

IN THE MUNICIPAL COURT OF PRIZREN
Case Number: PPS 34/09
16 October 2009

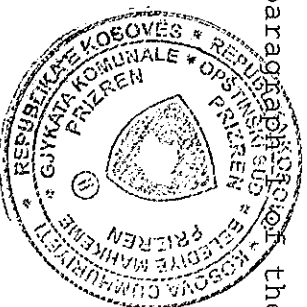
IN THE NAME OF THE PEOPLE

Judge Malcolm Simmons Presiding, with court recorders Vlora Johnston, Valentina Gashi, Stephen Parkinson, Nexhmije Mezini, Patricia Faltusova and Sonila MacNeil, in the criminal case against (1) Enver Zhitia, (2) Gani Grajdevci and (3) Selman Bogiqi, charged pursuant to the Summary Indictment filed by the Special Prosecutor of the Special Prosecution Office of the Republic of Kosovo (hereinafter "the SPRK") dated 12 May 2009 with the criminal offence of "Disclosing Official Secrets" committed in the period 13 August 2007 to 24 August 2007; 3 September 2007 and on 7 April 2008 in Prishtinë/Pristina municipality, Kosovo contrary to Article 347 (1) of the Provisional Criminal Code of Kosovo (hereinafter "PCK"), after holding a public trial on the 20 July, 1,2,16,23 September and 8 October 2009, Nazmi Mustafa appeared for the Special Prosecution Office of the Republic of Kosovo, the First Defendant Enver Zhitia was represented by Mexhid Sylta, the Second Defendant Gani Grajdevci represented himself and the Third Defendant Selman Bogiqi was represented by Bajram Tmava, on 16 October 2009 took and publicly announced the following

JUDGMENT

The Defendant **Gani GRAJDEVCI**, fathers name Sadik Grajdevci, mother's name Fatime Haliti, born on 8 February 1951 in the Village Ribari i Madh, in the Municipality of Lipjan, current address in Ibrahim Orugi Str. No.349, Pristina, identification number 1011127548, married, father of 3 children, Civil Administration Clerk, Pristina District Court, Kosovar Albanian, finished high school, good financial situation,

Pursuant to article 389 paragraph 1 of the CPCK



THE CHARGE IS REJECTED

that on 13 and 17 August 2007 in the capacity of a clerk of the Registry office of Pristina District Court, following the recording of investigation proceedings he, as a person in charge in presence of his colleague, the first defendant Enver Zhittia without authorization communicated and made available information to an unauthorized person, Rexhep Ibishi regarding the records of investigation proceedings and which information constituted an official secret whose disclosure has caused or might have caused detrimental consequences. Later, on 20 August 2007 he communicated the same information to a person named Flamur Bogaj, whereby he has disrupted the normal course of criminal proceedings. By reason thereof, it was alleged he had committed the criminal offence of "disclosing official secrets" contrary to Article 347 paragraph 1 of the CPCK.

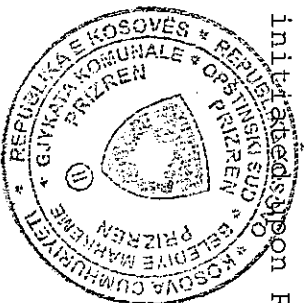
Further, Defendant **Enver ZHITTIA** fathers name Etem Zhittia, mother's name Zyrije Shabani, born on 15 April 1952 in the village Lluge, Municipality of Podujevo, currently residing at Nazmi Gafurri Str. No. 245, Pristina, identification number 10001225096, married, father of 6 children, currently working as a Cashier, Pristina District Court, Kosovar Albanian, average financial situation, and

Defendant **Selman BOGIQI**, fathers name Fetah Bogiqi, mother's name Kada Morina, born on 6 December 1949 in Komoran Municipality of Glogovac, current address in residing at Xhemajl Mustafa Str. Pristina, identification number 101450573, Married, Judge of the District Court of Pristina, Kosovar Albanian, finished Bachelor degree in Law, average/good financial situation,

Pursuant to article 390 paragraph 1 of the CPCK are

ACQUITTED FROM THE ALLEGATIONS

that the First Defendant, Enver ZHITTIA on 13 and 14 August 2007, in the capacity of an official of the District Court of Prishtinë/Pristina and following a preliminary discussion with Rexhep Ibishi about investigation proceedings initiated pursuant to Decision Ruling 58/07



dated 26 July 2007 by the Special Prosecution of the Republic of Kosovo against the defendant, Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka for committing the criminal offences of "Abusing official duty or position" contrary to Article 339 of the PCCK" and "Accepting bribes" contrary to Article 343 read with Articles 20 and 23 of the PCCK, went to the court Registry and inspected the case records and following this unauthorised examination through a phone conversation that he had with the defendant Gani Rukiqi on 14 August 2007 in the presence of Rexhep Ibishi communicated and made available to him information regarding the initiated investigation proceedings. This information constituted an official secret whose disclosure has caused or might have caused detrimental consequences. Accordingly, he has disrupted the normal course of criminal proceedings.

The Third Defendant, Selman BOGIQI In the capacity of an official person, acting as pre-trial judge of Pristina District Court in the above-mentioned criminal investigations initiated against the defendants Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka as Construction inspectors in Municipality of Prishtinë/Priština for the above-mentioned criminal offences upon Ruling 58/07 dated 26 July 2007, intentionally and without authorization, through phone conversations with the defendant Gani Rukiqi communicated and made available to him detailed information regarding the above-mentioned investigation proceedings initiated against him which information constituted an official secret whose disclosure has caused or might have caused detrimental consequences.

Accordingly, the Defendant Selman Bogiqi has damaged the criminal proceedings against the defendants Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka who were suspected of receiving bribes from an injured party, namely the instigator of the criminal charge, Agim Kryeziu, citizen of Prishtinë/Priština.

By reason thereof, it was alleged the Third Defendant had committed the criminal offence of "disclosing Official Secrets" contrary to article 347 paragraph 1 of the PCCK.



Pursuant to Article 103 of the CPCK the costs of criminal proceedings under Article 99 paragraph 2 subparagraphs 1 through 5, the necessary expenses of the defendant and the remuneration and necessary expenditures of defense counsel shall be paid from budgetary resources.

REASONING

It was the Prosecution case that, inter alia, information or documentation contained within a court file designated a "SEC" case was an 'official secret' within the meaning of Article 347 of the CCK.

The Prosecution case against each Defendant averred the following

First Defendant, Enver ZHITIA

On 13 and 14 August 2007, in the capacity of an official of the District Court of Prishtinë/Priština and following a preliminary discussion in person that he had with Rexhep Ibishi about investigation proceedings initiated upon Ruling 58/07 dated 26 July 2007 by the Special Prosecution Office of the Republic of Kosovo against the defendants, Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka for committing the criminal offences of "Abusing official duty or position" contrary to Article 339 of the PCKK" and "Accepting bribes" contrary to Article 343 read with Articles 20 and 23 of the PCKK, he went to the court Registry and inspected the case records and following this unauthorised examination through a phone conversation that he had with the defendant Gani Rukiqi on 14 August 2007 in the presence of Rexhep Ibishi communicated and made available to him information regarding the initiated investigation proceedings. This information constituted an official secret whose disclosure has caused or might have caused detrimental consequences. Accordingly, he had disrupted the normal course of criminal proceedings.



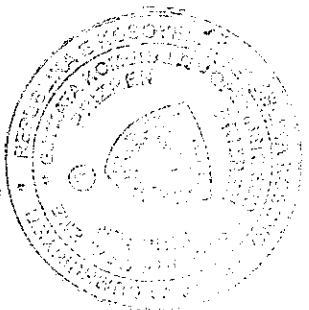
Second Defendant, Gani GRAJQEVCI

On 13 and 17 August 2007 in the capacity of a clerk of the Registry office of Pristina District Court, following the recording of above-mentioned investigation proceedings he, as a person in charge in presence of his colleague, the first defendant Enver Zhittia, without authorization communicated and made available information to an unauthorized person, Rexhep Ibishi regarding the records of the above-mentioned investigation proceedings and which information constituted an official secret whose disclosure has caused or might have caused detrimental consequences. Later, on 20 August 2007, he communicated the same information to a person named Flamur Bogaj, whereby he has disrupted the normal course of criminal proceedings.

