

DISTRICT COURT OF MITROVICA
P. no. 10/12
09 August 2012

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Andrew Hatton, as Presiding Judge, and EULEX Judges Dean Pineles and Katja Dominik as panel members, with the participation of Jana Božović National Legal Advisor as Recording Officer, in the criminal case against:

1. **BQ**, father's name SQ, mother's name S, born on *****, residing at *****, K/A, has completed high school, married father of three children, of average economic status; charged with: COUNT ONE: Unauthorised ownership, control, possession or use of weapons, under art. 328, para. 1 CCK (sic - PCCK); COUNT TWO: one count of Attempted Extortion under art. 267 para. 2 and art. 20 CCK (sic - PCCK).
2. **VQ**, father's name F, mother's name M, born on *****, residing at *****, Mitrovica, K/A, has completed primary school, married, father, of average economic status; charged with COUNT FOUR: Unauthorised ownership, control, possession or use of weapons, under art. 328, para. 2 PCCK (sic).

After having held the main trial hearing open to the public on 06, 07, 08 and 09 August 2012, all in the presence of the Accused BQ, his Defence Counsel Rexhep Kacaniku, the Accused VQ, his Defence Counsel Agim Lushta, the Injured Party HA, his Legal Representativ Xhafer Maliqi and EULEX Public Prosecutor Elisa Moretti, after having issued the Ruling of 07 August to sever count I from the indictment, after the trial panel's deliberation and voting held on 09 August 2012, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, their Defence Counsel, the Injured Party, his Legal Representative and the EULEX Public Prosecutor issues the following:

JUDGMENT

COUNT 2

The Accused BQ, personal data as above, is

FOUND GUILTY

Because it was proven beyond a reasonable doubt that the Accused BQ on 22 May 2009 in the parking lot of Va Piano restaurant, Mitrovica, unlawfully demanded 60,000 Euros from

HA with the threat that if the money were not paid something serious would happen to his family or his home.

THEREFORE, the accused BQ is

CONVICTED

of committing the criminal offence of Attempted Extortion under art. 267 para. (1) and art. 20 CCK, after having considered that the elements of Art 267 para (2) were not present.

The claim for compensation of the injured party HA is hereby referred for civil litigation pursuant to Article 112 Paragraph (1) of the CPCK.

THEREFORE the Accused BQ is

SENTENCED

To 3 (three) years of imprisonment for the criminal offence of Attempted Extortion under art. 267 para. (1) and art. 20 CCK and under Art 65(2) of the CCK.

COUNT 4

The Accused VQ, personal data as above, is

FOUND GUILTY

Because it was proven beyond a reasonable doubt that the Accused VQ on 24 May 2009 in the village of Kqiq I Vogel, had in his possession a TT pistol M57 Crvena Zastava 7.62mm calibre serial no. 21475 together with 3 bullets of the same calibre without a valid authorisation permit.

THEREFORE, the accused VQ is

CONVICTED

of the charge of committing the criminal offence of Unauthorised ownership, control, possession or use of weapons, under art. 328, para. 2 CCK.

THEREFORE the Accused VQ is

SENTENCED

To 1 (one) year and 6 (six) months of imprisonment for the criminal offence of Unauthorised ownership, control, possession or use of weapons, under art. 328, para. 2 CCK. That sentence

shall be suspended for a period of two years from the date upon which this judgment shall become final.

Pursuant to Article 328(5) of CCK the following articles are confiscated:

TT pistol M57 Crvena Zastava 7.62mm calibre serial no. 21475 together with magazine and 3 bullets of the same calibre.

The accused BQ and VQ shall each reimburse one half of the costs of these criminal proceedings pursuant to Article 102(1) of the CPCK with the exception of the cost of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Art 100(2) of the CPCK.

