

DISTRICT COURT OF MITROVICË/MITROVICA
P No. 02/2009
01 July 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICË/A, in the trial panel composed of EULEX Judge Charles L. Smith, III, as presiding judge, EULEX Judges Hajnalka Veronika Karpati and Klaus Jung, as panel members, with the participation of EULEX Legal Officer Zane Ratnicec, as recording officer, in the **CRIMINAL CASE**

against: AB, born on _____ in _____ Village in _____ Municipality;

charged: with the criminal offence of **Attempted Murder** contrary to Article 146 as read with Article 20 of the Criminal Code of Kosovo, according to the Indictment of the District Public Prosecutor Shyqyri Sylaj, PP No. 103/2008, dated 09 January 2009, and filed with the Registry of the District Court of Mitrovicë/a on 09 January 2009;

after having held the main trial hearings open to the public on 28 and 30 June 2010, all in the presence of the Accused AB, his Defence Counsel AC, EULEX Public Prosecutor Neeta Amin, Injured Party AD, Authorized Representative of the Injured Party AF, the mother of the Accused AG (except that at the hearing on 28 June 2010 the mother of the Accused was not present);

after the trial panel's deliberation and voting held on 01 July 2010;

pursuant to Section 12.3 of the UNMIK Regulation No. 2004/34 'On Criminal Proceedings Involving Perpetrators with Mental Disorder', pronounced in public and in the presence of the Accused AB, his Defence Counsel AC, EULEX Public Prosecutor Neeta Amin, Injured Party AD, Authorized Representative of the Injured Party AF, and the mother of the Accused AG, the following

RULING

AB, son of AH and AG, born on _____, in _____ Village, _____ Municipality, Kosovo Albanian, last known residence in _____

Village, Municipality, completed high school, married with four children, no previous conviction, in detention since 18 September 2008,

is

determined to have committed the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the Provisional Criminal Code of Kosovo; **because** on 18 September 2008 at around 10:00 hours, in §. Village, in the premises of the Village health centre, A.B. physically assaulted his wife the Injured Party A.D., by punching on her head and face, knocked her down on the floor, shut her mouth and then pulled out a rope from his pocket and tied it around the Injured Party's neck while she was down on the floor, until A.B. was sure that he had deprived the Injured Party of life;

and is

determined to have committed the said criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the Provisional Criminal Code of Kosovo, **in state of mental incompetence; because** at the time of commission of the criminal offence, on 18 September 2008, A.B. suffered from delusional disorder, which affected his mental functioning so that he was not able to understand or control his actions, or to understand that he was committing a criminal offence;

therefore is

criminally not liable for the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the Provisional Criminal Code of Kosovo, pursuant to Article 11 Paragraph (1) and Article 12 Paragraph (1) of the Provisional Criminal Code of Kosovo;

and is

imposed the measure of mandatory psychiatric treatment at liberty, pursuant to Section 5 and Section 12.3 of the UNMIK Regulation No. 2004/34 'On Criminal Proceedings Involving Perpetrators with Mental Disorder'; **the measure of mandatory psychiatric treatment at liberty** to be executed, according to the following:

- the measure of mandatory psychiatric treatment to be executed at the University Clinical Center of Kosovo in Prishtine/Priština;
- A.B. is required to report for treatment at the University Clinical Center of Kosovo in Prishtine/Priština on 01 July 2010;

- until 01 September 2010, A.B. be executed ambulatory treatment at the University Clinical Center of Kosovo in Prishtine/Priština, with regular and close supervision of the psychiatrist;
- starting from 01 September 2010 A.B. be admitted for stationary treatment at the University Clinical Center of Kosovo in Prishtine/Priština.

COSTS OF CRIMINAL PROCEEDINGS

Pursuant to Article 103 Paragraph (1) of the Criminal Procedure Code of Kosovo the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the Code, the necessary expenses of the defendant and the remuneration and necessary expenditures of defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

REASONING

I. PROCEDURAL HISTORY

1.1. Indictment

On 09 January 2009, the District Public Prosecutor for Mitrovicë/Mitrovica Shyqyri Syla filed the Indictment PP. No. 103/08, dated 09 January 2009, with the Registry of the District Court of Mitrovicë/Mitrovica.

According to the Indictment PP. No. 103/08, the Accused A.B. has been charged with the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the Criminal Code of Kosovo (the CCK).

