

DISTRICT COURT OF PEJA/PEC

P.nr. 542/11

Date 26 July 2012

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of the EULEX Judge Ingo Risch as Presiding Judge, Judges Lumturiye Muhaxheri and Gezim Pozhegu as panel members, assisted by the Court Recorder Joseph Hollerhead, in the criminal case against

SHK, son of I and B, maiden name Xhj, born on ***** in village *****, Peja Municipality, currently residing in “*****” street nr.****, unemployed, secondary school accomplished, of average financial state, married and has four children, Albanian, Citizen of Republic of Kosova,

XHK, son of Sh and F, maiden name S, born on ***** in Peja, residing in “*****” street nr. *****, unemployed, secondary school accomplished, of average financial state, married and has a child, Albanian, Citizen of Republic of Kosova,

VK, son of Sh and F, maiden name S, born on ***** in Peja, residing in “*****” street nr. *****, laborer, secondary school accomplished, of average financial state, single and has no children, Albanian, citizen of Republic of Kosova,

Charged with the Indictment of the Special Prosecution Office PP.nr.387/06 dated 26 March 2007, for the criminal offences *Criminal Association* pursuant to Article 26 in conjunction with Article 23 of CCK in relation to the criminal offence of *Aggravated Murder* pursuant to Article 147 par. 1 item 9 of CCK, and criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to Article 328 par. 2 of CCK,

After having held the main trial hearings in public on 07 May, 26 June and 26 July 2012 in the presence of the EULEX Prosecutor Peter Korneck on 07 May 2012, Public Prosecutor Ali Uka, the accused SHK, XHK and VK, their defense counsels Zenel Mekaj, Haxhi Cekaj and Nushe Kuka Mekaj,

after the trial panel deliberation and voting, on 26 July 2012, pronounces in public, the following

J U D G M E N T

I.

Pursuant to Article 390 par. 1 item 3 of KCCP, the accused **SHK, XHK and VK** (*personal data as above*) are

ACQUITTED

Of having committed the criminal offence of *Criminal Association* pursuant to Article 26 in conjunction with Article 23 of CCK in relation to the criminal offence of *Aggravated Murder* pursuant to Article 147 par. 1 item 9 of CCK, because it has not been proven that the accused have committed the act with which they have been charged under Count I of the Indictment

II.

Pursuant to Article 390 par. 1 item 3 of KCCP, the accused **XHK** is

ACQUITTED

Of having committed the criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to Article 328 par. 2 of CCK, because it has not been proven that the accused has committed the act with which he has been charged under Count III of the Indictment

Pursuant to Article 103 par. 1 of KCCP, the costs of the criminal procedure shall be paid by the Kosovo budgetary resources.

Reasoning

Procedural Background

On 07 May 2007 the Special Prosecution Office in Prishtina has filed the indictment PP.nr.387/06 PPHQ.no.87/06 dated 26 March 2007 against KH, AK, ShK, XhK and VK for the criminal offences *Criminal Association* pursuant to Article 26 in conjunction with Article 23 of CCK in relation to the criminal offence of *Aggravated Murder* pursuant to Article 147 par. 1 item 9 of CCK, criminal offence of *Aggravated Murder* pursuant to Article 147 par. 1 item 4 of CCK and criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to Article 328 par. 2 of CCK.

The indictment was confirmed on 14 June 2007 by the confirmation judge of the District Court or Peja/Pec, through the ruling KAQ.nr.133/07.

The first main trial in case number P.nr.538/07 was conducted on 15, 16, 17, 18, October, 19 November, 17 and 18 December 2007. On 18 December 2007 the judgment was announced, acquitting all the defendants for the criminal offence of *Criminal Association* pursuant to Article 26 in conjunction with Article 23 of CCK in relation to the criminal offence of *Aggravated Murder* pursuant to Article 147 par. 1 item 9 of CCK. Further, the defendant KH was acquitted of the criminal offence *Aggravated Murder* pursuant to Article 147 par. 1 item 4 of CCK and the defendant XhK was acquitted of the criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to Article 328 par. 2 of CCK.

The defendants KH and AK were found guilty of the criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to Article 328 par. 2 of CCK and were each convicted to one year and four months of imprisonment.

On 27 October 2011 the Supreme Court of Kosovo deciding upon the appeal of the Public Prosecutor, approved the appeal and annulled the first instance judgment in the part of the acquittal and sent the case back for a retrial. In the part of the conviction, the first instance judgment was confirmed.