REASONING

1. Procedural background

- 1.1 On 31 August 2011, the District Prosecution Office of Mitrovicë/Mitrovica filed the Indictment PP 188/09 dated 31 August 2011 against the above-mentioned defendants and other defendants, including HA.
- 1.2 The Confirmation Judge of the District Court of Mitrovicë/Mitrovica, after preliminary review of the Indictment, issued, on 15 September 2011, a Ruling under CPCK Art 306(2) asking the Prosecutor to amend the Indictment with a view to it meeting the requirements under the CPCK.
- 1.3 On 23 September 2011 the Prosecutor submitted the Amended Indictment dated 21 September 2011. On 17 October 2011, the Prosecutor filed a new Amended Indictment dated 13 October 2011, which was eventually presented at the Confirmation Hearing.
- 1.4 The Confirmation Hearing was held in the Municipal Court of Skenderaj/Srbica on 26 January 2012, in the presence of the above-mentioned defendants, their counsel, the aforementioned HA, the other defendants, their counsel, as well as the EULEX Public Prosecutor.
- 1.5 The Confirmation Judge ruled that pursuant to CPCK Art 305(3), a single indictment should not have been filed against all of the defendants. Accordingly, and pursuant to CPCK Art 34(1), the confirmation judge ordered the severance of proceedings between Counts 1, 2 and 4, on one hand, and Count 3, on the other hand. The defendant BQ faced counts 1 and 2 and VQ faced count 4. The aforementioned HA faced count 3.
- 1.6 The Confirmation Judge made a Ruling on the inadmissibility of certain evidence as against HA only and declared the remainder of the evidence admissible.
- 1.7 The Confirmation Judge partially confirmed the indictment. Count 1 was fully confirmed, count 2 was partially confirmed to allege attempted extortion only. Count 4 was fully confirmed. The aforementioned HA was to be tried separately on the partially confirmed count 3. The indictment was not confirmed as against all other defendants.

1.8 The Rulings of the Confirmation Judge were not the subject of appeal.

1.9 The Main Trial was held in public on the 6, 7, 8 and 9 August 2012 in the District Court of Mitrovica in the presence of the two defendants their defence counsel Rexhep Kacaniku and Agim Lushta, respectively, the Injured Party HA, counsel for the Injured Party, Xhefer Maliqi, and the EULEX Public Prosecutor Elisa Moretti.

2. Rulings during the main trial

2.1 At the commencement of the Main Trial HA, through his counsel, applied to become recognised as an injured party in the proceedings. No party objected to him becoming an injured party and so the Court ruled that he was an injured party by virtue of his involvement on count 2.

2.2 The defendant VQ had entered a plea of guilty to count 4 (unauthorised ownership, control, possession or use of weapons, under CCK art. 328(2)) at the Confirmation Hearing. When the indictment was read at the Main Trial he again entered a plea of guilty. The Court indicated a preliminary wish to accept that guilty plea, to sever VQ from BQ and to continue the trial against BQ alone. Before proceeding in that way, however, the Panel enquired of VQ the circumstances of the offence to which he had pleaded guilty. Save to say that he admitted having possession of a gun he said he could not remember anything further. In particular, he did not accept the written account of LP. Pursuant to CCK Art 359 (2), (3) & (4) and applying CCK Art 315, mutatis mutandis, in particular CCK Art 315(3) (“accepted by the defendant”), the Panel considered itself unable to accept the guilty plea in those circumstances and continued the trial as against both defendants (CCK Art 359(4)).

2.3 The main evidence, if accepted, against BQ on count 1 (unauthorised ownership, control, possession or use of weapons, under CCK art. 328(2)) came from FSH. His account was not accepted by BQ. In part, the credibility of FSH was challenged on the basis of differences between the account he gave in his testimony in court and the account he gave to the Police when examined as a suspect (Vol 2, pp.181-190). The witness SH sought to distance himself from the account he gave to the police on the basis that he was mistreated by the Police and was under the influence of tablets he had taken. He was represented at that stage at the Police station by a lawyer. It was the same lawyer, Rexhep Kacaniku, who was representing BQ in the main trial. That issue was discussed with counsel. The panel concluded, without disagreement from the Public Prosecutor or the defence, that in order to avoid potential difficulties for the Court and a conflict of interest for the lawyer, that count 1 should be severed from the remainder of the indictment and adjourned to be tried at a later date, if appropriate. The panel relied upon CCK Art. 34.

