

DISTRICT COURT OF MITROVICA
K nr. 28/09
07 December 2009

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA

In the panel composed of EULEX Judge Angela Kaptein as Presiding Judge, EULEX Judges Hajnalka Veronika Karpati and Klaus Jung as panel members, assisted by the Recording Officer Tara Khan,

In the criminal case against the Accused

M.J.

Charged,

According to the Public Prosecutor's Indictment PP nr 19/09, dated 05 August 2009, filed with the District Court of Mitrovica on 10 August 2009 and orally amended during the confirmation hearing of 22 September 2009 and during the first session of the main trial on 9 November 2009,

With the criminal offences of

- 1) Attempted Aggravated Murder, according to article 147 paragraph 11, as read with article 20 of the Provisional Criminal Code of Kosovo (PCCK),
- 2) Unauthorized Ownership, Control, Possession or Use of Weapons, according to article 328 paragraph 2 of the PCCK,

After the main trial hearings held in public on 09, 23, 26 and 30 November and 01, 03, and 07 December 2009, all in the presence of the Accused **M.J.**, his Defense Counsel Ljubomir Pantovic, the EULEX Public Prosecutor Neeta Amin, and the legal representative of the Injured Parties Mahmut Halimi, and on 09 November of the two injured parties M.M. and S.M.,

After the panel's deliberation and voting held on 07 December 2009 based on Article 390 of the Provisional Criminal Procedure Code of Kosovo (PCPCK),

On 07 December 2009 pronounces in public and in the presence of the Accused, the Defense Counsel, the legal representative of the Injured Parties, and the EULEX Public Prosecutor the following

VERDICT

The Accused, **M.J.**, nickname **D.**, born on . in N. P. , Kosovo S. , last permanent residence , Kosovo, not married, finished Secondary Medical School, of poor economic status, in detention from ,

is

ACQUITTED of count 1, ATTEMPTED AGGRAVATED MURDER;

FOUND GUILTY of count 2, UNAUTHORIZED OWNERSHIP, CONTROL, POSSESSION, OR USE OF WEAPONS;

Because on , between hrs and hrs, a driven by the Accused **J.** and a driven by S.M. with his father M.M. sitting next to him, were involved in an accident on the road from to . Immediately after, **J.** fired several shots from a pistol of calibre in the direction of the car of S. and M.M..

By doing so, the Accused **M.J.** committed and is, as far as the ownership, control and possession of the weapon is concerned, criminally liable for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons, according to article 328 paragraph 2 of the PCCK.

The Accused **M.J.** is not criminally liable for the shooting in the direction of the car of S. and M.M., since it cannot be excluded that the Accused acted in necessary self defence pursuant to Article 8 paragraphs (1) and (2) of the PCCK, and therefore an acquittal is necessary pursuant to Article 390 paragraph (2) of the PCCK.

Therefore, the Accused M.J. is

SENTENCED

To six (6) months of imprisonment for the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons.

The time spent in detention on remand from until 21 May 2009 and in house detention from 21 May 2009 until 22 June 2009, is to be credited pursuant to Article 73 paragraph (1) of the PCCK.

The Accused shall be ordered to pay a lump sum of 50 euro in connection with the costs of the criminal proceedings in connection with the criminal act of Unauthorized

Ownership, Control, Possession or Use of Weapons, pursuant to Article 102 paragraph (1). Regarding the costs of the remainder of the criminal proceedings, the Accused shall not be ordered to reimburse due to his acquittal of the criminal act of Attempted Aggravated Murder, pursuant to Article 102, paragraph (2).

The property claims of the injured parties M.M. and S.M. are rejected, since the Accused is acquitted from the charge as to which both filed their property claim.

REASONING

A. PROCEDURAL BACKGROUND

1. The Indictment

The abovementioned indictment, as amended, alleges that the Accused has committed the criminal acts of attempt of aggravated murder and unauthorised ownership, control, possession or use of weapons.

According to the indictment, the Accused, on around hrs on the road , turned his car in the direction of the car of the two injured parties while they were overtaking the Accused's car, the cars hit each other, and the Accused blocked with his car the car of the injured parties and shot with a pistol several times at the two injured parties who were hiding behind their car.

The confirmation hearing, pursuant to Article 314 of the PCPCK, was held on 22 September 2009 and adjourned, because of the absence of the two injured parties, until 05 October 2009. The decision confirming the indictment was issued on 22 September 2009. No appeal against the confirmation decision was filed by any of the parties.

2. Composition of the Panel

Pursuant to Article 3.3 as read in conjunction with Article 3.5 of the Law on Jurisdiction, Case Selection, Case Allocation of EULEX Judges and Prosecutors in Kosovo no. 03/L-53 (Law on Jurisdiction), the President of the Assembly of EULEX Judges can decide that a case be taken over by EULEX judges when it falls within the jurisdiction and secondary competence of EULEX.

On 24 February 2009, the President of the Assembly of EULEX Judges, Maria Giuliana Civinini, issued decision JC/EJU/OPEJ/0314/mgc/09, retaining the case under the jurisdiction of the EULEX judges and assigning EULEX Judge Christine Lindemann-Proetel of the Mitrovica District Court as Pre-Trial Judge, pursuant to Article 3.5 paragraph (b) of the Law on Jurisdiction.

Pursuant to Article 2.1 of the Law on Jurisdiction and in furtherance to the abovementioned decision, the abovementioned EULEX judges of the panel who are appointed to the District Court of Mitrovica have jurisdiction over this criminal matter.

None of the parties objected to the composition of the panel.

3. The Main Session

The main trial was open to public, with sessions held on 09, 23, 26 and 30 November 2009 and 01, 03, and 07 December 2009, all in the presence of the Accused **M.J.**, his Defense Counsel Ljubomir Pantovic, the EULEX Public Prosecutor Neeta Amin, and the legal representative of the Injured Parties Mahmut Halimi, and on 09 December in the presence of the two injured parties M.M. and S.M..

In accordance with Article 15 of the PCPCK, international interpreters provided simultaneous interpretation of all court proceedings, and all court documents relevant to the trial were translated into Serbian and English.

