

BASIC COURT OF MITROVICË/MITROVICA
PM nr. 01/2016
18 April 2016

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICË/MITROVICA, in the Juvenile panel composed of EULEX Judge Nuno Manuel Ferreira de Madureira as Presiding Juvenile Judge, Lay Judge Kimete Fejza and Lay Judge Novak Mirkovic as panel members, with EULEX Legal Officer Vera Manuello as the Recording Officer in the Juvenile case against:

A.P. _____, father's name B._____, mother's name S._____, maiden name S.1._____, born on _____ in _____, Kosovo Albanian, residing at _____, _____, _____ Municipality, I.D. number: unknown, single, occupation: unemployed, primary school completed, in detention on remand from 25 June 2015 until 10 August 2015;

A.S. _____, father's name X._____, mother's name A._____, maiden name B._____, born on _____ in _____, _____, Kosovo Albanian, residing at _____, _____, _____th floor, _____, _____ Municipality, I.D. number: unknown, single, occupation: student in High School (1st grade);

V.B. _____, father's name E._____, mother's name V._____, maiden name F._____, born on _____ in _____, Kosovo, Kosovo Albanian, residing at _____, _____, _____ Municipality, I.D. number: unknown, single, occupation: student at High School (1st grade);

M.D. _____, father's name B.1._____, mother's name S.2._____, maiden name K._____, born on _____ in _____, _____, Kosovo, Kosovo Albanian, residing at _____, _____, _____, Kosovo, I.D. number: unknown;

B.S. _____, father's name M._____, mother's name F.1._____, maiden name K.1._____, born on _____ in _____, Kosovo, Kosovo Albanian, residing at _____, _____, Kosovo, I.D. number: unknown;
and

E.R. _____, father's name S.3._____, mother's name A._____, maiden name N._____, born on _____ in _____, Kosovo, Kosovo Albanian, residing at " _____ " street, _____, _____, Kosovo, I.D. number: unknown;

Charged with:

Count I

A.P. _____, **A.S.** _____, **M.D.** _____, **V.B.** _____
and **E.R.** _____:

1) Attempted Aggravated Murder contrary to Article 179, Subparagraph (1.10) of the Criminal Code of the Republic of Kosovo (CCRK) as read in conjunction with Articles 28 and 31 of the CCRK;

Count II

V.B. _____, **M.D.** _____ and **A.S.** _____:

2) Threat contrary to Article 185, Paragraphs (1) and (4) of the CCRK as read in conjunction with Article 31 of the CCRK;

V.B. _____:

3) Unauthorized Ownership, Control or Possession of Weapons contrary to Article 374, Paragraph (1) of the CCRK;

Count III

A.P. _____, **A.S.** _____, **M.D.** _____, **V.B.** _____
and **B.S.** _____:

4) Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance contrary to Article 147, Paragraphs (1) and (3) of the CCRK as read in conjunction with Article 31 of the CCRK;

5) Threat contrary to Article 185, Paragraphs (1) and (4) of the CCRK as read in conjunction with Article 31 of the CCRK;

6) Theft contrary to Article 325, Paragraph (2) of the CCRK as read in conjunction with Article 31 of the CCRK;

V.B. _____ and **A.P.** _____:

7) Unauthorized Ownership, Control or Possession of Weapons contrary to Article 374, Paragraph (1) of the CCRK;

Count IV

A.P. _____:

8) Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance acting contrary to Article 147, Paragraphs (1) and (3), of the CCRK.

Pursuant to Article 73 Paragraph (3) of the Juvenile Justice Code (JJC),

Renders the following:

RULING

I. Measures

1. To Minor A.P. _____ the Court imposes an institutional educational measure and commits him to an educational-correctional institution for the period of **2 (two) years**, pursuant to Articles 20 Paragraph (4) and 28 of the JJC;

2. To Minor A.S. _____ the Court imposes a measure of intensive supervision and places him under intensive supervision by the Guardianship Authority for a period of **10 (ten) months**, pursuant to Articles 20 Paragraph (3) and 25 of the JJC.

It shall be the duty of the Guardianship Authority to:

- Ensure that the Minor is removed from any adverse influence, especially by not hanging out with any of the other minors in this case and not having access to Facebook. The Minor shall provide his Facebook account password to the Guardianship Authority;

- Enroll the Minor in programs with inter-ethnic components.

3. To Minor V.B. _____ the Court imposes a measure of intensive supervision and places him under intensive supervision by the Guardianship Authority for a period of **1 (one) year**, pursuant to Articles 20 Paragraph (3) and 25 of the JJC.

It shall be the duty of the Guardianship Authority to:

- Ensure that the Minor is removed from any adverse influence, especially by not hanging out with any of the other minors in this case and not having access to Facebook. The Minor shall provide his Facebook account password to the Guardianship Authority;

- Enroll the Minor in programs with inter-ethnic components.

4. To Minor M.D. _____ the Court does not impose any measure or punishment;

5. To Minor B.S. _____ the Court does not impose any measure or punishment;

6. To Minor E.R. _____ the Court does not impose any measure or punishment.

II. Confiscation

The pistol Ekol Volga, EVL-_____, with its cartridge, is hereby confiscated pursuant to Article 374, Paragraph 3, of the CCRK.

III. Costs of proceedings

The costs of proceedings shall be paid by Kosovo budget, pursuant to Article 75 Paragraph (1) of the JJC.

IV. Property Claim

The Injured Parties are instructed that they may pursue their property claim in civil litigation pursuant to Article 75 Paragraph (1) of the JJC.

REASONING

A. PROCEDURAL BACKGROUND

1. On 28 May 2015, the Mitrovicë/a Basic Prosecution Office filed a Ruling on initiation of preparatory proceedings dated 28 May 2015 against Minors **A.P.** _____, **A.S.** _____ and **V.B.** _____ for the criminal offences of Attempted Aggravated Murder allegedly committed on 09 April 2015 and the criminal offences of Threat, Inciting national, racial, religious or ethnic hatred, discord or intolerance, Theft and Unauthorized ownership, control or possession of weapons allegedly committed on 27 May 2015.
2. On 28 May 2015, the Mitrovicë/a Basic Prosecution Office filed an Application for Detention on remand against Minors **A.P.** _____, **A.S.** _____ and **V.B.** _____.
3. On the same day, the Prosecution filed a request to appoint EULEX Judges to adjudicate the case.
4. On 28 May 2015, the President of the Basic Court of Mitrovicë/a issued a Ruling GJA.nr.4/15, appointing EULEX Judge Nuno Madureira as Judge for the juvenile in the case PprM.nr. 25/2015 according to the Request of the EULEX Prosecution in Mitrovicë/a.

5. Following a detention hearing, on 28 May 2015, the Juvenile Judge issued two Rulings rejecting the Prosecution's application for detention on remand and instead imposing the measure of Prohibition of approaching a specific place, namely a prohibition to cross the Ibar river to the Northern part of Mitrovicë/a and to enter any Serbian enclaves in Kosovo against Minors **A.S.** _____ and **V.B.** _____ and the measure of house detention against Minor **A.P.** _____, both measures until 28 June 2015.
6. On 22 June 2015, the Mitrovicë/a Basic Prosecution Office filed a Ruling on expansion of investigation thereby expanding the investigation against Minor **A.P.** _____ for the criminal offence of Inciting national, racial, religious or ethnic hatred, discord or intolerance allegedly committed on 01 June 2015.
7. The prohibition measure imposed against the Minors **V.B.** _____ and **A.S.** _____ was further extended by the Juvenile Judge until 10 August 2015. On 10 August 2015, the Juvenile Judge issued a Ruling rejecting a Prosecution's request to extend the prohibition measure against the two Minors, which was appealed by the Prosecution. On 19 August 2015, the Court of Appeals issued a Ruling on appeal PN1.1364/15 and PN1.1369/15 thereby granting the Prosecution's appeal and extending the prohibition measure against Minors **V.B.** _____ and **A.S.** _____ for one month, until 10 September 2015.
8. Following a violation of the measure of house detention imposed against the Minor **A.P.** _____, the Mitrovicë/a Basic Prosecution Office filed an Application for detention on remand against the Minor on 22 June 2015. Following a detention hearing, the Juvenile Judge imposed the measure of detention on remand against Minor **A.P.** _____ for one month, until 25 July 2015. The measure was later extended by a Ruling dated 24 July 2015 until 10 August 2015. By a Ruling dated 10 August 2015, the Juvenile Judge rejected as ungrounded the Prosecution's Application for extension of detention on remand filed against Minor **A.P.** _____ and terminated the measure of detention on remand against him. The Prosecution filed an appeal against this Ruling. On 19 August 2015, the Court of Appeals issued a Ruling on appeal PN1.1364/15 and PN1.1369/15 thereby annulling the Ruling of the Juvenile Judge and returning the case to the Basic Court of Mitrovicë/a for retrial.
9. On 26 August 2015, a Juvenile Panel held a detention hearing to adjudicate the Prosecution's request to extend detention on remand against the Minor **A.P.** _____. On the same day, the Juvenile Panel issued a Ruling thereby rejecting the Prosecution's request for extension and instead imposed against **A.P.** _____ the measure of prohibition of approaching a specific place, namely to cross the Ibar river to the Northern part of Mitrovicë/a and to enter any Serbian enclaves in Kosovo, until 10 September 2015. This Ruling was confirmed by the Court of Appeals by a Ruling on appeal dated 04 September 2015.
10. Following requests filed by the Prosecution to extend the prohibition measure against Minors **A.S.** _____ and **V.B.** _____ and to extend detention on remand against Minor **A.P.** _____, the Juvenile Judge issued a Ruling dated 10 September

2015 thereby extending the prohibition measure against the three Minors for one month, until 10 October 2015.

