

DISTRICT COURT OF PEJA/PEC
P.nr. 68/12
Date 04 July 2012

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of the EULEX Judge Ingo Risch as Presiding Judge, the EULEX Judge Dariusz Sielicki and the Kosovan Judge Gezim Pozhegu as panel members, assisted by the Court Recorder Eriona Brading, in the criminal case against

NV, of father R and mother Z, maiden name B, born on ***** in Village ***** i ***** , resides in the same place, worker by profession, has completed secondary school, Albanian, citizen of Kosovo, married, father of six children, of average economic status,

Charged with the Indictment of the District Prosecution Office in Peja PP.nr.429/11 dated 17 January 2012, for the criminal offences of *Aggravated Murder* contrary to article 147 item 4 of CCK, criminal offence of *Grievous Bodily Injury* contrary to article 154 par.1 item 3 of CCK and criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to article 328 par. 2 of CCK, as modified during the hearing of 04 July 2012 with the criminal offence *Aggravated Murder* contrary to article 147 item 4 of CCK and criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to article 328 par. 2 of CCK

After holding the main trial hearings in public on 02, 03 and 04 July 2012 in the presence of the Public Prosecutor Peter Korneck, the accused NV, his defense counsels Gezim Kollcaku and Flamur Kelmendi, the injured party DO (present on 02 July 2012),

after the trial panel deliberation and voting, on 04 July 2012, pronounces in public, the following

V E R D I C T

I.

The accused NV is

GUILTY

Because

On 20 October 2011, at around 12:00 hours, in the village Dobrusha, Municipality of Istog, near the house of EV – the nephew of the accused, intentionally deprived of his life the victim MK by shooting at him four times with his AK-47 and by doing so, the accused endangered the life of DB and DO. On the critical day, after the victim MK,

accompanied with DB and DO went at the house of the accused Bosnian neighbor, where the accused NV appeared afterwards with his Volkswagen Golf 2, the accused approached the three persons, and after an argument which occurred between the three persons in one side and the accused in the other side, the accused went to his car and took his automatic rifle AK-47, returned back and at this moment DB fired two shots from his revolver in to the accused's direction, but missed. At this point the accused shot at the three persons, hitting the victim MK with one bullet in his head which caused the immediate death of MK. By this shooting the accused also caused injuries to the injured party DB into both right and left upper arm and caused him wounds of both arms, and injuries to the other injured party DO by hitting him in the heel of his right foot and caused him a wound of his right foot and a fracture in the right heel bone

- by which the accused committed the criminal offence of *Aggravated Murder* pursuant to Article 147 item 4 of CCK,

II.

The accused NV is

GUILTY

Because

Since 2010 until 20 October 2011 the accused was in possession of an automatic rifle AK-47 with serial number 71H5924 together with two magazines for the same rifle and 36 bullets of 7.62x39 caliber, without having a valid authorization card

- by which he committed the criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to article 328 par. 2 of CCK

Therefore, pursuant the provisions of Articles, 6, 11, 15, 31, 32, 33, 34 items 1 and 2, 37, 64 par 1, 65 par 1, 71 par. 2 sub-par. 1, 73 par 1, 99 par 1, Article 147 item 4 and Article 328 par. 2 of CCK and Articles 99 par 1, 2 items 3, 4, 6, par 3, 102 par. 1, 328 par 1, 385 par. 1 and 2, 386 par 2, 387 par 1 and 2, 391 and 392 of the KCCP, the accused is

SENTENCED

- For the criminal offence under Point I of this judgment to 15 (fifteen) years and 6 (six) months of imprisonment,
- For the criminal offence under Point II of this judgment to 1 (one) year of imprisonment,

- Pursuant to Article 71 par. 1 and 2 sub-par. 2 of CCK, the aggregate punishment is determined to 16 years of imprisonment.

Pursuant to Article 391 par. 1 sub-par. 5 of KCCP, the time spent in detention by the accused NV from 21 October 2011 until 04 July 2012, shall be credited in the punishment.

Pursuant to Article 54 par. 1 and 3 sub-par. 7 and Article 60 of the CCK, the accessory punishment of confiscation of the weapon – one automatic rifle AK-47, serial number 71H5924 together with two magazines for the same rifle and 36 bullets of 7.62x39 caliber is imposed against the convicted accused NV.

Pursuant to Article 99 par. 2 item 6 of KCCP, the accused NV shall pay the costs of these criminal proceedings in the amount of 400 (four hundred) Euros, counting 100 (one hundred) Euros for each hearing and a scheduled amount of 100 (one hundred) Euros.

The Injured Party may pursue a claim for compensation through the civil courts.

