

IN THE NAME OF THE PEOPLE

BASIC COURT OF PRIZREN

Case: P. 372/13

Date: 21 April 2016

The Basic Court of Prizren in the trial panel composed of EULEX presiding trial judge Piotr Bojarczuk and the panel members EULEX judge Jorge Martins Ribeiro and judge Artan Sejrani by the court recorder Venera Hadri-Mollakuqe **in the criminal case against:**

E.K.;

D.K.;

B.K.;

A.K.;

H.K.;

Charged pursuant to the Amended Indictment PPS no. 1/2011 dated 28 June 2011 and filed before the Basic Court of Prizren and issued on 5 February 2014, with the criminal offences as described in the Indictment as following;

E.K. and D.K. charged with;

COUNT 1: Aggravated Murder, under Article 147 paragraph 9 in conjunction with Article 23 of the Provisional Criminal Code of Kosovo (PCCK), punishable by imprisonment of at least ten years or long-term imprisonment.

B.K. and E.K. charged with;

COUNT 2: Grievous Bodily Harm, under Article 154 paragraph 2, sub-paragraph 4 read with paragraph 1, sub paragraph 2, in conjunction with Article 23 of the PCCK, punishable by imprisonment of six months to ten years.

B.K. charged with;

COUNT 3: Grievous Bodily Harm, under Article 154 paragraph 1, sub-paragraph 3 of the PCCK, punishable by imprisonment of six months to five years.

A.K. and H.K. charged with:

COUNT 4: Assisting Aggravated Murder, under Article 147 paragraph 1, sub-paragraph 9 in conjunction with Articles 25 and 65, paragraph 2, of the PCCK, punishable by imprisonment of no more than three-quarters of the maximum punishment prescribed for the criminal offense.

D.K. and B.K. charged with:

COUNT 5: Unauthorized Ownership, Possession and Control of Firearms, under Article 328 paragraph 2 of the PCCK, punishable by a fine of up to 7,500 euros or by imprisonment of one to eight years.

After having held the main trial sessions, in the presence of the prosecutor Blerim Isufaj, later replaced by prosecutor Elez Blakaj, the accused and their defense counsel Florin Vertopi, Shemsedin Piraj, Durmish Koçinaj, Rexhep Hasani, Myrvete Qollaku and Florije Drevinja, the injured parties A, I. and M. L., represented by counsel Ethem Rugova, later replaced by Qazim Xharra;

On the following dates;

2014:

27 January, 5 and 6 February, 4, 11, 13, 18, and 20 March, 24 and 25 April, 15 and 16 May, 3, 7, 21 and 22 July, 4 and 22 September, 1, 20, 27 and 30 October, 11 and 20 November.

2015:

6, 8, 9, 13 and 14 January, 11, 12 and 27 February, 24 April, 8 July, 20 August, 3 September, 26 October, 25 November.

2016:

25, 27, 28 and 29 January, 1, 2 and 29 February, 1 and 22 March, 21 April.

after the trial panel's deliberation and voting held on 21 April 2016;

PURSUANT to Articles 385, 387, 388, 390, 391 and 392 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), on this 21st day of April 2016, the trial panel in open court and in the presence of the defendants, defence counsel and the prosecutor renders the following

* * *

J U D G M E N T

On COUNT 1, the defendant E.K. is found

GUILTY

Because: on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshtjella", after the defendant and co-defendants agreed and planned to take revenge and cause harm to the L. family at restaurant "Oda" in Malisheva in the afternoon, because of an altercation which had happened between B.L. and **H.K.** on 12 December 2010 during the parliamentary elections, the defendant together with at least co-defendants **D.K.**, **B.K.** and **H.K.** in at least two motor vehicles, an Audi 6, property of co-defendant **H.K.** and a Volkswagen Passat, property of G.K., proceeded towards the restaurant Keshtjella, owned by the L. family. Co-defendant **A.K.** had informed the defendant of the presence of members of the L. family there. After parking their vehicles, the defendant while being armed with a metal bar, together with co-defendants **D.K.** and **B.K.** while being armed with automatic rifles, entered the premises of the restaurant. While the defendant and the co-defendants were yelling and cursing, shouting "where are you, sons of Gjoka?", the defendant approached the table where S.L. was sitting and watching TV, surrounded by family and other children. With the intent to deprive S.L. of his life, he hit him several times with the metal bar, including on his head and arm. This hitting caused fatal injuries comprising of brain contusion and bleeding under the soft brain membranes. Although for a very short period, S.L. suffered extraordinary physical pain, hence the defendant, by hitting S.L. with the metal bar, acted ruthlessly and violently.