11. On 15 September 2015, the Mitrovicë/a Basic Prosecution Office filed a Ruling on expansion of the preparatory proceedings dated 15 September 2015 thereby expanding the investigation to Minors **M.D.** _____ for Counts A and B, **B.S.** _____ for Count B and **E.R.** _____ for Count A.
12. On 30 November 2015, the Mitrovicë/a Basic Prosecution Office filed a motion for the imposition of an educational measure or punishment dated 27 November 2015. In that motion, the Prosecution submits that the Minors **A.P.** _____, **A.S.** _____, **M.D.** _____, **V.B.** _____ and **E.R.** _____ committed the criminal offence of Attempted Aggravated Murder on 09 April 2015 (Count I). Furthermore, the Prosecution contends that the Minor **M.D.** _____ committed the criminal offence of Threat and the Minor **V.B.** _____ committed the criminal offence of Unauthorized ownership, control or possession of weapon on 27 May 2015 at around 15:20hrs (Count II). In addition, the Prosecution claims that on 27 May 2015 at around 16:10hrs, the Minors **A.P.** _____, **A.S.** _____, **M.D.** _____, **V.B.** _____ and **B.S.** _____ committed the criminal offences of Inciting national, racial, religious or ethnic hatred, discord or intolerance, Threat and Theft. It is also alleged that the Minor **V.B.** _____ committed the criminal offence of Unauthorized ownership, control or possession of weapons (Count III). Finally, the Prosecution submits that the Minor **A.P.** _____ committed the criminal offence of Inciting national, racial, religious or ethnic hatred, discord or intolerance on 01 June 2015 via the use of his Facebook (Count IV).
13. Following a request by the Juvenile Judge, the Basic Court of Mitrovicë/a received six social enquiries made on each of the six Minors by the Probation Service of Kosovo.
14. On 21 January 2016, the Acting President of the Basic Court of Mitrovicë/a issued a Ruling GJA.nr.20/16 thereby appointing Lay judges Kimete Fejza and Novak Mirkovic as panel members of the Juvenile Panel for the juvenile case PprM. 25/2015.
15. The Main Trial in case PprM. 25/2015 was scheduled by a Scheduling Order dated 25 January 2016 on 02, 03, 04, 05 and 08 February 2016. Since the Main Trial was scheduled, the present case was given the criminal case reference PM. 01/2016.
16. On 29 January 2016, the Mitrovicë/a EULEX Prosecution office filed a request for disqualification of EULEX Judge Nuno de Madureira as Juvenile Judge and Kimete Fejza as Lay Judge for the Main Trial in case PM 01/2016 on the basis that both Judges had already acted as pre-trial judges during the pre-trial stage of this same case.
17. On 01 February 2016, the Acting President of the Basic Court of Mitrovicë/a issued a Ruling GJA.nr.43/16 thereby rejecting the Prosecution's motion for disqualification of the Juvenile Judge and the Lay Judge in this case.

18. The Main Trial in case PM 01/2016 was opened on 02 February 2016.
19. On the same day, the Defence made an oral request to the Court for the disqualification of EULEX Prosecutor Pascal Persoons under Article 44 Paragraph (2) of the Criminal Procedure Code of Kosovo (CPC)¹ on the basis that he is married to a Serbian woman, that the current case is a sensitive inter-ethnic case and that the Prosecution has shown a lack of objectivity in the proceedings so far.
20. Due to that request, the Juvenile Judge recessed the Main Trial on the same day until a decision was taken by the Chief Prosecutor on that disqualification request pursuant to the CPC.
21. On 03 February 2016, the Chief Prosecutor of the Mitrovicë/a Basic Prosecution Office issued a Ruling rejecting the Defence's request for disqualification of EULEX Prosecutor Pascal Persoons as unfounded.
22. The Main Trial in this case was resumed on 04 February 2016.
23. On 04 February 2016, the Prosecution amended the Motion for the imposition of an educational measure or punishment orally so as to charge Minor **A.S.** _____ with the criminal offence of Threat allegedly committed on 27 May 2015 at around 15:20hrs and Minor **A.P.** _____ with the criminal offence of Unauthorized ownership, control or possession of weapons allegedly committed on 27 May 2015 at around 16:10hrs. There was no objection from the Defence regarding the extension of the motion with regard to Minors **A.P.** _____ and **A.S.** _____.
24. On the same day, the Prosecution clarified to the Court that Minor **A.P.** _____ was charged under Count IV with Article 147 Paragraphs (1) and (3) of the CCRK. With regard to the charge of Theft, the Prosecution also clarified to the Court that the Minors were charged with Article 325 Paragraph (2) of the CCRK.
25. The Main Trial continued on 05 February 2016, 07, 08 and 22 March 2016. All Main Trial sessions were held closed to the public pursuant to Article 50 Paragraph (1) and Article 71 Paragraph (1) of the JJC².
26. On 24 March 2016, following deliberations held pursuant to Article 357 Paragraph (2) of the CPC, the Juvenile Panel found that there is a need to re-open the main trial so as to supplement the proceedings as foreseen in Article 359 Paragraph (1) of the CPC. On the same day, the Juvenile Judge re-opened the main trial and issued an oral Order thereby ordering the expert analysis of the pistol ref. E. _____ V. _____ serial no. EVL-_____ seized by the Mitrovicë/a North Kosovo Police on 27 May 2015.
27. The Main Trial continued on 15 April 2016 and was closed on that same day.

¹ CRIMINAL No. 04/L-123 PROCEDURE CODE.

² Code No. 03/L-193.

28. The Juvenile Panel deliberated on 15 April 2016.
29. The enacting clause of the Ruling was announced on 18 April 2016.
30. The Main Trial was carried out according to the provisions of the JJC since all six Minors were under the age of eighteen (18) years old at the time of the commission of the alleged criminal offences.
31. Pursuant to Article 541 of the CPC which entered into force on 01 January 2013, the Main Trial was also carried out according to provisions of the new CPC.

B. COMPETENCE OF THE COURT

32. The Law of Courts, Law no. 03/L-199 (LC) entered fully into force on 01 January 2013 (Article 43). This regulates the territorial and substantive jurisdiction of the Court.
33. Under Article 11 Paragraph (1) of the Law on Courts, Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.
34. Article 9 Paragraph (2) Subparagraph (2.7) of the same Law states that the Basic Court of Mitrovicë/a is established for the territory of the Municipalities of Mitrovicë/a South and Mitrovicë/a North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zveçan, Skenderaj/Srbica and Vushtrri/Vučitrn. Based on the filed Motion for the imposition of an educational measure or punishment, the alleged criminal offences have taken place in South and North Mitrovicë/a, therefore, within the territorial jurisdiction of the Basic Court of Mitrovicë/a, as per Article 29 Paragraph (1) of the CPC. Furthermore, considering that the petition for initiation of preparatory proceedings was firstly filed with, at that time, the Basic Court of Mitrovicë/a, pursuant to Article 29 Paragraph (2) of the CPC, the Basic Court of Mitrovicë/a has jurisdiction over the case.
35. Furthermore, on 28 May 2015, the President of the Basic Court of Mitrovicë/a issued a Ruling GJA.nr.4/15, in accordance with the Law No. 04/L-273 for amendment and supplementation related to the mandate of the European Union Mission of the Rule of Law in the Republic of Kosovo and in accordance with Article 5 point (1) of the Agreement between the Head of EULEX and the Kosovo Judicial Council in the relevant aspects of the action and cooperation of the EULEX Judges with the Local Judges, appointing EULEX Judge Nuno Madureira as Judge for the juvenile in the case PprM.nr. 52/2015 according to the Request of the EULEX Prosecution in Mitrovicë/a.
36. Following the filing of the Prosecution's Motion for the Imposition of an Educational Measure or Punishment, on 21 January 2016, the Acting Presiding of the Basic Court of Mitrovicë/a issued a Ruling GJA.nr.20/16 thereby appointing Kimete Fejza and Novak Mirkovic as lay judges to the trial panel for juveniles PprM.nr. 25/2015 to decide on the next schedule of the main trial.

37. Therefore, the Juvenile Panel in case PM 01/2016 is competent to adjudicate and try this case at Main Trial.

C. THE MAIN TRIAL

38. The Main Trial sessions were all closed to the public pursuant to Article 50 Paragraph (1) and Article 71 Paragraph (1) of the JJC and they were held on 02, 04 and 05 February 2016, 07, 08, 22 and 24 March 2016, and 15 April 2016.
39. During the Main Trial session of 04 February 2016, all six Minors pleaded not guilty to all charges, except Minor **A.P.** _____ who pleaded guilty only to the charge of Threat on 27 May 2015.

D. EVIDENTIAL PROCEDURE

i) Evidence presented during the course of the Main Trial

40. During the course of the Main Trial the following Witnesses were heard:
- B.I. _____ (called as Injured Party and as Witness by the Prosecution) was heard on 04 February 2016;
 - Z.K. _____ (called as Injured Party and as Witness by the Prosecution) was heard on 04 February 2016;
 - N.S. _____ (called as Injured Party and as Witness by the Prosecutor) was heard on 05 February 2016;
 - A.Z. _____ (called as Injured Party and as Witness by the Prosecutor) was heard on 07 March 2016;
 - K.D. _____ (called as Injured Party and as Witness by the Prosecutor) was heard on 07 March 2016;
 - N.M. _____ (called as Injured Party and as Witness by the Prosecutor) was heard on 07 March 2016;
 - L.J. _____ (called as Witness by the Injured Party representative) was heard on 07 March 2016;
 - S.D. _____ (called as Witness by the Court) was heard on 07 March 2016.
41. During the Trial Session of 08 March 2016, a list of documents from the Prosecution Binder was adduced as evidence and considered admissible³:

³ Minutes of Main Trial, 08 March 2016, para. 60, Court Binder III, Tab 18.

- 1. Criminal reports, pages 10-18;
- 2. Criminal background Check – **A.P.** _____, pages 19-21;
- 3. Criminal background Check – **V.B.** _____, pages 22-24;
- 4. Criminal background Check – **M.D.** _____, pages 25-26;
- 5. Initial Incident Report, 2015-SA-104, pages 27-28;
- 6. Flash Report, KP M.P. _____ #9644, pages 29-31;
- 7. Officer's Report, KP Z.V. _____ #9564, pages 32-34;
- 8. Officer's Report, KP M.P. _____ #9644, pages 35-37;
- 9. Officer's Report, KP P.S. _____ #9451, pages 38-40;
- 10. Officer's Report, KP A.J. _____ #9389, pages 41-43;
- 11. Officer's Report, KP A.B. _____ #9298, pages 44-46;
- 12. Officer's Report, KP M.M. _____ #8361, pages 47-49
- 13. Flash Report, KP G.M. _____ #9451, pages 50-52;
- 14. Investigative Information Report, KP G.M. _____ #9451, pages 53-62;
- 15. Officer's KP F.V. _____ #4101, pages 63-65;
- 16. KP Official Memo – Handover of the case 2015-SI-038 for the needs of PIK, pages 66-70;
- 17. KP Official memo – Request to download the video recordings, pages 71-74;
- 18. Officer's report, KP F.V. _____ #4101, pages 75-77;
- 19. Emails regarding the video recordings from cameras at the bridge, pages 81-83;
- 20. Officer's Report, KP L.M. _____ #9539, pages 84-86;
- 21. Officer's Report, KP S.B. _____ #7825, pages 87-89;
- 22. KP Official Memo – Submission of victim's statement, pages 90-92;
- 23. Initial Incident Report, 2015-SA-169, pages 93-101 ;
- 24. Officer's Report, KP K.N. _____ #9634, pages 102-104;
- 25. Officer's Report, KP Lt. Z.R. _____ #9529, pages 105-110;
- 26. Officer's Report, KP N.S.1 #9380, pages 111-113;
- 27. Officer's Report, KP L.J. _____ #6611, pages 114-116;
- 28. Officer's Report, KP N.S.1 _____ #9380, pages 117-119;
- 29. Special Report to BPO, KP F.V. _____ #4101, pages 120-125;
- 30. Officer's Report, KP M.S. _____ #5984, pages 126-131;
- 31. Officer's Report, KP M.B. _____ #7348, pages 132-134;
- 32. Two photos handed over to KP Z.K.1 _____ by D.K. _____, pages 135-136;
- 33. Officer's Report, KP Z.K.1 _____ #9647, pages 137-139;
- 34. KP Official Memo – Response to order GJPP.no. 25/15, pages 140-142;
- 35. Report on the course of investigation, KP M.B. _____ #7348, pages 149-151;
- 36. Forensic file content, pages 152-154;
- 37. Crime scene investigation report, KP G.M.1 _____ #7521, pages 155-160;
- 38. List of clothes taken from victim N.S. _____, 161-163;

