

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICË/A, in the trial panel composed of EULEX judge Vidar Stensland as presiding judge , EULEX judge Rene van Veen and EULEX judge Iva Niksic, with EULEX legal officer Agron Kelmendi as the recording officer, has conducted the main trial in the criminal case P.nr. 148/2016 against:

G.G. , fathers name, [...], mothers name, [...], maiden name, [...], born on [...], residing in [...], [...] where he has a permanent residency, Albanian ethnicity, citizen of Kosovo, father of five children, of average economic conditions; in detention on remand from 22.08.2014 until 21.11.2014 and since 21.11.2014 in house detention;

By the Indictment dated 15.12.2014, G.G. was charged with the criminal offenses of Murder committed in a state of severe mental distress as per Article 180 of the Criminal Code of Kosovo (CCK) and Unauthorized ownership, control or possession of weapon as per Article 374 (1) of the CCK. By the modified Indictment dated 01.04.2016, G.G. was charged with the criminal offences of:

1. Aggravated murder as per Article 179 (1.5) of Criminal Code of Kosovo¹, (Count 1);
2. Unauthorized ownership, control or possession of weapon as per Article 374 (1) of the CCK, (Count 2);
3. Use of weapon or dangerous instrument as per Article 375 (1) of the CCK, (Count 3).

The main trial hearings, open to the public, were held on 4 April, 11, 12, 16, 17, 18, 19, 26 May and 1 June 2016. The hearing on 17 May when examining the witnesses I.M., N.S. and N.M. was closed to the public. The hearing on 18 May when examining the experts A.B., A.V. and G.H. was closed to the public. All hearings were held in presence of the accused, his defense counsel, and EULEX Public prosecutor Lili Oprea Stelluta (replaced by Neeta Amin on

¹ Law No. 04/L 082, hereafter CCK

1 June). The lawyer of the injured parties Burhan Maxhuni was present on 11, 16, 17, 18 May (replaced by Bekim Dugolli), 19 and 26 May (replaced by Hatixhe Latifi). On 1 June the injured party H.Sh. and her lawyer Sokol Dobruna were present. The trial panel deliberated and voted on 2 June 2016.

Pursuant to Article 366 paragraph (1) of the Criminal Procedure Code of Kosovo² on 3 June 2016 in a public hearing and in the presence of the EULEX prosecutor, parties and their representatives as recorded in the minutes.

The Court renders the following:

JUDGMENT:

I. Under Count 1;

The accused **G.G.** is:

FOUND GUILTY and CONVICTED

of the criminal offence of **Murder in violation of Article 178 of the CCK**, *whereby the Court re-qualifies* the charge in the Indictment of **Aggravated murder** in violation of Article 179 (1.5) of the CCK.

Because

On 04.08.2014, at around 18:50 hours, on the road "Adem Jashar Square", in Skenderaj, specifically in the terrace of the café "N Qosh", the defendant G.G. deprived R.SH. of his life. The defendant G.G. together with Z.G. was on his way out from the café and heading towards the square, while R.SH. was sitting together with the following persons: Sh.K., N.K., S.H., E.J., A.R., B.M., E.L., at a table on the terrace of the defendant's left side. When the defendant was at the exit stairs of the premises of the, café "N Qosh", he suddenly heard

² Law No. 04/L-123, hereafter CPC

the words "Selam Alejkym". He stopped and turned his head left in the direction where the words came from. The defendant then noticed R.SH. who had his right hand raised in the air and G.G. realized that the greeting Selam Alejkym came from him. G.G. and R.SH. had a long lasting conflict.

G. stopped at the stairs for a short moment and then reacted by approaching R.SH. asking him "Did you gather the elders to swear where you were on the 19.10?!". Then some argue took place between G.G. and R.SH.. G.G. moved his hand towards his waist. R.SH. started pushing the table with his left hand and swore to G.G.. R.SH. simultaneously began to raise up from his seat, pushed the table further with his left hand and directed his right hand towards his lap area on his right side.

In this situation G.G. was in a state of severe mental distress and he pulled out the pistol of the caliber 7.62 mm, M-57 – semi automatic, with the serial number [...], Yugoslavian production and shot four times in the direction of the victim in the upper part of the right shoulder, in the external side of the right hand side and upper part of the left shoulder. The wounds caused the victim a massive external and internal bleeding from the ripping of the lungs and liver, as a consequence of the dynamic action of the projectiles fired by the firearm. Following that, the victim passed away on the way to the Mitrovica Hospital.

G.G. fired the four shots from a distance less than one meter directly towards R.SH. and the shooting did not endangered the life of one or more other persons than R.SH. .

When committing the above the defendant was mentally competent and acted with direct intent.

II. Under Count 2;

The accused **G.G. is:**

FOUND GUILTY and CONVICTED

Of the criminal offence of **Unauthorised ownership, control or possession of weapons**, in violation of Article 374, paragraph 1, of the CCK.

Because

From 04.08.2014 until the 22.08.2014 in Kosovo, G.G. kept in his possession the weapon – pistol of the caliber 7.62 mm, M-57 – semi automatic, with the serial number [...], Yugoslavian production, without permit in violation of the applicable law related to such weapons.

When committing the above the defendant was mentally competent and acted with direct intent.

III. Under Count 3;

Pursuant to Article 363 paragraph (1.3) of the CPC, the Court

REJECTS

the charge of **Use of weapon or dangerous instrument**; Article 375 paragraph (1) of the CCK,

Because:

The criminal offence of **Use of weapon or dangerous instrument** in this case is consumed by the conviction of the criminal offence of **Murder**.

IV. THEREFORE,

The accused **G.G.**, pursuant to the provisions of Articles 178, 45, 75 paragraph (1.2) and 76 of the CCK, is sentenced to 4 – four – years of imprisonment for the said criminal offence under Count 1.

The accused **G.G.**, pursuant to the provisions of Articles 374 paragraph (1), 45, 75 paragraph (1.3) and 76 of the CCK, is sentenced to 10 – ten – months of imprisonment for the said criminal offence under Count 2.

Pursuant to Article 80 paragraph (2.2) of the CCK, the Court imposes the following **AGGRAGATED** punishment and;

Therefore; the accused **G.G.** will **execute** 4 – four – years and 6 – six – months imprisonment.

The time he served in detention on remand from 22.08.2014 until 21.11.2014 and the time he served in house detention since 21.11.2014 is included in the punishment of imprisonment pursuant to Article 365 paragraph (1), subparagraph (1.5) of the CPC.

V. Confiscation

The pistol used by G.G. ; - pistol of the caliber 7.62 mm, M-57 – semi automatic, with the serial number [...], Yugoslavian production, is confiscated in accordance with the CCK Article 374 paragraph (3).

VI. Cost of Proceedings

The accused G.G. shall pay **1000 (one thousand)** Euros as part of the costs of criminal proceeding, but is relieved of the duty to reimburse the remaining costs in accordance with Article 453 paragraphs (1) and (4) of the CPC. The accused G.G. must reimburse the ordered sum no later than 30 days from the day this Judgment is final.

