

DISTRICT COURT OF PRISTINA

KA 547/11

PPS 64/10

Date: 11th January 2012,

The three-judge panel composed of EULEX Judge Andrew Hatton, as Presiding Judge, EULEX Judge Nikolay Entchev, and local Judge Tonka Berishaj, as members, in the criminal case against the defendants:

1. **Hashim Rexhepi**, son of Aziz, DOB 05 April 1958, POB in village Celina, Municipality of Rahovec, address Rr e UCK no.17, Prishtinë/Priština, Albanian, Kosovo citizen, ID no: 1004332799
2. **Ibish Mazreku**, son of Mustafe, DOB 15 July 1969, POB in village Qifllake, Municipality of Rahovec, address Hospital neighborhood, Prishine, Albanian, Kosovo citizen, ID no: 1008189877

Charged on Indictment PPS No. 64/10 with the following offences:

Rexhepi and Mazreku

Count 1

- **Abusing official position or authority**, contrary article 339 paragraph 3 related to article 23 of the CCK, punishable from one to eight years of imprisonment;
- **Trading in influence**, contrary to article 345 par 1 related to article 23 of the CCK, punishable by a fine or imprisonment up to two years;

Rexhepi

Count 2

- **Abusing official position or authority**, contrary to article 339 paragraph 3 of the CCK, punishable from one to eight years of imprisonment;

Rexhepi

Count 3

- **Abusing official position or authority**, contrary to article 339 paragraph 3 of the CCK, punishable from one to eight years of imprisonment;

Rexhepi

Count 4

- **Abusing official position or authority**, contrary to article 339 paragraph 3 of the CCK, punishable from one to eight years of imprisonment;
- **Fraud** contrary to article 261 of CCK, punishable by a fine or imprisonment up to three years;

- **Trading in influence**, contrary to article 345 par 1 of the CCK, punishable by a fine or imprisonment up to two years;

Rexhepi

Count 5

- **Abusing official position or authority**, contrary to article 339 paragraph 3 of the CCK, punishable from one to eight years of imprisonment;
- **Trading in influence**, contrary to article 345 par 1 of the CCK, punishable by a fine or imprisonment up to two years;

Mazreku

Count 6

- **Abusing official position or authority**, contrary to article 339 paragraph 3 of the CCK, punishable from one to eight years of imprisonment;

Upon receiving the appeal of the EULEX Prosecutor of the Special Prosecution Office of the Republic of Kosovo filed with the Court on 19 December 2011 against the Ruling of the Confirmation Judge KA 547/11 dated 12 December 2011 issues the following:

After having held deliberation and voting session, and Pursuant to Article 434, paragraph 2 of the Kosovo Code of Criminal Procedure,

Issues the following:

RULING

- I. The appeal of the SPRK Prosecutor PPS no.64/10 filed with the court on 19 December 2011, against the ruling of the confirmation judge KA.no.547/11 dated 12 December 2011, is hereby **REJECTED** as **UNFOUNDED**.
- II. The ruling of the confirmation judge KA.no 547/11 dated 12 December 2011 is hereby **AFFIRMED**.

REASONING

Procedural background

On 21 July 2010, SPRK Prosecutor filed the ruling on initiation of investigation against Hashim Rexhepi, Ibish Mazreku Ismet Jashanica and Shkendije Himaj for the criminal offences listed above.

On 9 August 2011, SPRK Prosecutor filed with the District Court, indictment PPS 64/10 dated 5 August 2011 against Hashim Rexhepi and Ibish Mazreku for the criminal charges listed above.

On 20 October 2011, at the premises of the District Court of Prishtina the confirmation hearing took place.

On 12 December 2011, the Confirmation judge issued the confirmation ruling.

On 19 December 2011, the SPRK Prosecutor submitted with the court the appeal against the confirmation ruling.

On 21 December 2011, defence lawyer Mr. Rame Gashi, on behalf of the defendant Hashim Rexhepi, submitted to the court his reply on the appeal of the SPRK Prosecutor.

In his appeal the SPRK Prosecutor, proposed to the three-judge panel to reject the determination of the confirmation Judge and to find that the reasoning given on the ruling of confirmation dated 12 December 2012 should be declared as unfounded. At the same time the SPRK Prosecutor request that the indictment be confirmed.