During the course of the proceedings at the main trial, the following **witnesses** were heard:

- (1) M.M., on 09 November 2009,
- (2) S.M., on 09 November 2009,
- (3) I.S., on 23 November 2009
- (4) B.D. on 23 November 2009
- (5) B.M. on 26 November 2009
- (6) G.M. on 26 November 2009
- (7) S.R. on 30 November 2009
- (8) Z.V. on 30 November 2009
- (9) D.N. on 30 November 2009

The **Accused** gave his statement and was questioned on 01 December 2009. The Accused denied the charge of attempted aggravated murder and pleaded guilty to the charge of illegal possession or use of weapons.

As **evidence** are accepted all documents of the file which are all formally read out.

The following evidence was submitted during the proceedings of the main trial and also entered into evidence:

- on *ex officio* request by the panel, two police shift reports concerning the day of the incident.
- by the Defence Council, four coloured photos of the Accused's .

The Public Prosecutor gave her closing statement on 03 December 2009. Her standpoint is that the Accused committed the acts of attempted aggravated murder. The Accused was angry and had a clear intention to seriously harm or even kill G.M. or his relatives, and he had purchased a gun for that reason. He took that gun and waited for the car of the injured parties -who were without weapons- and whom he attacked with five pointed shots. He did not act in necessary defence, or in the alternative if he did, at least his attack was disproportionate. The Accused could also be convicted for the physical assault of G.M. earlier that afternoon and for the intimidation of witnesses during the main trial.

The representative of the injured parties Mahmut Halimi gave his closing statement on same day. He joined the point of view of the public prosecutor and submitted a property claim for both of the injured parties in the amount of 35.000 euro each. In addition, he claimed payment of the costs he made.

The Defence Council gave his closing statement on 07 December 2009. He stated that his client acted in necessary and proportionate or disproportionate self defence after the injured parties, who were angry at him, chased him, tried to force him from the road and first starting shooting at him.

B. SUMMARY OF THE EVIDENCE PRESENTED

Injured Party S.M. testified on 09 November 2009, the first session of the main trial as follows.

About the shooting incident

On he was driving his father's from to , with his father M.M. sitting as passenger next to him. It was and the Witness had his short lights on. Between and hrs he started overtaking a vehicle speeding up from 40 km per hour. When he was parallel with the vehicle, this vehicle headed towards him in the left lane and cut in front of him. He saw it was a . The Witness stepped on the brakes and veered back into the right lane. The then blocked the road in front of him. The Witness stepped on the brakes again and drove into the driver's door of the . At that moment the Witness heard that someone from inside the started shooting. The Witness and his father opened the doors of their car and the Witness ducked under his door. He then recognized the person who was shooting. After one or two shots he saw him. His nickname is **D.** . His hand and head were outside his window. He was shooting from inside, through the driver's side window next to his seat. The Witness saw a gun and heard 4 or 5 gun shots. The Witness and his father crawled to the back of their car

during the shooting, where they remained for 2 or 3 minutes. While hiding behind their vehicle, the Witness saw D. 's shadow move away, to the right from the road. Neither the Witness nor his father followed him.

The Witness saw that evening that the left door of the was dented, and there were two shots on the windshield and one on the bonnet. Later he saw a hole in the passenger seat and in the front panel. He saw a handgun on the ground between the two .

The police - KPS in - were phoned by Witness' father one or two minutes after the shooting had ceased. The police arrived three to four minutes after this call, which was five to ten minutes after the incident occurred. People were around, some five to six persons, of whom the Witness only knew I.S..

In the first car after him was I.S., he was about 10 meters behind. When the Witness was confronted with his statement before the Police, where he stated that a cousin whose place they were going to was also in the car that came behind him, he testified that he had only mentioned his cousin as a person whose house they were going to.

About the hours before the incident and the possible reason it happened

On that day at hrs the Witness was in the , where he visited his uncles. He went home to and after minutes was called by his cousin G.M., who informed him that he was beaten up by M. and another person. G. asked the Witness for help and told him that he was alone in his car and afraid. The Witness first went home in , and then to the centre of . He did not visit the bar , nor did he go to the police station. His father, M., went to the police station, probably to find out why G. was attacked. M. is a surrogate father for G., who has no father of his own. The Witness heard from G. that he was attacked in the town centre by the Accused and M.I.. The Accused had punched him with a knuckleduster. Only later that evening, after the shooting incident, did the Witness meet G. who visited him. The Witness saw a spot on his forehead.

The Witness was phoned by his relative, N.M., who invited him to have dinner at his home in . This was at around hrs before the shooting happened. When he received the call, the Witness was at the petrol station in , where his father also happened to be. Nobody else was present when he was invited. The Witness drove together with his father to . Witness met I.S., B.M., Priest D. and N.M. next to the petrol station.

He knew at the time that the Accused had a , but he did not recognize him in the car, and he was not told that the Accused drove a on that day.

About weapons available to the Witness and/or his father

There were no weapons in the car he was driving that evening. His father owns a shotgun. The Witness' shotgun for hunting is in Serbia. He has had a shotgun in Kosovo, but his licence was not extended.

Injured Party M.M. testified on 09 November 2009, the first session of the main trial

About the shooting incident

The Witness corroborated the account given by his son, S.M..

He further declared the following.

The Witness left with his son for from the street after they had bought cigarettes. After three or four km, his son started to overtake a that was travelling well below legal speed. The Witness' son did not overtake any other cars before.

The Witness did not recognize the car of the Accused. He and his son realized it was the Accused's car after the incident. He recognized 'M.' for the first time when he saw him fleeing towards the river.

The Witness called the police in no more than minutes after the shooting stopped. The police arrived no more than minutes afterwards.

The first person in his car who caught up with the Witness and his son was N.M., five to ten minutes after the shooting incident. The Witness cannot tell if anyone else arrived with him. They had agreed earlier in that N. would follow them after N. had fuelled.

After the incident, 50 or more people gathered on the road.

About the hours before the incident and the possible reason it happened

The Witness met the Accused for the first time some months before the incident at the open air market in , where the Accused was causing trouble. Afterwards and up to the incident, he has seen him several times in town. He has seen him driving in the same

The Witness is aware of an ongoing dispute between G. and the Accused, which started before and is connected with the G.'s business of because G. informed him. The Witness was not present during the dispute on between G. and the Accused, but he was present later that afternoon in front of the police station, when G. was there to give a statement. The Witness wanted to find out what had happened since G. is a close relative. He cannot recall specifically who informed him about this fight, but it was not G..

