

DISTRICT COURT OF MITROVICA

K no. 49/10

11 October 2011

IN THE NAME OF THE PEOPLE

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

D O, charged according to the Indictment of the District Public Prosecutor PP No. 84/10 dated 26 July 2010 and filed with the Registry of the District Court of Mitrovica on 27 July 2010, with Grievous Bodily Harm contrary to Article 154 Paragraph (4) read in conjunction with Paragraph (2) of the Criminal Code of Kosovo („CCK“);

After having held the main trial hearing open to the public on 28 and 29 September, 10 and 11 October 2011, all in the presence of the Accused **D O**, his Defence Counsel **M H**, Injured Party **R O**, Legal Representative of the Injured Party **D V** and EULEX Public Prosecutor Petr Klement, after the trial panel's deliberation and voting held on 10 October 2011, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo („CPCCK“), pronounced in public and in the presence of the Accused, his Defence Counsel, the Injured Party, the Legal Representative of the Injured Party and the EULEX Public Prosecutor the following:

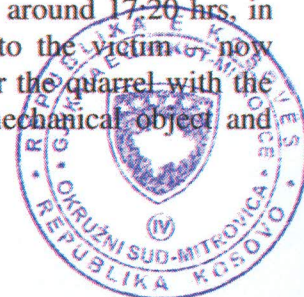
VERDICT

The Accused **D O**, son of **O** and **O** **Obrenović** born on **22 April 1968** of Serbian ethnicity and Serbian citizenship, with permanent address at **Vlade Četkovića str. No. 3** in **Evocaj**, unmarried, completed **Military Academy**, previous employed as a **Security Officer Captain**, retired, now running own business, economic status of **500** to **1000** Euros a month, no known previous conviction;

is

FOUND NOT GUILTY

Because it was not proven that the Accused on 20 September 2009 at around 17:20 hrs, in **Street in** inflicted Grievous Bodily Harms to the victim **now deceased T O**. It was not proven that the accused after the quarrel with the victim violently hit the victim on his head with a blunt and heavy mechanical object and



fractured the victim's skull bone which caused the death of the victim 9 days later in the hospital in Kragujevac- Republic of Serbia.

THEREFORE, the accused D O is

ACQUITTED

of the charge of committing the criminal offence of **Grievous Bodily Harm** under Article 154 Paragraph (4) read in conjunction with Paragraph (2) of the Criminal Code of Kosovo („CCK“), pursuant to Article 390 Item 3) of the CPCK.

The claim for compensation of the injured party R O is hereby rejected, pursuant to Article 112 Paragraph (3) of the CPCK.

Pursuant to Article 103 Paragraph (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs (1) through (5) of the CPCK, the necessary expenses of the Accused D O and the remuneration and necessary expenditures of his Defence Counsel, as well as the costs of interpretation and translation shall be paid from budget resources.

REASONING

A. PROCEDURAL HISTORY

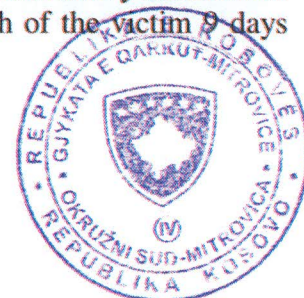
1.1. Indictment

On 26 July 2010, the District Public Prosecutor for Mitrovica, Shyqyri Sylja filed the Indictment PP No. 84/10, dated 27 July 2010, with the Registry of the District Court of Mitrovica.

According to the Indictment PP No. 84/10, the Accused D O **RENOVI** has been charged with the criminal offence of Grievous Bodily Harm, under Article 154 Paragraph (4) in conjunction with Paragraph (2) of the CCK.

The charge of Grievous Bodily Harm against the Accused has been based upon the following factual allegations:

„On the 20 September 2009, around 17:20 hrs, in **„Kragujevac“** street in **„Sveti“**, the Accused inflicted Grievous Bodily Harms to the victim-deceased T O **RENOVI**. After a quarrel, the Accused violently hits the victim over his head with a blunt and heavy mechanical device, by which he fracturing the victim's skull bone, causing a death of the victim 9 days later in hospital in Kragujevac“.



