

DISTRICT COURT OF PRISTINA

P. Nr. 504/2007

Date: 12 February 2010

IN THE NAME OF THE PEOPLE

The District Court of Pristina, in the trial panel composed of:

- 1) EULEX Judge, Mr. Francesco Florit, as presiding Judge,
- 2) EULEX Judge, Mr. Ferdinando Buatier de Mongeot, as panel member
- 3) Kosovo Judge, Mr. Mehidi Dehari, as panel member,

assisted by the court clerk undersigned, in the criminal case against:

Jahja Lluka born in Pejë/Peć on 2 March 1952, Father's name Mustafa Lluka, Mother's maiden name Ajshe Shala, Kosovo Albanian, Businessman, residing at Sefser Street, Veternik, Prishtina, married with four children, University College, very good economic status;

Charged pursuant to the indictment PP-KT No. 133-7/07 filed on 20 September 2007 by the International Public Prosecutor with the criminal offences of: False Statement or Report –for the Kasabank account-, contrary to UNMIK Regulation 2004/2, section 10.5, paragraphs (a) and (b), as amended by UNMIK Regulation 2006/53, under count 1); and False Statement or Report – for the Banka Ekonomike account-, contrary to UNMIK Regulation 2004/2, section 10.5, paragraphs (a) and (b) as amended by UNMIK Regulation 2006/53 under count 2); Unlawful Acceptance of Contribution, contrary to UNMIK Regulation 2004/2, section 10.8, as amended by UNMIK Regulation 2006/53, under count 3);

Milazim Abazi, born in Perpellac Village, Podujevë/Podujevo on 25 February 1955, Father's name Bajram Abazi, mother's maiden name Naile Dauti, Kosovo Ibanian, Economist, Residing at Syleman Vokshi Street, Entrance B, No. 11 in Pristina, married with one daughter, a university graduate in good economic status, personal identification number 1015354760;

Hashim Sejdiu, born in Dardanic, on 17 March 1977, Father's name Enver Sejdiu, mother's maiden name Vase Krasniqi, Kosovo Albanian, Graduated economist; former Manager of Retail Department and Manager of Pristina Branch of Kasabank, Residing at Ulpiana, Juprogram, E19, Pristina, single, no children, graduated in Economics, average economic status;

Both charged, pursuant to the indictment PP-KT No. 133-7/07 filed on 20 September 2007 by the International Public Prosecutor, with the criminal offence of Failure to Report Transactions, in Co-Perpetration, contrary to UNMIK Regulation 2004/2 dated 5 February 2004, Section 10.6, paragraph (b) on the deterrence of money laundering and related criminal offences, as amended by UNMIK Regulation 2006/53 and to Article 23 of the PCCK, under count 4);

After having held the main trial in public on the 10 December 2009, 18, 20, 26, 28 January and 9 February 2010, at the presence of the Special Prosecutor Nazmi Mustafi, of the accused and their defense counsels respectively Rame Gashi and Arianit Koci for Jahja Lluka, Hamit Gashi and Burim Xhemajli for Milazim Abazi, Bajram Tmava for Hashim Sejdiu;

after the panel deliberation held on 11 February 2010 , based on the article 391 (1) and article 390 of the Kosovo Code of Criminal procedure (KCCP), issues the following:

VERDICT

the accused **Jahia Lluka is found:**

Guilty of the criminal offence of False Statement or Report as for Kasabank account, as described below

COUNT 1

LLUKA

False Statement or Report, contrary to UNMIK Regulation 2004/2, section 10.5, paragraphs (a) and (b), as amended by UNMIK Regulation 2006/53.

That between on or about 19 August 2005 and continuing on through to and including on or about 25 January 2007, in Pristina, Jahja Lluka, co-founder and authorized representative of the Non-Government Organization (“NGO”) Komitet per Mbrojtjen e Ramush Haradinaj(Defense Fund for Ramush Haradinaj) (“Fund”), in providing information or in making reports, certifications or declarations as required by sections 3.1 through 3.5 of UNMIK Regulation 2004/2 in connections with the making deposits of currency into the Fund’s account at Kasabank, knowingly made materially false statements or willfully omitted to disclose material information, or made or used or caused the making or using of documents knowing the documents to contain materially false statements or entries, omissions, or errors, to wit: when making deposits of currency in amounts in excess of €10.000 in a single day into the KSB account of the Fund, did split up and structure the deposits into multiple transactions in amounts less than €10.000 and in the names of multiple other individuals, completing and causing the completion of deposit documents that falsely reflected the source and amounts involved, as more fully specified below.

Guilty of the criminal offence of False Statement or Report as for Banka Ekonomike account, as described below:

COUNT 2

LLUKA

False Statement or Report, contrary to UNMIK Regulation 2004/2, section 10.5, paragraphs (a) and (b), as amended by UNMIK Regulation 2006/53.

That from on or about 07 September 2005 and continuing through to and including on or about 12 September 2005, in Pristina, Jahja Lluka, co-founder and authorized representative of the Non-Government Organization (“NGO”) Komitet per Mbrojtjen e Ramush Haradinaj(Defense Fund for Ramush Haradinaj) (“Fund”), in providing information or in making reports, certifications or declarations as required by sections 3.1 through 3.5 of UNMIK Regulation 2004/2 in connections with the making deposits of currency into the Fund’s account at Kasabank, knowingly made materially false statements or willfully omitted to disclose material information, or made or used or caused the making or using of documents knowing the documents to contain materially false statements or entries, omissions, or errors, to wit: when making deposits of currency in amounts in excess of €10.000 in a single day into the KSB account of the Fund, did split up and structure the deposits into multiple transactions in amounts less than €10.000 and in the names of multiple other individuals, completing and causing the completion of deposit documents that falsely reflected the source and amounts involved, as more fully specified below.

