

DISTRICT COURT OF MITROVICË/A
P nr. 43/2010
25 May 2012

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICË/A, in the trial panel composed of EULEX Judge Roxana Comsa, acting as Presiding Judge, EULEX Judge Hajnalka Veronika Karpati and EULEX Judge Nuno Madureira as panel members, with the participation of EULEX Legal Officer Chiara Tagliani as Recording Officer in the criminal case against;

A. L., charged with the criminal offence of **Aggravated Murder** pursuant to Article 147 Items 3), 5) and 9) of the Criminal Code of Kosovo (CCK) and **Unauthorized Ownership Control Possession or Use of Weapons** pursuant to Article 328 Paragraph (2) of the CCK;

according to the Indictment of the District Public Prosecutor PP. 44/2010 dated 08 October 2010, filed with the Registry of the Mitrovicë/a District Court on 13 October 2010, and confirmed by the Ruling on Confirmation of the Indictment dated 24 November 2010;

after having held the Main Trial hearings in public on **17, 18, 21, 23 and 24 May 2012**, all in the presence of the Accused **A. L.**, his Defence Counsel M. H. and EULEX District Public Prosecutor Stefan Golfier, as well as in the presence of the Injured Party E. N. on 17 and 23 May 2012;

after having issued on 17 May 2012 a Ruling on Severance of Proceedings in relation to the charge of Light Bodily Harm (Article 153 Paragraph (1) of the CCK);

after the deliberation and voting held on 24 May 2012 and on 25 May 2012, pursuant to Article 392 paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), on 25 May 2012 it pronounces in public and in the presence of the Accused, his Defence Counsel and the EULEX Public Prosecutor the following:

JUDGMENT

The Accused **A. L.**, father's name..., mother's name ... and maiden name, born on ... in Village of ..., Municipality of Skenderaj/Sbrica, residing in Village ..., Municipality of Skenderaj/Sbrica, Kosovo Albanian, primary school completed, high economic school not completed, engaged, with no children,, of ... economic status, currently in detention on remand since 05.03.2010;

is

FOUND GUILTY

- **because** on 19 January 2010 around 10-10:30 he intentionally deprived A. N. of his life by shooting him seven times using a pistol TT caliber 7.62 X 25 mm in the “...” neighbourhood of Village ..., Municipality of Skenderaj/Sbrica.

By doing so, the Accused A. L. committed and is criminally liable for the criminal act of

- **Murder** in violation of Article 146 of the CCK – Count 1-

The Accused **A. L.** is also

FOUND GUILTY

- **because** on 19 January 2010 while committing the above criminal offence he used a Pistol which he had kept in possession for an unknown period of time and without any authorization.

By doing so, the Accused **A. L.** committed and is criminally liable for the criminal act of

- **Unauthorized Ownership, Control, Possession or Use of Weapons** in violation of Article 328 Paragraph (2) of the CCK – Count 2-

Therefore, the **Accused A. L.** is

SENTENCED

- to **ten** (10) years of imprisonment for the criminal act of Murder
- to **three** (3) years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons

The aggregate punishment is determined in **twelve (12) years of imprisonment.**

The time spent in detention on remand since 05 March 2010 is credited pursuant to Article 73 Paragraph (1) of the CCK.

The Accused **A. L.** shall reimburse a lump sum of five hundred (500) Euro as part of the costs of criminal proceedings and is relieved of the duty of reimbursing the remaining costs pursuant to Article 102 Paragraph (4) of the CPCK.

REASONING

A. PROCEDURAL BACKGROUND

1. On 13 October 2010 the District Public Prosecution Office of Mitrovicë/a filed the Indictment PPS nr. 44/2010 against the Accused with the respective Court for the charges of Aggravated Murder, pursuant to Article 147, Items 3), 5) and 9) of the CCK, Unauthorized Ownership Control Possession or Use of Weapons pursuant to Article 328 Paragraph (2) of the CCK, and Light Bodily Harm pursuant to Article 153 Paragraph (1) of the CCK.
2. The Indictment was confirmed by the ruling of the District Court of Mitrovicë/a dated 24 November 2010.
3. On 10 February 2011 the President of the Assembly of EULEX Judges allocated the respective case to the EULEX judges of the District Court of Mitrovicë/a in accordance with the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law nr. 03/L-035).
4. By a Ruling of the Presiding Judge issued on 17 May 2012, the Severance of Proceedings was ordered for the charge of Light Bodily Harm in relation to both the Defendant **A. L.** and the Defendant **J. B.**.
5. The Main Trial sessions were held on 17, 18, 21, 23 and 24 May 2012.
6. The verdict was announced on 25 May 2012.

B. COMPETENCE OF THE COURT

7. Under Article 23 Item 1) i) of the CPCK, district courts are competent to hear criminal cases involving charges for which the law prescribes the imposition of imprisonment of at least five years.
8. The Accused in the case at hand is charged with **Aggravated Murder** under Article 147 Items 3), 5) and 9) of the CCK and **Unauthorized Ownership Control Possession or Use of Weapons** under Article 328 Paragraph (2) of the CCK.
9. In relation to the charge of Aggravated Murder, Article 147, Items 3), 5) and 9), of the CCK states that: “A punishment of imprisonment of at least ten years or of long-term

imprisonment shall be imposed on any person who: 3) Deprives another person of his or her life in a cruel or deceitful way; 5) Deprives another person of his or her life while acting ruthlessly and violently; 9) Deprives another person of his or her life because of unscrupulous revenge or other base motives”.

10. In relation to the charge of Unauthorized Ownership Control Possession or Use of Weapons, Article 328 Paragraph (2) of the CCK states that: “Whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorization Card for that weapon shall be punished by a fine of up to 7.500 EUR or by imprisonment of one to eight years”.

