

District Court of Pristina

P 44/09

7 July 2011

IN THE NAME OF THE PEOPLE

The panel of the District Court of Pristina composed of EUELX Judge Karen Aspbaug, as presiding, Kosovo Judge Vehbi Kashtanjeva and EULEX Judge Ferdinando Buatier de Mongeot, as panel members, assisted by the court recorder Stephen Parkinson, in the criminal case against the defendants:

1. **AFRIM AZIRI**, son of Abedin and Mehreme, maiden name Maqastena, born on 06/07/1964 in Prishtina, same place of residence, Ramiz Sadiku Street. Nr. 42, married, father of four children, with a Masters Degree in Aviation, of average financial state, no criminal record, Albanian, citizen of the Republic of Kosovo,

And

2. **VLORA FERIZI**, daughter of Jusuf and Zyhra, maiden name Kaqorri, born on 10/05/1968, in Decan, residing in Prishtina, Dardania Neighborhood, Block 7, Entrance II, no. 24, unmarried, has accomplished the University of English, procurement expert by profession, of average financial state, no other procedure ongoing, Albanian, citizen of the Republic of Kosovo,

Indicted with the indictment filed by the Public Prosecutor dated 23 January 2009 with the following offenses:

AFRIM AZIRI:

Count 1: Abuse of Official Duty or Authority, pursuant to Article 339, paragraph 3 in conjunction with paragraph 1 of the Criminal Code of Kosovo(CCK).

Count 1 against Afrim Aziri was not confirmed by the confirmation judge, whose ruling was affirmed by the appeal panel in its ruling dated 22 December 2010.

Counts 2, 3, 4, and 5: Abuse of Official Duty or Authority, pursuant to Article 339, paragraph 1 of the Criminal Code of Kosovo (CCK).

At the close of the evidentiary proceedings in the main trial and immediately prior to final argument, the Public Prosecutor withdrew Counts 4 and 5 against Afrim Aziri.

VLORA FERIZI:

Count 1: Abuse of Official Duty or Authority, pursuant to Article 339, paragraph 1 of the Criminal Code of Kosovo (CCK).

Count 1 against Vlora Ferizi was not confirmed by the confirmation judge, whose ruling was affirmed by the appeal panel in its ruling dated 22 December 2010.

Count 2: Abuse of Official Duty or Authority, pursuant to Article 339, paragraph 2 in conjunction with paragraph 1 of the Criminal Code of Kosovo (CCK).

After the main trial sessions held on 8 June, 5 and 6 July 2011 in the presence of the defendants, their defense lawyers (Destan Rukiqi on behalf of Afrim Aziri and Rame Gashi on behalf of Vlora Ferizi), Naim Krasniqi, attorney on behalf of the Prishtina Airport, and the Public Prosecutor Lulzim Suleymani,

After deliberation and voting which took place on 7 July 2011, hereby renders the following:

VERDICT

Afrim Aziri, is details above, is hereby found not guilty of counts 2 and 3 of the indictment

Because there is insufficient evidence to prove each of these counts beyond a reasonable doubt; specifically, there was insufficient proof that Defendant 1) had the requisite intent to obtain an unlawful material benefit for another person; 2) that Defendant abused his official position; and 3) that Defendant exceeded the limits of his authorizations.

Pursuant to Article 389 (1) of the Criminal Procedure Code of Kosovo, Counts 4 and 5 are hereby rejected.

Vlora Ferizi, with details above is hereby found not guilty of count 2 of the indictment

Because there is insufficient evidence to prove the charge beyond a reasonable doubt; specifically, there was insufficient proof that Defendant 1) had the requisite intent to obtain an unlawful material benefit for another person or business organization; 2) that Defendant abused her official position; and 3) that Defendant failed to execute her official duties.

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Due to the not guilty verdict, the cost of the proceedings is not assessed against Defendants.

Bail posted by or on behalf of Afrim Aziri shall be returned to him. Bail posted by or on behalf of Vlora Ferizi shall be returned to her.