The Witness waited in front of the police station. No other members of the Witness' family were present. As G. did not come out, he headed towards the town center. He visited and his cousin's N. . In he met N.M. for the first time. He sat with him alone at a table. They did not discuss the fight between G. and the Accused, nor the visit to N.'s house. The Witness told N. that he would collect his son from his house, and they both left . In the street they met the Witness' son, where they discussed only details about dinner. Earlier that day, the Witness did not visit N. in . When he was in , G. arrived after half an hour. They did not discuss the fight with the Accused. G. spoke about the fight only the next day, by phone.

The Witness does not know I.S., B.M. (nicknamed "P. ") or Priest D..

That afternoon, in the center of _____, N. invited him and his son for dinner in the presence of his son. After this conversation, N. left to get fuel at the petrol station. The Witness did not see him at the petrol station. It was agreed that N. would catch up with the Witness and his son.

About weapons available to Witness and or his father

On that day the Witness' hunting weapon was in his house in _____. In Kosovo he has a current licence for a hunting weapon. His shotgun is in his house Serbia. He has a licence in Serbia. He rarely hunts in Kosovo. For hunting, his son sometimes uses a _____. When questioned whether his son ever uses the _____, the Witness answered: 'Possibly, I don't know'.

I.S. testified on 23 November 2009, the second session of the main trial.

About the shooting incident

At the entrance of _____ there was a blockage of _____ cars, one white one red. The Witness and his two friends were - by coincidence - the first who arrived on the scene. Based on what he saw and heard, they arrived two or three minutes after the incident happened. He saw only "C." (M.'s nickname) next to his car. They got all out and asked C. what had happened. C. said that this one or somebody had shot at them and that his son was somewhere below. The Witness could hear the son speaking in a raised voice. The Witness went in the direction of the _____ river to see if help was needed and he saw S.M. at a distance of about ten meters in the meadow below the road. The police arrived within _____ minutes. The Witness left _____ minutes thereafter. There was a crowd of people. Only later in the evening or the next day, the Witness found out that **M.J.** was involved.

About the hours before the incident and the possible reason it happened

The Witness knows the Accused as a neighbour, they sometimes have a drink. He knows both injured parties. M.M. he knows by his nickname C.. He also knows G.M. – the Witness works in his bar, for three years now. G. and the Accused have no good relations.

The Witness spent the day with his friends B.M., B. D., who is a priest, and N.M.. At N.'s house they were having a barbeque starting around _____. Later, sometime before dark, M. (C.), arrived. G. called the Witness to open the bar, as G. had problems. The four of them went in one car. C. went in his own car, probably a _____ because he usually drives a _____. They first went to the police station. Witness does not remember who he met in front of the police station. When confronted with his statement to the police where he said he met **M.** and S.M. in front of the police station, the Witness responded that it was not important and he can't remember the details.

Only the Witness entered the police station. G. told the Witness that he had problems with the Accused and gave him the key of . The four then went to . It is possible that M. also went with them in their car to . Later, both M. and S.M. came to . They all had a drink and talked together, while standing. After G. arrived in , the Witness, B. and N. left. They had talked briefly with G., about the fight in the centre. He had an injury next to his eye. G. did not ask the Witness for help, and the Witness does not know if he asked the others for help. The priest had left before. G. stayed in . The Witness does not know if also M. and S. left. The Witness, B. and N. spent some more time in the centre of and together decided to return to the barbeque. The Witness assumes that C. and S. were also invited for the barbeque, probably by N., because they go hunting together and are relatives, but he can't remember. In N.'s car, a , the Witness, B. and N. returned to for the barbeque. They went slowly, because the road was bad.

B.D. testified on 23 November 2009, the second session of the main trial.

About the shooting incident

The Witness was in in at the time he learned that some car chasing had happened. A girl who entered the bar said she had also heard shooting.

About the hours before the incident and the possible reason it happened

The Witness is a good friend of the Accused. He spent that day with I.S., B.M. and N.M. in and later in the home of N., having a barbeque. M.M. joined them later. I. received a phone call from G.M. and he informed all present about the conversation. G. was in the police station and asked I. to come for the key of . After this call, all four of them left the house and went out of curiosity to the police station in the of N., who was driving. M. also left in his car.

I. went into the police station while the other three waited outside. Later M.'s son also arrived in front of the police station. The Witness did not see M.. The Witness saw that M.'s son was angry based on his gestures. B. and N. spoke with him. The general topic was the physical conflict and why it occurred. After I. came out of the station, the four went to . It was twilight. M.'s son came to minutes later with a . The four plus M.'s son discussed G.. The son received information that G. had a bruise and thought that G. had been unjustly attacked by the Accused. G. arrived in or minutes after the group had left the police station. M. arrived at right before G.. M. was with some other guys. He was angry, and spoke with a raised voice, "Who is he to beat up G.?" M. mentioned the Accused. The atmosphere was rather tense. There were curses mentioning the Accused's mother. G. told the four and M.'s son about the physical conflict with the Accused. He had a bruise next to his eye. He was complaining. The four left briefly after G. arrived. M.'s son left at the same time but the Witness did not see where he went.

The Witness took a taxi from to , to . He did not know what was going to happen, “maybe a chase”, but as he preaches love and peace, it was at that moment not his place to be with the others.

B.M. testified on 26 November 2009, the third session of the main trial.

The Witness corroborated the accounts given by witnesses I.S. and B.D., adding the following. The Witness saw when arriving at the scene of the incident that a had hit a in the driver’s door. He recognized whose cars were blocking the road only when he got out and saw M.M.. S.M. came from the area below the road and said that it was “D.”, which is the nickname of the Accused, who had been shooting at him.

About the hours before the incident and the possible reason it happened

The Witness corroborated the accounts given by witnesses I.S. and B.D.. He further testified that, since he is from and a car mechanic, he knows everybody and their cars.

