

SUPREME COURT of KOSOVO

Supreme Court of Kosovo Ap.-Kz. No. 21/2012 Prishtine/Pristina 17 July 2012

IN THE NAME OF THE PEOPLE

The Supreme Court of Kosovo held a panel session pursuant to Article 26 paragraph (1) of the Kosovo Code of Criminal Procedure (KCCP), and Article 15.4 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (LoJ) on 17 July 2012 in the Supreme Court building in a panel composed of EULEX Judge Gerrit-Marc Sprenger as Presiding Judge and EULEX Judge Francesco Florit as well as Kosovo Supreme Court Judges Nesrin Lushta, Marije Ademi and Salih Toplica as panel members

And with EULEX Legal Officer Holger Engelmann as recording clerk, In the

presence of the

EULEX Public Prosecutor Judith Eva Tatraj, Office of the State Prosecutor of Kosovo (OSPK)

Defense Counsel. Av. M.H. for the defendant Sh.K;

Legal Representative Av. F.B. for the injured party B.O.

In the criminal case number AP-KZ 21/2012 against the defendant:

Sh.K, nickname xxx, father's name Abedin, mother's maiden name xxx, born on xxx in the village of xxx in the Municipality of Skenderaj/Srbica in Kosovo, permanent residence xxx, Kosovo Albanian, secondary school education, xxx, single, xxx, profession xxx, former xxx, in 2002 with final judgment convicted for a xxx and punished with a xxx imprisonment xxx, in detention on remand from xxx until present time;

In accordance with the Verdict of the first instance District Court of Mitrovica/Mitrovica in the case no. P. Nr. 46/10 dated 13 July 2011 and registered with the Registry of the District Court of Mitrovica/Mitrovica on the same day, **the defendant was found guilty of the following criminal offenses:**

[i] because on 17 September 2010 at around 07:00 hrs, in xxx village, Municipality of Skenderaj, in the proximity of the bus stop close to fuel station "xxx", the accused willingly shot with his pistol - TT M57 of caliber 7,62 mm - at least five times at the injured party B.O., xxx, causing him serious injuries at his right forearm, right leg, left leg and left ankle. On the critical day the injured party was travelling in a Kosovo Security Forces official vehicle together with his colleagues S.G., R.R. and the driver B.T., heading towards Mitrovica. While S.G. and R.R. were

sitting on the backseats of the vehicle, B.O. was in the front seat at the passenger side. When they reached the abovementioned bus stop, the accused, being also a member of the xxx, raised his hand to stop the vehicle. As the vehicle stopped about 20-30 meters after the accused, B.T. went out of the vehicle to ask the accused why he had made sign to stop. The other three passengers remained in the car. The accused told T. that he wanted to have a short discussion with Commander O. As the driver walked back to the vehicle and was at the point of entering the driver's seat, the accused instead went towards the vehicle on the right side, opened the door of the front passenger's seat and asked B.O. "why did you remove the photograph?" It was later clarified that the photograph in question was one of xxx, which had been removed some time before the incident from the office where the accused was working at the xxx base in Mitrovica. Immediately after he posed that question, the accused, standing outside the vehicle at a very short distance from the injured party, pulled out his pistol and started shooting inside the vehicle towards the legs of the injured party. After the shooting the accused left the crime scene and walked in the direction of Polac village. Due to the injuries sustained, the injured party had to undergo several surgery operations and, at the present date, has still not completed his medical treatment, which will take additional several months of treatment and rehabilitation. The injuries inflicted to the injured party were serious enough to result in permanent weakening of his limbs and permanently diminishing of his capacity to work.

By doing so, Sh.K committed and is criminally liable for the criminal act of Grievous Bodily Harm, contrary to Article 154, paragraph (1), items 10, 20 and 40 of the Criminal Code of Kosovo (CCK).

[ii] because during an unknown period of time until 17 September 2010, without authorization, he was in possession of pistol TT M57 of caliber 7,62 mm, which he used in the above-mentioned manner.

By doing so, the accused Sh.K committed and he is criminally liable for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328, paragraph (2) of the CCK.

Therefore, the defendant Sh.K was sentenced with five (5) years of imprisonment for the criminal offense of Grievous Bodily Harm and with three (3) years of imprisonment for the criminal offense of Unauthorized Ownership, Control, Possession or Use of Weapons, out of which the District Court has built an aggregate punishment of seven (7) years of imprisonment pursuant to Article 71 paragraphs 1 and 2 item 2 of the CCK.

