DISTRICT COURT OF MITROVICA
P nr. 01/2010
14 October 2010

IN THE NAME OF THE PEOPLE

The District Court of Mitrovica, in the trial panel composed of EULEX Judge Christine Lindemann-Proetel as Presiding Judge, and EULEX Judges Caroline Charpentier and Nikolay Entchev as panel members, with the participation of EULEX Legal Officer Tara Khan as Recording Officer, in the criminal case against:

A.P., charged according to Indictment PP. nr. 128/08 filed on 15 July 2009 by Public Prosecutor Shyqyri Syla, and partially adopted by Injured Party A.F. upon the withdrawal of the charge of Murder by EULEX Prosecutor Antonio Pastore on 14 October 2010, with:

> **Count (1) - Murder**, defined in Article 146 of the Provisional Criminal Code of Kosovo (PCCK), and
> **Count (2) - Unauthorized Ownership, Control, Possession or Use of Weapons**, defined in Article 328 Paragraph (2) of the PCCK;

After having held the main trial hearings open to the public on 12, 13, and 14 October 2010, all in the presence of the Accused **A.P.,** his Defence Counsel Mahmut HA.mi, EULEX Public Prosecutor Antonio Pastore, and Injured Party A.F.;

After the trial panel's deliberation and voting held on 14 October 2010, on the same day pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, the Defence Counsel, the Public Prosecutor, and the Injured Party, the following:

JUDGMENT

A.P., son of S. P. and H.A., born on in , MunicipA.ty, Kosovo-A., currently residing in , completed elementary school, retired and of average income, married with children, with no previous conviction;

is

FOUND GUILTY

Count I) Because on at approximately hrs, during a disagreement between **A.P.** and R.F. regarding the grazing of their cattle, R.F. attacked and struck **A.P.** in the jaw with a billhook and **A.P.** responded by firing four shots from his mm automatic rifle with serial number , in the direction of R.F., hitting him twice in the left arm and twice in the left leg and depriving him of his life. Although **A.P.** fired his weapon in defence of an unlawful, real and imminent attack by R.F., his response was disproportionate to the degree of danger posed by the attack and therefore exceeded the limits of necessary defence.

By doing so, A.P. committed and is criminally liable for the criminal act of Murder as defined in Article 146 of the (P)CCK.

Although **A.P.** exceeded the limits of necessary defence, because he did so by reason of strong trauma or fear caused by the attack, **the punishment for the criminal offence of Murder is waived** pursuant to Article 8, Paragraph (4) of the (P)CCK.

Count II) - Because **A.P.** was in possession of a weapon - an mm cA.bre automatic rifle with serial number - without vA.d authorization and used that weapon to deprive R.F. of his life.

By doing so, A.P. committed and is criminally liable for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of to Article 328 Paragraph (2) of the (P)CCK.

Therefore, A.P. is

SENTENCED

To two years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The time spent in detention on remand from and thereafter under House Arrest is to be credited pursuant to Article 73 Paragraph (1) of the (P)CCK.

The measure of House Detention against **A.P.** is hereby terminated.

The weapon – the an mm cA.bre automatic rifle with serial number – is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the (P)CCK.

The accused **A.P.** shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the (P)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 (P)CPCK.

Reasoning

I.

The District Court of Mitrovica is competent to hear this case, Article 23 item 1) i) and Article 27 paragraph (1) of the (P)CPCK.
EULEX Judges were assigned to the case by Decision of the President of the Assembly of EULEX Judges, dated 2 August 2010, based on Articles 3.3 and 3.5 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

II.

The Court had to decide on the merits of both charges, although it regards the charge of murder this charge withdrawn by the Public Prosecutor, because the Injured Parties have continued prosecution with regard to this charge.

1.
The Court understands the Public Prosecutor's proposal in his closing speech to find the Accused "not guilty" with regard to the murder charge as a withdrawal of this charge.

Article 379 (P)CPCK determines in detail the necessary and possible contents of the public prosecutor's closing speech without mentioning a possibility of an acquittal. Although it is not explicitly said that the public prosecutor must not propose an acquittal to the court, this stems from the system of this Code. The Code obliges the public prosecutor at all prior stages to terminate the proceedings, whenever he finds the facts not sufficient to support the respective level of suspicion, Article 208 paragraph 1 item 1 and Article 224 paragraph 1 item 1 (P)CPCK. Even after having filed the indictment the public prosecutor maintains the right to withdraw from prosecution until the conclusion of the main trial in the first instance, Article 52 (P)CPCK. Logically he has to do so, when he deems the evidence produced in the main trial not sufficient for a conviction.

