

MUNICIPAL COURT OF MITROVICË/MITROVICA

P Nr. 63/09

29 December 2010

IN THE NAME OF THE PEOPLE

THE MUNICIPAL COURT OF MITROVICË/MITROVICA, EULEX Judge Caroline Charpentier as trial judge, with the participation of EULEX Legal Officer Zane Ratniece as recording officer, in the criminal case against:

G. M. and **S. M.**, both charged, according to the Summary Indictment PP Nr. 1400/09, dated 24 August 2009, and filed with the Registry of the Municipal Court of Mitrovicë/Mitrovica on 31 August 2009, with the criminal offences of damage to movable property, under Article 260 paragraph (1) of the Criminal Code of Kosovo (CCK), and with threat against official person, under Article 161 paragraph (4) of the CCK;

After having held the main trial hearings open to the public on 28 and 29 December 2010, all in the presence of the Accused **G. M.** and **S. M.**, EULEX Public Prosecutor Petr Klement, Injured Parties **A. D.**, **A. J.** and **M. B.** (except that at the hearing on 28 December 2010 **M. B.** was not present), pursuant to Article 473 paragraph (2) of the Criminal Procedure Code of Kosovo (CPCK) pronounced in public and in the presence of both Accused, the EULEX Public Prosecutor and the Injured Parties (except **M. B.** who chose to leave from the rest of the trial session on 29 December 2010), the following:

JUDGMENT

I.

G. M., son of **H. M.** and **M. J.**, born on , in Village of ; Kosovo A. , residing in Street ' , Village of , Municipality of , completed high school, driver, average income per month 150 Euro, married, with children;

Is

FOUND NOT GUILTY

- A) **because** it was not proven that **G. M.** on damaged or annihilated or rendered unusable the movable property of another person at a shop in the market in Street ' , in ;

THEREFORE, pursuant to Article 390 item 3) of the CPCK, **G. M.** is

ACQUITTED

Of the charge of committing the criminal offence of damage to movable property, under Article 260 paragraph (1) of the Provisional Criminal Code of Kosovo (PCCK);

Is

FOUND GUILTY

B) **because** on , at around hrs, at a shop in the market in Street ' , in , **G. M.** while all the time holding a claw hammer in his right hand verbally seriously threatened to harm the police officers A. D. and A. J. , who were on duty, by saying to the police officers that he would cut their heads off; and later, while being handcuffed, by saying to the police officer A. J. that he (A. J.) would see later who **G. M.** was, when A. J. would be in his civilian clothes; **G. M.** made these threats in order to cause anxiety to the police officers A. D. and A. J. ;

By doing so, the Accused **G. M.** committed and is criminally liable for the criminal offence of

Threat against official person, under Article 161 paragraph (4) of the PCCK.

The Accused **G. M.** is

SENTENCED

To three (3) months of imprisonment for the criminal offence of threat against official person.

Pursuant to Article 38 paragraph (3) of the PCCK, the punishment of three (3) months of imprisonment is replaced with a fine of 80 (eighty) Euros (EUR). **G. M.** shall pay the fine of 80 (eighty) Euros (EUR) within three (3) months from the date this Judgment becomes final.

If the fine cannot be collected by means of compulsion, the Court may replace the fine with community service work with the consent of **G. M.** . If no consent is given, the Court shall order a day of imprisonment for each 15 (fifteen) Euros (EUR) of the fine.

II.

