

Monthly Bulletin “Justice in Kosovo”

No. 30 May 2013

Since September 2010, BIRN and Internews Kosovo have been publishing the monthly ‘Justice in Kosovo’ bulletin, which contains information about the Court Monitoring Project and its outcomes. The information provided has been collected by BIRN observers in Kosovo’s courts and focuses on the overall functioning of the judicial system, as well as court reform in the country. This Newsletter also includes analysis and research of related issues previously published in the Gazeta Jeta në Kosovë online portal.

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1. Suspicions about the Drenica group

The European Union Rule of Law Mission, EULEX, is investigating former Kosovo Liberation Army former Commanders and soldiers on suspicion of war crimes.

On May 25, a EULEX Judge issued the measure of house arrest for the Mayor of Skenderaj, Sami Lushtaku, Kosovo's Ambassador in Albania, Sylejman Selimi, both former senior KLA commanders, and five of their fellow fighters: Sahit Jashari, Avni Zabeli, Hysni Thaçi, Jahir Demaku and Zeqir Demaku.

Suspicions of war crimes committed by Selimi, a former Commander of the KLA General Headquarters whose nickname was "Sultan," are listed in seven counts.¹

2. Court Decision on "Media Restriction"

Presiding Judge, Anna Adamska-Gallant, warned the media about following restrictions on cameras recording in the courtroom.

The judge's remarks came on May 18 in the hearing session of the trial against Fatmir Limaj and six other defendants, all charged with 13 criminal offences mainly concerning corruption and abuse of official position.

"On the recording of hearing sessions, I have taken a decision and expect this decision to be respected," Gallant said at the beginning of the hearing session.

The Decision, published on EULEX's official website, provides that hearing sessions may be recorded only during the first 10 minutes of the hearing.

With this Decision, which contains linguistic errors and is not translated well from English, the EULEX Judge also defined the manner how hearings can be recorded.

According to the Decision, the media are only allowed to "make a general presentation of the hearings" but are prohibited from "directly presenting the judge, defendants and lawyers."

The decision to restrict the media was objected by Fatmir Limaj and his attorney, Karim Khan.

They both requested the Judge to allow full recording of hearing sessions, as was allowed in the first hearing session, when the case prosecutor Johannes Pickert read the indictment.

¹EULEX suspicions can be found in Albanian in the online news portal *Gazetën Jeta në Kosovë* <http://www.gazetajnk.com/?cid=1,1018,5670> and in English at <http://www.balkaninsight.com/en/article/ex-kla-members-investigated-for-killings-and-ill-treatment>

“For four years I couldn’t speak to the media on all the defamation and lynching against me and my family”, said Limaj.

“For four years I was tortured; that is why I want to speak”.

In addition, his attorney, Khan, also asked Judge Anna Adamska-Gallant to allow media to record, if they want, on the same grounds.

“This is not a case involving protected witnesses and is in the public’s highest interest,” said Khan.

Prosecutor Pickert also gave his opinion on the recording of hearing sessions, and said he didn’t object the recording and full broadcast of hearing sessions.

In the first part of the hearing, the Judge said she stands by her decision not to allow the recording of hearings, and that parties may appeal this decision in the Constitutional Court of Kosovo.

After the lunch break, Adamska-Gallant said she “reconsidered” the decision and decided to allow camera recording by the media.

3. Prison for the Chief of Anti-Corruption Task Force in the Special Prosecution

The trial panel of the Basic Court of Peja, issued a decision on May 23 sentencing the former Chief of Anti-Corruption Task Force and prosecutor of the Special Prosecution of Kosovo, Nazmi Mustafi to 5 years of prison. In addition to having to spend this time behind bars, he will also have to pay a fine of 10,000 euros. The court also banned him from practicing any official activity or duty for three years.

Mustafi was sentenced by the court for two counts of abusing position, and a third for illegal possession of weapon. He will remain in detention until the court’s decision becomes final.