- 39. List of evidence/Chain of custody, D2-D9, pages 164-166;
- 40. Photo Album no. 15-016, KP G.M.1 _____ #7521, pages 167-182;
- 41. Crime Scene entry registry, pages 183-185;
- 42. Photo Album no. 15-028, KP G.M.1 _____ #7521, pages 186-200;
- 43. List of confiscated items from **A.P.** _____, pages 201-202;
- 44. List of confiscated items from **V.B.** _____, pages 203-204;
- 45. Handover of journalist A/V footage – CD attached dated 27 May 2015, pages 205-207;
- 46. List of evidence/Chain of custody, D11, pages 208-209;
- 47. Images extracted from Facebook accounts of the defendants, pages 210-224;
- 48. KP Official Memo – Handover of cleared photos by Forensics, pages 225-227;
- 49. Officer’s Report, KP R.Z. _____ #7500, pages 228-233;
- 50. Photo Album – video recordings – CD attached from the incident of 9th April 2015, pages 234-241 ;
- 51. Medical Reports – N.S. _____, pages 242-260;
- 52. Items confiscated from **A.P.** _____ (mentioned on the list page 201);
- All the Facebook images attached with the statements of the defendant

42. With regard to items seized, they were exhibited as follows:

- One jackknife, black in colour, with inscription “UCK”;
- One jackknife, brown in colour, with wooden handle;
- One jackknife, grey in colour;
- One pistol type E. _____ V. _____, ser. No. EVL-_____, with magazine;
- One telephone, brand SAMSUNG;
- One scarf with inscription “Albanian” – with symbols of “Great Albania”;
- One gas-mask, green in colour, without air-filter;
- Four flags of the Republic of Serbia;
- One flag of the Republic of Albania;
- One school backpack with books.

43. Following the deliberation held on 24 March 2016 and the Juvenile Panel’s decision to re-open the Main Trial to supplement the proceedings as foreseen in Article 359 Paragraph (1) of the CPC, the Court issued an Order for Forensic Examination of the pistol, ref. E. _____ V. _____ serious no. EVL-_____, dated 24 March 2016. On 13 April 2016, the Court received a ballistic report dated 30 March 2016⁴ which was admitted as evidence during the Main Trial hearing of 15 April 2016.

44. None of the Minors gave a statement during the Main Trial of 08 March 2016.

⁴ Ballistic report dated 30 March 2016, Court Binder IV, Tab 9.

45. However, both Minors **A.P.** _____ and **V.B.** _____ stated during the Main Trial session of 08 March 2016 that they both stood behind their statements given in front of the Police and the Prosecution⁵.
46. Following the re-opening of the Main Trial on 24 March 2016 and the Ballistic report added to the case as evidence, both Minors **A.P.** _____ and **V.B.** _____ gave statements on 15 April 2016.

ii) Motions

47. During the Main Trial, the Juvenile Panel received the following evidentiary related motions and issued the following Rulings.
- *Motion for examination of evidence dated 08 February 2016 and filed by the Injured Party representative on 12 February 2016*
48. On 12 February 2016, the Injured Party representative filed a Motion for examination of evidence thereby requesting for a medical professional to be examined during the Main Trial to provide an opinion on the injuries sustained by the Injured Party N.S. _____ and to call _____ L.J. _____ as a witness since he filed the _____ upon the arrests of the Minors on 27 May 2015.
49. The motion to call _____ L.J. _____ was granted by an oral ruling dated 07 March 2016 under Article 329 Paragraph (3) of the CPC.
50. The request to call a medical professional was rejected under Article 258 Paragraph (2) subparagraphs (2.1) and (2.4) of the CPC. However, pursuant to Article 329 Paragraph (4) of the CPC, the Court decided to examine _____. S.D. _____ as a witness⁶.
- *Request to admit as evidence eleven (11) photographs of the Facebook page of Injured Party K.D. _____*
51. During the Trial session of 07 March 2016, the Defence Counsel Rexhep Kacaniku submitted a motion to admit eleven (11) photographs of the Facebook page of the Injured Party K.D. _____.
52. The motion was rejected since the photographs bear no relation with the case at hand.⁷

⁵ Minutes of Main Trial, 08 March 2016, paras. 62-64, 75-87, Court Binder III, Tab 18.

⁶ See Ruling dated 07 March 2016, Court Binder III, Tab 17.

⁷ Minutes of Main Trial, 07 March 2016, para. 380, Court Binder III, Tab 16.

E. FACTUAL FINDINGS

E.1. Summary of the proven facts

53. The Court had to establish what the proven facts are on the basis of the administered evidence submitted against the Minors **A.P.** _____, **A.S.** _____, **V.B.** _____, **M.D.** _____, **B.S.** _____ and **E.R.** _____ for the criminal offences of:
- Count I: ‘Attempted Aggravated Murder’ against the Minors **A.P.** _____, **A.S.** _____, **M.D.** _____, **V.B.** _____ and **E.R.** _____;
 - Count II: ‘Threat’ against the Minors **V.B.** _____, **M.D.** _____ and **A.S.** _____ and ‘Unauthorized ownership, control or possession of weapons’ against the Minor **V.B.** _____;
 - Count III: ‘Inciting national, racial, religious or ethnic hatred, discord or intolerance’, ‘Threat’ and ‘Theft’ against the Minors **A.P.** _____, **A.S.** _____, **M.D.** _____, **V.B.** _____ and **B.S.** _____ and ‘Unauthorized ownership, control or possession of weapons’ against the Minors **V.B.** _____ and **A.P.** _____.
 - Count IV: ‘Inciting national, racial, religious or ethnic hatred, discord or intolerance’ against the Minor **A.P.** _____.
54. Upon the admissible evidence presented and administered during the course of the Main Trial, the Court considered the following relevant facts as proven beyond reasonable doubt:
- I. Five Albanian youngsters, amongst them **A.P.** _____, **V.B.** _____ and **A.S.** _____, decided together to cross Mitrovicë/a main bridge from south to north in order to attack and harm citizens of Serbian ethnicity.
 - II. In accordance with such agreement, on 9 April 2015, at around 17h55m, the five youngsters crossed Mitrovicë/a main bridge and, between the White Monument and the main bridge in Mitrovicë/a north, they attacked by surprise three Serb youngsters, namely N.S. _____, born on _____, B.I. _____, born on _____, and Z.K. _____ born on _____.
 - III. **A.P.** _____, **V.B.** _____, **A.S.** _____ and other youngsters attacked B.I. _____, Z.K. _____ and N.S. _____ with fists and feet, punching and kicking them in several parts of their bodies.
 - IV. During the attack **A.P.** _____ decided on his own accord to stab N.S. _____ with a knife, which he did, stabbing the latter in the chest from the back when N. _____ had turned to run away.
 - V. As a consequence of the stabbing, N.S. _____ suffered a penetrating injury on the right side of his chest, which caused lesions to his liver, diaphragm and right lung. N.S.

_____ was immediately transported to the hospital and underwent surgery. He remained in the hospital until 27 April 2015. Without treatment N.S. _____ would have bled to death.

- VI. **A.P.** _____ intentionally stabbed N.S. _____ in the chest region because he was of Serbian ethnicity. He sufficiently foresaw that his action could result in the death of the latter and accepted it.
- VII. **A.P.** _____ was fully mentally competent.
- VIII. **A.P.** _____, **V.B.** _____, **A.S.** _____ and the other youngsters voluntarily acted together and intentionally hit N.S. _____, B.I. _____ and Z.K. _____ with the will to hurt them because they were of Serbian ethnicity.
- IX. **V.B.** _____ and **A.S.** _____ were fully mentally competent.
- X. On 27 May 2015, at around 15h20m, **V.B.** _____, **A.S.** _____ and another youngster decided to go together to the car wash located in Kolasinska Street, by the Three Towers in Mitrovicë/a north.
- XI. At the car wash were A.Z. _____ (born on ____ ____), who ____ there, together with his friends K.D. _____ (born on ____ ____) and N.M. _____ (born on ____ ____).
- XII. Once there, **A.S.** _____ and the other youngster pulled out knives and headed towards K.D. _____, N.M. _____ and A.Z. _____, while **V.B.** _____ pulled out a pistol E. ____ V. ____, serial no. EVL-____, and pointed it at those three.
- XIII. The pistol was designed for use of gas bullets of 9mm, however, the pistol's barrel has been redesigned in order to use firearms bullets of 6.35x15mm calibre. The firing pin, firing mechanism and the hammer were not functional and therefore the weapon itself was not functional.
- XIV. K.D. _____ and N.M. _____ started running towards the main bridge to report the incident.
- XV. One of the Minors then gesticulated in front of A.Z. _____, moving one open hand across his own throat and pointing at K.D. _____ and N.M. _____.
- XVI. **V.B.** _____ and **A.S.** _____ voluntarily acted together with the will to frighten N.M. _____ and A.Z. _____ because they were of Serbian ethnicity.
- XVII. **V.B.** _____ did not have a valid permission for that weapon issued by a competent authority, being aware of it.