Third Defendant, Selman BOGIQI

In the capacity of an official person, acting as pre-trial judge of the Pristina District Court on the above-mentioned criminal investigations initiated against the defendants Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka as Construction inspectors in Municipality of Prishtinë/Priština for the above-mentioned criminal offences upon Ruling 58/07 dated 26 July 2007, intentionally and without authorization, through phone conversations with the defendant Gani Rukiqi communicated and made available to him detailed information regarding the above-mentioned investigation proceedings initiated against him which information constituted an official secret whose disclosure has caused or might have caused detrimental consequences.

Accordingly, the defendant Selman Bogiqi has damaged the criminal proceedings against the defendants Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka who were suspected of receiving bribes from an injured party, namely the instigator of the criminal charge, Agim Kryeziu, citizen of Prishtinë/Priština.



A. The Applicable Law

i. Article 347 of the Provisional Criminal Code of Kosovo

Article 347 provides

(1) An official person who, without authorisation, communicates, sends, or in some other way makes available to another person, information which constitutes an official secret or obtains such information with the intent to convey it to an unauthorised person shall be punished by imprisonment of up to three years.

(2) When the offence provided for in paragraph 1 of the present article is committed for personal gain or for the purpose of publishing or using the information outside of Kosovo, the perpetrator shall be punished by imprisonment of one to five years.

(3) When the offence provided for in paragraph 1 of the present article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one year.

(4) The provisions in paragraphs 1 through 3 of the present article shall apply to a person who disclosed an official secret after his or her official status has ceased.

(5) For the purposes of the present article, the term "official secret" means information or documents proclaimed by law, other provisions, or by a decision by the competent authority issued on the basis of law to be an official secret and whose disclosure has caused or might cause detrimental consequences.

B. Background

On 26 July 2007 the SPRK issued a Ruling on Initiation of Investigation¹ against Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka for the criminal offences of "Abusing

¹ Filed on 03.08.2007 with SEC No 58/07



official duty or position" contrary to Article 339 of the PCCK" and "Accepting bribes" contrary to Article 343 read with Articles 20 and 23 of the PCCK.

On 26 July 2007 the Court made Orders for the interception of telephonic communications of telephone number 044-173-255 possessed and used by Gani Rukiqi; telephone number 044-200-158 possessed and used by Drita Rukiqi and telephone number 044-141-794 possessed and used by the informant Agim Kryeziu. Those Orders would remain in force for the period 27 July 2007 through 23 September 2007.

On 24 January 2008 the SPRK filed a Decision to Expand the Investigations against the Third Defendant for the criminal offences of Aiding and Abetting a Perpetrator under Article 305 of the CCK; violation of the procedural secrets defined in Article 311 of the CCK; bribery defined in Article 343 of the CCK and exercising influence defined in Article 345 of the CCK.

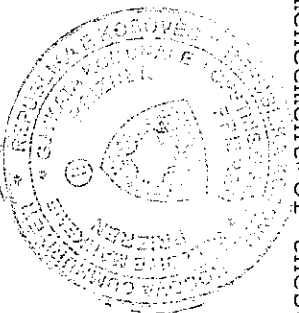
On 27 February 2008 the Court issued a further Order for the interception of telephonic communications of telephone number 044-173-255 possessed and used by Gani Rukiqi; telephone number 044-200-158 possessed and used by Drita Rukiqi and telephone number 044-124-172 possessed and used by the Third Defendant Selman Bogiqi. That order would remain in force for the period 27 February 2008 through 26 April 2008.

The investigation against Gani Rukiqi was terminated pursuant to a Decision on Termination of Investigation dated 12 May 2009.

On 8 September 2008 the Special Prosecutor under number PP 778 - 7/08 issued a Ruling for the Termination of Investigation against Drita Rukiqi, Nerxhivane Daka and Selman Bogiqi.

On 6 November 2008 the International District Court Prosecutor under CIR number 2007/644/PRS/NM in case number PP 778 - 7/08 issued a Ruling Withdrawing the Ruling for Termination of Investigation against Selman Bogiqi.

On 12 May 2009 the Defendant Selman Bogiqi filed in the Supreme Court of Kosovo an application for defending the legitimacy. As at the commencement of these proceedings



that application had not been determined by the Supreme Court.

Counsel for Selman Bogiqi averred that the Court should not hear evidence until that application had been determined.

Article 224 of the CPCK provides that the Prosecutor

...shall terminate the investigation if at any time it is evident from the evidence collected that:

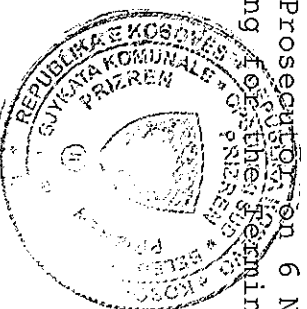
- 1) There is no reasonable suspicion that a specific person has committed the indicated criminal offence;*
- 2) The act reported is not a criminal offence which is prosecuted ex officio;*
- 3) The period of statutory limitation for criminal prosecution has expired;*
- 4) The criminal offence is covered by an amnesty or pardon; or*
- 5) There are other circumstances that preclude prosecution.*

The Termination of Investigation dated 8 September 2008 was based upon Article 224 (1) sub-paragraph (1).

Pursuant to Articles 6 (3), 46 (1) and 220 (1) and (3) of the CPCK the Prosecutor may investigate alleged offences and prosecute those against whom there exists grounded suspicion.

The Prosecutor averred the legal classification of the offences the subject of the current Summary Indictment are different to the offences the subject of the Decision to Expand Investigations dated 24 January 2008. In fact, the Decision to Expand Investigations refers to possible offences under Article 311 of the CPCK. In any event, the factual bases the subject of the Decision to Expand Investigations are essentially the same as the factual allegations the subject of the Summary Indictment.

The decision of the Special Prosecutor on 6 November 2008 to withdraw its earlier Ruling of Termination of



Investigation was somewhat surprising. Its decision to resurrect that investigation does not appear to be based upon the emergence of new facts or evidence. Indeed, the Ruling simply stated

"After further consideration of the case, our office believes that the Ruling shall be withdrawn".

Article 438 of the CPCK provides

Criminal proceedings terminated by a final ruling or a final judgment may be reopened upon the request of authorized persons only in instances and under conditions provided for by the present Code.

Reference in Article 438 to 'criminal proceedings' and their termination by a 'final ruling' is clearly a reference to a final Court ruling.

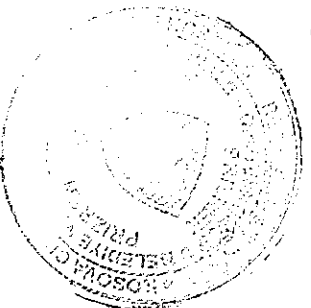
Article 4 of the CPCK provides

(1) No one can be prosecuted and punished for a criminal offence, if he or she has been acquitted or convicted of it by a final decision of a court, if criminal proceedings against him or her were terminated by a final decision of a court or if the indictment against him or her was dismissed by a final decision of a court.

(2) A final decision of a court may be reversed through extraordinary legal remedies only in favour of the convicted person...

The charges the subject of the Summary Indictment have not previously been determined by a final decision of a court. In the circumstances this matter is not Res Judicata.

Further, the Ruling for the Termination of Investigation and the subsequent Ruling Withdrawing the Ruling for Termination of Investigation did not prejudice the Defendant in these proceedings.



C. Evidence

There was no dispute between the parties that on 3 August 2007 the District Court in Pristina received from the SPRK the Ruling on Initiation of Investigation in case number SEC 58/07. There was no dispute that on the same day a Court employee, Artifete Krasniqi, registered that case in the PPH Register under case number PPH 223/07.

The Prosecution called **Rexhep Ibishi**². He is the nephew of the First Defendant, Enver Zhittia. Mr. Ibishi was examined by the Special Prosecutor on 23 May 2008³

Mr. Ibishi testified that he had known Gani Rukiqi since secondary school.

Mr. Ibishi testified that he occasionally visited his uncle at the District Court in Pristina. He recalled such a visit in 2007. He testified that he had gone to the District Court to enquire about a case in which he was involved. It is evident from the relevant transcripts of telephonic interceptions that that meeting occurred on 13 August 2007.