R e a s o n i n g

Procedural Background

On 18 January 2012 EULEX District Prosecution Office in Peja filed the indictment PP.nr.429/11 dated 17 January 2012 against NV for the criminal offences *Aggravated Murder* contrary to article 147 item 4 of CCK, two counts for the criminal offence of *Grievous Bodily Injury* contrary to article 154 par.1 item 3 of CCK and criminal offence of *unauthorized possession, ownership, control or use of weapons* pursuant to article 328 par. 2 of CCK.

The indictment was confirmed on 13 February 2012 by the confirmation judge of the District Court of Peja/Pec, through the ruling KAQ.nr.27/12.

On 17 April 2012 the President of the Assembly of EULEX Judges, deciding upon the request of the President of the District Court of Peja, decided to take over the case and allocate it to the competence of EULEX Judges for further proceedings.

Competence and Panel Composition of the Court

In accordance with Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the main charge against the defendant is the criminal offence of *Aggravated Murder* contrary to article 147 item 4 of CCK, punishable by imprisonment

of at least ten (10) years. Therefore, the District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offence, according to the indictment, was committed in the village Dobrusha, Istog Municipality, which is within the territory of the District of Pejë/Peć. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Since the present case was allocated to the competence of EULEX Judges by the decision of the President of the Assembly of EULEX Judge dated 17 April 2012, the panel was composed of two EULEX Judge and one Kosovan Judge pursuant to Article 3.7 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

None of the parties objected to the panel composition.

The Main Trial Sessions

The main trial was held in public on 02, 03 and 04 July 2012 in the presence of the EULEX Prosecutor Peter Korneck, the accused NV and his defense counsels Flamur Kelmendi and Gezim Kollcaku. The injured party DO was present only on 02 July 2012, while DB was not present even though he was duly summoned.

In accordance with Article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary.

Evidence administered during the main trial

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

Witness *MV* testified before this court on 02 July 2012
Witness *AV* testified before this court on 02 July 2012
Witness *DO* testified before this court on 02 July 2012
Expert witness *NP* testified before this court on 03 July 2012
Witness *IT* testified before this court on 03 July 2012
Witness *SS* testified before this court on 03 July 2012
Witness *DK* testified before this court on 03 July 2012
Witness *GM* testified before this court on 03 July 2012

Documentary Evidence

- Medical Check Sheet for the defendant number 20816 dated 21 October 2011 by Doctor PA,
- Certificate of Temporary Seizure of Items no. 2011-DF-807 of 21 October 2011,
- Certificate for Searching Apartment and Persons dated 20 October 2011,
- Police Officer's Report drafted by officer ShT dated 26 October 2011,
- Crime Scene Examination Report drafted by officers SA and HB dated 20 October 2012
- Photo Album of the Crime Scene containing 14 pictures,
- Photo Album containing 13 pictures of AK 47 and a hunting rifle
- Crime Scene Examination Report drafted by officer VK dated 21 October 2012
- Photo Album of the Crime Scene containing 45 pictures, a sketch of the crime scene and the legend
- Autopsy Report MA11-245 dated 21 October 2011
- Photo Album of the autopsy (three different albums)
- Vehicle examination report of 22 October 2011,
- Examination Report on Examination of Fire Weapons no. 2011-2215/2011-2329 of 01 November 2011,
- Amendment to Criminal Report no. 2011-DF-807 of 21/11/2011 – Metering report,
- Expertise for DO drafted by Doctor BV dated 05 December 2011,
- Expertise for DB drafted by Doctor BV dated 05 December 2011.

Factual Findings

In the morning of 20 October 2011, the late MK, accompanied with DB and DO went at the house of E in the village Dobrusha, Municipality of Istog in order to discuss land issues. MK and the accused were owners of bordering parcels. EV, the nephew of the accused, was in Germany during that time, and his wife MV gave the information to inform her uncle and she called the accused and asked him to come home. He was informed by M that there were three land neighbors awaiting him and the three unknown persons had claimed we had occupied their land. The accused answered to M who would come from Istog and be there in 10 minutes. The accused expected a dispute with these persons and wanted to be prepared for a conflict and took his unregistered automatic rifle AK- 47 with his car and he was ready to make use of his gun if necessary. His gun was loaded with at least four rounds of the suitable ammunition. After the accused had parked his car near the house of his nephew, late MK, DB and DO approached the accused. A discussion about their land developed and escalated when they discussed the issue of sale of land. The accused was interested to buy a part of the adjacent property, because his financial means were limited, while the late MK emphasized to be only interested in a deal covering his entire piece of land. The accused realized to be unable to buy the whole piece of land and decided to make use of his gun. He headed to his nearby parked Volkswagen Golf 2 in which he carried his loaded Kalashnikov on the co-driver's seat. He took the loaded gun and pointed it towards the three visitors with the intention to shoot at them. The panel cannot exclude that DB was armed with a handgun, pulled his revolver after the accused had pointed the Kalashnikov at them and the court can also not exclude that late DB shot two times with his revolver into the direction of the accused

before the accused opened the fire from his AK-47. If there were these two shots from a revolver both shots failed and the accused fired at least four rounds from his Kalashnikov towards the three visitors with the intention to kill at least MK and he deprived him of his life by shooting him into the head with the result of his immediate death. One of the other four bullets went into the heel of the right foot of DO and another of the four bullets went into the both right and the left upper arms of DB and by doing so, the accused endangered the life of DB and DO.

