

**DISTRICT COURT OF MITROVICA**

**K nr. 02/2010**

**05 July 2010**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF MITROVICA**, in the trial panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Charles L. Smith, III and Nikolay Entchev as panel members, with the participation of Tara Khan EULEX Legal Officer as Recording Officer (except the last day of the trial when she was replaced by EULEX Legal Officer Zane Ratniece), in the criminal case against;

**D.DJ.**, charged, according to the Indictment of the EULEX Public Prosecutor PP. Nr. 72/2008 dated 11 June 2009 and filed with the Registry of the District Court of Mitrovica on 15 June 2009, with the following criminal offences;

- **Aggravated Murder**, contrary to Article 147 Item 4 of the Provisional Criminal Code of Kosovo (PCCK)
- **Attempted Murder** contrary to Article 146 as read with Article 20 of the PCCK
- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the PCCK

After having held the main trial hearing open to the public on 15, 19, 28 April, 24 June and 05 July 2010, all in the presence of the Accused **D.DJ.**, his Defence Counsel Rexhep Kacaniku, EULEX Public Prosecutor Maria Bamieh, Injured Parties Z.M. and S.Dj., and Legal Representative of Injured Party Z.M. Boban Savic (except on the hearing on 24 June and onwards when Miodrag Brkljac took over), after the trial panel's deliberation and voting held on 05 July 2010, on the same day pursuant to Article 392 Paragraph (1) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), pronounced in public and in the presence of the Accused, his Defence Counsel Rexhep Kacaniku, EULEX Public Prosecutor Maria Bamieh, the Injured Parties Z.M. and S.Dj., and Legal Representative of the Injured Party Miodrag Brkljac, the following

**JUDGMENT**

**I.)** The accused **D.DJ.**, nickname **G.**, son of M. Dj. and M. B., born on \_\_\_\_\_, in \_\_\_\_\_, Municipality of \_\_\_\_\_, Kosovo S., last known residence at \_\_\_\_\_ Str. \_\_\_\_\_,

completed secondary school, labourer with average income of 15000-16000 Serbian Dinars, married with children, no previous conviction, in detention since

A) is

### **FOUND GUILTY**

- **because** the accused was in possession of a weapon , made, , calibre mm, with serial number without a valid authorization card for an unknown period of time until .

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

**Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the PCCK.

Therefore, the **Accused D.DJ.** is

### **SENTENCED**

- to 2 /two/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The time spent in detention on remand since is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

B) The Court

### **RULES** that

- **because** on at around hours, in , in Street from his house the accused, **D.Dj.** in a state of temporary mental disorder defined as paranoid psychotic reaction, fired several shots from a semi-automatic weapon , made , calibre mm, with serial number , whereby he killed R.M. who bled to death on the way to the hospital due to multiple penetrating gunshot injuries to the body. The accused also shot at P.Dj. who suffered gunshot injuries but was on the way of recovery when died due to a blockage of the pulmonary trunk by a blood clot on -

the Accused **D.Dj.** committed, but due to mental incompetency pursuant to Article 12 Paragraph (1) of the PCCK is **criminally not liable for** the criminal act of

**Aggravated Murder** contrary to Article 147 Items 4 and 11 of the PCCK.

Therefore, the Court imposes the **measure of mandatory psychiatric treatment at liberty** pursuant to Section 5 and Section 12.3 of UNMIK Regulation 2004/34 ‘On Criminal Proceedings Involving Perpetrators with Mental Disorder’;

The measure of mandatory psychiatric treatment at liberty shall be executed, according to the following:

- the measure of mandatory psychiatric treatment shall be executed at the Health Center – , Specialised Neuropsychiatric Clinic;
- **D.DJ.** shall report for treatment to Dr. R.J. in the Health Center – , Specialized Neuropsychiatric Clinic on 07 July 2010 at 09:00 and thereafter the ambulatory treatment shall be executed with regular and close supervision of the psychiatrist;

The weapon , made, , calibre mm, with serial number is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The accused **D.DJ.** shall reimburse part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCPCK with the exception of the costs of interpretation and translation. Pursuant to Article 102 Paragraph (2) of the PCPCK he shall not reimburse the costs related to the murder charges. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCPCK.

