

BASIC COURT OF MITROVICË / MITROVICA

P.nr. 147/2014

Mitrovicë/a, 10 December 2015

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICË/A, in a Trial Panel composed of EULEX Judge Vidar Stensland as Presiding Judge, EULEX Judge Franciska Fiser and EULEX Judge Katrien Gabriël Witteman as panel members, with EULEX Legal Officer Vera Manuello as the Recording Officer, has conducted the main trial in the criminal case P.nr. 147/2014 against:

R.K. _____ (**aka** “**R.** _____”), born on _____ in _____, _____ Municipality; Father’s name: U. _____, Mother’s name: K.B. _____; of Serbian nationality; Married; Residing at _____, _____ Municipality, Kosovo; ID no.: _____ issued by _____;

and

S.S. _____ (**aka** “**B.** _____”), born on _____ in _____; Father’s name: D. _____, Mother’s name: M.M. _____; of Serbian nationality; Married; Residing at _____, _____, Kosovo; ID no.: _____ issued by _____;

Accused through the Indictment of the EULEX Prosecutor of Mitrovicë/a dated 12 December 2014 and filed with the Registry on the same day, supplemented on 17 April 2015, after one count of the Indictment (Unauthorized Ownership, Control, Possession or Use of Weapon) was dismissed by the Court after the initial hearing, which decision was confirmed by the Court of Appeals in a Ruling on Appeals PN 254/15 dated 11 June 2015, of committing the criminal offences of:

Count 1: Aggravated Murder, count 2: Attempted Aggravated Murder, count 3: Obstructing Official Persons in Performing Official Duties, count 4: Causing General Danger, count 5: Endangering Public Traffic by Dangerous Acts or Means, count 6: Participating in a Crowd Committing a Criminal Offence, all counts committed in co-perpetration.

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The main trial hearings, open to the public, were held on 18 and 29 September 2015, 16, 26 and 30 October 2015, 11 and 30 November 2015, 03 and 07 December 2015; the hearing on 11 November 2015 at 09:45 hrs until 12:00hrs was closed to the public. All the hearings were held in the presence of the Defendant **R.K.** _____, his Defence Counsel Miodrag Brkljac (replaced by Defence Counsel Miro Delevic on 18 September 2015 and 26 and 30 October 2015), the Defendant **S.S.** _____, his Defence Counsel Dobrica Lazic, the Prosecutor Neeta Amin (replaced by EULEX Prosecutor Lili Oprea Steluta on 18 September 2015 and 30 November 2015 and by EULEX Prosecutor Tomas Skala on 16 October 2015), the Injured parties D.Z. _____, B.M. _____, D.P. _____¹ and their legal representative Burhan Maxhuni (replaced by Eron Prekazi on 30 November and 07 December 2015).

The Trial Panel held deliberation and voted on 07 December 2015.

Pursuant to Article 366 Paragraph (1) of the Criminal Procedure Code (CPC²) on 10 December 2015 in a public hearing and in the presence of the Accused persons, their Defence Counsel and the EULEX Prosecutor, the Injured Parties and their representative;

The Trial Panel announces the following:

JUDGMENT:

I

Count 3 (Obstructing Official Persons in Performing Official Duties):

R.K. _____ is found **GUILTY** because it is proven beyond a reasonable doubt that:

On 26 July 2011, at approximately 13:30 hrs, more than 50 Kosovo _____
_____, members of the _____ (_____), who were on standby

¹ The injured parties were not present at all hearings, in the minutes it is stated who was present at each hearing.

² Law No. 04/L-123.

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at the _____ base located in _____, received an order to depart in the direction of Gate 31 in order to take control of the border point. The convoy of _____ vehicles therefore left the _____ base. The convoy consisted of two armoured vehicles (one of them leading the convoy and the second one being at the end of the convoy), and approximately ten to twelve _____ vehicles were between the armoured cars. While proceeding towards Gate 31 along the main asphalted road between Mitrovicë/a and Zubin Potok, in the area located between the village of Varage and the village of Zupce, the _____ convoy encountered four to five vehicles coming from the opposite direction. The approaching vehicles stopped and created a barricade that blocked the road and forced the _____ convoy to stop. The people in these vehicles, around six to eight persons, stepped out and started to confront the _____ by screaming and making gestures at them to go back. One of these persons was **R.K.** _____.

