

DISTRICT COURT OF MITROVICË/MITROVICA
P. Nr. 29/2011
11 October 2012

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICË/MITROVICA, in the trial panel composed of EULEX Judge Hajnalka Veronika Karpati, as presiding judge, EULEX Judges Nikolay Entchev and Nuno de Madureira as panel members, with the participation of EULEX Legal Officer Chiara Tagliani, as recording officer, in the criminal case against:

F.T. /H./ charged with Aggravated Murder under Article 147 Items 2), 3) and 9) of the Criminal Code of Kosovo (CCK), according to the Indictment of the District Public Prosecutor PP nr. 149/11, dated and filed on 08 August 2011,

After having held the main trial hearings open to the public on 08, 09, 10 and 11 October 2012, in the presence of the Accused F. H., his Defence Counsel Kapllan Baruti, EULEX Public Prosecutor Philippe Bauduin, and the Injured Party R.C., representing the family of the victim S.C.;

After the trial panel's deliberation and voting held on 11 October 2012, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), on 11 October 2012 pronounced in public and in the presence of the Accused, his Defence Counsel, EULEX Public Prosecutor and the Injured Party the following:

JUDGMENT

The Accused **F.T. /H./**, father's name T. T., mother's name A., maiden name G., born on 17.08.1978 (02.03.1978) in the village of Buroja, Municipality of Skenderaj/Srbica, residing in the village of Buroja, Kosovo Albanian, widow, with no children, of poor economic status, convicted and served the sentence of 5 years and 6 months of imprisonment for the criminal act of Grave Cases of Burglary and Robbery pursuant to Article 138 Paragraph (1) of the Criminal Law of Kosovo (CLK) in conjunction with Article 22 of the CCY (Criminal Code of Yugoslavia) imposed upon him with the final judgment in the case P.Nr.146/04 of the District Court of Mitrovicë/a on 22.06.2005, in detention on remand since 01.12. 2010;

is

FOUND GUILTY

Because on 30 November 2010 at some time between 20:30-23:00 hours in his house in Buroja village, Municipality of Skenderaj/Srbica, he intentionally deprived of her life his wife, S.C., while being aware of her pregnancy. The accused, out of jealousy, assaulted S.C. by beating her with his hands, with the metal part of his strap, and with a metal stick during several minutes, punching and hitting her several times on her hands, arms, chest, breasts, face, neck, head, back and other parts of the body, causing her strong pains and prolonged suffering. As a result of these injuries S.C. died on the spot.

By doing so, F.T. /H./ committed and is criminally liable for the criminal act of Aggravated Murder in violation of Article 147 Items 2) 3) 5) and 9) of the CCK.

THEREFORE, the accused F.T. /H./ is

SENTENCED

to a long term imprisonment of **22 (twenty two) years** for the criminal act of Aggravated Murder pursuant to Article 37 Paragraphs (1) and (2) and Article 147 of the CCK.

The time spent in detention on remand since 01 December 2010 is to be credited pursuant to Article 73 Paragraphs (1) and (4) of the CCK.

The metal stick is hereby confiscated pursuant to Article 60 Paragraph (1) of the CCK. The mobile phone "Phone 32 GB" and the mobile phone Sony Ericson shall be returned to the accused F.T. /H./

The injured party R.C. may pursue his property claim in civil litigation pursuant to Article 112 Paragraph (2) of the CPCK.

The accused shall reimburse 200 (two hundred) Euro as part of the costs of criminal proceedings but he is relieved of the duty to reimburse the rest of the costs pursuant to Article 102 Paragraphs (1) and (4) of the CPCK.

REASONING

A. PROCEDURAL BACKGROUND

1. On 08 August 2011 the District Public Prosecution Office of Mitrovicë/a filed the Indictment PPS nr. 149/11 against the Accused with the District Court of Mitrovicë/a for the charge of Aggravated Murder, pursuant to Article 147, Items 2), 3) and 9) of the CCK. On 16 August 2011 the Indictment was confirmed by the ruling of the District Court of Mitrovicë/a.
2. On 22 June 2012 the President of the Assembly of EULEX Judges allocated the 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).
3. The Main Trial sessions were held on 08, 09, 10 and 11 October 2012. During the Main Trial session of 08 October 2012 the data of the Accused was checked and a discrepancy was found between his surname and the one of his father. The Prosecutor provided the Panel with the Accused birth certificate where the Accused surname was reported as being 'T.' and not 'H.'. After hearing the parties' opinion, the Panel amended the data of the Accused from F. H. into F.T. (H.).
4. The verdict was announced on 11 October 2012.

B. COMPETENCE OF THE COURT

5. 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.
6. The Accused in the case at hand is charged with **Aggravated Murder** under Article 147 Items 2), 3) and 9) of the CCK. Article 147 Item 2) states that: "A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed on any person who deprives a female person of her life knowing that she is pregnant". Article 147 Item 3) states that: "A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed on any person who deprives another person of his or her life in a cruel or deceitful way". Article 147 Item 9) states that: A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed on any person who deprives another person of his or her life because of unscrupulous revenge or other base motives".