11. Article 27 Paragraph (1) of the CPCK foresees the territorial jurisdiction of the District Court in the district where a crime has allegedly been committed. Based on the filed Indictment, the alleged criminal offences have taken place in K... neighborhood of Village and in the home residence of the Accused, namely the Village of K..., both situated in Municipality of Skenderaj/Srbica and therefore within the territorial jurisdiction of the District Court Mitrovicë/a.

12. Therefore, considering the sentence foreseen for the above charges and the district where the criminal offences have allegedly taken place, the Mitrovicë/a District Court is the competent judicial body to adjudicate this criminal case.

13. EULEX acquired competence over the case by the Decision of the President of the Assembly of EULEX Judges dated 10 February 2012 and in accordance with the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. (Law no. 03/L-053).

14. The Trial Panel was composed of EULEX Judge Roxana Comsa, acting as Presiding Judge, and EULEX Judge Hajnalka Veronika Karpati and EULEX Judge Nuno Madureira, acting as panel members.

15. None of the parties objected to the competence of the court or to the composition of the Trial Panel.

C. THE MAIN TRIAL

16. The Main Trial sessions were held on 17, 18, 21, 23 and 24 May 2012 and the verdict was announced on 25 May 2012 in the premises of the Mitrovicë/a District Courthouse. All sessions were open to the public and they were all held in the presence of the Accused **A. L.**, his Defence Counsel M. H. (with the exception of the morning session of 18 May 2012 when Mr. M. H. was replaced by D. C. B. Sh.) and the EULEX District Public Prosecutor Stefan Golfier.

17. During the Main Trial session of 17 May 2012, due to the absence from the country of the second Defendant, **J. B.**, and his impossibility to attend the proceedings, the Presiding Judge issued a Ruling severing proceedings against both Defendants in relation to the charge of Light Bodily Harm.

18. In accordance with Article 15 of the CPCK, international interpreters provided simultaneous interpretation throughout all court proceedings and all court documents relevant to the Trial were translated in both Albanian and English.

D. EVIDENCE PRESENTED DURING THE MAIN TRIAL

19. During the course of the Main Trial the following Witnesses were heard:

- E. N. (Witness called by the Prosecution and who also stayed in the trial in the capacity of Injured Party) and H. N. (Witness called by the Prosecution) were heard on 17 May 2012;
- H. L. (Witness called by the Prosecution) and L. L. (Witness called by the Prosecution) were heard on 18 May 2012;
- M. L. (Witness called by the Prosecution), O. L. (Witness called by the Prosecution), Merita Jashari Latifaj (Witness called by the Prosecution) and Xh. K. (Witness called by the Prosecution) were heard on 21 May 2012;
- A. K. (Witness called by the Prosecution), F. N. (Witness called by the Prosecution) and F. D. (Witness called by the Defence Counsel of **A. L.**) were heard on 23 May 2012. Furthermore, during the session of 23 May 2012 the Witness/Injured Party E. N. was heard for a second time.

20. On 23 May 2012, the following documents were accepted as evidence and read into record.

21. From Binder # 1 of the Prosecution's case file:

- The medical report, from Page 238 to 253, English and Albanian version;
- The ballistic report of expertise, from Page 256 to Page 265, English and Albanian version;
- The crime scene examination report, including photographs, from Page 271 to Page 284, English and Albanian version;
- The sketch at Page 291;
- The Photo Album, from Page 292 to Page 314;
- The vehicle examination report, from Page 315 to Page 318, English and Albanian version;
- Another Photo Album from Page 319 to Page 328;

- Forensic report, Page 332 and Page 333, English and Albanian version;
- Autopsy Report, from Page 334 to Page 336, English and Albanian version;
- The Photo Album related to the autopsy, Page 337 to Page 344;
- Two more sketches, Page 345 and Page 346;
- Another autopsy report, from Page 349 to Page 368, English and Albanian version;
- Further photographs from Page 369 to Page 377;
- Black and white photographs, Page 378 and Page 379;
- The Toxicology report, Page 380 and Page 381;
- Another expert opinion, from Page 382 to Page 392, English and Albanian version;
- The Forensic Identification report, from Page 393 to Page 396;
- Another photo album, from Page 397 to Page 399;
- The investigation report 210 BE/021, from Page 429 to page 434, English and Albanian version;
- The regional investigation report dated 29 June 2010, Page 441 and Page 442, English and Albanian version,;
- The information in the investigation report of 22 January 2010, Page 453 and Page 454, English and Albanian version;
- The officer's report of 19 January 2010, Page 457 of the English version and Page 458 of the Albanian version;
- The officer's report dated 19 January 2010, Page 459 and Page 460, English and Albanian version;
- The officer's report of the Drenas Police Station, from Page 461 to Page 464, English and Albanian version;
- Another Officer's report of the Police Station in Drenas, Page 457 and Page 458, English and Albanian version;

22. From Binder # 2 of the Prosecution's case file:

- Page 7 to Page 154;&
- Page 155 to Page 199;

23. The Court also considered as admissible evidence Pages 49 to Pages 235 of Binder # 1 of the Prosecution's case file, taking into account that during the hearing of 23 May 2012 the administration of this evidence was not disputed by any of the parties.

24. During the Main Trial session of 17 May 2012 after reading the Indictment, the Accused pleaded "not guilty" to the count of Aggravated Murder and "guilty" to the count of Unauthorized Ownership, Control, Possession or Use of Weapons.