If the prosecutor would have the choice to propose an acquittal instead, the right of the injured party to take over prosecution after a withdrawal of the charge would be undermined. It would also be detrimental for the accused, as in case of a withdrawal the court has to reject the charge, Article 389 item 1 (P)CPCK, while the court in spite of a proposed acquittal might find the accused guilty.

The argument a material verdict stating that it is not proven beyond reasonable doubt that he has committed the alleged criminal act would be more favorable to the accused than a formal verdict stating that further prosecution has been abandoned[1], is not convincing. As to the legal consequences, there is no difference at all. Obviously, this argument has not been adopted by the local judiciary, as the predominant local practice is to withdraw the charge, when the evidence at the main trial is deemed insufficient.

The Public Prosecutor had elaborated in detail that and why he found the evidence not sufficient to prove the charge and clearly expressed his will not to continue prosecution with regard to the murder charge. Therefore, the Court could and had to interpret his proposal as a withdrawal of the charge.

2.

The Court was neither obliged nor even authorized to reject the murder charge as a consequence of the withdrawal of this charge by the Public Prosecutor.

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1 Momcilo Grubac & Tihomir Vasiljevic, Commentary on the Law on Criminal Procedure (of the SFRY), 1999, Article 340 note 4;

By contrast, Branko Petric Commentary on the Law on Criminal Procedure (of the SFRY), 1988, Article 340 note II.2 obviously considers a withdrawal of the charge as the only possibility, when the prosecutor finds the evidence insufficient

Note: Article 340 of the SFRY Code is almost identical with Article 379 (P)CPCK..

Article 389 item 1 (P)CPCK stipulates that the court shall render a judgment rejecting the charge, if the prosecutor withdraws the charge during the period from the opening until the conclusion of the main trial. However, this provision was not to be applied, as the injured parties have continued prosecution. It is logical that a charge cannot be rejected and assessed as to its merits at the same time. This is confirmed by Article 63 paragraph 2 (P)CPCK, which foresees that a judgment rejecting the withdrawn charge has to be cancelled, if the injured party was not present at the main trial and has to be granted a return to the status quo ante. In the current case the injured parties were present and – as requested by Article 63 paragraph 1 (P)CPCK – immediately declared their will to continue prosecution. Therefore the court had to proceed straight away with the main trial also with regard to the murder charge, since the injured party as prosecutor must take over the procedure that is underway[2].

3.

The declaration to continue prosecution made by A.F., a brother of the deceased victim R.F., as representative of the injured parties and his further actions as a subsidiary prosecutor are vA.d. Whether a brother of a deceased victim can act as an injured party in the criminal proceedings cannot be concluded from the legal definition in Article 151 item 5 (P)CPCK, saying that "injured party" means a person whose personal or property rights are violated or endangered by a criminal offence. However, Article 57 and Article 62 paragraph 6 (P)CPCK determine the persons that may continue prosecution, if the injured party dies after (and independently from) the commission of the criminal offence in question, including brothers and sisters. This determination of persons authorized to exercise the rights of the injured party after his/her death is to be applied in analogy, as the interest of family members of a deceased injured party to participate in criminal proceedings and/or to continue prosecution is even more justified, when the death of the injured party was caused by the criminal offence in question. Therefore, the Court accepted as injured parties the two sons of the deceased R.F., A. and A.F., as well as the two brothers A. and I.F..

The Court did not appoint an authorized representative ex officio for the injured parties, because the injured parties were not "particularly vulnerable and in substantial need of the assistance of an authorized representative" as required by Article 82 paragraph 1

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[2] Branko Petric Commentary on the Law on Criminal Procedure (of the SFRY), 1988, Article 61 note I.1 and I.4

Note: Article 61 of the SFRY Code is identical with Article 63 paragraph 1 (P)CPCK.

subparagraph 5, paragraph 2 CPCK. A.F., who acted also on behalf of the other injured parties, is a highly educated and very eloquent Imam and he was able to exercise the rights of the injured parties and the function of a subsidiary prosecutor without the assistance of a lawyer as an authorized representative. The other alternative conditions listed in Article 82 paragraph 1 (P)CPCK (injured party is a child, has a domestic relationship with the defendant or has a mental disorder, or the charge is related to sexual offences or trafficking of human beings) are obviously not met either.

