DISTRICT COURT OF PRISHTINA/PRIŠTINE

AP Nr. 351/10

08th September 2010

The District Court of Pristina, in the trial panel composed of:EULEX Judge, Mr. Ferdinando Buatier de Mongeot, Presiding EULEX Judge, Mr. Francesco Florit, panel member and Local Judge, Mr. Gezim Llulluni panel member, in the criminal case against:

SOKOL QUSE, son of Eshref and Desanka (maiden name Nikolic) born on 26.06.1968 in Prizren, married, father of two children, Turk Kosovan nationality, found guilty by the judgment of the Municipal Court of Prishtina P.no.2615/08, for the criminal offences of Trading in Influence pursuant to article 345 paragraph 1, of CCK and for the criminal act of Falsifying Documents pursuant to article 332 paragraph 1 in relation with paragraph 3 of the CCK, deciding upon the appeal of the defence lawyer Mr Zivojin Jokanovic submitted to the Distrct Court of Pristina on 18 of February 2010, against the Judgment P.no.2615/08, dated 09 September 2009 of the Municipal Court of Pristina after having held the session of the second instance on 1st September 2010, and after deliberation and voting session held on 08th September 2010, district court panel decided as follows:

VERDICT

I. The appeal is **REJECTED** as unfounded.

II. The judgment of Pristina Municipal Court P. no 2615/08 dated 09 September 2009 **AFFIRMED** in its entirety.

REASONING

Factual background

Against the defendant Sokol Quse a summary indictment was filed on 26 of June 2008 and an extended summary indictment on 22 of April 2009. He was charged with the criminal offences of trading in influence contrary to article 345 paragraph 1 CCK and of the criminal act of Falsifying Documents contrary to article 332 paragraph 1 in relation with paragraph 3 of CCK.
On 09th September 2009 the Municipal Court of Pristine (Judgment P.no.2615/08) found the defendant Sokol Qyse guilty of the same criminal acts.

On 18 February 2010, the defence counsel of the defendant Mr Zivojin Jokanovic, submitted to the court appeal against the Judgment of Municipal Court of Pristine P.no.2615/08.
On 01st September 2010, at the premises of the District Court of Pristine, the session of the second instance took place. All parties were present.
After having held the deliberation and voting session on 08 September 2010, the panel of the District Court Pristina rendered the judgment by which the appeal was rejected in all its parts and the Pristina Municipal court judgment P.no.2615/08, dated 09th September 2009 was confirmed.

The merits

The appeal is articulated in four points.
The first three points of the appeal claim that the first instance judge committed respectively (a) substantial violations of criminal procedure, as foreseen by art. 403, paragraphs 8 and 12, KCCP, (b) violations of criminal law and (c) he established facts erroneously and incompletely. The fourth point is about the sentencing policy.
The first three points of the appeal are grounded on a series of factual-legal reasons most of which, in the opinion of the defence, amount at the same time to a violation of each of the three points above mentioned.
The following elaboration will assess separately each of these reasons.

1. As to the charge of trading in influence: the defence argues that Sokol Quse did not take any concrete action in order to approach the judge and/or the prosecutor in view of influencing them.
   The point, in the opinion of the Panel, is devoid of relevance: the criminal code (art. 345 CCK) clearly states that in order to commit the crime of trading in influence it is not necessary for the defendant to take any form of contact with the officials which allegedly were to be influenced by him. In order to be held liable it is sufficient for him to receive the offer or the undue advantage "*in consideration of the exertion of an improper influence by the perpetrator over the decision-making of an official person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result*".
   And this is exactly what the first instance judge limited himself to ascertaining in the appealed verdict.
2. With a second set of points of reasoning, the defence tries to tackle the reliability/admissibility of the written letter of Avci Yalcin containing the backbone of the accusation against Sokol Quse (exhibit 9, handwritten letter dated 8.8.2007). Once more, in the opinion of the defence this amounts to a violation of criminal procedure, and subsequently leads to a violation of criminal law and to an erroneous factual reconstruction.