Mr. Ibishi testified that during his visit to the District Court the First Defendant informed him that he had seen Gani Rukiqi's name in a court document. In fact, he was referring to the PPH Register.

Mr. Ibishi could not recall the First Defendant referring to anyone else by name. However, on 13 August 2007 at 10:48:02 Rexhep Ibishi spoke with Gani Rukiqi. During that telephone conversation Mr. Ibishi informed Mr. Rukiqi that Drita Rukiqi and Nerxhivana Daka were also involved.

Mr. Ibishi testified that the First Defendant knew that he and Gani Rukiqi were friends. It was presumably for this reason the First Defendant passed-on this information to his nephew. He testified that he was, at that stage, unaware of the specific details of the allegations.

² The investigation against Mr. Ibishi was terminated pursuant to a Decision on Termination of the Investigation dated 12 May 2009

³ Exhibit P 5



Mr. Ibishi testified that upon his leaving the District Court he telephoned Gani Rukiqi in order to inform him of the case against him. Mr. Ibishi subsequently met Gani Rukiqi at the Municipality Building where Gani Rukiqi worked.

Mr. Ibishi testified that he had known Drita Rukiqi since secondary school. He also knew Nerxhivane Daka. He testified that he did not know the Third Defendant.

Mr. Ibishi testified that, at the time of his initial conversation with Gani Rukiqi, he was unaware that the case in issue had been assigned to the Third Defendant.

However, it is clear from transcripts of telephone interceptions that by 10:48 on 13 August 2007 Mr. Ibishi knew the case had been assigned to the Third Defendant.

The Prosecution called **Gani Rukiqi**. He worked for the Municipality of Pristina during the period 1999 - 2008. From July 1999 to 2003 he worked as a Construction Clerk. From 2003 to 2008 he was Acting Head of the Construction Inspection Unit.

Mr. Rukiqi was interviewed as a witness by police on 5 May 2008⁴.

Mr. Rukiqi testified about the meeting he had with Rexhep Ibishi following Mr. Ibishi's meeting with the First Defendant. He testified that Mr. Ibishi informed him that a case had been commenced at the District Court against him, Drita Rukiqi and Nerxhivane Daka. Drita Rukiqi and Nerxhivane Daka were his colleagues in the Inspection Unit.

Mr. Ibishi had previously testified before this Court that the First Defendant only mentioned seeing the name Gani Rukiqi. That was not correct.

Mr. Rukiqi testified that he asked Mr. Ibishi to contact the First Defendant and enquire about the case. Clearly he wanted to know more about the allegations. The same day he discovered the case had been assigned to the Third Defendant.

⁴ Exhibit P 4



Mr. Rukiqi was interviewed by police on 5 May 2008. During that interview he was asked

"Please give us the names of people that provided you with information pertaining to the criminal investigation against you."

In response, Mr. Rukiqi testified

"Rexhep Ibishi, through [the First Defendant]"

Mr. Rukiqi testified that he spoke only once with the First Defendant. Mr. Rukiqi described a telephone conversation with Mr. Ibishi. During that conversation Mr. Ibishi gave his phone to the First Defendant who then spoke with Mr. Rukiqi. It is clear from the telephone intercepts⁵ that that conversation took place on 14 August 2007.

Mr. Rukiqi testified that he had never visited the First Defendant in his office at the District Court. He further testified the First Defendant had not informed him of the substance of the allegations.

Mr. Rukiqi testified that he and the Third Defendant were from the same village. They had known each other for 35 - 40 years.

Mr. Rukiqi testified about a meeting with the Third Defendant at the latter's home. It is clear from the transcripts of the relevant telephone interceptions that that meeting took place on 16 August 2007⁶. Also present at that meeting were Drita Rukiqi and Nerxhivane Daka.

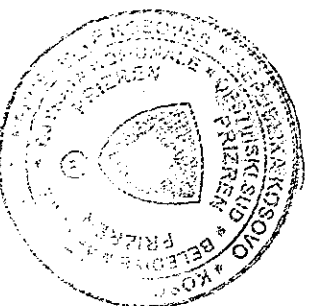
In his testimony, Mr. Rukiqi portrayed the presence of Drita Rukiqi and Nerxhivane Daka as pure chance. He said they were in the field together. In an intercepted telephone conversation between Gani Rukiqi and the Third Defendant immediately prior to that meeting⁷, Gani Rukiqi stated

"I wanted to come and see you along with Nexh and Drita."

⁵ Exhibit P 1

⁶ Exhibit P1

⁷ Exhibit P1



Mr. Rukiqi described the meeting at the Third Defendants home lasting some 30 - 40 minutes. He testified that they discussed the case in issue during that meeting.

When Mr. Rukiqi was interviewed by police in May 2008⁸ he was asked about that meeting. He testified

"...we talked about my case and I told him that Rexhep told me about the case and that the case had been assigned to Selman"

Mr. Rukiqi testified before this Court about another meeting with the Third Defendant at the District Court in Pristina. The meeting took place in the Third Defendants office.

The Third Defendant also testified before this Court about that meeting. That meeting took place on 3 September 2007.

Mr. Rukiqi testified that during that meeting the Third Defendant confirmed that a case had been filed against him by Agim Kryeziu. He further testified that the Third Defendant gave him the "claim" filed by Agim Kryeziu to read.

During cross-examination by counsel for the Third Defendant Mr. Rukiqi subsequently denied the Third Defendant had given him any document to read.

Counsel for the Third Defendant put in evidence the original court file number PPH 223/2007⁹. By reference to the date stamps on the various documents contained therein, at the time of this meeting, the Court file contained only the Ruling on Initiation of Investigation dated 26 July 2007.

When Mr. Rukiqi was interviewed by police in May 2008¹⁰ he was asked by police

"Did [the Third Defendant] ever assure you in any way that he would make sure that you would not be harmed by this case?"

⁸ Exhibit P 4

⁹ Exhibit D3.4

¹⁰ Exhibit P 4



In response he testified

"No, he said he would help me but he didn't assure me that he would do everything"

Mr. Rukiqi testified that he was subsequently contacted by telephone by the Third Defendant who asked him to undertake some work involving the assessment of a building for the Third Defendants brother. At that time Mr. Rukiqi was still working for the Municipality. He said he assigned the case to one of his subordinates. Mr. Rukiqi stated that he had never asked the Third Defendant for a favour and that the Third Defendant had never asked him for a favour.

The Prosecution called **Drita Rukiqi**. In 2007 she was employed as a Construction Inspector by the Directorate of Construction Inspection. Her colleagues included Gani Rukiqi and Nerxhivane Daka.

Mrs. Rukiqi was interviewed as a witness by police on 5 May 2008. She testified that she did not know the nature of the allegations.

Mrs. Rukiqi testified that the first time she became aware that she was a suspect in a criminal investigation was when she attended Court in these proceedings in July 2009. In fact, she had not been served with a copy of the Decision on Termination of Investigation dated 8 September 2008. A copy of that Decision was served upon her prior to her giving evidence before this Court.

In answer to a question put by counsel for the Third Defendant, Mrs. Rukiqi testified that Gani Rukiqi had never informed her that she was the subject of a criminal investigation. That contradicted the testimony of Nerxhivana Daka to which I shall refer below.

Indeed, Gani Rukiqi testified that Rexhep Ibishi had informed him of the investigation against him, Drita Rukiqi and Nerxhivana Daka. It is inconceivable that he would not have informed Drita Rukiqi of that investigation.

Mrs. Rukiqi testified that she did not know the Third Defendant was a judge. Given that they had previously



worked together at the Municipality that would be surprising.

Referring to the meeting with the Third Defendant at his home, Mrs. Rukiqi testified that Gani Rukiqi and Nerxhivane Daka were present. It was her recollection the meeting lasted approximately 10 minutes. She testified that the meeting was arranged by Gani Rukiqi and the conversation limited to a discussion about injuries sustained by the Third Defendant and his wife in a car accident in Montenegro.

Mrs. Rukiqi testified that she had never met or had any communication with the First Defendant.

The Prosecution called **Flamur Bogaj**, son of the Third Defendant Selman Bogiqi. Mr. Bogaj exercised his right pursuant to Article 160 (2) of the CPCK not to testify.

