

DISTRICT COURT OF PRISHTINË/PRIŠTINA

KA Nr. 504/2010
24 January 2011

The Confirmation Judge, Dr. Horst Proetel, EULEX judge at the District Court level, in the criminal case against the defendants:

Xheme Thaqi, father's name Hamit, born on 20 July 1975 in village Caprac, Prizren Municipality, where he currently resides, Kosovo Albanian, in detention on remand since 27 May 2010,

Abdyl KUKAJ, father's name Hasan, born on 8 November 1983 in Korish village, Prizren, residing in Korish village, Prizren, Kosovan Albanian; in detention on remand since 2010,

Gezim Iseberi, father's name Qemajl, born on 5 November 1968 in Kukes, Republic of Albania, residing in Koderlum village, Shtime Municipality, Republic of Albania, Albanian citizen, poor economic status, in detention on remand since 4 December 2010,

Indicted with the indictment filed with the Court on 23 December 2010, by the EULEX Prosecutor of the Special Prosecution Office of the Republic of Kosovo (SPRK), Maarit Loimukoski, with the following offences:

Unauthorized Purchase, Possession, Distribution, and Sale of Dangerous Narcotic Drugs and Psychotropic Substances, pursuant to Article 229, Paragraphs 1, 2, 3, and 4 of the Criminal Code of Kosovo (CCK) and punishable from three to fifteen years of imprisonment;

Organized Crime, pursuant to Article 274, of the CCK and punishable from seven to twenty years of imprisonment;

Pursuant to article 316 (4) of the Kosovo Code of Criminal Procedure (KCCP), hereby issues the following:

RULING

The indictment filed with the Court on 23 December 2011, is hereby confirmed with regard to all counts and all defendants.

REASONING

Waiver of the indictment

No written waivers have been filed with the Court, thus the confirmation hearing took place as scheduled, in the presence of all parties.

Parties' submissions

After the indictment has been read, the defendants all plead not guilty.

The prosecutor Office has provided the defense counsels with the materials listed in Article 307 of the Procedural Code, mainly the evidence the indictment is based on.

Although the defense Counsel of the defendant Gezim Iseberi, Mr. Gafurr Elshani, did complain about the lacking systematization of the evidence provided, he renounced the right to have the confirmation- hearing postponed enabling him to better prepare. All defendants and their counsels wanted to continue avoiding further loss of time. The deficiencies of the delivered evidence are not severe thus the right for a fair defense has not been impaired.

The defense lawyers in their speeches stressed the fact that the indictment does not propose to the Court enough evidence as to support the well grounded suspicion that the alleged criminal offences have been committed. They stress the fact that the indictment does not present clear evidence as to when, how, where, as the defendants are indicted with unauthorized distribution, possession, sale, etc of narcotics which allegedly occurred throughout a long period of time. Thus, the Prosecution is obliged, defense opines, to explain in details the whole timeframe, roads used, means employed and the final destination. In lack of all these elements, the defense argues that the requirements for confirming this indictment are not met.

Competence of the Court and Procedural background

The court is competent to decide on the confirmation of the indictment filed by the Special Prosecutor Office according to the Law on Jurisdiction of EULEX Judges and the decision of the Vice- President of The Assembly of EULEX Judges dated 4.1.2011 in connection with the internal case- allocation- system of the EULEX- judges at the District Court Pristina.

The confirmation hearing has been scheduled on Monday, 24.01.2011, after the judge has been satisfied that the indictment has been drawn in accordance with Article 305 of the Procedural Code. All requirements listed there have been fulfilled.

The indictment has been served in time enabling the defendants and the Defence Counsels to be prepared for the hearing.

Court findings

In analyzing the court file presented together with the indictment the Confirmation Judge is bound by the prohibition set forth in article 317 paragraph 1 CPCK, meaning that the outcome of this ruling cannot pre-judge in anyway the outcome of the main trial.

The indictment and the file in total do not contain inadmissible evidence. There are no indications that the statements of the defendants and the witnesses have been produced by unfair means in the sense of article 155 of the CPCK.

As to the interception reports they have been established lawfully based on rulings of the pre- trial judge pursuant to Article 256 of the CPCK.

The defense does not doubt the lawfulness of the covered measures of investigation and of surveillance. The measures have been needed and the performance was in accordance with the rules.

If the reports on the various interceptions and the other provided evidence are sufficient to lead to a conviction is not a matter of admissibility of evidence but on the grounds.

It's not the competence of the confirmation judge to assess definitely if the presented evidence is sufficient to lead to a conviction of the defendants. That only can be done within the main trial and the evaluation of the panel considering all facts and proofs including the personal impression on the defendants, witnesses and the other evidence provided by the prosecution and found ex officio.

The confirmation judge has the only task to ensure that the formalities of the indictment are fulfilled and the admissible evidence justifies the assumption that there is a real expectation of a conviction. Taking of evidence during the confirmation hearing is excluded expressly according to Article 314, paragraph 6 CPCK.

