

**BASIC COURT OF MITROVICĚ/MITROVICA**

**P. no. 186/2015**

**4 July 2017**

**IN THE NAME OF THE PEOPLE**

THE BASIC COURT OF MITROVICĚ/MITROVICA, in the Trial Panel composed of EULEX Judge Arnout Louter as Presiding Trial Judge, EULEX Judge Franciska Fiser and EULEX Judge Iva Niksic as Panel Members, with EULEX Legal Officer Asja Zujo as the Recording Officer in the criminal case:

*Against:*

**D.N.**, father's name D., mother's name D.T., born on ... in ..., residing in ..., Kosovo Serb;

*charged in the Indictment PP 98/2015 with the criminal offences of:*

- 1. Light bodily injury pursuant to Article 188 paragraph 1, subparagraph 1.1, paragraph 2 of the Criminal Code of the Republic of Kosovo (CCRK);**
- 2. Causing general danger pursuant to Article 365 paragraph 1, paragraph 3 of the CCRK;**
- 3. Unauthorised ownership, control or possession of weapons pursuant to Article 374 paragraph 1 of the CCRK;**

*After* having held the main trial hearings on 27 and 30 March 2017, 5 April 2017, 2 and 3 May 2017, in the presence of the Prosecutor, the Defendant, and his Defence Counsel, and open to the public;

*Following* the Trial Panel's deliberation and voting held on 3 May 2017;

*Pursuant* to Articles 359 – 368 of the Criminal Procedure Code (CPC), pronounced in public and in the presence of the Prosecutor, the Defendant, Defence Counsel, as recorded in the minutes;

*Renders* the following:

## J U D G E M E N T

### I.

Criminal charges (Count I of the Indictment):

1. Light Bodily Injury;
2. Causing General Danger;

The Defendant **D.N.** is **FOUND NOT GUILTY** and pursuant to Article 364, Paragraph 1 Sub-Paragraph 1.3 of the CPC, **ACQUITTED** of committing the criminal offences of Light Bodily Injury, described and punishable pursuant to Article 188 Paragraph 1, Sub-Paragraph 1.1, Paragraph 2 of the CCRK and Causing General Danger, described and punishable pursuant to Article 365 Paragraph 1, Paragraph 3 of the CCRK;

because:

It was found not proven that **D.N.**, around 01.15 hrs on 13<sup>th</sup> April 2015 in front of the disco-club “Crna Dama” located near the junction of the streets “Kralja Petra I” and “Lola Ribara” in northern Mitrovica, having participated in an assembled crowd here, has pulled out his firearm (a pistol) brand Crvena Zastava or similar and intentionally fired from it several times into an unestablished direction among the people present, thus endangering their life and health.

It also was found not proven that **D.N.**, in so doing, has wounded three of the individuals present: i) S.M.1, born on ..., who sustained a serious firearm injury into the right foot (multiple fracture of III metatarsals), requiring intensive medical care (in particular an emergency surgery in the general anesthesia) in the hospital until his discharge on 24<sup>th</sup> April 2015; ii) B.P., born ..., who sustained a firearm injury into the lower part of both legs (the shins), requiring intensive medical care (a surgery in particular) in the hospital until his discharge on 20<sup>th</sup> April 2015 and iii) M.V.1, born on ..., who sustained a minor firearm injury into a left leg finger, not requiring considerable medical care.

### II.

Criminal charge (Count II of the Indictment):

3. Unauthorised Ownership, Control or Possession of Weapons;

The Defendant **D.N.** is **FOUND GUILTY** and **CONVICTED** of committing the criminal offence of Unauthorised Ownership, Control or Possession of Weapons, described and punishable pursuant to Article 374, Paragraph 1 of the CCRK;

because:

It was proven that **D.N.** from around 2010 until 13<sup>th</sup> April 2015, in Mitrovicë/a and Zvečan, Kosovo, not being a holder of a valid permit to carry a weapon issued by a competent authority of the Republic of Kosovo, was in possession of a firearm (a pistol) brand “Crvena Zastava” type C-103095 and a magazine with 6 bullets.

Therefore, pursuant to Article 374, Paragraph 1, of the CCRK, for the criminal offence of Unauthorised Ownership, Control or Possession of Weapons, Defendant **D.N.** is **SENTENCED**

**to 1 (one) year of imprisonment;**

but, according to Article 75, Paragraph 1., Subparagraph 1.3., Article 51 Paragraphs 1 and 2 and Article 52 Paragraph 1 of the CCRK, the punishment of imprisonment imposed against Defendant **D.N.** shall not be executed if the Defendant does not commit another criminal offence for the **verification period of 3 (three) years;**

Pursuant to Article 83 Paragraphs 1 and 4 of the CCRK in conjunction with Article 365 paragraph 1.5 of the CPC, in case the suspended sentence is revoked in accordance with Article 53 of the CCRK, the time **D.N.** spent in detention on remand between 17<sup>th</sup> April 2015 and 15<sup>th</sup> May 2015, and in house detention between 15<sup>th</sup> May 2015 and 15<sup>th</sup> June 2015, is to be credited to the duration of the punishment.

III.

Pursuant to Article 115, Paragraphs 1, 2 and 5 of the CPC the following items, confiscated by the police on 13<sup>th</sup> April 2015:

- a firearm (pistol) brand “Crvena Zastava” type C-103095 with one magazine and 6 bullets

shall be confiscated from the Defendant **D.N.** and destroyed.

#### IV.

According to Articles 450-457 of the CPC and Article 365 Paragraph 1.6 of the CPC the Defendant **D.N.** shall reimburse 100 (one hundred) Euro as part of the costs of criminal proceedings while any remaining cost of the criminal proceedings shall be paid from the budgetary resources.

The Defendant **D.N.** must reimburse the ordered sum no later than 30 days from the day this Judgment is final.

