

**BASIC COURT OF MITROVICA/MITROVICĚ**

**P.nr. 933/2013**

**10 July 2014**

**IN THE NAME OF THE PEOPLE**

**THE BASIC COURT OF MITROVICA/MITROVICĚ**, in the Trial Panel composed of EULEX Judge Nuno Manuel Ferreira de Madureira as Presiding Judge and EULEX Judges Roxana Marilena Comsa and Iva Niksic as Panel Members, with the participation of EULEX International Legal Officer Vera Manuello as the Recording Officer, in the criminal case P.nr. 933/2013

*Against*

**Ž. V.**, son of J. (father) and M. (nee J.), born on \_\_\_\_\_ in M\_\_\_\_\_ (hereinafter M\_\_\_\_\_) where he resides at \_\_\_\_\_, married, \_\_\_\_\_, unemployed \_\_\_\_\_. He was arrested on 29 July 2013 and under the measure of detention on remand until 28 February 2014, following by the measure of house detention from 28 February 2014 until 20 June 2014; currently under the measure of attendance at Police stations;

*Accused* through the Indictment of the State Prosecutor in Mitrovica dated 24 October 2013 with the criminal offence of:

“Attempted Aggravated Murder” contrary to Article 147 Paragraph (1.10) in conjunction with Article 20 of the Criminal Code of Kosovo, UNMIK/REG/2003/25 (CCK);

*After having* held the Main Trial hearings, all open to the public, on 06 May, 03, 04, 09, 10, 11, 18, 19 June and 09 July 2014, in the presence of the Accused **Ž. V.** and his Defence Counsel Nebojša Vlajic, the Injured Parties Officer A. T. and Officer F. S. (on 03 June 2014) and the State Prosecutor,

*Having informed* the parties on 09 July 2014 that the Court is not bound by the legal qualification of the criminal offence as set out in the Prosecution’s Indictment according to Article 360 Paragraph (2) of the new Criminal Procedure Code (CPC) and that the Court

may *ex officio* re-classify the original criminal offence into a different one based on facts not entirely coincident with those described in the Indictment but which do not configure a substantial change in the circumstances,

*Having informed* the Defence on 09 July 2014 of the possibility of such re-classification in a timely manner and of his right to file any observations and present any additional evidence related to this matter,

*Having been informed* by the Defence that he did not wish to present any additional evidence but that he will present observations on the legal qualification of the criminal offence during his closing statement,

*Having heard* the parties' closing statements on 09 July 2014,

*Following* the Trial Panel's deliberation and voting held on 09 July 2014,

*Pursuant to* Article 366 Paragraph (1) of the CPC on 10 July 2014 in a public hearing and in the presence of the Accused, his Defence Counsel and the State Prosecutor;

*Renders the following:*

## **JUDGMENT**

**I. The Accused Ž. V. is**

### **FOUND GUILTY**

**Because** on 14<sup>th</sup> August 2010 Mitrovica Regional Operations Support Unit (ROSU) was implementing an operation plan named '\_\_\_\_\_' aimed at tackling illegal smuggling of goods in the north of Kosovo.

At a certain time during late afternoon before 19h00, on the road of Rudare between Zvečan/Zvečan and Mitrovica, near Sokolica Monastery junction, two Police officers in plain clothes managed to stop a cistern truck driving in the direction of South Mitrovica with license plate \_\_\_\_\_. The truck driver admitted the cistern was loaded with oil.

The truckload's destination was \_\_\_\_\_Petrol station, property of the family of the Accused and run by his brother Z. V. and for which the Accused worked on a regular basis.

The truck driver was unable to produce any documents with regard to the goods he was transporting. The truck driver was then ordered by the Police officers to follow them to the customs terminal in South Mitrovicë/a. The truck driver went into his truck, entered the cabin, but instead of starting the engine, jumped out of the truck through the passenger door and ran off.

In the meantime, a crowd started gathering on the road towards the direction of Zvečan/Zveçan in the proximity of the area and Kosovo Serbs started protesting against the actions of the Kosovo Albanian Police officers. In the meantime, at around 19h00, following a request for assistance, two separate teams of uniformed ROSU Police officers arrived at the scene to assist their colleagues.