- XVIII. **V.B.** _____ and **A.S.** _____ were fully mentally competent.
- XIX. Some days later, **K.D.** _____ received via Facebook two photos sent to him by Minor **V.B.** _____, one depicting a group of five youngsters holding knives and the second depicting Minor **V.B.** _____ in front of the building where **K.D.** _____ lives.
- XX. On 27 May 2015, at around 16h10m, **A.P.** _____, **V.B.** _____, **A.S.** _____, **M.D.** _____ and **B.S.** _____ crossed the Mitrovicë/a main bridge from south to north.
- XXI. **A.P.** _____ and **V.B.** _____ then went to the Muslim cemetery, took down four Serbian flags because their presence disturbed them and put them in a backpack.
- XXII. On their way back to the southern part of Mitrovicë/a, **A.P.** _____, **V.B.** _____, **A.S.** _____, **M.D.** _____ and **B.S.** _____ almost got involved in physical confrontations with a group of citizens of Serbian nationality that was going after the Minors.
- XXIII. While walking, **V.B.** _____ held at a certain point in his hand the pistol E. ____ V. ____, serial no. EVL-____ and gesticulated with it.
- XXIV. Police intervened and was able to apprehend **A.P.** _____, **V.B.** _____ and **A.S.** _____, while **M.D.** _____ and **B.S.** _____ were able to flee the scene.
- XXV. At that time **A.P.** _____ had the pistol E. ____ V. ____, serial no. EVL-____ in his underwear, next to his body.
- XXVI. **A.P.** _____ also carried in a backpack three knives (one with an UCK emblem), a gasmask, one “Great Albania” scarf and one Albanian flag.
- XXVII. **A.P.** _____ and **V.B.** _____ knew the flags did not belong to them and acted with the intent of not returning them back.
- XXVIII. Neither **V.B.** _____ nor **A.P.** _____ had a valid permission for the pistol issued by a competent authority, being aware of it.
- XXIX. **V.B.** _____ and **A.P.** _____ were fully mentally competent.
- XXX. On 1 June 2015, **A.P.** _____ posted on his Facebook account a picture where he is burning a Serbian flag.
- XXXI. This post caused many supporting comments written in Albanian and at least one comment written in Cyrillic.

- XXXII. Minor **A.P.** _____ comes from a very poor family with social and financial problems. He is not attending school regularly. His irregular attendance has caused his dismissal from secondary school. He used to be a regular student with good behaviour but lately in 2015 he started to be absent and quit classes. His mother has noticed a recent change in him and that he has been causing problems and hanging out with bad company. The Minor is considered calm, withdrawn in his thought and expressions but cooperative and communicative. He is in good health. He is known to the Probation service since he is registered as a suspect for the commission of another crime in case PPM no. _____. He has spent many months in the correctional detention centre in _____ as ordered by a judge in another case.
- XXXIII. Minor **A.S.** _____ comes from a family with good financial conditions. The Minor is attending school and is considered a very good pupil. He is in good physical and mental health, he is communicative and very calm and has maturity.
- XXXIV. Minor **V.B.** _____ comes from a family with good living conditions. The Minor is attending school and is considered a well-behaved pupil with very good grades. He is in good physical and mental health, he is kind and collaborative with good inter-family relationships.
- XXXV. Minor **E.R.** _____ comes from a family with good living conditions. The Minor is attending school and is considered a well-behaved pupil with satisfactory grades. He is in good physical and mental health, he is communicative and a quiet person in the family.
- XXXVI. Minor **M.D.** _____ comes from a very poor family. The Minor is attending school and is considered a well behaved pupil with average grades. He is in good physical and mental health, he is communicative and collaborative with good inter-family relationships.
- XXXVII. Minor **B.S.** _____ comes from a family with good living and economic conditions. The Minor is attending school and is considered a well behaved and good student. He is in good physical and mental health, he is communicative with good inter-family relationships.

E.2. Summary of the unproven facts

55. It could not be proven:

- I. That on 9 April 2015, **M.D.** _____ and **E.R.** _____ were part of the group of five Albanian youngsters.
- II. That on 27 May 2015, **M.D.** _____ was present during the car wash incident.

III. That on 27 May 2015, **A.S.** _____, **M.D.** _____ and **B.S.** _____ took out four Serbian flags from the Muslim cemetery.

III. That on 27 May 2015, **A.P.** _____ pulled out a knife.

E.3. Analysis

56. The above listed evidence (D. Evidential Procedure) forms the basis for the Juvenile Panel's decision in this case.
57. As mentioned, the Juvenile Panel has considered the testimony of several witnesses as well as analysed several documents to determine the alleged facts.

E.3.1 Count I

58. In regard to the facts of 9 April 2015, the most relevant piece of evidence is material evidence D#7⁸, which is a CD containing a 9m21s video footage from a street camera located in Mitrovicë/a north and facing the main bridge. The video is coloured and the quality is good, without any lag. The camera records from a very high viewpoint, so peoples' relative size is small. It is not possible to distinguish faces. However, peoples' actions are clearly perceptible.
59. The recording starts at 17h55m55s. On the left side of the Ibar Ribar, close to the bridge, a group of three youngsters can be seen having a conversation. On the right side of the river, coming from far away, a group of five youngsters is walking closely packed alongside the river bank. This group never pauses, never stops. It crosses the bridge and, one minute and fifty seconds later, is right behind the three youngsters in the north of Mitrovicë/a. What follows is not captured on camera, but ten seconds later the group that crossed the bridge can be seen running back towards the south.
60. This recording is, nevertheless, sufficient to establish some crucial facts. First, the group coming from the south has a specific and pre-determined purpose for crossing the bridge. This is clear since from the beginning this group does not show the slightest sign of hesitation. Second, there is no provocation from the group of three youngsters. Third, out of the five of the group that crossed the bridge, one youngster did not commit any of the actions described in the Prosecutor's motion, since he is visible at all time in the video footage and never comes in contact with the victims. Fourth, right before getting out of the camera frame, the three youngsters have their backs to the group coming from the south.
61. The identity of the three persons who were in the north is known: it consists of N.S. _____, B.I. _____ and Z.K. _____, the Injured Parties. What they told

⁸ See Prosecution Binder I, page 235.

the Court is very much corroborated by the camera footage, circumstance that adds to their in-court statements' credibility. Previous witnesses' statements cannot be used as direct evidence, pursuant to Article 123, Paragraph (3), of the CPC and shall not be considered.

62. The three Injured Parties mentioned that they had gone to that location for a walk and a talk. Also, that they were already heading home (they live in Mitrovicë/a north) when they heard some voices coming from their backs. Turning their heads, they saw five or six youngsters, who told them something most likely in Albanian. Then, everything happened very fast. The three of them were kicked and punched and then, when N. _____ turned his back and started running away, he was stabbed from the back.
63. All Injured Parties mentioned that several attackers pulled out knives at some point during the attack⁹.
64. The Injured Parties did not know and had never seen the attackers before. During their Court examination, B. _____, Z. _____ and N. _____ remembered **A.P.** _____ and **V.B.** _____'s faces¹⁰. N. _____ also said that **A.S.** _____'s face looked familiar¹¹.
65. During the investigation, an identification of persons' procedure was carried out in accordance with Article 120 of the CPC. N. _____ positively identified **V.B.** _____ (n. 4), **A.P.** _____ (n. 10) and **A.S.** _____ (n. 15)¹²; B. _____ identified **V.B.** _____ (n. 4) and someone who is none of the Minors (n. 109)¹³. Z. _____ identified **V.B.** _____ (n. 4) and **A.P.** _____ (n. 10)¹⁴.
66. Only **A.P.** _____ and **V.B.** _____ gave court statements, standing by everything they had previously told to the Police and the Prosecutor. Having reproduced in court their previous statements, what they told before can be used as direct evidence without the limitation imposed by Article 123, Paragraph (5), of the CPC, that is, their statements might be used as the sole or decisive evidence against them. Both Minors accept having taken part in the events, although **V.B.** _____ denied having engaged into any physical contact. He identified Minor **E.R.** _____ as being the last one of the group, the one who did not do anything¹⁵.

⁹ Minutes of Main Trial, 04 February 2016, paras. 196-204, 212-214, 236-247, 354-357, 395-400, 419-436, 474, 535-536, 576-577. Court Binder III, Tab 4.

¹⁰ Minutes of Main Trial, 04 February 2016, paras. 237-242, 407-440, 447-454., 457-460, Court Binder III, Tab 4; Minutes of Main Trial, 05 February 2016, paras. 35-39, Court Binder III, Tab 6.

¹¹ Minutes of Main Trial, 05 February 2016, paras. 35-39, Court Binder III, Tab 6.

¹² See Prosecution Binder II, page 343.

¹³ See Prosecution Binder II, page 359.

¹⁴ See Prosecution Binder II, page 374.

¹⁵ See Prosecution Binder II, page 943.

67. Minor **A.S.** _____ also admitted in his Pre-Trial Interview being part of this group¹⁶. In accordance with Article 123, Paragraph (5), of the CPC, this acknowledgment cannot be the sole or decisive inculpatory evidence for a conviction.
68. During the Main Trial, Z.K. _____ identified **V.B.** _____ as one of the persons who kicked and punched him.
69. Taking into consideration the victims' statements, the identification procedure and the three mentioned Minors' admission, the Court was satisfied that **A.P.** _____, **V.B.** _____, **A.S.** _____ and a fourth person jointly attacked the Injured Parties without any provocation and by surprise. Minor **A.S.** _____'s admission is neither the only source of evidence against him nor the decisive one when it comes to establish his guilt, considering the strength of the identification of persons' procedure already mentioned above in paragraph 65.
70. Also, considering Z. _____'s statement, where he identifies Minor **A.P.** _____ as the one who attacked his friend N. _____, and the said Minor's Pre-Trial Interview itself, where the Minor admits to the stabbing, the Court concluded that he was the one putting the knife to use during the attack.
71. The Court additionally concluded that the other three attackers, although they pulled out knives, never intended to use them, as in fact they did not when they could have easily done so. Instead, they just kicked and punched. The Court used this circumstance to establish that their intention was not to kill but only to physically hurt the victims.
72. The same conclusion is not valid for **A.P.** _____. He used a sharp, perforating object and hit another person in the chest area. A liver, the diaphragm and a lung were hit. Having consideration for the weapon used, the body area targeted – the thoracic area which contains several vital organs - and the strength used – enough for the knife to reach three organs, the Minor could easily foresee the dangerousness of his actions. He clearly accepted any consequences that might arise from his action.
73. The ethnic motives behind the attack are clear: the Minors attacked the youngsters for the mere fact that they were Serbs and the former Albanian. **A.P.** _____ is clear enough in this regard during his Pre-Trial Interview.
74. Since no faces were recorded by any camera, since the victims did not recognize any other attackers and since themselves did not testify in court, is there any evidence that **M.D.** _____ and **E.R.** _____ were present at the crime scene?
75. Minor **E.R.** _____ admitted being with his friends **V.** _____, **A.** _____ and **A.I.** _____ during his Pre-Trial Examination¹⁷. Pursuant to the already mentioned Article 123, Paragraph (5), of the CPC, statements by a defendant are admissible during the main trial against that defendant but may not serve as the sole or as a decisive inculpatory evidence

¹⁶ See Prosecution Binder II, page 687.