Pursuant to Article 160 (5) the Court exempted Mr. Bogaj from any obligation to testify against the First and Second Defendants because the nexus between the Defendants was such that it would be impossible to confine his evidence solely to the First and Second Defendants.

The Prosecution called **Nerxhivane Daka**. She described her occupation in 2007 as a Field Operator in construction. She was employed at the Municipality. Her colleagues included Gani Rukiqi and Drita Rukiqi.

Mrs. Daka was interviewed as a witness by police on 5 May 2008¹¹. She was served with a copy of the Decision on Termination of Investigation dated 8 September 2008 prior to her giving evidence in these proceedings.

Mrs. Daka testified that she had been informed by Gani Rukiqi in August/September 2007 that she, Gani Rukiqi and Drita Rukiqi were the subject of a criminal investigation. She testified that Gani Rukiqi did not inform her of the substance of the allegations or from whom he had obtained this information. She could not recall if anyone else was present at that meeting.

¹¹ Exhibit P3



Mrs. Daka testified that she discussed the criminal investigation with Drita Rukiqi the same day she had been informed of the investigation by Gani Rukiqi. This contradicted the testimony of Drita Rukiqi who had testified before this Court that the first time she became aware that she was a suspect in a criminal investigation was in July 2009.

She too testified about the meeting at the Third Defendants home. Mrs. Daka testified that she was in the field when Gani Rukiqi suggested they meet the Third Defendant to enquire about his health following a road traffic accident in Montenegro. She testified that she, Gani Rukiqi, Drita Rukiqi, the Third Defendant and the Third Defendants wife were present in the same room throughout the meeting. She thought the meeting lasted no more than 30 minutes. Mrs. Rukiqi testified that she spent most of the meeting talking with the Third Defendants wife. She did not hear what discussion took place involving the Third Defendant.

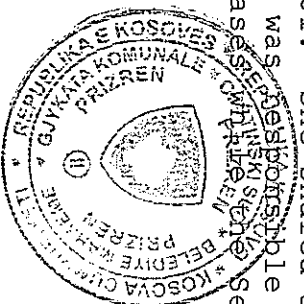
Mrs. Daka testified that she knew the Third Defendant was a judge. She testified that she had not been informed by Gani Rukiqi that the Third Defendant was the judge to whom the criminal investigation had been assigned. She had never met or had any communication with the First Defendant.

It is inconceivable that Mrs. Daka, a suspect in a criminal investigation, would attend a meeting at the home of the judge to whom the case had been assigned and not be aware of that fact.

Indeed, the transcripts of the various telephone intercepts support the Prosecution assertion that all three suspects were aware at an early stage in the investigation that they were the subject of an investigation and that, prior the meeting with the Third Defendant, they knew the case had been assigned to him.

The Third Defendant called **Artifete Krasniqi**.

Mrs. Krasniqi had worked in the Registry of the District Court in Pristina since 2001. She shared an office with the Second Defendant. She was ~~assigned to~~ responsible for the registration of criminal cases ~~with the~~ Second Defendant



was responsible for the registration of civil cases. It appears there existed between them an informal agreement that, in their respective absence, each would undertake the duties of the other.

Mrs. Krasniqi testified that she was on leave from 6 August until the end of August 2007. She could not recall the exact date she returned to the Court. Court records show that Mrs. Krasniqi was on leave from 6 - 29 August 2007. There was no dispute that on 3 August 2007 the District Court in Pristina received from the SPRK the Ruling on the Initiation of Investigation in case number SEC 58/07.

There was also no dispute that on the same day Mrs. Krasniqi registered that case in the PPH Register under case number PPH 223/07. This, it appears, was not her normal practice when registering SEC cases.

Mrs. Krasniqi testified that, ordinarily, she would receive SEC cases in a sealed envelope. She would not open the envelope. Receipt of the envelope would be entered in a separate register. She testified that she would endorse the sealed envelope with a file number and enter in the relevant Register the name of the judge to whom the case had been assigned.

Referring to case number PPH 223/07, Mrs. Krasniqi testified that the Ruling on Initiation of Investigation was not in a sealed envelope when she received it.

The Reception Register of the Court¹² contains a data entry for 3 August 2007 under number 970 with reference "Sec-mo 58/07" that records receipt of a "Ruling"¹³.

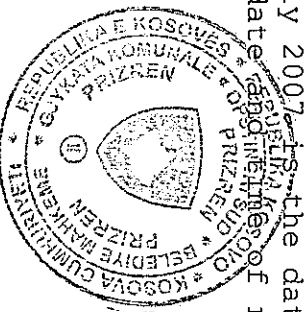
Reference in the Reception Register to "Ruling" would suggest the Ruling on Initiation of Investigation did not arrive at Court sealed in an envelope or, if it did, was opened by a Court clerk prior to it being registered in the Reception Register. The Register does contain other entries that refer to the receipt of "envelopes"¹⁴.

On the top, right-hand corner of the Ruling on Initiation of Investigation dated 26 July 2007, is the date stamp of the Court endorsed with the date ~~captioned~~ of receipt.

¹² Exhibit D3.2

¹³ Aktivendum

¹⁴ Zarf



There is also the reference number "970" that corresponds with the number in the "delivery date"¹⁵ column of the Register. On the top left-hand side of the Ruling is the case number "Sec. no. 58/07".

Although this was a SEC case - and Mrs. Krasniqi entered it as such in the PPH Register¹⁶ - she testified that she did not find it odd that the Ruling was not in a sealed envelope when she received it.

Mrs. Krasniqi testified that she entered the names of the Suspects in the PPH Register. Given this was a SEC case and given that, on her own testimony, such cases are registered in a different way to PPH cases, it is surprising she registered this case in this way.

Mrs. Krasniqi testified that, having registered the case, she would normally give the file to the judge to whom the case had been assigned. She could not recall when she had done so on this occasion.

Mrs. Krasniqi testified that during working hours the various registers would remain on the desk in her office. After working hours the registers were put away in locked drawers.

Mrs. Krasniqi testified that she has never discussed the SEC case in issue with any of the Defendants.

The Prosecution put in evidence the **transcriptions of the interception of telephonic communications** obtained pursuant to the Court Orders of 26 July 2007 and 27 February 2008. I shall refer to these when I consider the evidence relating to each of the Defendants.

The Albanian versions of the transcripts of those telephone interceptions were agreed by the Defendants.

Reference herein is made to extracts from the said transcripts.

¹⁵ Data e degraimit
¹⁶ Exhibit D3.1



The First Defendant, **Enver Zhittia** gave evidence in his own defence. He was examined as a Suspect on 23 May 2008¹⁷.

The First Defendant has been employed as a Cashier at the District Court in Pristina since 1980.

The First Defendant testified about a meeting with his nephew Rexhep Ibishi at the District Court in Pristina. Although he could not recall the date, it was clear he was referring to the meeting on 13 August 2007 about which Rexhep Ibishi had already testified.

The First Defendant testified that Mr. Ibishi was enquiring about a case in which he was involved that was proceeding before the District Court. The First Defendant went to the Court Registry to enquire about the number of that case. While checking the PPH Register for reference to the case that was of interest to Mr. Ibishi the First Defendant saw that a case had been registered against Gani Rukiqi. This was the Register entry about which Mrs. Krasniqi had testified.

The First Defendant testified he had been friends with Mr. Rukiqi for 30 years.

The First Defendant testified that he informed Rexhep Ibishi about the case against Gani Rukiqi. He could not recall if other persons were mentioned in the Register.

Although the First Defendant candidly admitted providing Mr. Ibishi with information from the PPH Register, other issues arise concerning, inter alia, the substance and source of the information disclosed and, to what extent if at all, this implicated the Third Defendant.

The Prosecution put in evidence the transcript of a telephone conversation on 13 August 2007 at 10:40:36 between Gani Rukiqi and Rexhep Ibishi

Gani: Rexh

Rexhep: I am looking at it, I let you know later

Gani: what is Enver saying

¹⁷ Exhibit P7



Rexhep: OK, I will let you know immediately, I am with him

Gani: it seems nonsensical

Given the context in which it is used, the Court finds that reference to "Enver" is reference to the First Defendant.

