

DISTRICT COURT OF PRISTINA

K.A. No. 339/2010
21 December 2010

The Confirmation Judge, EULEX Criminal Judge at District Court Level Klaus Jung, appointed with decision n. JC/EJU/OPEJ/2098/chs/10, issued by the Vice-President of the Assembly of EULEX Judges Charles L. Smith III on 5 November 2010, in the criminal case against:

- 1) **Fahrudin (Faruk) Gashi**, father's name Hajredin, born on 8 December 1969, in Shtime, residing in Shtime, married, Kosovar Albanian, currently in pre-trial custody in Pristina Detention center;
- 2) **Hysri (Hys) Rama**, father's name Asllan, born on 5 June 1973, in Sankovc (Drenas/Gillogovac), married, Kosovar Albanian, defending himself at liberty;

against whom, an indictment bearing the numbers PPS 460/09 and PPS 09/2010 was filed on the 5th of November 2010 by the Special Prosecutor, Maurizio Salustro and verbally amended during the confirmation hearing held on the 25th of November 2010, charging the defendants as follows:

Fahredin Gashi with the criminal offence of "War crime against the civilian population", contrary to Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), still criminalized under Articles 23 and 120 of the Criminal Code of Kosovo (CCK), in violation of Article 3 common to the four Geneva Conventions of 12 August 1949, and of Article 4 of Protocol II of 8 June 1977, Additional to the 1949 Geneva Conventions, all rules of international law effective at the time of the internal armed conflict in Kosovo and at the time of the offence, for having - in co-perpetration with Nazim Bllaca- in his capacity of member of the Kosovo Liberation Army (KLA), entered the home of Sali Gashi and killed him with a burst of automatic weapon, in Varigovc (Lipjan/Lipljane) on 15 June 1999;

Hysri Rama, with the criminal offence of "Providing assistance to perpetrators after the commission of criminal offences", provided for and punished by Article 305 paragraph 2 of the Criminal Code of Kosovo, because the defendant aided Fahredin Gashi (under investigation for the crime of War crime against the civilian population because of the grounded suspicion that in co-perpetration with Nazim Bllaca he killed Sali Gashi in Varigovc on 15 June 1999) to elude discovery by (a) providing Fahredin Gashi's father with a signed statement in which the defendant falsely stated that Nazim Bllaca in 2009 told him that Fahredin Gashi had nothing to do with Sali Gashi's murder and that Bllaca was going to accuse Gashi just to extort money from him, and (b) confirming the content of such handwritten statement in front of the Prosecutor when heard as a witness on 29 October 2010; - In Pristina, on 29 October 2010;

Deciding on the confirmation of the indictment against the above mentioned suspects, after hearing the parties on the 25th of November 2010, noting that the disclosure of material to the defence was integrated in court on the 25th of November when the decision declaring Nazim Bllaca as cooperative witness and some pages missing from one of the statements given by Nazim Bllaca were handed over to the defence counsels, considered the written comments filed by Advocate Kole Krasniqi on 1st December 2010, pursuant to article 316 para. 4) issues the following:

RULING

- 1. The Indictment bearing the numbers PPS 460/09 and 09/2010 dated 5 November 2010 contains the information required by law and therefore satisfies the requirements of Article 305, paragraph 1, subparagraphs 1 through 7 of KCCP.**
- 2. The Public Prosecution has fulfilled the obligation related to the disclosure of evidence, as provided by Articles 307 and 308 of KCCP.**
- 3. All the evidence referenced in the indictment is admissible. All the evidence that is in the Court file or to which reference is made in documents that have been filed with the Court is admissible.**
- 4. THE INDICTMENT IS CONFIRMED in its following Counts and regarding the following defendants:**
 - Count I, with regard to the defendants Fahredin Gashi;**
 - Count II, with regard to the defendants Hyrsi Rama;**
- 5. After the indictment becomes final, the indictment and the case record shall immediately be sent to the presiding judge for the main trial.**

REASONING

1) Jurisdiction of the Court

On the 9th of November 2010 the Special Prosecutor Maurizio Salustro filed the indictment bearing the numbers PPS 460/09 and 09/2010, which is the result of two different investigations against the aforementioned defendants.