REASONING

Procedural History

1. On 23 January 2009 the District Public Prosecution Office of Prishtina filed an indictment against Afrim Aziri and Vlora Ferizi. In the case against Mr. Aziri, the indictment charged him with multiple offenses alleged to have occurred during a time frame from 2006 to 2008. In the case against Ms. Ferizi the indictment charges multiple offenses alleged to have occurred from 2004 to 2006. The allegations of the indictment are separate and independent for each Defendant and the two are not alleged to be in co-perpetration with each other.
2. Defendant Afrim Aziri is alleged to be an official person employed by the Prishtina International Airport. The indictment alleged that in his capacity of an official person and with the intent to obtain unlawful material benefits for himself or others, Afrim Aziri abused his official duty or authority in connection with five separate acts.
3. Count 1 alleged that Afrim Aziri exceeded his professional authority in connection with the paving and maintenance of an airport runway, thereby mismanaging financial resources of the Airport.
4. Counts 2, 3, 4, and 5 allege that Afrim Aziri abused his official duty or authority in connection with the hiring and promotion of several Airport employees, specifically Merita Kostari (Count 2); Njomza Gashi (Count 3); Basri Zuka (Count 4); and Valon Grabovci (Count 5).
5. Defendant Vlora Ferizi is alleged to be an official person employed by the Prishtina International Airport. The indictment alleges that in her capacity as an official person and with the intent to obtain unlawful material benefits for herself or others, Vlora Ferizi abused her official duty or authority in connection with two separate acts.
6. Count 1 alleges that Ms. Ferizi exceeded her professional authority in connection with a tender for the construction of an airport fence. Specifically it is alleged that Ms. Ferizi failed to award the contract to the lowest bidder, thereby damaging the Airport in the amount of approximately 31.229 Euro.

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7. Count 2 alleges that Ms. Ferizi failed to exercise her professional duty in connection with the payment for fuel deliveries to the Airport, thereby damaging the Airport in the amount of approximately 3.145 Euro.

8. A confirmation hearing was held before the Honorable Francesco Florit, EULEX Judge at District Court Prishtina. On 13 October 2010 Judge Florit issued a ruling confirming the indictment in part and dismissing the indictment in part. Specifically, the confirmation judge dismissed Count 1 of the indictment against Afrim Aziri and he further dismissed all counts of the indictment against Vlora Ferizi.

9. The Public Prosecutor appealed the ruling by the confirmation judge, but only with respect to the dismissal of the charges against Vlora Ferizi. The three judge panel issued a ruling on 22 December 2010 which reinstated Count 2 of the indictment against Vlora Ferizi. The three judge panel rejected the Prosecution appeal concerning the dismissal of Count 1 against Ms. Ferizi.

10. The case proceeded to the main trial on Counts 2, 3, 4, and 5 against Mr. Aziri and Count 2 against Ms. Ferizi. Trial sessions were held on 8 June 2011 and 5 and 6 July 2011 before the undersigned panel of judges.

11. The following witnesses appeared and testified at trial: expert witness Fetah Tahiri, Xhevat Parduzi, Arta Visoki Alimi, Ilir Salihu, and Shqipe Devaje. In addition, Afrim Aziri and Vlora Ferizi both gave statements in their defense.

12. In addition to the testimony of witnesses, the trial panel admitted the following evidence:

- Report of the financial expert Fetah Tahiri dated 14.11.2008;
- Employment contract for employee Merita Kostari dated 08.05.2007;
- Employment contract for employee Njomza Gashi dated 08.01.2007;
- Annex agreement for employee Basri Zuka dated 10.01.2007;
- Regulation on staff of the Airport dated 28.06.2007;
- Staff Policies for the Prishtina International Airport J.S.C. dated June 2005;
- Airport Board of Directors Matrix of Authorizations dated 26.06.2007;
- Memorandum from James Johnson dated 11.01.2007;
- Prishtina International Airport Organizational Structure Chart dated 10.10.2007;
- Salary grades and Guidelines for Prishtina International Airport J.S.C.;
- Memorandum from Afrim Aziri dated 02.11.2007;
- Employment contract for Afrim Aziri dated 31.01.2007;
- Memorandum regarding ECAA Assessment Report dated 23.01.2008;
- Summary of Operational Budget of Prishtina International Airport J.S.C. for 2008;
- By-laws of the Prishtina International Airport J.S.C.;

