

DISTRICT COURT OF MITROVICA

P Nr. 349/07

18 February 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Klaus Jung and Nikolay Entchev as panel members, with the participation of Tara Khan EULEX Legal Officer as Recording Officer, in the criminal case against;

E.T., charged with the criminal offences of Murder contrary to Article 146 of the Provisional Criminal Code of Kosovo (PCCK) and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK, and

A.D. charged with Incitement to Murder contrary to Article 146 of the PCCK in conjunction with Article 24 of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK according to the Indictment of the District Public Prosecutor dated 27 July 2006 and amended in the first main trial on 07 December 2006;

After having held the public hearing concerning the acceptance of the plea agreement dated 27 January 2010, on 03 February 2010, in the presence of the accused **E.T.** and **A.D.**, their Defence Counsel Kosovare Kelmendi and Bajram Tmava, EULEX Public Prosecutor Mariah Bamieh and Representative of the Injured Party B.H. (at the first part of the hearing), after having accepted the plea agreement on the same day and after it has been filed with the Court at 9:00 on 18 February 2010 and after having held the public hearing concerning sentencing on 18 February 2010, in the presence of both Accused, both Defence Counsel and the EULEX Public Prosecutor, after the trial panel's deliberation and voting held on 18 February 2010, pursuant to **Article 308A Item 15 of the Criminal Procedure Code of Kosovo (CPCCK)** pronounced in public and in the presence of both Accused, their Defence Counsel and the EULEX Public Prosecutor the following

JUDGMENT

The accused **E.T.**, son of B. T. and Xh. S., born on _____, in _____, Kosovar A., residing in _____, _____ street, married, father of a _____ child, highest education primary school, tradesman by profession, of poor economic status, no known previous conviction, in detention since _____,

Having pleaded guilty to the criminal offences of **Murder in violation of Article 146 of the Criminal Code of Kosovo (CCK) and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK** pursuant to the Plea Agreement dated 27 January 2010 and

The Court having accepted the Plea Agreement dated 27 January 2010 and amended on the session on 03 February 2010, as filed with the Court on 18 February 2010

is

SENTENCED

- to 7 /seven/ years of imprisonment for the criminal act of Murder
- to 2 /two/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The aggregate punishment is determined in **8 /eight/ years of imprisonment**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the CCK.

The time spent in detention on remand since _____ is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

The accused **A.D.**, son of F. D. and V. G., born on _____, in _____, Kosovar A., residing in _____, _____, married, father of _____ children (_____), highest education secondary school, co-owner of _____, of average economic status, no known previous conviction, in detention from _____,

Having pleaded guilty to the criminal offences of **Providing Assistance to Perpetrators After the Commission of Criminal Offences in violation of Article 305 Paragraph (2) of the CCK and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK** pursuant to the Plea Agreement dated 27 January 2010 and

The Court having accepted the Plea Agreement dated 27 January 2010 and amended on the session on 03 February 2010, as filed with the Court on 18 February 2010

is

SENTENCED

- to 2 /two/ years of imprisonment for the criminal act of Providing Assistance to Perpetrators After the Commission of Criminal Offences
- to 1 /one/ year and 6 /six/ months of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The aggregate punishment is determined in **3 /three/ years of imprisonment**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the CCK.

The time spent in detention on remand and in house detention between is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

The accused **E.T.** and **A.D.** shall reimburse - in equal amount - the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK 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 Paragraph (2) of the CPCK.

REASONING

A. PROCEDURAL BACKGROUND

The District Public Prosecutor for Mitrovica in the indictment PP. no. 148/06 dated 27 July 2006 charged **E.T.** with Murder in violation of Article 146 of the Provisional Criminal Code of Kosovo (PCCK) and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK. **A.D.** was charged with Participation in a Brawl in violation of Article 155 Paragraph (1) of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK. During the closing arguments of the first main trial on 07 December 2006 the Public Prosecutor amended the indictment and changed the qualification of the first charge against **A.D.** as Incitement to Murder contrary to Articles 146 of the PCCK in conjunction with Article 24 of the PCCK.

The first main trial before the Mitrovica DC was concluded on 20 December 2006 and the judgment P. 262/06 was announced on the same day. The trial Panel found both accused guilty as charged and sentenced **E.T.** with an aggregate punishment of 13 years of imprisonment with credit of time served in detention on remand and **A.D.** with an aggregate punishment of 7 years with credit of time served.