VII. Property claims

Pursuant to Article 463 of the CPC, the Injured Party H.Sh. is instructed that she may pursue her property claim in civil litigation.

Rene van Veen

EULEX judge

Vidar Stensland

EULEX presiding judge

Iva Niksic

EULEX judge

Agron Kelmendi

Court recorder

REASONING

Procedural background

On 15 December 2014 the local Kosovo Basic prosecutor of Mitrovicë/Mitrovica filed the indictment dated 15 December 2014 with the number PP. I. 208/2014 against G.G. with the local Basic Court of Mitrovicë/Mitrovica.

On 14 January 2015 the local Kosovo Basic Court of Mitrovicë/Mitrovica held the initial hearing.

On 20 January 2015 the defense counsel filed a request to dismiss the indictment.

On 12 February 2015 the defendant submitted a motion in relation to the disclosure of the evidence.

On 13 February 2015 the local Basic Court of Mitrovicë/Mitrovica held the second hearing session. On the same date the local Kosovo Basic Court of Mitrovicë/Mitrovica rejected the request to dismiss the indictment dated 20 January 2015.

On 13 May 2015 the local Basic Court of Mitrovicë/Mitrovica held the first main trial session. After that session, the presiding judge resigned.

On 18 January 2016 the President of the Basic Court of Mitrovicë/Mitrovica assigned the case to the EULEX Basic Court of Mitrovicë/Mitrovica.

On 4 April 2016 EULEX Basic Court of Mitrovicë/Mitrovica started to hear the case anew in main trial. The following main sessions were held on: 11, 12, 16, 17, 18, 19, 26 May and 1 June 2016.

The injured party filed a claim for compensation.

Competence of the Court

The offences which were committed in the area of Skenderaj fall within the substantive and territorial jurisdiction of the Basic Court of Mitrovicë/a as provided in Article 29 paragraphs (1) and (2) of the CPC and Article 9 paragraph (2) subparagraph (2.7) of the Law on Courts (Law No. 03/L-199).

On 18 January 2016, the President of the Basic Court of Mitrovicë/a issued a Ruling G.J.A.nr.13/16 appointing EULEX judge Vidar Stensland as presiding judge and EULEX judges Iva Niksic and Rene Van Veen as panel members in the present case. The appointment is based upon Law No. 03/L-53 on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo, especially Article 2 paragraph (2.2) and Agreement between the Head of EULEX and the Kosovo Judicial Council dated 18.06.2014 Article 5 item a.

Therefore, the Trial Panel composed of EULEX judges has jurisdiction over the case.

It is a notorious fact that since March 2008 until the day the judgment was rendered, because of specific security requirements in the north of Mitrovicë/Mitrovica there has been a firmly established practice that criminal cases in the Basic Court of Mitrovicë/Mitrovica are being tried by panels composed exclusively of EULEX judges. This practice has never been contested by courts of any instance. Article 6 of the European Convention for the Protection

of Human Rights and Fundamental Freedoms (ECHR) as well as Article 31 paragraph 2 of the Constitution of the Republic of Kosovo provide for the right of access to a court not only for the defendants but also for the injured parties. The notion of “tribunal established by law” which is used in the said provision of the ECHR refers also to domestic legislation on territorial and factual jurisdiction. It appears that exclusive participation of EULEX judges was the only way to observe the right to court access.

Evidence presented

During the course of the Main Trial, the following witnesses were heard:

A.R. on 04.04.2016,
Sh.K. on 11.05.2016,
B.M. on 11.05.2016,
H.G. on 12.05.2016,
E.L. on 12.05.2016,
V.B. on 12.05.2016,
S.G. on 16.05.2016,
B.N. on 16.05.2016,
Z.G. on 16.05.2016,
B.H. on 16.05.2016,
S.M. on 17.05.2016,
A.N. on 17.05.2016,
I.M. on 17.05.2016,
N.S. on 17.05.2016,
N.M. on 17.05.2016,
H.Sh. on 01.06.2016.

Some witnesses were not possible to summon, and the Court decided, after the parties had agreed, that their testimonies to the prosecutor could be read pursuant to Article 338 paragraph (1) subparagraph (1.3). This was done for the statements of the following witnesses; S.H., E.J. and H.B..

The following expert witnesses were examined on 18.05.2016:

A.B., psychiatrist,

A.V., psychologist,

G.H.; neuro psychiatrist,

F.B., forensic pathologist.

The defendant G.G. chose to give evidence on 19.05.2016. He was also given the opportunity to give an additional statement after the witness H.Sh. gave statement on 03.06.2016.

The Court issued a ruling on 19 May 2016³ deciding on requests for evidence by the defendant dated 05.05.2016 and 16.05.2016. In the ruling, the interview with the injured party H.Sh. was not admitted as evidence, because until then, the Court had not been able to summon her. However, she showed up at the hearing on 01.06.2016 and gave evidence on 03.06.2016. Her pre-trial interview was then used in accordance with Article 123 of the CPC.

The presiding judge issued a separate ruling dated 25 May 2016 on the request by the prosecutor to include as evidence all documents listed in the index of binder I, II and III, meaning the complete case file.

The following documents were presented by the prosecutor and admitted by the Court as evidence:

BINDER I		
1. Report on inspection of the crime scene – KP Sh.G.	04/08/2014 @ 21:57 hrs.	37-40
2. KP Memo – Application for interception of telecommunications	05/08/2014	51-54
3. KP Memo – Application to excerpt all incoming/outgoing calls	05/08/2014	55-59
4. KP Memo – Application for obtaining DVR from Garden restaurant	06/08/2014	72-73
5. KP Memo – Application for issuing an order for	06/08/2014	74-77

³ Minutes of main trial 19 May 2016 page 2 and 3, English version. All further references to the minutes also refer to the English version.

examination of evidence		
6. KP Memo – Application for issuing an order for examination of evidence	07/08/2014	78-79
7. KP Memo – Application for interception of telecommunications	14/08/2014	82-87
8. KP Memo – Request for order of covert measures of investigations	14/08/2014	88-91
9. KP Memo – Application for interception of telecommunications	20/08/2014	92-95
10. KP Memo – Application for order	21/08/2014	96-97
11. KP Memo – Application for order	21/08/2014	98-99
12. KP Memo – Application for termination of interception	25/08/2014	100-103
13. KP Memo – Request for revocation of Arrest Order	25/08/2014	104-105
14. KP Memo – Application for issuing an order for examination of evidence	30/08/2014	106-107
PROSECUTION DOCUMENTS:		
15. Application for covert technical measures of surveillance and investigation	14/08/2014	174-177
16. Application for issuing an order for interception of telecommunications	18/08/2014	178-181
17. Application for issuing an order for interception of telecommunications	20/08/2014	182-185
18. Application for issuing an order for interception of telecommunications	21/08/2014	186-189
19. Application for termination of order for covert measures	21/08/2014	190-191
20. Decision for dactilosopic expertise	25/08/2014	204-205
21. Decision for ballistic expertise of weapon	25/08/2014	206-207
22. Order to perform description and autopsy of R.SH.		208-209
23. Decision for ballistic expertise	09/09/2014	210-212
24. Official Note from BP V.B.	24/10/2014	229-230
25. Official Note from BP V.B.	29/10/2014	231-232
26. Minutes on the review of the crime scene	29/10/2014	233-234
27. Official Note from BP V.B.	31/10/2014	237-242
28. Decision for phone examination	26/11/2014	258-261
29. Request for issuance of an order for covert measure	26/11/2014	262-265
30. Letter from H.G.– representative of G. family	18/08/2014	282-285
31. Submission from defense Counsel Ndrece Dodaj	23/08/2014	286-289
32. Proposal to perform psychiatric examination from DC	03/09/2014	304-307
33. Submission from defense Counsel Ndrece Dodaj	15/09/2014	308-313