### **REASONING**

#### **I. PROCEDURAL BACKGROUND**

##### **I.A. Procedural History**

1. The Defendant was arrested on 17 April 2015, in relation to an incident that occurred at the Coffee-Bar “Crna Dama” in northern Mitrovica on 13 April 2015. Pursuant to a Ruling of the Basic Court of Mitrovicë/a dated 19 April 2015, the Defendant was placed in one-month detention on remand. By the Ruling of the Basic Court of Mitrovicë/a dated 15 May 2015, detention on remand was replaced with house detention, which was terminated on 15 June 2015.
2. On 13 November 2015, the Prosecutor of the Mitrovicë/a Basic Prosecution Office filed the Indictment PP 98/2015, dated 11 November 2015, charging the Defendant with the criminal offences listed above.
3. On 28 January 2016, the Presiding Trial Judge held the initial hearing pursuant to Article 245 of the CPC, in the presence of the Prosecutor, the Defendant and the Defence Counsel. The Defendant pleaded not guilty to Count I of the Indictment, namely the charges of light bodily injury and causing general danger. The Defendant pleaded guilty to the charge of unauthorized ownership, control or possession of weapons in Count II of

the Indictment. Instead of scheduling a second hearing, the Presiding Trial Judge instructed the Defence that they may submit a request to dismiss the indictment and objections to the evidence pursuant to Articles 245(5), 249 and 250 of the CPC.

4. On 21 March 2016, the Presiding Trial Judge issued a Ruling dismissing the indictment against the Defendant **D.N.**, in relation to Count I of the Indictment. The Ruling was appealed by the Prosecutor.
5. On 25 April 2016, the Court of Appeals granted the appeal of the Prosecutor, modified the Ruling of the Presiding Judge dismissing the indictment, and returned the case to the Basic Court of Mitrovicë/a for further proceedings.
6. The main trial hearings were held on 27 and 30 March 2017, 5 April 2017, 2 and 3 May 2017, in the presence of the Prosecutor, Ms. Lili Oprea Steluta, the Defendant and his Defence Counsel, Mr. F.K.. The Court heard seven witnesses.
7. The verdict was announced by the Trial Panel on 5 May 2017.

### **I.B. Procedural Code**

8. On 1 January 2013 a new Criminal Procedure Code came into force in Kosovo. The Criminal Procedure Code (Criminal No. 04/L-123) (CPC) replaced the Provisional Criminal Procedure Code of Kosovo (as amended) (UNMIK Regulation 2003/26) (CPCK) (Articles 545(2) and 547 of the CPC). The new CPC was applied to the proceedings in the present case, in accordance with the transitional provisions of this code.<sup>1</sup>

### **I.C. Competence**

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<sup>1</sup> See Article 539 CPC.

9. Under Article 11 Paragraph 1 of the Law on Courts,<sup>2</sup> Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.
10. Article 9 Paragraph 2 Subparagraph 2.7 of the same Law states that the Basic Court of Mitrovicë/a is established for the territory of the Municipalities of Mitrovicë/a South and Mitrovicë/a North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zveçan, Skenderaj/Srbica and Vushtrri/Vučitrn. Based on the filed Indictment, the alleged criminal offences took place in the northern part of Mitrovicë/a and in Zvečan, and therefore, fall within the territorial jurisdiction of the Basic Court of Mitrovicë/a, as per Article 29 Paragraph 1 of the CPC.
11. According to Article 21 Paragraph 4 and Article 22 Paragraph 1 Subparagraph 1.75 of the CPC, the criminal offence of Unauthorised ownership, control or possession of weapons, covered by Article 374 of the CCRK, falls within the jurisdiction of the Serious Crimes Department of the Basic Court. Therefore, the entire case was adjudicated by the Serious Crime Department.
12. The case was assigned to an EULEX pre-trial judge of the Basic Court of Mitrovicë/a pursuant to a decision of the President of the Basic Court of Mitrovicë/a dated 18 April 2015, due to the urgent and sensitive nature of the case.
13. Following the filing of the indictment, on 19 November 2015, the Acting President of the Basic Court of Mitrovicë/a issued a ruling on the assignment of the EULEX Presiding Trial Judge to the case. On 16 December 2016, the Kosovo Judicial Council also issued a decision on the assignment of the case to EULEX judges of the Basic Court of Mitrovicë/a.
14. In accordance with Paragraph 2 of Article 15 of the Law on Courts, and the decision of the Kosovo Judicial Council referred to in paragraph 13 above, the case was heard by a

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<sup>2</sup> Law no. 03/L-199.

Trial Panel composed of EULEX Judge Arnout Louter, acting as Presiding Judge, EULEX Judge Franciska Fiser and EULEX Judge Iva Niksic, as Panel Members. No objections were put forward in regards to the Panel composition.

#### **I.D. Public Character of the Main Trial**

15. All main trial hearings were open to the public in accordance with Article 293 CPC.

#### **I.E. Language of the Proceedings, Interpretation and Court Recording**

16. Based on Article 16 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo,<sup>3</sup> the language used in the court proceedings was English.

17. In accordance with Article 1 Paragraph 2 of the CPC, interpreters translated the court proceedings and all court documents relevant to the trial from English into Serbian and vice-versa.

18. Accuracy of the written record was controlled by the presiding judge in real time. The computer screen displaying the record was placed in front of him. This manner of recording made use of other recording methods redundant as it appeared unlikely to achieve any better accuracy of the semantic content of the record.

#### **I.F. Evidence Presented**

##### **A. In-Court Testimony**

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<sup>3</sup> Law No. 03/L-053, 3 June 2008, as amended by Law No. 04/L-273, 15 May 2014, and Law No. 05/L-103, 29 June 2016.

19. The Trial Panel heard the testimony of the following witnesses, proposed by the Prosecution, during the main trial:

- i. S.M.<sub>1</sub>, on 27 March 2017
- ii. M.V.<sub>2</sub>, on 30 March 2017
- iii. S.M.<sub>2</sub>, on 5 April 2017
- iv. S.M.<sub>3</sub>, on 5 April 2017
- v. D.Č., on 5 April 2017
- vi. V.Z., on 5 April 2017
- vii. Z.P., 5 April 2017

20. Witnesses M.L.,<sup>4</sup> S.N.<sup>5</sup> and S.L.,<sup>6</sup> appeared before the Court when summoned, but chose to exercise their right not to testify pursuant to Article 127 of the CPC.