The Supreme Court of Kosovo, with the Ruling Ap. nr. 216/07, dated 21 November 2007 annulled the judgment of the first instant court and returned the case for re-trial.

B. COMPETENCE OF THE COURT

Under Article 23 Item 1) i) of the CPCK, district courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 paragraph (1) of the CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

As set forth above, the charge of Murder pursuant to Article 146 of the CCK allows for the imposition of a minimum sentence of 5 years of imprisonment. In addition, the indictment in this case alleges that the accused committed the acts in .

Therefore, the Mitrovica District Court is the competent judicial body to hear this criminal proceeding.

On 14 October 2009 the President of the Assembly of EULEX Judges assigned the case to EULEX judges based on Article 3.3 and 3.5 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Criminal Judge Hajnalka Veronika Karpati as Presiding Judge and EULEX Judges Klaus Jung and Nikolay Entchev as panel members. All three judges are assigned to the District Court of Mitrovica.

None of the parties objected to the panel composition.

The retrial before the panel of EULEX Judges was due to commence on 25 January 2010, but was adjourned due to ongoing plea negotiations between the parties.

C. THE PLEA AGREEMENT

A plea agreement was presented to the Court in a public hearing pursuant to Article 308/A Item 9 of the CPCK on 03 February 2010.

The Accused **E.T.** pled guilty to Murder in violation of Article 146 of the Provisional Criminal Code of Kosovo (PCCK) and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK. The accused

A.D. pled guilty to Providing Assistance to Perpetrators After the Commission of Criminal Offences in violation of Article 305 Paragraph (2) of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK.

The Plea Agreement contained the following factual findings:

On [redacted] at the restaurant [redacted] in [redacted], the victim K.H. had a few drinks with some friends and at around [redacted], upon leaving the restaurant, smashed a bottle of beer. The Accused **T.** witnessed this and verbally confronted H.. After this verbal exchange, H. went with his friends to the [redacted] shop “ [redacted] ” located on [redacted] street. Some fifteen-twenty minutes later the Accused **T.** and **D.** arrived at the [redacted] shop - which is five minutes away from the restaurant [redacted] – in a [redacted] owned by **A.D.**. **E.T.** was armed with a [redacted]; **A.D.** left his [redacted] in the car. **E.T.** went up to K.H. and hit him with the butt of the [redacted] and then shot him. The bullet went through the upper left part of his head, travelled across his brain and exited in the right maxillary region of his face, resulting in his death on [redacted]. **E.T.** and **A.D.** left the scene in the [redacted]. They spent the night hiding in a [redacted]. The following day **A.D.** gave himself up and produced the weapon he had in the car. **E.T.** gave himself up later and the murder weapon was recovered.

The Injured Party M. H., father of the victim, was abroad on the day of the public hearing. However, the family authorized B.H., the uncle of the victim to represent them. B.H., at the hearing on 03 February 2010 declared that the family does not want to submit a property claim. He was informed by the Prosecutor about the Plea Agreement after which he left. Pursuant to Article 308/A Item 5 of the CPCCK the injured party must be given an opportunity to present a statement to the court regarding the property claim. In the present case the Representative of the Injured Party - after he was given the relevant instruction and after it was explained to him what the property claim means -, explicitly stated in front of the Court that they do not wish to submit such a claim.

The Plea Agreement was accepted by the Court on the day of the hearing pursuant to Article 308/A Item 10 and Item 15 of the CPCCK, as after questioning the Accused, their Defence Counsel and the Public Prosecutor, the Court determined that the plea agreement met the conditions under Article 308/A Item 12; both Accused understood the nature and the consequences of the guilty plea, they voluntarily made the guilty plea after sufficient consultation with their defence counsel, they were not coerced in any way and were not forced to plead guilty. Furthermore the guilty plea is supported by the facts and evidence of the case, testimonies of the witnesses, statements of the Accused and documentary evidence of the case file. Therefore, pursuant to 308/A Item 15 of the CPCCK the Court ordered that the Plea Agreement be filed with the Court and scheduled the sentencing hearing for 18 February 2010.

The Plea Agreement was filed with the Court on 18 February 2010 at 9:00.