Against Fahredin Gashi it is alleged the criminal offences of War Crimes against the Civilian population -in relation to the murder of Sali Gashi- penalized under articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), still criminalized under Articles 23 and 120 of the Criminal Code of Kosovo (CCK), in violation of Article 3 common to the four Geneva Conventions of 12 August 1949, and of Article 4 of Protocol II of 8 June 1977, Additional to the 1949 Geneva Conventions punished by imprisonment of not less than 5 years to a maximum of 20

years – the maximum replaces the death penalty originally foreseen by article 142 CCSFRY but not applicable and therefore commuted, in compliance with article 38 paragraph 2) of the CC-SFRY, to a maximum of 20 years of imprisonment.

Against the second defendant it is alleged the criminal offence of Providing Assistance to Perpetrators after the Commission of Criminal Offences- in the hypothesis penalized by article 305 para. 2 CCK- because he allegedly providing assistance to Fahredin Gashi in relation to the crime alleged in count I of the same indictment, punished by imprisonment of 6 months to five years.

In accordance with article 23 para. 1 of the Kosovo Code of Criminal Procedure (henceforth: 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; furthermore, pursuant to article 33 paragraph 4 KCCP *The court which has competence over the perpetrator of the criminal offence shall, as a rule, also have competence over the accomplices, accessories after the fact and persons who failed to report the preparation of the act, the commission of the act or the perpetrator*; therefore the District Court is competent to deal with both counts.

The District Court of Pristina is territorially competent, since the place where the events allegedly occur falls under the territorial jurisdiction of this court

The offence falls within the scope of art. 3, paragraph 1 of the Law on Jurisdiction (3 – L053/2008), which sets forth the primary competence of EULEX Judges. Article 3 paragraph 1 states that EULEX Judges have jurisdiction for the respective stage of the criminal proceeding investigated or prosecuted by the SPRK.

2) Findings of the confirmation hearing and on admissibility of evidence

The confirmation hearing was held on 25 November 2010 at the presence of the defendant Fahredin Gashi and his two defence counsels, Advocate Kole Krasniqi, and advocate Tahir Rreçaj, the defendant Hyrsi Rama not assisted by a defence counsel, the SPRK prosecutor Maurizio Salustro. The hearing was held publicly and at the presence of the public.

The defendant Hyrsi Rama, upon explicit reminder of the confirmation judge about his right to be assisted by a defence counsel and answering upon direct question if he wished to be assisted by a counsel, answered that he intended to exercise his right to defend himself; the confirmation judge, considered that the defendant is charged with a criminal offence which does not require mandatory defence, noting that no particular reason were submitted to the attention of the court suggesting the appointment of an ex officio counsel for the defendant; noting the defendant freely expressed his will to not be assisted by a defence counsel for the purpose of this phases of the proceedings; declared opened the hearing.

The confirmation judge clearly explained to the defendants the allegations against them and warned them of their rights, in particular reminding Mr. Rama of his right to be

assisted by an attorney. The indictment was read to the defendants, they were informed of their right to plea guilty or not guilty to each of the counts of the indictment. The defendants declared to understand the allegations of the indictment and each of them entered a non guilty plea to the charges.

The Public Prosecution has fulfilled the obligation related to the disclosure of evidence, as provided by Articles 307 and 308 of KCCP. In particular, all statements of the witnesses, injured parties and the documentary evidence were made available to the defence counsels and the defendants. Additional documents were requested by the defence counsels of Mr. Gashi, who indicated only on the day of the hearing that the decision declaring Mr. Bllaca cooperative witness had not yet been disclosed, further submitting that pages two, three, four, six and seven of the statement given by Mr. Bllaca on the 30th November 2009 were missing from the copy disclosed by the prosecutor. The prosecutor provided the counsels with the request documentation and the undersigned judge gave 7 days to the defence counsels to comment on the documents lately received, thus the Court concludes that the requirements of Articles 307 and 308 of KCCP are so far met.

With regard to the admissibility of the evidence, the defence counsels of Mr. Gashi filed a written proposal dated 30 November 2010 in which he submits:

That that the disclosure of the order declaring Mr. Bllaca a cooperative witness was belated and thus violates the principle of the equality of the parties –as per article 10, paragraph 1, KCCP, article 6.3 ECHR and article 14.3.a of the International Covenant on Civil and Political Rights.