The charge of Attempted Murder against the Accused has been based upon the following factual allegations:

‘On 18 September 2008 at around 10:00 hours, in S. Village, in the premises of the Village health centre, A.B. intentionally started the accomplishment of the criminal offence of Murder which he did not complete; after a verbal dispute and based on the jealousy motivation, he went to the health center where the victim, the defendant’s wife A.D. works, and told her these words: ‘Write down the names of all men with whom you have had affairs, make me a coffee and I will go’; and when the victim refused to do so, A.B.

physically assaulted his wife A. O. , by punching on her head and face, knocked her down on the floor, shut her mouth and then pulled out a rope from his pocket and tied it around her neck while she was down on the floor, and by tightening the rope and by being sure that had strangled her and deprived her of life, he got out of the premises and met the witness F. B. to whom he said: 'I executed my wife, so hurry up and call the police and the emergency'; and in the meantime F. B. arrived to the victim and gave her first aid by taking the rope off her neck so the offence remained an attempt.'¹

1.2. Confirmation of Indictment

On 11 January 2010, Confirmation Judge Xhevdet Abazi issued a ruling confirming the Indictment PP. No. 103/08, dated 09 January 2009.

II. JURISDICTION OF THE COURT

2.1. Subject matter and territorial jurisdiction

According to Article 23 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCCK), a district court shall have jurisdiction to adjudicate at first instance a criminal offence punishable by imprisonment of at least five years or by long-term imprisonment.

The charged criminal offence of Attempted Murder, under Article 146 as read with Article 20 of the CCK, allows imprisonment of five years.

Therefore, the District Court of Mitrovicë/Mitrovica has subject matter jurisdiction over the case.

The charged criminal offence of Attempted Murder was allegedly committed in Samadrexha Village,² which is located in Vushtrri/Vučitrn Municipality.

Therefore, pursuant to Article 27 Paragraph (1) of the CPCCK, the District Court of Mitrovicë/Mitrovica has also territorial jurisdiction over the case.

¹ See Indictment PP. No. 103/08, dated 09 January 2009, p.1 (the translation in the English Language)

² *ibid*

2.2. *Jurisdiction of EULEX judges*

Article 3 Paragraph 3 of the Law No.03/L-053 'On the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo' states that in cases of subsidiary competence, EULEX judges can take over a case upon appointment by the President of the Assembly of EULEX judges. On 15 February 2010, the President of the Assembly of EULEX judges, upon the petition of the EULEX Prosecutor, decided to assign to the case EULEX judges of Mitrovicë/Mitrovica District Court.

III. APPLICABLE LAW

3.1. *Applicable substantive law*

The charged criminal offence of Attempted Murder was allegedly committed on 18 September 2008. The substantive law applicable to the case is the one in force at the time, when the criminal offence was committed.

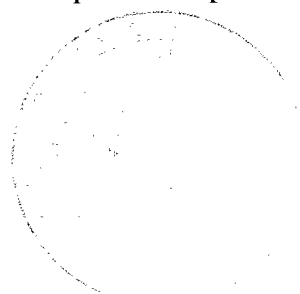
The Accused, pursuant to the Indictment PP. No. 103/08, has been charged according to the Criminal Code of Kosovo (CCK). The CCK is in force from 06 January 2009, which is *after* the Accused had allegedly committed the charged criminal offence. At the time the Accused allegedly committed the criminal offence of Attempted Murder, on 18 September 2008, in force was the Provisional Criminal Code of Kosovo, adopted with the UNMIK Regulation 2003/25, which entered into force on 06 April 2004 (PCCK).

The CCK as compared to the PCCK is not more favourable in particular case.

Therefore, even though the Indictment PP. No. 103/08 has charged the Accused according to the CCK, the applicable law is PCCK.

3.2. *Applicable procedural law*

The applicable procedural law is the one, which is in force at the time when the proceedings are conducted. At the time of the court proceedings in force has been the Criminal Procedure Code of Kosovo (CPCCK). Therefore, the court followed the procedure pursuant to CPCCK.



3.3. *Lex specialis in criminal proceedings involving perpetrators with mental disorder*

In the case file the court identified medical reports for the Accused A.B. (in detail described below), providing for suspicion that Accused suffers from a mental disorder. Therefore, the court also considered the UNMIK Regulation No. 2004/34 'On Criminal Proceedings Involving Perpetrators with Mental Disorder'.

IV. SUMMARY OF THE EVIDENCE PRESENTED

4.1. The following persons were examined as witnesses during the course of the main trial:

- 1) The Injured Party A.D., on 28 June 2010;
- 2) Expert witness Ass. Dr. H.H., psychiatrist, University Clinical Centre of Kosovo, on 30 June 2010;
- 3) Expert witness D.D., neuropsychiatrist, University Clinical Centre of Kosovo, on 30 June 2010.