25. During the Main Trial sessions of 23 and 24 May 2012, the Accused gave his statement and answered questions.

26. The evidentiary proceeding was concluded on 24 May 2012.

E. ANALYSIS OF THE EVIDENCE

E1. Summary of the presented evidence

27. The background of the alleged facts is the following: the victim, the late A. N., was married to E. N., the Defendant's sister, and they were both living in the family house of the Injured Party E. N.. On 16 January 2010 E. left the house, apparently without offering any explanation. The two families, the Defendant's and the victim's, conducted different inquiries and investigations for her search. During one such action, the Defendant repeatedly shot the victim with a pistol, causing his death.

28. A full list of evidence presented and rendered admissible in this criminal case is listed in the above section of this judgment. This evidence forms the basis for the Trial Panel's decision in this case. The vast majority of the said evidence concerns the charge of Aggravated Murder and only a smaller part of evidence relates to the other count of the Indictment, namely the charge of Unauthorized Ownership, Control, Possession or Use of Weapons.

29. With regard to the charge of Aggravated Murder, the Trial Panel has sought the testimony of a number of witnesses to determine the facts of the incident of 19 January 2010, which resulted in the death of A. N.. The Trial Panel has heard the testimony of eleven (11) witnesses altogether, whose testimony can be assorted into the following three categories:

- i.) persons present during the searches together with the Accused;
- ii.) persons close to the Accused or the victim who revealed background information related to E. N.'s disappearance and the critical day;
- iii.) expert witnesses: the medical doctor.

30. The witnesses' testimonies are briefly presented below.

i) Persons present during the searches together with the Accused

The testimony of the Witness and Injured Party E. N.¹

31. E. N. is the father of the late A. N.. In his testimony he confirmed that E. N. disappearance occurred on 16 January 2010. He also presented his recollection of the sequences of her search, up to the critical day when A. N. was murdered.

32. Based on his account, M. L., L. L., the Accused **A. L.** and also himself initiated the search for E. in the very evening of her disappearance, namely on 16 January 2010. On the following day he, together with his late son, reported the case to the police. They have continued the search on the following days, looking for E. in different places, such as the villages of M. and Q., but to no avail. As per their agreement, the witness together with the late A. N., the Accused **A. L.** and H. L. were supposed to meet up on 19 January 2010 at the school in Q., in order to make inquiries amongst the pupils for more information as to any potential leads.

¹ Page 6 to Page 27 of the Hearing Minutes of 17 May 2012, Court Binder P. 43/10, Volume I;

33. The Accused **A. L.** never reached the school, but contacted H. L. and A. N. asking them for a lift from Drenas. Consequently, on the critical day, at around 9-9:10 hours, the victim left to pick up the Accused. They drove together from Drenas towards the Accused's maternal uncle house in the Village of M. and the murder happened on the way.

34. The Witness received the tragic news of his son's death from his cousins F. and Sh.. They had obtained the news from F. N. who heard it from G. G.. The latter, at his turn, learnt it from the Defendant's brother, L. L., who was told directly by the Defendant over the phone. On 19 January 2010 the Witness was also told by G. G. that E. had died and that her body had been found hanging in the forest and had been eaten by dogs.

35. Based on the Witness's statement, during the searches, **A. L.** appeared to be nervous about his sister's disappearance and "withdrawn". Yet, he did not voice any accusation towards A., and the Witness did not at all suspect that the Defendant could be capable of murder. The relationships between the two families, the Defendant's and the victim's, had always been cordial prior to these events. Still, the Witness also stated that on the evening of 17 January 2010 his late son was threatened over the phone by M. L., one of E.'s brothers living in Germany.

36. On 22 June 2010 E. was found to be alive in a coffee bar in Prizren. Yet, the Witness stated that her family did not attempt to convey to him their condolences for the loss of his son, either directly or through any intermediaries.

*The testimony of the Witness H. L.*²

37. The Witness is the Defendant's paternal cousin. The Witness stated that he took part in the searches for E. on 18 January 2010 together with the Accused, E. N. and A. N.. The Witness maintained that at a certain point during the search Enver N. mentioned the rumour that some footsteps, possibly belonging to E., had been seen in the direction of the mountain.

38. Based on the Witness's statement, the Accused seemed stressed, but he never posed threats at the direction of the N. family and the Witness never noticed him carrying a weapon. He also mentioned that the relationships between the two families had always been good.

39. Then, on the morning of the critical day, while being at the school in the Village of Q., he confirmed having received a telephone call from the Defendant asking for E. N. and A. N. to pick him up in Drenas. He stated that around 9:30 hours he tried to call the Accused from his own number, namely 049 731 603, without however managing to get through. Later on he received a phone call from **A. L.** stating "you don't have to wait. It is all over. The girl is dead and there is no reason to look for her as they have found her body and her body is in Mitrovicë/a. The way they broke my heart, I broke theirs and

² Page 2 to Page 11 of the Hearing Minutes of 18 May 2012, Court Binder P. 43/10, Volume I;

killed their son and now E. and A. are together in another world. E. N. has been found dead”.

ii) Persons close to the Accused or the victim who revealed background information related to E.’s N. disappearance and the critical day

The testimony of the Witness H. N.³

40. The Witness is the late A. N.’s mother and the Injured Party’s wife. In her testimony the Witness confirmed that E. N. left their house and disappeared on 16 January 2010 and that M. L., L. L. and A. L. went to Nika’s house the same night. She denied having had any problems with E. prior to her disappearance and she stated that no blaming or accusations were ever addressed to her direction for E.’s disappearance. However, she did confirm what stated by the Injured Party, E. N., in relation to the threatening phone call received by the late A. N. from M. L., one of E.’s brothers living in Germany.

41. She stated having heard about the news of her son’s death on 19 January 2010 around 12h00 from S. N., one of E. N.’s cousin. She confirmed that her husband told her that the news was spread by F. N., who had heard it from G. G..