In the retrial the case was assigned number P.nr.542/11.

On 29 February 2012 the President of the Assembly of EULEX Judges, deciding upon the request of the President of the District Court of Peja, after the hearing held on 16 February 2012, decided to take over the case and allocate it to the competence of EULEX Judges for further proceedings. According to this decision the case was assigned to one EULEX Judge and two local judges of the District Court of Peja.

On 07 May 2012 the re-trial commenced. However, the two defendants from Republic of Albania, namely KH and AK, did not show up. From the case file it resulted that they were not summoned properly. Therefore, the presiding judge on 07 May 2012 issued a rogatory request to the relevant authorities of the Republic of Albania, through the Ministry of Justice of Republic of Kosovo as the competent body for International Legal Cooperation. The main trial was recessed for 27 June 2012.

Until the 27 June 2012 there was no respond from the authorities of Republic of Albania. Herein, in order not to violate the rights of the three defendants in Kosovo, namely ShK, XhK and VK, the trial panel decided to separate the case file between the latter three defendant's and the other two, considered to be in Albania. Further, the trial panel decided to issue an order for arrest, order for issuance a wanted notice and a request for international wanted notice against the two defendants'.

On 24 July 2012 the court received a reply from the Ministry of Justice of Republic of Kosovo regarding the attempt to summon KH and AK. According to this report the brother of KH stated that K resides in England. Regarding AK, his brother stated that he lives in Kosovo, but has no address.

Due to this circumstance the court finds the separation of the case just and continues the trial with the three defendants in Kosovo, since the report of Ministry of Justice is nearly based on the allegations of the brothers of two Albanian defendants regarding their whereabouts.

Competence and Panel Composition of the Court

In accordance with Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the charges against the defendants is *Criminal Association* pursuant to Article 26 in conjunction with Article 23 of CCK in relation to the criminal offence of *Aggravated Murder* pursuant to Article 147 par. 1 item 9 of CCK, by imprisonment of at least ten (10) years. Therefore, the District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offence, according to the indictment, was committed in the village Baic, Istog Municipality, which is within the territory of the District of Pejë/Peć. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Since the present case was allocated to the competence of EULEX Judges by the decision of the President of the Assembly of EULEX Judge dated 29 February 2012, the panel was composed of one EULEX Judge and two Kosovan Judges pursuant to Article 3.7 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

None of the parties objected to the panel composition.

The Main Trial Sessions

The main trial was held in public on 26 July 2012 in the presence of the Public Prosecutor Ali Uka, the accused ShK, XhK and VK and their defense counsels Zenel Mekaj, Haxhi Cekaj and Nushe Kuka Mekaj. The injured party VI was not present.

In accordance with Article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary.

Evidence administered during the main trial

During the course of the main trial, the trial panel, with the consent of the parties, considered as read the following statements:

Witness *VI* statement given before the Prosecutor on 24 August 2006

Witness *VI* statement given before the Police on 20 August 2006

Witness *ST* statement given before the Police on 20 August 2006

Ballistic expert witness *CH* testimony given in front of the trial panel on 16 October 2007

Forensic expert witness *AG* testimony given in front of the trial panel on 16 October 2007

The defendant *XhK* statement given before the Prosecutor on 27 February 2007

The defendant *XhK* statement given before the Prosecutor on 16 March 2007

The defendant *VK* statement given before the Prosecutor on 28 September 2006

The defendant *VK* statement given before the Police on 22 August 2006

The defendant *ShK* statement given before the Prosecutor on 28 September 2006

The defendant *ShK* statement given before the Prosecutor on 16 March 2007

The defendant *ShK* statement given before the Police on 22 August 2006

The defendant *AK* statement given before the Prosecutor on 12 September 2006

The defendant *AK* statement given before the Prosecutor on 28 September 2006

The defendant *AK* statement given before the Prosecutor on 20 October 2006

The defendant *AK* statement given before the Police on 20 August 2006

The defendant *KH* testimony given in front of the trial panel on 17 October 2007

The defendant *KH* statement given before the Prosecutor on 12 September 2006

The defendant *KH* statement given before the Prosecutor on 28 September 2006

The defendant *KH* statement given before the Prosecutor on 01 November 2007

The defendant *KH* statement given before the Police on 21 August 2006

The defendant *KH* statement given before the Police on 22 August 2006

Documentary Evidence

1. Crime scene report 2006-DI-352 dated 20 August 2006 together with the sketch of the crime scene and several pictures of the area where the pistol and the automatic rifle AK-47 were found.
2. Ballistic report number 2006-1917 dated 20 November 2006
3. Report on fingerprints examination number 2006-1917 dated 31 October 2006
4. Discharge sheet with epicrisis regarding the victim JO issued by Prishtina Hospital protocol number 375 dated 20 August 2006