Contrary to the legal opinion of the defense counsels and the defendants, the confirmation judge cannot stop the proceedings due to doubts on the commission of criminal offences by their clients respectively by themselves.

Assessing all the present facts and evidence there is a reasonable suspicion that all the defendants have committed the indicated offences according to Article 229, 274, 23 of the CCK

The measures of surveillance, the statements of the defendants and the heard witnesses indicate massively that at least the defendants **Kukaj** and **Thaqi** have collaborated in dealing with narcotic drugs according to Article 229, paragraph 1, 2, 3 and paragraph 4, point 1 between the 24 of July and the 15th. September 2009 as they are charged with (Count 1) and that they are part of an organized group including other suspect as the brother of Xheme Thaqi, Qerim Thaqi. Therefore count 3 and 4 of the indictment seem to be justified. They dealt in co-perpetration according to Art. 229, paragraphs 1,2, 3 and 4 CCK organizing the selling of drugs to be transported from Albania over the territory of

Kosovo to West Europe in the period of July 2009 and May 2010 (count 3 and 4). As the indictment states Xheme Thaqi appears to be the most trusted man of the believed leader of the organized group in Kosovo invested with the organization, mainly the coordination of the group's activities. Abdyl Kukaj is supposed to be the key member of the group operating in several countries of Europe. The indictment is self-explanatory. It does not need to have all repeated. The involvement of Kukaj and Thaqi in the criminal group and their activities as the shipment of drugs especially in September 2009 and November 2009 can be derived from the interceptions of calls and messages listed in points 1- 38 of the indictment (pages 16- 25) as to the first named shipment and to points 1- 21 on pages 33 to 36. The reasoning of the indictment is convincing establishing at least reasonable suspicion that they both committed the alleged crimes. This is supported by the files comprising police reports visual surveillance in public places by the added CDs and the information received by international legal assistance of Slovenia and Italy. Additional indicators for the commission of the crimes by the accused Kukaj and Thaci can be based as well- as the indictment provides- on the results of the financial investigation; by interceptions of telecommunication, house searches and police reports as they are summarized on pages 37- 42 of the indictment. The ruling refers to the mentioned evidences which will need to be interpreted in the main trial based on all direct and indirect proofs, the personal impression of defendants and witnesses and their statements.

The confirmation judge does not follow the legal opinion of the defence to dismiss the indictment due to the lack of facts on the modalities of the purchase of drug narcotics as the used roads, the quantity of sold narcotic and their destination. The intercepted calls contain at least information on the destinations (Netherlands and Switzerland) and figures on ordered stuff (105 kg). Further concretization may be found in the main trial.


As well the indictment has to be confirmed related to the defendant Gezim Iseberi charged for unauthorized possession and distribution of dangerous narcotic drugs and psychotropic substances according to Article 229, paragraph 1, 2, 3 and 4 of the Criminal Code of Kosovo committed in co-perpetration as to Article 23 resp. 25 of the Code (count 2) and of membership of an organization (group) aiming to commit serious crimes in the sense of Article 274, paragraph 12 of the CCK.

Is it true that the indictment charges Iseberi only for the commission of unauthorized possession and distribution of dangerous narcotic drugs acting between the 4th and the 6th September 2009 and no drugs have been found in his car stopped by the police. But contrary to the argumentation of his defense- counsel that does not mean that there is no sufficient probability that he will be convicted. The same applies for the charge having be part of a criminal group (count 5). The statement of Iseberi, confirmed by the other defendants, he does not know the co- defendants Kukaj and Thaqi, is obvious wrong. The surveillance report related to his activities demonstrates that Iseberi had at least one meeting with Thaqi on September, 5. This gives sufficient evidence as to his involvement in the preparation of the shipments in September 2009 and shows that he is not fully reliable and credible. The surveillance reports demonstrate that the defendant Iseberi was the driver of a van with the registration number KU 1962 on September, 5, he had used the previous day. He showed a suspicious behavior replacing the original plates. A

further grave suspicious action was, being followed by a police car, that he threw off a package containing most likely he transported drugs. Though there is no stringent proof that the package contained narcotic drugs, this is indicated by the fact that Iseberi has met the defendant Thaqi on the day before his journey and the package obviously has been recovered by members of the criminal group and sent as narcotic drugs to Europe. This is enlightening and throws a serious shadow on the personality of the defendant claiming to be innocent.

The same applies for the charge being part of the criminal group and having acted in co-perpetration with the other defendants. The indictment, this ruling is related to, speaks a convincing language.

As the charges are serious justifying high penalties the detention on remand is up to now proportional. The Court competent for the Main trial will have to decide on the remand in custody of the three defendants.


EULEX Confirmation- judge


Legal Remedy

The ruling on the confirmation of the indictment is **final**. Article 317, paragraph 2 of the CPCCK as “lex specialis” to the general provisions on appeals (Article 431, paragraph 1) grants an appeal only the prosecutor and the injured party in case of dismissal of the indictment.