1.2. Confirmation of Indictment

On 15 November 2010, a confirmation of Indictment hearing was held in the District Court of Mitrovica. With a Ruling of the Confirmation Judge, dated 15 November 2010, the Indictment PP No. 84/10 was confirmed.

The Main Trial was held on 28, 29 September and 10, 11 October 2011.

The closing statements were heard on 10 October 2011.

The verdict was orally rendered on 11 October 2011.

B. COMPETENCE OF THE COURT

The District Court of Mitrovica is competent to hear this case pursuant to Article 23 Item 1) i) and Article 27 Paragraph (1) of the CPCK.

On 09 February 2011, the President of the Assembly of EULEX Judges issued a decision for EULEX judges to take over the case pursuant to Article 3.3 of the Law on Jurisdiction¹ and assigned it to EULEX judges in the Mitrovica District Court. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case.

C. SUMMARY OF EVIDENCE PRESENTED

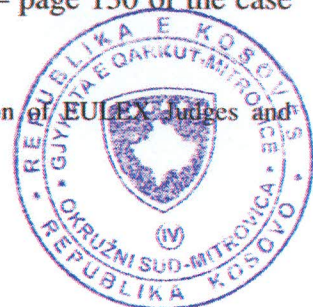
During the course of the main trial the following witnesses were heard:

1. R. Orenovic (Injured Party), 28 September 2011
2. J. V., 28 September 2011
3. J. N., 28 September 2011
4. N. M., 28 September 2011
5. Expert Witness Dr. J., 29 September 2011
6. Expert Witness Dr. B., 10 October 2011

The following documents were accepted as material evidence:

- 1) Record on autopsy of the late T. Orenovic – 1.– 1327/2009 dated 30 September 2009 of the Department of Forensic and Toxicology of the Kragujevac Clinical Centre;
- 2) Discharge list with epicrisis of the late T. Orenovic dated 29 September 2009 of the Neuro-Surgery Centre, Kragujevac;
- 3) Discharge list with epicrisis of the late T. Orenovic dated 20 September 2009 of the Health Centre, Mitrovica;
- 4) Photo album concerning the crime scene inspection (page 125 – page 130 of the case file).

¹ Law nr. 03/L-053, Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.



- 5) The Neuro-psychiatry Expertise for the late Todor Ožanić dated 28 September 2011, by Dr. Radmila Jevtić.

During the Main Trial session on 10 October 2011, the Accused Dragoljub Ožanić gave a statement and answered questions.

D. EVALUATION OF PRESENTED EVIDENCE

1.3. Factual findings

Based on the evidence presented during the course of the Main Trial, and the Accused's statement², given at the main trial, the Court established that:

On 20 September 2009, the Accused Dragoljub Ožanić came to [redacted] with his personal vehicle [redacted], silver colour, in order to attend a family event – engagement celebration of his cousin, his uncle's daughter. He stayed at the event till 17:20 hrs when he set off back to [redacted]. The Accused met his uncle Todor Ožanić on his way out of [redacted], near the place called " [redacted] ". Todor Ožanić, after noticing him, waved in his direction to greet him. The Accused pulled over to the left side of the road and after his uncle approached him, he lowered the car window in order to shake hands with him. The Accused then turned to a side street in order not to create obstacles for the traffic and there he continued the conversation with his uncle without exiting the vehicle. Todor Ožanić was tipsy and insisted to have a drink together, but the Accused responded he had not had time for that and that he was in a hurry to return to [redacted]. After having to reject the invitation to a drink several times and to explain that he was in a hurry Dragoljub Ožanić pushed his uncle's hand through the car window and drove in reverse towards the main road to [redacted]. As a result of that pushing his uncle began to fall down. When turning at the main road Dragoljub Ožanić saw his uncle in a process of getting up. Dragoljub Ožanić did not return to see what the state of his uncle was.