7. Therefore, considering the sentence foreseen for the above charges the Mitrovicë/a District Court is the competent judicial body to adjudicate this criminal case.

8. 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 offence has taken place in the village of Buroja, Municipality of Skenderaj/Srbica and, therefore, within the territorial jurisdiction of the District Court of Mitrovicë/a.

9. As mentioned above, EULEX acquired competence over the case by the Decision of the President of the Assembly of EULEX Judges dated 22 June 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).

10. The Trial Panel was composed of EULEX Judge Hajnalka Veronika Karpati, acting as Presiding Judge, EULEX Judge Nikolay Entchev and EULEX Judge Nuno Madureira, acting as panel members. None of the parties objected to the competence of the court or to the composition of the Trial Panel.

C. THE MAIN TRIAL

11. The Main Trial sessions were held on 08, 09, 10 and 11 October 2012 and the verdict was announced on 11 October 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 F.T. (H.), his Defence Counsel Kapllan Baruti, the Injured Party R.C. and the EULEX District Public Prosecutor Philippe Bauduin.

12. 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

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

- M.T. and H.T. (Witnesses called by the Prosecution) were heard on 09 October 2012.

14. On 10 October 2012, the following documents were accepted as evidence and read into record. From the Prosecution Binder 1/1:

- The suspect examination record, pages 25-28, English and Albanian version;
- The Minutes of Defendant's Interrogation of 03 March 2011, pages 29-35, English and Albanian version;
- The Minutes of interrogation of the Witness M.T. of 01 December 2010, pages 36-41, English and Albanian version;
- The Minutes of Interrogation of the Witness M.T. of 03 December 2010, pages 42-47, English and Albanian version;
- The record on the hearing of the Witness M.T., of 20 January 2011, pages 48-51, English and Albanian version;
- The Minutes on Interrogation of the Witness H.T. of 03 December 2010, pages 52-55, English and Albanian version;
- The Record on the hearing of the Witness H.T. of 20 January 2011, pages 56-59, English and Albanian version;
- The report on the health state of F. H., of 02 June 2011, pages 62-77, English and Albanian version;
- The Autopsy Report, of 02 December 2010, pages 78-89, English and Albanian version;
- The Autopsy Report along with photos of forensic unit, of 02 December 2010, pages 90-107, English and Albanian version;
- The Medical Report of the Doctor F. A., pages 108-109, protocol number 5986, English and Albanian version;
- Criminal charge by Kosovo Police investigator F. G., case number 2010-BI-442, of 01 December 2010, pages 110-113, English and Albanian version;
- The Initial Incident Report, of 01 December 2010, pages 114-119, English and Albanian version;
- The Report of Officer S. J. of 01 December 2010, pages 120-121, English and Albanian version;
- The Content of the forensic file, pages 126-127, English and Albanian version;
- The investigation report by E. S. of 01 December 2010, pages 128-129 English and Albanian version;
- The Crime scene examination report by B. M. of 01 December 2010, pages 130-132, English and Albanian version;
- The Photo Album, pages 133-138;
- The content of forensic file, pages 139-140, English and Albanian version;
- The Forensic Examination Report by Police Sergeant P. F., of 01 December 2010, pages 141-144, English and Albanian version;
- The list of evidence dated 01 December 2010, pages 145-147, English and Albanian version;
- The Photo Album dated 01 December 2010, pages 148-187;
- The chart of measurement of the crime scene, pages 188-189, English and Albanian version;
- The copy of the ID card of the victim, page 190;
- The Photograph of the suspect, page 191;
- The Minutes of the detention hearing of the Defendant F. H., of 02 December 2010, pages 202-207, English and Albanian version.

15. The Court also considered as admissible and relevant evidence the Report of the Officer F. P., pages 122-123, English and Albanian version.

16. The Court did not adduce as evidence the following documents, because it considered them as procedural acts:

- The Ruling on Initiation of Investigation, pages 23-24, English and Albanian version; and
- The Order of the Pre-Trial judge, pages 60-61, English and Albanian version.

17. The Court also did not adduce and it did not consider as relevant evidence the Report of the Officer F. G., pages 124-125 English and Albanian version, as it contained only the names of Witnesses to be questioned.

18. Finally, the Court did not adduce as evidence the Rulings on Imposing Disciplinary Punishment, pages 213-220 English and Albanian version, since it assessed that these documents do not give information in connection with the criminal charge. However, the Panel retained the possibility of taking into consideration these documents when discussing the sentence.

19. During the Main Trial session of 08 October 2012, after reading the Indictment, the Accused pleaded “not guilty” to the count of Aggravated Murder as per Article 147 Items 2), 3) and 9) of the CCK.

20. During the Main Trial sessions of 10 October 2012, the Accused gave his statement and answered questions. During the same session, the Injured Party gave a comment on the statement of the Defendant.