Guilty of the criminal offence of Unlawful Acceptance of Contribution, as described below:

COUNT 3

Unlawful Acceptance of a Contribution, contrary to UNMIK Regulation 2004/2, section 10.8, as amended by UNMIK Regulation 2006/53.

That between on or about 19 August and continuing on through to and including on or about 25 January 2007, in Pristina and elsewhere, Jahja Lluka, co-founder and authorized representative of the Non-Government Organization (“NGO”) Komitet per Mbrojtjen e Ramush Haradinaj(Defense Fund for Ramush Haradinaj) (“Fund”), willfully accepted on behalf of the NGO Fund a contribution in currency in excess of € 1.000 in a single day from a single source in violation of UNMIK Regulation 2004/2, section 4.1, to wit: on numerous occasions between the aforementioned dates, the defendant, who was the individual who registered the Fund as an NGO, opened the Fund’s bank accounts at Kasabank and Banka Ekonomike, and who accepted and deposited cash contributions on behalf of the Fund, accepted currency contributions from individuals or entities, as a single source, in excess of € 1.000 in a single day, and thereupon deposited said currency into one or the other Fund accounts in amounts in excess of €1.000 in a single day, as more fully set forth below.

Pursuant to article 390 of the Kosovo Code of Criminal procedure (KCCP),

the accused **Milazim Abazi is found:**

Not Guilty of the criminal offence of Failure to Report Transactions, in Co-Perpetration, as described below:

COUNT 4

ABAZI in co-perpetration with Sejdiu

Failure to Report Transactions, in Co-Perpetration contrary to Article 23 of the PCKK and UNMIK Regulation 2004/2, section 10.6, paragraph (b), as amended by UNMIK Regulation 2006/53.

That between on or about 19 August 2005 and continuing on through to and including on or about 25 January 2007, in Pristina, Milazim Abazi, General Director of Kasabank ("KSB"), and Hashim Sejdiu, Retail Manager of KSB and Branch Manager of the Pristina Branch of KSB, in co-perpetration and while acting as officers and employees of KSB, willfully failed to make a report, or caused the failure to make a report, to the Financial Intelligence Center ("FIC") of a suspicious act or transaction or a transaction in currency of €10.000 or more, as required by section 3,9 of UNMIK Regulation 2004/2, to wit: on several occasions between the aforementioned dates, and with the intent to obstruct a regulatory or law enforcement function, said Defendants willfully failed to make, or to cause the making of reports to the FIC, of suspicious transactions or multiple transactions on a single day of which they had or should have had knowledge, by or on behalf of one person or entity, which totaled more than €10.000, said deposits all being made at the same time by the Defendant Jahja Lluka to the KSB account of Komitet per Mbrotjtjen e Ramush Haradinaj(Defense Fund for Ramush Haradinaj) ("Fund"), but which he split up into separate deposits of € 9.000 each, or some other amount under €10.000, and in the names of others.

The accused **Hashim Sedjiu** is found

Not Guilty of the criminal offence of Failure to Report Transactions, in Co-Perpetration, as described below:

COUNT 4

ABAZI AND SEJDIU

Failure to Report Transactions, in Co-Perpetration contrary to Article 23 of the PCKK and UNMIK Regulation 2004/2, section 10.6, paragraph (b), as amended by UNMIK Regulation 2006/53.

That between on or about 19 August 2005 and continuing on through to and including on or about 25 January 2007, in Pristina, Milazim Abazi, General Director of Kasabank ("KSB"), and Hashim Sejdiu, Retail Manager of KSB and Branch Manager of the Pristina Branch of KSB, in co-perpetration and while acting as officers and employees of KSB, willfully failed to make a report, or caused the failure to make a report, to the Financial Intelligence Center ("FIC") of a suspicious act or transaction or a transaction in currency of €10.000 or more, as required by section 3,9 of UNMIK Regulation 2004/2, to wit: on several occasions between the aforementioned dates, and with the intent to obstruct a regulatory or law enforcement function, said Defendants willfully failed to make, or to cause the making of reports to the FIC, of suspicious transactions or multiple transactions on a single day of which they had or should have had knowledge, by or on behalf of one person or entity, which totaled more than €10.000, said deposits all being made at the same time by the Defendant Jahja Lluka to the KSB account of Komitet per Mbrotjtjen e Ramush Haradinaj(Defense Fund for Ramush Haradinaj) ("Fund"), but which he split up into

separate deposits of € 9.000 each, or some other amount under €10.000, and in the names of others.

SENTENCE

Jahia Lluka

As per count 1) of the indictment, pursuant the UNMIK Regulation 2004/2, section 10.5 as amended by UNMIK Regulation 2006/53 and to article 38 and 39 of the Criminal code of Kosovo is sentenced to 6 months and 6000 euro

As per count 2) of the indictment, pursuant the UNMIK Regulation 2004/2, section 10.5 as amended by UNMIK Regulation 2006/53 and to article 38 and 39 of the Criminal code of Kosovo is sentenced to 2 months and 2000 euro

As per count 3) of the indictment, pursuant the UNMIK Regulation 2004/2, section 10.8 as amended by UNMIK Regulation 2006/53 and to article 38 (imprisonment) and 39 (fine) of the Criminal code of Kosovo is sentenced to 2 months and 2000 euro

Pursuant to Article 396 par. 5) KCCP and article 71 CCK, the aggregate punishment is determined in 10 months of imprisonment and a fine of 10.000,00 (ten thousand, 00) euro

The time spent in detention by the accused shall be counted as part of the prison sentence pursuant to Article 391 Paragraph (1) Subparagraph 5 of the KCCP.