2.1. First, the defence alleges that Avci Yalcin (who in the letter of 8.8.2007 accused Sokol Quse of receiving 80.000 Euros as a price for the unlawful mediation with the international judge and prosecutor in charge of the case) subsequently changed his version, in that he "signed a written receipt stating the money was received by Sokol Quse as a loan for personal reasons" (i.e. for the payment of a house). The defence states that even if it could be assumed that Avci Yalcin was expecting some help from Quse because of the loan given, this does not mean that Quse actually exerted influence on International Judge Peralta or on International Prosecutor Ciaravolo.
The point is ungrounded. Firstly, it has to be stressed that it is not true that Avci Yalcin signed any receipt or document in which it was stated that the money was received by Sokol Quse as a loan. The case file contains only a written receipt signed by Sokol Quse (exhibit 6) in which he states having received 80.000 Euros from Avci Yalcin "as a loan". Such receipt was handed over by Avci Yalcin to the investigators immediately after he had received it from Sokol Quse's lawyer. The mere fact that Avci Yalcin handed over to the investigators this receipt received from Sokol Quse cannot per se imply (as the defence seems to argue) that Avci Yalcin was changing his version of the facts, stating that the money had been given as a mere loan. Indeed, the receipt is a factual declaration made by Sokol Quse and not by Avci Yalcin, who simply received it in the framework of a Police operation in which he was participating and immediately handed it over to the investigators.

2.2. Secondly, the defence attributes great importance to the fact that Avci Yalcin was a codefendant and did not appear at the main trial, thus "obliging Sokol Quse to defend himself in silence, because he could not confront him". As a consequence the presumption of innocence was violated and the judgment was based on doubts and not on valid evidence.
This ground of appeal was not particularly clear. The defence counsel seems to contest the admissibility of the document labeled as exhibit 9 (a handwritten letter dated 8.8.2007 addressed by Avci Yalcin to Judge Carol Peralta), in which the accusation of Avci Yalcin against Sokol Quse is contained.
To this issue (which must be addressed ex officio) the Panel answers that such document is admissible evidence.
The Kosovo criminal procedural code defines as inadmissible evidence exclusively the evidence obtained "in violation of the provisions of criminal procedure", when law "expressly so provides".

Nowhere does the code state that letters of a codefendant (or of a witness) cannot be acquired as evidence: the only exclusionary rule present in the code to this extent is that the defendant must have been put in a position to challenge the document during the trial, i.e. that the document must have been timely presented during the main trial and made available to the defence, so that grounds for defence could be dispelled.
This finds no exception in the case when the letter contains elements of accusation against the defendant.
Such conclusion remains true also when (as in the case being) the codefendant-author of the letter did not appear at the trial and thus the defendant was not put in a position to examine him on the contents of the letter.
This said about the admissibility of such piece of evidence, it must be stressed that, in line with the principles enshrined in the procedural code and in the jurisprudence of the European Court of Human Rights, such evidence is to be assessed with the greatest care, in consideration of the source of the document.
In particular (see on this art. 157 KCCP and the decisions of the ECHR of 20.4.2006 in the proceeding Carta against Italia and 13.10.2005 in the proceeding Bracci against Italia) the Panel concurs that the conviction cannot be based solely, or to a decisive extent, on the statements which could not be confronted by the defendant.
The first instance judge issued a decision in line with this procedural requirement, in that the letter of 8.8.2007 of Avci Yalcin is only a piece of a wide mosaic of other elements of great evidentiary value, both of factual and of logical nature. Below a more detailed overview of these elements is provided.

2.2.1. The defence argues that the verdict is based exclusively on Avci Yalcin's handwritten statement and that such statement is not reliable, because (a) it was changed during the proceeding and (b) Yalcin apparently received promises from the police and when this "did not give results" and he found himself in the capacity of defendant he fled. (c) Avci Yalcin accused Quse only in order to oblige him to give the money back.
This reason of appeal is ungrounded. Firstly, it was already clarified above that is not true that Avci Yalcin changed his position in the course of the proceeding. He merely provided the investigators with a receipt of payment signed by Sokol Quse in which the latter stated that he was receiving the sum of 80.000 EUR as a loan from Avci Yalcin.