On the other hand the defence lawyer of the first defendant (Hashim Rexhepi) Mr. Rame Gashi in his reply to the appeal of the SPRK Prosecutor proposed to the three-Judge panel to reject the appeal of the SPRK Prosecutor filed against the ruling of the confirmation judge. At the same time the defence lawyer suggested that the three-judge panel should affirm the ruling of the confirmation judge.

Findings of the three-judge panel

The three-Judge panel finds, pursuant to Article 434, paragraph 5 of the Kosovo Code of Criminal Procedure that the Confirmation Judge had the subject matter jurisdiction to render the ruling which he did render and that the ruling was rendered by the authority empowered to render it.

1. The three-Judge panel first of all observes that there is an error in the appeal of the Prosecutor who purports to appeal against the Ruling of the Confirmation Judge that the covert evidence in the case was inadmissible. In fact, the three-Judge panel notes, the Confirmation Judge made no such Ruling. In fact, the Confirmation Judge ruled the covert evidence *admissible*. The three-Judge panel, therefore, does not further consider that aspect of the appeal of the Prosecutor.
2. The three-Judge panel finds, in respect of each element of the Ruling the subject of appeal, that the findings of the Confirmation Judge are proper findings based on the evidence and material within the case files.

3. Specifically, the three-Judge panel finds in respect of the Ruling on count 1 as against both defendants that it was properly founded. Due to the lack of objective elements there is no presumption that the suspects have committed the criminal offences with which they are charged. Indeed Hashim Rexhepi and Ibish Mazreku did not have any role in establishment of the IAK and CREA-KO nor were they managers, board members, or shareholders. Taking that into consideration they did not made any financial profit for themselves or for other persons. From this perspective it could be seen that the both suspects could not exceed the limits of their authorization because they did not have any authorization or supervision over IAK or CREA-KO. Finally, as a consequence it appears that Hashim Rexhepi and Ibish Mazreku could not request, influence, or exert any kind of pressure towards IAK due to their lack of capacity as an official person in the decision making process. There was no official position for the defendants to abuse. The three-Judge panel concludes that even if the Prosecution case was taken at its highest, i.e. working on the basis that the Prosecution was able to prove all that it asserts in respect of count 1, the conduct alleged, whilst it may arguably be disreputable if proved, it would not be criminal conduct.
4. In respect of the Ruling on count 2, the three-Judge panel finds that the Prosecution, in its appeal, is seeking to put count 2 on a different basis than that alleged in the indictment and that there is no basis in law or on the evidence for them to do so. As was stressed in the ruling of the Confirmation Judge, It should be noted that during the period of time when the sponsorship agreement was signed between BpB bank and the Basketball club of Prishtina, Hashim Rexhepi did not have any formal function within the Basketball Club Prishtina. According to the minutes of the board meeting of the Basketball Club, Hashim Rexhepi was appointed as a member of the board of the Basketball Club Prishtina and elected Chairman of the Board only on 7 October 2004 (after the agreement on sponsorship was signed). However on 14 April 2005 BpB signed an agreement on sponsorship of the football club Prishtina in the sum of 30.000 euro. This decision was signed by Nazmi Mustafa chairman of the board of directors of BpB. Hashim Rexhepi had no function in football club prishtina. Hashim Rexhepi was chairman of the basketball club and not football club Prishtina. The three-Judge panel concludes that even if the Prosecution case was taken at its highest, i.e. working on the basis that the Prosecution was able to prove all that it asserts in respect of count 2, it would not demonstrate a criminal offence.
5. In respect of the Ruling on count 3, it should be stressed that on 21 December 2005 CBAK confirmed in writing to BpB that BpB could lend less than 10,000 Euros without restriction but loans in excess of that amount may be approved when the performance of the borrower and his capacity to repay the debt had been favourably assessed by the BpB loan committee. Taking into consideration that during this time of period Hashim Rexhepi had very high ranking official position within the CBK

(Chief Executive officer), had good incomes within Kosovo society, he was never classified as a bad borrower, it is obvious that Hashim Rexhepi fulfilled all criteria to be considered as a good borrower. It should be noted that Hashim Rexhepi's application for a loan was been carefully evaluated and fully approved by the loan committee within BpB. Furthermore it has been established that Hashim Rexhepi has reimbursed his loan before maturity. SPRK did not specify how the alleged abuse of official position and authority occurred, what was the damage caused by the criminal activity, who benefitted from those activities. The three-Judge panel finds that there is not sufficient evidence to find a well grounded suspicion that the defendant has committed the criminal offence alleged.