The property claim of the Injured Party is referred for civil proceedings pursuant to Article 112 Paragraph (3) of the PCPCK.

## Reasoning

### A. Procedural Background

Indictment PP nr. 72/08 dated 11 June 2009 and filed with the District Court of Mitrovica by EULEX Prosecutor Maria Bamieh on 15 June 2009, charged the Accused **D.DJ.** with Aggravated Murder in violation of Article 147 Paragraph (4) of the Provisional Criminal Code of Kosovo (PCCK), Attempted Murder in violation of Article 146 as read with Article 20 of the PCCK, and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK.

EULEX judges took over the case on 18 November 2009. The Indictment was confirmed on 25 January 2010.

The Main Trial was held on 15, 19 and 28 April 2010, 24 June 2010, and 05 July 2010. The closing statements of Prosecutor Maria Bamieh, Injured Party Representative Miodrag Brkljac, and Defence Counsel Rexhep Kacaniku were heard on 05 July 2010. The verdict was orally rendered the same day.

### B. Competence of the Court

Under Article 23 Item 1) i) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 Paragraph (1) of the PCPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The Accused is charged with the criminal offence of Aggravated Murder pursuant to Article 147 of the PCCK, which allows for the imposition of a minimum sentence of ten years of imprisonment. The Indictment in this case alleged that the Accused committed the criminal acts in \_\_\_\_\_, which lies within \_\_\_\_\_ District.

Therefore, the District Court of Mitrovica is the competent judicial body to hear this criminal proceeding.

On 18 November 2009, the President of the Assembly of EULEX Judges issued a decision for EULEX judges to take over the case pursuant to Article 3.3 of the Law on Jurisdiction<sup>1</sup> and assigned it to EULEX judges in the Mitrovica District Court. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Criminal Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Charles L. Smith, III and Nikolay Entchev as panel members.

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<sup>1</sup> Law nr. 03/L-053, Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

### C. Summary of Evidence Presented

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

- (1) S.Dj. (Injured Party), 15 April 2010
- (2) B.Dj., 15 April 2010
- (3) P.Dj. (Injured Party), 19 April 2010
- (4) M.Dj., 19 April 2010
- (5) Police Officer M.V., 19 April 2010
- (6) S.D., 28 April 2010
- (7) Police Officer S.V., 28 April 2010
- (8) Expert Witness Dr. R.J., 28 April 2010
- (9) Expert Witness Dr. F.D., 28 April 2010
- (10) Lj.B., 24 June 2010

On 15 April 2010, the following documents were read into the record:

- (11) Statement of V. K., .
- (12) Statement of M. Dj., dated .

On 24 June 2010, the following documents were read into the record:

- (13) Statement of P.Dj., .
- (14) Autopsy Report of R.M., .
- (15) Autopsy Report of P.Dj., .
- (16) Psychiatric Expertise for **Dj.D.** from the of Municipality”, Dr. R.J., .
- (17) Psychological Evaluation Report of **D.DJ.**, Dr. N.M., .
- (18) Report on Mental Health Status of **D.DJ.** born on in , Drs. N.M. and F.D., .
- (19) Initial Incident Report, Police Officer Lj.R., Sgt. M.Dj., and Cpt. D. B., .
- (20) Report on the Course of the Investigation, Police Officer S.D., .
- (21) Forensics Laboratory Investigation Forms.
- (22) Record from the Crime Scene, KPS .
- (23) Police Officer’s Report, Police Officer M.Dj., .
- (24) Report on the Course of the Investigation, Police Officer S.D., .
- (25) Report on Death of Late M.R., Dr. M.M., .
- (26) Report on Death (R.M.), Dr. M.D..
- (27) Criminal Report, Police Officer S.D., .
- (28) Forensics Identification Report, Police Officer S.D., .
- (29) List of Weapons Found, Police Officer S.V., .
- (30) Police Sketch, p. 149 of Prosecution Binder.
- (31) Description of Photo Album, .
- (32) Police Interoffice Memo, Sgt. D.L., (p. 243 of Prosecution Binder).