The time spent in detention on remand from 17 September 2010 to 20 December 2010 and the time spent under house arrest from 21 December 2010 to 13 July 2011 were credited pursuant to Article 73 paragraph 1 of the CCK.

The pistol TT M57 of caliber 7,62 mm, serial number C-54316 was confiscated pursuant to Article 60 paragraph 1 and Article 328 paragraph 5 of the CCK. The defendant was obliged to reimburse the costs of criminal proceedings pursuant to Article 102 paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP) with exception of the casts for interpretation and translation.

The property claim of the injured party was referred for civil proceedings as per Article 112 paragraph 2 of the KCCP.

The Defense Counsel of the defendant Sh.K timely filed an appeal dated 03 December 2011 against the Verdict. It was asserted that the Verdict contains violations of the criminal code and that the punishment imposed upon the accused was to be challenged. It was proposed to "*amend the challenged Judgment by finding that the actions of the defendant **Sh.K** contain the elements of the criminal offense of Grievous Bodily Harm, Article 154 paragraph 6 in conjunction with paragraph 1 item 2 and 4 of the CCK, or in the most inconvenient case to pronounce a more lenient punishment regarding the same criminal offense, Article 154 paragraph 1 item 2 and 4 CCK and the criminal offense described under Count 2 of the Judgment*

The District Prosecutor of Mitrovice/Mitrovica as well timely appealed the District Court Judgment by written appeal dated 06 December 2011 and registered with the District Court of Mitrovice/Mitrovica on 08 December 2011. It was asserted that the Judgment would contain erroneous and incomplete establishment of the factual state pursuant to Article 405 of the KCCP and violation of the criminal code pursuant to Article 404 of the KCCP. It was proposed "*that the verdict of Grievous Bodily Harm be annulled and replaced with a verdict of Attempted Aggravated Murder*".

The Legal Representative of the injured party timely filed an appeal dated 03 December 2011 against the District Court Judgment and asserted that the punishment imposed to the defendant was not severe enough, considering the serious consequences of the crime and in particular the permanent invalidity of the injured party as a result of the shooting.

The Defense Counsel of the defendant as well as the Legal Representative of the injured party both replied to the respective appeals of the other side.

The OSPK, with a response dated 24 May 2012 and registered with the Registry of the Supreme Court of Kosovo dated 25 May 2012 fully supported the appeal of the District Prosecutor of Mitrovice/Mitrovica and proposed to have it approved by the Supreme Court. It was asserted that the challenged Judgment contains erroneous and incomplete determination of the factual situation and violation of the Criminal Law. It was proposed to modify the challenged District Court Judgment and convict the defendant **Sh.K.** for the charges of Attempted Aggravated Murder pursuant to Article 147 item 4 as read with Article 20 of the CCK, but to reject the appeal of the defendant and his Defense Counsel as unfounded and to affirm the District Court Judgment in its remaining parts.

Based on the written Verdict in case P. Nr. 46/10 of the District Court of Mitrovice/Mitrovica dated 13 July 2011, the submitted written appeal of the defendant and his Defense Counsel, the appeal of the injured party through his Legal Representative as well as the appeal of the District Prosecutor of Mitrovice/Mitrovica and the Opinion of the OSPK, the relevant file records and the oral submissions of the parties during the session on 17 July 2012, together with an analysis of the applicable law, the Supreme Court of Kosovo, following the deliberations on 17 July 2012, hereby issues the following:

JUDGMENT

The appeal of the District Prosecutor of Mitrovice/Mitrovica and the appeal filed on behalf of the injured party against the Judgment of the District Court of Mitrovice/Mitrovica P. No. 46/2010, dated 13 July 2011, are GRANTED. The appeal filed by the Defense Counsel on behalf of the defendant is PARTIALLY GRANTED.

The Judgment of the court of first instance is MODIFIED as follows:

The criminal offence is re-qualified as Attempted Murder pursuant to Article 146 in conjunction with Article 20 of the Criminal Code of Kosovo (CCK). The defendant is sentenced to:

- six (6) years of imprisonment for the criminal offence of Attempted Murder pursuant to Article 146 in conjunction with Article 20 of the CCK and**
- two (2) years of imprisonment for the criminal offence of Unauthorized Ownership, Control, Possession and Use of Weapons pursuant to Article 328 paragraph 2 of the CCK.**

The aggregate punishment pursuant to Article 71 paragraph 1 and paragraph 2 item 2 of the CCK is determined as seven (7) years imprisonment.

