

## DISTRICT COURT OF PRISHTINË/PRIŠTINA

KA. No. 509/11  
6 October 2011

The Confirmation Judge of the District Court of Prishtinë/Priština, EULEX Judge, Gianfranco Gallo, in the criminal case against:

**Sadik Abazi**, father's name Hajriz, born on the 9<sup>th</sup> November 1959 in Davidovc village, Municipality of Shtime, currently address unknown, male, Kosovo Albanian, Kosovo citizen, IN K00260409;

**Driton Hajdari**, father's name unknown, born on the 12<sup>th</sup> June 1980 in Pristina, currently residing in Rruga Vllezrit Fazliu, 26, Vrenjevç, Pristina, male, Kosovo Albanian, Kosovo citizen, IN 1019788446;

**Shaban Sylja**, father's name Rizah, born on the 10<sup>th</sup> December 1965 in Kishnareke, municipality of Gllgovc, currently residing in Gllgovc, male, Kosovo Albanian, Kosovo citizen, IN K00217621;

**Shpresim Uka**, father's name unknown, born on the 8<sup>th</sup> January 1968 in Belgrade, Serbia, currently residing in Ismet Krasniqi, 100, Pristina, male, Kosovo Albanian, Kosovo citizen, IN K00100973

**Bekim Sylja**, father's name unknown, born on the 18<sup>th</sup> April 1976 in Kishnareke, municipality of Gllgovc, currently residing in Gllgovc, male, Kosovo Albanian, Kosovo citizen, IN unknown;

**Fahredin Gashi**, father's name Hajredin, born on 8 December 1969 in Shtime, residing in rr. Halime Arana 6/33, Pristina, Kosovo Albanina, currently on detention on remand in another case;

All of them charged by the SPRK Prosecution Office for commission of the criminal offences as below:

### Count 1

*Sadik Abazi, Bekim Sylja, Fahredin Gashi and Shpresim Uka in co-perpetration with Nazim Bllaca (declared co-operative witness by the Pristina District Court on 4<sup>th</sup> March 2011) committed the criminal offence of Aggravated murder, provided for and punished under Article 30 (1) and (2) of the Criminal Law of the Socialist Province of Kosovo in conjunction with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia currently criminalized under articles 146 and 147, item 3, and Article 23 of the Criminal Code of Kosovo (CCK), because the above named defendants murdered Ibush*

*Kllokoqi by shooting him dead with several rounds of firearm. Specifically, on the night of the murder, Fahredin Gashi provided Nazim Bllaca with a Scorpion type weapon. Then on the same night they together with Sphresim Uka, Bekim Sylja and Sadik Abazi went to the victim's house. Sphresim Uka waited near the house while Nazim Bllaca, Sadik Abazi, Fahredin Gashi and Bekim Sylja knocked on the door of the Kllokoqi's house. When the victim came out from the door, Nazim Bllaca killed him with at least 6 bullets fired by the above mentioned weapon.*

*- In Pristina on the 6<sup>th</sup> of August 1999*

### Count 2

*Sadik Abazi, Fahredin Gashi, Shpresim Uka, Driton Hajdari and Bekim Sylja in co-perpetration with Nazim Bllaca (declared co-operative witness by the Pristina District Court on 4<sup>th</sup> March 2011) committed the criminal offence of Attempted aggravated murder, provided for and punished under Article 30 (1) and (2) of the Criminal Law of the Socialist Autonomous Province of Kosovo and Articles 19 and 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia currently criminalized under Articles 146 and 147, item 3 together with Articles 20 and 23 of the CCK because the above named defendants attempted to deprive Ismet Arifi of his life by firing at him several shots. Specifically they went to the building where Ismet Arifi lived with his wife and son. Fahredin Gashi was guarding the front door of the building. Nazim Bllaca and Shpresim Uka were guarding the third floor whilst Sadik Abazi, Driton Hajdari and Bekim Sylja went to the apartment of Ismet Arifi and knocked on the door. After having asked Arifi's wife, who had opened the door, to speak with her husband they tried to make Ismet Arifi leave the apartment and follow them. After his refusal, the victim was immediately grabbed by the neck and hit on his right bare foot. As soon as Ismet Arifi managed to run up the stairs to the upper floor several shots were fired at him but the bullets by pure chance did not hit the victim.*