That the statements given by Mr. Bllaca on 30 November 2009, 3 December 2009, 21 April 2010, 28 April 2010, 29 April 2010, 30 April 2010, 4 May 2010, and 6 May 2010, are not admissible since these declarations were taken when Mr. Bllaca had the formal status of defendant and in accordance to the rules and with the warnings required for a defendant; however Mr. Bllaca was subsequently declared cooperative witness and therefore he now had the status of witness in these proceedings therefore his previous declaration may only be admitted if they comply with the rules and warning provided for a witness thus his previous declaration given as defendant shall be declared as inadmissible.

Findings on the court:

Preliminarily, the Court finds that the disclosure of the order declaring Mr. Bllaca cooperative witness is timely. In fact, article 302 KCCP requires that *the defendant against whom the co-operative witness is expected to testify shall be served with a copy of the order declaring the person to be a cooperative witness prior to the main trial of the defendant*. The order was served to the defence counsels on 25 November 2010, 7 days were granted to them to comment on any legal issue arising from such order, therefore this judge finds that no violation of the defendant right occurred nor any violations of the KCCP is found.

With regard to the admissibility at this stage of the proceedings of the statements given by Mr. Bllaca as defendant notwithstanding his status has change into cooperative witness, this judge notes that the general rule under the KCCP is that the Court *shall* have the authority to assess freely all evidence submitted in order to determine its relevance and admissibility (152 par. 2 KCCP) and that evidence is generally admissible unless obtained in violation of the provisions of the KCCP and when inadmissibility is explicitly foreseen (art. 153 KCCP).

The code clearly identifies two moments with regard to the evidence, the formal admissibility, which is cronologically first, and the assestment of the evidenciary value, which refers to the concrete weight the judge gives to the individual piece of evidence in a contextualized manner.

Considering that the statements of Nazim Bllaca were, each of them, taken in compliance with the law applicable with respect to the formal status Nazim Bllaca had at the moment when they were taken; noting that no explicit prohibition exist in the KCCP as to the inadmissibility of declarations rendered by a co-defedant who eventually testifies as witness in the proceedings – when permitted by the law-; noting that it is consolidated jurisprudence of this court to allow witnesses to be confronted with previous statements given in quality of defendant; finding the perplexlity of the defence counsels as to the truthfulness of the statements due to the different warnings given concern the moment of the evaluation and do not affect their admissibility;¹ and finally, considering the peculiar nature of the cooperative witness whose statement of facts, as submitted to the attention of the pre-trial judge, shall be truthful and consistent with its future testimony, this confirmation judge concldues that the statements challanged by the defence counsels are admissible.

Considering that the admissibility of all the other pieces of evidence was not challenged by the parties, nor any reason exist to declare any of it inadmissible *ex officio*, in light of the above considerations and regarding the provision of Article 154 paragraph 6 of KCCP, the Court finds that all the evidence contained in the case file is admissible.

The Court finds that the indictment satisfies all the requirements of Article 305, paragraph 1 of KCCP.

The Court finds that the grounds for dismissal of the indictment and for termination of the criminal proceedings under Article 316, paragraph 1, subparagraphs 1 through 3 of KCCP are not present.

3) The well-grounded suspicion under Article 316, paragraph 1, subparagraph 4 of KCCP

¹ The assessment of the truthfulness of the statement is a different moment and it does not refer to the admissibility of the statements the credibility of the declarations and the assessment of the probative value of the statements, which shall also take into consideration the consistency of the factual description given before the trial panel and the legal limits foreseen by article 157 par. 4 KCCP- The court shall not find any person guilty based solely on the evidence of testimony given by the cooperative witness. (Articles 298 through 303 of the present Code)

The defendants and the defence counsels of Mr. Gashi all plead for the dismissal of the indictment and for termination of the criminal proceedings pursuant to Article 316, paragraph 1, subparagraph 4 of KCCP, submitting that there is not sufficient evidence to support a well-grounded suspicion that the defendants have committed any of the criminal offences in the indictment.

As to Count I

Relevant to this charge is the following evidence:

- Statements of the witnesses/injured parties: [REDACTED]
[REDACTED]
[REDACTED] complete investigative file PPS 97/2010, outcome of metering of phone calls and sms messages and related police reports, statements of the accused Fahredin Gashi and Hysry Rama, documents confiscated during the house search of the residence of Fahredin Gashi.