The first instance judge correctly explained that the version of Avci Yalcin in his handwritten letter of 8.8.2007 is not the main piece of evidence, but for sure is a statement which is fully compliant with the network of the other pieces of evidence, providing a satisfactory explanation to them.

The Panel shares this conclusion of the first instance judge. In particular:

2.2.1.1. It is admitted by the defence (who also signed a receipt thereto) that Sokol Quse received by Avci Yalcin 80.000 Euros. This is the first and foremost confirm to the statement of Avci Yalcin.

2.2.1.2. The case file contains an "internal memorandum" prepared by Sokol Quse on 21 June 2007, addressed to the international judge Carol Peralta, by which Sokol Quse was suggesting that international judges should take over the case against the friends of Avci Yalcin. This document, not contested by the defendant and confirmed by Judge Peralta, shows that Sokol Quse actually activated himself towards Carol Peralta in order to reallocate the proceeding against Avci Yalcin's friends. This document also was useful to show to Avci Yalcin that steps were being undertaken by Sokol Quse to that extent.

2.2.1.3. It is not credible that 80.000 Euros could have been lent to Sokol Quse (a Kosovo resident) by Avci Yalcin (a foreigner) without any form of personal or real form of guarantee. The allegation of the defendant that there was an old relationship of friendship between him and Avci Yalcin remained proofless.

2.2.1.4. It is not credible that such a huge sum of money could be lent without a formal receipt being issued by the recipient at the same time of the loan, with clear indication of the time and modalities of restitution of the alleged loan: in the instant case, the alleged receipt appeared on the scene only weeks after, handed over to Avci Yalcin by the defendant's lawyer after he started threatening him to disclose the plot to the police.

2.2.1.5. The 80.000 Euros given to Sokol Quse were not property of Avci Yalcin: he had obtained that money from the budget of the Turkish company where he was employed together with the three friends who had been

arrested1. Now, it is naïve to think that, in order to favor a friend, someone exposes himself so heavily with his employer. It is also not believable that an employer could lend to an employee the sum of 80.000 Euros without asking for any guarantee, unless it were for a reason strictly connected to the interest of the company itself.

2.2.1.6. The letter of 8.8.2007 which Avci Yalcin sent to Judge Carol Peralta does not only contain accusations against Sokol Quse, but also clear inculpating elements against Avci Yalcin himself, sufficient to ground charges for corruption. This is a further symptom of reliability of such letter, most of all in consideration that it was the first evidentiary element which triggered the investigation.

2.2.1.7. Contrary to the allegation of the appeal, it must be excluded that Avci Yalcin had a motive to falsely accuse Sokol Quse, in order to try and regain possession of the sum of money. Indeed this behavior, far from facilitating the restitution of the money, would have made it more difficult (if not impossible), because:
- it would have further tensed the relationship with Sokol Quse;
- accusing Sokol Quse of having received the 80.000 as a bribe for the international judge and prosecutor would have implied a high risk (pursuant to art. 343 CCK) that such sum might be eventually confiscated.

2.2.2. The now described factual and logical elements of are fully in line with the contents of the letter written by Avci Yalcin on 8.8.2007. In addition to this a further set of documentary evidence is present in the case file and the appealed verdict sufficiently reasoned on its evidentiary value, namely:

2.2.2.1. The handwritten receipt (exhibit 7) in which Sokol Quse admitted having received 80.000 Euros, 50.000 of which in relation to "C.P." and 30.000 of which in relation to "P.P. (Italian)";

2.2.2.2. the falsified memo allegedly written by the international prosecutor Annunziata Ciaravolo (exhibit 2) and the subsequent authentic letter of the same

[1] The recorded conversations contained in the case file provide confirm to the fact (referred to by Avci Yalcin in his letter of 8.8.2007) that the 80.000 Euros were given by his employer: this circumstance was obsessively repeated by Avci to his interlocutors when he was trying to persuade the wife of the defendant and his lawyer to render the money to him.

prosecutor confirming that the previous letter was completely false (exhibit 1);

2.2.2.3. the falsified letter allegedly written by Tome Gashi (exhibit 4) and the other authentic letter from Tome Gashi (exhibit 3) proving that the former was false;

2.2.2.4. the written statement of Judge Carol Peralta (exhibit 10) dated 10 August 2007, in which he explained the circumstances of the meeting with Tome Gashi and Avci Yalcin.