Some _____ ordered (in Serbian and Albanian language) the persons who were blocking and obstructing the public highway to remove their cars. These persons did not obey that order and continued screaming and shouting at the _____, gesturing and raising their fingers at them. At that point, the _____ operation leader gave the order for the armoured vehicle to proceed and push away the vehicles of the barricade. As soon as the armoured vehicle approached the vehicles that were blocking the road, the persons who were standing behind the barricade left the barricade. **R.K.** _____ participated in the commission of the criminal offence as an active participant in the group of persons who by common action as described, obstructed the _____ convoy in their duty to go to Gate 31.

R.K. _____ was mentally competent when he committed the criminal offence, and he committed the criminal offence with direct intent.

Therefore **R.K.** _____ is **CONVICTED** of committing the criminal offence of:

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Obstructing official persons in performing official duties in violation of Article 318 of the Provisional Criminal Code of Kosovo (CCK)³, currently criminalized under Article 409 Paragraph (2) of the Criminal Code of the Republic of Kosovo (CCRK)⁴, *whereby the Court re-qualifies* the original charge of **Obstructing official persons in performing official duties** in violation of Article 316 Paragraphs (1) and (3) of the CCK as read in conjunction with Article 23 of the CCK currently criminalized under of Article 409 Paragraphs (1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK.

Therefore, pursuant to Article 318 of the CCK, **R.K.** _____ is hereby

SENTENCED

To

Six (6) months of imprisonment.

Pursuant to Article 43 Paragraphs (1) and (2) and Article 44 Paragraph (1) of the CCK, the punishment of imprisonment imposed against **R.K.** _____ shall not be executed if he does not commit another criminal offence for the verification period of **two (2) years**.

S.S. _____ is found **NOT GUILTY**

Of committing the criminal offence of Obstructing Official Persons in Performing Official Duties, in the Indictment described as follows:

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, in co-perpetration with other persons, acting jointly and participating together by substantially contributing through their intentional and unlawful conduct and actions being

³ UNMIK/REG/2003/25.

⁴ Law No. 04/L-082.

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part of the named group of persons using force and serious threats to obstruct the _____ at the *locus in quo* in performing their lawful official duties,

Because it is not proven beyond a reasonable doubt that he committed the said action.

Thereby, based on Article 364 Paragraph (1) Subparagraph (1.3) of the CPC, **S.S.** _____ is acquitted of committing the criminal offence of

Obstructing official persons in performing official duties in violation of Article 316 Paragraphs (1) and (3) of the CCK as read in conjunction with Article 23 of the CCK currently criminalized under Article 409 Paragraphs (1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK.

Count 1 (Aggravated Murder):

R.K. _____ and **S.S.** _____ are found **NOT GUILTY**

Of the criminal offence of Aggravated Murder, in the Indictment described as follows:

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, in co-perpetration with other persons, acting jointly and participating together, substantially contributing through their intentional and unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of Aggravated Murder depriving the life of E.Z. _____ for racial and national motives due to his Albanian and Kosovar nationality at the time when E.Z. _____ was executing his lawful duties of protecting legal order, safeguarding persons or property, safeguarding persons or property and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car.

Because it is not proven beyond a reasonable doubt that they committed the said action.

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Thereby, based on Article 364 Paragraph (1) Subparagraph (1.3) of the CPC, **R.K.**

_____ and **S.S.** _____ are **ACQUITTED** of the criminal offence of

Aggravated Murder contrary to Articles 146 and 147 Paragraphs (4), (6), (8) and (10) of the CCK as read in conjunction with Article 23 of CCK currently criminalized under Articles 178 and 179 Subparagraphs (1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Article 31 of CCRK.

Count 2 (Attempted Aggravated Murder):

R.K. _____ and **S.S.** _____ are found **NOT GUILTY**

Of the criminal offence of Attempted Aggravated Murder, in the Indictment described as follows:

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, in co-perpetration with other persons, acting jointly and participating together, substantially contributing through their intentional and unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of Attempted Aggravated Murder to deprive the lives of other passengers (_____ B.M. _____ and D.P. _____) in the car with the deceased injured party E.Z. _____ for racial and national motives due to his Albanian and Kosovar nationality at the time when E.Z. _____ was executing his lawful duties of protecting the legal order, safeguarding persons or property, safeguarding persons or property and keeping public order and peace and in doing so also intentionally endangered the lives of _____ B.M. _____, D.P. _____ and other _____ in the convoy of vehicles at the *locus in quo*.

Because it is not proven beyond a reasonable doubt that they committed the said action.