3.1 The legal qualification

The defence counsels of the defendant Gashi challenge the legal qualification of War Crimes against the Civilian Population for the offence alleged in the indictment, submitting that a criminal offence may be qualified as War Crime only if committed during an armed conflict, therefore, having the murder of Sali Gashi been committed on the 15th of June, while the war in Kosovo ended on 10 June 1999, this murder may not be qualified as a War Crime. The date of the end of the hostility is indicated by the defence on the basis of the *UNMIK Regulation 1999/1, which is applicable since 10 June 1999, when the SC Resolution 1244/1999 on Kosovo was approved. According to article 1 of the abovementioned regulation, UNMIK has the whole executive and legislative power in Kosovo, and it exercised this power through the SRSG of UN. From this it derives that the time when the murder occurred was not a time of war, the UNMIK administration was installed in Kosovo, KFOR was in Kosovo as a military organization for internal and external security of Kosovo.*²

This judge finds the submission of the defence correct in the part where it is indicated that for the underline offence to be characterized as War Crime against Civilians -as penalized by article 142 Criminal Code of the Socialist Federal Republic of Yugoslavia (hereafter CC-SFRY) and still punished under article 120 of the Criminal Code of Kosovo (hereafter CCK), additional elements – the offence shall be committed within an armed conflict and with a link to the conflict, therefore in such case, together with the elements necessary to prove the murder of Sali Gashi, the prosecutor shall also prove the following chapeau elements:

- a. The existence of the armed conflict in Kosovo at the relevant time;
- b. The existence of a nexus between the armed conflict and the crime alleged;

² Extract from the defence submission dated 30 November 2010, page. 6

- c. The victim's status as protected person according to the Geneva conventions;
- d. That the factual allegations of the surviving counts violate both: domestic law and applicable rules of international law effective at the -duality test-. time of war, armed conflict or occupation.

3.1.a) The existence of an armed conflict

The definition of an armed conflict is not given in the Geneva Convention. The ICTY Jurisprudence, namely para. 70 of the Tadic Jurisdiction Decision finds that *an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.*

The existence of an armed conflict is a factual assessment. Both parties accept that an armed conflict existed in Kosovo in 1999, although, the allegation raised by the prosecution is that an armed conflict of non international character existed at the time when the murder of Sali Gashi was committed, as opposed to the defence counsels of Mr. Gashi who indicate that the hostility ended on the 10th of June 1999. In his assessment, this judge does not find that the issuance of the UNMIK resolution, *per se*, excludes that a conflict existed at the time relevant to the indictment.

In fact, it is common knowledge that in Kosovo in 1999 at the same time co-existed an international and a non internal armed conflict. The international conflict was ended on 9 June 1999, with the signature of the Military Technical Agreement between NATO forces and the Governments of FRY and of the Republic of Serbia (MTA), to which the departure of the FRY forces followed, and the withdrawal of one of the two parties involved in the conflict, *de facto* concluded the international conflict.

Nevertheless, the conclusion of the international conflict did not *per se* settle the ongoing internal conflict between KLA, which had the *de facto* overall control over an identified portion of Kosovo, and the FRY forces. In fact, only on 20 June 1999 the Undertaking of demilitarization and transformation was signed by the UCK and it appears already from the wordings used in the undertaking in para. 6, and 8 throughout 14, that, when the undertaking was signed the hostilities on the Kosovo territory had not yet ended and the fighting was still ongoing.

This judge therefore concludes that an armed conflict of non international character existed at the time relevant to the indictment– i.e. 6 days after the signing of the MTA and 4 days before the signing of the undertaking- since factual elements indicate that hostilities were still ongoing in Kosovo at that time. It is clearly within the scope of the Geneva Convention to guarantee the rights of the protected persons when concretely needed. Common article 3, and its specification through the additional protocol II, is meant to guarantee persons not taking active part to the hostility when hostilities are *in concreto* ongoing, therefore, in spite of the formal status, its application shall be consistent with its scope anytime a conflict of non international character is not settled and until it is settled in concrete.

3.1.b) The existence of a nexus between the armed conflict and the crime alleged

The existence of a nexus entails a close relation between the underline offence and the ongoing hostilities.³ In the specific case the nexus is evidenced by the cooperative witness in his statement. In fact, Nazim Billaca stated that both, himself and Fahredin Gashi were member of the KLA -circumstance which is not disputed by Fahredin Gashi-, and that Fahredin Gashi told him after the murder that Sali Gashi had to be killed because of his cooperation with the Serb forces – opposing force to the KLA a the time of the conflict- by this indicating a direct link between the murder and the conflict.