The Witness, N.M., I.S. and B.D. went to to get the key from G.M. and then continued their drinking. The Witness heard at the police station from police officers that G. had had a fight with the Accused. The Witness saw both M. and S. at the police station. In , G. was tense. The Witness did not experience that the atmosphere in was tense, he did not hear swears. He does not remember if in they or others were invited for the barbeque. The Witness saw S. (the best friend of G. according to the file) in and he does not know if he saw G.’s brother Z.. He does not know about D.M.. The Witness thought it funny that G. was beaten by the Accused, who is much smaller than G.. He and his friends did not take it so seriously. The Witness, I.S. and N.M. headed for , but decided to go to N.’s place. G. was driving a .

G.M. testified on 26 November 2009, the third session of the main trial.

About the shooting incident

The Witness learned about the shooting incident from Z. M., who had heard the police sirens and was informed about what happened by people on the street. He does not know at what time Z. told him. In his statement to the police, the Witness declared that he called M. and S., but this was after he had already been informed by Z..

About the hours before the incident and the possible reason it happened

The Witness is no longer good friends with the Accused, since in late a was thrown in the Witness’ bar - of which the Witness accused the Accused - and physical fights and permanent threats from the Accused occur against the Witness. The Witness reported this to the police but they do not help or protect him.

The Witness related that in the afternoon he was seriously threatened by the Accused who was with a friend. Both showed him their guns. The Witness was very scared. The Accused looked drunk. He hit the Witness several times on his head with a knuckle duster. The Witness forgot to tell police about his using a fist puncher. The Witness fell down and was injured at the side of his head. They both went to the police station. The Accused went there with his . The Witness now recalls that he went alone to the police station, and not together with M.M. as he had declared to the police. M.M. was present at the police station, he only saw him outside. I.S., his employee of , entered the police station. The Witness had called I.S. to come and collect the key for . The Witness stayed in the police station for 1 to 1 1/2 hours. M. was present at the police station. The Witness thinks that his brother Z. M. was also present.

From the police station, the Witness went to his to tell people what the Accused had done to him. D.M., Z. M., S. (the Witness' brother-in-law), and possibly the four people who had the barbeque party in N.'s house were present in . M. and S.M. were also present. Who more exactly he cannot recall, as he was in trauma. The Witness did not see M. entering or leaving . The priest left earlier. The Witness cannot recall the conversation. He did not openly talk about revenge.

M.M. told the Witness that the Accused must have thought that it was the Witness who was in the . The Witness says that he looks like M. and M. also sometimes lends him one of his cars.

The Witness told the Accused's brother, with whom he has a "perfect" relationship, about the bombing incident and that he suspects the Accused. The Witness did not tell the Accused face to face that he suspects him, but he reported it to the police. The Accused is threatening him in all kinds of ways. The Witness is not angry at the Accused and not threatening him, he is afraid of the Accused and only waiting for the police to do their job.

S.R. testified as a witness on 30 November 2009, the fourth session of the main trial.

The Witness has been working as Head of Operations in police station for two years and three months. He is a forensic officer and at the time of the incident, he was the only one. Before that he was head of the investigation unit for four years. He is not an expert in forensics or ballistics. The Witness completed several specialized investigation courses. His knowledge is derived from school, literature and experience.

The Witness was supervising the investigations in this case. First, there were two parallel investigations, one regarding the traffic incident, and the other regarding the shooting incident. The Public Prosecutor later decided that only the shooting incident must be investigated. That evening the Witness was not on duty as a forensic officer, he was not on the crime scene, and he was not asked to investigate gunpowder traces on the Accused and Injured Parties nor to perform other forensic investigation. The Witness saw the cars only in the parking lot of the police station.

The Witness had heard that the Accused stated that he had been shot at himself. days after the incident, the Witness saw two stains on the roof of the which he thought could have been caused by shooting from above the roof. From the form of these traces he could tell as reported that the shooting was from the left to the right side, but

further expertise could be done. The Witness conducted further forensic examination of the roof and also of inside parts of the car, and sent his report to the Laboratory together with photos. The result was the opposite of what the Witness had expected: the stains on the roof could not be connected with shooting, whereas the interior parts of the car could. After days, traces of gunpowder could have vanished. Photos of the cars were made to compare mutual traces of the involved in the incident. On basis of the relevant photos, the Witness can see that the front right hand side of the probably had contact with the . He does not know whether the white car came into contact with the red car or vice versa. He sees no traces of red on the white car, but he does see rubber traces of a turning wheel of a passing car on the white car. He can't tell if the traces are old or fresh. The Witness did not report or investigate the car, which car was more interesting for the traffic incident.

Z.V. testified as a witness on 30 November 2009, the fourth session of the main trial.

The Witness was the duty officer on the day of the incident. The Accused was indentified by the telephone call he made to the police duty service when he reported himself. The Witness was informed by the duty service. A police escort brought the Accused to the police station. He was put in 48 hours detention, first briefly in police station and afterwards in police station. The decision - made by the Witness' boss - to transfer the Accused was due to his safety. His safety was thought to be at stake from the side of all participants in the shooting incident. The police wanted to avoid a meeting with the Injured Parties. The decision was also based on the incident which happened earlier that day between the Accused and G.M. and on previous experiences with both parties and the criminal record of the victims.

The Witness was at the crime scene where she saw both Injured Parties. She searched for weapons other than the one found, up till 200 meters in the direction of the river, but she found none considering the darkness and snow. Weapons were also not found in the . A paraffin glove test was not performed as the Accused had disappeared and the others were considered to be the victims. The red car was driven home by someone, but the Witness does not know by whom. The Witness does not know if the victims called the police, however if this was done it must be stated in the shift report.

The Witness did not conduct a body search on the victims. The patrol who arrived first did not report that they did a body search.

D.N. testified as a witness on 30 November 2009, the fourth session of the main trial.