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Thereby, based on Article 364 Paragraph (1) Subparagraph (1.3) of the CPC, **R.K.**

_____ and **S.S.** _____ are **ACQUITTED** of the criminal offence of

Attempted Aggravated Murder in violation of Articles 146 and 147 Paragraphs (4), (6), (8) and (10) of the CCK as read in conjunction with Articles 20 and 23 of the CCK currently criminalized under Articles 178 and 179 Subparagraphs (1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK.

Count 4 (Endangering Public Traffic by Dangerous Acts or Means):

R.K. _____ and **S.S.** _____ are found **NOT GUILTY**

Of the criminal offence of Endangering Public Traffic by Dangerous Acts or Means, in the Indictment described as follows:

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok in co-perpetration with other persons, acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons destroyed, removed and seriously damaged the Mitrovica to Zubin Potok public highway in the area located between the Villages of Varage and Zupce, Zubin Potok giving erroneous signs, signals, placing obstacles and barricades on the said public road thereby endangering traffic, human life, the physical safety and properties on a large-scale.

Because it is not proven beyond a reasonable doubt that they committed the said action.

Thereby, based on Article 364 Paragraph (1) Subparagraph (1.3) of the CPC, **R.K.**

_____ and **S.S.** _____ are **ACQUITTED** of the criminal offence of

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Endangering Public Traffic by Dangerous Acts or Means in violation of Article 299 Paragraph (1) of the CCK as read in conjunction with Article 23 of the CCK currently criminalized under Article 380 Paragraph (1) of the CCRK as read in conjunction with Article 31 of the CCRK.

Count 5 (Causing General Danger):

R.K. _____ and **S.S.** _____ are found **NOT GUILTY**

Of the criminal offence of Causing General Danger, in the Indictment described as follows:

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, in co-perpetration with other persons, acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons destroyed, removed and seriously damaged the Mitrovica to Zubin Potok public highway in the area located between the Villages of Varage and Zupce, Zubin Potok by weapons, other obstacles and barriers which caused the death of E.Z. _____ and substantial material damage to the public highway and vehicles of _____ and great danger to other _____ present in the vehicles convoy at the *locus in quo*.

Because it is not proven beyond a reasonable doubt that they committed the said action.

Thereby, based on Article 364 Paragraph (1) Subparagraph (1.3) of the CPC, **R.K.**

_____ and **S.S.** _____ are **ACQUITTED** of the criminal offence of

Causing General Danger in violation of Article 291 Paragraphs (1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK currently criminalized under Article 365 of CCRK as read in conjunction with Article 31 of the CCRK.

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Count 6 (Participating in a Crowd Committing a Criminal Offence):

R.K. _____ and **S.S.** _____ are found **NOT GUILTY**

Of the criminal offence of Participating in a Crowd Committing a Criminal Offence, in the Indictment described as follows:

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, in co-perpetration with other persons, acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons participated in the assembled crowd who gathered at the *locus in quo* which by their collection action deprived E.Z. _____ causing general danger, damage to vehicles of _____ on a large scale and other criminal offences of grave violence against the _____ present in the vehicles convoy at the *locus in quo*.

Because it is not proven beyond a reasonable doubt that they committed the said action.

Thereby, based on Article 364 Paragraph (1) Subparagraph (1.3) of the CPC, **R.K.**

_____ and **S.S.** _____ are **ACQUITTED** of the criminal offence of

Participating in a Crowd Committing a Criminal Offence in violation of Article 320 Paragraph (1) of the CCK as read in conjunction with Article 23 of the CCK currently criminalized under Article 412 of the CCRK as read in conjunction with Article 31 of the CCRK.

II

R.K. _____ shall pay two-hundred (200) 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 **R.K.** _____ must reimburse the ordered sum no later than thirty (30) days from the day this Judgment is final. Any remaining cost shall be paid from the budgetary resources.

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III

Pursuant to Article 463 of the CPC, the Injured Party D.Z. _____ is instructed that she may pursue her property claim in civil litigation.

IV

LEGAL REMEDY: A Defendant, their legal counsel, the Prosecutor or an Injured Party may file an appeal against this judgment in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC within fifteen (15) days from the day the fully reasoned judgement will be served. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.

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EULEX Judge

EULEX Presiding Judge

EULEX Judge

Franciska Fiser

Vidar Stensland

Katrien Gabriël Witteman

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Court Recorder

Vera Manuello