- (33) Discharge List with Epicrisis (P.Dj.), Dr. Lj.J., .
- (34) Death Certificate (P.Dj.), Dr. Lj.J., .

During the main trial session on 24 June 2010, the Accused gave a statement and answered questions.

## **D. Evaluation of Presented Evidence**

### *1. Factual Findings*

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

On , at approximately hrs, **D.DJ.** phoned S.Dj. because he saw an unknown car parked in front of their residence. S.Dj. went outside and spoke with the driver, who said the car had broken down. He then told the driver to move the car and returned inside.

Shortly thereafter, **D.DJ.** phoned S.Dj. a second time regarding another vehicle parked near their residence and wanted him to alert the police. S.Dj. went outside again, where he met his uncle P.Dj.. Then R.M. arrived in his vehicle.

S.Dj., P.Dj. and R.M. stood outside in front of the **Dj.** residence and talked. Then S.Dj. walked away from the other two men towards the business premises located on the property. At that moment, **D.DJ.** began firing an mm caliber automatic rifle from the attic window of the house towards P.Dj. and R.M.. At least shots were fired,<sup>2</sup> hitting both P.Dj. and R.M.. R.M. collapsed on the ground, S.Dj. took cover near the house, and P.Dj. fled away from the house.

S.Dj. immediately drove R.M. to the Health Center in M.'s car. R.M. had sustained two serious gun shot wounds which caused his death at hrs on .<sup>3</sup>

P.Dj. sustained three gun shot wounds, in the right leg, left shoulder and right hand.<sup>4</sup> He was treated in the intensive unit of the Health Care Center in and was recovering when he died suddenly days later, on , from a blockage of the pulmonary trunk due to a blood clot.

### *2. Evidence Establishing the Factual Findings*

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<sup>2</sup> bullet cases of caliber mm were discovered by police at the crime scene, Forensic Laboratory Investigation Form, nr. 2008-bh-094.

<sup>3</sup> Autopsy Report (R. M.), Faculty of Medicine in Pristina, Institute of Pathological Anatomy, S nr. 1906/08,

<sup>4</sup> Autopsy Report, Faculty of Medicine in Pristina, Institute of Pathological Anatomy, .

Apart from the Accused, S.Dj. is the only eye-witness to survive the event. The Court found that his testimony on 15 April 2010 regarding the factual events of the critical night to be credible and reliable. It is also corroborated by the testimonies of Police Officers S.D. and S.V., the partial testimony of **D.DJ.** (regarding the part of the night which he could recall), and the forensics evidence. S.Dj. testified to as follows.

On \_\_\_\_\_, at approximately \_\_\_\_\_ hrs, S.Dj. was home when he received a phone call from his brother, the Accused **D.DJ.**, regarding a vehicle which was parked outside of the front of the residence which they shared. S.Dj. went outside and recognized a person by the name V. in a \_\_\_\_\_. They spoke briefly and S.Dj. told him to move his car. At this time, the lights of **D.DJ.**'s house were turned off, and **D.DJ.** yelled from inside the house to the unknown person to move his car. After the man moved his car, S.Dj. returned inside his home.

A few minutes later, S.Dj. received a second phone call from **D.DJ.** regarding a different vehicle parked near their house. S.Dj. returned back outside of the front of the house, during which time their uncle, P.Dj., arrived. While they were talking, R.M., who was performing some electrical work on the premises, arrived in his vehicle and parked in the parking lot.