At approximately the same time two witnesses saw a silver car being stopped at that same street. One of them saw the victim leaning on the vehicle and talking to the driver. A person in pink t-shirt was seen to raise hand towards the victim which caused the witness Jelena Vukobratović to run into the victim's house and tell his wife "They killed your Todor". The witness, together with the family of the victim run towards the place and found him on the street half-leaning against the fence, bleeding from his ears and mouth with some bruises on his limbs and with torn shirt. The victim was not conscious and was not able to speak. He was then transported to Mitrovica Hospital and later to Kragujevac Hospital. There he died on 29 September 2009. The death was due to fracture of skull bones that lead to damage to vital brain centres. The said fracture of the skull bones and also other internal and external injuries were inflicted by a blunt, heavy and swung mechanical tool.

1.4. Evidence Establishing the Factual Findings

Examination of Witnesses

² Record of the Main Trial, 10 October 2011



1) The injured party testimony:

The Injured Party, R. O., late T.'s spouse, testified³ before the Court the following:

The Accused didn't have any serious conflict with the victim in the past; there were also no property disputes. In fact, T. O. loved his nephew. On the day when T. O. was injured she was working in the garden. Her neighbour J. came running and told her "A young man is killing your T.", after which they ran towards the location of the incident and found her husband sitting leaned on a fence, with his shirt torn and blood running from his mouth and ears. He had bruises on his hand and ankle. The Injured Party is not certain whether her husband was conscious at that moment but according to her, he was maybe trying to tell her something. She was told by the witness J. V. that T. O. was holding to the fence and was hit on his head. The victim was taken first to the Mitrovica City Hospital, and later transferred to Kragujevac (Serbia) where he died 9 days later. Later on the Injured Party learned from close relatives that before the incident the Accused made some threats, however she is not able to specify whom he was threatening and with what. She testified that after the incident neither the Accused nor his brother and sister expressed any condolences, paid a visit or attended the funeral of T. O.

2) Other witnesses:

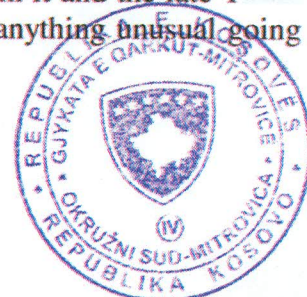
a) J. V.

J. V. testified that she did not know the Accused D. O. personally and that she was not aware if the late T. O. had had any unresolved dispute with him. She claimed she didn't remember what she had said initially in her statement to the police and she was not recalling anything since it happened a long time ago, moreover she saw it from a distance. She insisted that what she had said to the police was correct and that it was all that she knows about the case. The witness also was not able to confirm that she had seen the other man raising his hand to hit the deceased, let alone which hand was it and whether there was an object used. She could not verify whether the Accused was the person involved in the incident or not. J. V. saw a person resembling to the victim and that's why she ran to his house and informed his wife about what was going on. She only explained she assumed it was the late T. O. and she remembers him leaning on the fence with his shoulder and she could not see his face since he was with his back towards her. When asked to specify the distance from which she observed the incident she was not able to give any specific information. The witness was also unable to confirm if there was a grey or silver vehicle parked nearby. She kept saying that she has said all she knows to the police.

b) J. N.

The Witness accompanied the late T. till 17:20 hrs on 20 September 2009 and he was drinking beer outside a shop located in their street, but the deceased had not been drinking. Around that time the Witness left and went into direction of his own house in order to take his car and go downtown. By the time he got out of his courtyard, he had noticed a grey metallic or light blue vehicle pulling by the fence, with only a driver in it and the late T. leaning over the vehicle and talking to the driver. He did not notice anything unusual going

³ Record of the Main Trial, 28 September 2011



on, so he moved on and when he returned some 20 minutes later he noticed the ambulance and learned that the victim was battered in the meantime.

c) N. M.

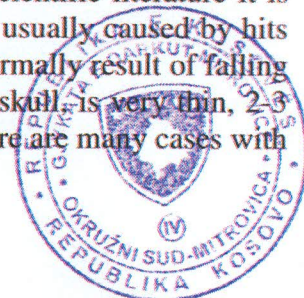
The Witness, who is also the uncle of the Accused, confirmed that the latter was present at the engagement celebration on 20 September 2009, but was not drinking, since according to the Witness, his nephew had never been drinking alcohol. He also said he was not aware of the exact time when his nephew left the house, since there were over 150 guests present in his house that day, but he was confident that D. O. had left in late afternoon hours. He also did not know what the Accused wore on that day, as well as which car did the Accused drive on that day, but he was aware that he owned a grey metallic car. He did not know any details related to the incident.

d) Expert witness R. J.

