

MUNICIPAL COURT OF PRIZREN

P no. 771/11

14 June 2011

IN THE NAME OF THE PEOPLE

The Municipal Court of Prizren

EULEX International Judge Witold Jakimko as a Presiding Judge,

assisted by

Nexhmije Mezini as court recorder,

in the criminal case against

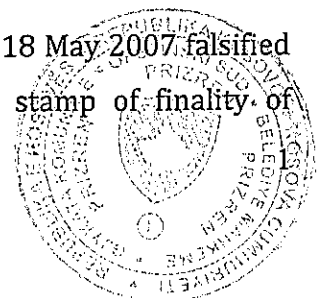
the Defendant **Myrvete Berisha**, born on 6 March 1964 in Rahovic in the municipality of Presheve, daughter of Muharrem Beqiri and Fatime Berisha, currently residing at Afrim Loxha street no. 4/7 in Prishtina, citizen of Kosovo, married, mother of two children, legal assistant by profession, of average financial situation, no previous convictions,

charged as

per in the summary indictment PPS no. 33/2010 dated 24 March 2011 filed in by the Special Prosecutor of the Special Prosecutor's Office of the Republic of Kosovo with the criminal offence of Special cases of falsifying documents in violation of Article 333 paragraphs 3 and 5 of the Criminal Code of Kosovo (CCK) read with the criminal offence of Falsifying documents as per Article 332 paragraph 3 of the CCK,

as described below

acting as a legal assistant in the District Court in Prishtina on 18 May 2007 falsified judgment C. No. 278/07 dated 18.05.2007 by putting the stamp of finality of



judgment and signing in the name of the court officer Hana Haliti without prior authorization,

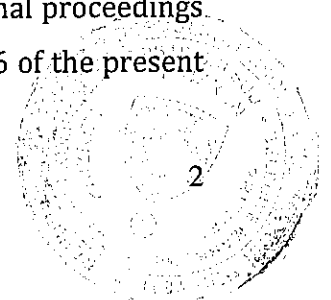
after having held

the pretrial session on 8th and main trial session on 14th June 2011, in which the Special Prosecutor Rrahim Podvorica and the Defendant with her defense counsel Vahid Halili were present, the court issues the following:

JUDGMENT

1. The Defendant Myrvete Berisha **is found guilty** because acting as a legal assistant in the District Court in Pristina, on 18.05.2007, she falsified the finality clause of the Judgment C. No. 278/07, dated 18.05.2007, by putting the genuine stamp of finality of Judgment and signing it with the name and in the name of the court officer Hana Haliti, without prior authorization - thus she committed the criminal offense of Special Cases of Falsifying Documents, as per Article 333 paragraphs 3 and 5 of the Criminal Code of Kosovo, read with the criminal offense of Falsifying Documents, as per Article 332 paragraph 3 of the Criminal Code of Kosovo and therefore, pursuant to Article 333 paragraphs 3 and 5 of the Criminal Code of Kosovo read with Article 332 paragraph 3 of the Criminal Code of Kosovo and Articles 3, 34, 42, 43, 44 paragraphs 1-3, 64 paragraph 1 of the Criminal Code of Kosovo, this Court sentences her to a suspended sentence imposing the punishment of 3 (three) months of imprisonment, whose execution shall not apply if the Defendant does not commit a new criminal offence in the time period of 1 (one) year, from the date the judgment becomes final;

2. Pursuant to Article 102 paragraph 4 of the KCCP this Court relieves the Defendant Myrvete Berisha of the duty to reimburse entirely the costs of criminal proceedings as provided for in Article 99 paragraph 2 subparagraphs 1 through 6 of the present Code;



3. Pursuant to Article 391 paragraph 1 subparagraph 6 of the KCCP the Court decides that the purpose if the punishment imposed on Myrvete Berisha, does not require the final judgment to be announced in the press or radio or television.

REASONING

I. Composition of the Court.

According to Article 22 § 3 of the KCCP criminal offences punishable by fine or by imprisonment of up to three years shall be considered by an individual judge of the municipal court.

II. Procedural background.

On 14.7.2010 the special prosecutor of the Special Prosecutor's Office of the Republic of Kosovo (SPRK) filed a ruling on initiation of investigation against Gjonaj and Berisha. Investigation commenced on 15.7.2010.