The Accused **S. M.**, son of **H. M.** and **V. K.**, born on
, in Village of , Kosovo A. , residing in Street '
Municipality of , graduated in Law, unemployed, married, with
;

Is

FOUND NOT GUILTY

- A) **because** it was not proven that **S. M.** on damaged or annihilated or rendered unusable the movable property of another person at a shop in the market in Street '
, in ;

THEREFORE, pursuant to Article 390 item 3) of the CPCK, **S. M.** is

ACQUITTED

Of the charge of committing the criminal offence of damage to movable property, under Article 260 paragraph (1) of the Provisional Criminal Code of Kosovo (PCCK);

Is

FOUND NOT GUILTY

- B) **because** it was not proven that on , at a shop in the market in Street '
, in , **S. M.** seriously threatened to harm, in order to frighten or cause anxiety, the police officers **A D** and **A J** , who were performing their official duties, or any other police officers;

THEREFORE, pursuant to Article 390 item 3) of the CPCK, **S. M.** is

ACQUITTED

Of the charge of committing the criminal offence of threat against official person, under Article 161 paragraph (4) of the PCCK.

As the Court found the Accused **G. M.** guilty of threat against official person, under Article 161 paragraph (4) of the PCCK, **G. M.**, pursuant to Article 102 paragraph (2) of the CPCK, shall reimburse the costs of criminal proceedings related to the criminal offence of threat against official person, with the exception of the costs of

interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the Court when such data is obtained pursuant to Article 100 paragraph (2) of the CPK.

REASONING

A. Competence of the Court

On 31 August 2009, EULEX Public Prosecutor Maria Bamieh filed the Summary Indictment PP Nr. 1400/09 with the Municipal Court of Mitrovicë/Mitrovica. Even though the Summary Indictment PP Nr. 1400/09 was addressed to the Municipal Court of Mitrovicë/Mitrovica, in the Summary Indictment it was proposed that *'the main trial of this case be scheduled and held in the District Court of Mitrovicë/Mitrovica'*.¹ The Court considered the charges provided in the Summary Indictment against **G. M.** and **S. M.**, in particular the alleged criminal acts of:

- Damage to movable property, under Article 260 paragraph (1) of the Criminal Code of Kosovo (CCK); and
- Threat against official person, under Article 161 paragraph (4) of the Criminal Code of Kosovo (CCK).

In view of the said charges, the case fell within municipal court level since under Article 21 paragraph (1) of the CCK the municipal courts are competent to hear criminal cases involving charges punishable by a fine or by imprisonment of up to five years. The charge of damage to movable property, under Article 260 paragraph (1) of the CCK allows the imposition of a sentence of a fine or imprisonment of up to six months, and the charge of threat against official person, under Article 161 paragraph (4) of the CCK allows for the imposition of a sentence of imprisonment of three months to three years.

Furthermore, pursuant to Article 27 paragraph (1) of the CCK, territorial jurisdiction is proper with the court within whose territory the crime is alleged to have been committed. The Summary Indictment alleged that the criminal offences were committed in of

Therefore, the Municipal Court of Mitrovicë/Mitrovica had both, subject matter and territorial jurisdiction to hear the case.

On 02 August 2010, the President of the Assembly of EULEX Judges exercised her right to assign the case to EULEX Judges pursuant to Article 3.3 of the 'Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo'. The case was assigned to EULEX Judges in view of situation of Municipal Court of Mitrovicë/Mitrovica and to avoid miscarriage of justice.

¹ The Summary Indictment PP Nr. 1400/09 in the English Language

B. Applicable law

The Summary Indictment PP Nr. 1400/09 charged **G. M.** and **S. M.** according to the Criminal Code of Kosovo (CCK). The substantive law applicable to the case is the one in force at the time, when the criminal offence was committed. The Summary Indictment alleged that criminal offences were committed on . At that time the Code was titled the Provisional Criminal Code of Kosovo (PCCK). The Code was renamed the Criminal Code of Kosovo with effect from 06 January 2009, which is *after* the alleged commission of criminal offences. Therefore, the Court applied the PCCK.