¹⁷ Prosecution Binder II, page 653.

for a conviction. Also, in their previous statements **A.P.** _____ and **V.B.** _____ mentioned **M.D.** _____ and **E.R.** _____ as being part of the group. In paragraph 66 above, **V.** _____'s statement has even been used in favour of **E.R.** _____. Again, pursuant to Article 262, Paragraph (1), of the CPC, the Court cannot find an accused guilty based solely, or to a decisive extent, on testimony or other evidence which could not be challenged by the defendant or defence counsel through questioning during some stage of the proceedings. Neither the Minors **M.** _____ nor **E.** _____ and their defence counsel were able to do so. As a matter of fact, they were not present during **A.** _____ and **V.** _____'s multiple examinations during the investigations. They were, however, during the trial but these two Minors did use their right not to answer any questions and, therefore, could not be examined or cross-examined.

76. In conclusion, Minors **A.S.** _____, **A.P.** _____ and **V.B.** _____'s statement cannot be used against **M.** _____ and **E.** _____ since they are the sole and decisive evidence against the latter.
77. The medical reports filed by the Mitrovicë/a Health Centre are sufficiently precise in order to establish the injuries sustained by N.S. _____ due to the stab wound¹⁸. Witness S.D. _____, a _____, was part of the _____ treating the Minor upon his arrival at the hospital. He confirmed that the liver and lung wounds sustained by the patient would have made him bleed to death if not treated in proper time¹⁹. The _____'s medical knowledge was found sufficient to establish such a fact and therefore the Court found no reasons to order an expertise. No relevance was given to the fact that this _____ has no licence to practice in Kosovo given by Kosovo authorities. The political situation in Mitrovicë/a north is well-known and the _____'s skills are more relevant than his bureaucratic validation.

E.3.2 Count II

78. Concerning the facts under Count II, the Court heard the three victims, namely A.Z. _____, K.D. _____ and N.M. _____. All of them have similar accounts on the incident. They described what they were doing at the car wash and how three youngsters showed up. Two of them pulled out knives and the third a gun. K. _____ and N. _____ ran away while A.3 _____ stood behind. Then, one of the youngsters made a throat-cutting gesture while pointing at the two running away. A.3 _____ told his friends about this upon their return to the carwash.
79. During the trial, the three victims identified **V.B.** _____ as being one of the youngsters²⁰. K.D. _____ added that this Minor was the one who had pointed a gun at them²¹, which logically implies that the other two were holding the knives. During the course of a pre-trial identification of persons' procedure, A.Z. _____ positively

¹⁸ Prosecution Binder I, pages 242-260.

¹⁹ Minutes of Main Trial, 07 March 2016, paras. 515-524, Court Binder III, Tab 16.

²⁰ Minutes of Main Trial, 07 March 2016, paras. 72-79, 242-254, 653-660, Court Binder III, Tab 16.

²¹ Minutes of Main Trial, 07 March 2016, paras. 250-254, Court Binder III, Tab 16.

identified **V.B.** _____ (n. 4) and **A.P.** _____ (n. 10)²²; **K.D.** _____ identified **V.B.** _____ (n. 4) and **A.S.** _____ (n. 15)²³; **N.M.** _____ also identified **V.B.** _____ (n. 4) and **A.S.** _____ (n. 15)²⁴.

80. As previously stated, **V.B.** _____ gave a court statement and referred to his previous statements, which can then be used as direct evidence. In one of those statements, he mentioned being accompanied by **A.1** _____ and **M.** _____ while going for a walk in Mitrovicë/a north. He admitted having taken out a gun. He said his friends and him were attacked by a group of Serbs²⁵.
81. The Court gave credit to the witnesses' statements as they corroborated each other and were given in a sincere way. The attack that Minor **V.** _____ mentioned as having suffered is not credible: **V.B.** _____ and **A.S.** _____ had already acted violently in a recent past due to ethnic reasons and this incident was one more to add to their disruptive behaviour at the time. There is no logical explanation for the Minors to possess weapons apart from their will to cause trouble. Also, the fact that **K.D.** _____ and **N.M.** _____ immediately ran in search of the police shows that they were not the ones with aggressive intentions. Lastly, after the events, Minor **V.B.** _____ directly sent some photos via Facebook to **K.D.** _____, photos which have clear intimidating purposes and reveal who really were the aggressor and the aggressor²⁶.
82. The Court faced once more the same situation when it came to establish who from the Minors was and was not present during that attack. Minor **V.** _____ accepted having participated in the car wash incident, where he held a weapon and he was identified by the victims in two different stages of the proceedings. There is no doubt that he took part in the event. A bit later, on the same day and close by, Minor **V.B.** _____ was recorded holding a gun, which only reinforces the Panel's conviction that he also brandished that same weapon at the car wash.
83. Minor **A.1** _____ was positively identified by two of the victims during an identification procedure but not in court. The Court considered that these identifications had enough evidentiary value to prove by themselves his presence at the scene. One additional and somehow weaker circumstance was considered. Sometimes after the car wash incident, Minor **A.1** _____ would be recorded not far away from that location and accompanied by Minor **V.** _____ and others. This evidence shows that in the afternoon of the events both were together in Mitrovicë/a north. A pistol and several knives were found in the group's possession²⁷. Therefore, the Court did not have any reasonable doubts about Minor **A.1** _____'s participation in the event at hand.

²² See Prosecution Binder II, page 472.

²³ See Prosecution Binder II, page 326.

²⁴ See Prosecution Binder II, page 336.

²⁵ See Prosecution Binder II, pages 944-947.

²⁶ See Prosecution Binder II, pages 466, 467, 468; See Minutes of Main Trial, 07 March 2016, paras. 255-284, Court Binder III, Tab 16.

²⁷ See Prosecution Binder I, pages 186-201.

84. When it comes to Minor **M.D.** _____, the decisive evidence as to his presence at the car wash would be Minor **V.** _____'s statement. Articles 123, Paragraph (5), and 262, Paragraph (1), of the CPC, prevent this outcome. His presence sometimes later at a nearby location would not be enough to conclude, by itself and without doubts, his presence at the car wash earlier on.
85. It could not be established who from the Minors made the gesture with the hand to the throat.
86. **K.D.** _____ described how he was contacted via Facebook by **V.B.** _____, who then sent him some photos that he later gave to the authorities, who added them to the case file.²⁸ Although the second printout has low quality, in the monitor of his computer **K.D.** _____ was able to identify his building in the background of **V.B.** _____, who wears a jacket with an UCK emblem²⁹. **K.D.** _____ felt intimidated by these photos, which have clear threatening motives behind it.
87. According to the ballistic analysis report made on the pistol dated 30 March 2016, the confiscated pistol that would be later found in the possession of Minor **A.P.** _____ when apprehended is in fact a gas pistol 9mm calibre gas. Furthermore, the same report states that the pistol was redesigned in order to use firearm bullets. During the physical examination of the weapon, it was also found that the weapon itself does not function since the firing mechanism and the hammer are both not functional³⁰.

E.3.3 Count III

88. Regarding Count III, the Court feels that it is its duty to say that it is technically incorrect to use legal terms, especially of criminal offences, in any factual description or as a way to describe the criminal actions of the Minors, as provided in the motion: "...*intention to incite tensions...*", "They went to Muslim cemetery and *stole...*" and "**V.B.** _____ holding a pistol and *threatening...*".
89. Concerning the facts under Count III, the Court considered the following evidence: the Minors **A.P.** _____ and **V.B.** _____'s court statements, one witness' statement, a video recording and police reports.
90. With regard to the alleged criminal offence of Theft, both Minors **A.** _____ and **V.** _____ recognized in their statements having gone to the Muslim cemetery and having removed some Serbian flags because they disturbed them. Minor **A.** _____ would be later on found, at the time of his apprehension by the authorities, in possession of the flags.
91. The court statements of **A.** _____ and **V.** _____ about the events that took place at the cemetery, being the sole evidence incriminating **A.S.** _____, **M.D.** _____

²⁸ See Prosecution Binder II, pages 466-467 and Prosecution Binder I, pages 135-136.

²⁹ Minutes of Main Trial, 07 March 2016, paras. 255-279, Court Binder III, Tab 16.

³⁰ Ballistic expert analysis dated 30 March 2016, Court Binder IV, Tab 9.

and **B.S.** _____, cannot be used against the latter as these three Minors were not able to challenge such evidence as foreseen in Article 262, Paragraph (1), of the CPC.

92. **M.D.** _____'s confession during the Pre-Trial Interview³¹, when he admitted having taken the flags, would therefore be the only evidence supporting his guilt. However, Article 123, Paragraph (5), of the CPC, prevents that.
93. Therefore, the only evidence in possession of the Court regarding the events that took place at the cemetery is the confessions of **A.P.** _____ and **V.B.** _____ that they stole the Serbian flags from the cemetery.
94. No evidence was offered to establish the value of the flags.
95. With regard to the allegations of Threat, Inciting national, racial, religious or ethnic hatred, discord or intolerance and Unauthorized ownership, control or possession of weapons on 27 May 2015, a video recording was done by a citizen on the day of the events³², in which the five Minors, namely **A.P.** _____, **A.S.** _____, **M.D.** _____, **V.B.** _____ and **B.S.** _____ can be easily identified walking together in Mitrovicë/a north.
96. On the video recording, Minor **V.B.** _____ can be seen holding a gun and gesticulating with it. In his statements, **V.** _____ admitted holding the gun. Some moments later, other persons following the minors can also be seen on the video. Minor **A.P.** _____ seems to be holding something shiny in his hand, most probably a knife, but his rapid movements do not allow for the Court to be certain of this.
97. **L.J.** _____, a _____, was able to stop three of the minors after receiving radio reports about their activities. A police report from 19h30m³³ details the objects found in Minor **A.** _____'s backpack and body. The gun that was seen in the possession of **V.B.** _____ on the video recording was found in the possession of the Minor **A.P.** _____ when apprehended by the Police³⁴. Due to that, the Court has evidence that both Minors **V.** _____ and **A.** _____ used the gun during the incident.
98. Moreover, during his Pre-Trial Interview, Minor **A.P.** _____ stated that he bought the pistol from "a Roma guy, who came from the north"³⁵. He also stated that **V.** _____, **A.1** _____ **M.** _____, **B.** _____ and himself decided to go to the North of Mitrovicë/a with the gun, specifying that the gun had a loader but was without ammunition³⁶.
99. The ballistic report dated 30 March 2016 and presented by Kosovo Agency on Forensics described the pistol E_____ V_____, its redesign and its non-functional state³⁷.

³¹ Prosecution Binder I, page 780.

³² Prosecution Binder I, page 205.

³³ Prosecution Binder I, page 105.

³⁴ Prosecution Binder I, page 105.

³⁵ Prosecution Binder II, page 849.

³⁶ Prosecution Binder II, page 580.

³⁷ See Ballistic Report dated 30 March 2016, Court Binder IV, Tab 9.