The time spent in detention on remand and house detention is credited against the imposed punishment.

REASONING

Procedural History

An Indictment (PP. no. 114/2010) was filed by the District Prosecutor of Mitrovice/Mitrovica on 19 October 2010, which was entirely confirmed by the Confirmation Judge on 19 November 2010.

The Main Trial commenced through altogether five sessions on 04, 05, 06, 08 and 13 July 2011, when the latter the challenged Judgment was announced.

In the course of the Main Trial the defendant was examined on 04 July 2011 and pleaded guilty to the charge under Article 328 paragraph 2 of the CCK. Moreover, the injured party B.O. (04 July 2011) as well as the witnesses R.R., S.G. (04 July 2011), B.T., Haki Berisha (05 July 2011) and the expert witness Dr. A.Xh. (06 July 2011) were heard.

In addition, the following documents have been read into the minutes: Police Officers report 2010-BF-0559 dated 17 September 2010, Crime Scene report 2010-BF-0559 dated 17 September 2010, photo album and sketch from the crime scene as included to the case files; medical report from the Health House in Skenderaj/Srbica in the name of B.O. with no. 1211 dated 17 September 2011 from Dr. Z.D., criminal file in the name of **Sh.K** as included to the case files as well. Moreover, exhibit no. 1, which is the head of a bullet which, according to the injured party, was taken from his leg at the Turkish military hospital, was presented to the panel.

The Defense Counsel of the defendant **Sh.K** timely filed an appeal dated 03 December 2011 against the Verdict and asserted and proposed having the actions of the defendant **Sh.K** re-qualified as Grievous Bodily Harm pursuant to Article 154 paragraph 6 in conjunction with paragraph 1 item 2 and 4 of the CCK, or in the most inconvenient case to pronounce a more lenient punishment as outlined before.

The District Prosecutor of Mitrovica/Mitrovica as well timely appealed the District Court Judgment by written appeal dated 06 December 2011 and asserted and proposed "*that the verdict of Grievous Bodily Harm be annulled and replaced with a verdict of Attempted Aggravated Murder*" as outlined before.

The Legal Representative of the injured party timely filed an appeal dated 03 December 2011 against the District Court Judgment and asserted that the punishment imposed to the defendant was not severe enough, as outlined before.

The Defense Counsel of the defendant as well as the Legal Representative of the injured party both replied to the respective appeals of the other side.

The OSPK, with a response dated **24 May 2012** fully supported the appeal of the District Prosecutor of Mitrovica/Mitrovica and proposed to have it approved by the Supreme Court.

FINDINGS OF THE COURT

A. Erroneous and incomplete determination of the factual situation

The District Prosecutor of Mitrovica/Mitrovica as supported by the OSPK has challenged the District Court Judgment for alleged erroneous and incomplete determination of the factual situation, because the District Court had not properly assessed the intent of the defendant, when he was shooting at the injured party. The District Court had not thoroughly assessed the fact that the defendant has not only shot at the legs of the injured party, but also at the upper part of his body, particularly at the top part of his right arm and that he - from a very short distance - has fired several times. This alone should have driven the District Court to conclude that the defendant at least eventually intended to kill the injured party, given also that no admissible medical opinion was presented to the Court saying that bullet shots at lower parts of a human body are incapable of killing that person. In addition, the interview of the defendant as given to the police would provide sufficient evidence for his intention to kill, because on this occasion he had claimed that he was acting in self-defense, whilst during the trial he had defended himself in silence.

The Supreme Court of Kosovo, after intensive discussion, has arrived to the opinion that the District Court indeed has erred assessing that the aforementioned shooting activities of the defendant lead to the conclusion that the defendant had had the intent to hurt the injured party. On the contrary, the Supreme Court finds that the shooting incident clearly indicates the intent of the defendant - in the form of *dolus eventualis* - to kill the injured party. Pursuant to Article 15 paragraph 3 of the CCK a perpetrator *acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrence.*

All the witnesses of the incident including the injured party have testified in front of the Court and the panel has analyzed their statements carefully. In this context it turned out that all witnesses described the situation in quite similar words, stating that the defendant had opened the front door of the vehicle at the passenger's side and asked the injured party, why he had 'removed the photograph' and that after this question he immediately had pulled out his pistol, stepped back a bit and fired at the injured party several times. In particular the injured party himself as well as witnesses R.R. and B.T. underlined that the defendant was shooting at the legs/feet of B.O.. Whist the injured party only remembers that at the end of the shooting the pistol 'remained open', from which he concluded that all bullet from the cartridge had been fired, witnesses R.R. and S.G. counted six or seven shots and witness B.T. heard five to six shots.