C. Summary of evidence presented

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

- (1) A. D. – Injured Party, 28 December 2010
- (2) A. J. – Injured Party, 28 December 2010
- (3) F. G. – Witness, 28 December 2010
- (4) F. R. – Witness, 28 December 2010
- (5) Xh. J. – Witness, 28 December 2010
- (6) M. B. – Injured Party, 29 December 2010

The following documents were put forward to be used as evidence by the EULEX Public Prosecutor, and have been considered as read out based on agreement by the parties:

- (7) Interview of G. M. before Kosovo Police Service, , case number
- (8) Interview of S. M. before Kosovo Police Service, , case number
- (9) Interview of M. B. before Kosovo Police Service, , case number
- (10) Report of the police officer F. R. , , case number
- (11) Report of the police officers A. D. and A. J. , , case number
- (12) Official note, Investigation Unit, , case number
- (13) Case initiation report, , case number
- (14) Routing slip, UNMIK Department of Justice, (file number)
- (15) Report, Investigation Unit, *(no date)* case number

- (16) Case details, UNMIK Criminal Division, (file number)
- (17) Cover letter, Kosovo Police Service, , file number
- (18) Criminal charges, Investigation Unit, , reference number
- (19) Initial incident report, , case number
- (20) Agreement, number ,
- (21) Photographs,

During the main trial session of 28 December 2010, the Accused **G. M.** and **S. M.** gave their statements and answered the questions.

D. Evaluation of presented evidence

1. Factual findings

Upon the evidence presented during the course of the main trial, the Court considered the following facts as proven:

On , in the police officers A. D. and A. J. were instructed by their superiors to go to the market in Street ' , in . **G. M.** and **S. M.** were in a shop, in the market, removing wires and other items from the shop. **G. M.** previously had been told by the manager of the enterprise " , M. B. that he could remove his investments from the shop. At around hrs the police officers A. D. and A. J. arrived at the shop and asked **G. M.** and **S. M.** to stop removing the items. **G. M.** refused to comply with the said request of the police officers and by holding a claw hammer in his right hand verbally threatened the police officers A. D. and A. J. , also by saying that he would cut their heads off. Not feeling safe due to **G. M.**'s behaviour, the police officers asked their colleagues for support. In the meantime, while being handcuffed, **G. M.** threatened the police officer A. J. that A. J. would see who **G. M.** was, when A. J. would be in his civilian clothes. On the contrary, **S. M.** remained calm.

*2. Evidence concerning the damage to movable property by **G. M.** and **S. M.***

S. M. in the Interview before Kosovo Police Service, on stated that on , he had been asked by his uncle **G. M.** to help him to transport some items from **G. M.**'s shop in the market in

. At the main trial hearing on 28 December 2010 **S. M.** confirmed that **G. M.** had asked him to guard some items in the shop, as the market was being relocated. Also, **G. M.** had told that he owned these items. In the **Interview before Kosovo Police Service**, on , **G. M.** , stated that he had made investments in the shop and on he went to the shop to move some items, as the market was being relocated. **G. M.** confirmed that on he was removing items in the shop until he was interrupted by the police officers. This was corroborated by **S. M.** .

As a proof for his right to remove the items from the shop, **G. M.** presented the **Agreement**, number , signed with the enterprise ' ' on . Article 4 of the Agreement provided that '*contracting parties agree that if PE' ' is going to be privatized, then the lessee will take electric and water meters, and the doors of the shop as well*'. The Agreement was not contested or challenged by any of the parties.

The testimony of the Injured Party **M. B.** , former manager of the enterprise ' ' , heard as a witness at the main trial hearing on 29 December 2010, corroborated the declaration of the Accused **G. M. M. B.** confirmed that there had been a contract concluded on use of premises, he also confirmed that it was his signature on the Agreement, number . In particular, **M. B.** recognized that he had advised **G. M.** to come to his shop in order to collect everything he could before the complete destruction of the market. **M. B.** denied having suffered any damage from the action taken by **G. M.** and **S. M.** on the critical day.