34. Submission from defense Counsel Ndrece Dodaj	29/09/2014	334-337
BINDER II		
COURT DOCUMENTS:		
35. Order for interception of telecommunications (IPKO provider)	07/08/2014	414-417
36. Order for interception of telecommunications (VALA provider)	07/08/2014	418-421
37. Order for metering of phone calls	07/08/2014	422-425
38. Request for issuance of wanted notice	12/08/2014	426-429
39. Order for issuance of wanted notice	12/08/2014	430-433
40. Order for covert photographic or video surveillance in public places, private places and covert investigation	14/08/2014	434-439
41. Order for interception of telecommunications	18/08/2014	440-443
42. Order for interception of telecommunications	20/08/2014	446-449
43. Order for interception of telecommunications	21/08/2014	450-453
44. Submission from defense Counsel Ndrece Dodaj	20/01/2015	665-674
45. Request from defense Counsel Ndrece Dodaj	16/02/2015	675-678
TESTIMONIES		
Witness statements		
46. Record of witness examination – E.J.	04/08/2014	691-697
47. Minutes on witness interview – E.J.	03/10/2014	698-703
48. Witness hearing minutes – M.M.	04/08/2014	704-709
49. Record of witness hearing – Sh.H.	04/08/2014	710-715
50. Record of witness hearing – B.B.	04/08/2014	716-721
51. Record of witness examination – Xh.T.	04/08/2014	722-728
52. Witness hearing minutes – V.B.	04/08/2014	729-732
53. Witness hearing minutes – V.B.	23/09/2014	733-738
54. Witness hearing minutes – E.L.	05/08/2014	739-745
55. Minutes on witness interview – E.L.	03/10/2014	746-754
56. Minutes on witness interview – S.H.	05/08/2014	755-761
57. Record of witness hearing – A.R.	05/08/2014	762-767
58. Witness hearing minutes – E.K.	05/08/2014	768-774
59. Minutes of witness examination – E.K.	15/09/2014	775-782
60. Minutes on witness interview – Sh.K.	05/08/2014	783-789
61. Minutes on witness interview – Sh.K.	10/10/2014	790-795
62. Minutes of witness examination – B.M.	05/08/2014	796-799
63. Record of witness hearing – B. M.	15/09/2014	800-805
64. Record of witness hearing – A.R.	05/08/2014	806-808
65. Minutes of witness examination – A.R.	15/09/2014	809-817
66. Minutes on witness interview – H.G.	23/09/2014	818-827
67. Minutes on witness interview – S.G.	10/10/2014	828-833

68. Minutes on witness interview – H.B.	10/10/2014	834-839
69. Minutes on witness interview – Z.G.	14/10/2014	840-846
70. Minutes on witness interview – B.H.	14/10/2014	847-852
71. Minutes on witness interview – N.S.	23/10/2014	853-860
72. Minutes on witness interview – I.M.	23/10/2014	861-866
73. Minutes on witness interview – S.M.	23/10/2014	867-873
74. Minutes of witness examination – H.Sh.	10/11/2014	874-881
Defendant 's statement		
75. Minutes on defendant's interview – G.G.	22/10/2014	882-898
Binder III		
Forensics / Expert witnesses / Material evidence		
76. List of evidence/Chain of custody – TT pistol	05/08/2014	903-904
77. Report on expertise – examination of cell phones	27/11/2014	907-914
78. Photo album of confiscated phones	27/11/2014	915-926
79. List of evidence/Chain of custody –D7.1, D7.2	04/08/2014	927-928
80. Expertise Report - evidence D2, D3, D4 and D5	26/08/2014	929-934
81. Expertise Report - pistol M-57	26/08/2014	935-942
82. Decision for ballistic expertise (<i>not translated</i>)	09/09/2014	943
83. Chain of custody Form B / List of evidence Form D	26/08/2014	944-945
84. List of sequestered weapons	22/08/2014	946-947
85. Certificate on return of sequestered items	05/08/2014	948-949
86. Content of forensic case file		950-951
87. Photo album – Murder – KP Sh.G.	04/08/2014	952-970
88. Weapon and ammunition confiscation certificate	04/08/2014	971-972
89. Minutes of searching the persons or flat	04/08/2014	973-976
90. Forensic file content	06/08/2014	977-978
91. Crime Scene Report – Sgt. P.F.	05/08/2014	979-984
92. Photo album – Murder – KP B.O.	04/08/2014	985-1016
93. Photo album – Murder –Mitrovica Regional Hospital	04/08/2014	1017-1040
94. Unscaled sketch of the crime scene	04/08/2014	1041-1046
95. Autopsy report – MA 14-206 – R.SH.		1047-1059
96. Medical Report – Death confirmation	04/08/2014	1060-1061
97. Forensic form for lab examination	05/08/2014	1062-1063
98. The expertise Form – Forensi Lab Test (D)		1064
99. Legend – Measuring	04/08/2014	1065-1068
100. Autopsy report – KP A.F.	05/08/2014	1069-1070
101. Autopsy report – KP S.A.	06/08/2014	1071-1074
102. Photo Album - MA 14-206	05/08/2014	1075-1090
103. Supplementary report, KP B.O.	29/10/2014	1091-1092
104. Photo album – revisiting the scene	29/10/2014	1093-1099

105.	Unscaled sketch	29/10/2014	1100-1101
106.	Officer's report – KP A.A.	11/01/2016	1102-1103
107.	List of evidence / Chain of custody – Hand watch	11/01/2016	1104-1107
108.	Cover letter from VALA – two CDs attached	04/12/2014	1108
109.	Cover letter from VALA – two DVDs from Garden restaurant cameras attached		1109
110.	Medical report on G.G.	18/11/2015	1110-1111
111.	Report of psychological examination of G.G.	19/11/2014	1112-1131
112.	Medical Report – home medical visit – G.G.	22/07/2015	1132-1133
113.	Medical Report – home medical visit – G.G.	28/08/2015	1134-1135
114.	News article in “Bota Sot” – Kosovo Association of Journalists condemns the threat against the Chief editor I.M. and the journalist N.S.	01/08/2014	1136-1139

Pursuant to Article 349 the criminal record of the defendant was presented by the prosecutor after the presentation of evidence was concluded.