Since it was impossible to determine with certainty how many bullets had been fired at the injured party, the District Court has based its findings upon the minimum number of five bullets counted by all witnesses. The District Court has thoroughly analyzed all witness statements given, individually as well as generally. The number of at least five bullets being shot at the victim B.O. also complies with the first statement of the injured party given in front of police on 29 September 2011. A detailed reasoning was provided, why the Court did not follow the version of the injured party as given in front of the Court during the Main Trial session on 04 July 2011, according to which he allegedly was hit by eight bullets (p. 10 of the challenged Judgment in its English version).

In addition, witness H.B. was heard, who wrote the 'Examination Report of the Vehicle' dated 19 September 2010. The witness, based upon his report and the pictures contained, stated that the distance between the defendant and the injured party during the shooting was about one meter and fifty centimeters (1.5 m) and that no bullet holes were found on the seat in the place where the chest is normally positioned. (On this background the District Court statement, according to which the distance between the defendant and the injured party during the shooting was less than one meter, [p. 10 of the challenged Judgment in its English version] is understood to be a typing error).

The District Court has based its assessment upon these pieces of evidence finding "*[t]hat the accused aimed at the legs of the injured party is proved: by the testimony of Ms. Ramadani and Mr. Teraku; by the findings of the 'Examination Report of the Vehicle dated 19 September 2010, and confirmed[...] by the expert witness Mr. Berisha [...who stated...] that no bullet holes were found on the seat in the place where the chest is normally positioned; and eventually by the fact that the injured party was hit by the bullets on his legs and on his right forearm, which, according to all testimonies, was lying along his body "* (p.9 of the challenged Judgment in its English version).

However, the District Court failed taking into sufficient consideration that also according to the Medical Report of the Turkish Armed Forces Rehabilitation Center in Ankara, dated 24 March 2011, a "*litigation surgery*" was performed to the right forearm for branches of "*ulnar radial artery inter-osseous* due to the fact that one of the bullet fired went through the right arm of the injured party into his leg and hurt an artery there.

While the court grants the defendant's claim that he aimed only at the lower parts of the victim's body in order to avoid life-threatening injuries, it concludes that such an action can in no way be

sufficient to eliminate the possibility of a mortal injury considering the way the shooting was executed. The defendant, being a xxx and trained on the use of handguns, must have been aware of the fact that a pistol as it was used by him is a very imprecise weapon and may cause other injuries that the immediately intended ones due to a quite strong kick-back and the resulting inaccuracy of the aim at the next shot. Therefore, he must have taken into consideration the possibility of injuring the victim in a manner that would seriously endanger and finish his life. The victim in a sitting position in the vehicle presented a much smaller target than a person standing upright, and consequently it was even harder to avoid targeting vital regions of the body. The upper part of the legs and the pelvic area - the body region, which the defendant targeted with his shots - contain large blood vessels, which, when injured can cause severe bleeding, leading to death within a short period of time. Apart from that, it is established that the defendant fired at least five shots in quick succession, without sufficient time to correct his aim. While it was not necessarily his primary intend to kill B.O., the defendant certainly must have been aware that his actions eventually could cause the victim's death. Nevertheless he executed his plan without regard for the possible consequences. Based on that, the court sees it as proven beyond reasonable doubt that the accused foresaw the possibility of killing his victim but consciously took the risk, executing his plan anyway. All this leads to the cogent conclusion that he was acting at least with eventual intend to kill.

As a result erroneous and incomplete determination of the factual situation is established in the case at hand and thus a violation of Article 403 paragraph 1 item 12 of the KCCP.

B. Substantial violation of the Criminal Law

The District Prosecutor of Mitrovica/Mitrovica as supported by the OSPK as well as the Defense Counsel of the defendant **Sh.K** has challenged the District Court Judgment for alleged violations of the Criminal Code.