From the evidence presented to the Court, nothing proved that the items removed by **G. M.** were not his property. Besides, there was no list of items unlawfully removed. Moreover, **M. B.** indicated that it was possible that other people could have removed some movable property from the shop of **G. M.** , before his arrival there, since the market was a total chaos at that time.

Therefore, due to lack of evidence, as per the ownership of the items removed by **G. M.** and **S. M.** and also as per the indefinite period of time when the items had been removed from the shop, the Court found that the conditions to find **G. M.** and **S. M.** guilty of damage to movable property, under article 260 (1) of the PCKK, were not fulfilled.

3. Evidence concerning the threat against official persons by **G. M.**

From testimonies of the two Injured Parties, police officers A. D. and A. J. and from testimonies of the witnesses, police officers F. G., F. R. and Xh. J. the Court found that, on , at around hrs, **G. M.** had a threatening behaviour towards the two police officers on duty, A. D. and A. J. and as such had caused them anxiety.

The threatening behaviour of **G. M.** towards police officers A. D. and A. J. was established by corroborating elements. First of all, the Court found that **G. M.** was under pressure on the critical day since he had been advised to remove his property from the shop, and, while removing some of the items, he was interrupted by the police officers. In the **Interview before Kosovo Police Service**, on , **G. M.** stated that he had resisted the police officers, and that he did not want to stop his work. **G. M.** also stated that he had told the police officers that if anybody hits him, will later face consequences. Also **S. M.** testified in the **Interview before Kosovo Police Service**, on , that **G. M.** had not respected the orders of the police officers. Further, according to the **Report** of the police officers A. D. and A. J. , , and also their testimonies at the main trial hearing on 28 December 2010, **G. M.** had insulted the police officers. It followed from the statements of the police officers that when they arrived at the scene they asked **G. M.** to stop his work at the shop. **G. M.** took a claw hammer in his right hand and verbally seriously threatened to harm the police officers, by saying such words as 'I will cut your heads off'. It caused such anxiety in the police officers that they asked for support from other colleagues. Following this request, police officers B. B., F. R., Xh. J. and F. G. joined the scene. This was also concluded from the **Report** of the police officer F. R. , , F. R.'s testimony at the main trial hearing on 28 December 2010, Xh. J.'s and F. G.'s testimonies at the main trial hearing on 28 December 2010. Further, the **Report** of the police officer F. R. , , corroborated testimonies of Injured Parties A. D. and A. J. , that even after the arrival of four police officers, **G. M.** kept insulting the police officers. At the main trial hearing on 28 December 2010, F. R. corroborated the Injured Parties' statement that, while being handcuffed, **G. M.** threatened the police officer A. J. that A. J. would see who **G. M.** was, when A. J. would be in his civilian clothes.

From all these elements, the Court found that conditions set forth in Article 161 paragraph (4) of the PCKK were fulfilled and therefore found **G. M.** guilty of threat against official person.

4. Evidence concerning the threat against official persons by **S. M.**

Concerning **S. M.**, there were no grounds in the evidence presented to the Court that would indicate that **S. M.** has committed the criminal offence provided for in Article 161 paragraph (4) of the PCCK. On the contrary, during the main trial it was testified by all Injured Parties and witnesses that **S. M.** had remained passive during the verbal exchange between **G. M.** and the police officers. Neither insult, nor threat from **S. M.** was indicated by the Injured Parties or witnesses. Moreover, it was underlined that **S. M.** came freely to the police station whereas **G. M.** was brought there handcuffed.

In view of all aforementioned, the Court found that it had not been proven that **S. M.** committed the charged criminal offence under Article 161 paragraph (4) of the PCCK and therefore he was acquitted of that charge pursuant to Article 390 item 3) of the CPCK.

E. Determination of punishment

As concluded above, the act of **G. M.** was qualified as threat against official person, under Article 161 paragraph (4) of the PCCK. Pursuant to Article 161 paragraph (4) of the PCCK the perpetrator for that criminal offence shall be punished by imprisonment of three (3) months to three (3) years.

a. According to Article 64 paragraph (1) of the PCCK, the Court in determining the punishment must take into consideration all the circumstances that are relevant to mitigation or aggravation of the punishment.