The testimony of the Witness F. N.⁴

42. The Witness is not related to the Defendant. He stated that he received the news about A. N.’s death from G. G. who had heard it from L. L., one of the Accused’s brothers. He confirmed having received the informative call at 11:45 hours. He subsequently informed Sh. and F. N. and asked them to go and pass the information to E. N..

The testimony of the Witness L. L.⁵

43. The Witness is the Defendant’s brother. He confirmed having received a phone call by E. N. in the evening of 16 January 2010 informing him of E.’s disappearance. He did not participate in the searches together with the Accused, E. N. and A. N., but he kept himself updated on their outcome via phone.

44. He stated that that the relationships between the two families had always been good. However, he further mentioned that during the days between E.’s disappearance up to the moment of A. N.’s murder, in the family they discussed about the difficult relationship between E. and H. N. The Witness added that he did not know that his brother A. L was in possession of a weapon.

³ Page 28 to Page 34 of the Hearing Minutes of 17 May 2012, Court Binder P. 43/10, Volume I;

⁴ Page 4 to Page 10 of the Hearing Minutes of 23 May 2012, Court Binder P. 43/10, Volume I;

⁵ Page 12 to Page 18 of the Hearing Minutes of 18 May 2012, Court Binder P. 43/10, Volume I;

45. On the critical day, on 19 January 2010, he stated having been called from an unknown number at around 10:15, by a person with a female voice and allegedly called Sh., informing him that E. was dead, that her body was in Mitrovicë/a and that it would be brought to their house later during the day. The phone call was received in the presence of G. G..

*The testimony of Witness M. L.*⁶

46. The Witness is the Defendant's brother. He stated that on the evening of 16 January 2010 E. N. called him to inform him about E.'s disappearance. Subsequently, he, together with L. L., went to the N.'s house in the Village of G., while the Accused only joined them later, since he had been involved in a traffic accident. On 19 January 2010, a police patrol came to the L.'s family house to search for A. L.. It was only at that point that, according to the Witness, the family learnt about E.'s disappearance.

47. The Witness mentioned that during the critical period the Accused always seemed calm and that no particular rumours were spread about E.'s disappearance apart from a dispute between her and H. N. concerning the cleaning of a balcony, which was mentioned to the Witness by E. N. the evening of 16 January 2010.

*The testimony of Witness O. L.*⁷

48. The Witness is the Defendant's brother. He lives in Germany and he was not present in Kosovo in the critical period. On 20 January 2010 he returned from Germany to Kosovo, after having being informed of his sister's disappearance and of the murder committed by his brother. He also stated that, based on what he heard after his return from Germany, he suspected H. N. in relation to his sister's disappearance. The Witness opined that the murder was not committed according to the Kanun, a set of traditional Albanian laws, but based on "mistaken reasons", thereby accidentally.

*The testimony of Witness M. L.*⁸

49. The Witness is the Defendant's sister. She maintained that her sister E. was going through a difficult time at the N.'s house. She also mentioned that E. had apparently been forced by H. N. to interrupt a pregnancy. She informed her mother and her brother A. in general terms about E.'s problems. She only informed her brother O. about some of the problems related to E.'s pregnancy and this happened before Osman returned to Kosovo from Germany, namely after E.'s disappearance but before A. N.'s murder.

⁶ Page 2 to Page 7 of the Hearing Minutes of 21 May 2012, Court Binder P. 43/10, Volume I;

⁷ Page 8 to Page 16 of the Hearing Minutes of 21 May 2012, Court Binder P. 43/10, Volume I;

⁸ Page 17 to Page 25 of the Hearing Minutes of 21 May 2012, Court Binder P. 43/10, Volume I;

50. She stated that the relationships between the two families had always been good. In this regard, the Witness retracted part of her statement given in front of the police on 23 April 2010⁹, namely when she mentioned that the Accused threatened A. over the phone by telling him ‘if she is alive she will be found, and if she is not alive, you will be in trouble’.

The testimonies of Witnesses Xh. K.¹⁰ and A. K.¹¹

51. Both Witnesses recalled the moment in which they found the car with inside the dead body of A. N..

52. The Witness Xh. K. stated that, in the morning of 19 January 2010, at around 11h00 he saw a stopped vehicle and when he got closer he recognized the dead body of A. N.. He then called the Police and waited for their arrival.

53. The Witness A. K. attended the crime scene after being called by some children. However, the Witness could not recall exactly at what time this happened, not even when being reminded of his statement given to the Police on 19 January 2010¹².

iii) Expert Witnesses: Medical Doctor

The testimony of the Expert, Doctor F. D.¹³

54. The Expert is a Neuropsychiatrist and he was the head of the expert team who examined the Accused. The doctor confirmed that the team did not exclude that the murder could have been committed in a state of distress. However, the doctor also stated that the fact that the Accused would have been affected by amnesia after having committed the crime is not a certain indicator of a condition of mental distress.

55. The Expert also mentioned that no dependences and no psychotic disorders were outlined after the examination of the Defendant. There were indicators that the Accused possessed an egocentric, possessive and fragile personality which made him subject to developing rapid reactions of distress.

56. The Expert entirely supported the conclusions of the medical report.¹⁴

E2. The statement of the Accused A. L.¹⁵

⁹ Page 127 to Page 136 of Binder # 1 of the Prosecution’s case file;

¹⁰ Page 25 to Page 26 of the Hearing Minutes of 21 May 2012, Court Binder P. 43/10, Volume I;

¹¹ Page 2 to Page 4 of the Hearing Minutes of 23 May 2012, Court Binder P. 43/10, Volume I;

¹² Page 214 to Page 219 of Binder # 1 of the Prosecution’s case file;

¹³ Page 13 to Page 19 of the Hearing Minutes of 23 May 2012, Court Binder P. 43/10, Volume I;

¹⁴ Page 238 to Page 253 of Binder # 1 of the Prosecution’s case file;

57. The Accused never denied having committed the murder. However, throughout the entire Trial he alleged having acted in a total state of mental shock.