His associates, brothers Reshad and Xhelal Zherka, were sentenced by the same trial panel with four years of prison each. The Zherkas will also have to pay each a fine of 10,000 euros.

Mirela Ndoci, Albanian citizen, was sentenced to six months of imprisonment and a fine of 10,000 euros for helping former Prosecutor Mustafi in the abuse of official position, receiving an undisclosed amount of money from the suspects, the indictment said.

Ndoci is free to travel in Kosovo, Albania and Switzerland.

The defendants’ lawyers have announced they will use their right to appeal the decisions.

According to the indictment, Nazmi Mustafi, through the Zherka brothers, requested Pashk Mirashi, a receiver at the Credit Bank of Prishtina, Gjakova Branch, to give 50,000 euro to terminate criminal investigations and free him from house arrest.

Mustafi, with the Zherka brothers, according to the indictment, managed to extort 30,250 euros from Mirashi.

4. Fatmir Limaj proposes Hashim Thaçi as witness

The Prime Minister of Kosovo, Hashim Thaçi, former Head of the International Civilian Office (ICO), Peter Faith, former EULEX Chief Special Prosecutor, Isabell Arnal, and former EULEX Chief Prosecutor, Johannes van Vreeswijk, are four witnesses proposed by Democratic Party of Kosovo MP Fatmir Limaj to testify in the corruption case against him.

Limaj's proposal was made on May 18 in the hearing session in the court case where Limaj and six other defendants are accused of 13 criminal offences, mainly involving corruption and abuse of official position.

The court will decide on the proposed witnesses after it initially decides whether to continue with the trial, or if the indictment will be dismissed.

If Thaçi is approved as witness, according to the criminal procedure, he is obliged to testify before the court.

Defence attorneys and defendants spent more than eight hours presenting their objections, requesting dismissal of the indictment.

In his presentation, Limaj made reference to the transcripts of telephone messages, evidence objected to by the Limaj's defence even during investigations.

According to the indictment filed by Prosecutor Johannes Pickert, Fatmir Limaj exchanged messages and met with Mehmet Shkodra, owner of Intereuropa Company, claiming that a tender was promised to him.

The indictment also holds the former Minister accountable for holding personal meetings with business operators while tenders were open, and for receiving bribes.

Limaj, according to the indictment, led a criminal group, deliberately using the fragility of the administration and the post-independence limbo, working to obtain personal gain, filing their pockets with "significant amounts of bribes".

Attorney Karim Khan, who defends Limaj in this case, offered his version to the court of the issue of SMSs.

Khan said that the first person to receive these SMS messages was Hashim Thaçi, who went to Fatmir Limaj's office to inquire on their contents.

"Limaj didn't hide anywhere when asked about SMSs by Thaçi, but called Endrit Shala immediately to clarify the matter", said Khan.

The defence lawyer added that they were "delivered anonymously, from anonymous sources and there isn't a shred of evidence on their validity".

In this case, according to the amended indictment PPS 425/09, on December 5, 2012, Fatmir Limaj, his two brothers Demir and Florim Limaj, Endrit Shala, Nexhat Krasniqi, Florim Zuka and Gani Zuka, are accused on 13 criminal offences mainly involving corruption and abuse of official position.

This case relates to the period when Fatmir Limaj served as Minister of Infrastructure and Telecommunication.

The seven defendants are accused of organized crime, misappropriation in office, entering into harmful contracts, abusing official position, receiving bribes, giving bribes, misuse of economic authorizations, money laundering, obstruction of evidence, destroying or concealing archive materials, unauthorised ownership, control, possession of weapons and non-disclosure of funds received during the campaign.

Other defendants also presented their objections.

"There is no evidence or testimony against Endrit Shala", said his attorney, Arianit Koci.

According to Koci, "Doctor Shala is a devoted parent and a good doctor, and his fate hangs by a thread".

The defence attorney stated that SMSs are not located in the Post's archives and, as a result, they never existed.

The attorneys of Demir and Florim Limaj, Nexhat Krasniqi, Florim Zuka and Gani Zuka also expressed objections.