- Herewith he committed the criminal offence of Aggravated Murder under Article 147, paragraphs 5 and 9 of the PCCK. (Thus, re-qualifying the original charge of Aggravated Murder under Article 147 paragraph 9 in conjunction with Article 23 of the PCCK).

On COUNT 1, the defendant D.K.,

Pursuant to Article 390, paragraph 3 of the PCCK, is

ACQUITTED

Because: it has not been proven that the accused committed the criminal act with which he has been charged in the indictment, namely the criminal offence of Aggravated Murder under Article 147 paragraph 9 read with Article 23 of the PCCK.

On COUNT 2, the defendant B.K. is found

GUILTY

Because: on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshtjella", the defendant **B.K.**, while being armed with an AK 47 type weapon,

with the intent to cause bodily injuries, shot once in the direction of injured party A.L. and hit him in the right knee, causing injuries which permanently weakened the function of the calf muscle of the right leg and incapacity of dorsiflexion of the foot, and temporarily and substantially impaired the capacity of A.L. to work.

- Herewith he committed the criminal offence of Grievous Bodily Harm under Article 154 paragraph 1, subparagraphs 2 and 4 of the PCCK. (Thus, re-qualifying the original charge of Grievous Bodily Harm under Article 154 paragraph 2, subparagraph 4 read with paragraph 1, subparagraph 2, in conjunction with Article 23 of the PCCK).

On COUNT 2, the defendant E.K.,

Pursuant to Article 390, paragraph 3 of the PCCK, is

ACQUITTED

Because: it has not been proven that the accused committed the criminal act with which he has been charged in the indictment, namely the criminal offence of Grievous Bodily Harm under Article 154 paragraph 2, subparagraph 4 read with paragraph 1, sub paragraph 2, in conjunction with Article 23 of the PCCK.

On COUNT 3, the defendant B.K. is found

GUILTY

Because: on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshtjella", the defendant **B.K.**, while being armed with an AK 47 type weapon, with the intent to cause bodily injuries, shot at the lower part of the body of injured party I.L.. Although the defendant failed to hit the injured party, fragments of the bullet, after it hit the floor, hit the injured party I.L. on the ankles of both feet. These injuries have temporarily impaired the capacity of the injured party to work.

- Herewith he committed the criminal offence of Grievous Bodily Harm under Article 154 paragraph 1, subparagraph 4 of the PCCK. (Thus, re-qualifying the original charge of Grievous Bodily Harm under Article 154 paragraph 1, subparagraph 3 of the PCCK).

On COUNT 4, the defendant H.K. is found

GUILTY

Because: on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshtjella", he intentionally assisted co-defendant **E.K.** in the commission of the criminal offence of aggravated murder by participating in the meeting with co-defendants at restaurant "Oda" and in the planning to go to restaurant "Keshtjella" to cause harm to

members of the L. family, and escorting co-defendant **E.K.** away from the crime-scene, in his vehicle Audi A6.

- Herewith, he committed a criminal offence of Assisting Aggravated Murder under Article 147 paragraph 1, subparagraph 9 in conjunction with Article 25 of the PCCK.

On COUNT 4, the defendant **A.K.**,

Pursuant to Article 390, paragraph 3 of the PCCK, is

ACQUITTED

Because: it has not been proven that the accused committed the criminal act with which he has been charged in the indictment namely the criminal offence of Assisting Aggravated Murder under Article 147 paragraph 1, subparagraph 9 in conjunction with Articles 25 and 27, paragraph 1, of the PCCK.

On COUNT 5, the defendant **D.K.** is found

GUILTY

Because: the defendant **D.K.**, from an uncertain date up to 2 January 2011 in Malisheva municipality, had unauthorized ownership, possession, and control of a firearm type AK 47 caliber 7.62 x 39mm, with serial number 074949-89.

- Herewith, he committed the criminal offence of Unauthorized Ownership, Possession and Control of Firearms, under Article 374, paragraph 1 of the Criminal Code of Kosovo (CCK) (before: Article 328 paragraph 2 of the PCCK).

On COUNT 5, the defendant **B.K.** is found

GUILTY

Because: the defendant **B.K.**, from an uncertain date up to 2 January 2011 in Malisheva municipality, had unauthorized ownership, possession and control of a firearm type AK 47 caliber 7.62 x 39mm, with serial number 759933, whereby on 1 January 2011 he committed two criminal offences of grievous bodily harm with this weapon.

- Herewith, he committed the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraphs 1 and 2 of the PCCK.