After the three men spoke briefly in front of the house, S.Dj. headed towards the business premises on the property, while R.M. and P.Dj. collected some tools from M.'s car. As they were walking back towards the house, there was a sudden burst of gunfire. From his position on the terrace next to the house, S.Dj. could see that the flames from the gun shots were coming from the direction of the house, but he could not see the shooter. He saw bullet casings dropping from the direction of the house and heard **D.DJ.** yell "What are you doing there?" S.Dj. shouted "Don't shoot, it is us!"

Police Officers S.D. and S.V. testified that the police on-site inspection established that the shots had been fired from the attic of the house.

Upon being hit by the gun shots, R.M. collapsed on the ground. P.Dj. fled in the direction away from the house and was also hit by gun shots. According to the testimony of Officer S.V. and the Forensics Identification Report dated \_\_\_\_\_, the police recovered cartridges of \_\_\_\_\_ mm caliber from the crime scene.

S.Dj. immediately drove R.M. to the hospital in M.'s car, and then returned home where he saw a wounded P.Dj. in front of the house and an ambulance. **D.DJ.** was also present. S.Dj. asked **D.DJ.** why he had fired at them. **D.** started pulling at his hair and asked "what were you doing here?" S.Dj. then asked where the weapon was located, and **D.DJ.** told him it was upstairs.<sup>5</sup>

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<sup>5</sup> In both his statement to police on \_\_\_\_\_ and his statement to the Prosecutor on \_\_\_\_\_, S. Dj. testified that **D. Dj.** informed him of the location of the weapon inside the house. During S. Dj.'s testimony before the Court on 15 April 2010, he did not recall that **D. Dj.** answered his question. However, the Court believes that the statements to the police and prosecutor which were taken nearer in time to the event present the more full recollection.



object to the information contained, even when she admittedly recognized that the information was not accurate. In fact, B.Dj. did not make any attempt to correct these allegedly inaccurate statements until almost a full year later, when she was interviewed by the Public Prosecutor on 26 May 2009.

The Court finds that the differences in her police statement and her testimony are too great to attribute to possible simple misstatements during her police interview. Neither does the Court believe that the statements were conjured up by the police. Furthermore, if B.Dj. had erroneously provided such details while in a state of shock, details which the Court notes would be in harmony with the events of that night according to the testimony of others, the Court does not find it credible that she would agree to the statement after hearing it read aloud, sign the statement, receive a copy and yet still not correct the statement for almost a year.

The Court also noted that when questioned during her testimony, B.Dj. was hesitant and elusive when her answers might be viewed as harmful to her husband's case. For example, she was asked clearly and directly by the Public Prosecutor whether **D.DJ.** had "any weapon on him" when she saw him in the corridor immediately after the shooting. She relied "No."<sup>6</sup> Later, she was confronted with her statement to police that she saw D.DJ. with a rifle in his hand, to which she replied "he did not have anything in his hands."<sup>7</sup> Only upon being asked a third time did she admit that she did see a weapon in the corridor with **D.DJ.** which had not been there before.<sup>8</sup> It is clear that during her testimony, B.Dj. was concerned with showing the Accused, her \_\_\_\_\_, in the best light possible.

For these reasons, the Court accepts B.Dj.'s statement which was given to police on \_\_\_\_\_ as credible and a more accurate account of the events of that night, and rejects the modification of the events attempted in her Court testimony. The Court therefore based its factual findings upon her police statement.

#### *4. Statement of Deceased Victim P.Dj.*

On \_\_\_\_\_, P.Dj. was interviewed by the police while in the hospital. His statement was given in general terms, without providing minute details, and generally corroborates the account given by S.Dj. above – that the three men were standing outside of the front of the house speaking when suddenly shots were fired. However, there is one significant contradiction in the statement; P.Dj. stated that **D.DJ.** was outside the house with S.Dj. and R.M. when P.Dj. arrived, and that **D.DJ.** was speaking to the men and then shook hands and went inside the house.

