

BASIC COURT OF MITROVICË / MITROVICA

P. 132/14

Mitrovicë/a 30 July 2015

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICE/A, in the trial panel composed of EULEX Judge Vidar Stensland as Presiding Judge, EULEX Judge Dariusz Sielicki and EULEX Judge Katrien Gabriel Witteman, with EULEX Legal Advisor Dukagjin Kerveshi as the Recording Officer in the criminal case against:

G. G., father's name M, born on _____ in _____, before detention on remand residing in the village of _____, Municipality of _____i, Citizen of the Republic of Kosovo, personal ID-number _____.

The defendant was accused through the Indictment of the EULEX Basic Prosecutor of Mitrovicë/a dated 14 November 2014 (with a clarification dated 8 December 2014) with the criminal offence of:

"on Friday, 22nd March 2013 at approximately 13:50 hours, at Arsim Muzaqi Street in Vushtrri, acting in co-perpetration with other persons, the now deceased B. G. and the juvenile I. G., participated and substantially contributed to the murder of the victim Xh. K., as a result of using a fire arm. Therefore the defendant G. G. has committed the criminal offence of Aggravated Murder contrary to Article 179 paragraph 1 subparagraph 1.5 and 1.8 in conjunction with Article 31 of Criminal Code of Republic of Kosovo."

The main trial hearing, open to the public, was held on 30 June, 2, 9, 24 and 28 July 2015 in presence of the Accused, his Defence Counsel Mahmud Halimi and EULEX Public Prosecutor Lily Oprea Stelluta. On 24 July 2015 EULEX Public Prosecutor Tomas Skala, was replacing Stelluta. The injured party, Q. B. (the widow of late Xh. K.) was present on 30 June and 2 July 2015.

The trial panel deliberated and voted on 28 July 2015.

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Pursuant to Article 366 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK)¹ on 30 July 2015 in a public hearing and in the presence of the Accused, his Defence Counsel and the EULEX Prosecutor;

The Court renders the following:

JUDGMENT:

I. The Accused G. G.is

FOUND GUILTY and CONVICTED

of the criminal offence of:

Aggravated murder - Article 179, Paragraph 1, Subparagraph 1.5 in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo².

Because:

On Friday 22 March 2013 at approximately 13:50 hours, at Arsim Muzaqi Street in Vushtrri, G. G. was driving a red/cherry coloured Golf II with the number plate _____. B. G. was sitting in the front passenger seat. They saw Xh. K. approaching from the opposite side of the street in a dark blue Mercedes with the number plate _____. G. G. stopped the Golf and B. G.

¹ Criminal No. 04/L-123

² Hereinafter CCRK

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went out of the vehicle. B. G. walked in direction of the Mercedes while G. G. turned the Golf over to the left lane of the road and blocked the road for the Mercedes. B. G. took out his pistol _____ while walking towards the Mercedes. He opened the driver's front door of the Mercedes and fired a gun shot in direction of Xh. K.. The shot hit and went through Xh. K.'s left forearm and entered thereafter the left front of his ribcage. Xh. K. died later that day as a result of the injuries caused by the gun shot fired by B. G.. After this gun shot, B. G. went behind the Mercedes and fired two gun shots witch went through the back headrests of the Mercedes and ended in the back seats.

Xh. K. had a _____ pistol in his car (the Mercedes) and he fired four gun shots. Two of these shots hit B. G.. One bullet hit B. G. on the left side of the abdomen and went outside to the opposite side. The second bullet hit B. G. on the front part of his chest, almost in the middle line. Also the middle finger of B. G.'s left hand was half down detached as a result of the strike from one of the two bullets.

After G. G. blocked the road for the Mercedes, he immediately left the Golf, ran towards the Mercedes and opened the front passenger door

G. and B. G. acted together. They saw that Xh. K. came towards them in the Mercedes and decided to attack him. G. G. contributed substantially by blocking the road of the Mercedes, forcing Xh. K. to stop, which made it possible for B. G. to open the driver's front door and shoot Krasniqi. Furthermore G. G. contributed by running to the Mercedes, opening the front passenger's door and disturbing Xh. K. in his defensive action.

The panel does not find it proven beyond reasonable doubt that G. G. acted with direct intent when it comes to the murder. The panel, however, finds it proven beyond reasonable doubt that G. G. acted with eventual intent. G. G. was aware that he and B. G. decided to attack Xh. K.. He was aware that his action; driving the Golf, blocking the way for Xh. K. in the Mercedes and disturbing Xh. K., taken together with the action of B. G., could lead to the killing of Xh. K.. Still he decided to contribute to B. G.'s attack against Xh. K.

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G. G. was mentally competent when he committed the crime.

At the time of the shooting there were several people walking along Arsim Muzaqi Street close to the crime scene. Two persons were inside the Kebab shop, Te'Bajrami, also close to the crime scene. One of the gun shots fired by Xh. K. entered the Kebab shop through the window facing the street, thus endangering the life of the persons inside. B. G. fired two gun shots from the back side of the Mercedes. He was in a stressful situation without particular control of his weapon. It was a coincidence that the two bullets hit the back seat of the Mercedes and not one or more persons outside the Mercedes. G. G. was aware that the attack against Xh. K. could result in a gun fight and endanger the life of one or more persons; still he decided to take part in the attack against Xh. K..

The panel does not find it proven beyond reasonable doubt that Xh. K. was deprived of his life because of unscrupulous revenge or other base motives.

II. The **Accused G. G.** is hereby

SENTENCED

to **15 (fifteen) years of imprisonment** in accordance with Article 179 Paragraph 1, Subparagraph 1.5 and Article 31 of the CCRK.

The time served in detention on remand since 19 September 2014 is included in the punishment of imprisonment pursuant to Article 365 Paragraph 1, Subparagraph 1.5 of the CPC.

III. Confiscation

The pistol used by B. G. _____ is confiscated in accordance with the CCRK Article 69 Paragraph 1 and the CPC Article 365 Paragraph 1 Subparagraph 1.4.

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IV. Cost of Proceedings

The accused G. G. shall pay 300 Euros as part of the costs of criminal proceeding, 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 G. G. must reimburse the ordered sum no later than 30 days from the day this Judgment is final. Any remaining cost shall be paid from the budgetary resources.

EULEX Judge

EULEX Presiding Judge

EULEX Judge

Dariusz Sielicki

Vidar Stensland

Katrien Gabriel Witteman

Legal Remedy:

The parties have the right to appeal against this Judgment within 15 days of the day the copy of the Judgment has been served (Article 380 Paragraph (1) CPCK).