* * *

THEREFORE,

The defendant **E.K.** is

SENTENCED

For COUNT 1, pursuant to Article 147, paragraphs 5 and 9 of the PCCK, in conjunction with Articles 37 and 73 of the PCCK, to *Long-term imprisonment for the duration of 22 (twenty-two) years.*

The time spent in detention on remand shall be taken into account from 2 January 2011 until the Judgment becomes final pursuant to Article 391 paragraph 1 subparagraph 5 of the PCPCK and Article 73 of the PCCK.

The defendant **B.K.** is

SENTENCED

For COUNT 2, pursuant to Article 154, paragraph 1 of the PCCK, in conjunction with Articles 38 and 73 of the PCCK, to *Imprisonment for the duration of 3 (three) years and 10 (ten) months.*

For COUNT 3, pursuant to Article 154, paragraph 1 of the PCCK, in conjunction with Articles 38 and 73 of the PCCK, to *Imprisonment for the duration of 3 (three) years and 9 (nine) months.*

For COUNT 5, pursuant to Article 374, paragraph 1 of the CCK, in conjunction with Articles 38 and 73 of the PCCK, to *Imprisonment for the duration of 1 (one) year.*

Pursuant to Article 71 paragraph 1 and paragraph 2 subparagraph 2 of the PCCK, the defendant **B.K.** is sentenced to an aggregate punishment comprising a term of imprisonment of *Imprisonment for the duration of 8 (eight) years.*

The time spent in detention on remand shall be taken into account from 2 January 2011 until 10 November 2015 and the the measure of house detention from 10 November 2015 until the Judgment becomes final pursuant to Article 391 paragraph 1 subparagraph 5 of the PCPCK and Article 73 of the PCCK.

The defendant **H.K.**, is

SENTENCED

Pursuant to Article 147 paragraph 1, sub-paragraph 9, in conjunction with Articles 25, 37, 65, paragraph 2, and 73 of the PCCK;

For COUNT 4, to;

Imprisonment for the duration of 5 (five) years.

The time spent in detention on remand shall be taken into account from 2 January 2011 until 7 June 2012 and the the measure of house detention from 7 June 2012 until 10 August 2012 pursuant to Article 391 paragraph 1 subparagraph 5 of the PCPCK and Article 73 of the PCKK.

The defendant **D.K.**,

Pursuant to Article 374, paragraph 1 of the CCK, in conjunction with Articles 38 and 73 of the PCKK;

SENTENCED

For COUNT 5, to;

Imprisonment for the duration of 1 (one) year.

The time spent in detention on remand shall be taken into account from 2 January 2011 until 10 August 2012 pursuant to Article 391 paragraph 1 subparagraph 5 of the PCPCK and Article 73 of the PCKK.

* * *

Pursuant to Article 60, read with Article 54 paragraph 2 subparagraph 7 of the PCKK the Court imposes the accessory punishment of:

CONFISCATION OF OBJECTS

Pursuant to Article 328, paragraph 5, of the PCKK, the seized AK 47 caliber 7.62 x 39 mm, with serial number 074949-89, is hereby confiscated.

Pursuant to Article 328, paragraph 5, of the PCKK, the seized AK 47 caliber 7.62x39mm, with serial number 759933 is hereby confiscated.

Pursuant to Article 54 paragraph 2 subparagraph 7, the Audi A6 motor vehicle with registration number 610-KS-898 5, belonging to **H.K.**, is hereby confiscated because it has been used for committing the above criminal offences .

The remaining seized vehicles shall be returned to their rightful owners.

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COSTS OF PROCEEDINGS

Pursuant to Article 102 of the PCPCK, the defendants whom are found guilty, shall jointly and severally be liable to pay the costs of these criminal proceedings.

The defendant **D.K.** shall pay an amount of € 300,- (three hundred euros), the defendant **H.K.** shall pay an amount of € 500,- (five hundred euros), the defendant **B.K.** shall pay an amount of € 800,- (eight hundred euros), the defendant **E.K.** shall pay an amount of € 1500,- (fifteen hundred euros).

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PROPERTY CLAIM

The injured part may pursue a claim for compensation through the civil courts.

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P. nr. 372/13

Dated this 21st day of April 2016

Recording Officer

Presiding Judge

Charlotte van Diepen

Piotr Bojarczuk

Jorge Martins Ribeiro, Panel Member

Artan Sejrani, Panel Member

LEGAL REMEDY:

An appeal must be announced within eight (8) days from the announcement of this verdict and shall be filed with the court of first instance, pursuant to Article 400 paragraph 1 of the PCPCK.

The parties have the right to file an appeal against the judgment within fifteen (15) days of the day the copy of the judgment has been served to the Court of Appeals through the Basic Court of Prizren pursuant to Article 398 paragraph 1 of the PCPCK.