Pursuant to article 43 CCK the punishment shall be suspended.

COSTS

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the KCCP.

REASONING

1) Background

In March 2005, the International Criminal Tribunal for the former Yugoslavia (ICTY) filed an indictment against Ramush Haradinaj, former Prime Minister of Kosovo and head of the Alliance for the Future of Kosovo Party (AAK). Later on the *Komitet për Mbrojtjen e Ramush Haradinaj* (Fund for the Defense of Ramush Haradinaj, hereinafter the Fund) was established by Jahja Lluka, Astrit Haraqia and Ethem Ceku as founders. On or about 25 March 2005, Jahja Lluka opened an account at Kasabank in the name of the Fund.

The statute for the Fund was signed *inter alia* by Jahja Lluka as a founder on or about 03 May 2005 and an Application to register the Fund as a Non Governmental Organization, pursuant to UNMIK Regulation 1999/22, was dated 10 May 2005. On 11 May 2005, Kasabank (KSB) donated € 70.000 to the Fund. On or about 23 May

2005, the application of the Fund for status as a NGO was approved by the Ministry of Public Services. On or about 24 May 2005 Ethem Ceku and Astri Haraqija issued a written document on behalf of the Fund authorizing Jahja Lluka to open accounts at Raiffeisen Bank, ProCredit Bank, and Banka Ekonomike and to be the signatory on those accounts. On or about 06 April 2005, Jahja Lluka opened an account at Banka Ekonomike (BE) in the name of the Fund.

2) Procedural History

On 20th September 2007, the International Prosecutor Caroline H. Henneman, filed an indictment against the three accused for the charges above reported. On 8 November 2007 the pre-trial judge confirmed the indictment as submitted with a decision confirmed in appeal on 14 April 2008.

On 02 February 2009, pursuant to the decision n. JC/EJU/OPEJ/0215/mgc/09, issued by the President of the Assembly of EULEX judges, Maria Giuliana Civinini, the case against the three defendants was transferred to EULEX and on 24 November 2009, the Presiding Judge, Francesco Florit, issued the order to establish the main trial.

The main-trial started on the 10th of December 2009 when, at the presence of the parties and after opening the main trial, the defence council Tmava requested the severance of the proceedings against Mr. Sedjiu and Mr. Abazi, stating that there is no causality link between the two alleged conducts and the severance of the indictment would speed up the proceedings; the trial chamber decided that the proceedings shall not be divided because the evidence is common to the three accused.

On 11 December 2009, the defence counsel Tmava filed a motion for disqualification of Judge Mehidi Dehari as he had been involved some pre-trial matters in the same proceedings; the President of the District court of Pristina, Anton Nokaj, issued a decision on 14 January 2010 rejecting the motion of advocate Tmava as ungrounded.

On 18 January 2010, the main trial continued and, after reading the indictment, witnesses: [REDACTED]

[REDACTED] testified before the trial panel and during the examination of [REDACTED] three e-mails sent by her were discussed and tendered as evidence.

On 20 January 2010, the main trial continued with the examination of witness: [REDACTED]

On 26 January 2010, the main trial continued with the examination of witness [REDACTED] and witness [REDACTED], and afterwards evidentiary motions of the parties were discussed: the prosecutor proposed the reading of the statements of 21 witnesses already interviewed during the pre-trial phases, the defence councils, after consultation, unanimously rejected the proposal of the prosecutor and incidentally proposed for 9-10 witnesses to be called to testify before the panel. The panel, after deliberating, decided that none of the witnesses proposed by the parties were needed, on the contrary the panel ex officio decided to summon witness [REDACTED]

On 28 January 2010, [REDACTED] testified before the trial panel, and after her the three defendant: Mr. Lluka, Mr. Abazi and Mr. Sejdiu were called to testify: the first

and the second testified extensively while Mr. Sejdju decided to remain silent. Finally, the panel decided on the admissibility of the documentary evidence, declaring admissible all the documents listed in the indictment.

On 9 February 2010, the Court heard the final speeches from the Public prosecutor and the defence counsels, the accused did not want to add anything to what stated by their lawyers.

On 12 February 2010, the Trial panel publicly announced the verdict.

3) Applicable law, competence of the Court and composition of the Panel

The defendant is accused of offences referred to in the UNMIK anti money laundering regulations (Regulation n. 2004/2 and following amendments).

In accordance with article 23 paragraph 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. The District Court of Pristina is territorially competent, there being the branches of the banks where the alleged conducts of false statement and non reporting (which are the most serious ones) were committed.

The offence falls within the scope of art. 3, para 2, of the Law on Jurisdiction (3 – L053/2008), which sets forth the primary competence of EULEX Judges. Art. 3 para 2 states that EULEX Judges have jurisdiction for the respective stage of the criminal proceeding investigated or prosecuted by the SPRK. Art. 5 para 1 letter o) of the law on the Special Prosecutor's Office of Kosovo states that the SPRK is competent for "*Criminal Offences listed in Article 10 of UNMIK Regulation No. 2004/2 On the Deterrence of Money Laundering and Related Criminal Offences as amended*".