3.1.c) The victim's status as protected person according to the Geneva conventions

Article 3 common to the Geneva Conventions, and its additional protocol II, both grant protection to the civilian population in time of conflicts of non international character (hereafter internal conflicts). The civilian status of Mr. Sali Gashi at the time when the crime was committed is not disputed by either of the parties. Sali Gashi was not wearing an uniform, was not armed, and was in his house, lying on his sofa when shot and killed by the perpetrators. It is evidence from the evidence in file that, when killed, Sali Gashi was not actively participating to the conflict or engaged in any military activity, therefore, falls under the category of protected person under article 3 common to the Geneva Conventions.

3.1.d) That the factual allegations violate both domestic law and applicable rules of international law effective at the time of war

In the specific case, the murder of a civilian person is explicitly punished by the domestic law, under article 142 CC-SFRY, and article 120 CCK. The unlawful killing of civilians

³ International jurisprudence indicates, among other elements useful to conclude such an assessment, that a sufficient link exists if it is shown, *inter alia*, that: (1) the perpetrator was a combatant; (2) the victim was a non-combatant; (3) the victim is a member of the opposing party; (4) the act may be said to serve the ultimate goal of a military campaign; or (5) the crime was committed as part of or in the context of the perpetrator's official duties, see ICTY, Prosecutor Vs. *Kunarac* Appeal Judgement, para. 59.

is also an offence under the Geneva Conventions under article 3 common and Article 4 of its Additional protocol II, both applicable in the specific case. With regard to the applicability of the Geneva Conventions in Kosovo at the relevant time, it is worth mentioning that the four Geneva Conventions were ratified by the People's Republic of Yugoslavia on 21 April 1950; while the additional protocols I and II were adopted on 8 June 1977, and entered into force on 7 December 1978 therefore were all in force in Kosovo as of March 22, 1989, which includes the period of the armed conflict and both in the specific case since applicable in case of *armed conflict not of an international character occurring in the territory of one of the High Contracting Parties*,⁴ and the Additional Protocol II, *which develops and supplements Article 3*.⁵

The standard of proof in the confirmation stage is a "well-grounded suspicion" as set in Article 316 paragraph 1 subparagraph 4 of KCCP. According to the interpretation of it, made by the Court in *Mehmet Morina* case: "... *the standard must be such evidence that – if accepted – may lead to a conclusion that it is more probable than not that a specific offence was committed. In this regard, the evidence submitted by the prosecution should be able to suggest that all elements of the offence have been committed*".⁶

After having examined the evidence attached to the indictment in the light of the said interpretation, the Court observes the following:

Nazim Bllaca⁷ declares that on 15 June 1999, he met Fahredin Gashi in the village of Pjetreshice, from where, on the same night, they walked to the village of Valrigovc looking for the house of Sali Gashi. When they reached the neighborhood of Sali Gashi, between 21:00 and 22:00 hours, being unable to identify Sali's house, reached one of the houses and, coincidentally found the brother Sali's brother (the late Shefki Gashi) whom they forced to accompany them to Sali's house.

Once by Sali's house, Shefki Gashi invited the person on the other side to open the door; Shefkije Gashi opened the door and immediately received a blow from one of the two men. The two men, consistently described as wearing black masks and gloves and branding automatic weapons,⁸ once in the house to the room where Sali Gashi was lying on a sofa beside his wife and, eventually, one of the two shot a burst from his automatic weapon killing Sali Gashi on the spot. After the murder, the two masked men left the house and, according to Nazim Bllaca, only after the murder Fahredin Gashi explained him that Sali Gashi had to be killed because he was a collaborator of the Serbian regime.

⁴ Common Article 3 to the Geneva Conventions, comma I

⁵ Additional Protocol II to the Geneva Conventions, Article 1

⁶ On the standard very grounded suspicion standard, see also Appeal Decision Supreme court in the criminal case against Sedat Hoti.