At the time of that telephone conversation Mr. Ibishi appeared not to know the substantive allegations the subject of the investigation against Gani Rukiqi.

The First Defendant testified that on the day he discovered the existence of the case against Gani Rukiqi, he spoke with Gani Rukiqi by telephone.

The Prosecution put in evidence the transcript of a telephone conversation on 13 August 2007 at 10:48:02 between Rexhep Ibishi and Gani Rukiqi:

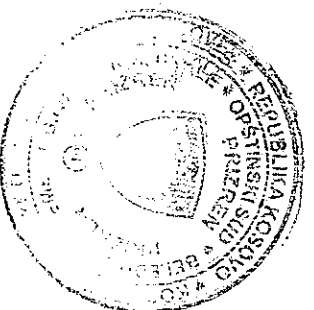
Rexhep Ibishi: I went there, they had submitted it, the case had reached Selman, but he is on holiday. From what I understood from uncle Enver, it did not mention a lot, they called me for a coffee for a drink to pay them to do something.

Gani Rukiqi: Who was it?

Rexhep Ibishi: It did not have a name; the name is with Selman, It was you, Drita and Nerxhivane, who is Nebahate?

Gani Rukiqi: Nerxhivan Daka, was it Nerxhivane Dake. Did you see the copy?

Rexhep Ibishi: Not the copy but the book in which it was recorded, it says Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka they have asked for a bribe for somebody, have invited for a coffee to talk to him to get the bribe, no amount of money or nothing else had been set.



The First Defendant testified that the only information he gave to Rexhep Ibishi was contained in the PPH Register¹⁸. He denied knowing the substance of the allegations.

However, during that telephone conversation reference is made to the substantive allegations. Although the Register does refer to the Articles of the Criminal Code that are the subject of the investigation, it does not contain details of the substantive allegations. It does appear on the face of the transcript that the First Defendant had access to additional information about the substantive allegations. However, no further reference thereto is made during the telephone conversation. The comments made by Mr. Ibishi during that telephone conversation appear to be based more on supposition than actual knowledge of the substantive allegations.

The Prosecution put in evidence the transcript of a telephone conversation on 13 August 2007 at 11:00:02 between Gani Rukiqi and Rexhep Ibishi:

Gani: Either you wait for me or I wait for you. Did you meet up Enver or who else?

Rexhep: Yes, with Enver and Gani.

Gani: Who is Gani?

Rexhep: Gani is the one you receives cases

Gani: Were you not able to see more details?

Rexhep: No, because it had been sent to Selman.

Given the context in which it is used, the Court finds that reference to "Gani" is reference to the Second Defendant.

During that conversation Rexhep Ibishi informed Gani Rukiqi that he was with the First and Second Defendants. He states he has no further information regarding the investigation.

¹⁸ Exhibit D 3.1



The Prosecution put in evidence the transcript of a telephone conversation on 14 August 2007 at 7:57:13 between Gani Rukiqi and Rexhep Ibishi:

Rexhep: ...he told me he will call me but I shall go without him calling me.

Gani: Yes, go without him calling you in case he forgets or is too shy to say. Tell him Uncle Enver please do this job for me, and this is a top secret between us and call me immediately.

Rexhep: Ok, do not worry, you should not worry do not make too big an issue out of this. There is nothing in it.

Gani: I know there is nothing, but I would like to know who it is just to be watchful. This is a big distress but it is some kind of lesson. I shall be indebted all my life. Bye.

Mr. Ibishi subsequently met with the First Defendant.

The Prosecution put in evidence the transcript of a telephone conversation on 14 August 2007 at 09:04:11 between Gani Rukiqi and Rexhep Ibishi:

Gani: Hello: what's up

Rexhep: I am at uncle Enver's, other than the notes we got yesterday we cannot do any more until Selman is back, you can speak to uncle Enver if you like.

...

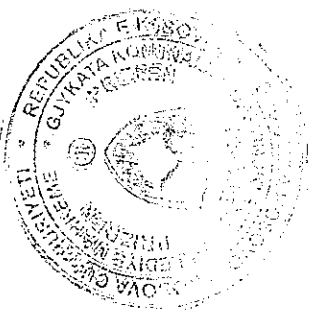
Gani:... So you could not do anything huh,

Zhittia: No, I could not do anything until they are back from the holidays.

Gani: So it's sure that the case is with Selman is it not?

Zhittia: Yes, yes, it is.

Gani: Ok thank you.



Zhittia: Common, do not worry.

Gani: Bye.

During that telephone conversation the First Defendant confirmed that the case had been assigned to the Third Defendant.

The Prosecution put in evidence the transcript of a telephone conversation on 14 August 2007 at 10:06:19 between Rexhep Ibishi and Gani Rukiqi

Rexhep: Gani, where are you?

Gani: I am in the office, and you?

Rexhep: I am at your garage. Hey, do not make too big an issue out of this..., nobody should learn about it.

Gani: No, no.

Rexhep: That's what uncle Enver also said, ok, so when they are back from the holidays you take it.

Gani: So it's a hundred per cent sure it is there.

Rexhep: Yes, it is there, he went to verify the names once again, the name is Nerxhivan, no names as to who submitted it, you must know that it must be someone from here who has done it to you.

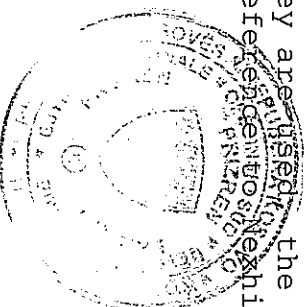
Gani: So there were no names who submitted, were there?

Rexhep: No there were no names there, this is intentional, you understand, this IS what they think. This will be ascertained when they open it when they are back.

Gani: when I am alone with Nexh and Drita we shall call you for a coffee.

Rexhep: Ok, no worries at all.

Given the context in which they are used, the Court finds that reference to "Nexh" is referent to Nexhivane Daka



while the reference to "Drita" is reference to Drita Rukiqi.

During that telephone conversation the First Defendant confirmed that the case had been assigned to the Third Defendant.

The First Defendant testified that he had not discussed the case in issue with the Third Defendant.

The Second Defendant, **Gani Grajqevci** gave evidence. He was examined as a Suspect on 23 May 2008¹⁹.

The Second Defendant had worked at the District Court in Pristina since 1972. At the time of the alleged offences he was the Civil Administration Clerk, responsible for the registration of civil cases. He testified that on any one day he might register between 5 and 40 cases. He worked in the same office at the District Court as Artifete Krasniqi.

Although Mrs. Krasniqi was primarily responsible for the registration of criminal cases the Second Defendant would occasionally also register criminal cases.

During the telephone conversation on 13 August 2007 at 11:00:02 between Gani Rukiqi and Rexhep Ibishi, Mr. Ibishi referred to a meeting with the First and Second Defendants.

The Second Defendant denied he had met with the First Defendant and Rexhep Ibishi.

The Third Defendant, **Selman Bogiqi**, gave evidence in his own defence. The Prosecution put in evidence the Minutes of his examination on 23 July 2008²⁰ and 26 February 2009²¹.

The Third Defendant testified that he had been a judge for over 25 years.

The Prosecution put in evidence the transcript of a telephone conversation on 13 August 2007 at 12:30:41 between Gani Rukiqi and the Third Defendant

¹⁹ Exhibit P6

²⁰ Exhibit P8

²¹ Exhibit P9



Gani: Hi

Bogiqi: Hi

Gani: Thanks god you are safe

Bogiqi: Where are you, who told you?

Gani: I got information, one kind of problem, my name was there, if! don't bother you

Bogiqi: No problem

Gani: Case seems to be with you. I have been interested and Shaban told me that you had a car accident, I was in your office I met your worker he gave me your number. I was in your office and Agron and your son gave me your number.

Bogiqi: After two days I will be there and then we talk

Gani: Living person is interesting in everything. Selman is my case with you

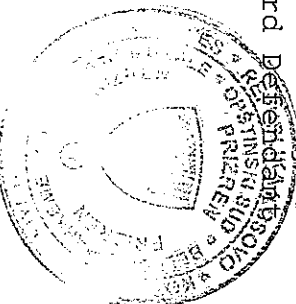
Bogiqi: I don't know

Gani: I pray to god case to be with you, hope is not to any of your colleagues. Because if it is something I wouldn't care, regards from Drita and Nebahate

Given the context in which it is used, the Court finds that reference to "Drita" is reference to the Drita Rukiqi.