It is possible that under the stress of his injuries and/or due to effects of medication, P.Dj. was not in the best condition to provide a clear and accurate recollection at the time of the

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<sup>6</sup> Minutes of the Main Trial Hearing, 15 April 2010, p. 20.

<sup>7</sup> Minutes of the Main Trial Hearing, 15 April 2010, p. 24.

<sup>8</sup> Minutes of the Main Trial Hearing, 15 April 2010, p. 26.

police interview. However, due to his unfortunate death, there was no opportunity for this discrepancy to be clarified during a later interview or before the Court.

As according to the accounts of S.Dj., **D.DJ.**, and B.Dj., **D.DJ.** was not outside of the house speaking with the men at any time that evening, and because P.Dj. can not be further questioned on this fact, the Court considers it not proven. In any event, due to the Court's finding that at the precise moment of the shooting, **D.DJ.** was not mentally competent (explained in detail below), the possibility that he may have been standing outside and speaking with the men prior to the event would not have any bearing on the outcome of the verdict.

### *5. Testimony of the Accused*

The Accused gave a statement and answered questions on . Of the critical night, he recalled the following:

His wife B.Dj. went into the bedroom with their son at about hrs. **D.DJ.** locked the entrance door and rested some tiles against the door for security reasons. He saw that the hatch to the attic was open and the attic windows were also open. When he went into the attic to close the windows, he saw a outside of the house with someone sitting inside it. He phoned S.Dj. to tell him about the . He also yelled at the person from the upstairs "Move that from here!"

A short time after that car had left, **D.DJ.** recalled seeing two persons on the road outside, and heard one of them say "There he is, we can not do anything to him but we will do his son." This alarmed him and he phoned his brother a second time to alert him to call the police.

**D.DJ.** could not remember anything else that happened that night after that after that point. He could not recall picking up the rifle, firing the weapon, or coming downstairs afterwards and seeing his wife.

### **E. Mental Competence of the Accused**

On 24 June 2009, the Pre-Trial Judge issued an Order for a psychiatric examination and analysis of the Accused in order to assess whether he suffered from any mental disability or decreased mental capacity at the time of the commission of the criminal offence. Extensive psychoanalysis and testing were carried out, and the results analyzed and reported upon in three written expertises.

#### *Neuropsychiatrist's Expertise<sup>9</sup>*

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<sup>9</sup> "Psychiatric Expertise for **Dj. D.** from the of Municipality", Dr. R. J., .

Neuropsychiatrist Dr. R.J. examined the Accused on four separate occasions in the Detention Center from     to     . Psycho-testing on the Accused was also performed on     . In her written expertise, Dr. J. finds that the Accused does not suffer from any permanent mental disorder or disease. However, the Psycho Test showed an “imbalance of personality, accumulated fatigue, psycho-emotional pressure and accumulated fear ... as well as a strong feeling of fear and threat and a paranoid experience of reality, [all of] which caused the mental de-compensation of the patient, which by its intensity and quality was, *tempore criminis*, of psychotic extent.” Dr. J. opines that the Accused suffered from paranoia and at the time of the criminal offence, was obsessed with the fear that someone was going to try to kill his son. She concludes that:

at the time of the perpetration of the charged criminal offence, **D.DJ.** was in a state of temporary mental disorder of the type of Paranoid Psychotic Reaction followed by a strong affective “trigger, the affect which hindered his logical thinking due to affect-narrowed consciousness /influence of affect on consciousness and reasoning.”

#### *Psychological Evaluation Report*<sup>10</sup>

In her expertise, Dr. N.M. found that the Accused suffered from a disturbance in the balance of his personality, which was characterized by a “strong intra-psycho-tension and an over-reaction to external provocation”. She concludes that this personality “disbalance”, together with accumulated fatigue and stress, psychological-emotional tensions, a feeling of fear and endangerment, and a paranoid perception of reality, caused a psychological de-compensation, which at the moment of the criminal offence was of psychotic level in both intensity and quality.