⁷ Record of Suspect hearing, dated 30 November 2009, pag 7 and ss, English version; record of suspect hearing, dated 3 December 2009, pag. 10 and ss; Letter encompassed in the minutes of the suspect hearing, dated 21 April 2010, pag 9 and ss

⁸ Record of the [REDACTED] hearing, 6 February 2010,

The physical description of the two masked men is consistently given in the different statements: one of the two was taller and slimmer while the second one appeared shorter and fatter; Nazim Bllaca in his declaration gives the identity to the two men, identifying himself with the taller and Fahredin Gashi with the other. The build of Nazim Bllaca and Fahredin Gashi are compatible with the i.d. given by Bllaca to the two masked man and consistent with the physical description of the two men given by the witnesses.

The description of the events given by Nazim Bllaca appears corroborated by the testimonies of the injured parties: [REDACTED] all present in the house when Sali Gashi was murdered- and contains details that could be known only to somebody present in Sali's house on the night of the murder. The injured parties confirm they could not see the perpetrators in the face (the two assailant were masked in the course of the action), but gave a rough description of their body shape (one tall, the other short and heavy) and gave an account of the events matching the one given by Nazim Bllaca in his different declarations.

This judge also finds that the credibility of the account of Nazim Bllaca is corroborated by other material and evidence contained in the case file which, even if not directly referring to the night of the incident, provide corroboration as to the frame of the story of Nazim Bllaca and indirectly support his credibility.

It is noted that some minor discrepancies exist between the declaration of Mr. Bllaca and the accounts given by the witnesses, also among the witnesses themselves, although the witnesses appear consistent in the description of the events they directly saw. Furthermore witnesses are consistent in the overall account of the events with regard to all the important points, and differences in the minor details shall be considered in light of the long time lapse between the time the events occurred and the time the declarations were given, and shall be noted as indication that the testimonies were not prepared or otherwise tampered.

It appears incredible, at this stage of the proceedings, the defence claim that Bllaca's story is just a set up for the purpose of financial gain and extortion. This judge, having considered the elements at his disposal, is not persuaded of the truthfulness of the defence claim and does not find this unsubstantiated allegation hindering the credibility of Mr. Bllaca. In the same way, the defence counsel's claim that Fahredin Gashi surrendered his AK-47 on 9 June 1999, at this stage not supported by evidence, does not disprove the allegation of the indictment. In fact, the AK-47 used on the night of the murder was not identified and it was never claimed to be the AK-47 in use a Fahredin Gashi during the war. *A contrario*, the fact that Mr. Gashi had an AK-47 issued to him during the war only indicated his technical ability to operate weapon.

Because of the foregoing, this judge, considered all the elements at his disposal, finds that very grounded suspicion exist that Fahredin Gashi, together with Nazim Bllaca, on the night of the 15th of June 2010, as member of the KLA during an internal armed conflict and with a nexus to the conflict, entered the home of Sali Gashi and killed him with a burst of automatic weapon, in Varigovc (Lipjan/Lipljane).

Therefore, this judge decided as in the enacting clause with regard to count I.

As to Count II

Relevant to this charge is the following evidence:

Statements of witness/injured parties and defendant: Hand written statement signed by the defendant Hysri Rama, Statement given by Hysri Rama to EULEX Police on 27 January 2010, statement given by Hysri Rama as defendant on 29 October 2010, [REDACTED]

[REDACTED] complete investigative file PPS 97/2010, outcome of metering of phone calls and sms messages and related police reports.

3.2 The legal qualification

The legal qualification of the factual allegations against Mr. Rama was not challenged by the defendant.

Article 305 paragraph 2)

Whoever assists the perpetrator of a criminal offence punishable by imprisonment of more than five years shall be punished by imprisonment of six months to five years.

The understanding of what is meant by “assist” for the purpose of this article, reference may be made to the non exhaustive list under para. 1 of the same article, which indicates that “assists” the commission of the offence *whoever aids him or her to elude discovery by concealing instruments, evidence or in any other way or whoever harbors a convicted person or takes steps towards frustrating the execution of a punishment or an order for mandatory treatment.*

The elements of the offence may therefore be declined as follows:

1. *a criminal offence was committed by a person other than the defendant;*
2. *the defendant has the knowledge of the underline offence;*
3. *the defendant with his acts, or omissions assists the perpetrator of the underline offence;*

3.2.1 In the specific case, the underline offence is the murder of Sali Gashi, which is also part of these criminal proceedings;

3.2.2) The knowledge of the underline offence – the murder of Sali Gashi- is clear evidenced by the factual allegation and it is apparent already in the statements of the defendant, given that in this specific case, the assistance is allegedly given through false testimony.