The Third Defendant testified this was the first telephone call he received from Gani Rukiqi. During that telephone conversation Mr. Rukiqi informed the Third Defendant that he is involved in a case that he believes has been assigned to the Third Defendant.

The Prosecution put in evidence the transcript of a telephone conversation on 15 August 2007 at 2:24:26 between Gani Rukiqi and the Third Defendant.



Gani: Welcome back Selman

Bogiqi: How are you Gani... I called you a few times today, but was not able to reach you.

Gani: I have been busy at Gazmend Zajm.

Bogiqi: Check your phone if you like I called you a three or four times at 10 or 12. What is the problem?

Gani: I do not know I hear some criminal report is there against me, my sister in law, Drita and Nerxhivane Daka. Some one has written and that allegedly the case is with you.

Bogiqi: Is it sure it has come to me? Anton called me and asked me about something and mentioned it to me, and I said that if it is with me then it can stay there.

Gani: Yes, I told Rexha, you know that

Bogiqi: No need to speak on the phone... Gani says that he is happy that Selman escaped unscathed from a car accident.

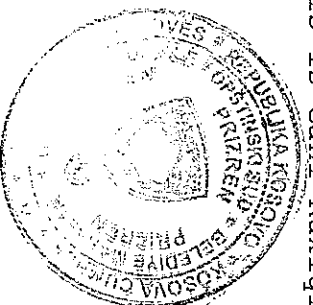
Given the context in which it is used, the Court finds that reference to "Drita" is reference to Drita Rukiqi while reference to "Rexha" is reference to Rexhep Ibishi.

During that telephone conversation Gani Rukiqi stated that a criminal report has been filed against him, Drita Rukiqi and Nerxhivane Daka and that the case has been assigned to the Third Defendant. The Third Defendant suggested they meet for coffee.

The Prosecution put in evidence the transcript of a telephone conversation on 16 August 2007 at 1:33:34 between Gani Rukiqi and the Third Defendant

Gani: Hello Selman, this is Gani Rukiqi, are you at home?

Bogiqi: Yes, I am,



Gani: I wanted to come and see you along with Nexh and Drita, we are at Xhemal Mustafa School.

Bogiqi: Ok, first entrance.

Given the context in which it is used, the Court finds that reference to "Nexh" is reference to Nerxhivana Daka while reference to "Drita" is reference to Drita Rukiqi.

During that telephone conversation the Third Defendant agreed to meet Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka at his home.

During his examination on 23 July 2008²² the Third Defendant testified he had known Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka since 1985, having worked with them at the Pristina Municipality. At that time the Third Defendant was a Supervisor for housing affairs.

When he was examined on 23 July 2008, referring to that meeting, he testified

"...we discussed about the Ruling to Initiate Investigations"

The Prosecution put in evidence the transcript of a telephone conversation on 17 August 2007 at 10:24:55 between Gani Rukiqi and the Third Defendant

Gani: Asks after the health of judge and family etc.

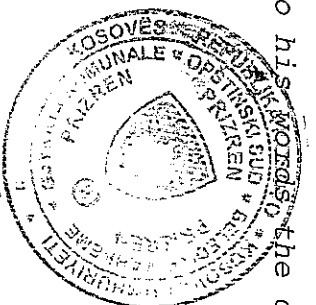
Bogiqi: You know what? The lady is on holiday until Monday. Can you imagine? Flamur goes to him to check who the case is with.

Gani: Should I go to Flamur or?

Bogiqi: Flamur will go to check him to find out who the case is with. I told him yesterday night to find out with Gani, the one who records the cases.

Gani: So according to his words, the case is with you,

²² Exhibit P8



isn't it?

Bogiqi: Yes, ok,....

Gani: Ok, because I am going nuts along with these colleagues. Selman: I shall let you know. We shall see.

Given the context in which it is used, the Court finds that reference to "Flamur" is reference to Flamur Bogaj while reference to "Gani" is reference to the Second Defendant.

During that telephone conversation the Third Defendant stated that he had asked his son, Flamur Bogaj, to speak with the Second Defendant in order to ascertain the whereabouts of the case.

The Prosecution put in evidence the transcript of a telephone conversation on 19 August 2007 at 8:01:20 between Gani Rukiqi and the Third Defendant

Gani: Hello, Selman, how are you, wife and kids?

Bogiqi: Ok, tomorrow, I spoke a little with Flamur; he will go tomorrow, he will look at it...

Gani: Should I go to make an authorisation or not,

Bogiqi: Yes, you should go it does not work without an authorisation.

Gani: At what time should I go?

Bogiqi: Around 8.30.

Gani: Ok, I go at 8.30, I have the general meeting, what do you reckon?

Bogiqi: I do not know what's inside it, if detention has been proposed, it remains to be seen from me. I will look at it and let you know. I am on holiday I will let you know.

Gani: Ok, please Selman, you're my brother. I hope something bad does not happen.



Bogiqi: Let's hear each other tomorrow and have a coffee.

Gani: Of course, by all means.

During that telephone conversation the Third Defendant referring to the possibility of a proposal for detention and said

"...it remains to be seen for me. I will look at it and let you know"

At that stage, the Third Defendant was well aware he was the judge to whom the case had been assigned. The Third Defendant then suggested meeting the following day.

The Prosecution put in evidence the transcript of a telephone conversation on 20 August 2007 at 11:46:24 between Gani Rukiqi and the Third Defendant

Gani: Hello Selman

Bogiqi: Did you meet up with this boy?

Gani: I only spoke with him on the phone. Did he not call you?

Bogiqi: My court recorder has not come back yet. Gani has not been able to give him any info whatsoever.

Gani: Are we going for a coffee? Are you free? Where are you

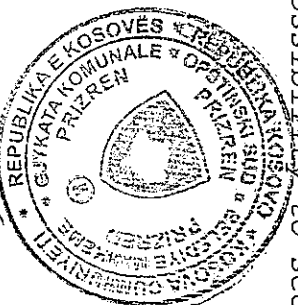
Bogiqi: No, I am still here busy, may be later in the afternoon may be we can go out.

Gani: Ok, when you are free.

Bogiqi: Ok, I will give you a ring.

Gani: So we do what Flamur said?

Bogiqi: There is no possibility to see the case, the boy has told him.



Gani: So there is no risk, is there?

Bogiqi: He has not seen the case. Don't worry we shall amortize it.

Given the context in which it is used, the Court finds that reference to "Gani" is reference to the Second Defendant.

During that conversation the Third Defendant suggested meeting later in the afternoon. When Gani Rukiqi expressed concern about the case the Third Defendant stated

"Don't worry we shall amortize it"

The Third Defendant was asked during the trial what he meant by his use of the word "amortize". He could not explain the meaning behind his use of the word. He testified

"I don't know how the word came out of my mouth"

The Prosecution put in evidence the transcript of a telephone conversation on 21 August 2007 at 18:06:40 between the Third Defendant and Gani Rukiqi

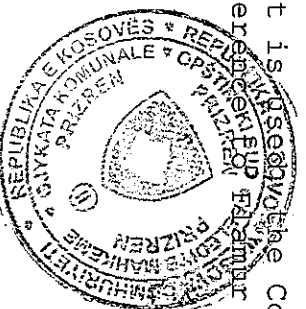
Bogiqi: That lady has not returned yet, checked with Flamur, the important one she is not back yet. My court recorder told me that the case is not here with me. Did you learn anything new?

Gani: No, I did not learn anything at all. I was busy today in a raid and was meaning to call you later on just to check how you were. I gave Flamur the authorization so there no point in making any other intervention.

Bogiqi: I if you like we can meet up for a coffee.

Gani: Yes, but I am not in Pristina.

Given the context in which it is used, the Court finds that reference to "Flamur" is reference to Flamur Bogaj.



During that telephone conversation the Third Defendant again suggests meeting for coffee.

The Prosecution put in evidence the transcript of a telephone conversation on 21 August 2007 at 20:57:55 between Gani Rukiqi and the Third Defendant

Gani: Hello Selman, what do you do?

Selman: who is it?