3. Competence of the Court

3.1 Pursuant to CCK Article 23(1), district courts have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

3.2 The criminal offence of attempted extortion art. 267 para 2 and art. 20 CCK (count 2) is punishable with a sentence of imprisonment of one to ten years and the criminal offences of unauthorised ownership, control, possession or use of weapons, under art. 328, para. 2 CCK (counts 1 & 4) are both punishable with a sentence of imprisonment from one to eight years or by a fine, thus the offences lie within the competence of the District Court.

3.3 According to the indictment, the criminal offences occurred in Mitrovica (counts 1 & 2) and Kqiq i Vogel (count 4), both of which places are under the territorial competence of the District Court of Mitrovica. Thus, pursuant to Article 27(1) CCK, the District Court of Mitrovica has the territorial competence to adjudicate upon this case.

3.4 None of the parties objected to the composition of the panel.

4. List of evidence presented

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

- 4.1.1 HA on 06 August 2012
- 4.1.2 FSH on 06 & 07 August 2012
- 4.1.3 BA on 07 August 2012
- 4.1.4 LP on 07 August 2012

4.2 The following material was admitted as material evidence. Some further items were ruled as inadmissible at the request of the defence following legal argument:

From Volume 1:

- Criminal report 31 May 2009, p. 98-106.
- List of exhibits sent for expertise, 24 May 2009, pp. 109-110.
- List of confiscated items of VQ, 24 May 2009, pp. 117-118.
- List of confiscated items of VQ, 24 May 2009, pp. 124-125.
- Investigation report Pranvera Delilaj, ID# 7219 filed 22 May 2009, pp 128-129.
- Officer Reports of Xhemsit Rushiti, ID# 8468, 23 May 2009, pp. 130-131 & 132-133.
- Officer Reports of Flori Osmani, ID# 7050, 24 May 2009, pp. 134-135 & 136-138.
- Investigation reports, Sgt. Qazim Ahmetaj, ID# 4916, 2 June 2009, pp. 141-146 & 24 June 2009, pp. 153-154.
- Request for expertise of the exhibits, pp. 163-164.
- Criminal background check of BQ, pp. 296-299.
- Criminal background check of VQ, pp. 310-311.

From Volume 2:

- The three statements provided by HA upon which he was challenged during his evidence, dated 21 May 2009 (as witness), pp. 25-30, 22 May 2009 (as witness), pp. 31-34, 5 June 2009 (as suspect), pp. 35-54.
- Statements of BA of 22 May 2009 (as witness), pp. 65-68, 22 May 2009 (as witness), pp. 69-77, 29 May 2009 (as suspect), pp. 78-81, 16 June 2009 (as suspect), pp. 82-89.
- VQ record on suspect examination, 25 May 2009, pp. 90-97.

The defendant BQ testified on 08 August 2012.

5. Summary of the presented evidence

5.1 *HA*. He stated that although he could not recollect the precise date he remembered an incident which occurred at the Va Piano restaurant in Mitrovica. He and several members of his family had attended at the restaurant for lunch, he said. Before arriving he had received a telephone call on his wife's mobile telephone during which someone complained that one of HA son had agreed to regulate a visa for him (the implication being that he had then failed to do what he had agreed).

When his son, B, arrived at the Va Piano restaurant B said that there were three men outside asking for HA. The witness said that, as a result of that conversation, he went outside, together with B and another relative. In the car park of the restaurant was a car and someone asked HA to join him in the car. The witness said that he sat in the back of the car and two men sat in the front of the car; a third man stood outside the car.

The witness said that he later learned that one of the men with whom he spoke inside the car was BQ. He identified the defendant BQ in the court room.

The witness said that he was in the car only for one minute and that the conversation was very short. He was told by *both* of the two men in the car: "someone has paid 80,000 Euros to eliminate your son. You give us 60,000 Euros and we will protect your son". The tone, he said, was calm. The witness said that he got out of the car saying to the men as he did so, "I would not give you 60 cents". He said he then rejoined his family in the restaurant where they finished their drinks and left; they did not stay for lunch, as they had planned, because the incident in the car park had "ruined the atmosphere".