21. Witnesses and Injured Parties M.V.<sub>1</sub> and B.P. were duly summoned to testify, but they informed the Court that they would not be able to appear on the scheduled dates due to their absence from Mitrovica. Instead of trying to resummons the witnesses, one of whom lives in Belgrade, the Prosecution and the Defence agreed to have their statements read into evidence instead.<sup>7</sup>

## **B. Documentary evidence**

22. The following documentary evidence was admitted:

### Evidence tendered by the Prosecution:

Binder -1  
(Police documents)

1. Initial incident report and list of persons present at crime scene, binder 1 divider 1.

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<sup>4</sup> Minutes of the main trial hearing dated 30 March 2017, pp.8-11.

<sup>5</sup> Minutes of the main trial hearing dated 30 March 2017, pp.12-13.

<sup>6</sup> Minutes of the main trial hearing dated 5 April 2017, pp. 39-43.

<sup>7</sup> Minutes of the main trial hearings dated 27 March 2017, p. 22, and 5 April 2017, p. 43.

2. Officer's report – KP M.S.<sub>1</sub> 9493, binder 1 divider 2.
3. Investigative information report dated 13.04.2015, binder 1 divider 3.
4. Officer's report – KP M.S.<sub>2</sub> 9530, binder 1 divider 4.
5. Officer's report – KP V.Z. 9632, binder 1 divider 5.
6. Officer's report – KP P.Z. 9479, binder 1 divider 6.
7. Officer's report – KP V.R. 9437, binder 1 divider 7.
8. Officer's report – KP M.B. 7348, binder 1 divider 8.
9. Report on the progress of the investigation drafted by KP M.B., binder 1 divider 9.
10. Officer's report – KP M.S.<sub>3</sub> 5984, binder 1 divider 10.
11. Investigation report – KP M.S.<sub>3</sub> 5984, binder 1 divider 11.
12. Officer's report – KP O.N. 9630, binder 1 divider 12.
13. Officer's report – KP V.M. 9517, binder 1 divider 13.
14. Official note, drafted by investigator 5984, binder 1 divider 14.
15. Interoffice memorandum dated 14.04.2015, binder 1 divider 17.
16. Criminal background check D.N., binder 1 divider 18.
17. Police request for ballistic examination, binder 1 divider 19.
18. Criminal report dated 19.04.2015, binder 1 divider 21.
19. Officer's report KP – M.S.<sub>3</sub>, binder 1 divider 22.
20. Official memorandum dated 20.04.2015, binder 1 divider 23.
21. Police request for expert opinion-cell phone examination, binder 1 divider 24.
22. Report on the course of investigation, binder 1 divider 25.
23. Police officer's report KP M.S.<sub>3</sub> 5984, binder 1 divider 26.
24. Injured party S.M.<sub>1</sub> reported case at police station, binder 1 divider 27.
25. Officer's report, KP M.S.<sub>3</sub> 5984, binder 1 divider 28.
26. Report on the progress of investigation, KP M.B. 7348, binder 1 divider 29.

## Binder-2

### (Forensic Documents)

1. Crime Scene examination report with table of measurements , binder 2 divider 1.
2. Report on the search of premises, binder 2 divider 2.
3. List of evidence and chain of custody, binder 2 divider 3.
4. List of evidence and chain of custody, binder 2 divider 4.
5. House search certificate, binder 2 divider 5.
6. House search certificate, binder 2 divider 6.
7. List of confiscated items, binder 2 divider 7.
8. List of confiscated items, binder 2 divider 8.
9. List of evidence and chain of custody, binder 2 divider 9.
10. Photos of D.N., binder 2 divider 10.
11. Photo Album, binder 2 divider 12.
12. Forensic Unit photo album, binder 2 divider 13.
13. Doctors report on body injuries S.M.<sub>1</sub>, binder 2 divider 15.

14. Doctors report on body injuries B.P., binder 2 divider 16.
15. Discharge sheet with epicrisis B.P., binder 2 divider 17.
16. Discharge sheet with epicrisis S.M.<sub>1</sub>, binder 2 divider 18.
17. Evidence examination report, binder 2 divider 19.
18. Text messages (SMS) retrieved from D.N.'s apple iPhone, from 001 to 061, binder 2 divider 20.
19. Text messages (SMS) retrieved from D.N.'s apple iPhone, from 062 to 157, binder 2 divider 21.
20. Text messages (SMS) retrieved from D.N.'s apple iPhone, from 158 to 178, binder 2 divider 22.
21. Text messages (SMS) retrieved from D.N.'s apple iPhone, from 179 to 198, binder 2 divider 23.
22. Text messages (SMS) retrieved from D.N.'s apple iPhone, from 199 to 210, binder 2 divider 24.
23. Viber application messages retrieved from D.N.'s Apple iPhone from 001 to 006 binder 2 divider 25.
24. Viber application messages retrieved from D.N.'s Apple iPhone from 007 to 032 binder 2 divider 26.
25. Viber application messages retrieved from D.N.'s Apple iPhone from 060 to 190 binder 2 divider 27
26. Viber application messages retrieved from D.N.'s Apple iPhone from 191 to 212, binder 2 divider 28.
27. Report on expert analysis of Fire Arm unit, binder 2 divider 29.
28. Interoffice memorandum dated 04.06.2015, binder 2 divider 30.

Binder 3  
(Statements)

1. Record on hearing of witness M.V.<sub>1</sub>, binder 3 divider 1.
2. Record on witness examination M.V.<sub>2</sub>, binder 3 divider 2.
3. Record on hearing of injured party M.V.<sub>1</sub>, binder 3 divider 3.
4. Suspect examination report D.N., binder 3 divider 4.
5. Minutes on injured interrogation S.M.<sub>1</sub>, binder 3 divider 4.
6. Minutes on injured interrogation B.P., binder 3 divider 6.
7. Record of pre-trial interview of witness M.V.<sub>1</sub>, binder 3 divider 7.
8. Record of pre-trial interview of witness M.V.<sub>1</sub>, binder 3 divider 8.
9. Record of the pre-trial interview of witness M.V.<sub>2</sub>, binder 3 divider 9.
10. Record of the pretrial interview of witness M.V.<sub>2</sub>, binder 3 divider 10.
11. Record of pretrial interview of witness S.M.<sub>1</sub>, binder 3 divider 11.
12. Record of pretrial interview of witness B.P., binder 3 divider 12.
13. Record of pretrial testimony of defendant D.N., binder 3 divider 13.
14. Record of pretrial testimony of defendant D.N., binder 3 divider 14.
15. Record of pretrial interview of witness M.L., binder 3 divider 15.
16. Record of pretrial interview of witness D.Č., binder 3 divider 16.