The following documents were attached and presented through the request filed on 5 May 2016 by the defendant and admitted by the Court as evidence:

- An article published in the daily newspaper Koha Ditore on [...] (attachment nr. 5);
- Summary of a declaration no 59 of the KLA Headquarters dated [...] (attachment nr. 6);
- Response to the declaration no 59 of the KLA Headquarters dated [...] (attachment nr. 7);
- Summons by the SPRK in case PPS [...] addressed to G.G.. (attachment nr. 9);
- Notification by SPRK in case PPS [...] to G.G. (attachment nr. 10);
- Letter from witness A.N. (attachment nr. 11);
- Copy of SMS (attachment nr. 13);
- First page of the indictment in case PP. [...] dated [...] of the District Court of Pristina (attachment nr. 14);

- Summary of judgement of the Administrative Court of Stuttgart, Germany, dated [...] (attachment nr. 15);
- Notification from G.G. to UNMIK and EULEX dated [...] (attachment nr. 16);
- Copy of SMS (attachment nr. 18);
- News article from the internet (Insajderi) and CD in relation to A.S. (attachment nr. 19);
- Medical report concerning G.G. dated [...] (attachment nr 21).

The following documents were attached and presented through the request filed on 16 May 2016 by the defendant and admitted by the Court as evidence:

- Weapon permits G.G. (attachment nr. 1 and 2);
- Medical report dated 05.05.2016 (attachment nr. 4);

The Court notes that there is a typing error in the minutes of 19.05.2016, page 2 in the enacting clause paragraph of the ruling it is written "6?? KLA". This should be deleted. In the minutes further on one can see that the parties agreed to that a summary of attachment nr. 6 can be used as evidence.

On the request of the defendant the Court decided to collect and admit as evidence the criminal record of the victim R.SH. .

Assessment of evidence

1. The incident at the café "N'Qosh" on 04.08.2014
2. The Court found facts described in the enacting clause proven beyond a reasonable doubt. The Court has based its findings on the statements of the defendant and the

eyewitnesses, who basically described the factual events of the murder in a similar way, which is also supported by the forensic evidence. The Court will reiterate some basic points of what was stated during the main trial.

3. **A.R.** was together with R.SH. when the murder took place. He stated⁴:

After some time, I had R. just was in front of me on my left side while my back was towards the entrance of the bar and I saw R. lifting up his right hand saying "Selam Alejkum". I looked to my right hand side and was looking whom he greeted and I saw that it was G.G. getting out of the premise who left the premise and was already on square area and then he came towards us, turned towards us and he addressed R.SH. with following words: "have I told you to gather the elders and swore where were you on 19th of October?" and R.SH. said "Walk your way" and lifted his hand, indicated that...

Presiding Judge: Right or left hand?

A.R.: Right hand. G. came close to him around a meter away and he put his right hand to his waist.

Presiding Judge: He G., or?

A.R.: G., and R.SH. addressed to him with following words: "why are you putting your hands to the waist? Pull it out and shot, no one is afraid of you". And G. pulled out his gun; he prepared it, loaded it and shot at R.SH. four times. He left the premise with his gun on his hand to unknown direction. We tried to give him the aid as he was still alive. E. with another person went outside and stopped a car and B., N. and E. and other people helped him put inside the car and he was taken to the health centre in Skenderaj.

4. Further he stated⁵:

⁴ Minutes main trial 04.04.2016 page 10 and 11

⁵ Minutes main trial 04.04.2016 page 14

Iva Niksic: If you remember in what position was R.SH. ? Was he sitting, standing or rising up when the defendant was preparing to shoot?

A.R.: He was in a sitting position.

Iva Niksic: And when the defendant was shooting at him at which position was he?

A.R.: Sitting.

Rene Van Veen: Before G.G. shot at him did R. move his hands?

A.R.: No.

presiding Judge: Did you see him doing anything with his hands?

A.R. : When he put his hands at his waist he said pull it out and shoot. And then he did so.

5. **Sh.K.**, who was at the table with R.SH. , stated⁶:

So, at this time while I was greeting and saying "Hello" to this person E., then in meantime I heard a word spoken by R. who said this word "Selamualejkum" and I turned around whom he is addressing in that manner and then I noticed there was G.G.. So, I heard G. asking him "have you managed to bring together 24 elders in order to come and pledge or swear where you were on the 19th" and then he put the hand in his waist to reach the pistol, actually I did not see whether he had a pistol or not but I know he put a hand in his waist. I did not see the gun until he pulled it off.

6. **B.M.** was also together with R.SH. . He stated⁷:

I was sitting with my back towards the door of the bar as he passed us, he then passed R. he was sitting in a position as this police officer is sitting next to me and I heard him saying "Selamalejkum" and G. turned and asked him whether he gathered the elders for a date which date I cannot remember right now. Then he said "you just

⁶ Minutes main trial 11.05.2016 2016 page 3

⁷ Minutes main trial 11.05.2016 page 12

go” using a word which I think it is not appropriate to use right now “pull it out and shoot because I don’t care” then G. pulled out the weapon and shot. This is it.

7. **E.L.** , also in the group together with Sh., stated⁸:

While I was talking to Shani, it did not last longer than 10 to 15 minutes G. went out of the café and passed by us. He didn't recognize us, I don't know if he noticed us or not but he didn't turn his head to us. So, he passed by us and R. raised his hand saying Selam Alejkum as far as I remember. G. stopped, turned back and stopped on the stairs and said to him “Did you gather the people to give an oath” and R. greeted him with Selam Alejkum and when G. from distance asked him if he gathered the people for the oath, R. didn't reply to that question and G. approached us. When he came close to us his face was pale and he again addressed to him saying “Did you gather the people to give an oath” and I don't remember which date he mentioned. And I don't remember the date he referred to. And then he said “I will see you” and G. said again “you should gather people very soon”. R. then somehow moved a bit on the chair, and I don't know if he made that on purpose or not, and G. put his hand on the pistol. I intervened at that time and stood up, and I told them leave these things because you are behaving like kids and then G. removed his hand from the pistol. Then R. replied “Are you trying to scare me?” and said “I will piss on it” and he also mentioned another word and I don't know if I can mention that.

Presiding Judge: Yes.

E.L.: It is in my statement with the police and prosecution.

Presiding Judge: We need to have it what he exactly said.

E.L.: I find it a bit embarrassing. So he said “I will piss on it, go on the dick” and another word whether he insulted him or not I don't remember that and on the way R. was sitting on the chair he was initially holding his hands on the table and he was wearing a shirt and a tie and put his hand down (indicating the right hand on the right lap), so R. was sitting on my right side, and then when he put his hand on the

⁸ Minutes main trial 12.05.2016 page 12 and 13

lap G. reacted. When R. removed his hands from the table one or two bottles fell down though I don't remember if one or two, and after that the pistol was fired. I don't know who sent him to the hospital, I don't remember it at all.

8. **V.B.** was working in the café "N'Qosh" on 04.08.2014, but he left before the shooting took place.