21. The evidentiary proceeding was concluded on 10 October 2012.

E. ANALYSIS OF THE EVIDENCE

E1. Summary of the presented evidence

22. The background of the alleged facts is the following. On the critical day of 30 November 2010 the victim and the Accused were at her family house in the village of Koretin, Municipality of Kamenica, where they had been spending time with the victim’s family. When the time arrived to head back to the couple’s marital house in the village of Buroja, in the Municipality of Skenderaj/Srbica, the victim was noticed by the Accused talking at the phone. When asked by the Accused with whom she had been having a phone conversation, the victim named M., a friend of hers. Once they reached their house in Buroja in the evening hours of 30 November 2010, the Accused attacked the victim in an attempt to find out the name of the person with whom she had been previously talking

at the phone, since he did not believe her. As a consequence of such attacks the victim sustained multiple injuries and died. The victim was six month pregnant.

23. 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 Trial Panel has assessed the testimony of the two Witnesses, the statement of the Injured Party and the statement of the Defendant.

The testimony of M.T.

24. The Witness M.T. is the niece of the Accused. She stated that, on the critical night, she was asleep when the Accused went to ask for her help around 11 o'clock. She then went with him to his house and she saw the body of the late S.C.. She did not touch the body, but at the same she noticed that the victim was not giving any sign of being alive. The room was quite dark and the Witness could see bruises only on the face of the victim, since the rest of the body was covered.

25. Although her house was in the same yard of the Accused house, the Witness stated that she did not hear any noise coming from that house during the critical time.

26. She mentioned that, apart from twice when she shortly left the crime scene because she was afraid of staying there any longer, she stayed with the Defendant in the same room with the victim from 11 p.m. until 2 a.m.. She stated that around 2 a.m. she returned to her house again, using the excuse that her father was calling her. At that point, also the Accused went to her house and called her father. When her father arrived at the critical scene he touched the victim's hand and he saw that she was dead. Only at that time the police was called.

27. The Witness indicated that during the time she spent with the Accused he felt guilty and sorry for what he had just done. He cried, he stated that he had done a mistake and that he did not know he was going to kill his wife and that he did not know how he was going to take the prison.

28. She stated that the relationships between the two seemed fine, but when addressed with questions by the Panel she confirmed what previously reported in her statement given to the police¹, thereby affirming that she saw the Accused beating his wife up several times and she had even prevented him from beating her twice.

¹ See Minutes on Witness Interrogation, pages 42-47 of the Prosecution Binder 1/1;

The testimony of H.T.

29. The Witness is the brother of the Accused. He corroborated what stated by the Witness M., namely that in the critical night he was called by his brother to inform him that he had harshly beaten S..

30. The Witness then described what he saw at the critical place. He mentioned that the victim had a short sleeve shirt and, therefore, he could clearly see the injuries present on her body. Namely, he could see injuries on the upper part of both shoulders, on her sides and on her neck. He, therefore, understood that the victim was dead and that there was no need any more to call a doctor.

31. Concerning the Accused behaviour, the Witness mentioned that the Accused was nervous and he cried during the entire period until the arrival of the police. He did not ask the Accused the reason for what he did and the Accused himself did not say anything in that regard. The Witness mentioned that the Accused simply kept on saying "What have I done, what have I done".

32. The Witness asserted that the Accused told him that he had used a metal bar against the victim, a bar which the Witness himself saw when he entered the critical place, lying near the stove. The Witness mentioned that this bar is a tool normally used for the stove. He identified this bar with one of the pictures shown to him².

33. The Witness further stated that the marital relationship deteriorated immediately after the couple got married. Often the Accused would not allow the victim to visit him, although they were living within the same yard, in a distance of 30 meters. Further, the Accused had often been violent and was beating the victim.

34. Notwithstanding the short distance between the two houses he stated not to have heard any noise coming during the critical night from the crime scene.

The statement of the Accused F.T. (H.)

35. The Accused stated that he had been married to the victim for ten months before the critical time. Describing the relationship, he admitted having slapped the victim several times when she was doing something wrong, like in case of 'lack of obedience'. He asserted that his wife could speak with her relatives, but she was not allowed to speak with unknown persons.

36. Concerning the reason why he started attacking his wife during the critical night, he stated that it all commenced because of a phone call received by the victim previously on that day, when they were still in the village of Koretin, Municipality of Kamenica, visiting her family. The Accused mentioned that at that time he posed questions to the

² Picture number 13, page 163 of the Prosecution Binder 1/1;

victim inquiring into the source and nature of the received phone call and she explained to him that she was talking with a friend of hers, namely a girl called M., also residing in the village of Koretin. However, the Accused stated that he did not believe her and he thought, instead, that she had been speaking with a male person. Once they reached their family house back in the village of Buroja, Municipality of Skenderaj/Srbica, he started hitting the victim with the intention to have her revealing the real name of the person she had been speaking with.