*- In Pristina on the 3<sup>rd</sup> of November 1999*

### Count 3

*Shpresim Uka, Driton Hajdari and Shaban Sylja in co-perpetration with Nazim Bllaca (declared co-operative witness by the Pristina District Court on 4<sup>th</sup> March 2011) committed the criminal offence of Attempted aggravated murder, provided for and punished under Article 30 (1) and (2) of the Criminal Law of the Socialist Autonomous Province of Kosovo and Articles 19 and 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia currently criminalized under Articles 146 and 147, item 3 together with Articles 20 and 23 of the CCK because the above named defendants attempted to deprive Adem Salihaj of his life by setting up an ambush in order to kill him by firearm shots. On the day of the attempted murder Driton Hajdari drove an Opel Omega vehicle, tailing Adem Salihaj's car. Shaban Sylja was seated in the front seat of the Omega vehicle, armed with a handgun, and a third so far unidentified male was seated in the back seat. Nazim Bllaca and Shpresim Uka were driving a black BMW in front of Salihaj's vehicle, to slow him down. When the right moment came, the Omega vehicle flanked Salihaj's car and Shaban Sylja aimed his pistol at the victim. Adem Salihaj immediately reacted by pointing*

*in turn his handgun at Shaban Syla, who did not fire any shots because the pistol jammed and/or because of the victim's unexpected reaction.*

*- In Ferizaj/Uroševac on the 12<sup>th</sup> of June 2000.*

After the confirmation hearings held on 15 and 22 September 2011, in the presence of the defendants, their defense lawyers, and the Public Prosecutor;

Pursuant to article 316, paragraph 1, item 4, hereby issues the following:

### **RULING**

**The indictment PPS 460/09, filed on 29 July 2011, as amended during the confirmation hearing held on 15 September 2011, is hereby confirmed in its entirety.**

**The indictment, along with the case file records, shall be sent to the presiding judge of the main trial immediately after this ruling becomes final.**

### **REASONING**

#### **Procedural background.**

On 29 July 2011 the SPRK Prosecutor filed an indictment against the above mentioned defendants charging them with the criminal offences described above.

Public confirmation hearings were held on 15 and 22 September 2011.

The Prosecutor read out the indictment according to Article 314 (3) of the KCCP.

Upon asking the defendants if they understood the indictment, the judge gave them the opportunity to plead guilty or not guilty, as laid out in article 314 (4) of the KCCP. All defendants indicated that they understood the indictment and pleaded not guilty.

The Judge then gave the floor to the parties for their statements, as provided by article 314 (5) of the KCCP.

#### **The statements of the parties.**

The prosecutor, after having amended the indictment specifying that the events described in count 3 of the indictment actually occurred on 12 June 2000, asked for the confirmation of the indictment

All defense lawyers asked for the indictment to be rejected.

The defense stressed out that some of the statements given by the cooperative witness Naim Bllaca (namely the statements given on 30 November 2009, 3 December 2009 and 1 November 2010) were inadmissible, because at that time Bllaca was a defendant and only afterwards was declared cooperative witness.

More specifically the defence requested to rule out the above statements, on the basis of the argument that the obligations of the defendant are different from the ones of the witness (in particular in respect to the obligation to tell the truth) and therefore it would be unlawful to utilize the statements given by Bllaca in his capacity as defendant, since he is currently a cooperative witness.

Furthermore the defence claimed that the evidence based on the conversation recorded by Bllacea should be ruled out since the above conversations were intercepted without an order of the Judicial Authority.

The defence also challenged the order of the pre trial judge declaring Bllaca a cooperative witness, claiming that the order was issued in violation of art. 300, par. 5 of the KCCP, since Bllaca was the organizer or the leader of the group which committed the criminal offences.

Finally, all the defence counsels highlighted the vagueness, lack of accuracy and intrinsic contradictoriness of all the counts of the indictment.

As to the merits of the case, the defense counsels underlined the unreliability of the cooperative witness, pointing out the numerous internal and external discrepancies of the narration given by Bllaca.