23. The Defence did not present any evidence.

### **I.G. Admissibility of Evidence and Other Procedural Motions**

24. The Court ruled on a number of procedural issues in the course of the main trial. They are summarized below.

25. Three witnesses chose to exercise their right not to testify, in accordance with Article 127 CPC, due to their relationship with the Defendant. These were the Defendant's brother S.N.,<sup>8</sup> the Defendant's extra-marital partner M.L.,<sup>9</sup> and her father S.L..<sup>10</sup> With regard to the latter two witnesses, the Trial Panel ruled that, even though the Defendant and M.L. were not formally married, she was exempt from testifying under Article 127 Paragraph 1 Subparagraph 1.1 of the CPC.<sup>11</sup> Moreover, the Trial Panel found that, although the text of Article 127 CPC is unclear with regard to whether the privilege not to testify extends to the father of the Defendant's extra-marital partner, the principle of *in dubio pro reo* mandates such a conclusion. Consequently, witness S.L. was granted the right not to testify in accordance with Article 127 CPC.<sup>12</sup>

26. With regard to the admissibility of documentary evidence proposed by the Prosecution, the Trial Panel found that all of the evidence was to be considered as admissible under Article 260 CPC, as it was not contrary to Article 249 and Article 259 of the CPC. The value of each piece of evidence would be considered separately, and the use of prior statements would be assessed in line with Articles 261 and 123 of the CPC.<sup>13</sup>

27. Deciding on the request of the Defence Counsel to exclude from the case file and seal the transcript of the SMS messages exchanged between the Defendant and M.L. as well as her pre-trial statement, the Trial Panel ruled that the right not to testify under Article 127 applies only to

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<sup>8</sup> Minutes of the main trial hearing dated 30 March 2017, pp. 12-13.

<sup>9</sup> Minutes of the main trial hearing dated 30 March 2017, pp. 8-11.

<sup>10</sup> Minutes of the main trial hearing dated 5 April 2017, p. 42.

<sup>11</sup> Minutes of the main trial hearing dated 30 March 2017, p. 11.

<sup>12</sup> Minutes of the main trial hearing dated 5 April 2017, p. 42.

<sup>13</sup> Minutes of the main trial hearing dated 2 May 2017, p. 6.

testimony before the court. Therefore, the said documents would remain in the case file, and the pre-trial statement would be assessed in line with Articles 123 and 131 of the CPC.<sup>14</sup>

## **I. FACTUAL FINDINGS**

### **Regarding charge 3 – unauthorized ownership, control or possession of weapons**

28. The defendant **D.N.** pleaded guilty on this charge.<sup>15</sup> The court establishes that a firearm (a pistol) brand “Crvena Zastava” type C-103095 and a magazine with 6 bullets were found in the house of the defendant<sup>16</sup>. The witness M.V.<sub>2</sub> also stated that the defendant **D.N.** carried a weapon on the 13<sup>th</sup> of April 2015<sup>17</sup>.

### **Regarding charges 1 and 2 – light bodily injury and causing general danger**

#### **Summary of the proven facts**

29. The Court had to establish what the proven facts are on the basis of the administered evidence submitted against the accused person.

30. Upon the admissible evidence presented and administered during the course of the Main Trial, the Court considered the following relevant facts as proven beyond reasonable doubt:

31. Three shots were fired in the close vicinity of “Crna Dama” in Mitrovica, on the 13th of April 2015, around 01.15 hours<sup>18</sup>.

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<sup>14</sup> Minutes of the main trial hearing dated 3 May 2017, p. 2.

<sup>15</sup> Minutes of the main trial hearing dated 27 March 2017, p. 4.

<sup>16</sup> Report on the search of premises, binder 2 divider 2.

<sup>17</sup> Minutes of the main trial hearing dated 30 March 2017, p. 3.

<sup>18</sup> Minutes of the main trial hearing dated 5 April 2017, p. 26.

32. S.M.<sub>1</sub> sustained a serious firearm injury into the right foot (multiple fracture of III metatarsals), requiring intensive medical care (in particular an emergency surgery in the general anesthesia) in the hospital until his discharge on 24<sup>th</sup> April 2015.<sup>19</sup>
33. B.P. sustained a firearm injury into the lower part of both legs (the shins), requiring intensive medical care (a surgery in particular) in the hospital until his discharge on 20<sup>th</sup> April 2015<sup>20</sup>.
34. M.V.<sub>1</sub> sustained a minor firearm injury into a left leg finger, not requiring considerable medical care<sup>21</sup>.
35. The defendant **D.N.** was present at the scene of the crime on the 13<sup>th</sup> of April 2015 when the shooting took place. He was carrying a weapon.<sup>22</sup>
36. On the 13<sup>th</sup> of April 2015, from around 10.40 to 11.10 hours, a house search took place in the house of the defendant **D.N.** A firearm (a pistol) brand “Crvena Zastava” type C-103095 and a magazine with six bullets were found<sup>23</sup>.

### **Summary of the unproven facts**

37. On the 13<sup>th</sup> of April 2015, around 01.15 hours, in front of the disco-club “Crna Dama” located near the junction of the streets “Kralja Petra I” and “Lola Ribara” in northern Mitrovica, the defendant **D.N.**, having participated in an assembled crowd here, has pulled out his firearm (a pistol) brand Crvena Zastava or similar and intentionally fired from it several times into an unestablished direction among the people present, thus endangering their life and health.

In so doing, the defendant **D.N.** has wounded three of the individuals present:

S.M.<sub>1</sub>, B.P. and M.V.<sub>1</sub>.

### **Summary of Witness Testimony**

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<sup>19</sup> Doctor’s report on body injuries S.M.<sub>1</sub>, binder 2 divider 15; Minutes of the main trial hearing dated 27 March 2017, p. 8.

<sup>20</sup> Doctors report on body injuries B.P., binder 2 divider 16; Minutes of the main trial hearing dated 5 April 2017, p. 43.

<sup>21</sup> Minutes of the main trial hearing dated 27 March 2017, p. 22.

<sup>22</sup> Minutes of the main trial hearing dated 30 March 2017, p. 3.

<sup>23</sup> Report on the search of premises, binder 2 divider 2.