The expert witness has two specializations - neurologist and psychiatrist. According to her the injuries sustained by the victim are of neurological character, they are in the sphere of neurology since it is a case of injury on the head. The expert witness is of opinion that such injury to the head can be caused if the person falls, but it has to be a fall from substantial height for example from the third floor. It could also be caused by a car crash as an injury of that kind requires use of some force. The bleeding from the ears is an unmistakable sign of a fracture of the skull base. The skull base is located approximately at the ears level and the fracture might not be seen through X-ray. The victim T. O. had a massive bleeding in his brain and that did not allow for any surgery to be performed, moreover he was in life-threatening condition. It was not possible from medical point of view to avoid the death of the victim.

e) Expert witness Dr. F. B.

The expert witness who is experienced forensic pathologist examined all the medical documents provided in the case and discovered some discrepancies when reading the autopsy report and discharge lists from Kragujevac and Mitrovica. An injury at the left ear of the victim is described in the autopsy report but is not mentioned in the other medical documents while on the other hand in the latter there is another injury mentioned that is not found in the autopsy report. Regardless of that, according to the expert witness the autopsy report was very well done. The description of injuries is done in detail. The expert witness is of opinion that the injuries of the victim can be caused while falling to the fence where T. O. was found. The description in the autopsy report that the injury was caused by a blunt heavy and swung object does not necessarily mean that it was a result of somebody hitting the victim with such an object. When describing the reasons for an injury in the pathologist reports it is a common way to describe the tool that might have caused the injury in such a way but this description includes also cases where the body is falling down since the body itself can be a swung object when falling down onto a non-moving surface. In the scientific literature it is generally admitted that injuries to the skull that are above the ears are usually caused by hits from somebody else while injuries that are located below the ear are normally result of falling down. The expert witness explained that the base of the cranium, the skull, is very thin, 2-3 mm. and it does not take a lot of force to have that kind of fracture. There are many cases with



fractures of the base of the skulls from falling down while walking. It is possible to have that kind of fracture of skull from falling down. According to the expert witness it is also possible for the victim to receive such injury if he was pushed from his front and fell backwards towards the fence where he was found subsequently.

f) Accused D O

The Accused was in [redacted] for a family celebration. On that occasion he was wearing a white-coloured solemn shirt. At the late afternoon he left in direction to [redacted]. He confirmed that he had never had disputes with his now late uncle T O [redacted], or his cousins, the uncle's son and daughter. Before that day he had not seen his uncle for one or two years. On his way to [redacted] on the main road in [redacted] along the street near the location of " [redacted] ", he spotted his uncle T [redacted] waving at him to greet him. Since he stopped to return the greeting, a line of vehicles was created behind his vehicle on the main road. Therefore, he decided to leave the main road and pull over to the left side of the road, while his uncle T [redacted] crossed the road and approached his vehicle. The Accused had lowered the car window in order to shake hands with his uncle and he noticed that the late T [redacted] was slightly intoxicated. Todor O [redacted] insisted for the Accused to join him for another drink, which the latter refused since he was in a hurry to go back to [redacted] and did not have time. The Accused stated he had rarely visited [redacted] and the only reason he had stopped the car was because of his uncle, whom he wanted to greet. The Accused reject his uncle's persistence to join him for a drink because he could see his uncle was under influence of alcohol and also because he wanted to leave as soon as possible. During the whole meeting with T O [redacted] the Accused stayed inside the car and did not exit it. He was sitting in the driver's seat on the left side of the vehicle. Following the insistence of his uncle to have a drink together he pushed him away of the car with his left hand using normal force to do that. More precisely, he had pushed his uncle's hand towards the stomach. He did not see his uncle falling down because immediately after doing that he drove in reverse towards the main road and made a turn there. While making that turn he could see his uncle in a process of getting up. He could not see any blood on his uncle and was not able to hear him saying anything. He regretted for not turning back the vehicle and not helping his uncle. He also said he had learned about his uncle's condition several days after the incident and through a friend of his he had contacted Neuro-surgeons at the Kragujevac Medical Center, offering his assistance in any way he could have helped his uncle. The Accused also confirmed to the Court that he was supporting his statements⁴ given initially to the Public Prosecutor.

