

## **DISTRICT COURT OF PRISHTINË/PRIŠTINA**

**KA Nr. 185/2010**

**P Nr. 200/10**

7 February 2011

The confirmation judge, Gianfranco Gallo, EULEX judge at the District Court level, assigned to this case pursuant to the designation letter dated 4 January 2011, in the criminal case against the defendants:

Slavisa Petkovic, Branislav Grbic, Nemanja Vujovic, Muhamet Sadiku, Rruzhdhi Prebreza, Ismet Hasani, Fidan Sadiku, Rifat Sadiku, Shemsi Haliti, Gani Zeneli and Drition Hamiti, with personal data as in the minutes of confirmation of indictment hearing of 18 January 2011.

Charged with the following criminal acts pursuant to the indictment filed on 6 August 2010 by the SPRK Prosecutor Maria Bamieh:

**Misappropriation in office** in co-perpetration pursuant to article 340 paragraph 1 and 3 of the Criminal Code of Kosovo (CCK) in connection with article 23 of the CCK (against Slavisa Petkovic, Branislav Grbic, Nemanja Vujovic, Muhamet Sadiku, Rruzhdhi Prebreza, Ismet Hasani, Fidan Sadiku, Rifat Sadiku, Shemsi Haliti, Gani Zeneli and Drition Hamiti):

**Misappropriation** in co-perpetration pursuant to article 257 paragraph 1 and 3 of the Criminal Code of Kosovo (CCK) in connection with article 23 of the CCK (against Slavisa Petkovic, Branislav Grbic, Nemanja Vujovic, Muhamet Sadiku, Rruzhdhi Prebreza, Ismet Hasani, Fidan Sadiku, Rifat Sadiku, Shemsi Haliti, Gani Zeneli and Drition Hamiti)

**Fraud in office** in co-perpetration pursuant to article 341 paragraph 1 and 3 of the Criminal Code of Kosovo (CCK) in connection with article 23 of the CCK (against Slavisa Petkovic, Branislav Grbic, Nemanja Vujovic, Muhamet Sadiku, Rruzhdhi Prebreza, Ismet Hasani, Fidan Sadiku, Rifat Sadiku, Shemsi Haliti, Gani Zeneli and Drition Hamiti):

**Accepting bribes** pursuant to article 343 paragraph 1 of the Criminal Code of Kosovo (CCK) (against Nemanja Vujovic):

**Giving bribes** pursuant to article 344 paragraph 1 of the Criminal Code of Kosovo (CCK) (against Ruzhdi Prebreza):

**Falsifying official documents** in co-perpetration pursuant to article 348 paragraph 2 of the Criminal Code of Kosovo (CCK) in connection with article 23 of the CCK (Nemanja Vujovic, Muhamet Sadiku, Rruzhdhi

Prebreza, Ismet Hasani, Fidan Sadiku, Rifat Sadiku, Shemsi Haliti, Gani Zeneli and Drition Hamiti);

**Falsifying documents** in co-perpetration pursuant to article 332 paragraph 3 of the Criminal Code of Kosovo (CCK) in connection with article 23 of the CCK (against Nemanja Vujovic, Muhamet Sadiku, Rruzhdin Prebreza, Ismet Hasani, Fidan Sadiku, Rifat Sadiku, Shemsi Haliti, Gani Zeneli and Drition Hamiti):

after having held confirmation hearings pursuant to article 314 of the Kosovo Code of Criminal Procedure (KCCP), on 15 December 2010, 18 January 2011 and concluded on 25 January 2011 in the presence of the above mentioned accused and their defence counsels, in the presence of the SPRK Prosecutor and the legal representative of the injured party from the Ministry of Justice;

deciding on the confirmation or dismissal of the indictment as filed by SPRK on 6 August 2010 as read out before the present parties during the confirmation hearings;

pursuant to article 316 (4) of the KCCP, hereby issues the following:

### **Ruling**

The indictment PP No. 58/2010, filed by the SPRK Prosecutor with this Court on 6 August 2010, **is confirmed.**

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

### **Reasoning**

On 6 August 2010 the SPRK Prosecutor filed an indictment against the above mentioned defendants and laid out charges as described above.

The vice president of the Assembly of EULEX judges by a designation letter assigned the undersigned judge on 4 January 2011, replacing the formerly appointed confirmation judge on 25 August 2010.

Public confirmation hearings were held on 15 December 2010, 18 January 2011 and 25 January 2011.

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

Upon asking the defendants if they understood the indictment, the judge gave them the opportunity to plead guilty or not guilty, as laid out in article 314 (4) of the KCCP. All defendants indicated that they understood the indictment and pleaded not guilty. The Judge then gave the floor to the Defense Counsels for further comments, as provided by article 314 (5) of the KCCP and then to the defendants for their final comments.