9. **S.G.** was on the stairway of the café "N'Qosh" when the shooting took place. He stated⁹:

The day that happened, I was entering the bar or facility with my cousin, we were just entering that facility when it happened. So, we didn't hear anything because it was noisy and there was a loud music. So, when it happened G. was at the table on the side from me, and I remember when R.SH. got up from the table and he put his hand at the gun, and then the event or case happened. [...]

I told my cousin, "Watch out" because R. was pulling his gun out", and I didn't see G. because he was on my other side. [...]

Presiding Judge: My question was when G.G. was shooting, did R. then hold his gun in his hand or was it still on his waist?

S.G.: I just saw him when he pulled out his gun and then everything started, noise and shots, that's all what I can remember and he fell on the floor.

10. **Z.G.** who left the bar with G. Gaci, stated¹⁰:

So, while we were going out there was an Arabian expression that came to our attention and it was Selam Alejkum and it came from a table, which was on our left side. I heard that expression and I turned my head but I thought that that came from G. 's friend and I didn't take it tragic since I thought it was G. 's friend and I moved on. At that moment I was looking at G. who was hesitating whether to go or not, so once

⁹ Minutes main trial 16.05.2016 page 5, 6 and 10

¹⁰ Minutes main trial 16.05.2016 page 19 and 20

he hesitated whether to go out of the bar or to the terrace and finally he went to that table. When he turned and went to the table I just turned and from the stairs I saw what happened and they were having some dialogue between each other. At that moment the late R. or R.B., since I don't know his full name, I saw him putting his left hand on the table pushing his body up and with his right hand he was like standing up but he didn't stand up but it looked as if he was standing up but the glasses were shaking. And this whole scene happened for about 20 to 30 seconds and then the case happened. At that moment when they were having the conversation I didn't hear what they were saying to each other because in the bar there was music and it was noisy and I could not hear what they were saying.

11. He mentioned that G. shot 3 or 4 times and he did not see any gun in R.'s hand. He also recalled that there were other persons on the stairs and one of them even stepped on his foot, which corroborates with the statement of H.B. and Z.G..

12. **B.H.** stated¹¹ that he was in the bar "Hollywood" next to "N'Qosh" where he met R.SH. short time before the murder:

[R.] asked me how are you Bajram, how are you doing, how are you doing with these people, are you having any troubles with people, if you have any problem I will solve it for you because I am looking for trouble, because I have gone out to fuck somebody's mother. I said no, I have no problem with anyone, have a sit and have a coffee. He said, "No", some fiends have invited me for a coffee, I greeted him by hand and he went, I didn't look further, after a couple of minutes a noise was heard and I saw them standing and shootings occurred. When a noise was heard those people who were there stood up and this is what I saw.

¹¹ Minutes main trial 16.05.2016 page 24

13. The parties agreed that the testimonies given to the prosecutor in front of the defense lawyer from **E.J. and H.B.**, who could not be summoned and did not show up at the trial, was read.

14. **E.J.** stated on 03.10.2014 to the prosecutor that he was at the table with R.. He saw G.G. on his way out, but then come back and faced R. in a distance of about 1 meter. The witness noticed that G. said something while he was pointing his finger to R.. R., looking serious turned to face G. and said something. The witness said he did not hear what was said due to a medical hearing problem. He said R. was sitting when G. fired his gun and hehe did not notice that R. had any gun.

15. **H.B.** gave statement to the prosecutor on 10.10.2014. He stated that he walked towards the entrance of "N'Qosh" together with S.G.. He saw something was going on at a table of the terrace of the café but could not hear what was said. It all happened very quickly, in a flash. He stated *"Before hearing the gunshots, I noticed that the person-victim was half-standing on his feet and he had his left hand on the table, while he had his right hand on his waist, but I cannot say whether there was a gun on the victims waist, because the incident happened very fast, and at the moment when I saw the victim holding his hand on his waist I immediately heard the gunshot [...]."*

16. **S.H.** only gave an interview to the police and his statement cannot be used as direct evidence, see Article 123 of the CPC.

17. **G.G.** chose to give statement on 19.05.2016, and the Court will refer some parts of his statement:

Z. was walking in front of me, about two to three steps in front of me and the waiters told us that somebody paid for our drinks. [...] Then I passed by a small terrace, and I also crossed by the second terrace, and walking down the stairs towards square I heard the Arabic word "Selamualejkum". I turned on my left side; when I turned on

my left side I saw a few persons sitting at the table, and among them was R.SH. . I observed him to have raised his hand greeting me "Selamualejkum". When I saw R. I was scared because I never saw R. before in Skenderaj and much less in that location. That location was frequented by me night and day, and I turned and since we had a meeting arranged which was initiated by R. and not by me, because he called me by the phone of N.S. 5 to 6 days before which is written in my statement and if you ask me about it I can answer to that. Then I approached to their table without noticing or seeing others around him. I told him; "did you gather the elders in order to pledge an oath where you have been on 19 October" and R. pushed away the table.

He did not allow me to mention year 2001, and with the left hand he was pushing forward the table. At that moment I was in front of R. while the other were pushed back from their positions, and he told me "get lost" and he cursed on me. He tried to stand up, and it seemed to me that with his right hand he wanted to get something in black colour and I got lost at that moment and for that reason I pulled out my weapon and fired towards him. After that I went towards our premises we have about 20 meters far from there and after that I went home. After I went home I noticed that the weapon was open with the safety off and by this I could have injured myself. This is what happened at that moment. I don't recall more of it.

[...]

According to the witness, he said; "just shoot me". Do you remember any of this? I refer to R. as who said, "shoot me".

G.G. : Maybe witnesses rE.ded me on that but I don't exactly know, whether he said "I will piss on it" or something like that and "fuck your mother", but I know that when the glasses fell down; after these words the glasses that fell down and he raised his hand and after this moment I pulled my weapon and shot.

18. G. stated that the insult was a grave insult. The presiding Judge then asked him if it was possible for him to oversee the insult and G. replayed:

When he pushed the table and sent his hand to his waist, after that there came certain reactions and after the cursing of my mother I didn't know what he was going

to pull out, whether a lighter or a knife or what. It was impossible for me to determine. I just perceived it as a danger for me and I reacted.

After the time when I was on house arrest I saw on TV when an American police officer murdered a child thinking that the child was carrying a weapon while he was not. When the court acquitted him the city of Ferguson was on fire. There were a lot of protests.

Presiding Judge: You said that you did not know whether the weapon was a lighter or knife?

G.G.: I was not myself anymore.

Presiding Judge: Do you remember if you thought it could be a gun, a knife or anything?

G.G.: R.SH. was known that he will not carry anything else apart from a weapon. Anybody that you might ask in [...], everybody will say that he was carrying a weapon.

Presiding Judge: Do you remember, did you have any thoughts at the moment if he had any gun or not?

G.G.: It seems to me that it was something like black, like a weapon and I thought he is going to kill me and I was thinking as fast as possible to pull out my weapon.