After he and his family had left the restaurant they drove towards their home in Kqiq I Vogel. On their way there his wife received a call on her mobile telephone. The caller said "your son has been kidnapped in Pristina". The witness understood that to mean his son, E, who had been taken to Pristina Airport that morning.

The witness said that he reported these matters to the Police that very day and that he took the incident seriously.

The witness said that his home had been attacked twice in May 2009, prior to the incident at the Va Piano restaurant. (The Panel was aware that the witness had spoken to the Police on 21 May 2009 and had given a statement complaining of attacks on his home on 15 May 2009 and 18 May 2009.)

The witness said that on 24 May 2009 two men attended at his home and said "why don't you answer your phone?" The witness called the police who later arrived at the scene. In the court room he pointed to VQ as being one of those two men. He said that VQ had a weapon in the left hand side of his waist, a weapon that was taken away from him by the Police when they arrived.

He was asked by a member of the Panel about his statement to the Police on 22 May 2009 (vol2, p.32) and he confirmed the conversation in the car was about "protection". He said that he was afraid of the people he spoke to in the car.

5.2 *FSSH*. It was during the course of his evidence to the Court that the Ruling referred to at paragraph 2.3 herein was issued. As a result, the evidence of this witness ceased to have relevance to the matters remaining on the indictment for this trial and therefore the Panel disregarded his evidence, having indicated to the parties the intention to do so.

5.3 *BA*. He recalled the day of an incident in the car park of the Va Piano restaurant. He said that he had earlier that day taken his brother E to Pristina Airport for him to take a flight to Slovenia and had then later received a telephone call from his parents to join them at the Va Piano restaurant. He entered the restaurant but returned to his car to collect his telephone. As he did so, two people approached him and asked him to call his father outside. One of those men was BQ whom he had known for months. The witness said he had a clear and uninterrupted view of BQ during this conversation. The witness said that he called his father from inside the restaurant and his father then approached the men and got into a vehicle.

The witness said three men were actually present in the car park, BQ, FU (now deceased) and a third man whom the witness did not know. It was BQ and the witness' father only who sat together in the vehicle, the other two men remaining on the outside. The witness said that he did not know what happened inside the vehicle but that his father got out saying that he would not give even 60 cents.

The witness said that he and his family finished their drinks at the restaurant and then left as they did not feel safe to stay any longer as a result of the incident in the car park.

On the journey home the witness' mother received a telephone call from the "people who were at Va Piano" saying that they had taken (i.e. kidnapped) E (the brother of the witness). The witness confirmed that the family had concerns for the well-being of E as a result.

The witness recalled an incident on the evening of 24 May 2009. He was at his home when there was a knock at the door. When he answered the door he found two men there, one of whom he knew as VQ. The witness said that VQ, who had a gun in his waistband, said "why are you keeping your phones off?" The witness said that VQ reached for his gun and attempted to pull it out but was disarmed by the witness and the sister of the witness who had come to the door.

5.4 *LP*. He said that on the evening of 24 May 2009 he had met VQ who had been driving past in a car. VQ asked the witness to go with him to Kqiq "about some visas". He went with VQ. He confirmed that VQ had a gun in his waistband but that he could not remember where the gun came from. He had earlier told the Police that he had seen VQ take the gun from the glove compartment of the car before putting it into his waistband. The gun was taken from VQ when they were at Kqiq, he said. The witness said that he could not remember much of what happened when they arrived in Kqiq although the people who they met there were armed and VQ "had no way to pull his gun as they had already put their guns to us".

5.5 *BQ*. He said that he was not at the Va Piano restaurant at the time when it was said he was there (22 May 2009). When asked where he was he initially said that he was either at home, working or doing fitness. Later his account was that he was in Montenegro at the time. That accorded with what he said to the Police about the matter in June 2009. (No formal indication of an alibi defence was ever given to the Prosecution pursuant to CPMK Art. 308(1) 1)).