III.

1.

During the evidentiary proceedings evidence was taken as follows.

As witnesses were heard

(1) Witness (and Injured Party) A. F.,

(2) Witness I.I.

(3) Expert Witness Dr. E. A.i.

The following documents were read and entered into evidence:

(4) Police Report about Autopsy, (p. 56 - 61),

(5) Autopsy Report MA08-295, (p. 64 – 86),

(6) Forensic Examination Report (Ballistic), (p. 93 - 99),

(7) Forensic Examination Report (DNA), , (p.110 – 114),

(8) Expertise Report (Gunpowder Residue), , (p. 115 – 120),

(9) Expert Analysis Forms, (p.130 – 158),

(10) Police Photograph Album (Crime Scene, Suspect, Weapon), (p.178 – 197),

(11) Police Officer R.B.'s Report, , (198 – 201),

(12) Police Officer N.H.'s Report, , (202-203),

(13) Crime Scene Report, dated , (215 - 217),

(14) Collection of Photographs related to crime scene/weapon (p.220 – 223),

(15) List of Weapon Recovered, dated , (p. 228),

(16) Photographs of Autopsy, dated (p. 231 – 248),

(17) Medical Reports on Accused, different dates 2000-2006, (p. 249 – 264),

The following document turned out to be only partly readable and was entered into evidence by the testimony of the expert witness Dr. E. A.i:

(18) Medical Report issued by Dr. E. A.i, dated .

(19) The Accused gave a statement and answered questions in the main trial session on 13 October 2010.

2.

The reasoning does not refer to evidence (4), (8) , (9), (12), (14), (15) and (17), because the Court deems them without any additional evidentiary value and none of the parties has specifically referred to any of these pieces of evidence.

IV.

The Court found the Accused guilty of murder committed by exceeding the necessary defence. Article 146 as read with Article 8 (P)CCK.

Article 146 (P)CCK stipulates that “whoever deprives another person of his or her life” is punishable for murder. According to Article 8 paragraphs (P)CCK an act committed in necessary defence is not a criminal offence (paragraph 1). An act is committed in necessary defence, when a person commits the act in order to avert an unlawful, real and imminent attack from himself, herself or another person and the nature of the act is proportionate to the degree of danger posed by the attack (paragraph 2). If these conditions are met, the illegA.ty of the committed act is excluded. If the act is disproportionate to the degree of danger posed by the act, the act exceeds the limits of the necessary defence (paragraph 3) and remains a criminal offence.

1.

The Accused satisfied the elements of the criminal offence of murder as determined in Article 146 (P)CKK, as he intentionally deprived R.F. of his life.

The Court found proven that on at approximately hrs in the fields called , belonging to the and the District of , the Accused fired four shots from his mm automatic rifle with serial number at R.F.. R.F. was hit twice in the left arm and twice in the left leg and died some minutes later from the injuries received thereby. When firing at R.F., the Accused was aware that the shots might cause the death of R.F. and acceded thereto.

The Court insofar assessed evidence as follows:

The Accused admitted in his statement given to the court that he had fired three or four shots with his above mentioned weapon at R.F. at the above mentioned time and place.

The place where R.F. was found, has been clearly determined in the Police photo album [see III.(10)] by coordinates DN/819-535 and by the name “ ”. Also in the crime scene report [see III.13] this place is reported with the same name. The place where R.F. was found is also the place where he was shot. Otherwise there would have been traces from his - active or passive - movement due the severe bleeding, but according to the photo album [III.(10)], there were no such traces. The Accused spoke about “ ” as the place of the incident, but neither he nor his defence counsel ever challenged these documents. The court concludes that the Accused only used another name for the same area.

Police Reports prove that the mm automatic rifle with serial number was collected from the Accused on [see III.(11)and (13)] and four shell casings were found at the crime scene [see III, (10)]. By the ballistic examination [see III.(6)] it is proven that the weapon is functional and that the shell casings are parts of rounds of mm cA.ber, which are fired from automatic rifle of mm cA.ber, with serial number .