The hearing session, the second since the trial against Limaj and others in the corruption case, was held in the premises of Cinema ABC 1 on Friday, from early morning until around 6 p.m.

Initially, the Judge assigned 15 minutes for each defence attorney to present their objections.

This was objected by Khan, Limaj and others, with the reasoning that they should all be treated as equal parties.

“The prosecutor had two days to present the indictment. Do not limit our time, and treat us as equal parties”, Limaj said.

The Cinema, which is rented by the EULEX Mission in the absence of courtrooms, accommodated around 150 persons, including litigating parties and the public.

Hearing sessions in the trial of Limaj and others attract the most public attention.

5. Witnesses in the Kleçka case change their testimonies again

In May, Fatmir Limaj appeared in another case in the Basic Court in Prishtina, in the Kleçka case, where he and nine of his fellow fighters are accused of committing war crimes against the civilian population and prisoners of war.

Protected witnesses Y, M, B and I testified in five hearing sessions. Witnesses confronted their testimonies given during investigations, which differed from those given in the hearing.

Protected witness Y testified in the room emptied from the public, objecting all statements deposited in the prosecution, said Tomë Gashi, Fatmir Limaj’s attorney.

In addition, protected witness M also objected his statement given before Special Prosecutor Maurizio Salustro, saying he made a mistake signing his deposition.

The reason for signing the statements given earlier to the EULEX mission members, according to the witness, was the fact that he was intimidated and under the pressure of EULEX investigators.

“I understood some parts of the statements, but if you were in my position and under the same pressure, you would have also signed them. I was frightened and my family was also frightened”, said witness M.

Protected witness M declared that he stayed in the Kleçka prison for 3 to 4 hours, but couldn’t remember other details.

In his testimony he dismissed his statement that he was beaten or mistreated, and said he doesn’t know of any other prisoners.

In his previous statements, M had declared he was hit by someone and that his fellow villagers have beaten them in the prison, but that he couldn’t see them.

According to the previous testimony, when they were brought in the first floor of the prison makeshift in Kleçka, he saw signs of beating and hitting of three of his fellow villagers.

But this time he said: “I haven’t seen anyone beaten or reddened. I am not a doctor to make a diagnosis”.

Similarly to the previous witnesses, witness B gave another testimony, different from the one given in 2010 to investigators.

B told of his arrest and delivery to the Kleçka centre.

He said: “I was sent to a person that I believed to be Nexhmi Krasniqi, but later I found out it wasn’t him”.

The prosecution confronted the witness with his statement given to the investigator, where he stated that the person he met in Kleçka was Nexhmi Krasniqi.

The witness admitted to having declared this in his first statement, but he said it was not correct.

B added that while he was in the mountains of Berisha, he heard from the people that Nexhmi Krasniqi was chief of military police in this area, and this made him believe that Nexhmi was the person who met him in the Kleçka prison.

The witness said that after giving his statements to the investigation unit in 2010, he understood that it wasn’t the same person. The person he believed to be Nexhmi, the witness stated he had never seen him before and described him as 190 cm tall, blond and short hair, thin and with a black uniform.

Agim Zogaj (now deceased, and previously known in the proceedings as Witness X) had brought him the decision in writing from military judge Sokol Dobruna, after he had questioned him, which provided that witness B would be sentenced to 30 days of imprisonment.

The witness declared that after three weeks he was released from prison, where he had good conditions, he was fed well, like other soldiers, and that he wasn’t beaten or ill-treated.

“Agim Zogaj came and took me and sent me to Petrit Ujmiri (Sokol Dobruna), who told me I was free to go”, stated witness B.

The court planned to put the protected Witness I, who has disclosed his identity, in the end of the month.

Urim Krasniqi, refused to testify claiming he was blackmailed and was under pressure by prosecutor Salustro.

During the hearing, the witness accused the Prosecutor and EULEX for exerting pressure and fear when taking the statement in 2010. This led to the hearing being adjourned and the witness was fined 100 Euro.