### **Court Findings:**

According to the evidence contained in the file there is sufficient evidence to support a well-grounded suspicion that the defendants committed the criminal offences for which they are being indicted. The investigation involved interviews with a number of witnesses, officials and employees of the MCR, assessment of contracts for building works done on behalf of the MCR, financial records of the defendants and other evidence that allow the conclusion that there is well-grounded suspicion for the elements of the charges contained in the indictment i.e. that defendants did misuse funds of the MCR and in doing so committed the criminal acts as charged in the indictment.

The factual background of the crimes is that this case arose following an auditor's report for the year of 2005 indicating a loss of 1.1 million Euros from the Ministry of Communities and Returns (MCR).

Following the revelation in the auditor general's report in 2005, an investigation was commenced and it revealed that a lot of contracts were drawn up within a very short period of time (from 1<sup>st</sup> July to 13<sup>th</sup> September 2006) after the alleged works were supposed to have been undertaken. Some of the projects to rebuild houses for returnees on behalf of the MCR were never executed. During inspections at the various locations it resulted that the contracts were totally fictitious.

However when the contractors, i.e. the signatories of the contracts, were questioned, they all individually and collectively stated the same thing that they did other works for which there were no contracts and in order to get paid they had to sign these false contracts and invoices.

It also transpired that part of the work that was done by these contractors included extensive renovations to the house of the Minister Petkovic, to the house of the procurement officer Mr. Nemanja Vujovic, to the house of a friend of the Minister, Marina Dimitriovic, to the house of Anisa Rexhepi, the secretary of the Minister Petkovic and also renovations were made as to the restaurant called "Tropicana": all these works do not seem to have any reason linked to the scope of the activity of the MCR.

The total loss that indictment is able to prove by virtue of the contracts is around 600,000 Euros. The entity which lost money by this fraudulent conduct was the Ministry of Economy and Finance that paid on these false contracts.

The defence attorneys raised a number of issues and all objected to the indictment and asked that the court dismissed the indictment and terminated the proceedings against their clients.

The issues raised are the followings:

1. The criminal offences that the defendants are charged with are not in compliance with Article 305 paragraph 1 item 3, 4 and 5 of KCCP; namely the criminal acts described in the indictment are not precise, lacking the definition of time and place, the exact amount of money and the roles of each defendant;
2. The criminal offences committed by official persons are not applicable to the defendants that were not employees of MCR;
3. Evidence as to the conduct of co-perpetration between the official persons and the other defendants (the owners of the constructions companies) was missing or insufficient;
4. Some of the defendants (the owners of the construction companies) did not receive any illegal profit, but simply got paid for the work they carried out;
5. The contracts were drafted by official person in MCR, whereas the owners of the construction companies did not create documents or forge them; therefore they are not liable for the criminal offences in count 6 and 7.
6. The investigation was extended only until 31 December 2007 whilst the indictment was filed on 6 August 2010.
7. Delay in receiving the statements of Slavisa Petkovic and Branislav Grbic and interviewing them after indictment is filed is

a violation of the law, coupled with the late receipt of evidence after the indictment was filed.

\* \* \*

The court finds that the matters raised in the above points point 1 and 3 are not completely without justification; however, the indictment in its entirety, taking in consideration not only the bare counts, but the reasoning and the factual explanation, is sufficient to allow the defendants to understand the charges against them and to enable them and their defence attorneys to prepare their defence at the main trial.

In fact a more accurate specification of the charges and of the roles of each defendant would have been more appropriate, but nevertheless it cannot be affirmed that the indictment does not satisfy the requirement of Art. 305, par. 1, items 3, 4 and 5 of the KCCP.

More specifically, as to the place and time of commission of the crimes, both of them are clearly indicated in the charges and therefore give the defence the possibility to have a collocation in time and space of the conducts.

Furthermore, on the above point 3, it is clear from the reading of the entire indictment that there was an agreement between the private and the official persons as to the fake invoices and as to the works which were never performed or performed illegally.

The court finds that the matters raised in the above point 2 are utterly ungrounded.

In fact it is undisputed that the criminal offences of Misappropriation in Office, Fraud in Office and Falsifying Official Documents must be committed by official persons, but on the other hand, since the above crimes were committed in co-perpetration by the official persons Petkovic, Grbic and Vujovic with the owners of the construction companies, also the private persons must be considered responsible for the above crimes.