#### *University Clinic Report on Mental Health Status*<sup>11</sup>

The report on the mental health status of the Accused submitted by the University Clinic and signed by Drs. F.D. and N.M. is based on the neuropsychological examination, clinical examinations from     to     , laboratory analyses and research, and additional methodology. The report concludes that the criminal offence was a direct result of the psychopathological substrate, characteristic of mental disorder known as delusive disorder/paranoia. At the time when he fired the weapon, **D.DJ.** was highly mentally incompetent, could not understand the seriousness of the criminal offence and had no control over his actions. The doctors propose that criminal accountability is excluded and **D.DJ.** should be put into mandatory psychiatric treatment in a prison hospital.

Drs. R.J. and F.D. testified as experts before the Court. They each adopted and supported the findings of their reports and provided detailed explanation of their conclusions.

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<sup>10</sup> “Psychological Evaluation Report” of **D. Dj.**, Dr. N. M.,     .

<sup>11</sup> “Report on Mental Health Status of **D. Dj.** born on     in     ”,     .

The Court is fully satisfied with the expertise, and accepts in their entirety the expert reports and the testimonies of Drs. R.J. and F.D.. Therefore, it is determined that at the time of the criminal offence, **D.DJ.** was suffering from a temporary mental incompetence as defined in Article 12 Paragraph (1) of the PCCK, and was not able to understand or to control his actions.

## **F. Legal Qualification**

### *1. Applicable Law*

The *substantive law* applicable in the case is the Criminal Code which was in force at the time when the criminal offence was perpetrated. The criminal act was committed on . The criminal code in effect at that time was the Provisional Criminal Code of Kosovo (PCCK) which entered into effect on 06 April 2004.

Article 2 Paragraph (1) of the PCCK provides that in the event of a change in the applicable law prior to the final verdict, the law more favorable to the perpetrator shall be applied. In this case, the current law – the Criminal Code of Kosovo (CCK) which entered into effect on 06 January 2009, is not more favorable to the Accused in this particular case. Therefore, the PCCK is the applicable substantive law.

With regard to the applicable *procedural law*, due to the special circumstances in and the municipalities of the district, the Trial Panel refers to the Provision Criminal Procedure Code of Kosovo (PCPCK) which entered into force on 06 April 2004. The Court notes that the applied paragraphs of the PCPCK are fully identical with the Kosovo Code of Criminal Procedure (KCCP) which entered into force on 06 January 2009.

In addition, because of the mental incompetence of the Accused during the commission of the criminal offence, UNMIK Reg. nr. 2004/34 on Criminal Proceedings Involving Perpetrators with a Mental Disorder is also applicable as *lex specialis*.

### *2. With Regard to the Charges of Aggravated Murder and Attempted Murder*

The Indictment charges the Accused with Aggravated Murder, contrary to Article 147 Item (4) of the PCCK, with regard to the killing of R.M., and Attempted Murder, contrary to Article 146 as read with Article 20 of the PCCK, with regard to the shooting of P.Dj.. However, the Court finds that the factual circumstances correctly fall under the legal qualification of Aggravated Murder contrary to Article 147 Items (4) *and (11)* of the PCCK.

Item (4) of Article 147 qualifies a killing as an “aggravated” murder if in the process of depriving a person of his life, the perpetrator intentionally endangers the life of another persons. When **D.DJ.** intentionally fired his automatic rifle at the men standing outside of the front of his house, he caused the death of R.M. and endangered the life of S.Dj. due to the close proximity of the men and the Accused’s use of a lethal weapon. Item (11) of Article 147 qualifies a killing as “aggravated” murder if the perpetrator intentionally commits two or more murders. When read together with Article 20 of the PCKK, this provision encompasses the attempted murder of P.Dj. in addition to the killing of R.M..