58. He stated that he learnt about E.'s disappearance on the evening of 16 January 2010. In the very same evening he went to the N.'s family house. He arrived there with a delay, as he had been involved in a car accident. There he sat together with the Injured Party E. N. and the Witnesses M. L. and L. L.. They discussed the background of his sister's disappearance. He heard about some arguments between E. and her mother-in-law related to a balcony. Then, all the persons mentioned above agreed to proceed with organizing searches for E. in the following days.

59. The Accused participated in such searches on 17 January 2010 and on 18 January 2010 together with E. N. and A. N.. On Monday 18 January 2010 the Accused heard from E. N. that some footsteps had been found in the direction of the woods and the mountain. On the evening of 18 January 2010 he, H. L., E. N. and A. N. agreed to meet at the school of Q. Village the following morning to continue searching for his sister. Since the Accused, as a consequence of the incident of 16 January 2010, did not have any means of transportation to get there, on the morning of 19 January 2010 he called H. L. and the late A. N., asking to be picked up from Drenas at the tailor's school, opposite the F. Factory. A. N. went to pick him up at around 9h00-9:20. However, instead of heading back to the school in Q., they drove to the village of M., in a further attempt to find E. at her uncle's place.

60. It is during that drive that the incident happened. According to his testimony, the Defendant received a phone call while riding in the car, at around 10:30 hours. During that phone call, a female voice conveyed to him that he did not need to look for his sister any further, since she had been found hung in the mountain and her body had been eaten by dogs.

61. The Accused could not recall which SIM card he was using, nor was he able to give any indication about the number that called him. He underlined that his phone display was broken as a consequence of the car accident he had on 16 January 2010, one more reason for his impossibility of recognizing the number of the incoming call.

62. Due to the bad reception in the area, the Accused stepped out of the car for taking the call, while the victim, who was the driver, stayed inside.

63. The Accused stated that, due to the information received via phone he lost control and blanked out and the murder happened as a consequence of this loss of control. He could not give any concrete information as to how he killed the victim and he also added that he fainted after the shooting. He remembered speaking with H. L. shortly after the critical incident, but he could not recollect the exact content of the call.

¹⁵ Page 21 to Page 32 of the Hearing Minutes of 23 May 2012 & Page 1 to Page 5 of the Hearing Minutes of 24 May 2012, both documents in Court Binder P. 43/10, Volume I;

64. As soon as he regained control, he headed towards Mitrović/a and subsequently towards Hungary, feeling too ashamed for having killed a member of the family and, therefore, unwilling to return home.

65. The Accused admitted carrying a weapon with him at all times during the searches for E., namely a revolver TT. He stated that the reasons for that was the fact that they were searching for E. at all possible hours, also during the night, and that travelling during the night around the villages can be dangerous because of the presence of ‘masked persons’, namely robbers.

66. He could afford the trip towards Hungary as he was carrying 2000 Euro with him, since in those days he had the intention of buying presents for his bride-to-be, for her birthday, due on 15 January, and for their wedding scheduled in two weeks’ time.

67. The Accused entertained good relationships with the N.’s family, especially with Amir to whom he was very close.

E3. Evaluation of the Administered evidence

68. The Court had to establish what the proven facts are on the basis of the administered evidence submitted against the Accused **A. L.** for the criminal offence of Aggravated Murder, Article 147 Items 3), 5) and 9) of the CCK, and for the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons, Article 328 Paragraph (2) of the CCK, and also on the basis of the Accused’s guilty plea.

69. Upon the evidence presented and administered during the course of the Main Trial, the Court considered the following relevant facts as proven beyond reasonable doubt.

Evidence in relation to the charge of Aggravated Murder

70. It is undisputed that on the critical day the victim A. N. sustained multiple injuries which resulted in his death. The full autopsy performed on the deceased revealed nine injuries identified by the DFM Forensic Doctor as gunshot wounds, notably five on the anterior aspect of the body and other four on the posterior aspect of the body. The cause of death, as determined by the Forensic Medical Doctor, was “haemorrhage from multiple gunshot injuries”.¹⁶

71. The Trial Panel is fully aware that no weapon was found and there are no direct witnesses to the incident.

¹⁶ Autopsy report of 20 January 2010, Page 349 of Binder # 1 of the Prosecution’s case file

72. Yet, although the Accused could not describe the exact modality in which he committed the murder, he admitted to indeed having murdered the late A. N.. It was never disputed and it is, therefore, established beyond reasonable doubt that in the morning of 19 January 2010 at around 10-10:30, in the “K.” neighbourhood of Village M., Municipality of Skenderaj/Srbica, the Accused **A. L.** deprived the late A. N. of his life while they were together in the victim’s car Golf 2 type, dark blue in colour with plate no. 2.-KS-.5. Similarly, it is also proven beyond reasonable doubt that the victim was in the driver’s seat and he was shot from the direction of the right/passenger side of the car, as maintained by the Accused and by the evidence of the photo album. The administered photos also confirm what stated by the Accused, namely that at the critical moment the car was stopped, charged in the first gear and with the handbrake pulled up.¹⁷ Indeed, the Accused explicitly admitted all of the above in his statement. Moreover, there are no indications that a third party was involved and would have caused the injuries to the victim.

73. Therefore, based on the above, the Trial Panel concluded that it is proven beyond reasonable doubt that A. N. died as a result of the shots fired by the Accused.