6. In respect of the Ruling on count 4, due to the worsening financial situation in the insurance company, Dardania, on 29 May 2009, the Board of the CBK appointed Faton Bajrami as temporary administrator with the aim of restoring the financial situation of Dardania.

On 7 July 2009 an official meeting took place between temporary administrator of Dardania and the Crisis Committee of Dardania chaired by Hashim Rexhepi in his capacity of the Governor of the Central Bank of Kosovo.

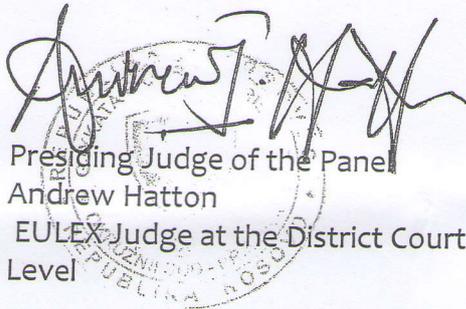
On 16 July 2009, the temporary administrator issued a decision by which certain advance payments in the total amount of 1,987.997.19 euro were write off, from the account balance upon the request of the Managing Committee chaired by Governor - Hashim Rexhepi, and converted into external balance positions. It is the opinion of the court that the "write-off" as tool used in accounting process does not have any impact or influence on the civil court procedure, therefore Dardania remained fully competent to initiate civil claim for reimbursement of debts with regard to the advance payments. The Public prosecutor failed to make distinction between legal nature of advanced payment and the right of the Insurance company Dardania for compensation of the debts, in deed the write off of the claims in the balance sheet of Dardania does not delete civil debts of the beneficiaries with regard to Dardania.

Even if the writing off the advance payment constituted a criminal offence of abusing of official position the crime itself cannot stand without involvement of the temporary administration Faton Bajrami, and involvement of other members of the board, because Faton Bajrami was the one who exercised directly his official position, he was the one signing and taking over the implementation of the decision to write off the advanced payment. In addition the decision to appoint Faton Bajrami as a temporary administrator was a decision of the managing board of the Central Bank of Kosovo and not a decision of Hashim Rexhepi. The indictment failed to describe how Hashim Rexhepi influenced Faton Bajrami to take that decision. Furthermore, the Prosecutor failed to provide any evidence of a possible link between Hashim Rexhepi and "beneficiaries" of the write off. In relation to the criminal offence of fraud, the Prosecutor did not submit any relevant evidence on how Hashim Rexhepi "deceived", or presented any false representation, or concealed

any fact. Due to lack of objective and subjective elements of the criminal offences described above there is no ground to believe that Hashim Rexhepi committed the crime he is charged with.

The three-Judge panel finds that there is not sufficient evidence to find a well grounded suspicion that the defendant has committed the criminal offence alleged.

7. In respect of the Ruling on count 5, As was mentioned in the ruling of the Confirmation Judge, the Insurance Association of Kosovo (IAK) is registered as a non-governmental organization (NGO) and as a result the organization is governed independently by its own internal bodies. Indeed IAK is a private institution which is not supervised by any institution, including the Central Bank of Kosovo. Moreover the IAK is managed by a board composed of managing directors of insurance companies licensed in Kosovo. There was no official position for the defendants to abuse. The three-Judge panel concludes that even if the Prosecution case was taken at its highest, i.e. working on the basis that the Prosecution was able to prove all that it asserts in respect of count 5, the conduct alleged, whilst it may arguably be disreputable if proved, it would not be criminal conduct.



Presiding Judge of the Panel
Andrew Hatton
EULEX Judge at the District Court
Level