Gani : Gani, Gani.

Selman: Gani how are you?

Gani: Am I disturbing you?

Selman: No, you are not, I'm here with Gazim, we are here, we made an appointment to meet at Germia Gazim Qerimi a friend of mine.

Gani: Ok

Selman: What's up?

Gani: I have returned. I was wondering if you were free to go for a coffee. If it convenes you, if you like we can leave it for tomorrow.

Selman: Ok, let's leave it for tomorrow, we shall here each-other tomorrow

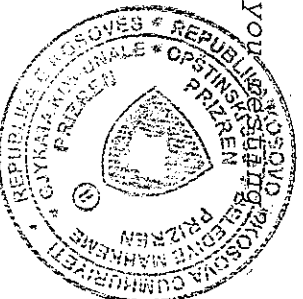
Gani: Goodbye.

Selman: Good luck.

Gani: Goodbye.

The Prosecution put in evidence the transcript of a telephone conversation on 22 August 2007 at 18:21:04 between Gani Rukiqi and the Third Defendant

Gani: Hello Selman, are you



Bogiqi: I have some guests over.

Gani: We have a cousin with diabetes, they told me that he is not good.

Bogiqi: Let's meet at fifteen to seven at Shark.

Gani: Ok.

During that telephone conversation the Third defendant suggested they meet at 6.45pm in 'Shark'.

The Prosecution put in evidence the transcript of a telephone conversation on 22 August 2007 at 20:05:52 between Gani Rukiqi and Nerxhivane Daka

Gani: Where are you my daughter?

Nerxhivane: I was going to stop washing machine.

Gani: I just parted with Selman.

Nerxhivane: Are you angry or something?

Gani: No, not at all. Are you joining me for a coffee at Interminex, I am calling Drita to join in as well?

Nerxhivane: Yes.

Given the context in which it is used, the Court finds that reference to "Drita" is reference to Drita Rukiqi.

During that telephone conversation Gani Rukiqi referred to having just left a meeting with the Third Defendant. It follows from the conversation with the Third Defendant at 18:21:04 that the meeting to which Gani Rukiqi referred was the meeting in Shark. Gani Rukiqi agreed with Nerxhivane Daka that they will meet at Interminex. He further stated that he would ask Drita Rukiqi to join them.

The Prosecution put in evidence the transcript of a telephone conversation on 24 August 2007 at 16:43:15 between Gani Rukiqi and the Third Defendant.



Bogiqi: My recorder was here yesterday, and said that it is not with me. Gani, I will know nothing until Monday.

Gani: It's ok.

Bogiqi: I asked her in detail, she said it is not registered with us, it has not arrived here with us. The main one will come on Monday.

Gani: Why has he said Gani, then?

Bogiqi: It is very interesting.

Gani: That is interesting. I know no more details.

Bogiqi: Even our big boss called me yesterday, asking if you had undertaken any action. I told him we have taken no action.

Gani: I am afraid somebody may take action without you coming back.

Bogiqi: No, unless they assign it to somebody else...

Gani: Will go to work on Monday?

Bogiqi: No, Gani, I intend to return to work on Saturday, the day after tomorrow I will go to Rugova valley, I have to go there, because my wife is very anemic. Flamur will see to it on Monday. If Anton cannot take it then nobody will. Do not be afraid.

Gani: Ok,

Bogiqi: We are in the loophole. Thank you bringing up this subject.

Gani: Thank you for bringing up the subject, please trust me I am only calling you just to enquire about your health; it's important you that you are Ok and so is your wife.



Given the context in which it is used, the Court finds that reference to "Flamur" is reference to Flamur Bogaj while reference to "Anton" is reference to Anton Nokaj, President of the District Court of Pristina.

The Prosecution put in evidence the transcript of a telephone conversation on 3 September 2007 at 5:05:04 between Gani Rukiqi and the Third Defendant

Gani: Hello Selman, am I bothering you?

Bogiqi: Go on.

Gani: How did it go in Gillogovc?

Bogiqi: Ok

Gani: Are we meeting up tomorrow?

Bogiqi: Ok, or later. Whenever you like, it is ok.

Gani: I am not too sure about later because I have that sick nephew in Gillogovc. If I come back from Glogovc I give you a ring.

Bogiqi: Ok, I have some commitments today but let's make it for tomorrow.

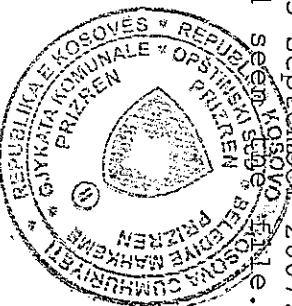
Gani: I am glad there will be no troubles for you in that.

Bogiqi: No, no... I looked at it in the morning, it is ok. Don't worry.

Gani: Ok, thank you.

During that telephone conversation the Third Defendant agreed to meet Gani Rukiqi. He referred to having looked at the case file and told him "don't worry".

The Third Defendant testified before this Court that he met Gani Rukiqi at his office at the District Court. That meeting took place on 3 September 2007. He said it was the first time he had seen Gani Rukiqi. The Third



Defendant testified the Court file contained only the Ruling on Initiation of Investigation. He said there was no request by the Prosecutor that the suspects should not have access to the file. Further, he averred the file was not marked "confidential". He testified that he did not notice it was a "SEC" case.

The Third Defendant testified that during that meeting he informed Mr. Rukiqi that an investigation alleging two offences had been initiated against him and that the informant was Agim Kreziu.

The Prosecution put in evidence the transcript of a telephone conversation on 3 September 2007 at 12:44:31 between Gani Rukiqi and Nebahate Jashari

Gani: Can I not talk again?

Nebahate: Hello. Where are you now?

Gani: I wanted to tell you something, but do not tell anyone, not just yet, do you hear me?

Nebahate: Yes.

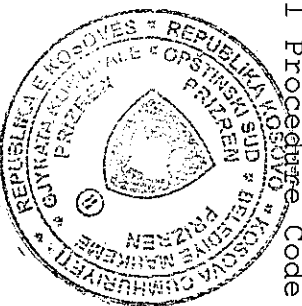
Gani: That dog had sent it. Agim Kryeziu had sent it to court, I have not told anybody, not to Flora, Drita or Nexh, I told you first. Give me a ring when you are free?

Nebahate: Ok.

Given the context in which it is used, the Court finds that reference to "Drita" is reference to Drita Rukiqi while reference to "Nexh" is reference to Nerxhivane Daka.

That telephone conversation occurred after the meeting at the District Court between Gani Rukiqi and the Third Defendant.

Referring to the information he gave to Gani Rukiqi, the Third Defendant testified before this Court that he had a legal obligation to provide that information. In support of this contention he referred to the provisions of Article 17 of the Criminal Procedure Code



The court shall have a duty to inform the defendant or any other participant in the proceedings of the rights to which that person is entitled according to the present Code as well as of the consequences of a failure to act, if that person might omit an action in the proceedings owing to ignorance or does not exercise his or her rights for the same reason.

That was an absurd averment. Informing a defendant of his rights during criminal proceedings is one thing. Providing a suspect with information of an ongoing criminal investigation is quite different.

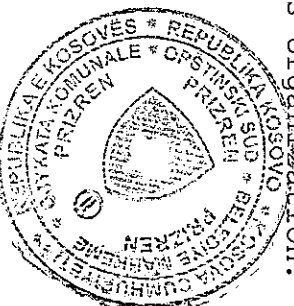
The Third Defendant testified he had not discussed the case with the First Defendant.

The Third Defendant testified about a request he subsequently made of Gani Rukiqi for assistance regarding a garage in the Ulpina District. During his examination on 26 February 2009²³ the Third defendant testified "the garage was for the son of my brother Arban Fetahu". The Third Defendant did not deny the fact of his having sought the assistance of Mr. Rukiqi. He testified they had known each other for some years having previously worked together at the Municipality.

The Prosecution put in evidence the transcripts of the interception of telephonic communications between the Third Defendant and Gani Rukiqi relating to that matter. The first such communication was in April 2008. However, in March 2008 there was one telephonic communication between them regarding a meeting. The subject of the meeting was not mentioned.