74. The Trial Panel turned then to evaluate whether any of the aggravating factors as qualified by Items 3), 5) and 9) of Article 147 of the CCK are met in the case at hand.

75. To qualify as Aggravated Murder under Article 147 Item 3) of the CCK, the fact of depriving someone else of his/her life has to be executed “in a cruel or deceitful way”.

76. In this case, the Trial Panel considered that the elements of cruelty and deceitfulness could not be proven beyond reasonable doubt.

77. In the morning of 19 January 2010 the Accused found himself in Drenas without any means of transportation in order to reach the school of Q. where, as per their agreement, he was supposed to meet with H. L., E. N. and A. N.. The Court assessed this fact as credible, mainly in light of the fact that the Defendant’s car was not functional as a result of the accident of 16 January 2010.

78. Most relevant is the fact that the Accused put forward his request by initially calling H. L.. Through him, the Accused requested both E. N. and A. N. to pick him up. These circumstances are confirmed by the testimonies of both H. L. and E. N.. The latter did not join his son for the ride only because, by his own choice, he decided to stay behind in Q. and continue the search.

79. Therefore, it is ruled out that the Accused could have had in any way concocted, by requesting the lift, a deceitful scenario as to attracting the victim with the purpose of killing him.

¹⁷ Photo number 12 at page 299 of Binder # 1 of the Prosecution’s case file;

80. In relation to the element of cruelty, the following were assessed. Cruelty would imply the infliction of pain or suffering, which could not be proven in the case at hand. Cruelty by definition encompasses an abusive, atrocious, and inhumane treatment that would result in the brutal and unnecessary infliction of suffering upon a body or a mind. Notwithstanding the fact that the victim was shot several times, there are no traces of any specific type of inflicted cruel treatment and, subsequently, no signs of pitiless suffering perpetrated against the victim. In fact, as assessed in the Forensic Report above mentioned, all the injuries found on the body of the victim are attributable exclusively to gunshots.

81. The Trial Panel then assessed Item 5) of Article 147. To qualify as Aggravated Murder under Article 147 Item 5) of the CCK, the fact of depriving someone else of his/her life has to be executed “while acting ruthlessly and violently”. Any murder is in itself the culmination of a violent act. As mentioned above for the component of cruelty, also the specificity of violence and mercilessness could not be proven beyond reasonable doubt based on the administered evidence. In fact, based on the forensic and autopsy report, the victim died for an haemorrhage caused by the several shotguns and there were no other traces which would indicate that he was exposed to any other form of violence.

82. The Trial Panel then turned to evaluate Item 9) of Article 147. In order to qualify as Aggravated Murder under Article 147 Item 9) of the CCK, the fact of depriving someone else of his/her life has to be executed “because of unscrupulous revenge or other base motives”. In relation to this element, the Panel recognized that some sort of planning might have occurred.

83. The events originated from E.’s disappearance. This was most probably connected with certain dissatisfaction with her daily life within the N. family. Even if the exact reason of her departure cannot be established with certainty, it can be related, based on the testimonies of the Witnesses L. L., M. L., O. L. and M. L., as well as the testimony of the Accused, to the deteriorated relationship between E. and her mother-in-law, H. N.. However, it cannot be established with certainty that the L. family linked E.’s disappearance to a specific act or behavior of H. N.. In this respect, the Witness M. L. offered conflicting accounts. She initially stated that she never mentioned to any of the family members about E. being forced into an abortion. Only later she maintained that she partly revealed the information to her brother O. L..

84. There are no solid elements to establish with certainty that E.’s family planned to take revenge. There are indeed indications that the L.’s family could have suspected, even during the searches, that E. might be dead, as certain rumours circulated about footsteps leading into the woods. Yet, the testimonies of the Witnesses H. N., E. N. and H. L. are consistent in the direction that no concrete accusations or threats were ever addressed to the N.’s family. During the searches, the Defendant appeared generally composed and he did not raise suspicions, not even to the victim’s father, E. N..

85. It is indeed revealed by the Witnesses E. N. and H. N. that M. L. addressed certain threats to A. N. during a phone call. However, based on this mere aspect it cannot be established beyond reasonable doubt that the L.’s family planned the killing of A. N. out

of revenge. It is not unusual that in times of crisis such as those caused by a family member's disappearance, tensions would accumulate, conflicts would escalate and relationships would deteriorate. However, this is not necessarily followed by putting into practice a revenge plan.

86. Moreover, in relation to what might have triggered the Defendant's reaction of killing A. N., the Court considered the following. Bearing in mind that no eye witnesses were present at the critical moment, the Court could only rely on the evaluation of the telephone transcripts record¹⁸. It can, therefore, be proven that two calls were made by the Witness H. L. towards the phone of the Accused, one before the critical incident at 9:58 and one after the incident, at 10:39, as also stated by the Witness himself.

87. Due to the short duration of the first call and the fact that the Accused subsequently received lot of messages typical of an out-of-network situation, the Court found verified what stated by the Witness H. L., namely that around 10h00 he made a call to A. L., but he encountered a bad reception. Judging by its time, the second call would appear to be the call by which the Accused confessed the murder to the Witness.

88. In between the calls with the Witness H. L., the Accused received two more calls, one of 26 seconds at 10:21 and one of 13 seconds at 10:30 from a number whose owner could not be tracked and identified. When assessing the credibility of the Accused in relation to these received calls, the Court could neither rule out nor confirm the possibility that one of the two phone calls, particularly the 26 seconds phone call, could have been the call through which the Accused received the news of his sister's death.