On 2.8.2010 the pre-trial judge of the district court of Prizren issued an order for interception of telecommunications against the defendants.

On 16.9.2010 the pre-trial judge of the district court of Prizren issued a search order against Gjonaj and Berisha:

- Search-raid of houses and accompanying buildings of the suspects.
- Search-raid of office in the district court in Prishtina to confiscate the hardware of official computer.
- Search raid of computer, possible propositions for marriage settlement and other letters (bank account, card etc.).

On 20.10.2010 the pre-trial judge of the district court of Prizren issued an order for expert analysis for examining computer of Gjonaj.

On 10.1.2011 the special prosecutor filed a ruling on expansion of investigation against Gjonaj and Berisha. Expansion of investigation started on 24.12.2010.

On 18.4.2011 the special prosecutor filed a summary indictment against Gjonaj and Berisha to the municipal court of Prizren.

On 8.06.2011 the court ordered a new file related to the position of the defendant Myrvete Berisha, to be created and the position separated with a new reference number, pursuant to Article 34 paragraph 2 KCCP.

On 14.06.2011 the court started and on the same day ended the main trial against the defendant Myrvete Berisha.

III. Administered evidence.

1. During the trial session on 14 June 2011 the following witnesses were heard:

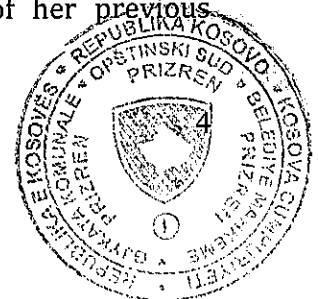
- Kadri Begolli from the Disciplinary Prosecution Office of Kosovo Judicial Council.
- Feriz Berisha District Court Administrator from Prishtina.

2. The Defendant Myrvete Berisha was heard on 14 June 2011.

3. The court admitted as evidence the following documents:

- Exhibit A-1: The Final report with reference number 2006/242, dated 25 February 2008.
- Exhibit A-2: Judgment of District Court of Prishtina with reference number 278/2007, with a round stamp on top of it and a long stamp on the top left with declaration on the right of witness Hana Haliti that it was not her signature.

According to Article 368 paragraph 3, the parties agreed that the hearing of the witness Hana Haliti will be replaced by reading the records of her previous examination (protocol of the hearing dated 11.11.2010).



4. The evidence which influences on Court's findings is explicitly elaborated in subsequent paragraphs. Other evidence had no direct impact on the final content of the enacting clause.

IV. Factual and legal findings.

IV.A. Factual state.

The Defendant Myrvete Berisha worked as a legal assistant in the District Court in Pristina. On 18.05.2007 she went to Haliti's office and she did not find her there. She went to look for her three times. The party requesting for the finality stamp was supposed to travel abroad. The defendant did not change any substantive element in the judgment. The party was in hurry and they wanted to get the registrars' office in Ferizaj before CoB. Myrvete Berisha decided to put the genuine round stamp of finality on the top left of the Judgment C. No. 278/07, dated 18.05.2007 and signed it with the name of the court officer Hana Haliti and on her behalf without having her prior authorization. Myrvete had no authorization to put the stamp of finality on the judgment.

IV.B. Individual analysis of the evidence.

1. Hana Haliti's testimony was read out during the hearing. She worked as a registrar in the district court of Prishtina. Her testimony was related to the case allocation and civil procedure in the court and about the case no 278/07 dated 18.5.2007. There was no dispute on the fact that her signature was falsified on the judgment. She gave no authorization to Myrvete Berisha to sign the judgment on her behalf and to put a stamp on it. Her testimony was not contentious. The defendant admitted the fact of falsification of the signature and the fact of unauthorized stamping.



2. Feriz Berisha gave his testimony in the court. He worked as a court administrator in the court. He admitted that the defendant Myrvete Berisha was not authorized to stamp and to sign the judgment and stated that the only person responsible for guarding and stamping with the finality stamp was Hana Haliti. In her absence the witness is responsible on stamping himself. Hana Haliti told him that she did not sign the document. He asked her to write on the judgment stating that it was not her signature. The raised issue is corresponding with the Exhibit A-2 and the statement given by the defendant. The court treated it as non-contentious. According to the witness the senior archive officer Naser Foniqi was the one who substituted the Hana Haliti on other issues.