The District Prosecutor and the OSPK are of the opinion that a proper assessment of evidence by the District Court would have led the Court to find the defendant guilty for Attempted Aggravated Murder pursuant to Article 147 item 4 as read with Article 20 of the CCK. In particular they refer to the fact that the defendant did not fire to the legs of the injured party only but also against the upper part of his body, that there is a contradiction between the defendant's declaration in front of the police where he claimed that he had acted in self-defense (while defending himself in silence in front of the Court) and that he had fired at least five but more likely eight times on victim, emptying the whole magazine of his pistol,

On the contrary, the Defense Counsel of the defendant **Sh.K** has stressed that the District Court had not paid enough attention to the fact that the defendant always had good relations with the injured party and that the removal of the photography of Xxx, who was an idol for him, from his office had caused particular mental stress upon him. Therefore, the District Court as a result of proper assessment of all facts should have arrived to qualify the actions of defendant **Sh.K** as criminal offense pursuant to Article 154 paragraph 6 of the CCK.

The Supreme Court arrives to the opinion that the factual findings of the District Court as established before do not leave any room for a qualification of the action of the defendant as Grievous Bodily Harm pursuant to Article 154 paragraph 1 of the CCK, but that - although the

requirements of Attempted Aggravated Murder pursuant to Article 147 item 4 of the CCK as proposed by the Prosecution are not met - the incident needs to be qualified as Attempted Murder pursuant to Article 146 of the CCK.

Article 147 item 4 of the CCK is not applicable in the case at hand, because the provision stipulates as follows:

A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed on any person who:

4) Deprives another person of his or her life and in doing so intentionally endangers the life of one or more persons.

It needs to be underlined in the case at hand that at no time any persons other than the injured party have been endangered during the shooting.

All immediate witnesses of the incident - as much as they have seen where the defendant was pointing his pistol - have repeatedly and in an undisputable way stated that the defendant, after he told to the driver, witness B.T. that he had to talk to the injured party in his capacity as KSF Commander, went to the right side of the vehicle, where the injured party B.O. was sitting on the passengers front seat, that he opened the door, asked his question regarding removal of a picture and started firing at the injured party straight away. In particular witness B.T. in his statement to the police dated 22 September 2010 and in front of the Court in the Main Trial session dated 05 July 2011 pointed out that the defendant has pointed his pistol towards the legs/feet of the injured party and witness R.R. has stated in front of the Court on 05 July 2011 that the defendant was pointing at the lower part of the victim's body. Both pieces of evidence are corroborated by the statement of the injured party himself, as given to the police on 23 September 2010 and in front of the Court on 04 July 2011, according to which he was hit at least by two bullets in both, his right and left leg, and that he received injuries to his right forearm (which according to the findings of the District Court was caused by the fact that the injured party held his right arm in line with his leg, when the shooting started). Moreover, as a result of the 'Examination Report of the Vehicle' dated 19 September 2010 and prepared by Forensic Police Officer H.B., who stated as expert witness in front of the Court on 05 July 2011, it was found that the passengers front seat of the vehicle, where the injured party was sitting during the shooting showed two bullet holes, which were caused by almost perpendicular shots.

On this background it needs to be concluded that at no time there was an objective and concrete danger for the other passengers of the vehicle, even considering the fact that according to the statement of witness S.G. as given to the police on 22 September 2010 the witnesses B.T., R.R. and S.G. *"immediately [...] got out of the vehicle as [they] felt endangered too as the same directed his weapon towards [them/ too* At no time the defendant has fired his gun, while pointing anywhere else than towards the legs of the injured party. Pointing the gun in the direction of the other passengers without actually shooting does not qualify as concrete danger for their lives, in the terms of Article 147 paragraph 4 of the CCK.

Even if one would take the position that the defendant had caused a real and concrete danger for the life of the other passengers, there is no indication that he had the intent to cause such a danger. In

order to apply the qualification of Article 147 item 4 of the CCK it is required that the described qualifying circumstances - the endangering of the life of one or more persons - are included in the intent of the perpetrator. He would have to have at least eventual intent in that regard, as prescribed in Article 15 paragraph 3 of the CCK.

Here the defendant's quarrel was with the injured party B.O. alone and there is no evidence that he either wished or even just acceded to the endangering of the lives of the other passengers.

As a result the Supreme Court finds that in the case at hand all objective and subjective requirements of an Attempted Murder pursuant to Article 146 as read with Article 20 of the CCK are given, which is why the District Court assessment needs to be re-qualified.

As to the allegations of the Defense Counsel regarding an alleged state of mental distress of the defendant at the time when he committed the crime, this does not have a proper basis in the findings of Police, Prosecution and the Court.

Despite that according to the Supreme Court findings the Criminal Offense of Grievous Bodily Harm is not given in the case at hand, **Article 154 of the CCK** - as relevant in this regard - stipulates as follows:

(1) Whoever inflicts bodily harm upon another person or impairs the health of another person to such an extent that it may result in:

Shall be punished by imprisonment of six months to five years.