89. Such uncertainty further substantiated the fact that the Court could not find established that the Accused already knew about the alleged death of his sister and had, consequently, planned the murder. This doubt and the presence of other possible and plausible alternative solutions had to be interpreted in the favour of the Accused, based on the principle of *in dubio pro reo*.

90. On the basis of this principle, the burden of proof incorporated in the Prosecution's obligation to prove a Defendant's guilt beyond reasonable doubt means that it must be established and proven that there are no other reasonable alternatives to the one demonstrated by the Prosecutor. As explained by the European Court of Human Rights (ECtHR) in the case of *Barberà, Messegué and Jabardo v Spain*, in relation to the right to a fair trial, Article 6 of the European Convention on Human Rights (ECHR),: "Paragraph 2 [of Article 6] embodies the principle of the presumption of innocence. It requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the Accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the Accused."¹⁹ Therefore, this principle is intrinsic to the right to be presumed innocent until proven guilty according to the law. Subsequently, based on the principle of *in dubio pro reo*, the Court, when

¹⁸ page 49 of Binder 2 # of the Prosecution's case file;

¹⁹ A 146 (1989); 11 EHRR 360 para 77 PC;

evaluating the facts and the evidence, must find in the favor of the Accused in case of doubt.

91. Similarly, based on interpreting the same principle, the fact that on the critical day the Accused was carrying a relatively large amount of money cannot be established as a certain indicator of any intention to abscond. In fact, the Accused had recently returned from abroad with the purpose of getting married. The fact that he intended to use the money in order to buy a present for his wife-to-be could represent a plausible explanation in Kosovo reality, not much accustomed to the system of banks and credit cards.

92. Therefore, none of the aggravating factors under Article 147 Item 3), 5) and 9) of the CCK could be established beyond reasonable doubt and the criminal offence could not be qualified as an Aggravated Murder.

93. Another crucial aspect pertaining to the legal qualification of this criminal offense and which was raised before the Trial Panel was that the Accused committed the murder in a state of mental distress and his action would therefore fall under Article 148 of the CCK.

94. One of the elements required by Article 148 of the CCK is that the Accused “deprives another person of his or her life in a state of mental distress after being brought, through no fault of his or her own, into a state of severe shock caused by an attack, maltreatment or grave insult **by the murdered person**”. In this case, it was neither claimed by the Defense nor supported by any administered evidence that the late A. N. acted in such a way as to trigger a state of shock and mental distress of the Accused. Therefore, the Trial Panel deemed unnecessary to further elaborate on whether it could have been established with certainty that a phone call received by the Accused would have prompted him to commit the murder, as claimed by the Defense.

95. Based on the above the Trial Panel concluded that the criminal offence cannot be qualified as a Murder in state of mental distress, as per Article 148 of the CCK.

96. It is, therefore, established beyond reasonable doubt that the Accused committed the criminal offence of Murder as qualified by Article 146 of the CCK.

In relation to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons

97. The Accused pleaded guilty to the Count of Unauthorized Ownership, Control, Possession or Use of Weapons. He admitted having carried with him the weapon, for which he never had any authorization, even the days before the critical day of 19 January 2010 and although, as mentioned above, the pistol was never found, he admitted having used the pistol TT calibre 7.62 X 25 mm to kill the late A. N..

98. Therefore, the Court considered this fact as proven beyond reasonable doubt.

F. LEGAL QUALIFICATION. Criminal Liability and Intent. Sentence imposed.

99. According to Article 2 Paragraph (1) of the CCK: “The law in effect at the time a criminal offence was committed shall be applied to the perpetrator”. The Accused committed the murder of A. N. on 19 January 2010 when the applicable law was the Criminal Code of Kosovo, which entered into force on 06 April 2004 under the name of Provisional Criminal Code of Kosovo. That was amended on 06 November 2008 merely by changing its name to Criminal Code of Kosovo. No subsequent legislative changes have occurred which would be more favourable to the Accused, pursuant to Article 2 Paragraph (2) of the CCK.

100. The Trial Panel found that the Accused committed the criminal offence of Murder as incriminated by Article 146 of the CCK. All elements of the said criminal offence are established, as elaborated above.

101. The Trial Panel then turned to evaluate whether the subjective elements (so called *mens rea*) of the Accused are established.

102. Pursuant to Article 11 Paragraph (1) of the CCK, a person is criminally liable if he or she is mentally competent and has been found guilty of the commission of a criminal offence. Pursuant to the same provision, a person is guilty of the commission of a criminal offence when he or she commits a criminal offence intentionally or negligently.

103. Three are, therefore, the elements to be considered: the commission of the criminal offence, the mental capability of the person and the intent to commit or the negligence in committing such criminal offence.

104. Firstly, it was established that the Accused committed the criminal offence of Murder under Article 146 of the CCK, as elaborated in chapter D.

105. Secondly, there is no doubt as to the fact that the Accused was fully mentally competent when he committed the offence. The psychological report²⁰ supports this conclusion and nothing in the case-file suggests otherwise and no such challenge has been raised by the Defence.

106. Thirdly, the Accused, when committing the crime, acted with intent. Article 15 of the CCK, when describing the notion of intent, states that: “(1) A criminal offence may be committed with direct or eventual intent. (2) A person acts with direct intent when he or she is aware of his or her act and desires its commission. (3) A person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrence”.

107. The Accused used a pistol to kill the victim. He repeatedly fired towards him from a remarkably short distance, which is indicative of his intention to deprive the victim of his life. The Trial Panel also took note of the Accused’s behaviour immediately after the

²⁰ Page 238 to Page 253 of Binder # 1 of the Prosecution’s case file;

attack, when he confessed the murder to the Witness H. L. by stating “You don’t have to wait. It is all over. The girl is dead and there is no reason to look for her as they have found her body and her body is in Mitrovicë/a. The way they broke my heart, I broke theirs and killed their son and now E. and A. are together in another world. E. N. has been found dead”²¹.