100. In the video recording mentioned above, the five Minors can be seen having an altercation with a group of Kosovo Serbs on the street.
101. The Prosecution's motion asserts that the minors "almost started a fight" with that group of citizens and that **V.B.** _____ was "threatening" the other group with his gun.
102. After an analysis of the video recording, the Court finds that there is no evidence demonstrating that the Minors were the initiators of the confrontation. The video shows an altercation between the two groups and that the Minor **V.B.** _____ was gesticulating with a gun on the street. He did not point the gun at anyone from the other group. Since the video is recorded with the events already ongoing and there is no other evidence, it is not possible to know what exactly triggered the clash between the two groups.
103. The Police officer's testimony confirms that the Police took the group of Minors away from the other group³⁸. The Police officer testified in front of the Court that he did not see the minors making gestures with their hands but rather running or fleeing³⁹.

E.3.4 Count IV

104. When it comes to Count IV, Minor **A.** _____ accepted the facts. A copy of the Facebook posting can be found on page 868 of the Prosecution case file. This is the sole evidence submitted by the Prosecution office to support their allegation of the commission of the criminal offence of Inciting national, racial, religious or ethnic hatred, discord or intolerance by the Minor **A.P.** _____.
105. From the picture posted on Facebook, the Court recognises the Minor **A.P.** _____ who is setting a Serbian flag on fire with a lighter. However, the Court notes that there is no written message accompanying the posting of the picture. Furthermore, one can see that only one commentator of supposedly Serbian ethnicity intervenes once by writing a message in Cyrillic.
106. A partial translation of the ensuing comments attached to the picture can be found at page 1565 of the Prosecution Binder IV.

F. LEGAL FINDINGS

F.1. Count I

³⁸ Minutes of Main Trial, 07 March 2016, para. 774, Court Binder III, Tab16.

³⁹ Minutes of Main Trial, 07 March 2016, para. 802, Court Binder III, Tab 16.

107. Minors **A.P.** _____, **V.B.** _____, **A.S.** _____, **M.D.** _____ and **B.S.** _____ are charged with the commission of a criminal offence of co-perpetrated Attempted Aggravated Murder, in violation of Article 179, Paragraph (1.10), as read in conjunction with Articles 28 and 31 of the CCRK.
108. Article 179, Paragraph (1.10) of the CCRK reads:
(1) A punishment (...) shall be imposed on any person who:
1.10 Deprives another person of his or her life because of racial, national or religious motives.
109. Co-perpetration is defined in the CCRK under Article 31 as follow:
When two or more persons jointly commit a criminal offence by participating in the commission of a criminal offence or by substantially contributing to its commission in any other way, each of them shall be liable and punished as prescribed for the criminal offence.
110. The first part of the definition covers persons who actively participate in the commission of the offence. This covers the situation where persons act as co-principals in the commission of the offence either by adopting the same roles or different roles which meet the active element of the offence (*actus reus*). The agreement between the joint principals can be established during the commission of the crime; premeditation is not necessary.
111. The second part of the definition covers persons who have done preparatory or supportive acts which are not active elements or the adoption of active elements of the offence but are substantial contributions that have an impact on the execution of the common plan.
112. Active participation and substantial contribution are mutually exclusive: to be a co-perpetrator a person either takes direct part in the commission of the offence or does not but assists substantially to its commission.
113. The proven facts show that **A.P.** _____, **V.B.** _____, **A.S.** _____ and two other persons decided all together to cross the Mitrovicë/a main bridge in order to attack and harm citizens of Serbian ethnicity. Acting out, this group attacked three Serbian kids. Four of the attackers, **V.B.** _____ and **A.S.** _____ included, punched and kicked two of their targets. **A.P.** _____ stabbed the third victim, causing him a life threatening injury.
114. As said, premeditation is not a requirement for co-perpetration. The mere agreement to cross the bridge made moments before is enough.
115. A co-perpetrator is criminally liable within the limits of his or her intent or negligence, as stated in Article 36, Paragraph (1), of the CCRK. This provision supplements Article 17, Paragraph (1), of the CCRK, which reads that a perpetrator of a criminal offence is criminally liable only if he has committed the criminal offence intentionally or negligently.

116. What this means is that, if a joint principal deviates from the common plan and acts in an excessive manner not agreed by the others, the deviation cannot be attributed to the other participants. The participant who deviates from the plan can trigger a more serious offence, while the others will still be liable for the lesser agreed upon offence.
117. The facts show that **V.B.** _____ and **A.S.** _____ acted according to their plan and also that **A.P.** _____ exceeded what had been agreed.
118. Pursuant to Article 188, Paragraph (1), sub-paragraph (1.1) of the CCRK, Light Bodily Injury is committed whenever someone “*inflicts light bodily injury upon another person which results in temporarily damaging or weakening (...) part of the body of the other person*”.
119. **A.P.** _____, **V.B.** _____ and **A.S.** _____, by intentionally punching and kicking N.S. _____, B.I. _____ and Z.K. _____ in several parts of their bodies, committed the criminal offence of Light Bodily Injury. Since they acted without any lethal intention and they did not produce any lethal consequence, they are not liable for any offence of murder (exception made to the actions of **A.P.** _____ towards N.S. _____).
120. The Prosecution’s Motion charges the Minors with the commission of one, and only one, criminal offence. But the unit (entity) of the criminal offences of light bodily injury and of murder must be evaluated based on the protected legal value. Because the protected values are the physical integrity and the life of a person, and these values are, indeed, completely of individual nature, the violation of such values creates the entity of the criminal offences.
121. Therefore, the Juvenile Panel considers that the actions of **V.B.** _____ and **A.S.** _____ amount to three criminal offences of Light Bodily Injury. They acted as a group and the factual contributions by each of them to the commission of the offence are attributed to all others without the need to establish the commission of a full offence as such by one of them. However, and although the Panel is free to qualify in a different way from the Prosecution’s motion the actions by the Minors, it cannot add charges to the ones the Prosecutor has decided to prosecute. This is his prerogative.
122. As for Minor **A.P.** _____, although he had initially agreed upon a plan that foresaw solely physical aggression, he decided to go beyond it. He used a knife to stab N.S. _____ and could anticipate that his action might have lethal consequences, consequences that fortunately did not occur. The area he targeted and the strength he applied, enough to deeply hit three organs, leave no doubt as to this and also show he accepted the consequences.
123. Article 20 Paragraph (1) of the CCRK defines attempt as follow:
Whoever intentionally takes an immediate action towards the commission of an offence and the action is not completed or the elements of the intended offence are not fulfilled...

124. An attempt means the lack of full completion of the offence.
125. It is clear that the elements of the offence referred to are the active elements of the offence and not the mental elements. *Mens rea* required for the full offence must always be fulfilled in order for there to be an attempt: on the cognitive side, the person's intention must cover all the elements of the offence, including criteria that increases the punishment; on the volitive side, the person must have the requisite degree of intent demanded by the offence in question.
126. **A.P.** _____ acted with eventual intent, as defined by Article 21, Paragraph (3), of the CCRK: he was aware that death could occur as a result of his act and he acceded to its occurrence.
127. In addition, the aggravating factor under Article 179, Paragraph (1.10) of the CCRK is engaged. The Minor acted out of national prejudice: he chose his targets based solely on their nationality and on his own; the intolerance between the two main nationalities inhabiting Kosovo territory was his motivation.
128. Minor **A.P.** _____ additionally committed in co-perpetration with Minors **V.B.** _____ and **A.S.** _____ two offences of Light Bodily Injury on **B.I.** _____ and **Z.K.** _____, as this was their original plan. The Prosecution Office did not charge **A.P.** _____ with these offences and therefore they will be disregarded.
129. In Conclusion, the Juvenile Panel found that the actions of Minors **V.B.** _____ and **A.S.** _____ amounted to and that they committed the criminal offence of Light Bodily Injury in co-perpetration, punished under Article 188, Paragraph (1), subparagraph (1.1), and Article 31 of the CCRK.
130. Regarding Minor **A.P.** _____, the Juvenile Panel found that he committed the criminal offence of Attempted Aggravated Murder, punished under Article 179, Paragraph (1), subparagraph (1.11) of the CCRK.
131. As for Minors **M.D.** _____ and **E.R.** _____, the proven facts do not show they took part in the events. Therefore, they are not liable for the commission of any criminal offence.

F.2. Count II

132. Minors **V.B.** _____, **A.S.** _____ and **M.D.** _____ are charged with the commission of a criminal offence of co-perpetrated Threat, in violation of Article 185, Paragraphs (1) and (4), as read in conjunction with Article 31 of the CCRK. Minor **V.B.** _____ is additionally charged with the commission of a criminal offence of Unauthorized Ownership, Control or Possession of Weapons, contrary to Article 374, Paragraph (1), of the CCRK.

133. Article 185 of the CCRK states as follow:
(1) Whoever seriously threatens by words, acts or gestures to harm another person in order to frighten or cause anxiety to such person shall be punished...
(4) Whoever commits the offence provided for in this Article by using a weapon, a dangerous instrument or another object capable of causing bodily injury or serious impairment to health, the perpetrator shall be punished...
134. On 27 May 2015, **V.B.** _____, **A.S.** _____ and another youngster headed to a car wash located in Mitrovicë/a north, where three youngsters were present. There, showing a gun and knives, the Minors made two of the youngsters run away, while the third one remained behind. In front of that one, and pointing at the other two, one of the Minors made a gesture of moving one open hand across his own throat.
135. A threat consists of three basic elements: it is an (1) upcoming, (2) ill and (3) dependant of the will of the actor. The ill must not be imminent. If the announced ill is imminent or if execution acts of the announced harm have started, then a line has been crossed and an attempt of some other offence, bodily harm or murder, is ongoing. This temporal element of the threat is what distinguishes it from the violence common to so many criminal offences, such as Assault on Constitutional Order of the Republic of Kosovo foreseen (Article 121 of the CCRK), Coercion (Article 195 of the CCRK), Robbery (Article 329 of the CCRK), and so on.
136. Subjectively, the words, acts or gestures must be meant to intimidate or to be taken seriously.
137. By making a gesture in front of A.Z. _____ which implies a beheading and is easily interpreted that way, while pointing at the two fugitives, thus motioning that their lives would not be safe, the Minors committed the charged criminal offence of Threat, punished under Article 185, Paragraphs (1) and (4), of the CCRK.
138. The gesture is intimidating, especially considering the knives and the gun the Minors were holding; the menace of use of force is postponed since the targets were running away and oblivious to the gesture; since it was made in front of another person connected to the targets, there was a clear expectancy that the message would reach the latter, as it did.
139. Although the identity of the person who actually gestured is unknown, the demeanour of all of them – brandishing of weapons, pointing of the gun - contributed to the seriousness of the threat. The adoption of these different roles is the contribution of each of the Minors to the commission of the offence which, all put together, consummate it.
140. The Juvenile Panel also finds it established that Minor **V.B.** _____ committed the criminal offence of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’, as per Article 328 Paragraph (2) of the CCRK, since it was established that he possessed a weapon for which he did not have authorization.