The Witness that evening conducted the on-site investigation, supervising and coordinating the work between the traffic and investigation unit. According to his report he arrived at hrs. In his report it states that the incident occurred ten minutes before he arrived. He discovered that the Accused was involved when he saw his car. Later when the Witness returned to the police station to get his equipment, the Accused called and spoke to him. The Accused told him that had shot with firearms and that he

voluntarily wanted to report it to the police. The Witness decided to escort him because of the Accused's safety, that of police officers and the general safety. The Witness thought of possible danger because other weapons were not found and someone else might use them. During the transport, the Accused told the Witness that he was shot at. The Witness left the Accused at the police station and returned to the crime scene. The investigation unit had arrived. The Witness talked to the chief about the Witness' first review of the situation and about his conversation with the Accused. The Witness did not see the details of the damage to the . The car was not searched inside. The patrols would inspect the car, but not search inside. The Witness investigated and secured the scene until the investigation unit arrived.

The same evening, the Accused was transferred to police station for his and the police safety. Such transfers are done when firearms are used and general safety is involved. In addition, people such as members of M. family were seen driving around the police station. The Witness saw Z. M., G.'s brother, passing by in his car. He did not stop, and the Witness did not speak to him. No one spent time in front of the police station. Precaution was necessary because of general danger. There were signs that trouble could be expected, because of the presence of both sides. The Witness knew of the fight that day between G. and the Accused and that after that fight both parties were in the police station. That afternoon people had gathered at the police station. He saw M. and S.M., Z. M., I.S., M.I. and S. K.. They were friends of either G. or the Accused. G. left the police station first, and half an hour later the Accused left. He left later because his report had to be finished and the police kept him until the crowd had dispersed. No threats came from this group of people. The police took the car of the Accused to the police station yard, for reasons of security and to search it. It had been standing on the road to minutes after the Accused had arrived. The Accused left with the same car. The Witness has known the Injured Parties for 30 years. He has had more contact with G. because of his . The Witness is informed about the hand grenade incident at G.s but did not know that the Accused was a suspect.

The Accused testified on 01 December 2009, the fifth session of the main trial.

About the shooting incident

After being released from police station just after on , the Accused drove first to a kiosk to buy cigarettes, and then headed towards on the main road. Ten minutes later, between and , the incident happened. He was driving slowly because he was low on fuel. He stopped after the turn onto the main road towards to pick up a handgun which he had hidden there a day or so earlier, near a traffic speed limit sign. Approximately five minutes later, or six kilometres further, when he had almost reached , he saw in his rear-view mirror a car approaching from behind at high speed with flashing lights. It was dark and he could not make out who was in the car. He then heard a burst of gunfire from behind - two or three shots from an automatic rifle. He looked in the rear-view mirror but the car was no longer visible as it had begun to overtake him in the left lane. He pulled out the handgun from his belt. When the two vehicles were almost parallel, the other car – which he could now recognize as a car

belonging to the M. circle – rammed into his vehicle in an effort to push him off the road into a decline that leads to the River. He still could not see who was inside the vehicle. He held the wheel firmly but did not manage to keep the car steady. He had been in 4th gear, so his engine turned off as the car veered across the road and came to a stop across the right lane of the road. The front of the stopped immediately against his door.

His door on the driver's side was now blocked by the other car and could not be opened. He heard shots fired in his direction. These bullets entered through the driver's side window, passed through the vehicle and exited through the passenger side window. He fired once into his window to break the glass in order to exit the car. At that time he saw three people standing behind the , and from their silhouettes he could see that one was shooting in his direction. He lay down in his car and heard bullets smashing through his window. When those shots stopped, he stuck his arm through the window and blindly fired shots. He then climbed through his window and crawled onto the bonnet of the . He did not try to get out of the car via the passenger side because there was not enough time, the gear stick and 4-wheel drive stick are highly elevated, creating obstacles, and he didn't want to make himself a target while attempting to cross over to the other side. He had run out of bullets and dropped his gun on the left side of the road which was lit, in order to show the others that he was no longer armed and then stood up on the bonnet. He saw two of the persons begin to approach him from behind the , one from each side of their car. There was also an off-road vehicle immediately behind them. He jumped off of the bonnet and ran to the side of the road. There was deep snow, so he rolled down the decline about 100 meters to a railway while the two persons pursued him. When he reached the railway he paused and saw his two pursuers about 20 meters behind him. He now knows those two persons were S.M. and I.S.. As he continued running towards the River, which was another 100 meters away, he heard one pursuer, whom he recognised later in court as S.M., shout to the third person who was still on the road holding a rifle, "shoot and kill him". He now knows that person on the road was M.M.. He then heard a few short bursts of fire from an automatic rifle. He jumped into the iced-over river and swam to a tree. From there he saw the two pursuers reach the river bank, look for him, and then walk back to the main road after about minutes. He then made his way home on foot and called the police about minutes later.

KP officers D.N. and D.Dj. picked him up at his house and brought him to the police station. Along the way, they passed the scene of the incident, at which point he was instructed to duck down in hiding for everyone's safety. He was nevertheless able to see that the had been moved from immediately adjacent to his vehicle to 2-3 meters away from his vehicle.

About the hours before the incident and the possible reason it happened

to days before the incident, after having been threatened by G.M., and having heard stories about what the M. family did to others, the Accused purchased a handgun. He did not have this gun when he confronted G., as he had hidden it on the side of the road one day before, or on the day of the incident, before the confrontation with G..

On _____, he approached G.M. to ask him to go together to the Police station to resolve the issue they had between them. G. refused to go and threatened him, and the Accused punched G.. A police officer pulled him away from G. and he was searched. He and G. went to the police station.

While at the station, the Accused saw that about a dozen members of the M. family were gathering in front of the station. He saw among them some people who came to testify in G.'s favour as well as the people that subsequently attacked him on the road. From what he heard shouted and saw gestured, he concluded that these people were arguing with the police and attempting to enter the station. He left the station some time after G. had left.

Police Reports:

Two shift reports of the Leposavic police station concerning 22 February 2009 contain the following relevant information:

In report one:

- hrs, info: in _____ centre, **M.J.** with M.I. approached G.M., who was in his car, and told G. to get out in order to settle problems between them, because G. has threatened him for a while. **J.** struck G. several times in the head with his fist. G. got bruises;
- hrs, info: a _____ driven by **M.J.** at the time of the incident, was searched;
- hrs, info: after giving his statement, G.M. left PS _____;
- hrs, info: after giving his statement, **J.** left PS _____;
- hrs, info: PS _____ received a "NN" phone call reporting an accident on the main road to _____, with a _____ on the spot;
- hrs, _____: arrived on the spot. Patrol unit met M. and S.M., but **J.** was not there. We found a pistol which was used in the shooting incident pistol _____, model _____ mm;
- hrs, info: **J.** called police station, he wanted to surrender.

