

MUNICIPAL COURT OF MITROVICA/MITROVICË

P. Nr. 25/09 – KBr. 25/09

15 May 2009

IN THE NAME OF THE PEOPLE

THE MUNICIPAL COURT OF MITROVICA/MITROVICË,

With EULEX Judge Christine Lindemann-Proetel as individual judge,

Assisted by the Recording Officer Tara Khan,

in the criminal case against the accused **D. RR.**,

charged with the criminal acts of Light Bodily Harm committed in co-perpetration, Article 153 paragraph 1 item 4 and paragraph 2, as read with Article 23 of the Provisional Criminal Code of Kosovo ("PCCK"), and Damage to Movable Property committed in co-perpetration, Article 260 paragraph 2, as read with Article 23 of the PCCK,

in the main trial in summary proceedings held in public on 12 May 2009 and on 15 May 2009

in the presence of the accused, his Defence Counsel Xhelal Hasani, and EULEX Public Prosecutor Jari Mikko Auvinen

on 15 May 2009 pronounced in public the following:

VERDICT

The accused, **D. RR.**, son of M. Rr. and A. M., ID no. , born on , in , Kosovo-A., residing at Street , , Kosovo, single, completed elementary school, presently unemployed, of average economic status, no known previous conviction,

is found

GUILTY

because

On around hrs, in immediate vicinity of the crossroads between the and streets in , **D. Rr.** acting together with other unknown persons, whilst armed with baseball bats and/or wooden sticks, approached the car number plates belonging to the injured party Dj. B., who was sitting therein together with G. P..

D. Rr. together with the unknown persons, after having cursed at the persons in the car, assaulted Dj. B. by inflicting several blows to his head and body, causing light bodily injuries, which temporarily impaired his health.

At the same time they hit the vehicle with the baseball bats and/or wooden sticks and damaged it. The actions were motivated by bias against Serbs.

Thereby he committed

the criminal offence of Light Bodily Harm, Contrary to Article 153 (1) (4) and 153 (2) as read with article 23 PCCK,

and

the criminal offence of Damage to Moveable Property, Contrary to Article 260 (1)(2), as read with article 23 PCCK.

For the criminal offence of Light Bodily Harm a punishment of 5 months imprisonment is rendered.

For the criminal offence of Damage to Moveable Property a punishment of 2 months imprisonment is rendered.

Therefore, the accused **D. RR.** is

SENTENCED

With an aggregate punishment of 6 (six) months imprisonment

according to Article 71 (1) and (2) PCCK.

This sentence shall not be carried out, if the accused does not commit any other criminal offence for a period of **two (2) years** according to Articles 44 (1) (2) (3), 45 (1) PCCK.

In case of revocation of the suspended sentence, the duration of custody from is to be credited to this sentence according to Article 391 (1) item 5 PCPCK.

COSTS

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 (1) PCPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 (2) PCPCK.

REASONING

I. Competence of the Court

On 16 January 2009, the President of the Assembly of EULEX Judges exercised her right to assign EULEX judges to cases falling under the subsidiary competence of EULEX judges (Article 3.4 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, Law No. 03/L-053).

The substantial and territorial competence of an individual judge at the Municipal Court of Mitrovica stems from Article 21 paragraph 1 item 1, Article 22 paragraph 2 and Article 27 paragraph 1 PCPCK.

II. Proven Facts

The Court is convinced beyond reasonable doubt of the following facts:

1. On _____ around _____ hrs, in immediate vicinity of the crossroads between the _____ and _____ streets in _____, a group armed with baseball bats and/or wooden sticks, approached the car with number plates _____ belonging to Dj. B., who was sitting therein together with G. P..
After having cursed at the persons in the car, the group assaulted Dj. B. by inflicting several blows to his head and body, causing light bodily injuries, which temporarily impaired his health.

At the same time they hit the vehicle with the baseball bats and/or wooden sticks and damaged it.

This course of events is proven by the concurrent testimonies of the injured party Dj. B. and the witnesses G. P. and M. B..