1.5. Documentary Evidence

The Neuro-psychiatry Expertise⁵, dated 28 September 2011, by Dr. R [redacted] J [redacted] listed the injuries of T O [redacted] and described them in details. The Neuro-psychiatry Expertise stated that:

The injuries of T O [redacted] were of difficult nature - life threatening, because they were located on the head and the fracture of the base of the skull was located in the proximity of

⁴ Statement of the Accused dated 22 February 2010; Statement of the Accused dated 30 June 2010 (page 436, page 64 of the case file)

⁵ Record of the Main trial, 29 September 2011



vital centres for breathing, heartbeat and blood circulation. As a consequence of those injuries the victim died 10 days after the injuries have been inflicted.

Assessment of the evidence

The Court assessed all the evidence separately and in relations to other evidence and could not establish that the Accused committed the criminal offence he was charged with. It was proven that the Accused was in [redacted] on 20 September 2009, that he met the victim T [redacted] O [redacted] at the time and on the place where the latter sustained injuries and had a conversation with him. It was not proven however that he hit the victim on his head with a blunt, heavy and swung mechanical object and thus inflicted grievous bodily injuries to T [redacted] O [redacted] that eventually lead to the death of the latter.

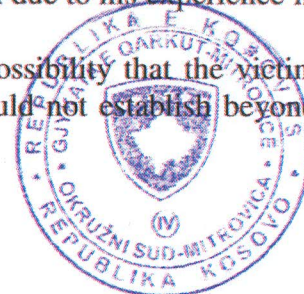
The main issue in the case was to find out what exactly happened on 20 September 2009 between the victim and the defendant and how the victim sustained the injuries that lead to his death. To that end the testimony of the only eye-witness J [redacted] V [redacted] are of a paramount importance. During the main trial that witness was obviously reluctant to answer questions and was constantly referring to her statement before the police. That statement however is not detailed and does not provide information on some important aspects of the incident. The testimony of the witness during the main trial is also superficial and does not help establish beyond reasonable doubt all the important facts. The court is therefore of the opinion that J [redacted] V [redacted] withheld some of the information she might have regarding the case.

As resulting from the cross-examination of J [redacted] V [redacted] it can not be concluded that the young man wearing a pink t-shirt whom she saw from a distance to raise a hand towards T [redacted] O [redacted] was the Accused D [redacted] O [redacted]. The witness herself never confirmed that before the police or during the main trial. Furthermore it could not be concluded that the said raising of a hand towards the victim was actually an attack against T [redacted] O [redacted]'s physical integrity. No further description is available as to whether those actions of the young man showed any intent to harm the victim. No plausible explanation was provided by the witness as to why just a mere raising of a hand would make her run to victim's house and inform victim's wife that T [redacted] O [redacted] has been killed. J [redacted] V [redacted] never confirmed that she had seen T [redacted] O [redacted] holding to the fence and being hit on his head as she allegedly told R [redacted] O [redacted]. Such a statement is not corroborated by other evidence.

It should be noted that the Accused's version of the meeting he had with the victim is at least partially corroborated by the witness J [redacted] N [redacted]. The accused claims that he never left his vehicle while having conversation with T [redacted] O [redacted] and that his uncle was leaning on his car and speaking through the open window. That is also what the witness J [redacted] N [redacted] saw. Therefore it can not be concluded that the Accused at any moment hit his uncle on his head and thus caused the injuries.

After assessing the testimonies of the expert witnesses the Court is of the opinion that their statements are supplementing rather than confronting each other. The experts were able to clearly and precisely explain the type of the injuries that the victim sustained, the consequences of those injuries the ways and mechanisms to inflict such injuries. The only discrepancy in their statements is to do with the question whether such injuries could be caused by simply falling on the ground. The Court found convincing the opinion of the forensic pathologist F [redacted] B [redacted] that it is possible to receive such injuries by falling on the ground. Such an opinion is based on observations in number of similar cases and also on findings in the scientific literature that F [redacted] B [redacted] is familiar with due to his experience in the field of forensic pathology.

