is the fact that the injured parties were reluctant to talk about the money that the defendant had asked from them and that they had given money to a policeman in order to support his duty work. It was of the vital interest of the injured party to receive from the defendant the information who had killed their relative. And when the superiors of the defendant contacted them by asking if money was in question the injured parties were reluctant to state because they were still expecting the desired information by the defendant and didn’t want to jeopardize their aim by telling the truth. Their hesitation to answer is as unconfined comprehensible as the insisting position of \_\_\_\_\_ and \_\_\_\_\_ to receive a sufficient answer regarding this issue. But it is irreproducible to call this insisting being a compellation.



Taking all this into consideration the alleged loan was that far beyond reality and has to be excluded without the slightest doubt with the result that the court of first instance was right not to order a cross examination and also the panel excluded the necessity to give such order *ex officio*.

## b) Legal findings

a) At first it has to be established that the defendant has committed **one** criminal act of *Abuse of official Position or Authority* as per Article 339 par. 1 in conjunction with par. 2 CCK.

The defendant has abused his official position as a police officer by asking for the sum of 10.000 Euro from the injured party justifying his demand with the pretended need of money for informants. In fact he intended to use the money for his private disposal.

Although the defendant received according to his plan unlawfully money in three portions, 3.000 Euro at once, later 700 Swiss Franc and later further 1.500 Euro, he committed one criminal act, because the three acceptances of money were covered by his criminal plan and intention and have to be considered as three steps of one single criminal act.

b) As to the legal classification of the panel endorses the legal finding of the court of first instance and is – contrary to the opinion of the defense – convinced that an aggravating case of Article 339 par. 2 CCK is given, because all elements of Article 339 par. 1 and 2 CCP are given.

As explained above, all the elements of Article 339 par. 1 CCK are fulfilled. Article 339 par. 2 CCK refers to its par. 1 and requires the further element that the offence described in par. 1 **resulted** in a damage exceeding 2.500 Euro. On the demand of the defendant the injured party paid to him 4.500 Euro plus 700 Swiss Franc, which were at the payment of a value of at least 427 €<sup>1</sup>, in total 4.927 €. Indisputable the damage of the injured party was 4.927 € in total, and this damage was the direct **result** of the Abuse of the Official Position of the defendant.

The panel disagrees with the legal interpretation of the defense counsels that par. 2 of Article 339 of CCK was not fulfilled because there was no intention to cause damage. Par. 2 of Article 339 of CCK requires the following elements to be given:

The conditions of Article 339 par. 1 of CCK has to be given as a first precondition and as a further precondition there has to be fulfilled the element that a damage exceeding 2.500 € as a **result** of committing the criminal offence of Article 339 par. 1 of CCK. Article 339 par. 2 of CCK does not require the intention to cause the damage exceeding 2.500 €, the requirement of a damage exceeding a damage 2.500 € has only to be a **result** of the committed crime due to par. 1 of Article 339 of CCK. The intention of the law maker is clearly expressed to create as an aggravating factor when the specific sum of money as mentioned in par. 2 of Article 339 of CCK is exceeded as a **result** of committing a crime as par. 1 of Article 339 of CCK.

<sup>1</sup> The figures are taken from the Ruling of the three-judge panel of the District Court of Peja KP.nr. 5/10 dated 22.01.2010.



This is comparable with the description given in par. 4 of Article 154 of CCK, where the lawmaker describes the aggravating circumstance of the death of the victim in the case that someone inflicts bodily harm, only with the intention to cause bodily harm, but the death is the *result* of the intended attack.

There is no intention regarding the *result* required, not in Article 154 par. 4 of CCK regarding the death and also not in Article 339 par. 2 of CCK regarding the sum of more than 2.500 €.

As a consequence the legal frame of punishment foresees up to three years of imprisonment.

c) As to the question of a criminal offence of *Fraud*, Article 261 par. 1 CCK, the panel refers to the legal classification and subsumes the law with the same result as the court of first instance did:

Applying the general principle that the graver criminal offence absorbs the more lenient one, the law constitutes the criminal act of *Abusing of Official Position or Authority*, punishable up to 8 years of imprisonment in aggravating cases compared with *Fraud*, punishable up to five years of imprisonment, as the more grave criminal offence.

Furthermore the panel also shares the opinion of the court of first instance that the criminal offence was committed the day the defendant asked for the money (the 10.000,00 €) and received 3.000 €, and in the following months, the money received on the second and third occasion, was only the execution of the promise given on the day the money was asked by the defendant.

Therefore – opposite to the opinion of the Public Prosecutor - the demanded punishment for a criminal act of *Fraud* was excluded and the appeal of the Public Prosecutor in this regard had to be rejected as ungrounded.

#### d) Determination of Punishment

In compliance with the court of first instance it appears also appropriate to the panel to terminate the punishment in half of the maximum foreseen by the law. To the favor of the defendant had to be taken into consideration that there were no previous convictions of and no complaints about the defendant and his implementation of his duties. As a mitigating factor the panel also took into consideration that the defendant meanwhile paid back the unlawfully received money.

To the disfavor the panel evaluated the fact that the defendant precisely planned his criminal offense by choosing the injured party as the persons who had already suffered a lot by losing one of their relatives, exploiting their uncomfortable situation and acting at three occasions, which excludes the option that he failed by “jumping at a random chance”.

Furthermore the high sum of the received unlawful money scaled to the disadvantage of the defendant, because the total value nearly reached the sum of 5.000 Euro and therefore nearly the aggravating condition of Article 339 par. 3 CCK was fulfilled, since par. Of this provision opens a frame of punishment up to eight years when the criminal offence of Article 339 par. 1 CCK results in a material benefit exceeding 5.000 Euro.



Calculating all the relevant mitigating and aggravating factors the panel is convinced that a punishment of one year six month of imprisonment is appropriate and necessary on one hand and has not to be exceeded on the other hand in order to meet the purposes of punishment as defined in Article 34 CCK.

### Alternative Punishment

Opposite to the decision of the court of first instance the panel is convinced that a suspended sentence as foreseen in Articles 41 to 44 CCK are inadequate and insufficient to implement the purposes of punishment, in particular with regards to Article 34 par. 2 CCK.

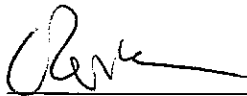
A merely suspended sentence in this particular case would be misinterpreted inevitably by relevant parts of the population like policemen and other authorities in Kosovo that a criminal offence due to Article 339 CCK to appear as a less severe criminal act.

The panel follows the argumentation of the Public Prosecutor that only an unsuspended sentence is able to prevent potential perpetrators to commit such criminal offence and consequently the panel approved the appeal of the Public Prosecutor in this regard.

It is therefore decided as in the enacting clause of this judgment.

DISTRICT COURT OF PEJA/PEC, AP.nr.93/10 date 07 September 2010.

Panel Members



Riku JAAKKOLA



Salih MEKAJ



Presiding Judge



Ingo RISCH