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- Various invoices for the delivery of fuel from The Petrol Company to the Airport and authorizations for the payments thereof;
- Document protocol number 022 dated 09.04.2008 prepared by Arta Visoka Alimi;
- Salary documents for Merita Kostari;
- Salary documents for Naim Krasniqi;
- Salary documents for Fazlli Gjonbalaj;
- Salary documents for Njomza Gashi;
- Salary documents for Bujar Mustafa;
- Statement given by Xhevat Parduzi;
- Announcement of vacancies published in Koha Ditore;
- Minutes of the interview panel for the position of Senior Administrative Officer;
- Employment contract for employee Valon Grabovci dated 09.01.2008 and announcement published in Koha Ditore for his position.

13. On 6 July 2011, after the conclusion of the trial and prior to final argument, the Public Prosecutor amended the indictment. Specifically, the Public Prosecutor withdrew Counts 4 and 5 against Afrim Aziri (the counts related to the employment and promotion of Basri Zuka and Valon Grabovci).

Findings of Fact and Assessment of Evidence

1. Defendant Afrim Aziri

Defendant Afrim Aziri is an official person within the meaning of Kosovo law. He was the Deputy Director of the Prishtina International Airport in 2006 and beginning in 2007, the Managing Director. At all times relevant to this indictment, Mr. Aziri held a position of managing authority at the airport.

Mr. Aziri is charged in the indictment with four confirmed offences, each charges of Abuse of Official Position or Authority. Each count relates to the hiring and/or promotion of airport employees. At the close of the Prosecution case, the Public Prosecutor withdrew from Counts 4 and 5 and moved to dismiss these counts. The Prosecution motion was granted by the Court. Only Counts 2 and 3 were submitted for judicial determination at the conclusion of the trial.

In this case, in order to prove the charge of Abuse of Official Position or Authority, the Prosecution must establish beyond a reasonable doubt, the following elements:

1. That the Defendant is an official person;
2. who with the intent to obtain an unlawful material benefit for himself or another person;
3. abused his official position, exceeded the limits of his authorizations or did not execute his official duties.

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The Prosecution did not present any evidence, nor did it argue during trial that Defendant had an intention to receive an unlawful material benefit for himself in connection with the hiring and promotion decisions alleged to be illegal. Additionally, there is no evidence that Mr. Aziri received any personal benefit from the allegedly illegal conduct. Mr. Aziri is not related to any of the employees who are the subject of the indictment. There is no allegation of any illegal financial kickback or remuneration received by Mr. Aziri. The sole issues are 1) whether he acted with the intent to obtain an unlawful material benefit for another; and 2) whether he abused his official position or exceeded the limits of his authorizations.

Count 2 relates to the hiring of Merita Kostari. Ms. Kostari, an attorney, was hired for the position of Senior Legal Officer at the Airport, a position that has a salary of 1300 Euro per month. Immediately after being hired, the Airport faced an extraordinary legal situation involving the restructuring of the legal department. Ms. Kostari was asked to perform the duties of the Managing Director of the Legal Office, a position that has a salary of 1600 Euro per month. She immediately began to perform the duties of the Managing Director of the Legal Office and was compensated at the higher rate for that position. As a result, the indictment alleges that the Airport was damaged in the amount of 2100 Euro.

Merita Kostari was hired to fill a highly responsible, sensitive position at the Airport. There is ample evidence to support her qualifications for the position and that she performed her job admirably. Ms. Kostari was tasked with duties above and beyond the job description for the position for which she was hired. She was eventually promoted to the Director of the Legal Office and that promotion is not the subject of this criminal case. In other words, there is no allegation of wrongdoing in connection with Ms. Kostari's promotion.

Count 3 relates to the hiring of Njomza Gashi, who was employed by the Airport in the position of a Lost and Found Luggage Agent. Njomza Gashi was employed on 08.11.2007, at which time the salary for her position was set at 650 Euro per month. Mr. Aziri set her beginning salary at the rate of 800 Euro and the indictment alleges that from November 2007 until March 2008 the Airport was damaged in the amount of 450 Euro.

