

MUNICIPAL COURT OF PRISTINA/PRISTINA

KA Nr. 263/10

20 January 2011

The Eulex Judge of Pristina Municipal Court, Charles L. Smith, in the capacity as the Judge of the Confirmation Hearing, in the criminal case against:

(1) Uke Mucaj, father's name Misin, born, mother's name Shahe, born on 5 March 1949 in Lluga e Eperme village, Municipality of Decani, currently residing in Peja at "Fidanishte Kulla"str. A-no 11, Kosovo Albanian, married with six children, completed Law School, judge at the District Court of Peja, no prior convictions;

(2) Viktor Zefi, father's name Gjon, mother's name Zoje, born on 19 September 1967 in Ranoc village, municipality of Peja, currently residing at "Str. "Brigada 135, Dardania 1-8, Kosovo Albanian, married, with five children, completed university, occupation military with the rank of captain, employed at ex KPC, no prior convictions;

Charged with:

Uke Mucaj: two counts of Accepting bribe pursuant to article 343 paragraph 1 CCK, punishable with imprisonment from six months to five years;

Viktor Zefi: two counts of Giving bribe, pursuant to article 344 paragraph 1 CCK, punishable with imprisonment from three months to three years, and one count of Fraud pursuant to article 261 paragraph 1 CCK, punishable by a fine of by imprisonment up to three years;

Pursuant to article 316 paragraph 4 CPCK, hereby issues the following

RULING

The Indictment filed on 4 November 2010 is hereby confirmed in respect of all the charges and all defendants.

REASONING

Procedural background

On 23 March 2009 the Public Prosecutor office of Mitrovica filed an indictment against the above mentioned defendants. After a confirmation hearing held on 17 November 2009 the Confirmation Judge rejected all charges.

The Public Prosecutor appealed the said ruling and on 28 January 2010 three judge panel of the Municipal Court decided to send the case back to the Prosecutor to finalize the investigation. On 4 June 2010 the Public Prosecutor requested an extension of the investigation which has been granted by the Confirmation Judge. The investigation was granted for one month, and after that an indictment shall be field or consider that the Prosecution withdrawn from the indictment.

On 4 November 2010 Public Prosecution, complying with instruction received from the Confirmation Judge filed an indictment which is the result of the other investigative steps undertaken from January to November 2010. Thus, the indictment filed on 4 November represents an amended version of the initial indictment filed on 23 March 2009.

Waiver of review of indictment

No written waiver was filed in the records of the case made by the defendant; hence, the confirmation hearing of the Indictment proceeded as scheduled pursuant to Article 309, 310, 311 PCPCK.

Plea of the defendants

All defendants plead not guilty to all the counts

Submissions of parties

Pursuant to Article 314 Paragraph 5 of the CPCK, the Parties presented their statements.

Submission of the Defense

Defense Lawyer Orhan Basha, in his submission stressed that the initiation of the investigation is illegal. Also he mentioned the fact that there is no clarity with regard to the faith of the first indictment, and the second indictment would be a violation of the law, in contradiction with *non bis in idem principle*, therefore the Confirmation Judge should dismiss this second indictment.

Furthermore, the defense lawyer stressed that the indictment lacks evidence and that the investigation in this case lasted more than the legal deadline, thus, exceeding this deadline the Prosecutor waived the right to file an indictment.

Defense lawyer Zeqir Berdyna stressed the fact that any extension of the investigation granted in this case is illegal, since pursuant to article 225 CPCK, only in cases where the minimum punishment foresees by the law is 5 years an extension can be granted, which is not the case here, since the criminal offences his client is charged with are punishable with imprisonment up to three years. Moreover, he underlined the fact that the statement his client gave in front of the Police is inadmissible, since his client has not been told that he has the right to a lawyer, he did not read the statement before signing it. For all these reasons, the Confirmation Judge should reject the indictment.

Submissions of the defendants

All defendants stood by the speeches provided by they defense counsels. In particular Mr. Zefi argued that the statement given in the Police was not taken in accordance with the law provisions. He also mentioned that he does not know where Uke Mucaj lives, and that he never had coffee with Uke Mucaj.

From his side, Mr. Mucaj stated, inter alia, that he remembers very well the week-end, when allegedly received the visit of Viktor Zefi and the money, and he says that was in this house in the village not in his apartment, thus this meeting could have not taken place.

Submission of the Prosecution

The Public Prosecutor asked from the Confirmation Judge to confirm the indictment in its entirety.

LEGAL ISSUES

Admissibility of the evidence

The only evidence challenged by the parties at this stage of the proceeding is the statement given by Viktor Zefi to the Police. From the careful evaluation of the said statement the Confirmation Judge notes that all the warnings prescribed by the law have been given to the suspect, and he signed on every single page the said statement. Thus, this Confirmation Judges finds no reason to declare this statement inadmissible evidence.

Indictment to raise well- grounded suspicion


This Confirmation Judge **states** that any analysis of the case file performed at this stage of the proceedings has to be done in such a way as not to prejudice in any way the out come of the main trial, as requested by the article 317 paragraph 2 CPCK.

Based on this assumption, the Confirmation Judge considers that the evidence presented in the case file is more likely than not to ensure a guilty verdict at the end of the main trial. So, the Judge notes that the statements given by File and Prek Ndrecaj's are corroborating evidence. There was no reason, in the opinion of this Judge, to invent a story to harm somebody who they never met before. Further more, the statement of the accused Viktor Zefi gives interesting details which corroborates the story put forward by the members of Ndrecaj's family. All these statements gave a full picture of the factual situation which meets the standard of well grounded suspicion required by the law.

Any question which might arise as to the credibility of these witnesses has to be assessed by the trial panel, as well as any other exculpatory evidence which can be brought by the defense, i.e, Mr. Mucaj's claim that on the incriminated night he was not in the residence indicated by the witnesses. There is no reason for this Judge not to believe Mr. Mucaj's claim, but it is not in the mandate of this judge to decide upon the alibi of the defense. All these elements are to be dealt with properly by the main trial. Further, it was pointed out by defense counsel that there was a lack of direct evidence of delivery of the bribe. The Court notes that there is evidence referred to which can be characterized as circumstantial evidence. It is for the trial court to examine the sufficiency of such circumstantial evidence to determine if it will support a finding of guilt or to examine if there are other logical explanations for such circumstantial evidence. The confirmation Judge must determine if the evidence viewed as a whole reaches the threshold determination that there is a well grounded

suspicion that the defendant committed the criminal offense set out in the indictment. The Court has made such a determination.

For all these reasons, it has been decided as in the enacting clause.


Charles L. Smith
EULEX Confirmation Judge



Legal Remedy

No appeal is allowed against this ruling, since article 317, paragraph 2 of the CPCK as “lex specialis” grants an appeal only to the prosecutor and the injured party in case of dismissal of the indictment.