38. **S.M.**<sub>2</sub> stated that, after being informed about a fight and shooting, he went to Crna Dama. He relates how two young male, visibly intoxicated, individuals that just left Crna Dama approached and told him and his colleagues about a fight and shooting that occurred in front of the bar. They talked about the nickname of a certain individual who fired shots from a pistol who, according to them, was “S.’ son from ...”. Upon approaching Crna Dama, while trying to find a way through the crowd, he and his colleagues heard a shot from firearms. Due to darkness and presence of a large number of persons he and his colleagues were not able to identify the individual that fired a shot from a weapon. But, while running away, several guests that were leaving the location commented loudly that “S.’ son was the one who fired shots”. The witness stated that this shot was fired when he was in the vicinity, but due to the darkness and the crowd of people he was not able to see who fired the shot. He also stated that he did not see the defendant **D.N.** at the scene<sup>24</sup>.

39. **S.M.**<sub>3</sub> stated that, after being informed about a serious fight and shooting that occurred in front of Crna Dama, he went there with his colleagues. On the way to Crna Dama, two younger male individuals approached, visibly intoxicated, holding beer in their hands, coming from the direction of Crna Dama, telling him about the fight and the shooting that occurred in front of the bar, and talking about the individual, calling him by his nickname, who was, according to their story, S.’ son from .... When he approached Crna Dama, in a passage between this bar and another bar named “Pivnica”, they noted a large number of young individuals (approximately 70) majority of them in visibly intoxicated condition. He and his colleagues experienced trouble approaching Crna Dama due to the crowd. While going through the crowd they heard a shot from firearms. The panic arose amongst the people, standing in front of the bar, and they massively began running away. Due to darkness and presence of the large number of persons they were not able to identify the individual that fired a shot from a weapon. But, the several individuals that were leaving the location commented loudly that the shots were fired by “S.’ son”. They heard that someone was injured and then they noticed an individual walking towards them with a leg injury, in the lower leg area. At the scene it was dark and the visibility was quite

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<sup>24</sup> Minutes of the main trial hearing dated 5 April 2017, pp. 7-12.

poor. The witness knows the defendant **D.N.** by face and appearance, but did not see him at any point at that location on that evening. He did not know him under the nickname “S.’ son”<sup>25</sup>.

40. **V.Z.** stated that he was on patrol and after having heard two gunshots from the direction of Crna Dama, he went to the scene with other patrols. He went with his colleagues towards the entrance of Crna Dama, where two drunken persons approached them as they were going from Crna Dama. They said that the fight and shooting had occurred in front of Crna Dama. The same persons mentioned the nick name of the person who fired from the pistol and they said it was a son of S. from .... Upon approaching Crna Dama there were over 80 guests, young people and most of them visibly drunk. As the witness and his colleagues were going through the mass, they heard one shot fired from a firearm and panic occurred, a large number of guests started to run away and because of the dark and the large number of guests, they were not in a position to see who the person firing from the weapon was. While the guests were running away they heard comments that it was S.’ son and they heard that some persons had been injured. The witness did not see the defendant **D.N.** at the scene<sup>26</sup>.

41. **Z.P.** stated that, after having been instructed to go in the direction of Crna Dama because of an incident, he heard two shots from firearms upon approaching Crna Dama. Two young, visibly intoxicated male individuals approached, holding beer in their hands, coming from the direction of Crna Dama, telling the witness and his colleagues about a fight and a shooting that occurred in front of the bar. They told that the person who fired the shots was S.’ son from .... They experienced trouble approaching Crna Dama due to the crowd. While going through the crowd they heard a shot from firearms. The panic arose amongst the people, standing in front of the bar, and they massively began running away. Due to darkness and presence of the large number of persons they were not able to identify the individual that fired a shot from a weapon. But several individuals that were leaving the location commented loudly that the shots were fired by S.’ son. The witness stated in the courtroom that he did not see the defendant **D.N.** on the scene of the crime<sup>27</sup>.

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<sup>25</sup> Minutes of the main trial hearing dated 5 April 2017, pp. 14-19.

<sup>26</sup> Minutes of the main trial hearing dated 5 April 2017, pp. 25-31.

<sup>27</sup> Minutes of the main trial hearing dated 5 April 2017, pp. 33-38.

42. **D.Č.** was not present at the scene of the crime. Upon being questioned about the messages that were exchanged between him and the defendant **D.N.**, the witness stated that he heard rumours that the defendant **D.N.** was in the possession of a firearm but that he didn't fire. On the exchanged messages the witness commented that it is a classical communication between him and the defendant **D.N.** They were commenting on a totally different case that had happened that very same night, because the witness overheard talking about it, when walking near the police station. He overheard two policemen talking about an arrest warrant being issued. Someone was brought in, for another case. The communication was mainly about this incident. Another message referred to the brother of the defendant **D.N.**, **S.**, who was unhappy about the statement that he gave. The witness could not tell why **S.** was unhappy about his statement<sup>28</sup>.

### **Discussion and Analysis of Evidence**

43. The above listed evidence forms the basis for the Trial Panel's decision in this case.

44. The Trial Panel has considered the testimony of all the witnesses as well as Police reports and other material evidence admitted as evidence, to determine the facts proven and the facts not proven.

### **General Considerations**

45. Article 361 paragraph (2) of the CPC states that the Court shall base its judgement solely on the facts and evidence considered at the Main Trial.

46. Article 361 paragraph (2) of the CPC also states that “[t]he Court shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established”.

47. In this process, the Court is bound to achieve a positive conclusion only if the beyond reasonable doubt standard is satisfied. The meaning of that legal provision is easy to state but in certain cases more difficult to apply.

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<sup>28</sup> Minutes of the main trial hearing dated 5 April 2017, pp. 20-23.

48. Article 19 subparagraphs (1.8) to (1.10) of the CPC gives us some important remarks. We can notice that there is a difference in the requirements for reasonable suspicion and grounded cause. The first only demands the likelihood that the person may have committed the offence; the other “*that the person concerned is substantially likely to have committed the offence*”. The meaning of reasonable doubt is even more demanding. The Court has to be sure (not just find a likelihood) of the facts that could incriminate the Defendant, with a degree of certainty that is above any type of reasonable question that could be put by any objective observer. The Court has to take notice that grounded suspicion is used for the findings required for detention on remand (Article 187 of the CPC), and reasonable doubt for the final judgment.