In report two:

- hrs, info: **M.J.** and G.M., nephew of M.M., were released after giving statements.

Evidence produced by the Defence Council:

Four photographs of the _____ that was parked in the police station yard, allegedly taken by the father of the Accused two weeks after the incident.

C. EVALUATION OF THE EVIDENCE PRESENTED

Upon the evidence presented during the course of the main trial, the Court considered the following relevant facts as proven:

Before the car incident

On _____, between _____ and _____ hrs in the center of _____, the Accused, who was with his friend M.I., approached G.M., who was alone. The Accused punched G. in his face, resulting in a bruise. The police divided the parties and both gave their statements at the police station directly after this incident.

The Court does not consider it as proven that the Accused hit G.M. with a knuckleduster. G. testified to this fact for the first time when before the court. He did not mention a knuckleduster during his statement to the Public Prosecutor on 10.06.2009. Further, his injury, for which he did not seek nor receive medical attention - he only put ice on - does not fit to the use of a knuckle duster, and the Accused denied that he used one.

The Court cannot exclude but does not consider proven that the Accused and M.I. each carried a gun during this physical incident since only G.M. has testified as such and no other evidence exists as to this point.

G.M. saw the Accused arrive at the police station with a _____.

I.S., B.M., B.D., N.M. and M. and S.M. had gathered in front of the police station. They were informed that G.M. was in trouble and giving a statement inside the police station. I.S., B.M., B.D., and N.M. had come from a barbecue party at the house of N.M. in _____, where later M.M. also attended. S.M. came separately to the police station. G.M. had phoned I.S. during his barbecue and had asked him to come to the police station and to collect the key of _____.

After giving his statement, G.M. left the police station at _____ hrs and went to _____.

In _____, all above-mentioned persons were present. G.M. went there to talk about what had happened to him. He showed his injury and as a cure got ice from I.S.. G.M. and both Injured Parties were angry at the _____. Also S.M. appeared angry in front of the police station.

The Accused left the police station at _____ hrs in his _____ and headed for his home in _____. Along the way he picked up his gun.

The Court did not find evidence that the Accused, angry at G.M. for challenging his authority, picked up his gun with the intention and premeditation to (try to) kill G.M. or the Injured Parties, as is the standing of the Public Prosecutor. It is equally possible that he picked up his gun out of fear and precaution.

I.S., B.M. and N.M. went in one car back to _____. B.D. parted from his barbecue friends and took a taxi to _____. M. and S.M. also left for _____ in a _____,

On the road from _____ to _____, near to _____, the _____ driven by S.M. with his father M.M. in the passenger seat, came behind the _____ driven by the Accused.

At a certain point when close, S. and M.M. recognized the car the car in front of them as the one belonging to the Accused. Behind both these car was the car driven by N.M., with I.S. and B.M. as passengers.

The Court cannot exclude that all five went to to continue the barbecue, as they all have declared, but found as proven that they came across the Accused's car at that moment. The Court cannot assess whether they went after the Accused, were looking for him, or met him on the road by chance. They came up behind him and at least the Injured Parties must have recognized it was the car of Accused. It was known that the Accused drove such a car. G.M. had also seen the Accused in this car right before, at the police station. Furthermore, the Court considers it common knowledge that when driving a car on the road in the dark, one only can see the details of and recognize the car driving in front (such as plate number, type, colour, etc). It is not possible to clearly see the car behind. The driver in front is only able to see the lights of the car that is following him.

The car and shooting incident

Between and hrs on the road from to , the driven by the Accused was hit by the of the Injured Parties while they were overtaking him. As a result of this accident, forced by the Injured Parties, both cars came to a standstill. The Accused could not open the door of his car on the driver's side.

Immediately after the collision, the Accused shot out his own window on the driver's side, and then fired from inside his car through this window several times in the direction of the car of the Injured Parties. He shot with his gun, a pistol , calibre. Based on the photos and crime scene report, he hit the windshield of the car of the Injured Parties, the bonnet, the front passenger seat and the left rear view mirror. The Accused exited his car through the driver's seat window.

After having fired all his bullets, the Accused threw his gun down in the road and fled in the direction of the river. S.M. and I.S. also went in that direction.

The Court found as proven that the car incident happened as described above. The Court found the statements of the Injured Parties unreliable – as explained below – and rejects their version of the car incident, which is that the Accused turned his car in the direction of the Injured Parties while they were overtaking him and blocked the road, so that they could not prevent driving into the driver's door of the Accused's car.

The Court found as proven that the car incident happened as described above on the basis of the statements by the Accused and the physical damage on both cars as visible on photos 12 through 17 in the crime scene report. These modest damages at the sides of both cars fit, according to the Court, more to the event that the of the Injured Parties hit from aside the white one of the Accused, than to the event that the drove into the when it was blocking the road. The Court also took into account firstly the unreliability of the statements of the Injured Parties (explained below), and secondly all that happened in the short period before the car incident - at the police

station and in _____, where the witnesses came together because of the confrontation G.M. had just had with the Accused, and where the atmosphere was tense with G.M., S.M. and M. M. all angry.

The Court found the statements of the Injured Parties unreliable since their testimonies as to several important topics differ from each other and/or from other witnesses, among whom are their friends.

These topics are the presence or absence of S.M. at the police station after the fight between the Accused and G.M., the presence or absence of S.M. in _____, whether in the fight between the Accused and G.M. was discussed, S.M. (not) going to the river after the shooting incident and (not) calling the police after the shooting incident.

B.D. and B.M. testified before the court that S.M. was also at the police station after the fight between the Accused and G.M.. According to B.D., both B.M. and N.M. spoke to him. They were all outside the car and the topic was the physical conflict and how and why it happened, and S.M. appeared angry. Police officer D.N. also testified that he saw S.M. outside the police station at this time.

However, the Injured Parties deny that S.M. was present.