37. The Accused then described what he recalled of the critical moment. He asserted having beaten the victim with his hands and with the metal part of his belt. However, he could not recall how many times he beat her and what part of the body specifically he hit. He also could not recall in what position they were standing when the beating took place. With regard to the length of the attacks, he could not describe for how long exactly the beating went on, but he stated that it approximately lasted for five minutes. He further added that during the beating he took breaks, asking the victim again and again the name of the person she had been speaking at the phone with, but he was never satisfied with the answer given by his wife, namely that she had been talking to M. and that she was not cheating on him.

38. He stated that the fatal attack was when he hit her with his fist behind her neck, following which she died within a couple of minutes. However, he asserted that at that point he did not take any action like calling the relatives or an ambulance, because he thought that maybe she was still alive, but just asleep. He stated having changed her stained clothes after killing her, in order for her to be clean, and to have thrown them somewhere inside the room.

39. When confronted with the evidence provided by the Photo Album and the Autopsy report, the Accused could not explain the amount and nature of bruises present on his wife's body.

40. As already mentioned above, the Accused declared that during the tragic event, the victim did not say anything, apart from claiming that the idea that the Accused had, namely that she was cheating on him, was not true.

41. The Accused expressed remorse for his child and his wife and he blamed the love and jealousy for his wife as the reason of what happened. He stated that S. was a good wife and he was looking forward to becoming a father. Throughout his entire statement he often reiterated that what happened was without any intention and premeditation.

The Comment given by the Injured Party R.C., following the Defendant's statement

42. The Injured Party is the father-in-law of the Accused, namely the father of the victim, the late S.C.. The Injured Party was not called to testify as a Witness. However, he gave a comment to the Defendant's statement. He asserted that the Accused had full intention of committing what he did, well knowing that his wife was six-month pregnant.

E2. Evaluation of the administered evidence and FACTUAL FINDINGS based upon the presented evidence

43. The Court had to establish what the proven facts are on the basis of the administered evidence submitted against the Accused F. T. (H.) for the criminal offence of Aggravated Murder, Article 147 Items 2), 3) and 9) of the CCK. 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.

44. It is undisputed that on the critical day the victim S.C. sustained multiple injuries which resulted in her death. The full autopsy performed on the deceased described the death as a violent death and the cause of death, as determined by the Forensic Medical Doctor, was a massive bleeding in bodily soft tissues (Haemorrhagic shock) as well as subdural, subarachnoid and brain bleeding.³ The Photo Album also shows the bruises and haematomas present basically all over the victim's body⁴.

45. It is, therefore, established beyond reasonable doubt that in the evening of 30 November 2010, after having returned from the victim's family house in the village of Koretin, in the Municipality of Kamenica, at some time between 20:30-23:00 hours in his house in Buroja village, Municipality of Skenderaj/Srbica, the Accused attacked and deprived of her life his wife, S.C..

46. This was never disputed even by the Accused himself, who always admitted his guilt in relation to the death of his late wife, although he never admitted to the modalities which then lead to the victim's death. Moreover, there are no indications that a third party was involved and would have caused the mentioned injuries to the victim and such argument was never cited or alleged.

47. Therefore, based on the above, the Trial Panel concluded that it is proven beyond reasonable doubt that S.C. died as a result of the injuries inflicted upon her by the Accused.

48. As already mentioned, the Accused never admitted to the aggravating factors alleged by the Prosecutor in his Indictment. Therefore, the Trial Panel had to turn to evaluate whether any of the aggravating factors as qualified by Items 2), 3) and 9) of Article 147 of the CCK were proven beyond reasonable doubt in the case at hand.

Aggravated Murder under Article 147 item 2)

49. To qualify as Aggravated Murder under Article 147 Item 2), someone must deprive a female person of her life knowing that she is pregnant.

³ See the Autopsy report, page 89 of the Prosecution Binder 1/1;

⁴ See the Photo Album included in the forensic report, pages 92 to 107 of the Prosecution Binder 1/1;

50. In the present case the Accused was aware of the pregnancy of his wife and he never disputed this. As a matter of fact, he often stated that he was looking forward to becoming a father and several times he expressed great remorse for the death of his child⁵. Although the Accused always denied having had any intention to end up killing his pregnant wife, this affirmation did not exculpate him from the fact that **he knew his wife was pregnant and, nevertheless, he attacked her and through his actions his wife died.**

51. Therefore, the Trial Panel found proven beyond reasonable doubt the elements of Article 147 item 2) of the CCK.

Aggravated Murder under Article 147 Item 3)

52. 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”.

53. Firstly, the Panel observed that the enacting clause of the Indictment lacked reference to the factual description explaining the ground for this aggravating factor. However, the Panel assessed that the Indictment should be considered in its entirety, and as such the Panel was satisfied that, although the enacting clause did not justify the aggravating factor of item 3), such explanation was contained in the section of the Indictment on the factual allegations.