49. Therefore we have a different ‘*degree of certainty*’, according to the different stages of the proceedings. That is why the same elements of evidence could be enough to confirm the Indictment or to order detention of remand against a Defendant but could not be enough to achieve the degree of certainty necessary to find the Defendant guilty.

50. Last but not least, that degree of certainty should be enough not just to satisfy the Court itself with sound reasoning, but using that same reasoning to convince a normal and objective observer.

51. In this case, the Court heard all the witnesses presented by the Prosecution. The Defence did not present any witnesses.

**Regarding the presence of the defendant D.N. with a weapon at the scene of the crime at the time of the events**

52. M.V.<sub>2</sub> stated that the defendant pulled out a pistol that he carried with him and also that he never used it. He stated during the main trial that:

*“It was Easter and it is our great holiday, I went with a couple of friends to a discotheque, and I together with D. around 1 a.m were heading home because it was already late. He went out first and I was after him and there was some crowd in front of “Crna Dama”, it was a small space and there were around 20 people there. I was going out together with him and people were passing by each other and we were going out when the shots were heard, 3 to 4 shots. Since he bigger than me, he literally protected me and pushed me behind him, he pulled his gun, pointed it to the ground, and everything was developing fast, police came and everyone ran away. And*

*then we went to my vehicle I took him home and then I went home afterwards. And that was it. The next day the story was heard as to what had happened and this is what went on.*"<sup>29</sup>

53. The defendant admitted that he carried a concealed weapon with him, which he immediately pulled out after some shots were fired. He denied having fired his gun. The messages on Viber that the defendant **D.N.** sent to D.V. corroborate the statement given by the witness V. In one of these messages the defendant **D.N.** writes:

*"Maybe because I said I had a gun with me and I took it out, but I did not shoot ..."*<sup>30</sup>

54. The court concludes from this evidence that the defendant **D.N.** was present at the scene of the crime at the time of the events. Moreover, he carried a firearm ("*a gun*") with him during the shooting on that evening.

#### **Regarding the question who fired the shots**

55. Apart from the defendant, four persons were at the scene of events: S.M.<sub>1</sub>, B.P., M.V.<sub>1</sub> and M.V.<sub>2</sub>. Other witnesses that were examined were not present during the events.

56. Three persons were (lightly) wounded during the shooting that evening in front of "Crna Dama": S.M.<sub>1</sub>, B.P. and M.V.<sub>1</sub>. S.M.<sub>1</sub> and B.P. never saw the perpetrator. Initially M.V.<sub>1</sub>, when interviewed by the police, stated that he saw the defendant holding a gun, waving it towards his group and shooting in the air and towards his legs. Later this witness retracts twice his first account of events when examined by the prosecutor. He finally stated that he did not see who the shooter was.

57. S.M.<sub>1</sub> stated that:

*"That night, somewhere around 1:00 or 1:15 or 1:30 I wanted to go home from discotheque Dama, I was texting my girlfriend to wait for me in front of the discotheque Dama. There was no crowd there, people were going out in a regular classical manner, nor was there any quarrel or anything. All of a sudden some shouts were heard, some shots were heard, and I felt some pain in the foot. I climbed down the stairs and then I was transported to the hospital."*<sup>31</sup>

On the question if he saw who shot in his direction, he answered negative.

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<sup>29</sup> Minutes of the main trial hearing dated 30 March 2017, p. 3.

<sup>30</sup> Viber application messages retrieved from D.N.'s Apple iPhone from 191 to 212, binder 2 divider 28.

<sup>31</sup> Minutes of the main trial hearing dated 27 March 2017, p. 8.

58. B.P. stated:

*"I was with my girlfriend at the discotheque "Crna Dama" and at a certain point I needed to go to the toilet. But the toilet was busy, as the bar was so crowded, so as many other people I went outside. On my way back to the pub, I saw a group of people who were involved in a quarrel, as these persons were involved in a kind of a fight and the group was coming towards me, at a certain point I received a hit on my head, I don't know who hit me with what, I tried to back up to avoid the group. So, I tried to position myself aside the group, to avoid being involved, at a certain points I heard some shots, and I had a sensation of something going down both my legs, something humid, then I realized I had blood on both my legs. Then I went back to the pub, explained what happened to my girlfriend and then we went to the health centre where I was initially treated, and they told me that these wounds were caused by ricochet bullet and told me to go to hospital where they treated my wounds. And I have to mention because of the crowd, the dark, and me being intoxicated, I simply couldn't see who was doing what and who was there. More or less that is it."*<sup>32</sup>

59. M.V.<sub>1</sub> stated:

*"I was in front of "Crna Dama", so I went outside and I decided to go back inside and all of the sudden a few meters behind me I noticed people pushing each other, at the moment I noticed that a friend of mine, B.P., and another unknown guy, I went towards my friend B. the chaos began, I heard shots, I cannot claim how many shots, and I felt strong pain. I cannot say was it a single shot or more shots, as I was occupied with my pain."*<sup>33</sup>

Upon being asked if he saw the shooter, the witness answered negative.

60. Apart from the three witnesses mentioned above and apart from M.V.<sub>2</sub>, several police officers went to the scene of the crime, after having received information that there was a shooting in the vicinity of "Crna Dama". Upon their arrival, four police officers, who gave statements as witnesses in the courtroom, witnessed the firing of one single shot at the scene of the crime. They did not see who fired the shot, but they heard other people present relating that it was a person known as "S.' son" who fired the shots.

61. S.M.<sub>2</sub> stated:

*"Upon our arrival at "Crna Dama" or vicinity of "Crna Dama", there we met with three of our patrols, no. 305, 304 and 309. So, they briefly informed us what it was about. So, when we headed towards "Crna Dama", two unknown persons passed next to us and they were talking, and actually said that S.' son from ... had fired. We headed towards "Crna Dama", and then in*

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<sup>32</sup> Minutes of the main trial hearing dated 5 April 2017, p. 43; Record of pre-trial interview of witness B.P., binder 3 divider 12, p. 3-4.

<sup>33</sup> Minutes of the main trial hearing dated 27 March 2017, p. 22; Record of pre-trial interview of witness M.V.<sub>1</sub>, binder 3 divider 7, p. 3.