141. Witness K.D. _____ said that Minor **V.B.** _____ was the minor who had the weapon. Witness N.M. _____ said the same although he is less certain that **V.** _____ had the weapon.
142. Possession of a weapon and ammunition is unlawful under Article 374, Paragraph (1) of the CCRK which states:
Whoever owns, controls or possesses a weapon in violation of the applicable law relating to such a weapon shall be punished...
143. The applicable law is found in the Law on Weapons⁴⁰ (LW). Any breach of the provisions of the Law on Weapons creates liability for offences under the CCRK (pursuant to Article 72 of the LW).
144. The weapon E_____ V_____ is a gas pistol but was transformed to become a firearm. The weapon is not functional.
145. Article 2 subparagraph (1.27) of the LW defines what an imitation of weapon is, namely a device that looks like a weapon but cannot be used as a fire arm. The Juvenile Panel agrees that this definition does not fit the description of the confiscated weapon possessed by the Minor **V.B.** _____ since the pistol at hand was originally capable of firing gas bullets of 9mm and was later adapted for firing firearm bullets.
146. The weapon is not functional. Although the weapon is right now not functional, it might be if the elements that prevent it from firing are fixed.
147. Article 2 subparagraph (1.35) of the LW gives a definition of what is considered a firearm that has been rendered permanently unfit for use (de-activated) as “a firearm of category B, C and D, which has made permanently inoperable through the application of a technical procedure on one of the main parts of the fire arm, and which has been certified by the competent body”.
148. The Juvenile Panel found that this description does not fit the weapon at hand since if properly fixed this weapon can be used and, eventually, kill a person. The weapon has not been made permanently inoperable and in any case that procedure needs to be certified by a competent body, which is again not the case here.
149. Therefore, according to Article 4 of the LW, the confiscated weapon in this case is a firearm. As a result, it is a criminal offence to possess this type of pistol.
150. **V.B.** _____ was carrying the weapon without a consent to acquire a firearm or a permit to possess a firearm (see Articles 2(1.11), 4(1.2.1), 5(1) and 20 of the LW). The Minor was carrying the weapon in a public place. He was aware and intended to do so. As such he meets the requirements of direct intent under Article 21, Paragraph (2) of the CCRK.

⁴⁰ Law No.03/L-143.

151. Therefore, the Juvenile Panel found that the Minor **V.B.** _____ committed the criminal offence of Unauthorized possession of weapon on 27 May 2016 at the car wash incident since he was unlawfully in possession of the pistol that has been described as a gas pistol 9mm calibre gas redesigned for use of firearm bullets of 6.35x15mm calibre with one empty magazine.

F.3. Count III

152. Minors **A.P.** _____, **A.S.** _____, **M.D.** _____, **V.B.** _____ and **B.S.** _____ are charged with the commission of a criminal offence of co-perpetrated Inciting national, racial, religious or ethnic hatred, discord or intolerance in violation of Article 147 of the CCRK as read in conjunction with Article 31 of the CCRK. All of them are also charged with the criminal offence of co-perpetrated Threat in violation of Article 185 Paragraphs (1) and (4) of the CCRK as read in conjunction with Article 31 of the CCRK and Theft in violation of Article 325 of the CCRK as read in conjunction with Article 31 of the CCRK.

153. With regard to the charge of Theft, on 04 February 2016, the Prosecution clarified that the Minors were charged with Theft in violation of Article 325 Paragraph (2) of the CCRK.

154. Article 325 of the CCRK states:

(1) Whoever takes the property of another person valued at fifty (50) EUR or more with the intent to unlawfully appropriate it for himself, herself or for another person shall be punished.....

(2) If the value of the stolen property is less than fifty (50) EUR, the perpetrator shall be punished....

155. Both Minors **A.P.** _____ and **V.B.** _____ went to the cemetery and removed the Serbian flags present there. Minors **A.P.** _____ and **V.B.** _____ took the property of another person with the intent to unlawfully appropriate the flags for themselves.

156. The value of the objects was not established. Since the law foresees two differentiated punishments for Theft depending on the value of the stolen assets, in accordance with *in dubio pro reu* principle, the Court must consider the one more favourable to the Minors.

157. Therefore, the Juvenile Panel finds that Minors **A.P.** _____ and **V.B.** _____ committed in co-perpetration the criminal offence of Theft in violation of Article 325 Paragraphs (1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK.

158. With regard to the three other Minors, the Juvenile Panel finds that it was not established that Minors **A.S.** _____, **M.D.** _____ and **V.B.** _____ committed the criminal offence of Theft.

159. Article 147 of the CCRK states as follow:
- (1) Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in the Republic of Kosovo in a manner which is likely to disturb public order shall be punished*
- (2) (...)*
- (3) Whoever commits the offence provided for in paragraph 1 of this Article by means of coercion, jeopardizing safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves shall be punished....*
- (...)*
160. “[I]nciting is to be understood as the action by which it is possible to cause the feeling of hatred, discord or hostility, whereas fanning signifies the action by which it is possible to enhance an already existing feeling of hatred, discord or hostility”.⁴¹ In other words, to incite means to generate a feeling which was not present before, while spreading means to disseminate that feeling into larger portions of the public.
161. The Prosecution argues that the five Minors, namely **A.P.** _____, **A.S.** _____, **M.D.** _____, **V.B.** _____ and **B.S.** _____, have committed in co-perpetration the criminal offence of Inciting national, racial, religious or ethnic hatred, discord or intolerance when, on the 27 May 2015, they “almost started a fight with a group of citizens of Serbian nationality” and that Minor **V.B.** _____ was holding a pistol and “threatening the other group” while **A.P.** _____ was “pulling out a knife”.
162. The proven facts show that, on their way back to the southern part of Mitrovicë/a, **A.P.** _____, **V.B.** _____, **A.S.** _____, **M.D.** _____ and **B.S.** _____ almost got involved in physical confrontations with a group of citizens of Serbian nationality that was going after them and that **V.B.** _____ held at a certain point in his hand the pistol E_____ V_____ and gesticulated with it.
163. The facts only show an altercation between two groups of different nationalities, one of them being the group of Minors. No evidence demonstrates that the Minors committed a criminal offence there, especially that of incitement of hatred by way of causing in the other group the feeling of hatred. The Minors might have acted in ways unknown to the Panel that have provoked the anger of the other group, but that is not equivalent to inciting or spreading hatred amongst two different ethnic groups. The anger of the crowd was directed towards the Minors and not towards Albanians as such, although the Minors were of Albanian ethnicity.

⁴¹ Commentary to the similar Article 134 under the Criminal Code of Former Republic of Yugoslavia (FRY) by Srzentic Nikola and Ljubisa Lazarevic (1995, 5th edition).

164. As to the charge of Threat, and disregarding the technical incorrectness of describing the facts by using the offence's title⁴², it has been said above that a threat is an upcoming ill which is not imminent. It is clear that the Minors were ready to engage in violent acts if the two groups were to become in contact with each other.
165. Therefore, the Juvenile Panel finds that the Minors **A.** _____, **V.** _____, **A.1** _____, **B.** _____, **M.** _____ and **E.** _____ did not commit any criminal offences besides the possession of the weapon that follows.
166. During the events, Minor **V.B.** _____ was holding a pistol on the street, the same he had held sometime before during the carwash incident. This Minor has already been found guilty of the criminal offence of Unauthorized Ownership, Control or Possession of Weapons, offence that has been committed under very close circumstances of time and place and under the same criminal resolution. He cannot be found guilty a second time for the same facts.
167. Minor **A.P.** _____, when apprehended, held the pistol in his underwear near his body. The evidence demonstrates that he possessed the weapon on that day without proper authorization.
168. Since the weapon is the same as the one described and analysed in Count II, the Juvenile Panel finds that **A.P.** _____ committed the criminal offence of Unauthorized possession of weapons.

F.4. Count IV

169. Minor **A.P.** _____ is charged with the commission, on 01 June 2015, of a second criminal offence of Inciting national, racial, religious or ethnic hatred, discord or intolerance in violation of Article 147, Paragraphs (1) and (3) of the CCRK.
170. The Prosecution's case is that the Minor committed the offence by posting a picture on his Facebook account, thus generating some debates between both Serbian and Albanian ethnicities.
171. The Juvenile Panel considers the Prosecution's motion dubious when it comes to the description of the offence. Was the offence committed with the posting or with the "aggressive debates" it incited⁴³? Had there been no debates or would they be civil if the offence was committed?

⁴² An indictment must contain facts, not conclusions. For example, it is not appropriate to describe the actions of A, who kicked and punched B, by simply saying that A bodily injured B and therefore committed the criminal offence of Light Bodily Injury.

⁴³ Regarding the use of the word "incited" see footnote ⁴².

172. The Juvenile Panel finds that it was not proven that, by publishing a picture of himself burning a Serbian flag on Facebook, the Minor **A.P.** _____ committed the criminal offence of Inciting national, racial, religious or ethnic hatred, discord or intolerance.
173. The picture in question shows that the Minor is disrespecting a national symbol and demonstrating his opinion and his lack of upbringing and respect for others. However that picture by itself is not demonstrating that he wants others to do the same. It is provocative but does not reach the threshold of incitement.
174. Indeed, incitement is the action of provoking unlawful behaviour or urging someone else to behave unlawfully. As said before, it is the action of causing the feeling of hatred, discord or hostility. In this case, the Juvenile Panel cannot find establish that by the act of posting such picture on Facebook the Minor **A.P.** _____ was trying to put into other people's mind a will to do something bad and illegal. There is also no evidence that he was part of a process of convincing others to commit a criminal offence. Actually, the picture was posted with no messages attached to it.
175. Additionally, the ensuing comments show that the audience who congratulated the Minor already shared the same unfortunate views as he did. The Minor's post did not cause nor spread hatred or intolerance because the intolerance already pre-existed and did not become any stronger or intense.
176. Without any other kind of elements, the Juvenile Panel agrees that the Minor **A.P.** _____ did not commit this criminal offence.

G. SENTENCE

177. The Juvenile Panel found that three minors committed criminal offences, namely **A.P.** _____, **V.B.** _____ and **A.S.** _____. Indeed, the Juvenile Panel found that the Minors **M.D.** _____, **B.S.** _____ and **E.R.** _____ did not commit any criminal offence.
178. The Juvenile Panel also looked into the mitigating and aggravating circumstances to be taken into consideration in considering the punishment. The mitigating circumstances are different for each of the Minors since they are mostly based on the social enquiries made on each of them and their personal, educational and social behaviours.
179. The Juvenile Panel then considered the provision of Article 37 of the JJC, which rules that for concurrent criminal offences the Court shall impose only one education measure or only a punishment.
180. With regard to the aggravating circumstances, the Juvenile Panel found that the attack which took place on 09 April 2015 was particularly serious and that it was a very cowardly attack, committed by an armed group of five who attacked by surprise the three victims. In addition, another aggravating circumstance is that the Minors went twice to

the North of Mitrovicë/a, in April and then in May 2015, to commit criminal offences there. The criminal actions had solely ethnic motivations, which is also to take into consideration when this factor is not in itself an element of the offence.

