

**DISTRICT COURT OF MITROVICA**  
**P nr. 16/2009**  
**4 August 2010**

**IN THE NAME OF THE PEOPLE**

DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judges: Agnieszka Klonowiecka-Milart as Presiding Judge, and Charles L. Smith, III and Caroline Charpentier as panel members, with the participation of EULEX Legal Officer Noora Aarnio as Recording Officer, in the criminal case against

**R.A.** , charged according to the Indictment filed on 19 February 2009 and orally amended at the confirmation hearing on 9 February 2010 with the criminal offences of Attempted Murder contrary to Article 146 in conjunction with Article 20 of the Provisional Criminal Code of Kosovo (PCCK) and Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 Paragraph (2) of the PCCK,

After having held publicly a main trial on 4 August 2010, in the presence of the Accused **R.A.** , his Defence Counsel Rexhep Kacaniku, EULEX Public Prosecutor Neeta Amin and Injured Party **R.D.** , after the Trial Panel's deliberation and voting held on 4 August 2010, on the same day pursuant to Article 392 Paragraph (1) of the Kosovo Code of Criminal Procedure (KCCP), pronounced in public and in the presence of the Accused, his Defence Counsel Rexhep Kacaniku and EULEX Prosecutor Neeta Amin, the following

**JUDGMENT**

I. The accused **R.A.** , no nickname, son of **H.A.** and **H.S.** , born on                      in                      Village, Municipality of                      /                      , Kosovo-A. , residing at                      Village, of primary education, currently unemployed, single, no previous conviction

**is found guilty,**

because until \_\_\_\_\_, in his house in the village of \_\_\_\_\_, municipality of \_\_\_\_\_ / \_\_\_\_\_ the Accused has kept in his possession and use a pistol type \_\_\_\_\_, mm calibre, with serial number \_\_\_\_\_, with magazine and \_\_\_\_\_ bullets of the same calibre, without a valid Weapon Authorization Card.

By doing so, R.A. \_\_\_\_\_ committed the **criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons** contrary to Article 328 Paragraph (2) of the Criminal Code of Kosovo (CCK).

II. Therefore, the Accused R.A. \_\_\_\_\_ is **sentenced to two years of imprisonment.**

III. Based upon Article 43 of the CCK the execution of this sentence is **suspended for the verification period of two years.**

IV. The weapon, a \_\_\_\_\_ mm calibre pistol with serial number \_\_\_\_\_ is hereby confiscated from R.A. \_\_\_\_\_ pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

V. The Accused R.A. \_\_\_\_\_ is obliged to reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the Court when such data is obtained pursuant to Article 100 Paragraph (2) of the KCCP.

VI. The **charge of attempted murder** under Article 146 in connection with Article 20 of the CCK is **rejected** based on Article 389 of the KCCP following the withdrawal of the charges by the Public Prosecutor.

### **Reasoning**

The criminal acts averred by the indictment were committed on \_\_\_\_\_, which was after the entry into force of the law renaming the Provisional Criminal Code of Kosovo and the Provisional Criminal Procedure Code of Kosovo [Official Gazette III/44]. Therefore the Court applies the nomenclature consistent with this law, i.e., Criminal Code of Kosovo (CCK) and Kosovo Code of Criminal Procedure (KCCP).

The charge of attempted murder under Article 146 in connection with Article 20 of the CCK was withdrawn by the Public Prosecutor after the only witness as to this charge had availed himself of the privilege of not testifying. According to Article 389 of KCCP, the Court was obliged to reject the charge.

The accused pleaded guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons.

The court is satisfied that the material gathered in the case file sufficiently supports the charge under Article 328 Paragraph 2 of the Criminal Code of Kosovo and the plea entered by the accused.

In the statement that the defendant A. gave at the Prosecution Office on 2 February 2009 he admitted that he had had the weapon his possession since . It results from the same statement that he had kept it ready for actual use.

The document on confiscation of items no. , dated in the name of the defendant R.A. and signed by the defendant himself confirms the fact that a pistol type “ ”, mm calibre with serial number and bullets of the same calibre were confiscated from him.

The Panel considered that a suspended sentence will best serve the purposes of punishment under Article 34 of the CCK.

According to the Article 44 of the CCK a suspended sentence may be imposed on a perpetrator of a criminal offence punishable by imprisonment of up to ten years if the provisions of the mitigation of the punishment are applied.

According to the Article 66 item 2 of the CCK the Court may apply mitigations when the Court finds that there are particularly mitigating circumstances which indicate that the purpose of punishment can be achieved by imposing a lesser punishment.

The Panel took as a mitigating factor that the whole event encompassed by the charges had as a background a family conflict, where the roles of the offender and the victim were defined along evidentiary matters rather than undoubtedly established. This conflict had come to an end by the time of the confirmation hearing. Both parties repeatedly assured the Court of the reconciliation that had taken place between them. Given this, the imposition of a punishment of imprisonment without conditional suspension would go against the purpose of

punishment in that it would, in all likelihood, be perceived as an unjust outcome and be damaging for the relations in that family.

Moreover, the Court considered that the accused from the beginning of the investigation has shown true remorse. He admitted his guilt from the outset of the proceedings, voluntarily surrendered the weapon to the Police officers, and was co-operative with law enforcement in giving evidence. The accused has no previous criminal record.

The Court noted that according to the Law on Supplementation and Amendment of the Provisional Criminal Code of Kosovo, the mitigation of punishment has been foreseen as one of the consequences of the plea agreement. While in this case, technically speaking, there is no "plea agreement", the Court considered nevertheless that the accused had offered his guilty plea instantly and consistently. The mitigation of punishment in this case would thus be consistent with the current criminal policy of Kosovo, as reflected in the abovementioned Law.

The Panel took as an aggravating factor the long term of possessing the weapon without the valid authorization, during which the accused failed to avail himself of amnesties and did not attempt to legalise the weapon. The Panel likewise considered that the frequency of crimes committed with the use of weapons in Kosovo, as a matter of general prevention, calls for sanctioning illegal possession of weapons with imprisonment of considerable duration. On the other hand, the two-year probation period is sufficient to correct the behaviour of the accused and prevent re-offending.

District Court of Mitrovica  
P. nr. 16/2009

Prepared in English, an authorized language.

Noora Aarnio  
Recording Officer

Agnieszka Klonowiecka-Milart  
Presiding Judge

Charles L. Smith, III  
Panel Member

Caroline Charpentier  
Panel Member

*Legal remedy:* The parties must announce an appeal no later than 8 days after the pronouncement of the Judgement. 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 KCCP.