Dj. B. testified that the event happened as described above and added more precisely that a group of 6-7 people carrying wooden sticks and pipes approached the car, with one person approaching the window of the driver's side. The assailants dragged him out of the car and onto the ground, and then struck him on his head and body with the sticks. He suffered light injuries to his body and head, and received stitches in his hand. The windshield and two front side windows of his car were smashed, as well as the back lights.

The Court deems this testimony credible, especially as the injured party did not incriminate the accused. He consistently testified that he could not identify any of the attackers. Even in the court room, when it would have been very easy to claim he would now recognize the accused, the injured party persisted in his inability to say whether or not the accused was amongst the assailants.

Moreover, the statement of Dj. B. is confirmed by the testimony of G. P. as to all essential elements. The slight discrepancies that according to G. P. a group of more than 10 people approached the car and these people carried baseball bats, do not invalidate the credibility of either of the testimonies. By contrast, the minor discrepancies indicate that the injured party and the witness G. P. have not co-ordinated their statements with each other. It is normal that such details are perceived and/or memorized differently by the persons involved. The Court does not see any reason to query the credibility of the statement given by the witness G. P. insofar. He provided his testimony in a calm and considerate way without any eagerness for retaliation.

Further, the testimony of police officer M. B. is corroborative of the statements given by Dj. B. and G. P.. He testified that he was on duty patrolling when he saw approximately 40 meters away at the crossroads of and streets approximately 10 people standing in the vicinity of a vehicle, at least one of them with a baseball bat while others carried wooden sticks. Three or four of the people were hitting and kicking a person lying on the ground next to the car, while the others were causing damage to the car. All of the persons present were taking part in the actions, either by beating the victim or inflicting damage to the car. The testimony of this witness is especially credible,

as he was not personally involved in the incident, but observed it as a police officer on duty, thus being aware of the need to be attentive to all possibly relevant details.

2. The members of the group knowingly and willingly acted together.

This stems from the proven course of events, especially the fact that several of the assailants were equipped with baseball bats and/or wooden sticks, respectively. Further, the group arrived practically at the same time at the place of the incident. Each of the participants could see what was going on and could have interfered or at least could have left the scene, if he or she was not in agreement with the actions of the group.

3. The accused **D. Rr.** actively participated in these actions.

The Court deems this proven beyond reasonable doubt by the statements of the witnesses G. P. and M. B..

G. P. testified that he recognized the accused **D. Rr.** as one of the attackers. He did not know the name of the accused at the time of the incident, but recognized his face because they both had lived in the same area, in _____ in _____, for around ten years starting from the early nineties. The last time he had seen the accused there was only some months prior to the incident. They have neither had any close contacts nor any disagreements with each other.

This testimony is credible, as the witness convincingly explained why he could recognize the face of the accused, but did not know his name, when he was questioned the first time. The witness has no reason to give false testimony against the accused. He himself has no interest in doing harm to the accused, as he knows him only by sight. Neither can the close relation to his friend Dj. B. be a reason for giving false testimony insofar, as the latter does not incriminate the accused at all. The Court is further convinced that the witness did not mistake the accused for somebody else, as he has known him for a long time and he has seen him only some months before the incident.

The fact that the witness identified the accused on a photograph, which was shown to him at the police station in non-compliance with the procedure foreseen in Article 255 PCPCK, does not make the statement inadmissible evidence. Evidence obtained in violation of the provisions of criminal procedure is inadmissible only when expressly so prescribed (Article 153 Paragraph 1 PCPCK), which is not the case related to Article 255 PCPCK. It does not invalidate the testimony either. The witness had known the accused before the incident and he had recognized and identified him at the moment of the

incident – he just did not know his name at that time. He also recognized the accused in the court room as the person he had known for a long time. This is a different situation from that underlying the procedure foreseen in Article 255 PCPCK, namely that the witness shall identify a suspect he does not know.

The witness M. B. testified that he recognized the accused **D. Rr.** as the person who first began talking with the driver and then together with others dragged out the driver from the car. However, he was not sure, if the accused actually participated in hitting and kicking the driver. He had knowledge of the accused because **D. Rr.** had been a suspect in two previous criminal cases of theft and the witness had taken him to the police station around two years ago. He has also seen him thereafter several times in the area of .