I.S., B.D., B.M. and G.M. all testified that S.M. was present that same afternoon in _____. G.M. testified that the reason he went to _____ after leaving the police station was to tell the others what had happened. In _____ he said "this man **M.J.** wants to kill and destroy me". I.S. gave him ice for the bruise on his head. Even according to G.M., both the Injured Parties were present in _____. B.D. declared that he, N.M., I.S., B.M. and the son of M.M. (S.) talked about G.M. while at _____. It was precisely with the son that they spoke about G.M.. The son had information that G.M. had a bruise, and he said that G.M. had been unjustly attacked. When G. M. arrived, he told the four and the son of M. about the physical conflict with the Accused. He showed them his injury. M.M. who also arrived at _____ was angry and asked in a raised voice, "Who is he (referring to the Accused) to beat up G.?" The atmosphere was "rather tense". B.D. left the bar and took a taxi alone. He did not know what was going to happen, "maybe a chase", but as a priest he did not want to stay. However, M.M. testified that when he was in _____ they did not discuss the fight with the Accused. Rather, G.M. spoke with him about the fight only the next day, by phone. S.M., although he testified that he was phoned by G.M. that afternoon before the car accident who informed about the fight and that asked him for help, denied that he was present in _____ and declared that he saw G.M. that day only after the shooting incident.

I.S., B.M., B.D. and N.M. have testified that they were earlier that day together in N.'s house having a barbeque where later also M.M. arrived. They all testified that these four except for B.D. later went back to _____ to continue the barbeque at N.'s house. However, M.M. testified that he did not visit N. in _____ earlier that day and even denies that he knows I.S., B.M. and priest B.D..

According to M.M., N.M. in person invited him and his son S. for dinner that afternoon in the center of _____. When this occurred, S.M. was present.

According to S.M., N. invited him by phone at the petrol station, where also his father happened to be.

I.S., B.M. and the Accused have testified that after the incident S.M. went down towards the Ibar river.

However, both S. and M.M. deny this.

S. and M.M. declared that M.M. called the police some minutes after the incident. The Court notes that in neither of their statements was mentioned that M. called the police anonymously without telling his name. According to the shift reports, the incident was first reported to the police at hrs by an “NN” (meaning unknown person) phone call. Witness D.N. also testified that an unknown person made a telephone call. Witness Z.V. testified before the court that if the Injured Parties had called, it would be noted down in the shift reports.

The above-mentioned contradictions give the panel reason to believe that M. and S.M. are not reliable in their testimonies and that they have something to hide, or at least that they try to diminish their role and involvement in what happened that afternoon as follow-up to the fight between the Accused and G.M. in center and later on the road between them and the Accused. This could also be their use of a weapon against the Accused right before, during or immediately after the car incident, but the court will elaborate on this issue later.

Did the Accused act in self defence?

The panel can not establish that the Injured Parties shot at the Accused and even started the shooting, as the Accused has declared. However the Court can equally not exclude that the event occurred this way.

The Court reached this conclusion by taking into account the shortcomings of the investigation of the shooting incident, the lack of expert opinions, the lack of independent eye witnesses (other than the Injured Parties), the existence of some few traces that might indicate that also the Injured Parties have been shooting, and the unreliability of the statements of the Injured Parties as already explained. Only the interconnection of all these aspects and viewed in their totality, led the panel to serious doubts as to what actually happened in the shooting incident.

Not proven

The panel finds that it can not be proven beyond a reasonable doubt that the Accused was shot at, for the following reasons.

Evidence to sustain this assertion, which is only made by the Accused, is not available. The Injured Parties testified that they had no weapons and did not shoot. According to them, only the Accused shot, starting right after the cars had collided. No other witness

was present during the shooting, or at least no persons other than the Injured Parties could testify about any shooting at the Accused.

As to material evidence, the panel considers the following.

A thorough police report of the investigation of the car of the Accused and the condition of the car after the incident, including damages which could have been caused by bullets, is not available. No ballistic research was done. A ballistic expert report is not available. The file does contain a crime scene report, which contains only the following relevant information: a damaged driver's side door, two broken front windows, and a bullet casing calibre mm (which the panel finds must belong to the gun of the Accused who shot with same calibre). The crime scene report contains photos of the damage of the car of the Accused (photos marked with numbers 14, 15, 16 and 17). However these do not show traces of damage that can be definitely considered as damage caused by bullets. Furthermore, the report says that all damages on photos 14, 15, 16 and 17 are caused by the crash with , not by shooting. Photo 17 shows a spot that could have some resemblance to the form of a bullet hole, but without any further precise investigation and without reported expertise about the nature of this damage (and without having any certainty about when this damage was caused) the panel cannot accept these mere photos as evidence for the assertion that the Accused was shot at during the incident.

The same is true for the four photos produced by the Defence Counsel which were not taken by the police but allegedly by the father of the Accused two weeks after the incident. Photo 1 shows the same spot of damage as mentioned above on photo 17. The other three photos do not show damage possibly caused by shooting.

No evidence in the form of weapons, bullets cartridges or cases or - unquestionable - traces of gun shooting which could be connected to shooting by the Injured Parties were found, neither on the Injured Parties, nor on or in their car.

Not excluded

Although the panel finds no evidence of the fact that the Accused was shot at, the panel nevertheless is of the opinion that it equally can not fully exclude a real possibility that the Accused was shot at because of the following reasons.

It is unclear how the window at the passenger's side of the Accused's car was broken. The Accused testified that it was broken due to gun fire from the Injured Parties – specifically that the Injured Parties shot at his window, and the bullets entered through his driver's side window, and flew through the car and exited through the passenger side window.

The cause of the breaking of the passenger side window was not found or not reported. Seen from the limited damages on both cars, the impact of the collision between the two cars was not very strong. Therefore the Court found it not probable that the window broke as a result of this collision, especially since all other windows of both cars (except

for the one that was shot at by the Accused) were still fully in tact, as can be seen on the photos of same crime scene report.

As already mentioned, next to this broken left window, a spot is visible (photo 17 of the crime scene report). This spot could have resemblance with damage caused by a bullet. It can be safely excluded that the Accused himself shot at his passenger's window. This would not have been in the direction of his attackers who were positioned at the side of his driver's door and the Injured Parties testified that the Accused shot through and from his driver's window.