He said that he did not know HA nor did he know his son, EA. He was then confronted with some financial documents which were within the court files and which had been served upon the parties (vol 1, p.248). The document, from Western Union, showed payments made to BQ by EA from Slovenia, as follows: 1,000 Euros 21/4/09, 4,300 Euros 18/3/09 and 4,000 Euros 28/4/09. He said that the money had been sent to FU but that FU did not have an identification card, it being in the court house at Vushtrri: "FU asked me if I could give him the ID because he was due to receive some money ... what I did was I

gave him my ID...he was there, took my ID and received the money...as far as I know it was only once that I did that.”

It was pointed out that the same document showed payments around the same time to FU directly (the implication being that FU *did* have his own ID or else how could he have collected *that* money) but the defendant said that it was impossible and could not be proved.

When it was pointed out that his identification card was a photo ID (there being a copy of it in the court file) and he was asked how could FU have used it in those circumstances. He then changed his account and said that he went to the Western Union with FU, that he, BQ, received the money and then he handed it over to FU at the door of the premises. He said that he could only remember doing it on one occasion but that he was not saying that the Western Union documents were wrong.

5.6 *VQ*. He chose not to give an account or a statement but indicated that he relied upon what he had said to the Police. In that account (of 25.5.09, vol 2, pp90-93) he said that on 24 May 2009 he had gone to the home of HA in Kqiq I Vogel “to ask B to pick up the phone”. He said that he had been sent to do that by F (U) and that he had gone there with LP, arriving at about 20:30 hrs. He confirmed that he had a gun in his waistband; it was his gun, he said, he had had it since 1999 having inherited it when one of his brothers had died. It was a black TT gun which he said was not loaded. He did not always carry the gun, he said, but did not explain why he had it on that occasion.

5.7 *Material evidence*. The panel considered all of the material evidence as previously set out. There were two principal matters of significance: It was apparent that there were two attacks on the home of HA in May 2009 *before* the incident at the Va Piano restaurant. It was also apparent that the handgun referred to in count 4 was recovered from VQ by members of the A family on 24 May 2009 and handed over to the police when they arrived at the scene. The gun contained a magazine in which were three live rounds.

6. Factual and legal findings

6.1 Count 2:

- (a) The panel had to consider the issue of whether BQ was, in fact, present at the Va Piano restaurant on 22 May 2009 and whether he was involved in the conversation relating to 60,000 Euros. The panel reminded itself that HA did not know BQ before that day. He did, however, identify BQ in court as one of those present and involved in the conversation about 60,000 Euros. Much more significantly, however, the witness BA had known BQ for months (evidence which was not challenged by the defence). The witness said he had a clear and uninterrupted daylight view of BQ during his conversation with him in the car park and he saw BQ in the car with HA at the time the conversation about 60,000 was taking place. He confirmed the identification in court. The panel bore in mind that BA said that there was only one person in the car with HA whereas HA said that there were two people in the car with him. The panel acknowledged that as a discrepancy in the accounts of the two witnesses but was satisfied beyond reasonable doubt that both HA and BA were truthful and accurate in their accurate that BQ was present and was (one of those) in the car with HA during the conversation about 60,000 Euros.
- (b) In considering whether BQ was present and involved, the panel bore in mind his own account that he was not present. Although there was no burden upon the defendant to prove he was elsewhere, the panel did not accept that account as either true or accurate.