A Kosovo judge has been part of the Panel throughout the trial pursuant to article 4.7 of Law on Jurisdiction. It has to be added that *in limine litis* the parties had nothing to object about the composition of the Panel.

4) The accused Jahja Lluka

4.1) With regard to counts 1 and 2 of the indictment

The defendant is accused of false statement or report according to UNMIK regulation 2004/2, section 10.5, paragraphs a) and b), with reference to section 3.5 of the same UNMIK regulation.

Such norms are part of a vast array of provisions which were introduced in the legislation of Kosovo in order to comply with the best practices currently being implemented at international level (in line with the GAFI/FATF recommendations and with the major international instruments against money laundering agreed upon at the level of UN and COE).

What is important to point out here is that the conduct which is criminalized by the above quoted norms is not per se money laundering. The conducts (or omissions) which are punished aim at preventing the commission of money laundering, by criminalizing the actions or omissions which would prevent law enforcement agencies

(in the instant case: the Financial Intelligence Center) from detecting that suspicious operation possibly relating to money laundering are being undertaken.

More specifically Section 3.1 of UNMIK regulation 2/2004 obliges banks to verify the personal data of all clients before ... (d) engaging in any single transaction in currency of more than 10.000 €, Multiple currency transactions shall be treated as a single transaction if the bank or financial institution has knowledge that the transactions are conducted by or on behalf of one person or entity and total more than € 10.000 in a single day.

Section 3.2 of the UNMIK regulation 2/2004 sets forth that a person engaging in a transaction under section 3.1 shall certify in writing to the bank or financial institution, in a format specified by BPK, that he or she is acting:

(a) On his and her own behalf as both the owner and the beneficiary of any property that is the subject of the transaction; or

(b) As an authorized agent of one or more persons or entities identified pursuant to sections 3.3 or 3.4, having taken reasonable steps to verify that each identified person or entity is the owner or the beneficiary of any property that is the subject of the transaction, and believing in good faith that each identified person or entity is the owner and/or beneficiary of any property that is the subject of the transaction.

Section 3.5 of the same UNMIK regulation establishes that any person acting as an authorized agent shall present documents in accordance with sections 3.3 and 3.4 for him/herself and for the authorizing person or entity and shall provide a document authorizing him or her to conduct transactions on behalf of such person or entity.

Finally, section 10.5 provides criminal sanctions to some of the conducts described above, by stating that whoever, in providing any information or in making reports, certifications or declarations pursuant to section 3.1 through 3.5 ... of the present regulation, knowingly (a) makes any materially false statement or willfully omits to disclose material information or (b) makes or uses any document knowing the document to contain a materially false statement or entry, a material omission or a material error.

The above configuration of the legislative framework makes it clear that the crime of which the defendant is accused does require the court, in order to ascertain the commission of the crime, to have proof that the transactions refer to proceeds of crime. The evidentiary test that the court is called to perform is not about the illicit origin of the assets, but merely about the compliance with the duties of reporting/declaration illustrated above.

In the instant case, at the end of the evidentiary proceeding there is full proof that Jahja Lluka violated the above set of provisions, thus committing the criminal offences counted *sub* 1 and 2.

Such evidence is provided firstly by the massive documentation seized by the investigators in the Bank, in Jahja Lluka's apartment and in the offices of the NGO which was running the fund for the defence of Ramush Haradinaj.

Secondly, the case file contains the statements made by Jahja Lluka himself during the investigations, containing a number of self accusatory declarations, of great evidentiary value.

Finally, during the main trial several witnesses provided additional information bearing evidentiary relevance against Jahja Lluka.

In particular, at the end of the evidentiary proceeding the following can be considered as proven with regard to count 1 of the indictment (Kasabank):

- on the dates 19 August, 5 September, 6 September, 24th November 2005, 10, 14 February and 20 February 2006 Jahja Lluka went to the ABC Branch of Kasabanka. In particular:
 - o on the 19th of August 2005 he deposited 45.000 in 5 separate 9.000 transactions, signing two of the deposit slips;
 - o on the 5th of September 2005 he deposited 203.000 in 22 separate transactions of 9.000 each and 4 transactions of 5.000 each, signing all the deposit slips.
 - o On the 6th of September 2005 he deposited 209.000 in 21 separate transactions of 9.000 each and 4 transactions of 5.000, signing most of the deposit slips with his name;
 - o On 24th November 2005 he deposited € 363.000 in cash in 39 separate transactions of € 9.000 each and one transaction each of € 8.000, 3.000 and 1.000. Part of the slips were signed by the same signature
 - o On the 10th of February 2006 he deposited € 100.000 in cash into the fund's account with 10 separate transactions of € 9.000 each in Lluka's and other individual's names
 - o On the 14th February of 2006 he deposited 243.000 in 27 separate transactions of 9.000 each, signing most slips with his name;
 - o On the 20th of February of 2006 he deposited 100.000 in cash in 16 structured deposits ranging in amount from 5.000 to 9.000 all in different names, according to his instructions, signing all the deposit slips.
 - o On the 3rd of November 2006 Lluka deposited 200.000 € in 27 separate transactions in amounts ranging from € 4.000 to € 9.700 under different names, signing each of the slips.

As a result of the above described *modus operandi*, the bank records indicate that the depositors were the individuals that he named, rather than himself. The above circumstances find full proof both in the deposit slips and bank records contained in the case file, as well as in the clear statements of the witnesses [REDACTED] (cashier at the ABC Branch), [REDACTED] (Branch Manager at the ABC Branch), [REDACTED] (AML official of Kasabank), [REDACTED] (Head of the internal audit office of Kasabank), as well as in the admissions of the same Jahja Lluka in front of the Public Prosecutor and during the main trial.