The Court concludes that it is not fully unlikely that the passenger window broke by shooting. The spot near to this window could corroborate this explanation.

The spot near to the passengers window could also on itself be an indication that the Accused's car was shot at.

In the , one particle was found (D#2) that contains primer residue. The Court is aware that it could be possible that this is connected with the hunting practice of both Injured Parties. However, the Injured Parties declared that they rarely hunt in Kosovo, and M.M. stated that another car other than the is used for hunting in Serbia.

Two traces on the roof of the , although as result of laboratory investigation not containing gunpowder particles (D#1), are judged by an experienced police officer (S.R.) as traces very likely caused by shooting.

The car of the Injured Parties was not searched, at least this cannot be established (since Z.V. says the car was searched and D.N. says it was not searched) and no report about such a search is available.

On the contrary, the car of the Injured Parties was driven home not know by whom or following whose order.

No paraffin gloves were taken from the Injured Parties.

No thorough search of the crime scene has been done, at least it was not reported about. Before the Court, Z.V. answered on a question of the Prosecutor that the car was searched and that they searched the scene for 200 meters, but the Court finds that this insufficient and is not sure whether traces would have been present and could have been found.

Furthermore the Court has considered that the Injured Parties have had time to erase traces until the police arrived on the scene, which was some to minutes later.

The incident must have happened between when the Accused was released from the police station and when the incident was first reported by a NN phone call.

Police officer M. B. in his report declares that he heard shots at hrs. The panel take this moment as a mistake, since at that time parties must have been still in the police station. It may be assumed that he meant hrs.

Police arrived for the first time at hrs, this is earliest minutes after the incident was reported, or earliest minutes after the incident, if the time in the report by B. is read as hrs.

Finally, the Court considered that M. and S.M. are in the possession of a hunting rifle and that both father and son are hunters, meaning that they both know how to handle a gun.

Apart from considering all these aspects, the panel found, as already mentioned and explained above, that the statements of the Injured Parties are not reliable. The Court cannot fully exclude that they tried to conceal their use of a gun against the Accused.

The Court rejects the standpoint of the Public Prosecutor, that it is clear that the Accused had the intention to murder the Injured Parties and that it can not be true that the Accused was shot at himself, since according to the Pubic Prosecutor the Accused exited his car through the driver side window, which would be in the direction of the Injured Parties and in the line of fire if the Injured Parties were shooting.

The Court finds that in such a difficult moment, the Accused might have reacted in not the most logical and rational way. Furthermore, to leave his car via the passenger side might indeed, as he declared, be more difficult and time consuming due to the obstacles such as the gears and the upright position of the passenger chair.

Conclusion as to the first charge:

A fundamental principle of criminal law is that in case of doubt the decision must be taken in favour of the Accused.

In case the Injured Parties indeed have started shooting first at the Accused, who was blocked in his car, the Accused had no reasonable other choice than to defend himself and was also entitled to do so.

The Accused declared that he defended himself by shooting at the Injured Parties who had started to shoot at him. Under those circumstances, his actions could be considered as proportionate.

The Court cannot exclude that the Accused, locked in his car, was attacked by shooting and that he, by shooting back, acted in necessary and proportionate self defence.

According to the law, an act committed in necessary defence, which act is proportionate to the degree of danger posed by the attack, is not a criminal offense.

That is why the panel decided - in favour of the Accused - that it was not proven that the Accused committed a criminal offense.

He must therefore be acquitted of the charge of attempted aggravated murder.

Conclusion as to the second charge:

The unauthorized possession of a weapon is proved. The Accused confessed and pleaded guilty as to this charge. Taking into account as mitigating circumstance his relatively young age and his confession as to the possession and use of his weapon, and as an aggravating circumstance that he himself had been aggressive earlier that day against G.M., the panel sentenced the Accused for this criminal act to

six months of imprisonment.

D. APPLICABLE LAW AND LEGAL QUALIFICATION

Concerning the applicable law:

The panel is aware that especially in the northern region of the district of Mitrovica, the applicable law is under discussion.

In Kosovo the relevant laws are the Kosovo laws, that is the Criminal Procedural Code of Kosovo (CPCCK) and the Criminal Code of Kosovo (CCK) which entered into effect on 06 January 2009. Prior to this date, they were in their former versions the Provisional Criminal Procedural Code of Kosovo (PCPCCK) as made applicable by UNMIK Reg/2003/26, and the Provisional Criminal Code of Kosovo (PCCK) as made applicable by UNMIK Reg/2003/25.

In its verdict, the panel refers to the PCPCCK and PCCK but points out that the substance of the PCPCCK compared to the CPCCK and of the PCCK compared to the CCK, are almost fully identical, and furthermore that the substance of every single article that the panel applied or could have applied in this case is fully identical in both the aforementioned criminal codes. The panel considered and applied the substance of these relevant articles.

Concerning the legal qualification:

The Accused purchased and carried a pistol of calibre which he used firing five shots on the evening in question. He did not obtain the proper licence required for the ownership of the gun. By doing so, the Accused committed and is, as far as the

ownership, control and possession of the weapon is concerned, criminally liable for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of article 328 paragraph 2 of the PCCK.

E. COSTS

The Accused was found guilty only of the charge of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of article 328 paragraph 2 of the PCCK. Therefore, pursuant to Article 102 paragraph 1 of the PCPCK, the Accused shall be ordered to pay a lump sum of 50.00 euro in connection with the costs of the criminal proceedings related to this charge.

The Accused shall not be ordered to reimburse the costs related to the remainder of the criminal proceedings due to his acquittal of the criminal act of Attempted Aggravated Murder, pursuant to Article 102, paragraph (2) of the PCPCK.

F. PROPERTY CLAIMS

The property claims of the Injured Parties M.M. and S.M. are rejected, since the Accused is acquitted from the charge as to which both filed their property claim.

**District Court of Mitrovica
K. nr. 28/09**

Prepared in English, an authorized language.

Recording Officer

Presiding Judge

Tara Khan

Angela Kaptein

Legal remedy:

Authorized persons may file an appeal in written form against this verdict through the District Court of Mitrovica to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.