*front of "Crna Dama" there was also a shop called "Pivnica", there were around 70-80 guests. So, our team leader ordered us to go at the entrance so that we could see what was happening. So when we arrived at that premise, or shop called Pivnica, at that moment we heard a shot. Panic emerged. The guests from "Crna Dama" and from also Pivnica started running and panicking. And also on many occasions we heard comments that it was S.' son from ... who shot with a pistol. So after that it was a total commotion. And at a certain moment a person approached us who told us that he was wounded in the right lower part of the leg.*"<sup>34</sup>

62. S.M.<sub>3</sub> stated:

*"While were going to the scene there was a large group of young people, and according to some estimates there were between 70 to 100 mostly youngsters, most of them were under the influence of alcohol, and while as far as I remember some of them, the girls, were trying to leave that location; while we were approaching we thought the shots took place inside the bar and tried to reach the very entrance of the bar, and while we were approaching the scene some of the persons who were leaving the place said that, "S.' son fired the shot", not mentioning the name and not mentioning anything else.*"<sup>35</sup>

63. V.Z. stated:

*"At 1 o'clock in the morning I was in patrol located in the street "Kralj Petra" the first, at the roundabout so at around 1.15 hours we have heard two gunshots, and from the place where we were located at the roundabout we presumed that these shots came from the direction of the bar "Crna Dama", then I immediately informed the base because when we moved to approach the scene we noticed a large number of young people, and upon our informing the base we immediately got assistance from the remaining patrols, and then all of us together went in direction of "Crna Dama" while we were approaching the bar "Crna Dama" and in front of "Crna Dama" were large group of people who most of them were under the influence of alcohol, and while we were approaching we heard another shot and after that shot a big number of people had started to move and run away and given that we faced a very large group of people, we were not able to determine who fired the shot, and only after that we were penetrating in order to get the scene, a large number of people in front of us there were large group of people and according to my personal estimates I would say they were 80 to 90 people, both who were inside the club and the people who were outside of these clubs and then they started to move and try to run; and after they were running out of these bars and while we were pushing ourselves to approach the scene the people were running around and saying that, "there was a shooting and it was S.' son". And then when we approached and arrived at the actual site and this is also what we were told by our chief and upon us asserting that we have found some traces and evidence given that we saw several casings, we have started to secure the scene, and upon*

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<sup>34</sup> Minutes of the main trial hearing dated 5 April 2017, p. 8.

<sup>35</sup> Minutes of the main trial hearing dated 5 April 2017, p. 15.

*securing the scene and to arrive at the scene and also while securing these young people who were moving and running were shooting and saying that there are people who got wounded, and then when we arrived at the crime scene we were told by our supervisor that we have to secure the crime scene and given that we had to secure the crime scene in order to preserve any traces or evidence from the crime scene which would later be used by the investigation unit so this is what happened from 1 o'clock until 01.30 and until that the investigation unit did not show up.*<sup>36</sup>

64. Z.P. stated:

*“On the 13<sup>th</sup> of April roster I was assigned to patrol 309 with my colleague S.N. and the position was Knjaza Miloša Street and Ivo Lolla Ribar Str. During our regular activities during the night somewhere between 01:15 or 01:20 hours while we were at the crossroad between these two streets, via radio, we heard our colleagues, their sign was 305, that they needed assistance, because they were positioned in "Kralj Petra" Str., at the so called roundabout and they saw there was something going on in front of the bar "Crna Dama" and that the remaining patrols in the field needed to assist them. After their call, we were also contacted by our team leader also via radio and he ordered us to go and assist the patrol. So my colleague and I headed directly for the patrol 305 that was located in "Kralj Petra" Str. not too far from "Crna Dama". While we were approaching that point, the roundabout was still not constructed, it was an intersection, we heard two shots. These were shots from small calibre of pistols, not automatic, after that we approached Patrol 305 and Patrol 304 which was also together with them. After that, we waited for a few seconds and then the team and deputy team leaders came, and when we all gathered there we headed for the scene of the event where there was a huge crowd of young people. While we were going to "Crna Dama", we did not know if there was a fight previously or not, we saw two young guys of age 16, 17 or 18, we noticed that they were drunk and they were holding in their hands beer bottles. They told us, S.' son from ... fired the shots. As we were further going through the crowd of these young people, a large number of these young people were drunk and then another shot was heard. And then there was commotion, between "Crna Dama" which was on our left side as we were moving and the "Ambient" which was on the right, and this crowd started running in the direction of the health center. There was quite a big crowd, it was dark and we could not notice who fired the shots. At that moment a large number of them dispersed, started running away, some of them remained at "Crna Dama" and then we started searching for casings. I think, in fact I know, that I found two casings, pistol casings and one bullet which was not fired, it was intact. We secured the scene of the event. After that there were still guests in "Crna Dama" and the team leader, in order to prevent further escalation he called the base and asked for reinforcement to be sent. And I remember that two patrols from Zvečan arrived, and*

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<sup>36</sup> Minutes of the main trial hearing dated 5 April 2017, p. 26.

*the base informed Sierra Control to send us the intervention team. I apologize, shall I go on and tell you till the end, because there was another problem while we were securing the incident.*<sup>37</sup>

### **Reliability of the statements of the witnesses**

65. The court finds the statements of the witnesses S.M.<sub>2</sub>, S.M.<sub>3</sub>, V.Z. and Z.P., all police officers, reliable. Two years after the events, they were able to relate the events that they witnessed accurately. Apart from that, all the four statements corroborate when it comes to the sequence of the events.
66. The court finds the statements of the witnesses S.M.<sub>1</sub>, B.P. and M.V.<sub>1</sub>, all injured parties, reliable as well. Taking into account that they were in a stressful situation, being injured due to the shooting, they were able to give a fair account of the events.
67. The court deems the statement of M.V.<sub>2</sub>, who is a friend of the defendant D.N. and who was in his presence when the events occurred, also reliable. He is the only witness who saw that the defendant D.N. had a firearm with him. Even though it might be in the interest of his friend, the witness did not change his previously given statement, which is partially favorable, but also partially unfavorable to the defendant D.N.
68. The explanation given by D.Č. on the nature and meaning of the text messages that were exchanged between him and the defendant D.N., is not very likely. He is not very precise about the two policemen he allegedly overheard talking about an arrest warrant, and if so, why should he discuss this with the defendant. It seems rather likely that he is trying to protect D.N. in one way or another, and for this reason his statement is considered as unreliable.