Indeed:

- According to the cashiers of the branch "ABC" of Kasabank, [REDACTED] and [REDACTED], Mr. Lluka on several occasions came to the bank with bags full of cash – whose total amount would vary but was well above the 10.000 euro threshold provided for by the law against - and with a list of names containing around 20/30 names. The cash would then be divided into deposits smaller than € 10.000 and deposited each one under a different name, while the slips were signed by Mr. Lluka himself.
- The bank records show that each one of the structured deposits was made by different persons. In other words, the depositors appear to be the persons whose names figure on the bank records¹;
- Cross checking the printouts of the bank records with the deposit slips which are in the case file (which relate to the same transactions recorded in the

¹ See the documents contained in the case file

records), it is possible to ascertain that the signature on the deposit slips themselves was on most occasions that of Jahja Lluka². On nearly all other deposit slips, the signatures of blocks of slips taking place on the same day are from another couple of persons (who signed with their names a number of deposits allegedly made by different persons)³. In the opinion of the Panel it must necessarily be concluded that Jahja Lluka, in his quality of Authorized Representative of the “Fund for the Defence of Ramush Haradinaj” was aware and participating also in the structured deposits in which the signature on the deposit slips apparently is not his. This because:

- The modalities of execution of such latter deposits was exactly the same of the deposits in which the signature is Jahja Lluka’s appear, this showing a common strategy behind all the transactions;
 - the existence of an extremely high number of donations of exactly 9.000 € is not credibly explained by the defendant (according to which on many occasions citizens would come to the office of the Association and bring their contribution in cash). The Panel deems that it is not realistically admissible that such a huge number of equal deposits be in reality made autonomously in the same framework of time by different individuals.
- Each one of the structured deposits in question took place at a time distance of minutes (if not seconds) from the following. This documentarily confirms that it had been always the same person performing the deposit, and not different persons (because otherwise, according to what was stated during the main trial by the witness ██████████, the IT system of the Court would have needed more time in order to process the switch from one client to the other client);
 - The bank cashiers who were called to testify and who received the deposits stated that on several occasions the money was brought to the bank by the defendant Jahja Lluka, inside a bag, which contained the cash wrapped in pages of newspaper; Jahja Lluka would present to the cashiers a list of the names of the persons who allegedly had contributed to the “Ramush Haradinaj Defence Fund” (without presenting any letter of empowerment, authorizing him to deposit such money into the bank account on their behalf), together with the entire amount of money. Then he would sign all the deposit slips, one for each of the transactions which had been done⁴;

² This is the case, e.g., for the bank slips of 19 August 2005, 6 September 2005, 5 September 2005, 14 February 2006, 20 February 2006, 3rd November 2006, most of which are signed by Jahja Lluka with his own signature, also when the deposit appears to have been made in the name of some other persons.

³ This is the case for the deposit slips of 24 November 2005,

⁴ See, e.g., the statements of witness ██████████, branch manager of the ABC Branch in Kasabank described the modalities of the deposits of the defendant:

██████████: *Once a day up to 200.000 euros. There were various amounts of money deposits but the greatest amount was 200.000 euros.*

Public Prosecutor: When he had 200.000 euros with him, did he deposit this money on the same day?

██████████: *Yes.*

Public Prosecutor: He did the same other times.

██████████: *Yes.*

Public Prosecutor: Do you remember what amount of money he deposits other times in your bank?

██████████: *The amount of money varied but approximately 200.000, or 150.000 euros.*

Public Prosecutor: In whose name did he make the deposit?

██████████: *I can not recall the names but they were individual persons.*

Public Prosecutor: How did you understand this?

- The defendant plainly admitted (at least with regard to the greatest part of the transactions indicated above) that its source was a single contribution of € 530.000, deriving from a loan made by Mr ██████ to the Fund on the 2nd of September 2005. It is worth recalling the statements of the defendant extensively, given their pivotal importance for the adjudication of this case. Such statements were made in front of the Public Prosecutor on 17 April 2007. The defendant was subsequently confronted during the main trial on the same circumstances and the previous statements were recalled⁵.
- It is important to note that the defendant plainly admits that in order to get around the legal obligation to report the deposit of the sum of 535.000 euros belonging to Mr ██████, it was the choice of the management of the NGO to split the deposit in many single deposits of less than 10.000 euros, allegedly pertaining to many different donors, thus avoiding the duty to report. Importantly, Mr Lluka expressly admits knowing the existence of the legal provision obliging to report such kind of transactions and that, therefore, such way of proceeding was “not quite appropriate”.
- It is particularly relevant to further note that an identical modus operandi was adopted by Jahja Lluka also in the case of all the other deposits for which he is

██████████: Money was brought in packs; bunch of money. There was this list with the names of person.

Public Prosecutor: Who signed on behalf of the names?

██████████: Jahja Lluka.

Public Prosecutor: Do you remember what the amount he deposited per person was?

██████████: The amount varied, from 7.000 to 9.800 euros.

⁵ Public Prosecutor: I am focusing on these 39 deposits, did you personally meet these thirty nine people and did you receive money from them?

Jahja Lluka: No

Public Prosecutor: Can you describe how you ended up with all that cash?