### *3. State of Temporary Mental Incompetence*

Article 11 of the PCKK bars criminal liability for criminal acts committed while the perpetrator is mentally incompetence. As explained above, at the time of the commission of the criminal act, **D.DJ.** was in a state of temporary mental incompetence, and therefore is not criminally liable for his actions.

UNMIK Reg. 2004/34 dictates the grounds for imposing mandatory psychiatric treatment in cases where the perpetrator suffers from mental incompetence. Section 5 of the Regulation states that the Court “shall impose a measure of mandatory psychiatric treatment at liberty” where the Court determines that there is a serious danger that the perpetrator will commit a future violent criminal offence against another person and psychiatric treatment at liberty will remove this danger. Article 12.3 provides that if the Accused is found to have been mentally incompetent at the time of the commission of the criminal offence, the Court “shall issue a ruling to impose a measure of mandatory psychiatric treatment” if where the grounds of Section 5 are satisfied and the Public Prosecutor filed a motion to impose a measure of mandatory psychiatric treatment.

During their expert testimony, both Dr. R.J. and Dr. F.D. were directly questioned about the danger which **D.DJ.** would pose to others in the future. Dr. J. testified that there always exists a possibility of a recurrence of another episode of extreme stress and delusional paranoia. However, in the majority of cases such a condition does not repeat, and in the particular case of **D.DJ.**, the patient is more inclined to commit suicide rather than homicide in the future due to his depression and guilt over the act he committed. Dr. D. testified that if **D.Dj.** does not undergo regular therapy, there is risk that he might experience another future mental de-compensation, however this possibility is decreased. He confirmed Dr. J.’s statement that there is a greater risk that the Accused would commit suicide rather than homicide.

Both experts agreed that **D.DJ.** would benefit from psychiatric treatment. Dr. D. testified that the Accused should be put under the strict control of a psychiatrist for a limited time, primarily in order to prevent suicide, but also to prevent danger to others. He opined that the Accused should be institutionalized for a period of approximately two years and then his mental condition could be re-evaluated and re-assessed. Dr. J. also testified that **D.DJ.** should be under the control of a psychiatrist, and specifically, that he should receive monthly injections against paranoia and oral medication. Both experts agreed that now

that the Accused's family members are informed about **D.DJ.**'s condition, they are better able to pick up on signs or symptoms of a future episode, and will be on alert to read whether his condition is deteriorating.

The Court finds that the grounds for imposition of mandatory psychiatric treatment under Article 5 of the UNMIK Regulation are met. There is a danger that **D.DJ.** could commit a future violent criminal offence, and this risk can be addressed by psychiatric treatment. Furthermore, during her closing statement on 05 July 2010, Prosecutor Maria Bamieh orally submitted a motion that if the Court does not find that the Accused is criminally liable for his acts due to mental incompetence, then the Court should order mandatory psychiatric treatment pursuant to the UNMIK Regulation. Therefore the legal preconditions for ordering mandatory psychiatric treatment under the law are satisfied, and thereby orders **D.DJ.** to undergo mandatory psychiatric treatment while at liberty.

#### 4. *With Regard to the Weapons Charge*

D.DJ. pled guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK. He testified that his sister and brother-in-law had brought the weapon, an \_\_\_\_\_, \_\_\_\_\_ made, \_\_\_\_\_, calibre mm, with serial number \_\_\_\_\_, from \_\_\_\_\_ during the war and had left the weapon in his house approximately two years prior to the event. **D.DJ.** was aware of the presence of the weapon in his home without a valid authorization card for an unknown period of time until \_\_\_\_\_. Therefore, he is guilty of and criminally liable for the unauthorized *possession* of the weapon during this period.

Because the Court finds that at the time of the shooting, **D.DJ.** was mentally incompetent, he can not be criminally liable for the act of unauthorized *use* of the weapon on the night of \_\_\_\_\_.