This testimony is credible firstly for the general reasons mentioned above (see 1). Secondly, the explanation why he could recognize the accused is persuasive. Even the defence refers to the prior arrest of the accused by the witness two years ago. However, the Court excludes the possibility that the witness might have incriminated the accused in order to take revenge for the exchange of words that had taken place at that time. Police officers are quite often verbally attacked by arrested persons due to the extraordinary emotional situation. The idea that a police officer would take revenge for such an event at all and if so, only two years later, is a rather far-fetched thought. The witness M. B. has by contrast demonstrated his unbiased approach, when he clarified that he was not sure whether the accused himself kicked and/or hit the injured party.

By contrast, the accused has consistently stated that he was not present at the time and place of the incident, but went to the health clinic on at around hours for an injection, as he was not feeling well. Together with his sisters H. B. and A. Rr. he went home thereafter and stayed at home. He suffers from depression and often receives these injections that make him feel weak.

The statement of the accused is supported by the witnesses H. B. and A. Rr.. Both of them confirmed having been with the accused on the evening of . After having received his injection at around hours, the accused had stayed at home sleeping in his bedroom for the rest of the day.

However, their testimonies cannot invalidate the contrary statements of G. P. and M. B., as the Court finds the statements of the alibi witnesses not credible. Although H. B. and A. Rr. may have been tempted to testify in favour of their brother, it is not cogent that

they gave false testimony intentionally. But in any event, it is not credible that the witnesses can remember that what they described happened exactly on , although both of them concurred that nothing special had happened that day and that they heard about the incident only when the accused was arrested. The arrest of the accused took place on , i.e. eleven days later. Related to the date of this extraordinary event, which is much more likely to be remembered correctly, the witness A. Rr. said "it must have been the 10th". Thus, the likelihood that they mixed up the events of different days is obviously very high.

The two medical reports regarding **D. Rr.**, which were submitted by the defence and read to the Court, are of no relevance to the presence of the accused at the time and place of the incident, as they refer to medical treatment in March and April 2009.

4. The actions of the group and specifically of the accused were motivated by bias against Serbs.

This motive for the actions described above is to be deduced from the entirety of the following factual circumstances. The accused has not had any dispute prior to the incident with the injured party Dj. B., who had not known the accused at all, or the witness G. P., who had known the accused only by sight as a neighbour several years ago. There was no provocative action of Dj. B. and/or G. P. that might have caused the assault as an immediate reaction, because they had just reached the place of the incident and were still sitting in the car when the assault started (see above under 1.). However, the car, in which Dj. B. and G. P. were sitting, was equipped with the number plates " ". It is generally known that the number plates " -..." are issued by Serbian authorities and - in principle - used by Kosovo-Serbs. Further, it is common knowledge that at the time of the incident, i.e. within the first days of this year, inter-ethnic tension in the area of the incident was quite high and several incidents had occurred before. The latter has also been corroborated by the witness M. B..

Thus, the only conceivable motivation for the assault is the assumed and actual Serbian ethnicity of the persons in the car, namely Dj. B. and G. P..

III. Legal Qualification

The Court is aware that especially in the Northern region of Mitrovica the applicable law is under discussion. The Court points out that the Criminal Procedural Code of Kosovo (CPCK) and the Criminal Code of Kosovo (CCK) as to their substance are almost identical with their former versions, the Provisional Criminal Procedural Code of Kosovo (PCPCK) and the Provisional Criminal Code of Kosovo (PCCK), whereas the substance of every single article that the court applied or could have applied in this case, is fully identical in both aforementioned procedural laws.

Although the Court in this verdict refers to the PCPCK and the PCCK, it considered and applied the substance of these relevant articles.

The accused knowingly and willingly acted together with the other unknown perpetrators in inflicting bodily harm on the injured party Dj. B. by kicking and hitting him, using objects capable of causing serious bodily injury, namely baseball bats and/or wooden sticks. This resulted in temporarily impairing the health of Dj. B., who suffered light injuries to his body and head, and stitches in his hand. Thereby he committed the criminal offence of Light Bodily Harm, pursuant to Article 153 paragraph 1 item 4 and paragraph 2 PCCK as read with article 23 PCCK.