19. The Court found that all the eyewitnesses honestly stated what they remembered of the incident, and the statements basically corroborating each other. There are only minor discrepancies between the statements, which can be attributed to the ability of different witness to observe, memorize, recall and finally in court orally in words describe the incident.

20. It is proven that when defendant was at the exit stairs of the premises of the, café "N Qosh", he heard the words "Selam Alejkym". He stopped and turned his head left in the direction where the words came from. The defendant then noticed R.SH. who had his right hand raised in the air and G.G. realized that the greeting Selam Alejkym came from him. G. stopped at the stairs for a short moment and then reacted by

approaching R.SH. asking him "Did you gather the elders to swear where you were on the 19.10?!" . Then some argue took place between G.G. and R.SH. .

21. The Court finds the witness E.L.'s quotation of the words (argue) spoken by G. and R., as cited above, as most accurate and proven. The quotation is basically corroborated by the other statements. Further, L. was the only one who tried to intervene and deescalate the conflict, which would make him more observant to what was actually said. The Court found it proven that G.G. moved his hand towards his waist. Further that R.SH. started pushing the table with his left hand and swore, as stated by E.L., to G.G. and R.SH. simultaneously began to raise up from his seat, pushed the table further with his left hand and directed his right hand towards his lap area on his right side. The Court does not find it proven beyond a reasonable doubt that G. actually showed the gun to R.. However, by moving his hand towards his waist, R. took this movement as a sign that G. had a gun. R.'s words: "pull it out and shoot" confirms this. E.L. stated that G. "*put his hand on the pistol*". The Court does not find this sufficient to prove that G. showed the gun to R.. The fact that G. actually quite immediately pulled out the gun and shot most likely inflicted the memory of L..

22. The Court found it proven that G.G. was not in a situation of necessary defense when he shot R.SH. . S.G. is the only witness who stated he saw R.SH. having a gun. The other witnesses stated that they did not see that R. had any gun. S. G. 's information is not supported by any of the other eyewitnesses. Neither is it supported by examination of the crime scene. When R. was brought to the hospital, no gun or gun holster was discovered. It is of course possible, if R. had a gun, that someone removed and hid it from the police. However, there is no evidence to support this theory. Even G.G. did not state that he saw a gun, only that he was afraid that R. was about to pull out a gun. G.G. indicated in the main trial that B.Sh. was arrested 30 minutes after the incident and that he had a gun that might have been R.'s gun. It is the assessment of the Court that this is a mere theory not supported by any evidence. None of the witnesses placed B.Sh. at the crime scene and there is no

other evidence indicating that B.Sh. was at the crime scene and took in possession R.'s possible weapon. R.'s purse, with documents and money, was left at the table. This indicates that after the shooting, the main concern of the persons at the crime scene was to get R. to hospital as soon as possible. The Court has to conclude that R.SH. did not carry a gun when the shooting took place. The Court is of the opinion that S.G. stated what he thought he saw but he was mistaken of the facts.

23. Further, the Court finds it proven that R.SH. about two weeks before 04.08.2014 had an operation related to his spinal cord. He was released from hospital about one week before the incident and on 04.08.2014 he had still severe back pain and it was difficult for him to sit normally and to move¹². His condition made it even less likely that he was about to attack G.G..

24. The Court found it proven that G.G. did not believe he was under a deadly attack. In the main trial he first stated that he *"didn't know what he was going to pull out, whether a lighter or a knife or what"*, then after been questioned he stated: *"It seems to me that it was something like black, like a weapon and I thought he is going to kill me and I was thinking as fast as possible to pull out my weapon."* His statement that he thought it was a gun is in the Court's opinion a rationalization of his action done after he had the possibility to reflect over what he had done. This is even more the case since no witness apart from S.G.. confirmed to have seen R.SH. carrying a gun. Further, when one takes into account the bad relationship since 1998 between G. and R., G.'s fear of assignation over years, G.'s personality and R.'s severe insult just before the shooting, this becomes even more obvious. The Court will elaborate on this more in detail below.

25. The Court found it proven, based on the statements of the eyewitnesses and G.G. that G. was standing about 1 meter from R.SH. just before G. fired his gun. R. was

¹² Statement of H.Sh. on 01.06.2016. It was also confirmed that R.SH. was in hospital by G.G. and S. M.

about to stand up and was in a half-standing position when he was shot. This is confirmed by the eyewitnesses and the trajectory of the wounds described in the autopsy report and by the statement of the expert Dr. F.B. in the main trial.

26. The Court found it proven that G.G. was in a state of severe mental distress when he killed R.SH. . This is based on the psychiatric report and statements in the main trial by psychiatrist A.B., psychologist A.V. and neuro psychiatrist G.H..

27. The psychiatric experts concluded their report as this:

1. [...].

2. [...].

3. [...].

4. [...]. *The moment he saw the deceased in his mind overruled strong affect/emotion of fear, to escape or to strike, a situation in which a person is facing a delicate state of his life. In such a state he could not control, restrain his actions which resulted with commission of the criminal offence.*

28. The Court does not find particularly grounds to put in doubt their conclusion. The background information in the report about the history of G.G. is very much corroborated by evidence presented by G. and witnesses that gave statements on the background of the case. Dr. B. stated in the main trial that the anamnestic information was only from G.G. himself (auto anamnestic information) not from relatives (hetero anamnestic information) as it was written in the report. The tendency of impulsiveness was clearly expressed even during the main trial.

Background

29. The Court found that there was a long lasting conflict between G.G. and R.SH. and other persons to whom, in G.'s opinion, Sh. was connected. G.G. was further

convinced that he, since 1998 up to August 2014, was in high risk of being killed by R.SH. or persons close to Sh..

30. The evidence presented by G. and the statements during the main trial by witnesses H.G.¹³, B.N.¹⁴, S.M.¹⁵, A.N.¹⁶, I.M.¹⁷, N.S.¹⁸ and N.M.¹⁹, and the assassination attempt on G.G. in [...], give indications that G.G. had reasons to fear that his life was at risk. It is not up to this Court to decide if this actually was true and even less to have an opinion on who could possibly be behind this threat. However, the Court found it proven that G.G. himself was convinced that he for many years was in a life threatening situation and that R.SH. was involved as a part in this.

31. The Court does not find it necessary for the purpose of this trial to go into detail about the background as presented by the witnesses, G.G. and the documentation presented by G.. However, the Court will briefly highlight some major parts.

32. G.G. stated to the psychiatrists²⁰ that the conflict with R.SH. started in 1998 when R., according to G., pointed a gun on G. and threatened him. On [...] an assassination attempt on G.G. was carried out. G.G. was injured while two other persons were killed. It is not contested that the assassination attempt took place. G.G. was and is convinced that Sh. was involved in the assassination attempt in [...].