(6) When the offense provided for in paragraph 1, 2 or 3 of the present Article is committed in a state of mental distress after brought, through no fault of his or her own, into a state of severe shock caused by an attack, maltreatment or grave insult by the injured party, the perpetrator shall be punished by imprisonment of six months to three years, in the case of the offense provided for in paragraph 1 or by imprisonment of six months to five years, in the case of the offense provided for in paragraph 2.

No indication has been brought forward that the removal of a picture of xxx from the office room where the defendant was sitting could have caused him a state of mental distress such as severe shock caused by an attack, maltreatment or grave insult by the injured party as suggested by the Law. To the contrary, the removal of a picture - which at no time was discussed by the defendant with either his colleagues or the injured party before - deems to be almost ridiculous as a motivation for the commission of a criminal offense as the one at hand, causing serious and permanent health problems to the victim. Also the allegations of the Defense as brought forward in the Main Trial session on 17 July 2012, according to which the mental distress of the defendant has its roots in his painful and serious experience from the times of the war, when he was a KLA soldier and on which occasion he also has lost his father and brother, are not further substantiated, nor could this cause of the alleged mental distress be qualified as one of the circumstances mentioned in Article 154

paragraph 6 of the CCK (*...caused by an attack, maltreatment or grave insult by the injured party...*).

The Supreme Court of Kosovo therefore finds that the respective allegations of the Defense Counsel are without merits and ungrounded.

C. Decision on the punishment

The Defense Counsel of the defendant **Sh.K** as well as the Legal Representative of the injured party both have stressed that the decision of punishment would be unjust, whilst the Defense Counsel of the defendant **Sh.K** is of the opinion that the punishment imposed is too severe, given the highest punishment possible was imposed for the criminal offense of Grievous Bodily Harm, not sufficiently considering the emotional effect of the removal of **xxx**'s photography to the defendant **Sh.K**, as well as the fact that the injured party is recovering slowly. The Legal Representative of the injured party has stressed that as a result of the shooting the injured party is permanently invalid, which is why the punishment would be too lenient.

The decision on the punishment needed to be reviewed as well, due the requalification of the shooting incident as Attempted Murder pursuant to Article 146 of the CCK and - on the background of the appeal as filed by the Defense - also regarding the criminal offense of Unauthorized Ownership, Control, Possession and Use of Weapons pursuant to Article 328 paragraph 2 of the CCK.

The Supreme Court found that the First Instance Court has properly taken into consideration all aggravating and mitigating circumstances regarding the defendant **Sh.K**, and his activities.

Nevertheless, regarding the criminal offense of Attempted Murder pursuant to Article 146 of the CCK it is required to re-define the separate punishment in accordance with the different legal punishment frame compared to the previous conviction for Grievous Bodily Harm. Considering the enormous pain and the serious consequences of the shooting for the victim as well as the fact that the defendant has not shot only once but at least five times, thus increasing the danger of his action for the health and life of the injured party, the Supreme Court finds a separate punishment of six (6) years balanced and in line with the weight of the crime.

As to the punishment imposed by the District Court for the criminal offense of Unauthorized Ownership, Control, Possession and Use of Weapons pursuant to Article 328 paragraph 2 of the CCK, the Supreme Court finds that a separate punishment of three (3) years is slightly excessive, taking into consideration the sentencing practice adopted by the Courts of Kosovo in similar cases. Therefore, given the specific situation of the case at hand as elaborated already by the District Court, the Supreme Court finds a separate punishment of two (2) years adequate.

Based upon both separate punishments, an aggregate sentence of seven (7) year of imprisonment is reached in accordance with Article 71 of the CCK.

The time spent in detention and house arrest has to be credited pursuant to Article 73 paragraph 1 of the CCK.

Taking also into consideration the level of social risk of the commission of criminal offenses as well as the level of responsibility of the accused, the latter is well and fairly served with the aggregate sentence, as imposed.

For the foregoing reasons the Supreme Court decided as in the enacting clause.

Members of the panel:

**Francesco Florit
EULEX Judge**

**Marije Ademi
Supreme Court Judge**

**Nesrin Lushta
Supreme Court Judge**

**Salih Toplica
Supreme Court Judge**

Presiding Judge:

Recording Clerk

**Gerrit-Marc Sperger
EULEX Judge**

**Holger Engelman
EULEX Legal Officer**

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