54. 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. In the landmark case of *Ireland v. the United Kingdom*⁶, the European Court of Human Rights (ECtHR), with the intent to distinguish between a general harsh treatment and the level of severity that could amount to torture or cruel and inhumane treatment, made it clear that “the assessment of the minimum level of severity is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim”⁷.

55. Based on the evidence administered during the proceedings, the Panel considered such required **level of severity reached in the case at hand and it found proven beyond reasonable doubt the element of cruelty** in the way the Accused deprived the victim of her life.

56. In his statement given during the Main Trial hearing of 10 October 2012⁸, the Accused claimed that he could not recall his actions, that he did not remember what part

⁵ See the Accused statement given during the Main Trial hearing of 10 October 2012, chapter 7 of the Court Binder P 29/11. See also the Minutes of the Defendant’s Interrogation of 01 December 2010, page 30 of the Prosecution Binder 1/1;

⁶ 18 January 1978, Series A no. 25;

⁷ Ibid Paragraph 162 ;

⁸ See above, pages 8 and 9 of the Judgment. See also the hearing minutes of 10 October 2012, page 5 to 27, chapter 7, Court Binder P 29/11;

of the body he hit, that the beating went on ‘only’ for five minutes and that he beat the victim ‘only’ with his hands and with the metal part of his belt⁹. This was clearly discrepant with the previous statement given by the Accused during his interrogation on 03 March 2011, when he stated that, after initially hitting his wife on her back and her arm with the metal part of his belt, he took a metal bar 50-60 cm long and hit the victim twice in the back¹⁰.

57. The statement of 03 March 2011 is, instead, corroborated by the adduced evidence, namely the autopsy and the photo album¹¹, which prove beyond reasonable doubt that the victim was subjected to a cruel treatment. The Autopsy report describes all the injuries present in the body of the victim, namely injuries in the form of subcutaneous haemorrhages and spraining of soft regional tissues almost all over the body, particularly in the region of both breasts, the chest, the arch under the left rib, the region of armpits, the arms and the palms of both hands, and on frontal and posterior parts of the legs including the region of thighs and fibulas. Profuse haemorrhages were also found over the whole region of the back, as well as under the skin and above the periosteum of the skull bones, and in the left brain hemisphere¹².

58. The report finally identifies as cause of such injuries the mechanical action of a hard blunt object, most likely of axial shape and with uniform indentation since the majority of the injuries reflect axial injuries parallel to each other¹³. Such definition corresponds to the description of the metal bar found at the crime scene¹⁴ and it corresponds to what stated by the Accused on 03 March 2011 and what stated also by the Witness H.T. during the Main Trial hearing of 09 October¹⁵, namely that he was told by the Accused that he had availed himself of such metal bar while attacking the victim. The Witness also stated to have seen such bar at the crime scene and he corresponded this to the picture shown to him during the hearing¹⁶.

59. Furthermore, although the Accused denied having repeatedly hit the victim with a metal bar, when confronted with the evidence stemming from the autopsy report alongside the photo album, he could not explain the existence of the numerous and terrifying bruises on his wife’s body.

60. Therefore, based on the above recalled evidence clearly indicating **the brutality of the injuries inflicted on the victim**, considering also the **vulnerable state of the same victim**, being a woman and being pregnant, and also considering the fact that, as already mentioned above, it was never contested during the proceedings that the Accused was the only person present in the room during the critical moment and, therefore, the only

⁹ *ibid*;

¹⁰ Minutes on Defendant’s Interrogation, Page 30-31 of the Prosecution Binder 1/1;

¹¹ See above footnotes number 3 and 4;

¹² *Ibid*, pages 84 to 89 of the Prosecution Binder 1/1;

¹³ *Ibid*, page 86 of the Prosecution Binder 1/1;

¹⁴ See picture13, photo album at page 163 of the Prosecution Binder 1/1;

¹⁵ See statement above at page 7 and 8 of the Judgment; see also the Hearing Minutes of 09 October 2012 page 25, chapter 8 of the Court Binder P 29/11;

¹⁶ *Ibid*;

person who could have inflicted such injuries to the victim, the Panel assessed that **the way in which the Accused deprived his wife of her life was indeed cruel.**

61. The Panel also noted as an **added element of the ‘cruelty’ the length of time** during which the attacks took place, bearing in mind, as referred to above, the physical condition of the victim, namely her natural vulnerability and pregnancy. It is in fact clear from the statement given by the Accused on 03 March 2011¹⁷, but also during the Main Trial hearing of 10 October 2012¹⁸ that he took ‘breaks’ during the beating and he posed questions to the victim in an attempt to find out the name of the person she had, previously on that day, spoken on the phone with. The Panel assessed that this validates the fact that a certain length of time elapsed, during which the victim was subject to the attacks by the Accused and this further contributed to the prolonged suffering inflicted upon the victim and, therefore, to the element of cruelty.