The Court considered as a mitigating circumstance the situation in which **G. M.** threatened the police officers **A. D.** and **A. J.**. In particular, **G. M.** on was removing items from a shop that was in his use for his private business activity until that time. There was no evidence presented during course of the main trial that his rights to use the shop for his private business activity had been disputed. **G. M.** had signed the Agreement, number , on the lease of the premises with the enterprise ' ' on behalf of his nephew **D. M.**. Article 2 of the Agreement stated that lessee had invested considerable material funds in repair of the shop. Further, Article 4 of the Agreement stated that in case of privatization of the enterprise ' ', the lessee would take the electric and water meters, and the doors of the shop. The Injured Party **M. B.**, a former manager of the enterprise ' ', at the main trial hearing on 29 December 2010, confirmed that around the time when the incident occurred he had advised **G. M.** to remove his investments from the shop. As it followed from the witnesses' testimonies, at that time the market was being demolished and the market was in a rather disorganized situation.

Therefore, when **G. M.** in these circumstances was requested by the police officers **A. D.** and **A. J.** to stop removing the items, it created a rather confusing situation for **G. M.** . Especially, because he had previously been advised to remove the items from the shop. Moreover, this happened in circumstances, where there was a risk that investments made in the shop could be looted, as the market was being demolished, and **G. M.** was trying to protect his claimed investments.

Further, the Court also assessed that even though **G. M.** made threats against the police officers, he afterwards surrendered to the police.

Based on the foregoing circumstances the Court determined that minimum punishment of three (3) months of imprisonment be imposed against **G. M.** . And, in view of the circumstances of the case, the Court substituted that punishment with the fine of 80 EUR, pursuant to Article 38 paragraph (3) of the PCCK.

b. According to Article 64 paragraph (1) of the PCCK, in determining the punishment of the criminal offence, the Court also took into consideration the purpose of the punishment.

The Court deemed that with the determined punishment, both the individual prevention task and general prevention task will be achieved.

G. M. made threats against the police officers **A. D.** and **A. J.** in response to their request to stop removing items, which, in particular circumstances, was confusing. In particular, that **G. M.** was convinced that he was entitled to remove the items, also as advised by **M. B.** . Nevertheless, the Court stresses that even in such circumstances the police officers may not be threatened, and the parties are to handle the situation in a peaceful manner. The police officers perform an important public service, in ensuring public order and safety, and also have the duty to protect the life, safety and property of all individuals and prevent dangers to the public. Therefore, the determined punishment is to deter **G. M.** from commission of such criminal offences in the future, and also to raise awareness for importance of functions of the police and that threats against police officers shall be punished accordingly.

F. Costs

A separate ruling on the amount of the costs shall be rendered by the Court when such data is obtained pursuant to Article 100 paragraph (2) of the CPCK. As the Court found the Accused **G. M.** guilty of threat against official person, under Article 161 paragraph (4) of the PCCK, **G. M.** , pursuant to Article 102 paragraph (2) of the CPCK, shall reimburse the costs of criminal proceedings related to the criminal

the criminal offence of threat against official person, with the exception of the costs of interpretation and translation.

Municipal Court of Mitrovicë/Mitrovica
P. nr. 63/2010

Prepared in English, an authorized language.

Recording Officer

Presiding Judge

Zane Ratniece
EULEX Legal Officer

Caroline Charpentier
EULEX Judge

Legal remedy:

Authorized persons may file an appeal in written form against this judgment through the Municipal Court of Mitrovicë/Mitrovica to the three-judge panel of the District Court of Mitrovicë/Mitrovica within eight days from the date the copy of the judgment has been served, pursuant to Article 473 paragraph (3) of the CPCK.