After assessing all the evidence the Court could not exclude the possibility that the victim sustained the injuries as a result of an accident. The Court also could not establish beyond



reasonable doubt that the Accused had any intent to harm the victim and that he undertook any action to that end. It could not be established even that the Accused acted negligently towards the victim.

During the main trial the Injured Party R. O. requested twice that two additional witnesses were heard - T. O. brother of the victim and uncle of the accused, and his wife L. O. Her motions were rejected on the ground that those persons were not present at [redacted] at the time of the incident and although they could possibly be able to indicate to some problems between the accused and the victim, they could not provide relevant information of what happened on 20th September 2009.

Also during the main trial Public Prosecutor requested for revision expertise by the best institute and for reconstruction at the crime scene in order to clarify contradictions between expert witnesses. That motion was rejected on the grounds that a reviewing expertise does not exist in the CCK as a way for obtaining evidence. The Court considered the possibility to hear yet another expert witness but also rejected it because the two expert witnesses have their specializations in different fields of medicine and because while assessing the evidence it is up to the panel to decide on which evidence it can base its findings. The court also found that a reconstruction of the crime scene after two years had elapsed would not be productive as it would not reveal any significant information for the case.

E. LEGAL QUALIFICATIONS

Applicable Law

The substantive law applicable to the case is the one in force at the time, when the criminal offence was committed. On 20 September 2009, when the alleged criminal offence was committed, in force was the Criminal Code of Kosovo (CCK).

Qualification Of The Injuries

It has not been contested from the very beginning of the criminal procedures that the injuries inflicted on the victim T. O. were life threatening and that those injuries eventually caused his death. It was further confirmed during the main trial by all evidence that those injuries were serious, endangered his life and the death was inevitable. Therefore the injuries meet the criteria of Article 154, para.1, item 1 and para. 4 of Criminal Code of Kosovo and must be qualified as Grievous Bodily Harm. However, it could not be found that the Accused caused those injuries either intentionally or negligently and thus committed any crime.

Qualification of the act of the Accused

As specified above, the Court could not find beyond reasonable doubt the existence of intent or negligence from the part of the Accused towards inflicting Grievous Bodily Harm to the victim. In accordance with one of fundamental principles of the criminal procedure, as provided in Article 3, para.2 of CCK, the defendant is given the benefits of the doubt. Therefore he is found not guilty for the crime he was charged with and is acquitted.



F. COSTS


The Accused was acquitted, therefore he is not obliged to reimburse the costs of criminal proceedings pursuant to Article 103 Paragraph (1) of the CPCK. The costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs (1) through (5) of the CPCK, the necessary expenses of the Accused D. O. and the remuneration and necessary expenditures of his Defence Counsel, as well as the costs of interpretation and translation shall be paid from budget resources.


G. COMPENSATION CLAIM

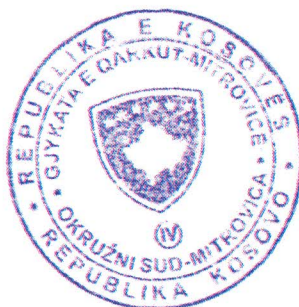
During the Main Trial on 10 October 2011, the Legal Representative of the Injured Party R. O., Lawyer D. V., filed a compensation claim for the amount of 20 000 Euros. The claim was made orally into the minutes, pursuant to Article 109 of the CPCK. Since the Accused is found not guilty and is acquitted, the claim for compensation of the Injured Party R. O. is rejected, pursuant to Article 112 Paragraph (3) of the CPCK.


District Court of Mitrovica K. nr. 49/2010

Prepared in English, an authorized language.


Jana Božović
Recording Officer


Hajnalka Veronika Karpati
Panel Member




Nikolay Entchev
Presiding Judge


Klaus Jung
Panel Member

Legal remedy:

Authorized persons 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) of the CPCK.