62. It is, therefore, established beyond reasonable doubt that the Accused committed the criminal offence of Aggravated Murder as qualified by Article 147 Items 3) the CCK.

Aggravated Murder under Article 147 Item 5)

63. The Panel then turned to evaluate the existence of the aggravating factor of Article 147) Item 5), which was not presented in the filed Indictment, but which was raised during the closing arguments of the Defence Counsel and the Prosecutor. Namely, the Panel had to assess whether the element of violence could have been considered as absorbed by the established element of cruelty or whether it could qualify as an aggravating factor per se.

64. To meet the requirements of an 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”.

65. After having assessed the element of cruelty, the Panel equally assessed that the element of violence can also be proven beyond reasonable doubt, based on the adduced evidence. The Panel considered **violent and ruthless the intentional use of physical force by the Accused against the victim which then lead to her injuries and, ultimately, to her death.** Particularly, the Panel assessed as brutal violence the fist inflicted by the Accused behind the victim’s neck which caused the fatal deathblow, as stated by the Accused himself¹⁹.

66. The way the Accused attacked the victim was violent in nature and the Panel assessed that he used such violence to impose his power and control over the victim. Therefore, the element of violence also well describes the factual situation proven in the case.

¹⁷ See above footnote number 10, page 31 of the Prosecution Binder 1/1;

¹⁸ See above footnote number 8;

¹⁹ See above footnote number 10, page 31 of the Prosecution Binder 1/1. See also above footnote number 8, pages 17 and 26, chapter 7, Court Binder P 29/11;

67. As a result, it is established beyond reasonable doubt that the Accused also committed the criminal offence of Aggravated Murder as qualified by Article 147 Items 5) the CCK.

Aggravated Murder under Article 147 Item 9)

68. To qualify as an Aggravated Murder under Article 147 Item 9) of the CCK, the fact of depriving someone else of his/her life has to happen “because of unscrupulous revenge or other base motives”.

69. The Accused during his statement given during the hearing of 10 October 2012²⁰ expressed how the reason for the attacks against the victim began with the phone call received by the same victim from M. and the fact that he did not believe his wife and he suspected, instead, that the victim had been speaking with a male person²¹. The Accused himself explicitly reiterated jealousy as the reason for what then escalated in the tragic event and death of his wife²². Hence, the Panel assessed that **the Accused was driven into his brutal and fatal actions by the base motive of jealousy.**

70. It is, therefore, established beyond reasonable doubt that the Accused also committed the criminal offence of Aggravated Murder as qualified by Article 147 Items 9) the CCK.

F. LEGAL QUALIFICATION. Criminal Liability and Intent.

71. 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 in the evening of 30 November 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.

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

73. 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. Three are, therefore, the elements to be considered: the commission of the criminal

²⁰ See above footnote number 8, pages 5, 13 and 14 of Chapter 7, Court Binder P 29/11;

²¹ Ibid, page 20;

²² Ibid, page 5. See also above footnote number 10, page 30 of the Prosecution Binder 1/1;

offence, the mental capability of the person and the intent to commit or the negligence in committing such criminal offence.

74. Firstly, it was established that the Accused committed the criminal offence of Aggravated Murder as incriminated by Article 147 Items 2), 3), 5) and 9) of the CCK, as elaborated in details in the above chapter D.

75. Secondly, there is no doubt as to the fact that the Accused was fully mentally competent when he committed the offence. The report on the Accused mental health²³ supports this conclusion and nothing in the case-file suggests otherwise and no such challenge has been raised by the Defence during the proceedings.

76. Then the Panel had to evaluate whether the Accused, when committing the crime, acted with intent. The Accused rejected having had any intention to kill his wife. He reiterated this in his statement given during the Main Trial hearing of 10 October 2012²⁴, but also in his previously given statement of 03 March 2011²⁵.

77. 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”.

78. In his statement given at the detention hearing session²⁶, the Accused stated that he told his wife that ‘she will not have life anymore’, indicating an intent to kill. However, when confronted with this statement he asserted that he never said that and throughout the entire Main Trial proceedings he always stated that it was never his intention to kill his wife and that her death happened as a consequence of him losing control.

79. Based on the administered evidence, considering the dynamics of the critical event and considering that the Accused had his own personal motive which directed his actions, namely he wanted to obtain the name of the person the victim had previously spoken on the phone with, the Panel assessed that a direct intent by the Accused to kill his wife could not be proven. However, the Panel considered that the above mentioned personal motive and the fact that the Accused cruelly attacked the victim for a certain period of time, being aware of her vulnerability, necessarily implied an acceptance by the Accused of the possibility that the victim would have not endured the imposed injuries. Such behaviour, while not being immediately indicative of a direct intention to kill, has to be considered as **proof of an eventual intent**.