Assessment of evidence

In first line the panel has considered that the accused has deliberated his defense with his counsels and has upon this consultation plead guilty regarding his charge of one act of aggravated murder pursuant to article 147 item 4 of CCK – count 1 - and the further offence of unauthorized possession, ownership, control or use of weapons pursuant to Article 328 para 2 of CCK – count 2 -.

As to count 1 the confession of the accused is supported by the further evidence taken by the panel.

It has to be established beyond all reasonable doubts that the accused shot four times with his AK-47 automatic gun at MK, DB and DO and that three of the four shots hit their aims: One of the bullets hit MK into the head and killed him at the spot, a further bullet went into the right foot of DO and a further bullet hit both arms of DB.

There are also no doubts that the accused used his gun with the intention to deprive the life of the victim MK and that the accused endangered by his four shots also the life of DB and of DO. Although the injuries of B and O were not life threatening the accused endangered their life by his shooting, because the shot which hit MK verifies how dangerous a shooting from an automatic rifle AK-47 is.

It is proven by the police reports and the autopsy report that MK was killed by a shot from the gun AK-47, which was seized in the car of the accused. All the before mentioned reports were read during the main trial. And according to the reports of the police and the medical reports regarding the injuries of DB and DO there are no doubts that they were caused by shots from the very gun of the accused.

The panel was unable to establish that DB was armed with a revolver and that he shot two times after the accused pointed his AK-47 towards the three Serbian visitors. But the panel could not exclude this possibility and therefore considered this to the favor of the accused. The reason of this uncertainty is as follows:

On one hand witness DO testified before the court, neither he nor MK and also DB were armed. Witness MV stated in front of the court during the main trial that the bold headed man had pulled a black revolver and wanted to point it at the accused. To the conviction of the panel the witness described DB, because he was the only bold headed man at the

scene. But MV's statement is not convincing. First of all her testimony is inconsistent in comparison with her previous statements which she gave to the police and the public prosecutor. Prior to the main trial witness MV did not report to the police that one of the visitors was armed with a handgun. The police interviewed her shortly after the shooting occurred and at this time according to common experience the memory of a witness is fresh. Confronted with this discrepancy the witness gave the explanation that she did not want to talk to the police about a gun in the presence of her children. But this explanation is also not convincing, because her 11 years old son arrived at home from school after the police had arrived to interview the witness. And the fact that her daughter was present when the police arrived at her home it cannot be seen as an act of taking care of the daughter not to mention the gun in the hand of one of the visitors in the presence of the daughter, because due to the statement of MV her daughter will have heard the shots as well. When shots were heard it does not make sense not to mention the gun, which the witness now wants to have seen in the hand of a bold headed visitor. Apart from the fact that her report about the handgun even in the presence of the daughter would have been reasonable without further frightening of the girl, it would have been easy for her to indicate to the police officers that she wanted to give further explanations in the absence of her daughter.

Witness SS testified to have seen that the person who entered the red Golf 2 at the co-driver's side was armed with a hand gun. He obviously meant DB who – due to the shot into his arms – was unable to open the co-driver's door. But this description is in fully contradiction to the testimony of witness DO who stated they were unarmed all the time.

The trial panel has taken into consideration that also witness GM in his statement before the court reported on a bold headed man armed with a revolver and that he heard two gunshots. Nevertheless, his testimony is not fully convincing and in contradiction to the statement of the injured party DO and witness MV. While witness MV described the gun as being black, witness GM thought it was a white one. The further discrepancy in his statement was that before the trial panel he stated to have seen the man with a handgun while he was shooting and in further stage of the proceedings he stated not to have seen him shooting, but only to see the gun and to have heard the shots.

To the favor of the accused the panel considered that DB was armed with a handgun at the critical day and used his gun by firing two times after the accused had pulled his AK-47 and pointed it at the three visitors.

Legal Findings

1) Aggravated murder

The accused committed the criminal offence of *Aggravated Murder* pursuant to Article 147 item 4 of CCK, because he intentionally deprived the life of victim MK by shooting into his head an endangered intentionally by his further shots the life of DB and of DO. Regarding his killing he acted with *dolus directus*, because it was his will to kill this

person upon the land dispute. Regarding the endangering of the life of D and D he acted with *dolus eventualis*, because he took into consideration that his further shots from his automatic rifle AK-47 could lead to the death of these two persons who have been nearby MK and he was firing four shots into the direction of these three persons.