4.2. The following documents were put forward to be used as evidence by the EULEX Public Prosecutor, and have been considered as read out based on agreement by the parties:

- 1) Statement of A.D. to District Public Prosecutor Xhevdet Bislimi, dated 22 December 2008;
- 2) Interview of A.B. before Kosovo Police Service, case no.2008, dated 19 September 2008;
- 3) Interview of witness G.G. before Kosovo Police Service, case no.2008, dated 18 September 2008;
- 4) Forensic Identification Report, Regional Forensic Unit, Mitrovicë/Mitrovica, case file no. , KPS, dated 18 September 2008;
- 5) Expertise Report of the University Clinical Centre of Kosovo for A.B., the Expertise Report addressed to judge Emine Mustafa, the report compiled based on the order of Mitrovicë/Mitrovica District Court of 13 October 2008;
- 6) Report of the University Clinical Centre of Kosovo for A.B., dated 05 March 2010, the expertise conducted based on the order of judge Ferit Osmani, dated 09 February 2010;
- 7) Additional Report of the University Clinical Centre of Kosovo for A.B., no.155, dated 04 June 2010, the expertise conducted based on the order of presiding judge EULEX judge Charles L. Smith,III, dated 17 May 2010;

- 8) Psychological Report for A B. no.867, dated 20 November 2008;
- 9) Discharge List for A D. , reg.no. , from the University Clinical Centre of Kosovo, Neurosurgery Clinic;
- 10) Discharge List for A B. , reg.no. , from the University Clinical Centre of Kosovo, Neuropsychiatry Clinic;
- 11) Discharge List for A B. , reg.no. , from the University Clinical Centre of Kosovo, Psychiatry Department;
- 12) Report to the Medical Commission regarding A B. , card no. , reg.no. , dated 05 December 1989;
- 13) Crime Scene Investigation Report, dated 19 September 2008;
- 14) Initial / Incident Report, case no.2008 , reference no.2008 , dated 18 September 2008;
- 15) Crime Scene Record, Sketch, by Officer Mentor Imeri;
- 16) Photo Album, no. , dated 18 September 2008.

4.3. Out of above mentioned evidence, that have been considered as read out based on agreement by the parties, the following evidence was collected by the court:

- 1) Expertise Report of the University Clinical Centre of Kosovo for A B. , dated 04 June 2010, the expertise conducted based on the order of presiding judge EULEX judge Charles L. Smith,III, dated 17 May 2010;
- 2) Expertise Report of the University Clinical Centre of Kosovo for A B. , the Expertise Report addressed to judge Emine Mustafa, the report compiled based on the order of Mitrovicë/Mitrovica District Court of 13 October 2008;
- 3) Report of the University Clinical Centre of Kosovo for A B. , dated 05 March 2010, the expertise conducted based on the order of judge Ferit Osmani, dated 09 February 2010.

V. ASSESSMENT OF THE PRESENTED EVIDENCE

5.1. *The Accused's medical background and ability to stand the trial*

The evidence in the case file provided for suspicion that Accused A B. suffers from a mental disorder:

- The Report to the Medical Commission regarding A B. , card no. , reg.no. , dated 05 December 1989, stated that A B. had been at the

Neuropsychiatric Clinic in Prishtinë/Priština twice: from 11 May 1989 until 26 June 1989 and from 08 September 1989 until 20 October 1989. The diagnosis was provided _____.

- The Discharge List for A B., reg.no., from the University Clinical Centre of Kosovo, Neuropsychiatry Clinic, provided that Accused had been at the Clinic from 16 August 2000 until 28 August 2000.
- The Discharge List for A B., reg.no., from the University Clinical Centre of Kosovo, Psychiatry Department, stated that Accused had been at the Clinic from 12 December 2007 until 15 December 2007.
- The Expertise Report of the University Clinical Centre of Kosovo, compiled based on the court order of 13 October 2008, stated that Accused 'had been treated for years for the psychiatric disorder, which flew chronically, described in episodes of remission but also aggravation, depending whether the therapy was used or not'.

The aforementioned evidence suggested that Accused's mental condition must be duly examined by the court.

On 09 February 2010, the court, pursuant to Section 6.1 of the UNMIK Regulation No. 2004/34, ordered the Accused's psychiatric examination. The Report of the University Clinical Centre of Kosovo, dated 05 March 2010, following the court order, stated that

A B. suffers from delusional disorder F22.0 ICD-10; delusional disorder is of a chronic development and character.

To further clarify the mental condition of the Accused, on 17 May 2010, the court, pursuant to Section 6.1 of the UNMIK Regulation No. 2004/34, ordered another psychiatric examination of the Accused. The court also inquired as to ability of the Accused to stand the trial. The findings of experts compiled in the Additional Report of the University Clinical Centre of Kosovo for A B., no., dated 04 June 2010, confirmed that

A B. suffers from delusional disorder. Regarding the Accused's ability to stand the trial, the experts' conclusion was that Accused can stand the trial. It was also stated that Accused is able to understand the charges against him and he is able to consult with the defence counsel, however, he can give unreasonable answers.