3. Kadri Begolli was a judicial expert witness who had sent the final report (25.2.2008) of the judicial inspection against the judge Zahide Gjonaj. He has referred only to his report which was related generally to the question of responsibility of the judge Zahide Gjonaj what was stressed explicitly by him. In respect to the defendant Myrvete Berisha the content of Kadi Begolli's statement was non-contentious.

4. The testimonies given by all three witnesses had no direct implication to factual findings regarding whether the Defendant had falsified the signature and had been entitled to put the finality stamp on the judgment or not. It has to be emphasized that the factual elements have been acknowledged by the Defendant herself. The remaining issue to be decided by the court was legal aspects.

5. Myrvete Berisha admitted the key point of the indictment as it is commented below in the subsequent part of this reasoning.

IV.C. State of mind of the perpetrator within the meaning of the criminal substantive law.



The defendant was fully aware of the fact that she falsifies the signature of Hana Haliti. No mitigating circumstances can change the fact this formal criminal offense was committed intentionally. The defendant admitted it during the main hearing saying (page 21 of the record of the main hearing) as follows: I was not authorized to do it (...) and my only mistake is that I did not put 'on behalf of' but this was not done with any bad intentions."

She admitted main legal circumstances which make her act constitute criminal offense. Her defense counsel claimed that "she only had formalized the content of the enacting clause of that judgment and that the judgment was final on the day of the announcement without amending anything in the content of the judgment". He is right that by her signature the judgment itself was not substantively amended. However this observation does not change a fact the defendant's behavior constitutes a criminal offense described in the provisions cited above because she falsified somebody else's signature and put the finality stamp without prior authorization.

IV.D. Applicable substantive law.

1. Myrvete Berisha is charged of Falsifying documents (special cases of falsifying documents) because allegedly acting as a legal assistant in the district court in Prishtina on 18.5.2007 she falsified judgment C. No. 278/07, dated 18.5.2007 by putting the stamp of finality of judgment and signing in the name of the court officer Hana Haliti without prior authorization (articles 332 and 333 of the CCK).

2. The articles 332 and 333 of the CCK say as follows:

Article 332 paragraphs 1 and 3. (1) Whoever draws up a false document, alters a genuine document with the intent to use such document as genuine or knowingly uses a false or altered document as genuine shall be punished by a fine or by imprisonment of up to one year. (3) When the offence provided for in paragraph 1 of the present article is committed in relation to a public document,

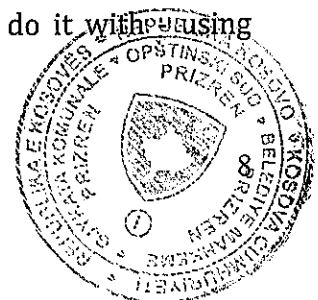
will, bill of exchange, public or official registry or some other registry kept in accordance with the law the perpetrator shall be punished by a fine or by imprisonment of up to three years.

Article 333. A person shall be deemed to have committed the offence of falsifying documents and shall be punished as provided for in paragraph 3 of Article 332, if such person:

- 1) Without authorisation completes a letter, blank form, or any other item which has already been signed by another person and fills in a statement that creates a legal relationship;*
- 2) Deceives another person with regard to the content of any document and such person signs the document thinking that he or she is signing some other document or a document with some other content;*
- 3) Issues a document on behalf of another person without his or her authorisation or on behalf of a person who does not exist;*
- 4) Issues a document and claims by signing the document that he or she has a position, title or rank, although he or she does not, and such act has a substantial influence on the value of the document; or*
- 5) Issues a document using a genuine stamp or sign without prior authorisation.*

The art.333 paragraphs 3 and 5 read together with the Article 332 paragraph 3 of CCK correspond to the description on the criminal offense adopted in the judgment. Myrvete Berisha falsified the document acting on behalf of Hana Haliti and putting her signature on the finality stamp.

Myrvete Berisha was charged generally with falsifying the whole judgment. The court specified it to the finality clause which was falsified by putting the stamp without prior authorization and by signing it with Hana Hailiti's signature. The court underlines that the enacting clause was not only signed in the name of Hana Haliti but also with the name of Hana Haliti. The criminal offense was a formal one. Even if you have some doubts whether the defendant was entitled to sign this finality clause on behalf of Hana Haliti you are not allowed to have any doubts whether it was signed with her name. By signing the finality clause with Hana Haliti's name the criminal offence was committed. The defendant was aware that she signed the finality clause with somebody else's name even if she did not do it with using colloquial words - a "bad intent".