- (c) Having been satisfied beyond reasonable doubt of the presence of BQ, the panel considered whether or not the alleged offence of attempted extortion was proved to the necessary criminal standard, as follows:
- (d) Firstly, the panel considered whether this was, if proved, an offence of attempted extortion under CCK Art.267 (2) (the more serious, aggravated form of the offence, as alleged in the indictment) or an offence of attempted extortion under CCK Art. 267(1) (the simple offence). The difference between the two forms of the offence is that for the aggravated offence under Art. 267(2) it must be proved to the criminal standard of proof that either (i) a perpetrator was acting as a member of a group, (ii) the offence is committed using a weapon or a dangerous instrument, or (iii) the offence results in a great material benefit [the numbering of the clauses is for convenience only, it is not part of the Article].
- (e) As the alleged offence was an attempt (CCK Art. 20) rather than a completed offence, the panel was able to disregard clause (iii) above, that of the offence “resulting in a great benefit”, as no benefit was actually achieved.
- (f) Although at the time the indictment was prepared it was alleged that BQ had a weapon with him at the time of the commission of the alleged offence, the panel considered, as did the Confirmation Judge, that there was no evidence of that. That clause (ii) above was therefore disregarded.
- (g) That left the issue of whether BQ was “acting as a member of a group”, clause (i) above. The panel accepted the evidence of both HA and BA that there were *three* men present who wished to speak with HA. The panel considered that “a group” involves three or more persons (relying, *mutatis mutandis*, on CCK Art274(4)). The panel at that point had to consider whether there were two men in addition to HA in the car, or only one. The panel preferred the account of HA, i.e. that there were two men in addition to himself. The panel preferred his account as he was actually present in the car at the time whereas BA was some metres away. HA, in recalling events, would also have the advantage of having a picture in his mind of the actual conversation in the car. The panel therefore believed that to be the accurate account. Regardless, however, of whether there were, in fact, two people in the car in addition to HA or merely one person, the panel concluded that it could not be satisfied beyond reasonable doubt that the person or persons who remained outside the car knew the purpose or the content of the conversation that was to take place in the car. The panel could only be satisfied beyond reasonable doubt that those inside the car were knowingly involved in the offence.
- (h) Accordingly, the panel concluded that none of the aggravating elements required for CCK Art. 267(2) was present. The panel therefore continued to deliberate on the basis that the offence was, if proved, an offence of attempted extortion under Art. 267(1) (the simple form of the offence).
- (i) The panel considered whether BQ used “force or serious threat to compel another person to do or abstain from doing an act to the detriment of his ...property or another person’s property” as required by CCK Art. 267(1). The panel was satisfied beyond reasonable doubt that the home of HA had been attacked twice prior to the meeting on 22 May 2009. Regardless of whether BQ was involved in that or not, and there was no evidence that he was, those attacks were clearly part of the general background to this incident. The panel was satisfied beyond reasonable doubt that BQ, in the car at the car park of Va Piano restaurant, demanded 60,000 Euros from HA as “protection money” to protect the son of HA or the property of HA (p.21 minutes of hearing 6 August 2012). That was, therefore, a threat to compel HA to hand over 60,000 Euros. Further, the panel was satisfied beyond reasonable doubt that was a “serious” threat, both objectively and subjectively, for the following reasons:
- there was talk of the possibility of the death of HA son,

- HA believe the threat to be serious (as he confirmed in his evidence, which the panel accepted),
 - HA contacted the Police that same day (that being an indication of how seriously he took the threat),
 - the family’s planned meal was abandoned as a result of what was said (a further indication that the threat was taken seriously - “the atmosphere was ruined”),
 - the follow-up telephone call to the mobile phone of HA wife – where it was said that HA son had been kidnapped - was confirmation that the threat was intended to be taken seriously,
 - the threat was objectively serious in the opinion of the panel
- (j) In the light of that, the panel considered whether BQ was acting “with intent to obtain an unlawful benefit for himself...or another person” as required by CCK Art, 267(1). In demanding 60,000 Euros in the manner outlined, the panel was satisfied beyond reasonable doubt that BQ was acting with the necessary intent.

6.2 *Count 4:*

- (a) The panel was satisfied beyond reasonable doubt on the material evidence and on the direct testimony of HA, BA and LP that VQ was present at the home of HA on the evening of 24 May 2009. He was armed with a handgun which was tucked into the waistband of his trousers. The panel was satisfied so that it was sure that the gun had 3 live rounds in the magazine which was in the gun. The panel was unsure as to when the gun had been placed into his waist band but was satisfied beyond reasonable doubt that its presence there was not by accident; it was there with a view to enforcing the point he had attended at the house to make and to be used, if necessary. He had clearly gone there to pursue a dispute of some sort, be it over visas (as LP said in his evidence) or some other matter.
- (b) The panel also bore in mind that VQ did not challenge the evidence of his possession of the gun and wanted to plead guilty although that plea was rejected (as indicated earlier in this document) because of his inability to remember any of the circumstances. He admitted the offence in his closing statement to the panel.