2.2.2.5. the transcripts of telephone calls and live conversations recorded by Avci Yalcin

2.2.2.6. the statements of witness Antonio Fulco, who performed part of the investigation.

3. A further point developed in the appeal is that the defendant would not have been able *in abstracto* to exert a relevant influence on the international judge and prosecutor. Also this reason of the appeal is ungrounded, for the same reason highlighted above under 1.

4. As to the crime of falsification of documents, the appeal stresses that art. 332 CCK refers to documents suitable to produce some legal effect and that in order to produce such legal effect, it is necessary that the document be used, i.e. "introduced" into the legal traffic. Contrary to this, the Panel concurs that the norm is clear in stating that the drawing up of a false document is per se punishable, regardless of whether such document was subsequently used: indeed, art. 332 clearly criminalizes both the conduct of drawing up the false document (or of altering a genuine document) or the conduct of using the false document (thus making it clear that either conduct is per se punishable).

4.1. The appeal argues that, anyway, the documents referred to in the indictment were not suitable (in abstract) to cause any legal effects and that they could not be considered as documents pursuant to the legal definition. Contrary to this, the Panel concurs with the first instance judge in that the criminal code contains a very broad definition of document, suitable to encompass the objects described in the indictment. Indeed, according to art. 107,6 CCK, a document is any object suitable or designated to serve as evidence of some fact relevant to legal relations, regardless of whether it is an official document (this latter case being specifically regulated by the third paragraph of the same article). In the instant case, both the note of International Prosecutor Ciaravolo and the letter of Lawyer Tome Gashi are objects which can suitably serve as evidence of the information contained therein. And such information is surely relevant to legal relations (to the point that they were, *in abstracto*, suitable to influence the evaluations of the magistrates involved in the decision making

process).

That the documents were drawn up by Sokol Quse is made clear by the circumstance (correctly assessed by the first judge) that he:

4.1.1. handed over such documents to Avci Yalcin when the latter was complaining about the fact that despite the payment of the relevant sum of 80.000 Euros, his friends had not been released from prison yet. This means that there was a material connection between Sokol Quse and the falsified documents (he physically gave them to Avci),

4.1.2. had a significant motive to commit the falsification. Such false documents, indeed, were a suitable means by which Sokol Quse could prove to Avci Yalcin that he had been successfully influencing Carol Peralta and Annunziata Ciaravolo and that their intervention in the case could not be successfully accomplished due to reasons external to their will (i.e. the intervention of lawyer Tome Gashi).

5. In conclusion, the first instance judge grounded his decision on admissible evidence and did not commit the procedural violations alleged by the defence. Based on such evidence the facts have been satisfactorily ascertained and the legal qualification given to such facts is considered by this panel to be correct.

6. With regard to the sentencing policy, the appeal claims that only the mitigating circumstances were properly assessed by the first instance judge. The aggravating circumstances considered ("big social danger" and "endangering the reputation of certain people") should not have been considered as aggravating circumstances, being already contained in the description of the criminal offence.
The Panel, contrary to this allegation of the defence, deems that the aggravating circumstances ascertained by the first instance judge were correctly assessed. It is to be excluded that the circumstances considered in the appealed verdict are constitutive elements of the criminal offences. On the contrary, the intensity of danger to the protected value is precisely one of the aggravating circumstances considered by art. 64 CCK.
The panel agrees that the penalty ordered by the first instance judge is reasonably calculated and the reasoning provided thereto is ample and sound, by far sufficient in order to enable the defendant to understand the motives for its entity.
For the above reasons it was decided as in the enacting clause.

Ferdinando Buzzier de Mongeot	Francesco Florit	Gezim Llulluni
Presiding Judge	Panel Member	Panel Member

Sonila MacNeil
Court recorder