Factual Findings

The court finds that on the early morning of 20 August 2006 at 05:45, in the village Bajice, Istog Municipality, JO was shot twice by KH with a firearm, once in the head and once in the chest, causing him lethal injuries, from which injuries the said JO died on 22 August 2006 in a hospital in Switzerland. By doing so, KH also shot and injured AB in his left shoulder.

The shooting occurred because the victim JO and AB, wanted to apprehend the defendant KH, since they thought he was in the area to steal the villagers. JO and AB had already apprehended AK and handed him over to the police.

The defendants ShK, VK and XhK did not have anything to do with this murder. There was no evidence that the victim and the said three defendants had any dispute between themselves nor had any link with each other.

Assessment of evidence

From the evidence available to the court in relation to defendants ShK, VK and XhK the only incriminating factor is the statement of KH and a part of the statement of AK.

In all his statements KH explained that he came to Kosovo with AK and AD in order to commit a murder for ShK. He said that he was offered 5000 Euros to do this murder. The person he had to shoot was the owner of a motor vehicle BMW grey color with foreign number plates. He got the weapons from the two sons of ShK, VK and XhK. He was together with AK when they were driven to the site where they would do the ambush. However, the villagers noticed them and they started chasing them. He got separated from AK at that point. He went on hiding in a corn field and stayed there until the sun set. Then he went in the main road where he would meet the victim JO and AB. They tried to stop him, however he managed to escape. At that point he heard that JO drew and cocked his gun and shot twice in his direction. While running, he pulled his gun and started shooting in the direction of JO.

AK remained silent during the main trial. In his previous statement given to the police he explained that he came to Kosovo with KH and AD. He said that AD told them that they will go to Kosovo to find work. When they came to Kosovo AD told them that they will commit a murder for ShK. They met with ShK at Sh house in Peja. Together with Sh's sons, V and Xh he went in the town center to identify the motor vehicle BMW with French number plates which reads 1578 SM 33, owner of which is the person who they have to murder. He was together with KH when he was taken to the place where the ambush had to take place. Later they were spotted by two local villagers. The villagers asked them what were they doing there and also were asked for their passports. At that point he started running away from them. He got separated from KH. Later a vehicle cut his road and two men came out and ordered to enter the vehicle. He was taken to the house of one of the villagers. He was asked what he was looking for in that village. He was threatened with a hunting rifle by one of the persons. He was then taken to the police

station in Istog where he had spent the night. In the early morning he was left free. He hitchhiked an Opel vehicle in the direction of Peja. When he arrived at the village Baica he noticed the police all around. It was there where he was arrested.

From the statement of VI it was concluded that he was the owner of the BMW 530 vehicle with French number plates 1578 ST 33. He stated that he lives in France. He never had any problems with the K family. He knows ShK, and he had no problems with him. He does not know two sons of ShK in person; however he knows who they are.

The trial panel was unable to assess properly the statements of the two defendant's KH and AK in their absence. There might be truth to their allegation. However, the court has doubts regarding their statements. There is no other evidence that supports their allegation. After all the crime they were allegedly hired to commit, was never committed. It was by chance that KH ran into another person when shooting occurred. And since the case was separated for this charge, this issue was not evaluated in this case.

It is possible that a case of *aberration ictus* occurred when the wrong target was attacked. But there is no objective evidence to support such assumption.

As a consequence the three defendants ShK, VK and XhK had to be acquitted from all charges of the indictment.

Costs of the criminal proceedings

Since all the defendants have been acquitted, pursuant to article 103 par. 1 of KCCP, the costs of the criminal proceedings shall be paid from the Kosovo budgetary resources.

DISTRICT COURT OF PEJA/PEC

P.nr.524/11

Dated this 26th day of July 2012

Panel Member

Panel Member

Presiding Judge

Lumturiye Muhaxheri

Gezim Pozhegu

Ingo Risch

Court Recorder

Legal Remedy

Authorized persons may file an appeal in written form against this verdict through the District Court of Peja/Pec to the Supreme Court of Kosovo, within fifteen (15) days from the date the copy of the judgment has been served, pursuant to Article 398 Par. 1 of the KCCP.