Jahja Lluka: Mr Ramush Haradinaj asked to borrow some money from Mr ██████ and they came to an agreement where he would borrow five hundred and thirty five thousand euros. After the agreement was reached between them, they informed me about this agreement and I was authorized by Mr Haradinaj to receive those funds from Mr ██████.

Public Prosecutor: My question was about these thirty nine names on the list, are you saying that Mr ██████ had to do something with this?

Jahja Lluka: Mr ██████ did not want to be publicly known. Therefore we asked some people to help us to deposit these funds in their names.

Public Prosecutor: For example, where it says Enver Berisha deposits nine thousand euros. What you are saying is that those nine thousand euros deposited by Enver Berisha are coming from ██████?

Jahja Lluka: True

Public Prosecutor: You are saying that all of those thirty nine people agreed to have the money deposited in their names although it was not their money, is that what you are saying?

Jahja Lluka: Part of them were real donors, but I do not remember who they were

...

Public Prosecutor: do you know why you chose to make deposits in amounts of nine thousand euros rather than in amounts of eleven or twelve thousand euros?

Jahja Lluka: In order not to make legal violations

Public Prosecutor: You understood that it was against the law to make a single cash deposit of more than 10 thousand euros, right?

Jahja Lluka: It is not against the law, but you have to tell where the money comes from ...

Public Prosecutor: Did you remember who told you that the amount has to be below ten thousand euros?

Jahja Lluka: No

....

Jahja Lluka: we found the way which was not quite appropriate, but that was the way to deposit the contributions of the people that wanted to remain anonymous and I also told Mr ██████ that there is a huge amount of money and that it would be better if he himself deposited the money.

accused, both with regard to the transactions performed in Kasabanka and with regard to the transactions performed in Banka Ekonomike. This circumstance is a clear demonstration of the existence of a well organized and standardized practice (and it is the case to note that such practice was simply necessary, in consideration of the huge amount of cash which it was necessary to bring into the NGO's accounts).

The above described circumstances make it evident that the defendant Jahja Lluka committed the offences described under counts 1 and 2, by depositing in an articulated and structured manner sums of much more than 10.000 Euros in a multiplicity of deposits of less than 10.000 euros.

The presence of the element of the *mens rea* is, in the opinion of the Panel, made clear by the very same confession of the defendant. He clearly stated:

- that he was aware of the legal requirement to report the transactions of more than 10.000 euros;
- that he devised the stratagem of the structured deposits specifically for the purpose of getting around the legal duty to report, with a view to maintain "confidentiality" on some of the deposits which were exceeding the amount of 10.000 euros.

This makes it obvious that the defendant was very well aware of the legal requirements and that he willfully acted in order to get around them.

4.2) With regard to count 3 of the indictment

Section 4.1 of the UNMIK Regulation 2004/2, as amended by UNMIK Regulation 53/2006, states that "*Except as provided in section 4.3, an NGO shall not accept any contribution in currency in excess of €1,000 from a single source in a single day*".

The subsequent art. 10.8 of the Regulation states that "*Whoever willfully accepts or disburses currency in violation of section 4.1, 4.2, 5.1 or 5.2 of the present Regulation commits a criminal offence punishable by imprisonment of up to two years and a fine of up to €5.000 or twice the amount of the currency accepted or disbursed, whichever is greater*".

Jahja Lluka is accused of having accepted (between August 2005 and January 2006) donations from individuals and entities in violation of the above provisions.

The outcomes of the main trial and the evidence contained in the case file provides full proof of the guilt of Jahja Lluka also as to this count of the indictment.

The evidentiary framework leading to this conclusion is, in principle, the same which substantiates the guilt of the defendant with regard to the first two offences.

Indeed,

- Firstly, Jahja Lluka plainly admitted having received from [REDACTED] a single loan of Euro 535.000 in four installments. This statement was reiterated both in front of the Public Prosecutor and at the main trial. These admissions clearly bear the evidentiary relevance of a confession. As it was widely illustrated above, such confession is strongly corroborated by documentary evidence (deposit slips and bank records related to the structured deposits by which Jahja Lluka brought into the bank accounts the sum which was loaned to the Defence Fund). The above is already *per se* sufficient in order to affirm the criminal liability of Jahja Lluka for the offence described by art. 10.8;
- Additionally, Jahja Lluka, trying to defend himself from the accusations contained in counts 1 and 2, eventually stated not only that the Fund for the Defence of Ramush Haradinaj received the euro 535.000 loan in four

installments from one single donor (thus automatically committing the criminal offence described by section 10.8 of the UNMIK Regulation 2004/2), but also made admissions that several of the other Euro 9.000 deposits which ended up in the Fund's accounts came from previous donations (of the same amounts) made by private citizens of Kosovo. It is important to note that Jahja Luka (or his subordinates on his behalf) had received donations for an overall amount of much more than the loan from Mr [REDACTED] described above. This is made clear by the fact that much more than Euro 535.000 were deposited into the Fund's bank accounts (the total amount of money, indeed, was of more than Euro 1,5 Million) and that there is documentary evidence (deposit slips and bank records) of multiple deposits into the bank account which sum up to much more than Euro 535.000. Nearly all of such deposits refer to donations of more than Euro 1.000 each, received by the NGO from donors. This amounts to the proof of further infringements of the criminal provision described by art. 10.8 of the UNMIK Regulation 2/2004, in addition to the acceptance of the contribution of Euro 535.000 from [REDACTED]. The element of the *mens rea* is evidently present, both with regard to the conducts described in counts 1 and 2, as well as to the conduct described in count 3.