Ms. Gashi was hired to fill sensitive position at the Airport. The Airport management team was aware that thefts were reported by passengers from their lost luggage. The media reported that thefts of mobile telephones and other electronic equipment occurred from lost luggage at the Airport. Ms. Gashi's educational level was significantly higher than other agents in the Lost and Found Luggage department. She was assigned the duty of watching for negative conduct on the part of other employees that could damage passengers and the image of the Airport and to report the same to Airport management. As a result

of her additional duties and responsibilities Mr. Aziri, in coordination with the Chairman of the Board of Directors, set Ms. Gashi's pay level at Grade E2, the level of general administrative support staff. The purpose of doing this was to compensate her for the actual work she was assigned to perform, while at the same time allowing her to be integrated into the Lost and Found Luggage department without suspicion on the part of other employees.

The Airport has a detailed compensation grid that was in effect at the relevant time period. The internal policies of the Airport created flexibility in the application of the compensation grid. Article 4.7 of the Staff Policies for the Prishtina International Airport, dated June 2005, recognizes that the Managing Director has the final authority to arrive at the salary level for newly hired employees. Contained within that same document, in Article 2 (General Terms provisions) is a provision that allows the Managing Director the right to waive the rules in exceptional cases.

Mr. Aziri did not have the intent to obtain an unlawful material benefit for either Ms. Kostari or Ms. Gashi when he hired them and set their salaries. He believed that he had the authority to take the actions that he did. Given the internal policy documents submitted at trial, this panel cannot find beyond a reasonable doubt that Mr. Aziri abused his official position or exceeded the limits of his authorizations.

2. Defendant Vlora Ferizi

Ms. Ferizi is an official person within the meaning of Kosovo law. She was employed during the relevant time frame as the Procurement Manager at the Airport.

Ms. Ferizi is charged with one count of Abuse of Official Position or Authority. The charge concerns the alleged overpayment for fuel at the Airport in the amount of 3.145.35 Euro.

Concerning Ms. Ferizi, in order to prove the charge of Abuse of Official Position or Authority, the Prosecution must establish beyond a reasonable doubt, the following elements:

1. That the Defendant is an official person;
2. who with the intent to obtain an unlawful material benefit for herself or a business organization;
3. abused her official position, exceeded the limits of her authorizations or did not execute her official duties.

The Prosecution did not present any evidence, nor did it argue during trial that Defendant had an intention to receive an unlawful material benefit for herself in connection with the overpayments for fuel deliveries. Additionally, there is no evidence that Ms. Ferizi received any personal benefit from the allegedly illegal

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conduct. Ms. Ferizi is not related to any of the officers or principals at the Petrol Company. There is no allegation of any illegal financial kickback or remuneration received by Ms. Ferizi. The sole issues are 1) whether she acted with the intent to obtain an unlawful material benefit for the Petrol Company; and 2) whether she abused her official position or exceeded the limits of her authority.

Ms. Ferizi was the Procurement Manger at the Airport. She did not work in the Financial Services Department, nor was she responsible for the payment of invoices. Indeed, according to the financial expert, Mr. Tahiri, "the procurement office did its duty. It selected the best bid possible and with regards to the payment, the procurement office does not have any responsibility whatever, it lies with the financial office." See 8 June 2011 main trial minutes.

This court finds that the Prosecution has failed to prove beyond a reasonable doubt that Ms. Ferizi abused her official position in connection with alleged overpayment of fuel invoices.



Presiding Judge
Karen Aspbaug

Panel member
Vehbi Kashtanjeva

Panel member
Ferdinando Buatier de Mongeot

Court recorder
Stephen Parkinson

Legal remedy

The parties have the right to appeal this verdict within fifteen (15) days of the day the copy of the judgment has been served pursuant to Article 398 Paragraph 1 of the Kosovo Criminal Procedure Code (KCPC) to the Supreme Court of Kosovo through the District Court of Prishtinë/Priština.

The appeal must be announced within eight days from the date of the verdict.