7. Sentencing

7.1 *General issues:*

When imposing a criminal sanction, the Court must bear in mind both the *general* purpose of punishment, i.e. the need to suppress socially dangerous activities by deterring others from committing similar acts, and the *specific* purpose, i.e. to prevent the offender from re-offending.

The panel came to the conclusion that only by imposing the sentences which were imposed in this case would those purposes be achieved. The panel evaluated all mitigating and aggravating factors, pursuant to CCK Art.64(1) whilst remaining within the limits provided for by law.

7.2 *Count 2:*

The defendant BQ was convicted of the criminal offence of Attempted Extortion under art. 267 para. (1) and art. 20 CCK, as indicated above. The penalty for the offence of extortion under Art. 267(1) is imprisonment for three months to five years. By virtue of CCK Art 65(2), because the offence was an attempt, the maximum penalty shall be no

more than three quarters of that maximum of five years, namely, 45 months imprisonment.

The panel found the following *aggravating features*:

- BQ has a conviction for an offence of aggravated theft, i.e. an offence of dishonesty and against property;
- It was the intention of BQ to obtain a *significant* material benefit;

The panel found the following *mitigating features*:

- The offence was committed over three years ago

The panel was not informed by either counsel of any time spent by BQ on detention on remand and only told of an (unspecified) period under house arrest once the enacting clause had been read. Pursuant to CCK Art. 73(1) any time served in detention as well as any period of deprivation of liberty related to the criminal offence shall be included in the punishment of imprisonment passed by the panel. It therefore follows, in law, that if there was such a period of detention or deprivation of liberty related to this matter it shall be automatically deducted from the sentence imposed.

7.3 Count 4:

The defendant VQ was convicted of the criminal offence of unauthorised ownership, control, possession or use of weapons, under CCK art. 328 (2). The offence is punishable by a fine of up to 7,500 euros or by imprisonment of one to eight years.

The panel found the following *aggravating features*:

- the gun was in the waist band of his trousers, clearly visible, in the street and was in his possession at the very least to intimidate;
- the gun contained a magazine which contained three live rounds and so it was ready to fire within a very short time if necessary;
- the incident on 24 May 2009 was part of a campaign of intimidation against the Ademi family;
- there is a particular need for deterrence as gun crime is prevalent and it is important that the public realise that the courts take such offending seriously.

The panel found the following *mitigating features*:

- The offence was committed over three years ago;
- The defendant wished to enter a plea of guilty;
- The defendant expressed remorse to the court;
- The defendant has no convictions;
- The defendant is now married with children.

In suspending the sentence of imprisonment which was imposed, the panel had in mind CCK Art.44 and ordered the suspension on the basis of the past conduct of the defendant and his behaviour after the commission of the offence. The panel considered that the purposes of a suspended sentence were satisfied.

8. Confiscation of Items

Pursuant to CCK Article 328(5) the panel ordered that the following articles are confiscated in relation to count 4:

TT pistol M57 Crvena Zastava 7.62mm calibre serial no. 21475 together with magazine and 3 bullets of the same calibre.

9. Costs

They having been convicted of the matters upon which the panel had to deliberate, the accused BQ and VQ shall each reimburse one half of the costs of these criminal proceedings pursuant to Article 102(1) of the CPCK with the exception of the cost of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Art 100(2) of the CPCK.

Prepared in English, an authorized language

Andrew J. Hatton

Dean Pineles

Katja Dominik

Presiding Judge

Panel Member

Panel Member

Jana Bozovic

Recording Officer

Legal Remedy:

The parties have the right to appeal against this verdict within fifteen (15) days of the day the copy of this judgment has been served pursuant to Art 398(1) CPCK to the Supreme Court through the District Court of Mitrovica.

The appeal must be announced within eight (8) days from the date of the verdict.