33. The witness A.N., stated that he was in prison in the year 2000 with R.SH., then using the name I.T.. N. witnessed an episode when G.G. appeared on TV and R. 's reaction

¹³ Minutes main trial 12.05.2016

¹⁴ Minutes main trial 16.05.2016

¹⁵ Minutes main trial 17.05.2016

¹⁶ Minutes main trial 17.05.2016

¹⁷ Minutes main trial 17.05.2016

¹⁸ Minutes main trial 17.05.2016

¹⁹ Minutes main trial 17.05.2016

²⁰ In the main trial G. confirmed that information he gave to the psychiatrist could be regarded as a part of his statement, minutes 18 May page 3

when he saw G.. N. did not know G. personally but after he heard about the incident on 04.08.2016, he wrote a letter²¹ to G.G. informing about the episode in prison and that he was convinced that G. “would be killed by R. in the first convenient moment”. The Court has no reason not to believe the information about the episode in prison is a part of the background, however, the Court will not give it much probative value since N. only sent the letter after 04.08.2016.

34. The witness B.N. stated that about one month before 04.08.2014 he met R.SH. and that R. told him not to “hang out” with G.. B.N. informed G.G. about this but he did not meet G. after this because R. was a closer friend and also “maybe I was a bit afraid”.

35. On [...], the newspaper Bota Sot published an article about all alleged murders of members of DLK for political motives. R.SH. met with the journalist N.S. and via N.’s phone R. called G.G.. According to G.²², R. accused G. of giving the newspaper information. They then met and on this occasion G. wanted R. to swear that he was not involved in the assassination attempt in [...]. The witness S.M. was present during this meeting.

36. S.M. stated:

On our way to Prishtina with G., G. and R. discussed on the phone where they would meet. I remember he told him that they would meet at A.M. and once he said that he was in hospital but the main thing is that the last time I remember he told him to meet at restaurant Garden near the roundabout.

So, I and G. went there and met R. there. G. asked him ‘Why are you swearing at me’ and R. said ‘I didn’t swear at you but at EULEX’ and then they started to discuss about the event when G. got wounded, and then G. asked him ‘are you willing to

²¹ Attachment nr. 11 to the request from G.G. dated 05.05.2016

²² Minutes main trial 19.05.2016 page 14

come and swear about that previous case and I need 24 elders, come with them and pledge and once and for all we will settle this issue'. But R. said 'I cannot do that because I cannot gather 24 elders because no one can come for me'. G. asked him 'Are you able to bring your uncle D. or B.', I don't remember the name but I know he spoke about R.'s uncle but also about R.'s brother. R. said 'my brother cannot come because I haven't spoken with him for 2 years' and he cursed his brother and his uncle as well. Then G. said 'Can you swear on your own, swear on Koran and then we will settle this issue once and for all'. R. said 'I cannot swear either on Koran or Mosque', and then insulted the holy book and the mosque as well. He said 'I can swear on my brother who got killed during the war; I can come and swear on my brother's children because only when I swear on these children I will speak the truth otherwise I will not tell the truth if I swear on mosque and holy book'. G. and I departed and got into the vehicle and N. and N. spoke with G., but I don't know what they talked about because I was not there and G. told them "Ok you don't have to talk to him because I already talked to him'. So finally we entered the vehicle and left. That is all, nothing more than that.

37. M.'s statement is corroborated by G.'s statement and partly by the statement of journalist N.S. (N.S. was not present at the meeting between R. and G.). On the other side, H.Sh., the [...] of R.SH., stated²³ that when R. returned home he told her that he had told G. "I swear on Koran or whatever you want", and they agreed to meet G. on 14.08.2014. It might be that R. told her this, but there are no other indications that confirm this. On the contrary, G.'s reaction on 04.08.2014 shows that R. was not willing to take the oath. This is also confirmed by the statement of S.M.. The Court finds it therefore most likely that the basic elements of the statement of M. are correct.

²³ Minutes main trial 01.06.2016 page 16 and H.Sh. 's statement to the prosecutor 10.11.2014 page 3 first paragraph, which was read in the hearing.

38. On 04.08.2014 around 13:00 hrs., in Pristina, G.G. met with among others the journalist N.S. and N.M., a former officer in Kosovo Intelligence service. They discussed R.'s reaction to the articles in Bota Sot and M. and Sh. told G. to be careful "because these are dangerous times for the people who have knowledge and to be careful for the sake of his life because he can easily be killed as his friends got killed"²⁴. The Court has no reason not to believe this and N.S., N.M. and G.G. all confirmed that the meeting took place.

39. **The documentary evidence** presented by G.G. also indicates that G.G. had reasons to fear for his life and supports the statements by the witnesses on the background. The Court has noted, that for instance the authenticity of the declaration from KLA, the response and of the SMS's are not confirmed. Further, information in video clips of TV interviews or in articles in newspaper cannot be controlled and the Court did not put any particular probative value into this evidence.

40. The Court has carefully assessed the **documentary evidence** presented by the prosecutor and some of them have been discussed above. The Court further found that especially the crime scene report, the photos of the crime scene, the autopsy report with photos, the ballistic expert report support the findings of the Court. The other documents presented by the prosecutor are either not relevant or they cannot be given particular probative value.

41. All in all G.G. 's perception of this long time life-threatening situation together with the warning he received just hours before the murder, had an obvious impact on his behaviour and reaction on R.'s greeting and swearing on the day of the murder. Further, G.G.'s personality, as described by the psychiatric experts, contributes to explain G.G.'s behaviour.

²⁴ Stated by N.M., minutes of main trial 17.05.2016 page 35

Legal classification

Count 1

42. G.G. deprived R.SH. of his life and hence committed the criminal offence of Murder as per Article 178 of the Criminal Code of Kosovo (CPC).

43. The act of depriving R.SH. of his life is a criminal offense since G.G. did not act in necessary defense. According to Article 12 paragraph (2) of the CPC an *“act is committed in necessary defense [and hence would not be a criminal offence as per Article Article 12 paragraph (1)] when a person commits the act to avert an unlawful, real and imminent attack against himself [...]”* The court does not find that R.SH. was about to really and imminently attack G.G. . As elaborated above no objective evidence established that R.SH. had a gun at the time of the shooting. The fact that R.SH. before the shooting started to push the table with his left hand while swearing to G.G. and then simultaneously began to raise up from his seat, pushing the table further with his left hand and directed at the same time his right hand towards his lap area on his right side cannot be qualified as a real and immanent attack. Sh.’s back pain and difficulty of moving, as described above, explain his hand movements.

44. G.G.’s liability for depriving R.SH.’s life is not excluded by a mistake of fact. According to Article 25 paragraph (1) CPC *“A person is not criminally liable if, at the time of committing a criminal offense, [...] he or she mistakenly believed that circumstances existed which, had they in fact existed, would have rendered the act permissible”*. As elaborated above, G.G. did not mistakenly believe that such circumstance in relation to the necessary defense existed. The Court is convinced that G.G. rationalized his action after he had the possibility to reflect the shooting, letting him believe retrospectively (ex-post) that he had seen a gun.

45. G.G.’s act depriving R.SH. ’s life is not to be qualified as an aggravated murder as no of the counts mentioned under Article 179 paragraph (1) CPC is pertinent; neither

count 1.5 since G.G. did not intentionally endanger the life of one or more persons while he deprived R.SH.'s life. As established, G.G. shot from a distance less than one meter directly towards R.SH..