The Injured Parties \_\_\_\_\_ A. T. and F. S., wearing \_\_\_\_\_, placed themselves near the rear of the truck in order to regulate the on-going traffic, specifically by stopping the traffic coming from Zvečan/Zveçan.

Several minutes after the truck driver ran off, and while \_\_\_\_\_ A. T. and F. S. were standing in the middle of the road, a four wheel motorbike (quad bike) coming from the direction of Zvečan/Zveçan approached with two persons on it. The Accused Ž. V. was the driver. The identity of the passenger remained unknown.

The Accused was ordered by \_\_\_\_\_ A. T. to stop by raising his hand over his head with his palm facing forward. Realizing that the driver of the quad was not stopping, the \_\_\_\_\_ made a sign to the driver of the quad to slow down.

The Accused, who clearly saw the signals and who was fully aware that he had to follow the \_\_\_\_\_ order, instead kept driving at the same speed in the direction of \_\_\_\_\_ officers A. T. and F. S..

\_\_\_\_\_ officers A. T. and F. S. could only avoid a collision with the oncoming vehicle by swiftly moving aside. Thus, the quad bike managed to pass through.

After continuing his drive for several metres towards Mitrovica, the Accused executed a U - turn and drove back approaching the truck and inquired about the Police actions in relation to the truck.

Moments later, the Accused was arrested next to the truck cabin, thus being prevented from undertaking any further actions, while the passenger of the quad managed to escape.

The Accused acted intentionally with the purpose of preventing the truck together with its load to be driven to customs terminal in South Mitrovica and undergo customs procedure. The Accused was aware that the truck was under Police custody and that the persons towards whom he drove the quad bike were \_\_\_\_\_ officers acting in such capacity. The

Accused was also aware that the truck load was destined for \_\_\_\_\_ Petrol Station and that the truck has been stopped by Kosovo Albanian Police officers.

The Accused was fully mentally competent.

**Therefore,**

**The Court requalifies the criminal offence of “Attempted Aggravated Murder” and**

**The Accused Ž. V. is CONVICTED of committing the criminal offence of attempt of “Obstructing Official Persons in Performing Official Duties” contrary to Article 316 Paragraphs (1), (3) and (4) of the Criminal Code of Kosovo (CCK), in accordance with Article 3 Paragraph (1) of the Criminal Code of the Republic of Kosovo – Law 04/L-082 (CCRK);**

**II. The Accused Ž. V. is**

#### **FOUND NOT GUILTY**

Because under the circumstances described above, the Accused on 14.8.2010 around 19.00 hrs on the road between Zvečan/Zveçan and Mitrovica, near Sokolica monastery junction, was driving a quad bike towards the Injured Parties who tried to stop him. It was however neither proven beyond reasonable doubt that he used his vehicle deliberately as a lethal weapon with the intent to kill the Injured Parties or that he saw the possibility that he might hit them and they might be killed by this action and he agreed with it.

**Therefore, the Accused Ž. V. is ACQUITTED of committing the criminal offence of “Attempted Aggravated Murder” contrary to Article 147 Paragraph (1.10) in conjunction with Article 20 of the Criminal Code of Kosovo (CCK), pursuant to Article 364 Paragraph (1) subparagraph (1.3) of the CPC.**

**III. The Accused Ž. V. is hereby**

#### **SENTENCED**

to **12 (twelve) months of imprisonment** in accordance with Article 38 Paragraph (1) and Article 65 Paragraph (2) of the CCK.

The time served in detention on remand from 29 July 2013 until 28 February 2014 and in house detention from 28 February 2014 until 20 June 2014 is to be included in the punishment of imprisonment pursuant to Article 73 Paragraphs (1) and (4) of the CCK.

**IV.** The Accused shall pay 300 (three hundred) Euros as part of the costs of criminal proceedings, but is relieved of the duty to reimburse the remaining costs in accordance with Article 453 Paragraphs (1) and (4) of the CPC. The Accused must reimburse the ordered sum no later than 30 (thirty) days from the day this Judgment is final.

**Basic Court of Mitrovicë/a**

**Nuno de Madureira**

**Roxana Comsa**

**Iva Niksic**

**Presiding Judge**

**Panel Member**

**Panel Member**

**Vera Manuello**

**Recording Officer**

**LEGAL REMEDY:** A Defendant, their legal counsel, the Prosecutor or an Injured Party have 15 days from service of this judgment to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.