There was no necessary defense, Article 8 CCK. The panel is fully convinced that it was the accused who used at first his weapon. The accused returned to his parked car in order to get his AK-47 out of it and at the latest at this moment he intended to use his gun by shooting at MK, because he realized that he was unable to purchase the property deal. Therefore he decided to kill M, who had not pulled a revolver so far. After the accused had taken his loaded gun from his car and had pointed the weapon towards M, D and D, ready to shoot at them with the intention to kill at least M, it cannot be excluded that M pulled a revolver and fired twice, before the accused started a series of four shots from his Kalashnikov towards M and his two companions.

To the conviction of the panel M by no way had pulled his revolver at an earlier stage and in particular not before the accused had pulled his Kalashnikov, because this would not have made any sense. M was ready to sell his property. It would not make sense at all to kill the potential buyer of the land. And if he had such a senseless intention he could and would have killed the accused earlier as long as he was close to himself and not later when the accused went back to his car.

Since the panel is convinced that it was the accused who pulled at first his gun, it was M who acted in necessary defense, when he pulled his revolver and although it has to be taken as a fact that M fired twice before the accused started to shoot it was M who acted in necessary defense, Article 8 CCK. And there is no necessary defense possible against an act which is excused by necessary defense. In other words: M acted in necessary defense and the shots of the accused were not excused by necessary defense.

2) *Unauthorized possession, ownership, control or use of weapons*

The accused was in possession of the unregistered *corpus delicti*, the AK-47, an automatic gun, and he used it at the critical day by firing four times. Therefore he committed the criminal offense pursuant to Article 328 par. 2 of CCK.

Determination of Punishment

1. *Aggravated murder*

Article 147 CCK foresees a frame of punishment of at least ten years of imprisonment or of long-term imprisonment.

Within this frame the panel evaluated all relevant aspects to the favor and to the disfavor of the accused.

a) Mitigating factors

As the main mitigating factor the panel realized the fact that the accused – after consulting his defense counsels – confessed to have committed the killing and he expressed to feel sorry for the victims.

Furthermore the panel followed the opinion of the medical expert and shared the conclusion that “*IN TEMPORE CRIMINIS the ability of the accused to understand the importance of his actions and the possibility to control his actions, was reduced but not essentially*”. Therefore, this circumstance was also taken as a mitigating factor which resulted in a lower punishment against the defendant.

Further mitigating factor, the panel considered the behavior of the victims before the defendant used his Kalashnikov. In particular the panel considered that the accused would have felt provoked by the three Serbian persons and it cannot be excluded that they have insulted MV, family member of the accused and also the pulling of the revolver and the two shots from it after the accused have pointed his Kalashnikov towards the three Serbian persons.

As a further mitigating factor, should be considered the escalating dispute about the property of the neighboring land and the emotions of the accused raised by this dispute.

The advanced age of the accused is a further aspect which the trial panel took into consideration to the favor of the defendant.

b) Aggravating factors

As an aggravating factor the trial panel considered the actions of the accused endangered the life of two other persons when he shot with his Kalashnikov. This action not only endangered the life of two persons, but also injured two of them by inflicting serious wounds to them.

After considering all these factors the trial panel imposed the punishment of 15 years and 6 months of imprisonment.

2. Unauthorized ownership, control, possession or use of weapons

Article 328 par. 2 of CCK foresees a frame of punishment of a fine up to 7.500 Euro or the imprisonment of one to eight years.

Within this frame the panel considered all the mitigating and aggravating factors.

As a mitigating factor the trial panel considered the confession of the accused and his remorse.

As an aggravating factor the trial panel considered that the weapon was an automatic rifle and particularly a dangerous weapon

After considering all these factors the trial panel imposed the punishment of one year of imprisonment.

Considering the two punishment, the trial panel imposes a punishment of 16 years of imprisonment as an aggregate punishment against the accused.

Costs of the criminal proceedings

Pursuant to Article 99 par. 2 item 6 of KCCP, the accused NV shall pay the costs of these criminal proceedings in the amount of 400 (four hundred) Euros, counting 100 (one hundred) Euros for each hearing and a scheduled amount of 100 (one hundred) Euros.

DISTRICT COURT OF PEJA/PEC

P.nr.68/12

Dated this 04th day of July 2012

Panel Member

Panel Member

Presiding Judge

Dariusz Sielicki

Gezim Pozhegu

Ingo Risch

Court Recorder

Eriona Brading

Legal Remedy

Authorized persons may file an appeal in written form against this verdict through the District Court of Peja/Pec to the Supreme Court of Kosovo within fifteen (15) days from the date the copy of the judgment has been served, pursuant to Article 398 Par. 1 of the KCCP.