The witness, who cried in the courtroom, categorically refused to answer. “I said a hundred times that I will not answer to him. I have nothing else to add or take” said the witness.

Krasniqi added, “This one only knows how to blackmail, nothing else”.

The prosecutor reacted by warning the witness that false statements constitute a criminal offence – as do false accusations.

Urim Krasniqi continued with his allegations of blackmail and pressure of prosecutor Salustro.

According to the witness, the prosecutor forced him to accept what the prosecutor was saying. “He took his police and sent me in a forest and told me you must accept everything I said”.

The witness continued, “He came to my house again, and told me you have to come. He never stopped”. “My state of being is very difficult, as it was then” said the witness.

In the “Kleçka” case, Arben Krasniqi, Naser Krasniqi, Nexhmi Krasniqi, Behlul Limaj, Fatmir Limaj, Refki Mazreku, Naser Shala, Sabit Shala, Shaban Shala and Besim Shurdhaj, are all accused for war crimes against the civilian population and prisoners of war.

Charges against Limaj was initially dismissed in May last year, but the prosecution appealed the judgment and the case was sent to a retrial.

6. Analysis: Anonymous witnesses changes stories

Testimonies from witnesses are the main evidence used against in war crimes trials in the Kosovo courts.

Special Prosecution of Kosovo bases its accusations precisely on testimonies of witnesses given during the investigation phase, including eyewitnesses and circumstantial witnesses.

However, often the testimonies given during investigations differ from those given in main hearings.

Currently, in the Basic Court of Prishtina, there are two very important ongoing trials on war crimes. Both are in retrial, as the Supreme Court quashed the decisions of the former District Court.

The first case is Kleçka, where the accused persons are MP of Democratic Party of Kosovo and former KLA Commander, Fatmir Limaj, and nine of his former comrades.

The second case is the Llapi Group, where the accused persons include another PDK MP, Latif Gashi, who during the war was Chief of Intelligence in the Llapi zone, and Rrustem Mustafa, known as Remi, former PDK MP and former Commander in the Llapi zone. Nazif Mehmeti, former KLA member, is also accused with them.

Special prosecutors in both cases have based their indictments in statements of protected and anonymous witnesses, but the latter are coming out publicly to testify, despite receiving protection measures from the prosecution.

Rushid Ballofci, previously known as anonymous witness 7 in the Llapi Group, on April 4 this year, when he came before the trial panel, disclosed his identity and denied all statements made in the investigations phase.

Ballofci had given his first testimony on August 20, 2002, to the UNMIK Police.

He told the trial panel in the hearing that: "I stand by the statements given to the Police, but the interpreter was Serbian. I stand by all that I said in the statements, but I don't know what was written".

In the statement of August 20, 2002, Witness Ballofci stated: "In the second interview in Llapashtica (KLA detention centre), Latif Gashi interrogated me and Nazif Mehmeti beat me".

In the hearing of April 4 the witness denied his statement again, putting the blame on the interpreter: "I did say the conditions were not good".

To police, he said he saw beatings every day in Llapashtica, while in the hearing he said: "I didn't hear or see any beating".

Then, in the statement to the investigative judge, he said: "Nazif Mehmeti beat me. He hit with a wooden stick for an hour. After a break of 30 minutes, he beat me again with a wooden stick and an electric baton".

After this was read to the witness, he denied the statement, saying: "It is not true, because if he [Nazif Mehmeti] had beaten me, I would have taken revenge even if he were a dragon".

Ballofci was confronted by the prosecutor and trial judge with his statements given to the police and the investigative judge. The witness denied the statements given to the police and investigative judge even in the first trial against the Llapi Group in 2003.

The witness said that UNMIK offered to send him abroad in exchange for testimony against the defendants, but that he rejected this. He denied UNMIK offered him money.

Rushid Ballofci was arrested in November 1998 by KLA in village Barilevë and was sent blindfolded to village Llapashtica, where he stayed detained until December 31, 1998. The witness was later given amnesty.