The autopsy report [see III.(5)] proves that R.F. was hit by four bullet shots, two in the left arm and two in the left leg, which caused ruptures of the big blood vessels in the left elbow area and in the upper left thigh, entailing his death within minutes.

Contradicting evidence to the facts established above has not been presented by any of the parties and the Court had no reason to take further evidence ex officio.

That the Accused was aware that the shots might cause the death of R.F. and acceded thereto is to be concluded from the circumstances. It is common knowledge that targeting and shooting at a person with an is very likely to cause fatal injuries to him or her, especially when several shots are fired. The Accused, who had kept this weapon since the war, certainly had this knowledge and by firing four shots at R.F. acceded to the possible death of the latter, although he might not have desired it.

He therefore acted with so-called indirect intent as defined in Article 15 (P)CCK, which is sufficient for criminal liability for intentional commission of a criminal offence.

2.

The Accused shot at R.F. in order to avert an unlawful, real and imminent attack by the latter from himself.

The Court found proven that in the course of a verbal dispute between the Accused and R.F. about the grazing of their cattle in the area R.F. intentionally hit the Accused from behind with a bill hook and inflicted on him an open wound at the left jaw, as the

Accused had turned round in the last moment. R.F. raised his hands with the bill hook again to hit the Accused, who was then facing him, a second time. In that moment the Accused started shooting at R.F. in order to prevent R.F. from hitting him again with the bill hook.
The Court insofar assessed evidence as follows:

a) The Court is convinced that a dispute on grazing cattle in the area preceded and eventually caused the incident. The Accused in his statement given to the Court admitted that for two years before the incident he had cleaned and fenced one hectare land rented from his cousin in order to graze his cattle there. Several times before the incident he found the fence damaged and some times he found R.F.'s cattle inside. On the day of the incident he was already in the area and complained to R.F. about this issue when the latter arrived. R.F. objected and called him a liar and asked to be shown the damages.
The witness A. F. testified that his father had not had any problem with the Accused before. Only in the evening after the incident I.I. had told him after that he had been threatened before by the Accused and two other persons not to graze cattle in that area and that he "had almost been killed".
However, the witness I.I. only confirmed that he was told by the Accused and two other persons not to graze cattle in that area and to tell this also to R.F..
He had agreed and had passed the message to R.F..
The Court cannot determine whether I.I., who provided his testimony very reluctantly, had exaggerated when he talked to A. F. immediately after the murder of R.F. or he wanted to play down the issue when testifying or A. F.'s memory is not quite accurate with regard to what he was told by I.I. . However, to the extent the statements of A. F. and I.I. concur; the Court accepts them as credible and deems refuted the Accused's allegation he would have raised the issue towards R.F. the first time on the day of the incident.
Thus, the verbal dispute between the Accused and R.F. on the day of the incident may have been more heated than described by the Accused. However, there is no evidence and not even an indication of any other violent act between the Accused and R.F. except the hitting with the bill hook and the shooting. It is proven by the autopsy report [III.(5)] that R.F. had no other injuries besides the shot wounds.

b) The Court is further convinced that R.F. hit the Accused with his bill hook and thereby inflicted on him an open wound at the left jaw.

The Accused stated that they walked together to see the damages at the fence. R.F. carried his bill hook and the Accused had his with him. R.F. walked two steps behind the Accused who suddenly noticed R.F. raising his hands with the bill hook to hit the Accused from behind. The Accused turned round and thus, he was not hit on his neck but on his left jaw. Certainly, an accused in general is interested in exonerating himself from any guilt. However, the Court accepts this statement of the Accused as credible, because it is corroborated by objective evidence.

The witness A. F. confirmed that his father had a bill hook with a handle of almost one meter length, like an axe and sometimes carried it with him for cutting pruning and branches. Such a bill hook was found with the body of R.F. at his right hand partly under his body [see III, (10) photos 2-6, 9 and 13)].

The expert witness Dr. E. A.i declared that he had treated the Accused on , at hrs at the Hospital and issued the medical report on the Accused, dated 16 December [III.(18)] . He explained that it confirms a wound caused by a sharp object on the left hand side of the jaw that was stitched and that antibiotic pills to treat the wound and paracetamol tablets were given. The injury was of light nature as to the first impression. The expert witness further said he remembers it was a fresh injury and an open wound. It was a light injury, because it was at the jaw and there are no veins which can endanger life, while the main arteries are on the neck.