The accused knowingly and willingly acted together with the other unknown perpetrators in damaging the car, number plates , belonging to Dj. B., motivated by bias against the Serbian ethnicity. Thereby he committed the criminal offence of Damage to Moveable Property pursuant to Article 260 paragraphs 1 and 2 PCCK as read with article 23 PCCK.

IV. Criminal Liability

The accused is criminally liable for the criminal offences described in the enacting clause, Article 11 paragraph 1 PCCK as read with Article 12 PCCK. The Court has no doubt that the accused at the time of the commission of these acts was fully capable to understand and control his actions and to understand that he was committing a criminal offence. The fact that he suffers from depression, which is confirmed by the two medical statements read to the Court as well as by the – insofar credible statements of H. B. and A. Rr., does not affect his criminal liability at the time of the commission of the criminal offences. The accused himself explained in concurrence with the related accounts of H. B. and A. Rr., that his condition is varying and when he really does not feel well, he gets the injections that make him extremely tired. However, the way the accused acted in

committing the criminal offences shows clearly that at that time he was neither in the state of needing these injections nor in the state after having received them.

V. Determination of Punishment

The criminal offence of Light Bodily Harm is punishable by imprisonment of at least 15 days and up to 3 years imprisonment, Article 153 paragraph 2 PCCK as read with Article 38 paragraph 1 PCCK.

The criminal offence of Damage to Moveable Property is punishable by a fine or by imprisonment of up to one year, Article 260 paragraph 2 PCCK.

In determining the punishment, the Court considered as a mitigating circumstance the difficult personal situation of the accused, especially due to his suffering from depression. In favour of the accused, the Court also considered that no previous convictions are known to the Court.

With regard to the criminal offence of Light Bodily Harm, the Court considered to the detriment of the accused that the injured party Dj. B. and the witness G. P. were at the mercy of the assailants and the offence was committed motivated by nothing but ethnic bias. On the other hand, it was taken into account in his favour that the injuries of Dj. B. even within the scope of light bodily injuries were rather at the lower end of the scale.

With regard to the criminal offence of Damage to Moveable Property, in the absence of proof about the concrete amount of loss, the damage of the windshield, two front side windows and the back lights being smashed had to be estimated rather low in favour of the accused.

After all, the Court deemed appropriate the punishments of five (5) months imprisonment for the criminal offence of Light Bodily Harm and of two (2) months imprisonment for the criminal offence of Damage to Moveable Property, and imposed an aggregate punishment of six (6) months imprisonment.

A suspended sentence was imposed, as the Court expects the pronouncement of the sentence without execution is sufficient to prevent the accused from criminal offences in the future and to deter other persons from committing similar criminal offences, Articles 34, 42, 43 paragraphs 1 and 2, and 44 paragraphs 1-3 PCCK.

The accused was in detention on remand from the . In case of revocation of the suspended sentence this period of time is to be credited to the sentence, Article 391 paragraph 1 item 5 PCCK.

VI. Costs

The accused has been found guilty. Therefore he must reimburse the costs of criminal proceedings, Article 102 paragraph 1 PCPCK. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained, Article 100 paragraph 2 PCPCK.

VII. Compensation

The injured party Dj. B. has been informed pursuant to Article 355 paragraph 2 PCPCK, that he may file a property claim within the criminal proceedings. As the injured party did not file such claim, the Court did not have to decide on this issue.

The injured party remains entitled to seek compensation in civil litigation.

Prepared in English, an authorized language and drawn up in writing on 29 May 2009.

Tara Khan
Recording Officer

Christine Lindemann-Proetel
EULEX Judge

Legal Remedy: An appeal against this verdict may be filed in written form through the Municipal Court of Mitrovica/Mitrovicë to the District Court of Mitrovica/Mitrovicë **within eight (8) days** from the date the copy of the verdict has been served, Article 473, paragraph 3 PCPCK.