²³ Pages 62-77 of the Prosecution Binder 1/1;

²⁴ See above footnote number 8;

²⁵ See above footnote number 10, page 30 of the Prosecution Binder 1/1;

²⁶ see the minutes of the detention hearing of 02 December 2010, page 203 of the Prosecution Binder 1/1;

80. Accordingly, the Trial Panel found that the Accused committed the offence with eventual intent.

G. SENTENCE

81. 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.

82. 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 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”.

83. For the criminal offence of Aggravated Murder, Article 147 of the CCK foresees a punishment of imprisonment of at least ten years or of long-term imprisonment.

G1. Aggravating circumstances

i) Aggravated Murder under Article 147 items 2), 3), 5) and 9)

84. As an aggravating circumstance, the Panel considered that the criminal act carried out by the Accused qualified not only once, but **four times** as an Aggravated Murder, namely under items 2), 3), 5) and 9).

ii) The social aspect of violence carried out against women within a domestic relationship

85. The Panel had to strongly consider the domestic violence aspect of the case, and its wider social aspect, as a strong aggravating circumstance. In fact, although domestic violence is not a criminal offence *per se* in the criminal code of Kosovo, the domestic relationship and the vulnerability of the victim had to be carefully evaluated when considering the context and the aggravating circumstances of the committed criminal offences.

86. As described by the Council of Europe in its campaign against domestic violence²⁷, domestic violence is one of the most serious and pervasive forms of violence exerted against women. It allows the perpetrators to assume the right to use violence as a means of exercising dominance and control and it encompasses physical, psychological or sexual violence. A common pattern of domestic violence often starts with intimidation, humiliation and threatening behaviour and it can end fatally. Violence is reinforced by establishing control over another person's life through isolation, manipulation and by placing limits on personal choices and freedoms. But violence can often also involve economic abuse by denying financial independence and controlling economic decisions.

87. Domestic violence is often not an isolated act and it is present in a long history of suffering, fear and mortification, loss of self confidence, degradation and a general lack of freedom. The position of vulnerability in which many women live is the ideal nourishment to grow a path of domestic violence and, as such, domestic violence becomes a form of gender-based violence and it represents a violation of women's human rights. In its General Recommendation No. 19 on "Violence against Women"²⁸, the Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a treaty directly applicable in Kosovo²⁹, included family violence within the general category of gender-based violence³⁰.

88. Domestic violence in Kosovo is systematic and represents a serious problem, ultimately affecting the entire society. A culture of violence against women within households seems to be widely tolerated and accepted. The United States Department of

²⁷ http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Aboutdomesticvio_en.asp;

²⁸ See the Committee's General Recommendation No. 19 on "Violence against Women," (1992) UN doc. CEDAW/C/1992/L.1/Add.15, at § 24 (a). In its explanations of General Recommendation no. 19, the CEDAW Committee considered that: "Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities".

²⁹ See Article 22 of the Kosovo Constitution;

³⁰ See above footnote number 28, at § 24 (b). See also § 24 (r);

State, in its 2010 *“Human Rights Report: Kosovo”*, stated that domestic violence against women amounts to “a serious and persistent problem”³¹.

89. Representatives of NGOs, of the Kosovo Ministry of Labour and Social Welfare as well as of the Organization for Security and Cooperation in Europe (OSCE) often addressed the concern that domestic violence continues to be underreported to the relevant institutions³². As reported by the OSCE Mission in Kosovo, during 2010 a total of 944 incidents of domestic violence were reported to Kosovo police, and statistics for 2011 indicated that a total of 1046 incidents of domestic violence were reported to Kosovo police during that year, an increase of just over 10% from the previous year, most likely under-representing the total incidence of domestic violence in Kosovo during 2010 and 2011³³. As described by the Kosova Women’s Network (KWN), society in Kosovo still considers domestic violence shameful and as a ‘private matter’, and women do not often denounce it in order to avoid personal or family shame³⁴. Furthermore, several women hesitate to report it being in fear of revenge by the perpetrators or of losing their children, but also because in fear of being expelled from their house which, considering the lack of economic independence of many women in Kosovo, can tragically affect a woman’s life in Kosovo.³⁵

90. The CEDAW Committee General Recommendation mentioned above refers to a duty on States to “take all legal and other measures that are necessary to provide effective protection of women against gender-based violence including **penal sanctions**, civil remedies and compensatory provisions to protect women against all kinds of violence”³⁶. There is, therefore, a **positive obligation on State Institutions to protect** women from domestic violence and to **strongly condemn such cases**.

91. In its jurisprudence, the ECtHR has affirmed how there is a paramount State’s positive obligations to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for the victims. *Children and [women as] other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity*³⁷.