The correctness of his statement is not questionable, as he has a long professional experience and does not have any personal interest in the outcome of these proceedings.

The wound described by the expert witness matches very well with the version of the Accused. The Subsidiary Prosecutor argued in his closing speech that as the blade of the bill hook is turned inwards, being hit from behind on the neck the Accused would have had not only “scratches” to the Accused, but the blade would have entered and ended up at the shoulder; had he been hit frontally the blade would have ended up in a different part of the body. This argumentation ignores that the Accused according to his statement was not in a static position, but turning round, which is the normal reaction, when a person becomes aware of a potential danger from behind. If the Accused had not moved, a stroke from R.F. walking behind him on his right side would indeed have hit the Accused on his right side. If he turned around, he was logically hit on his left side. The size and form of the blade of the bill hook can be clearly seen on the two photos in the Police Photograph Album [III.(10) p. 196]. Although the blade is turned inwards and curved**,** it can cause a wound as described by the expert witness and to be seen (after

being stitched) on the photo 31 in the in the Police Photograph Album [III.(10) p. 196], namely an almost horizontal cut of a few centimeters length at the left jaw.
The Court also excludes the possibility considered by the Subsidiary Prosecutor in his closing speech, that the Accused may have inflicted the wound on himself. The Court is convinced that the Accused with only basic education would not be able to invent such a consistent story exactly matching with his injury or to inflict on himself an injury exactly matching with the circumstances given.
The DNA expertise [III.(7)] did not provide further prove, as it only concludes that the blood samples taken from the crime scene and the blood samples taken from the bill hook belong to the same male person. However, none of the parties requested further evidence to be taken related to the DNA traces and the Court found it not necessary to take further evidence ex officio, because even if no blood from the Accused can be identified on the blade of the bill hook, it does not prove that he would not have been cut, especially in view of the high amount of blood from R.F.'s injuries that may have overlaid other traces.

c) The Court has no doubt that R.F. hit the Accused with the bill hook before the Accused shot at him and not the other way round. R.F. was hit at his arm and thereby severely injured by the first bullet fired by the Accused. Thus, he would not have been able to raise the bill hook and hit the Accused with it in reaction on the shooting. Further, if the Accused had intended to shoot at R.F. without a prior attack from the latter, he certainly would have shot from a safe distance instead of letting R.F. get close enough to hit the Accused with the bill hook.

d) The Court is further convinced that R.F. raised his hands with the bill hook again with the intention to hit the Accused, who was then facing him, a second time.
The Accused stated that after being hit with the bill hook he went two steps backwards and asked "why are you trying to kill me?". R.F. replied "I will show you now" and raised his hands with the bill hook again. In that moment the Accused opened his rifle and shot at R.F., whom he was facing from a distance that he believes was no more than two meters. The Court accepts this statement as credible, especially with regard to the attempt of R.F. to hit the Accused a second time with the bill hook. The autopsy report [III.(5)] and the pictures 33 – 37 of the Photographs of Autopsy [III.(16)] prove that the directions of the shots in normal standing-up position of the body of the victim were from left and back to the right and forward. It can be seen clearly that the two bullets entered at the back of the upper left arm of R.F.. This matches exactly with the situation

described by the Accused, namely that R.F. had raised both his hands holding the bill hook. In that position the back side of the upper arm of R.F. was turned towards the Accused, who was then facing him. Further, it is highly plausible that R.F. intended to hit the Accused a second time with the bill hook, as the Accused had received only light injuries from the first stroke and had his at hand.

e) Therefore, the attempt of R.F. to hit the Accused a second time with the bill hook was an unlawful, real and imminent attack against the Accused and the Accused had the right to react in necessary defence.

3.

The Panel decided that the Accused exceeded the limits of the necessary defence, as shooting four bullets at R.F. was disproportionate to the degree of danger posed by the attack of R.F..

The attempt of R.F. to hit the Accused a second time with the bill jeopardized the life of the Accused, even though the first stroke had caused only light bodily injuries. It stems from the convincing statement of the expert witness Dr. E. A.i that this was only due to the location of the wound on the left jaw, while it would be different if the main arteries on the neck were hit. It is common knowledge that a cut of the main arteries causes fatal bleedings within a very short time. Furthermore, R.F. was around fifteen years younger and much stronger [see III. (10) photos 2-11)] than the Accused. No one else was around, who could have prevented further attacks.