D. THE SENTENCING

On 18 February 2010 the trial panel heard arguments from all parties regarding sentencing. The parties presented all the mitigating and aggravating circumstances and after deliberation the Panel imposed the punishment pursuant to Article 308/A Item (15) of the CPCK.

When imposing the criminal sanction the Court has to bear in mind both the general purpose of punishment – that is to suppress socially dangerous activities by deterring others from committing similar criminal acts, and the specific purpose – to prevent the offender from re-offending. In determining the duration of punishment, the Court has to evaluate all mitigating and aggravating factors, pursuant to Article 64 paragraph (1) of the CCK.

In the case of **E.T.** the Court took as aggravating factors that the victim was years old and that the Accused committed the criminal offence armed.

However, the mitigating circumstances outweigh the aggravating circumstances. The accused has no previous criminal record, he admitted the criminal offences from the very beginning of the criminal procedure, he showed sincere remorse and took responsibility for what he had committed. Further mitigating circumstances are; the reconciliation with the injured party, the father of the victim; the Accused has been in pre-trial detention for an exceptionally long period of time; and he has a three year old child.

In the case of **A.D.** the Court took as an aggravating factor that the victim was years old. The mitigating circumstances outweigh the aggravating circumstances also in his case. He has no previous criminal record, he showed remorse and reconciled with the family of the victim. He has children, and the is on the way.

In the case of the accused **E.T.;**

For the criminal act of Murder pursuant to Article 146 of the CCK, the law foresees a punishment of at least 5 years. Considering all the mitigating and aggravating factors, the panel imposed 7 years of imprisonment for this criminal act.

For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons pursuant to Article 328 Paragraph (2) of the CCK the law foresees a punishment of a fine or an imprisonment of 1 to 8 years. The panel imposed 2 years of imprisonment.

In the case of the accused **A.D.;**

For the criminal act of Providing Assistance to Perpetrators After the Commission of Criminal Offences pursuant to Article 305 Paragraph (2) of the CCK, the law foresees a punishment of imprisonment of 6 months to 5 years. Considering all the mitigating and aggravating factors, the panel imposed 2 years of imprisonment for this criminal act.

For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons pursuant to Article 328 Paragraph (2) of the CCK the law foresees a punishment of a fine or an imprisonment of 1 to 8 years. The panel imposed 1 year and 6 months of imprisonment.

Both Accused committed two criminal acts. Pursuant to the rules of calculation of compounded sentence, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments. The panel imposed an aggregate punishment of 8 years of imprisonment in for **E.T.** and 3 years of imprisonment for **A.D.** pursuant to Article 71 paragraphs (1) and (2) Item 2) of the CCK.

The accused **E.T.** has been in detention on remand since .
These periods are to be credited in the imposed punishments of imprisonment pursuant to Article 73 paragraph (1) of the CCK.

E. THE APPLICABLE LAW

The criminal acts were committed on . At that time the Provisional Criminal Code of Kosovo (PCCK), that entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 paragraph (1) of the PCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator unless a new law is more favourable for the accused. The accused pled guilty to the criminal offences pursuant to PCCK.

However, some changes, including the institution of “Plea Agreement” were introduced in the Criminal Procedure Code of Kosovo by the Law No. 03/L-003 that entered into force on 06 January 2009 and also the Provisional Criminal Code of Kosovo was amended by the Law No. 03/L-002 that entered into force on 06 January 2009. Obviously, the provisions concerning a plea agreement can be applied only by reference to the “new” laws, the Criminal Code of Kosovo (CCK) and the Criminal Procedure Code of Kosovo (CPCCK). Therefore, the Criminal Code of Kosovo is more favourable for the accused and the Court made reference to this law in the Judgment concerning sentencing.

F. COSTS

The accused were found guilty, therefore, in equal amount they must reimburse the costs of criminal proceedings pursuant to Article 102 paragraph (1) of the CPCCK, except the costs of interpretation and translation throughout the criminal proceedings. A separate ruling on the amount of the costs shall be rendered by the Court when such data is obtained pursuant to Article 100 paragraph (2) of the CPCCK.

**Presiding Judge
Hajnalka Veronika Karpati**

**Recording Officer
Tara Khan**

Legal remedy:

This judgment concerning sentencing became final on the day of its announcement as it does not fall under Article 308 Item 8.1 of the CPCK.