In other words, in case the legal qualification of a crime changes because of the quality of one (or more) of the culprits (for instance from Misappropriation to Misappropriation in Office because an official person is involved) all the people who cooperated with the official person, even though do not have that special position, will commit the crime of Misappropriation in Office and not of simple Misappropriation.

The court finds that matters raised in the above points 4 and 5 are not grounded as the defendants knowingly produced invoices and signed contracts for works that either were never performed or performed as

favours for the MCR personnel and outside the scope of the MCR activity. The prosecutor on the point has presented sufficient evidence to support a well grounded suspicion against the defendants.

The court finds that the matter raised in point 6 is not grounded. Article 304 paragraph 1 of the KCCP does not give a time limit to the prosecution to file an indictment, but simply states that after the investigation has been completed, the indictment can be filed providing there is sufficient grounds for filing the indictment.

The court finds that the matters raised in point 7 above are not completely without justification.

In fact article 229 of the KCCP does state that the defendants shall be examined at the latest before the conclusion of the investigation.

The defendant Slavisa Petkovic was examined during the investigation by the UNMIK CIVPOL investigator on 21 April 2008 in the presence of his defence attorney Zef Prenaj.

This is sufficient (art. 229 does not require that the examination is conducted by the prosecutor) to comply with the provision of article 229 of the KCCP.

On the contrary, the defendant Branislav Grbic was interviewed as witness by the UNMIK CIVPOL on 21 March 2008 and gave a witness statement on 15 January 2007. He was interviewed as suspect by the SPRK Prosecutor only on 23 December 2010 in the presence of his lawyer Zivojin Jokanovic.

It is undisputed that the provision of art. 229 of the KCCP was applied incorrectly as to the defendant Grbic, but, nevertheless, the court finds that since the confirmation hearing was actually held after the prosecutor had interviewed the defendant as a suspect, the above violation cannot be considered a substantial one.

In fact the above omission will not influence the render of a proper judgment (art. 403, par. 2 of the KCCP), since the confirmation judge and the parties were provided with the statement before the confirmation hearing and therefore the defence could found their arguments also on the basis of the above statement.

The court is mindful of the provisions of article 317 (1) of the KCCP that confirmation ruling and its reasoning shall be drafted in the manner that will not prejudice the adjudication of the matters which will be considered in the main trial. As such the matters raised can be assessed by the trial panel too and therefore the rights of the defence are not violated at this stage.

## **Admissibility of evidence:**

At this stage the court has not declared any of the pieces of evidence proposed as inadmissible evidence.

The defence attorney of Ruzhdi Prebreza raised the question of the inadmissibility of the statement given by his client during the interview with the police on 29 October 2006. From the case file it stems that the defendant Prebreza was questioned without the presence of his defence attorney.

On the other hand, it results from the above statement that he was informed about his rights and amongst the others the right to the immediate assistance of a defence attorney.

The understanding of the provisions of Art. 231 and 213 of the KCCP (Prebeza was interviewed while he was arrested) make it clear that the defendant has indeed the right to have the assistance of a defence counsel, but the presence of a lawyer during the examination is not compulsory.

Since Mr. Prebeza did not exert his right to be questioned in the presence of a defence counsel, the examination was perfectly legitimate.

Furthermore Article 235 of the KCCP lists the violations which make the statement given by the defendant inadmissible and the circumstance that the examination did not take place in the presence of the lawyer is not indicated among the above violations.

Lawyer Ramë Gashi raised the issue that there is inadmissible evidence pursuant to article 156 (1) and (2) of KCCP regarding his client, defendant Nemanja Vujovic. However, apart from this vague and general claim the court did not receive details as to which evidence shall be declared inadmissible and the reasons for it. The exception is clearly too vague to be assessed. In any case the court did not find that any of the pieces of evidence against the defendant Vujovic were inadmissible.

The new pieces of evidence handed to the court by lawyer Ramë Gashi (contract of employment for Nemanja Vujovic) and lawyer Ahmet Ahmeti (for Fidan Sadiku) are not admissible pursuant to article 314 (6) of the KCCP as it was correctly observed by the Prosecutor and therefore will be sent back to the lawyers in order to submit them during the main trial.

No other evidence is presently found to be inadmissible.

**More witnesses to be summoned for the main trial:**

Miloran Smilic was proposed as witness by the defence.

SPRK provided the court with a handwritten list of names of witnesses to be summoned for the main trial, attached to the minutes of the confirmation hearing dated 18 January 2011.

Thus it was decided as in the enacting clause of this ruling.

Dated this 7<sup>th</sup> day of February 2011.

**Confirmation judge**



Gianfranco Gallo

EULEX Criminal judge at the District Court level

**LEGAL REMEDY:** The ruling confirming the indictment is **final**.