108. Accordingly, the Trial Panel found the Accused criminally liable for committing the criminal offence of Murder in violation of Article 146 of the CCK. The Accused committed the offence with direct intent.

109. Similarly, the Trial Panel found that all the elements of the criminal offence of Unauthorized Ownership Control Possession or Use of Weapons under Article 328 Paragraph (2) of the CCK are met. Namely the Accused killed the victim using a weapon, concretely a pistol TT calibre 7.62 X 25 mm, for which he did not possess a valid Weapon Authorization Card.

110. Likewise the above mentioned, in relation to this second charge there is no doubt as to the mental stability of the Accused. Furthermore, the Accused committed this offence with direct intent. The Accused clearly knew that possession and/or ownership of a firearm requires a valid permit in order to be lawful. He revealed in his statement that he did not report his sister’s disappearance himself precisely because he did not want to step into the Police station carrying a gun.

111. Accordingly, the Trial Panel has found the Accused criminally liable for committing the criminal offence of Unauthorized Ownership Control Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the CCK. The Accused committed the offence with direct intent.

112. When imposing the criminal sanction, the Court had to consider both the general purpose of punishment, namely to suppress socially dangerous activities by deterring others from committing similar criminal acts, and the specific purpose, that is to prevent the offender from re-offending. According to Article 34 of the CCK: “The purposes of punishment are: 1) to prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator; and 2) to deter other persons from committing criminal offences”. Bearing this in mind, the Trial Panel decided to apply the imposed sentence.

113. According to Article 64 of the CCK: “The Court shall determine the punishment of a criminal offence within the limits provided for by law for such criminal offence, taking into consideration the purpose of the punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment (*mitigating and aggravating circumstances*) and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his or her

²¹ See Page 8 above;

behaviour after committing a criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender”.

114. For the criminal offence of Murder, Article 146 of the CCK foresees a punishment of imprisonment of at least five years.

115. For the criminal offence of Unauthorized Ownership Control Possession or Use of Weapons, Article 328 Paragraph (2) of the CCK foresees a punishment of imprisonment of a fine of up to 7.500 EUR or imprisonment of one to eight years.

116. As aggravating circumstances in relation to the Murder charge, the Trial Panel considered the fact that the Defendant fled the country immediately after committing the crime and was retrieved only by the means of an extradition warrant. Furthermore, the Court considered that the murder of an in-law and friend as a way of settling inter-family misunderstandings and disputes cannot be tolerated and it is a grave case of criminal act, which should be punished accordingly and should serve as a deterrent message for the entire society. Furthermore, by directing his attack in such a sudden and surprising way, from such a short distance and using such a precise and efficient weapon, the Defendant offered absolutely no chance to the victim to explain, to defend himself or to react in any way.

117. As aggravating circumstances in relation to the charge of Unauthorized Ownership Control Possession or Use of Weapons, the Trial Panel considered that the unauthorized carrying of a weapon is a criminal act which in a society like Kosovo represents an increased danger, due to the facts that there is a constant high risk that any kind of dispute, let it be between neighbours or within a family, might escalate easily and the act of grabbing and making use of an unlawfully possessed weapon can lead to grievous and irreversible consequences. The Trial Panel considered that, had the Defendant not been in possession of the weapon, the incident claiming the young life of **A. L.** could not have occurred. Therefore, the punishment applied is meant as a strong deterrence from such actions that, unfortunately, are still common practice in the Kosovo society.

118. As general mitigating circumstances, the Panel considered the fact that the Accused has no previous criminal record, that during the Main Trial he admitted to committing the murder and he expressed his regrets, and the fact that he pleaded guilty to the charge of unlawful possession and use of weapon.

119. Considering and balancing all the aggravating and mitigating circumstances, and, at the same time, bearing in mind the general purpose of the punishment, the Panel considered as a just sentence the imposition of 10 years of imprisonment for the criminal offence of Murder and 3 years of imprisonment for the criminal offence of Unauthorized Ownership Control Possession or Use of Weapons.

120. Pursuant to the rules of calculation of compounded sentence pursuant to Article 71 of the CCK, the aggregate punishment must be higher than each individual punishment,

but not as high as the sum of the prescribed punishments. Therefore, the Panel imposed 12 years of imprisonment as aggregate punishment.

121. The time spent in detention on remand since 05 March 2010 was credited pursuant to Article 73 Paragraph (1) of the CCK.

G. COSTS OF PROCEEDINGS

120. The Court found the Accused **A. L.** guilty and pursuant to Article 102 of the CPCK he must reimburse the costs of criminal proceedings. Considering the number of hearings held and the economic conditions of the Accused, pursuant to Article 102 Paragraph (4) of the CPCK the Court decided that the Accused shall reimburse a lump sum of five hundred (500) Euro as part of the costs of criminal proceedings and is relieved of the duty of reimbursing the remainder of the costs.

H. PROPERTY CLAIM

121. The Trial Panel took note that the Injured Party did not submit any claim for compensation during the Trial and that he was instructed that, pursuant to Article 112 Paragraph (2) of the CPCK, he may pursue claims for compensation in civil litigation.

**District Court of Mitrovicë/a
P. nr. 43/2010**

Roxana Comsa
Presiding Judge

Hajnalka Veronika Karpati
Panel Member

Nuno Madureira
Panel Member

Chiara Tagliani
Recording Officer

Legal remedy:

Authorized persons may file an appeal in written form against this judgment to the Supreme Court of Kosovo through the District Court of Mitrovicë/a within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398 Paragraph (1) of the CPCK.