### **G. Rejected Motions**

During the main trial hearing on 28 April 2010, Defence Counsel Kacaniku made an oral motion for the Trial Panel to conduct an on-site crime scene visit in order to personally view the configuration of the field, specifically the direct sight line from the attic window to the crime scene. The Legal Representative of the Injured Party Boban Savic expanded the Defence Counsel's proposal, and requested a reconstruction of the scene be performed. After deliberation, the trial panel rejecting both motions because the documentation of the case file included crime scene reports and ample photographs of the scene. Therefore, the trial panel already had all the necessary information and documentation in order to come to a judgment.

During the main trial hearing on 24 June 2010, Legal Representative of the Injured Party Miodrag Brkljac proposed that the Trial Panel order additional expertise from the expert doctors who testified, in order to allow them to consider new information and evidence

which came to light after they had completed their initial examination of the Accused and review of the case file. The Legal Representative specifically raised the point that the testimony of B.Dj. was radically different from her first statement to police. After deliberation, the Trial Panel rejected the motion because the written expertises together with the expert testimonies were clear and complete, with a unified conclusion. Any questions left unanswered by the written expertises were posed to the experts during their testimony. Furthermore, the witness testimonies before the Court could not have had any effect on the mind of the Accused at the time of the commission of the criminal act.

## **H. Sentencing**

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the PCCK.

The Court considered as mitigating circumstances the fact that the Accused has no previous criminal record, that he admitted this criminal offence - he pled guilty to the charge of unlawful possession of weapon, and that he has to provide for his wife and three children.

The Court took as an aggravating circumstance that in Kosovo society, the unauthorized possession of weapons is highly spread and that these weapons pose a special danger in that are commonly used to solve any kind of conflict. As the Accused himself expressed, he should not have possessed that weapon and if he did not have access to such a weapon, the killings would not have occurred.

For the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK the law foresees a punishment of a fine or imprisonment of one to eight years. The Court imposed a sentence of two years of imprisonment for this criminal act.

**D.DJ.** has been in detention on remand since \_\_\_\_\_, a period of over \_\_\_\_\_ years. Pursuant to Article 73 Paragraph (1) of the PCCK, time served in detention on remand is to be credited to the imposed punishment of imprisonment. Therefore, the Accused has already served in full the two years of imprisonment to which he was sentenced, and was ordered released immediately.

## **I. Confiscated Items**

The weapon, an \_\_\_\_\_, \_\_\_\_\_ made, \_\_\_\_\_, calibre \_\_\_\_\_ mm, with serial number \_\_\_\_\_, is confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

## **J. Costs**

As **D.DJ.** was found guilty of Unauthorized Ownership, Control, Possession or Use of Weapons, he must reimburse the part of the costs of the criminal proceedings related to this charge pursuant to Article 102 Paragraph (1) of the PCPCK, with the exception of the costs of interpretation and translation. Pursuant to Article 102 Paragraph (2), he shall not reimburse the costs related to the murder charges. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCPCK.

### **K. Compensation Claim**

On 28 April 2010, Legal Representative Boban Savic submitted a compensation claim on behalf of Injured Parties Z.M. (brother of victim) and J. M. (mother of victim) in the amount of 178,240.00 euro for damages stemming from the killing of R.M.. It is undisputed that the compensation claim arises from the act of the Accused. Nevertheless, because the Court holds that the Accused is not criminally liable for his act, the criminal trial panel can not compel the Accused to compensate the Injured Party for damages arising from his act, pursuant to Article 112 of the PCPCK.

For this reason, the property claim of the Injured Party is referred for *civil* proceedings pursuant to Article 112 Paragraph (3) of the PCPCK.

**District Court of Mitrovica  
K. nr. 02/2010**

Prepared in English, an authorized language.

**Tara Khan**  
**Recording Officer**

**Hajnalka Veronika Karpati**  
**Presiding Judge**

**Charles L. Smith, III**  
**Panel Member**

**Nikolay Entchev**  
**Panel Member**

**Legal remedy:**

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