### **Assessment of evidence given by the statements of the witnesses**

69. Even taking into account that it is possible that “S.’ son” referred to the defendant, the statements of the police officers do not present conclusive evidence regarding the question who fired the shots. According to their statements, “several persons” told the police officers who fired the

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<sup>37</sup> Minutes of the main trial hearing dated 5 April 2017, p. 34.

shots, but the police officers did not take the names of these “several persons”, nor did they take more detailed statements.

70. Thus, the court is not able to assess the reliability of the statements of these “several persons” claiming that “S.’ son” fired the shots. Witnesses S.M.<sub>3</sub> and V.Z. stated that they were confronted with a large group of people, of which the most were under the influence of alcohol. The witness Z.P. specifically states that the two young men who told him that “S.’ son” fired the shots, were drunk. The court has to take into account that these statements were most likely given by (unknown) people under the influence of alcohol.
71. Furthermore, the court cannot assess how these “several persons” got the information that “S.’ son” fired the shots. Did they actually see what happened? Or did they hear from someone else? Or was it rather a rumor, spread by other people who had too much alcohol? Even though the court holds in esteem the work that police officers do in general, it is in this regard very unfortunate that the police officers were not able to take the names of potential witnesses.
72. The information that S.’ son was the one who fired the shots comes from unknown sources and is hearsay. It is not possible to examine the sources of such information and assess its quality, that is, its credibility and reliability.

### **Regarding the Forensic Evidence**

73. The unit for expert analysis of firearms issued a report on the 25<sup>th</sup> of May 2015<sup>38</sup>. Two casings and one unfired cartridge were found at the scene of the crime. They were later submitted to a ballistic analysis, together with the pistol found at the defendant’s house. The experts concluded that those cartridges were not fired from the pistol that was found in the house of the defendant.
74. The court concludes that there is no forensic evidence that can link the firearm that was found in the house of the defendant D.N. and the cartridges and the shell that were found at the scene of the crime. Furthermore, the prosecutor has given no explanation in her closing statement about the absence of any match. No other forensic evidence was presented.

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<sup>38</sup> Report on expert analysis of Fire Arm unit, binder 2 divider 29.

### **Regarding the Rest of the Evidence**

75. The rest of the evidence presented, and on which the prosecutor heavily leans, are the Viber messages that were exchanged between the defendant D.N. and M.L. and D.Č. The contents of the messages exchanged between the defendant and these two other persons are, in themselves, inconclusive regarding the facts with which the defendant is charged.
76. Apart from that, it should be noted that the text messages written by M.L. and D.Č. are based on hearsay, since they did not witness themselves any relevant facts. D.Č. was heard as a witness in court, but his statement did not shed any further light on the case.
77. The court finds this evidence indirect and only by itself not strong enough to support the case that the defendant fired a weapon at the place of the events.

## **II. LEGAL REASONING**

### **Regarding charges 1 and 2 – light bodily injury and causing general danger**

78. The basic principle of criminal law is that any criminal liability is dependent on an action or omission done by the Defendant (Article 1 of the CCK and CCRK). It was not proven beyond reasonable doubt that the defendant D.N. fired a weapon. Thus, it cannot be proven either that he (in doing so) has caused general danger or that he injured anybody.
79. Therefore the defendant has to be acquitted, under Article 364 paragraph. (1) subparagraph (1.3) of the CPC of having committed the criminal offences of:

Light bodily injury pursuant to article 188 paragraph 1, subparagraph 1.1, paragraph 2 of the Criminal Code of the Republic of Kosovo (CCRK);

Causing general danger pursuant to article 365 paragraph 1, paragraph 3 of the CCRK.

### **Regarding charge 3 – Unauthorised ownership, control or possession of weapons pursuant to Article 374 paragraph 1 of the CCRK**

80. The court finds that it is proven beyond reasonable doubt that the defendant D.N. committed this offence. A firearm was found in the house, for which the defendant did not have authorization. The defendant pleaded guilty to this charge.

### **Sentencing**

81. According to General rules on Calculating Punishments in Article 74 of the CCK, the court shall determine the punishment of a criminal offence within the limits provided by law for such criminal offence, taking into consideration the purpose of the punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment (mitigating and aggravating circumstances) and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender.

82. As a mitigating circumstance, the court takes into account that the defendant pleaded guilty.

83. The court takes into account that the basic court of Mitrovica imposed a fine on the defendant of € 300 - for endangering public traffic (pursuant to article 378 (6) of the CCRK). This judgement has become final and binding on the 7<sup>th</sup> of April 2015.

84. The court does not take the age of the defendant (now 24 years old, at the time of the event 22 years old) as a mitigating circumstance (nor as an aggravating one). The defendant should have been old and wise enough to know the law and to act accordingly.

85. As an aggravating circumstance the court takes into account that the defendant not only carried his firearm with him to Crna Dama, but also pulled his firearm in a crowded area, at a moment when panic already emerged after the hearing of shots, and thus being visible to the audience.

86. Taking into consideration all of the above mentioned circumstances related to defendant D.N., the criminal offence he committed, as well as the applicable sentencing range, the court has

sentenced D.N. to 1 (one) year of imprisonment. In accordance with Article 43, paragraph (1) and Article 44, paragraph (2) of the CCK, this punishment shall not be executed if the defendant D.N. does not commit another criminal offence for a verification period of 3 (three) years. The court believes that in this case, the purpose of punishment can be achieved with the application of the suspended sentence without the execution of the imprisonment. Also, the court deems the verification period of 3 years long enough for the defendant to change his behaviour in a positive way.

### **Confiscation and destruction**

87. Pursuant to Article 115, Paragraphs 1, 2 and 5 of the CPC the firearm (pistol) brand “Crvena Zastava” type C-103095 with one magazine and 6 bullets, shall be confiscated from the Defendant D.N. and destroyed.

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**Arnout Louter**  
**EULEX Presiding Judge**

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**Asja Zujo**  
**Recording Officer**

*LEGAL REMEDY: Authorised persons have the right to file an appeal against this judgment within 15 days of the day the copy of the judgment has been served (Article 380 Paragraph (1) CPC).*