3.2.3) The allegation is that the defendant, with the knowledge of the factual allegations against Mr. Fahredin Gashi, and in contradiction to his previous statement given to EULEX Police on 27 January 2010, changed his version of the facts as to discredit the declaration of Nazim Bllaca and provide help to Fahredin Gashi to elude discovery.

The evidence shows that on 27 January 2010 the defendant, interviewed by EULEX Police officers, declared that sometime in 2009 he drove Bllaca with his car to Varigovc village to meet the family of the late Sali Gashi, and that *Bllaca did not tell me why he wanted to speak with that family and I could not hear the conversation.*⁹

This statement is contradicted in a fundamental part by the same defendant in a handwritten document of uncertain date, whose authorship the defendant confirms in his statement given to the Public Prosecutor on 29 October 2010. In this handwritten letter, Hysri Rama confirms accompanying in 2009 Nazim Bllaca to Varigovc village, but also states that Bllaca told him that he was going to speak to Sali Gashi's sons to tell them that he himself (Nazim Bllaca) and Fahredin Gashi, had killed Sali Gashi in June 1999. Hysri Rama further states that Bllaca told him Fahredin Gashi had nothing to do with the murder of Sali Gashi, who instead was committed by Bllaca and somebody else whose identity Bllaca would not disclose, but that by reporting Fahredin Gashi to the victim's relatives, Bllaca aimed to extort money from Gashi. Finally, Rama confirmed that he could not hear the content of the conversation between Bllaca and Sali Gashi's relatives because he remained inside the car.

The content of this handwritten letter, and the authorship, is confirmed by the defendant when interviewed by the Prosecutor on 29 October 2010. The defendant indicated that this letter had been given to Fahredin Gashi's father and, when asked by the prosecutor to explain the contradiction with his previous statement, confirmed that what written in the letter is true and the difference is due to the fact that this was *because at the beginning Bllaca did not explain everything in detail. He was just vague.*¹⁰

This judge finds explanation provided by the defendant incredible. The declaration of Nazim Bllaca were broadcasted in the media and widely reported by the press. The defendant was interviewed several time by the SPRK prosecutor and it is incredible he never thought to mention facts he realizes having a great importance for the criminal investigation – Nazim Bllaca admitting a murder and fabricating evidence against someone else for the purpose of extorting money-, especially in consideration of the fact that Fahredin Gashi was deprived of liberty and the allegations against him had become public already in July 2010.

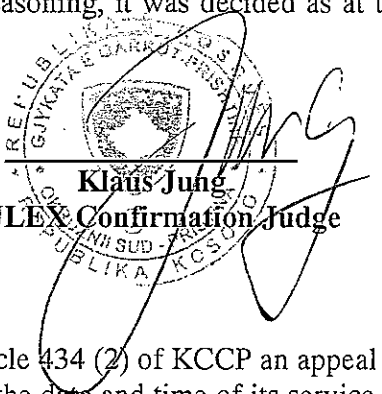
This judge, finding the latest declarations of the defendant untrue, noting the contradiction between the two "stories" and that the new statements of the defendant clearly aim to strongly impact the proceedings against Fahredin Gashi and dent the credibility of the declaration given by Nazim Bllaca for the purpose of assisting Fahredin Gashi to elude prosecution providing false evidence, concludes that the very grounded suspicion exists that the defendant Hysri Rama intentionally and willingly has provided false declarations with the intention to help and assist Fahredin Gashi to escape prosecution for the murder of Sali Gashi; therefore, this judge finds that very grounded suspicion exist that the defendant, committed the criminal offences alleged against him in

⁹ Witness Statement given by Hysri Rama on 27 January 2010, pag. 4 English version

¹⁰ Record of witness hearing, Hysri Rama, 29 October 2010, pag. 3 English version.

count II of the indictment, exist, and on the basis of the available elements, therefore, this judge decided as in the enacting clause with regard to count II.

Based on the aforementioned reasoning, it was decided as at the enacting clause of this ruling.



Klaus Jung
EULEX Confirmation Judge

Legal Remedy:

Pursuant to Article 432 and Article 434 (2) of KCCP an appeal against this ruling may be filed within three (3) days from the date and time of its service by the parties and persons whose rights have been violated to the Three-judge Panel of this Court.