In view of these circumstances the Accused had no less harmful means to avert the attack than shooting with his gun. However, shooting in the air only might not have been sufficient, as the distance between R.F. and the Accused was around two meters. Thus, R.F. might have been able to overpower the Accused and take away the gun from him.

Therefore, the Accused did not exceed the necessary defence by the first shot at R.F..

However, the panel decided that this first shot was sufficient to avert the imminent attack, because it hit the upper left arm of R.F. and with this injury R.F. would not have been able to continue with the attack.

The Court acknowledges that it cannot be excluded that R.F. might have died from the injuries inflicted on him by the first shot, if the Accused had not continued shooting. The autopsy report [III. (5)] only determines that R.F.' s death was caused by ruptures of the big blood vessels in the left elbow area and in the upper left thigh. However, the panel decided that with regard to the finding, whether or not the Accused exceeded the

necessary defence, the firing of the four shots should be regarded as one act without any distinction as to the consequences.

Thus, the Accused had to be found guilty of the murder of R.F..

V.

The punishment for the criminal offence of Murder is waived.

The criminal offence of Murder is punishable by imprisonment of at least five years, Article 146 (P)CCK.

However, when the perpetrator exceeds the limits of necessary defence, the punishment may be reduced and if the perpetrator exceeds the limits by reason of strong trauma or fear caused by the attack, the punishment may be waived, Article 8 paragraph 4 (P)CCK.

The court is convinced that the Accused acted out of strong fear caused by the attack, when he continued shooting at R.F. after the first shot.

That the Accused acted out of fear, stems from the circumstances. The incident took place in a remote area, where the Accused was alone with his much younger and stronger opponent, who had hit him with a bill hook and tried to hit him again and who was at a close distance of around two meters to him. R.F. was injured by the first shot, but as he was still moving, the Accused could not be sure that R.F. would not be able to continue attacking him.

Whether he also acted out of trauma need not be determined.

The Court decided to waive the punishment, taking into account that the Accused is an elderly person without any previous conviction, who surrendered to the police immediately after the incident and who spent almost years in detention on remand as a consequence of this incident.

The purposes of punishment are listed in Article 34 (P)CCK, namely

-to prevent the perpetrator from committing criminal offences in the future,

- to rehabilitate the perpetrator and

to deter other persons from committing criminal offences.

None of these purposes requires a punishment to be imposed on the Accused in this particular case.

VI.

1.

The accused **A.P.** pleaded guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph 2 of the Criminal Code of Kosovo.

The court is satisfied that the material gathered in the case file sufficiently supports the charge and the plea entered by the accused.

2.

The Court found a sentence of two years of imprisonment appropriate to serve the purposes of punishment under Article 34 of the (P)CCK.

The punishment applicable for unauthorised possession of weapons under Article 328 paragraph 2 of the (P)CCK spans from a fine up to 7500 Euros to imprisonment from one to eight years. Such untraditionally wide range of available sanction leaves the court with a great deal of discretion in deciding individual cases.

The Court considers as a matter of general prevention that frequency of crimes committed with the use of weapons in Kosovo, often resulting in death or serious injury, call for sanctioning illegal possession of weapons with imprisonment of more than minimal duration. The Court is committed to sending a signal that easy availability of fire weapons and the resort to the use of them as means of resolving conflicts will not be tolerated with impunity.

The Court took as aggravating factor the long term of possessing the weapon, namely since the war, without the vA.d authorization. The Court took as a mitigating factor that the elderly accused living in a remote area kept the weapon to defend himself against possible attacks by human beings and wild animals. Further, the accused has no prior criminal record and has admitted his guilt with regard to this charge from the outset of the proceedings.

VII.

The additional punishment of confiscation of the weapon is mandatory under the law pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

VIII.

The measure of house detention against the Accused was terminated with immediate effect. The Accused has been in detention on remand for , thus there are only two months imprisonment remaining to be served. In view of this short time and the age

of the Accused the risk of flight, on which the previously ordered was based, does not exist any longer.

Tara Khan
Recording Officer

Christine Lindemann-Proetel
Presiding Judge

Legal remedy: The parties may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the date the copy of the judgment has been received pursuant to Article 398 Paragraph 1 (P) CPCK.