It might be said that in the present case, *res ipsa loquitur*, because:

- it is proven that defendant willfully accepted a huge amount of contributions from several donors;
- the amount of most of the sums being given to the Fund was by far above the legal threshold of EUR 1.000;
- the law provisions criminalizing the conduct of unlawful acceptance of contributions were approved more than one year before the first episodes took place.
- the cultural and professional background of the defendant and the fact that he was covering the position of legal representative of the Fund, make it impossible to think that he could be in a situation of excusable ignorance of the statutory provisions incriminating his conducts.

5) The accused Milazim Abazi and Hashim Sejdiu

Milazim Abazi and Hashim Sejdiu, in their respective capacity of General Director and Retail Manager of KSB, are charged with the violation of section 10.6 paragraph b) of UNMIK regulation 2004/2 as amended by UNMIK regulation 2006/53 in co-perpetration as per article 23 CCK.

The relevant provision foresees that *whoever willfully* [omissis] b) *Fails to make a report in accordance with section 3.9, 3.11, 4.5, 5.4, 6.3, 6.7, 6.8 or 7.2; commits a criminal offence punishable by imprisonment of up to two years and a fine of up to €100.000.* In the specific case, it is alleged that the defendants –in co-perpetration– willfully omitted to report to the FIC the suspicious transactions operated by the co-defendant Jahia Luka.

Pursuant to the law, the elements of the offence are identified as follows:

1. One or more transactions which the law prescribe to be reported were operated by Jahja Luka in the alleged period;

2. A duty to report exists upon the defendants;
3. The defendants knew or had reason to know that one or more of such transactions had been operated;
4. The defendants willfully omitted to report the suspicious transactions to the competent authority.

Element 1)

With regard to this element, the findings of this panel as described in the section above are confirmed. The conduct of Mr. Lluca, who intentionally divided larger sums into small consecutive deposits, falls under section 3.9 b) of the UNMIK regulation 2004/2, and should have been therefore reported to the FIC as specified in the same section.

Element 2)

Section 10.6 paragraph b) of UNMIK regulation 2004/2 foresees a liability for omission, when the perpetrator, having the duty to act, willfully omits to do so. This form of liability is recalled under article 31 2) of the CCK, which foresees that a *criminal offence is committed by omission only when the perpetrator has an obligation to act but fails to do so*. Therefore a legal obligation must exist upon the defendant as to find him/her liable for a criminal offence charged against him/her.

Pursuant to UNMIK regulation 2004/2, a generic duty to report exists upon each and everyone of the bank employees, including upon the persons who have the responsibility to manage and supervise the bank employees; however, the regulation demands *a contact person to be responsible for interaction and information exchange with the BPK and the Centre, and compliance with the reporting and record keeping obligations under the present Regulation.*⁶

Based on a logical interpretation of the regulation, it can be stated that a specific reporting duty is imposed on the bank employees, to report relevant information to the authorized person – the anti-money laundering officer- who, in turn, is entrusted with the duty to report the relevant transactions to the FIC. The bank employees are in direct contact with the client and are in the best position to identify financial operations which are “unusual or unjustifiable” and therefore suspicious; thereafter, the liaison with the FIC is the exclusive responsibility of the anti-money laundering officer who enjoys independence and is trained for this specific task.

Testimonial evidence confirms that this understanding of the provision was also the internal policy of the Kasabank on anti-money laundering.

The testimonies of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and the same [REDACTED] show that suspicious transactions had to be reported by every bank employee to the duly appointed officer; witnesses clearly stated that such report was not to be directed or copied to the bank management or the FIC. Testimonial evidence confirmed that instructions in this

⁶ See UNMIK Regulation 2004/02 Section 3.16

sense had been circulated around and that Mr. Milazim Abazi and Hashim Sejdiu were not directly involved in the anti-money laundering activity as such.

Element 3)

The knowledge of the suspicious transactions means awareness of the illicit or doubtful nature of the transactions.

The UNMIK regulation foresees a duty of investigation upon the anti-money laundry officer in charge to investigate and analyze the whole information available to him/her for the purpose of detect possible money-laundering activities. An analogous duty does not exist for other employees who have however a duty to report suspicious transactions.

On the base of this reconstruction, the defendants did not have the autonomous duty to investigate possible anti-money laundering activities but had, only a duty of general supervision also of the activity of Aferdita Mexhuani.

This duty *in vigilando*, implicit in the managerial functions of the defendants, aims to ensure that all the subordinated activities are conducted properly and to prevent any procedural violation by the subordinated staff.

Testimonial evidence indicates that Milazim Abazi was indeed informed that a series of transactions of 9,000 euro were operated on the same day "*on the account for the defence of Ramush Haradinaj*". The defendant himself corroborated the testimonies of [REDACTED] and [REDACTED] on the point, when he admitted having a conversation with them sometime in June or July 2006 during which he was informed that multiple deposits on the mentioned account were being operated by Mr. Lluka.

Such kind of multiple operations on the same account is normally suspicious, as they could aim to avoid the implementation of the reporting mechanism to FIC. Nevertheless, it must be noted that in the specific case, the large publicity surrounding the fund and the public call for contribution, the exceptional qualifications of the promoters of the fund- the Kosovo council of Ministry and government officials- and the large public response and scrutiny to the fund, somehow contradict the above allegation as this fund was the opposite of a secret fund for the management of illegal activities and money laundering.