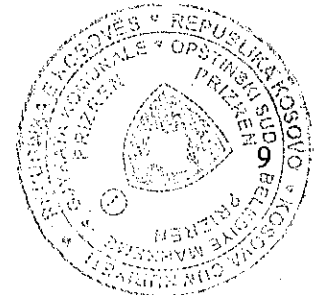
IV.E. Personal circumstances of the Defendant.

1. Previous life of offender. Regarding this circumstance, before the commission of the criminal act the defendant had never broken the law before.
2. Offender's attitude upon committing the criminal act. The offender's behavior as the accused in the course of the criminal proceeding was proper.
3. These two arguments establish mitigating circumstances that have to be taken into consideration on calculating punishment.

IV.F. Calculation of the punishment.

1. The court was considering two types of punishment, fine and imprisonment, of course for sure only imprisonment with a suspended sentence because the court is fully sure that the defendant will not commit any criminal offence in the future. Why did the court choose the imprisonment and not the fine? From the perspective of Article 87 (2) subpara 2 and 4 of the CCK and from the perspective of provisions related to rehabilitation, the conviction shall be expunged from the criminal record one year from the day the verification period expires – in the case of a suspended sentence and three years from the day a punishment is served – in the case of a punishment of a fine. According to those provisions the conviction with suspended sentence is expunged from the record before the punishment of a fine.

2. The punishment of imprisonment, calculated according to the content of the art.64 of CCK the above mentioned conditions and according to the purposes mentioned in the Article 34 of CCK, especially preventing the perpetrator from committing criminal offenses in the future and rehabilitating the perpetrator, has been established with a period of 3 (three) months of imprisonment, whose execution shall not apply if the defendant does not commit a new criminal offence in the time period of 1 (one) year, from the date the judgment becomes final as the most adequate, proportionate and accurate.



3. Degree of criminal liability. The intensity of acting of the offender was not on the level that requires a sanction more severe from than the suspended sentence of 3 (three) months imprisonment. In this particular case the degree of criminal liability should be assessed from the perspective of the objective damage caused in the case. In the opinion of the court there was on objective damage caused by the criminal act. The only favour, by giving them the judgment with an unauthorized stamp on it, was a chance to get to the register office before the end of working hours.

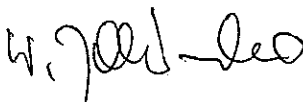
4. Incentives for which the act is committed. In the opinion of the Court the most probable motive of the action of Myrvete Berisha was, as the defendant claims, to help the parties to get to register office in Ferizaj before CoB, especially that the parties were ready for the trip abroad. In the opinion of the Court there was no material benefit as an incentive in this case.

5. Intensity of criminal danger or injury to the protected value. The negative impact of this offense to the safeness of legal turnover relations is an undeniable fact. However the court is obliged to take into consideration that the criminal danger and the detrimental value of the criminal offense were relatively small and the criminal offense did not result in considerable injury to the protected value.

6. In the opinion of the Court Myrvete Berisha deserves the application the Suspended sentence to her. The Suspended sentence gives the Defendant a reprimand and achieves the purpose of a punishment by pronouncing a sentence without executing it (arg. ex. Art. 42 of CCK). Previous life of the offender proves that she will not commit another criminal offense (arg. ex. Art.43§2 of CCK). The court determined the vacation period of 1 year which is satisfactory. The other conditions provided by the Art. 44 of CCK are also met. The criminal offense the defendant was charged with is punishable up to 3 years. The past conduct of perpetrator neither her behavior after the offense nor the degree of criminal liability nor detrimental value of the offense do not oppose imposing the suspended sentence on the Myrvete Berisha. All these conditions have been previously

profoundly analyzed by the Court. The goals of a general prevention can be reached by a suspended sentence, since it contains a socio-ethic assessment of the committed criminal offense. The above facilitates the achievement of the above mentioned objectives.

Legal remedy: Pursuant to Article 473 paragraph 3 of the KCCP an appeal against the Judgment may be filed within eight days of the service of a copy thereof.



Witold Jakimko
Presiding Judge



Nexhmije Mezihi
Court recorder