³¹ U.S. Department of State, *2010 Human Rights Report: Kosovo*, 8 April 2011, page 32 (<http://www.state.gov/documents/organization/160196.pdf>);

³² See the Report ‘Security Begins at Home: Research to Inform the First National Strategy and Action Plan against Domestic Violence in Kosovo’, by the Kosova Women’s Network (KWN), Kosovo 2008, page 24;

³³ See the Report on “*Adjudication of petitions for protection orders in domestic violence cases in Kosovo*”, OSCE Mission in Kosovo, March 2012, page 4;

³⁴ See above footnote number 32, page 24;

³⁵ *Ibid*, page 24-25;

³⁶ See footnote above number 28, at § 24 (t) (i). See also paragraph 24 (r) on measures necessary to overcome family violence. Furthermore, in its Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated that member States ***should penalise serious violence against women*** such as sexual violence and rape, abuse of the ***vulnerability of pregnant***, defenceless, ill, disabled or dependent victims, as well as ***penalising abuse of position by the perpetrator***;

³⁷ see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI;

92. In the landmark case of *Opuz v. Turkey*³⁸ the ECtHR again referred to **the State authorities' positive obligation to take protective measures in the form of effective deterrence** against serious breaches of a potential victim's personal integrity by her husband.

93. Therefore, it was exactly in an attempt to adhere to such 'positive obligation to protect and to deter' that the Panel assessed that the ferocity of the attacks inflicted by the Accused on his pregnant wife had to be considered as a grave aggravating circumstance deserving a strong punishment. **The Panel had an overriding obligation to send a strong message to society in Kosovo that domestic violence cannot be accepted and tolerated.**

iii) The Accused criminal record

94. The Panel also considered as an aggravating circumstance the Accused criminal record³⁹, according to which the Accused was found guilty for the criminal offence of Grievous Robbery and for which he was sentenced to five years and six months of imprisonment through a final judgement of 22 June 2005.

iv) The Accused violent behaviour

95. Further, the Panel took into consideration the violent behaviour showed while in custody by the Accused towards other detainees as well as the threats posed against the Security Officers and the Director of the Detention Centre in Lipjan, as evidenced in the Rulings on Disciplinary Punishment dated 23 February 2012 and 06 April 2012⁴⁰. Such behaviour of the Accused, displayed after the commission of the criminal act of murdering his pregnant wife, shows that his character continues to represent an increased and concrete risk to society.

G2. The mitigating circumstances

96. As overall mitigating circumstances, the Panel took into consideration the Accused general admission of guilt and his cooperativeness during the investigations.

³⁸ (Application no. 33401/02);

³⁹ See document of previous criminal convictions submitted by the Prosecutor during the Main trial hearing of 10 October 2012, chapter 7 of Court Binder P 29/11;

⁴⁰ Pages 213 to 220 of the Prosecution Binder 1/1;

G3. Calculation of punishment

97. Therefore, balancing the aggravating and mitigating circumstances, considering that the aggravating circumstances overwhelmed the mitigating ones and, at the same time, bearing in mind the general purpose of the punishment, the Panel considered as **a just and necessary sentence** the imposition of **long term imprisonment of 22 (twenty two) years**.

98. Article 37 Paragraph (1) of the CCK states that: “The law may provide for the punishment of long-term imprisonment for the most serious criminal offences committed intentionally either under particularly aggravating circumstances or causing especially grave consequences”. In the present case, the victim had been subject to violence several times and she had often been restricted in the enjoyment of her fundamental rights. It is obvious from the adduced evidence how she was obliged to live in a subordinate position, not being able to freely visit family or talk at the phone. She was brutally and cruelly attacked by her husband on the basis of mere jealousy and in a clear act by the Accused to reinforce his power and dominance over her. The gravity of such ferocity was tragically accentuated by the fact that the victim was six-month pregnant. Based on this and based on what has been elaborated in detail above, **the Panel considered that this case indeed fell under the ‘particularly aggravating circumstances’ required by Article 37 Paragraph (1).**

G4. Accreditation of detention

99. The time spent in detention on remand since 01 December 2010 was credited pursuant to Article 73 Paragraph (1) of the CCK.

H. CONFISCATION

100. Pursuant to Article 60 Paragraph (1) of the CCK, the metal stick was confiscated, because it was used by the Accused to carry out the criminal act, as elaborated above.

101. The mobile phone “Phone 32 GB” and the mobile phone Sony Ericson, both ownership of the Accused, shall be returned to the same.

I. COSTS OF PROCEEDINGS

102. The Court found the Accused F.T. (H.) 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 Paragraphs (1) and (4) of the CPCK the Court decided that the Accused shall reimburse a

lump sum of two hundred (200) Euro as part of the costs of criminal proceedings and he is relieved of the duty of reimbursing the remainder of the costs.

L. PROPERTY CLAIM

103. The Trial Panel took note that the Injured Party R.C. did not submit any claim for compensation during the Trial, although he had been instructed of such possibility. Pursuant to Article 112 Paragraph (2) of the CPCK, the Injured Party is reminded that he may pursue claims for compensation in civil litigation.

**District Court of Mitrovicë/a
P. nr. 29/2011**

Chiara Tagliani
Recording Officer

Hajnalka Veronika Karpati
Presiding Judge

Nikolay Entchev
Panel Member

Nuno Madureira
Panel Member

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.