Furthermore, the public nature of the fund is surely compatible with multiple daily operations. [REDACTED] expert of money laundering, testified that "*One of the indicators or elements that a certain deposit might be suspicious would be the number of manual deposits but in the case of the Defence fund, it was know that this fund was there to provide the defence of this person. Of course the people did not hesitate to come and give as much as they could*". The large public response is confirmed by the documentary evidence which show that several transactions were indeed operated by ordinary citizens.

Testimonial and documentary evidence shows that also Mr. Sejdiu was informed of the exceptional number of transactions of large amount operated on the account. [REDACTED] testified that she informed her supervisor- the defendant - of her suspicion about the transactions; and the circumstance is confirmed by the co-

defendant Abazi who admitted discussing with Sejdiu [REDACTED] concerns about the fund, even though such concerns were not described as related to suspicious transactions.

[REDACTED] further testified that the Sejdu, her supervisor, *“convinced me that these are not suspicious transactions. Mr. Jahja Lluka was the authorized person to collect these means, collecting them from persons who would like to contribute”*. [REDACTED] never stated that her supervisor prevented her from reporting or otherwise obstructed her activity, but simply indicated that the defendant’s opinion was that such transactions were not suspicious.

So being, this circumstance alone excludes the criminal responsibility of the accused under the UNMIK regulation since the intention of the defendant to hide suspicious transactions must be excluded.

Finally, it must be noted that [REDACTED] underlined that the internal procedure of Kasabank at the time of the event was partially non in compliance with the UNMIK regulation. In fact, according to the internal policy *“If transactions are taking place within a single day however we as a bank reported transactions taking place in the amount of 10k, that was the regulation up until the inspections that was conducted by the FIC. After the search we reported even those.”* [...omissis...] *“After the search took place but the searches they understood that the transactions that was done in amount of 10.000 euro were not recorded as it was foreseen in the regulation then that we should correct this flaw and report*

With this in mind, the trial panel may not forget that the regulation was, at the time of the events, of recent introduction and that the internal regulations were issued only in 2007. The factual circumstances referring to the common understanding of the UNMIK regulation 2004/02 must therefore be taken into adequate consideration.

Element 4)

As a last point, the trial panel finds that there is no evidence showing that the defendants willfully omitted to report the suspicious transactions to the competent authority. In fact, it appears from the testimonial evidence of [REDACTED], [REDACTED] and [REDACTED] that the defendants were puzzled when suspicion about the operations on the fund was raised.

This trial panel does not find intentional omission has occurred in the conduct of the defendants because it does not consider that the defendants intended to conceal relevant facts to the FIC. While it is established that the defendants were informed about the suspicious nature of some of the transactions it can be said that their reaction to such information shows that there was no intention to omit the report.

The special nature of the fund and its humanitarian aim make it difficult to believe that the defendant wanted to conceal an unlawful activity, especially considering that the normal “ring bells” indicating suspicious operations in this case were not applicable. The defendants did not have the duty to follow up on the information received by the anti-money laundering officer and the auditing office, nor had the duty to immediately involve the FIC.

Furthermore, the trial panel believes that the defendants did not have the “willful intention to conceal information from the FIC”, which is required by the provision of the Regulation to entail the criminal responsibility.

Simply, they did not consider the transactions to be suspicious and, in the opinion of this court, did not have the *mens rea* required to entail the criminal liability as alleged.

6) SENTENCING POLICY

When deciding on the penalty the court must keep in consideration the modalities of the commission of the crime and the personality of the defendant. The punishment must also be a proper deterrent against further crimes and a proportionate sanction for the offence which was committed.

With regard to the modalities of the conducts and the objective characteristics of the crimes committed by Jahja Lluca, the following must be considered.

- The conduct of Jahja Lluca was reiterated several times, both with regard to counts 1 and 2, and with regard to count 3.
- The amounts of money received by the defendant and subsequently deposited into the bank accounts were of great significance (and this should have with greater urgency pushed the defendant to report the transactions to the competent institutions).
- In favour of the leniency of the punishment, the panel consider the personality of the accused, his political commitment and the circumstance that the criminal conduct was not directed to gain a personal profit.

The Panel reckons that, in consideration of the above circumstances and parameters, the punishment of six months of imprisonment and Euro 6,000.00 of fine is appropriate with regard to the offence considered by count one of the indictment.

The punishment for the offence referred to by count 2 of the indictment can be fairly indicated in 2 months of imprisonment and Euro 2,000.00 of fine.

The punishment for the offence considered by count 3 of the indictment can be indicated in 2 months of imprisonment and Euro 2,000.00 of fine.

The aggregated punishment for the three offences is of ten months of imprisonment and 10,000,00 of fine.

Pursuant to article 43 CCK the punishment shall be suspended.

Considering the personality of the accused, his age and his conditions, it can easily be concluded that he will abstain in the future from committing further criminal violations.

The time spent in detention by the accused shall be counted as part of the prison sentence pursuant to Article 391 Paragraph (1) Subparagraph 5 of the KCCP.

7) COSTS

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the KCCP.

Pristina, 12 February 2010

Presiding Judge

Francesco Florit

Panel Member

Mehidi Dehari

Panel Member

Ferdinando Buatier de Mongeot

Court Recorder

Svetoslava Savova
EULEX Court Recorder



Legal remedy

Pursuant to Article 400 par. 1) KCCP, An appeal against this verdict shall be announced immediately and in no case later than 8 days from the date of this public announcement. Pursuant to article 398 KCCP, par. 1), authorized persons may file an appeal against a judgment rendered at first instance within fifteen days of the day the copy of the judgment has been served.