G.1. Minor V.B. _____

181. The Juvenile Panel found that the Minor **V.B.** _____ committed the following criminal offences:
 - A criminal offence of Light Bodily Injury (Count I);
 - Threat (Count II);
 - Unauthorized possession of weapon (Count II);
 - Theft (Count III).
182. The Minor **V.B.** _____ was born on _____, meaning that he was fifteen (15) years old when he committed the above-mentioned criminal offences in April and May 2015.
183. According to the JJC, there are two types of punishments applicable to minors, namely so-called “measures” and “punishments”.
184. Pursuant to Article 7 Paragraph (3) of the JJC, only measures may be imposed on minors who have not reached the age of sixteen (16) years at the time of the commission of the criminal offence.
185. Therefore, pursuant to that same provision, only measures may be imposed against the Minor **V.B.** _____.
186. According to Article 7 Paragraph (1) of the JJC, the measures that may be imposed on minors are so called “diversity measures” and “educational measures”.
187. According to Article 18 of the JJC, there are many types of diversity measures that may be imposed, such as mediation, compensation, school attendance, acceptance of employment or training, performance of unpaid community service work, education in traffic regulations and psychological counselling. In addition other educational measures can be imposed pursuant to Articles 19 and 20 of the JJC in order to contribute to the rehabilitation and proper development of the Minor offender, such as judicial admonition, committal to a disciplinary centre, measures of intensive supervision and committal to institutional educational measure.
188. According to the Social enquiry made on Minor **V.B.** _____ on 22 December 2015, the Juvenile Panel notes that the Minor comes from a good family. His family is attentive to his education and concerned about him. He does not miss school and, in fact, he is a good student. This report is very favourable to the Minor.

189. On the contrary, the Panel deemed his attitude during the trial not good. He did not show any remorse or regret. In fact, it was quite the opposite. He even mentioned during the Main Trial session of 08 March 2016 that “coming to the North is not a crime”. Obviously this is not a crime unless you go there to commit criminal offences yourself. Therefore he is still defying and this somehow shows he has not internalized the seriousness of his actions.
190. Furthermore, it was established that Minor **V.B.** _____ contacted Witness K.D. _____ via Facebook after having committed the criminal offence of Threat against him. Minor **V.** _____ took a picture of himself in front of the house of K.D. _____ which was obviously an explicit threat.
191. Taking all this into account, the Juvenile Panel agrees that the sentence to be imposed against him has to be severe.
192. According to the JJC, the most severe punishment in the given case is institutional measures where the Court can send the Minor to disciplinary centres.
193. However the Juvenile Panel agrees that it is not necessary to remove the Minor from his family. It was noticed during these proceedings that his father is very concerned about his child. Besides, it would not be beneficial for the Minor to be completely removed from his environment, especially since he is attending school on a regular basis and is a good pupil.
194. Peer influence and xenophobia, together with some immaturity, played a big role in the events.
195. Therefore, the Juvenile Panel agrees to impose a measure of intense supervision by the Guardianship authority as foreseen in Article 25 of the JJC. Such measure is provided under Articles 20 Paragraph (3) and 25 of the JJC. This measure is imposed on the Minor whose best interest does not require isolation from his previous environment and is served by a long-term measure which provides the Minor with an opportunity for education, rehabilitation or treatment.
196. Therefore, the Guardianship authority will be supervising the Minor and controlling what he does, especially by ensuring that the Minor is removed from any adverse influence, particularly by not hanging out with any of the other Minors in this case and not having access to Facebook. For that purpose, the Minor shall provide his Facebook account password to the Guardianship authority.
197. The Juvenile Panel also decides that a specific component of inter-ethnicity within the educational measure is indispensable in order to educate the Minor **V.B.** _____ in light of the criminal offences he has committed. Therefore, it is ordered that the Guardianship authority enrolls the Minor in programs with inter-ethnic components.

198. Pursuant to Article 20 Paragraph (3) of the JJC, such measure may be imposed against a Minor between three (3) months to two (2) years.
199. In light of all the facts and circumstances at hand, the Juvenile Panel decides to impose the measure of intensive supervision and places the Minor **V.B.** _____ under intensive supervision by the Guardianship authority for one (1) year pursuant to Articles 20 Paragraph (3) and 25 of the JJC.

G.2. Minor A.S. _____

200. The Juvenile Panel found that the Minor **A.S.** _____ committed the following criminal offences:
- A criminal offences of Light Bodily Injury (Count I); and
 - Threat (Count II).
201. **A.S.** _____ was born on _____. Therefore he was sixteen (16) years old when he committed the above-mentioned criminal offences.
202. According to the Social enquiry made on the Minor on 14 January 2016, Minor **A.S.** _____ is a good kid who is attending school and has good grades.
203. According to Article 7 of the JJC, both punishments and measures could be imposed against the Minor **A.S.** _____ since he was over sixteen (16) years old when he committed the crimes.
204. The Juvenile Panel took all the facts and circumstances into account and decided to impose a measure of intense supervision by the Guardianship authority against the Minor **A.S.** _____.
205. Like Minor **V.B.** _____, it was decided by the Court that Minor **A.S.** _____'s best interest does not require isolation from his previous environment and is served by a long-term measure which provides the Minor with an opportunity for education, rehabilitation or treatment. Again, peer influence, immaturity and xenophobia revealed by his actions were taken into account.
206. Therefore, the Guardianship authority will be supervising the Minor and controlling what he does, especially by ensuring that the Minor is removed from any adverse influence, particularly by not hanging out with any of the other Minors in this case and not having access to Facebook. For that purpose, the Minor shall provide his Facebook account password to the Guardianship authority.
207. The Juvenile Panel also decides that a specific component of inter-ethnicity within his punishment is indispensable in order to educate the Minor **A.S.** _____ in light of the criminal offences he has committed. Therefore, it is ordered that the Guardianship authority enrol the Minor in programs with inter-ethnic components.

208. In light of all the facts and circumstances at hand, the Juvenile Panel decides to impose the measure of intensive supervision and places the Minor **V.B.** _____ under intensive supervision by the Guardianship authority for ten (10) months pursuant to Articles 20 Paragraph (3) and 25 of the JJC.

G.3. Minor A.P. _____

209. The Juvenile Panel found that the Minor **A.P.** _____ committed the following criminal offences:

- An Attempted Aggravated Murder (Count I);
- Theft (Count III); and
- Unauthorized possession of weapon (Count III).

210. **A.P.** _____ was born on _____. Therefore he was more than sixteen (16) years old at the time of the commission of the criminal offences.

211. The Juvenile Panel found no mitigating circumstances with regard to Minor **A.P.** _____.

212. The Minor was imposed house detention in May 2015 upon his apprehension by Kosovo Police in North Mitrovicë/a. Although he felt very sorrow at that time, he violated the measure of house detention in June 2015⁴⁴ and was then put under the measure of detention on remand for a total duration of one (1) month and fifteen (15) days.

213. The Court also found out that the Minor **A.P.** _____ was under the measure of house detention in another case when he initially committed the criminal offence of Attempted Aggravated Murder on 09 April 2015⁴⁵.

214. In addition, the Juvenile Panel did not consider his behaviour in Court good. On 08 March 2016, he did not apologize to the victim N. _____.

215. Furthermore, the criminal offences he committed are extremely serious.

216. According to the numerous Social enquiries made on the Minor **A.P.** _____⁴⁶, it is clear that the Minor stopped attending school. His socialization level is not going well.

⁴⁴ Prosecution Binder III, pages 1138-1143; Notification from Kosovo Police dated 18 June 2015, Court Detention Binder for **A.P.** _____ I, Tab 12.

⁴⁵ Prosecution Binder III, pages 1128-1137.

⁴⁶ Social Enquiry report dated 29 May 2015, Court Detention Binder for **A.P.** _____ I, Tab 9; Social Questionnaire dated 19 June 2015, Court Detention Binder for **A.P.** _____ I, Tab 21; Social Enquiry dated 15 January 2016, Court Binder II, Tab 10.

217. According to Article 7 of the JJC, both measures and punishments can be imposed against him since he had reached the age of sixteen (16) when he committed the criminal offences.
218. The Court also looked at past convictions but according to the criminal records, Minor **A.P.** _____ has no previous convictions. This will be the first measure to be imposed on him.
219. In light of all the facts and the circumstances at hand, the Juvenile Panel agrees to impose against the Minor **A.P.** _____ a commitment to educational institutions and to an educational correctional institution. It was assessed by the Panel that the Minor clearly needs to be removed from his family and his environment.
220. Article 28 of the JJC states that when a Minor committed a criminal offence punishable by imprisonment of more than three (3) years, which is the case here since he committed the criminal offence of Attempted Aggravated Murder, the Court shall impose the measure of committal to an educational-correctional institution. Such measure is in the best interest of the Minor.
221. In addition, when deciding on the imposition of the measure, the Court considered the gravity and the nature of the criminal offence and whether the minor has previously been sentenced. The Juvenile Panel also took into account that the Minor was already sent to detention in Lipjan Juvenile Centre for one (1) month and fifteen (15) days. The Panel finds it better to send him in a correctional educational institution.
222. According to Article 28 Paragraph (3) of the JJC, the measure may not be less than one (1) year or more than five (5) years.
223. Since one (1) year is the minimum and in light of the facts and the circumstances at hand, the Juvenile Panel decides to impose the institutional educational measure for two (2) years pursuant to Articles 20 Paragraph (4) and 28 of the JJC.

H. CONFISCATION

224. The Juvenile Panel decides to confiscate the pistol E_____V_____ ref EVL-_____, with its cartridge, pursuant to Article 374 Paragraph (3) of the CCRK.

I. COSTS OF PROCEEDINGS

225. The cost of proceedings shall be paid by Kosovo budget, pursuant to Article 75 Paragraph (1) of the JJC.

J. PROPERTY CLAIM

226. Since only measures and no punishments have been imposed, the Injured Parties are instructed that they may pursue their property claim in civil litigation pursuant to Article 75 Paragraph (1) of the JJC.

Basic Court of Mitrovicë/a

Nuno Madureira

Presiding Judge

Kimete Fejza

Panel Member

Novak Mirkovic

Panel Member

Vera Manuello

Recording Officer

Legal remedy:

Authorised persons have the right to appeal against this ruling within 8 (eight) days from the day the ruling has been served (Article 77 of the JJC).