#### **Confirmation Judge's findings:**

The procedural objections raised by the parties are worthless.

As to the question raised in relation to the admissibility of the statements given by Nazim Bllaca, it must be noted that, pursuant to Art. 153 of the KCCP, evidence obtained in violation of the provision of criminal procedure shall be inadmissible only when the law expressly so prescribes.

However the above statements do not even constitute evidence obtained in violation of the law, since at the time of the above examinations Nazim Bllaca was a defendant and therefore could only be examined in that capacity.

The evidence was therefore obtained in compliance with the law and in fact there is no provision which imposes to rule out the statements given by the defendant who was afterwards declared a cooperative witness.

Therefore the above evidence is admissible and shall remain in the case file.

As to the objection related to the conversation recorded by Bllaca, it must be noted that such activity of recording can not be qualified as a covert measure subject to the provisions envisaged by Article 256 and followings of the KCCP.

In fact the concept of interception entails an activity of capturing of conversations, which is hidden to all the parties present or having the conversation; this hidden capture makes the activity “covert” and definitely requires an order of the Judicial Authority.

Whereas, when the conversation is voluntarily recorded by one of the person present to the conversation (as it happened in the present case), there is no need for any order of the Judicial Authority and the support on which the conversation has been recorded is just a piece of material evidence utterly admissible and, if presented at the main trial, subject to the provisions of Articles 367 and 371 of the KCCP.

From the statements given by Nazim Bllaca, it does not emerge that he was the organizer or the leader of the group of people committing the crime, and therefore the pre trial judge did not violate the provision envisaged in Art. 300, par. 5 of the KCCP.

Also the objection related to the vagueness and contradictoriness of the counts is ungrounded. The counts describe clearly the conduct undertaken by all the defendants and their roles in the commission of the criminal activities, specifying the time and the place of the commission of the crime and thus fulfilling entirely the requirements of Article 305, par. 1, item 4 of the KCCP.

As to the merits of the case, bearing in mind that the ruling on confirmation of indictment must not prejudice the adjudication of the matters which will be considered at the main trial, the Confirmation Judge notes that the evidence in the case file is sufficient to support a well grounded suspicion that the defendants committed the criminal offences they are charged with.

It is undisputed that the key piece of evidence is provided by the statements Mr. Nazim Bllaca gave to the investigators.

Mr. Bllaca gave a very detailed description on how the events occurred and a precise indication of the role of each defendant in relation to each of the three criminal offences, also specifying the factual circumstances and the reasons for the commission of the crimes.

The narration of the cooperative witness appears to be intrinsically coherent and has received solid external corroboration from the testimonies of the eyewitnesses and injured parties who were on the crime scene when the murder and the two attempted murders were committed.

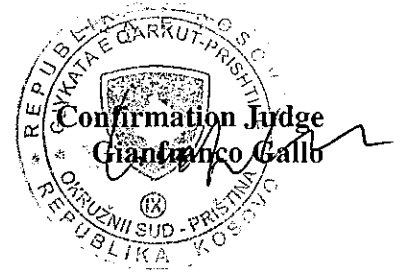
Furthermore, the version of the events given by Bllaca is corroborated by some pieces of material evidence: the expertise report dated 27 August 2010 on the shell casings retrieved at the scene of the murder of Ibush Kllokoqi and, in relation to the attempted murder of Ismet Arifi, the report of the hospitalization of Mr. Driton Hajdari and the conversation recorded by Bllaca.

The Confirmation Judge acknowledges that there are some internal and external discrepancies as to the version of the events given by the cooperative witness, but bearing in mind the time elapsed (the events took place almost ten years before the first examination of Bllaca), this can not infirm the general reliability shown by the cooperative witness.

For the above reasons the Confirmation Judge reckons that the Prosecution has collected sufficient evidence to support a well grounded suspicion that the defendant has committed the above criminal offences.

Since none of the circumstances under Article 316, par. 1, 2 and 3 of the KCCP exist, the indictment is therefore confirmed in its entirety.

For all these reasons it has been decided as in the enacting clause.



**Legal remedy:**

No appeal is allowed against this ruling