Based upon the transcription of telephonic communications, the first communication occurred some months after their discussions regarding the investigation against Gani Rukiqi. No evidence was put before the Court that, at the time the Third Defendant informed Gani Rukiqi of the allegations against him, he had formed the intent to obtain an unlawful benefit for himself, another person or a business organization or that he intended to cause damage to another person or business organization.

²³ Exhibit P9



SUMMARY AND CONCLUSIONS

The Defendants were each charged with one offence under Article 347 of the Criminal Code of Kosovo.

Pursuant to Article 52 of the CPCK, prior to the conclusion of the main trial, the Prosecutor withdrew the prosecution against the Second Defendant.

The Prosecution must prove the following

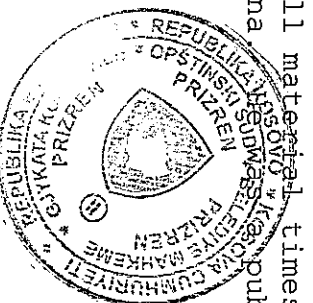
- i. The Defendant acted in the capacity of "official person";
 - ii. The Defendant communicated, sent, or in some other way made available to another person information or documentation;
 - iii. The information or documentation disclosed was properly an "Official Secret" within the meaning of Article 347 of the CCK and
 - iv. Its disclosure caused or might cause detrimental consequences;
 - v. The Defendant was not authorized to disclose that information or documentation;

I shall deal with each element of the offence in turn.

i. Were the First and Third Defendants "Official Persons" within the meaning of Article 347 of the Criminal Code of Kosovo?

First Defendant, Enver Zhittia

The First Defendant was at all material times a Cashier at the District Court in Pristina public servant



performing official duties and occupied a position of trust within a public institution. As such the First Defendant was an "Official Person" within the meaning of Article 347 of the CCK.

Third Defendant, Selman Bogiqi

The Third Defendant was at all material times a Judge at the District Court in Pristina. He was a public servant performing official duties and occupied a position of trust within a public institution. As such the Third Defendant was an "Official Person" within the meaning of Article 347 of the CCK.

ii. Did the First and Third Defendants communicate, send, or in some other way make available to another person information or documentation?

First Defendant, Enver Zhitita

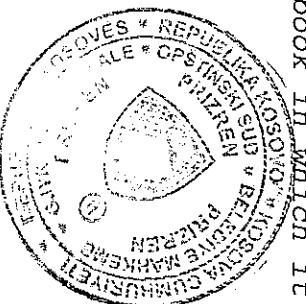
The First Defendant testified that he informed Rexhep Ibishi about the investigation against Gani Rukiqi. He could not recall if he mentioned the names of the other suspects. He said the information that he disclosed to Mr. Ibishi was limited to the information contained in the PPH Register.

It is clear from the transcript of the interception of the telephonic communication on 13 August 2007 at 10:40:36 between Gani Rukiqi and Rexhep Ibishi that Mr. Ibishi was with the First Defendant. Mr. Ibishi says "I am looking at it". He was referring to the PPH Register.

At 10:48:02 on 13 August 2007 Rexhep Ibishi again spoke by telephone with Gani Rukiqi. During that conversation Mr. Ibishi informed Gani Rukiqi that an investigation had been initiated against him, Drita Rukiqi and Nerxhivane Daka.

Gani Rukiqi asked Mr. Ibishi if he had seen "a copy". Presumably this was reference to the file containing the Ruling on Initiation of Investigation. In reply Mr. Ibishi said

"Not the copy but the book in which it was recorded"



Mr. Ibishi further stated

"It says Gani Rukiqi, Drita Rukiqi and Nerxhivane Daka they have asked for a bribe for somebody, have invited for a coffee to talk to him to get the bribe, no amount of money or nothing else had been set"

It appears this comment is based on supposition, given reference in the PPH Register to offences under Articles 339²⁴ and 343²⁵ of the Criminal Code of Kosovo.

No evidence was put before the Court the First Defendant, in fact, disclosed information other than that contained in the PPH Register.

Third Defendant, Selman Bogiqi

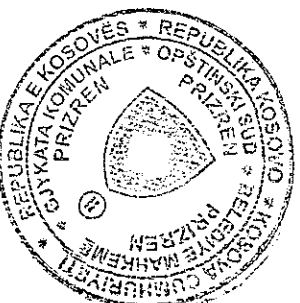
The Third Defendant met with Gani Rukiqi on 16 August, 22 August and 3 September 2007. During his examination on 23 May 2008 the Third Defendant admitted that at the meeting on 16 August 2007 they had discussed the Ruling on Initiation of Investigation. The Third Defendant testified before this Court that in September 2007 he met Gani Rukiqi at his office at the District Court and that during that meeting he told Gani Rukiqi the substance of the investigation and the name of the informant.

iii. Was the information or documentation disclosed properly an "official Secret" within the meaning of Article 347 of the CCK?

The information or documentation to be included within the classification of an "official secret" must be proclaimed as such by law, or other provision, or a decision of a competent authority, itself issued on the basis of law, to be an official secret.

It was the Prosecution case that information or documentation contained within a court file designated a "SEC" case was an 'official secret' within the meaning of Article 347 of the CCK.

²⁴ Article 339 - Abusing Official Position or Authority
²⁵ Article 343 - Accepting bribes



Artifete Krasniqi testified that on 3 August 2007 she received the Ruling on Initiation of Investigation in SEC case number 58/07. She registered the case in the PPH Register. The entry in the PPH register contains, inter alia, the names of the suspects and the offences of which they are suspected.

The information disclosed by the First Defendant was limited to the information contained in the PPH Register.

Although the entry in the PPH Register did refer to it being a SEC case, the PPH Register was not an 'official secret' within the meaning of Article 347 of the CCK. No law or other provision or decision of a competent authority, itself issued on the basis of law, had prescribed information contained within a PPH Register to be an 'official secret'.

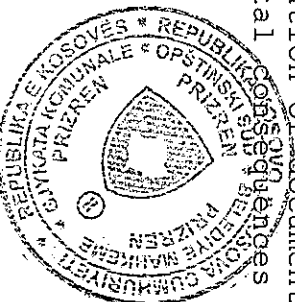
However, if SEC cases are properly 'official secrets' within the meaning of Article 347 it might be, with some force, argued that information relating to such cases retain any special characteristics despite their having been erroneously registered.

The Prosecutor conceded that he was unaware of any law, other provision, or decision of a competent authority, itself issued on the basis of law that proclaimed that 'SEC' cases were official secrets within the meaning of Article 347 of the CCK.

The Court finds that no law, other provision or decision of a competent authority (itself issued on the basis of law) has proclaimed SEC cases or information or documentation contained within court files designated as such, to be 'official secrets' within the meaning of Article 347 of the CCK.

In the circumstances the Court finds that 'SEC' cases are not official secrets within the meaning of Article 347 of the CCK.

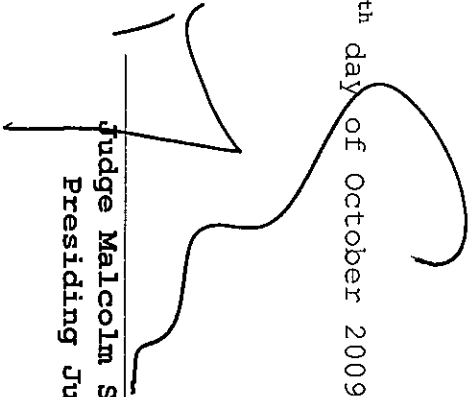
Having determined that 'SEC' cases were not 'official secrets' within the meaning of Article 347 of the CCK it is unnecessary to consider whether the disclosure by the Defendants of the said information or documentation caused or might have caused detrimental consequences and whether



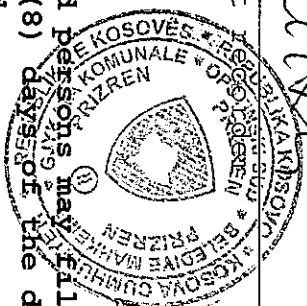
the Defendants were authorized to disclose that information or documentation.

For the reasons stated herein I hereby render this Judgment.

Dated this 16th day of October 2009.



Judge Malcolm Simmons
Presiding Judge



LEGAL REMEDY: the authorized persons may file an appeal of this Judgment within eight (8) days of the day the copy of the Judgment has been served.