46. Finally, the act of depriving R.SH.'s life by G.G. was not committed in severe mental distress in the terms of Article 180 CPC which states "*whoever deprives another person of his or her life while in a state of severe mental distress, caused through no fault of his or her own, by an attack, maltreatment or grave insult by the murdered person, shall be punished by imprisonment of one (1) to ten (10) years*". Although G.G. was at the time of the shooting in mental distress, this mental status was not caused by a grave insult without his own fault. G.G. approached R.SH. asking him if R.SH. : "Did you gather the elders to swear where you were on the 19.10?!". This question in front of the other persons at the table was taken as a provocation by R.SH., especially considering the above elaborated fact that G.G. requested R.SH. only a couple of days before to give an oath on this matter which R.SH. had refused.

Count 2

47. The Court found it proven that G.G. was in possession of the said pistol from the time he committed the murder until he turned himself in to the police and handed over the pistol. His possession of the weapon was in violation of the Law No. 03/L-143 on Weapon because he did not have a permit as required by the Law on Weapon. G.G. plead guilty for this Count and the Court accepted the guilty plea.

Count 3

48. The Court found that the criminal offence of Use of weapon or dangerous instrument, Article 375 paragraph 1, in this case is subsidiary to and consumed by the actual conviction of the criminal offence of Murder, Article 178, because the defendant is convicted of depriving R.SH. his life by the use of a pistol.

49. Basically, one single act can constitute two or more criminal offences, so-called ideal concurrence, if the criminal offences have mutual distinct material elements. One would ask if the offences have different elements; or if the provisions creating the offences protect different interests; or if it is necessary to conviction the defendant for both offences in order fully to describe what the accused did. The starting point of the analysis should be a comparison of the different elements of the crimes in order to determine reciprocal speciality. Further, the contextual elements should be considered as part of this analysis.
50. In any case, a possible conviction of two or more offences in ideal concurrence has to be assessed in the light of the principle of subsidiarity, (*lex primaria derogat legi subsidiariae*) and the principle of consumption (*lex consumens derogat legi consumptae*). The principle of subsidiarity will apply when a less authoritative or inferior criminalisation only applies when the competing superior criminalisation is not applicable. The principle of consumption refers to relationships between offences of the same kind, but of considerably different gravity, that are designed to protect the same or closely related social interests, but which differ in relation to particular elements.
51. In abstract, the use of weapon it is not a legal requirement of Article 178 of the CCK. Further, the criminalization of murder mainly protects individual interests while criminalization of the use of weapon without a permit mainly protects public interests. In our case, however, G.G. is charged with and convicted of Murder by using a weapon as the very instrument to deprive another person of his life. In this particular situation, the conviction of Murder will consume the use of weapon without a permit. Further, if the principle of consumption could not be applied, the Court finds that the principle of subsidiarity then could be applied in this particular case. The result will in any case be that G.G. only can be convicted under Article 178,

not under Article 375 paragraph (1) for the use of weapon in Skenderaj on 04.08.2014.

52. It should also be taken into consideration that the public interests of having a permit relating to weapon in this case is covered by the conviction of Count 2, which is partly applied in ideal and partly in real concurrence.

53. Further, to the knowledge of this Court, when a murder is committed by the use of weapon, it has been common practice by the Kosovo courts only to convict for Murder, not in addition for the use of weapon.

54. It is worth mentioning that whether Article 178 and 375 paragraph (1) is applied in ideal concurrence or not, does not have any substantial impact on the aggregated sentence, since the Court will consider the use of weapon to commit Murder as an aggravating circumstance.

Sentencing

55. The Court considers it an aggravating circumstance that the murder was committed using such a dangerous instrument as weapon. The murder does not qualify as aggravated murder as charged, however, even if the defendant did not endanger the life of other person(s), the Court puts some weight as an aggravating circumstance, that the murder happened in a public place.

56. Pursuant to Article 75 paragraph 1.3 and Article 76 of the CCK, the Court has taken into consideration, as a particular mitigating circumstance, the background that the defendant was in a state of severe mental distress when he shot R.SH. . The criminal offence of Article 180 shall be punished by imprisonment of one to ten years. Even though Article 180 of the CCK cannot be applied as established above – especially because his mental status was not caused by a grave insult without his own fault - there are some similarities. As the psychiatric expert's concluded in item 4., in which

the Court agrees, the defendant was *“in a state of aggravated mental affect/shock/- caused by the fear, affect accumulation knowing the course of the event, the course of his relationship with the deceased. The moment he saw the deceased in his mind overruled strong affect/emotion of fear, to escape or to strike, a situation in which a person is facing a delicate state of his life. In such a state he could not control, restrain his actions which resulted with commission of the criminal offence”*.

57. The Court therefore decided to impose a punishment for the committed Murder under the minimum of five years as stipulated in Article 178.

58. Pursuant to the provisions of Articles 374 paragraph (1), 45, 75 paragraph (1.3) and 76 of the CCK, G.G. is sentenced to 10 – ten – months of imprisonment for the said criminal offence under Count 2. The Court has taken into consideration as a mitigating circumstance that G. turned in his pistol to the police and pled guilty.

59. Pursuant to Article 80 paragraph (2.2) of the CCK, the Court imposed an AGGRAGATED punishment of 4 – four – years and 6 – six – months imprisonment.

60. The time he served in detention on remand from 22.08.2014 until 21.11.2014 and the time he served in house detention since 21.11.2014 until he was released by the Court’s ruling on 03.06.2016 - 1 year, 9 months and 12 days - is included in the punishment of imprisonment pursuant to Article 365 paragraph (1), subparagraph (1.5) of the CPC.

Confiscation

61. G.G. is under Count 2 convicted of unauthorized possession of weapon, and the pistol of the calibre 7.62 mm, M-57, semi automatic, with the serial number [...], Yugoslavian production, is confiscated in accordance with the CCK Article 374 paragraph (3).

Cost of proceedings

62. G.G. is convicted for the criminal offences of Murder (re-qualifying the charge of Aggravated Murder) and illegal possession of weapon. The Court rejected the charge under Count 3. The Court finds, according to the principle of the CPC Article 453 paragraph (2), that G.G. shall reimburse only part of the cost, in this case 1000 euros. The Court further finds that to impose full payment would jeopardize the support of the defendant's wife and children, given his family and economic situation.

Property claim

63. Pursuant to Article 463 of the CPC, the Injured Party H.Sh. is instructed that she may pursue her property claim in civil litigation.

The judgment with reasoning is issued on 14 June 2016

EULEX Presiding Judge

Vidar Stensland

Court recorder

Agron Kelmendi

LEGAL REMEDY: A defendant, their legal counsel, the prosecutor or an Injured Party may file an appeal against this judgment in accordance with Articles 380 paragraph (1) and 381 paragraph (1) of the CPC within fifteen (15) days from the day this judgement will be served. Any appeal must be filed with the Court of first instance under Article 388 paragraph (1) of the CPC.