Based on the Additional Report of the University Clinical Centre of Kosovo for

A B., no., dated 04 June 2010, the court at the main trial hearing on 28 June 2010, pursuant to Section 8.1 of the UNMIK Regulation No. 2004/34, ruled that Accused is competent to stand the trial.

5.2. Factual findings

5.2.1. Guilty plea

At the main trial hearing, on 28 June 2010, the Accused, in accordance with Article 358 Paragraph (1) of the CPCK, was given an opportunity to plead guilty or not guilty. First, the Accused voluntarily stated that he pleads 'partially guilty'.³ The Accused was given an opportunity to consult his Defence Counsel A C. regarding his plea. After consulting his Defence Counsel, A B voluntarily confirmed that he pleads guilty to the charge of Attempted Murder. A B also confirmed that he understood that by pleading guilty he agrees that he had attempted to deprive his wife of life, and attempt means that he did not succeed. A B also approved that he understood that he would be entitled to a full trial if pleading 'not guilty'.⁴

5.2.2. Evidence supporting the guilty plea

Statements of witnesses

a. A D., the Injured Party, testified to the District Public Prosecutor Xhevdet Bislimi on 22 December 2008 that on the critical day, before 08:00 hrs she got ready to go to work and left the house. On the way to work A D. met her husband A B. He went with his wife A D. to her workplace, the health center in S. Village. A B. had asked his wife, whether he could have a coffee with her. So, immediately after A D. had entered the health center she took a pot in order to prepare the coffee. While she was preparing the coffee, A B. was sitting on a chair. A D. was opening the door of the locker, and does not know what happened, but she fainted and was unconscious until she reached the clinic in Prishtine/Priština. Her son was next to her at the clinic and he told her that they were at the clinic in Prishtine/Priština. A D. had cannulas in her arms, injuries on her left and right side of the head, on the back, she had a broken bone. The Injured Party also saw the traces of a rope on her throat.⁵

Also the Accused A B. one day after the incident, on 19 September 2008, testified to Kosovo Police Service, that in the morning of 18 September 2008, he met his wife

³ Record of the Main Trial, 28 June 2010, p.5 (the Record in the English Language)

⁴ Record of the Main Trial, 28 June 2010, p.5 (the Record in the English Language)

⁵ Statement of A D. to District Public Prosecutor Xhevdet Bislimi, dated 22 December 2008

A D., while she was walking to work. A B. accompanied A D. to her workplace, the health center in S. Village. Before that he had taken a screwdriver and had found a piece of rope at about one meter (1 m) long. The Accused testified that he had taken the screwdriver and the rope as he was planning to frighten his wife, to put the rope around her neck and use the screwdriver for tightening the rope. In this way A B. wanted to force his wife to tell the names of males that she had affairs with in Kosovo and Germany. So, after he and his wife had entered the health center he asked his wife to write the names of all males that she had affairs with, after this to make a coffee for him and he would go home. The Injured Party refused to write any names. A B. slapped her on the neck, punched her on lips so the Injured Party started bleeding on the floor, she started to scream, and A B. shut her mouth, pulled the rope out of his pocket, put the rope around his wife's neck and tightened it. The Accused testified to Kosovo Police Service that when he saw his wife's stomach still moving, he let her down and left the health center.⁶

b. G.G. in the Interview before Kosovo Police Service on 18 September 2008 corroborated the Injured Party's statement by testifying that in the morning of 18 September 2008 she had found her colleague A.D. on the floor at the health center in S. Village. In the Interview before Kosovo Police Service on 18 September 2008 G.G. stated that in the morning on 18 September 2008 G.G. arrived at the health center in S. Village. She noticed some blood stains and when she opened the door, she saw A.D. down on the floor. G.G. screamed, and A.D. moved her head, but could not open her eyes, her face was swollen, and blackened. G.G. called the emergency. Thereafter F.B. came and according to him the suspect for this was the Injured Party's husband A.B.⁷

With regards to witness F.B., to which G.G. referred in her above mentioned statement, it is noted that F.B.'s testimony was contained in the Minutes of Witness Hearing, dated 22 December 2008, before District Public Prosecutor Xhevdet Bislimi. The Minutes were filed by EULEX Public Prosecutor with the court, they were also referred to in the Indictment PP. No. 103/08. However, the EULEX Public Prosecutor during course of the main trial *did not* consider F.B.'s testimony. The Prosecutor also *did not* propose the Minutes to be considered as read.⁸ According to Article 387 of the CPCK, the court may solely base the judgment on facts and evidence *considered at the main trial*.

⁶ Interview of A.B. before Kosovo Police Service, case no.2008- dated 19 September 2008

⁷ Interview of witness G.G. before Kosovo Police Service, case no.2008- dated 18 September 2008

⁸ See Record of the Main Trial, 30 June 2010, pp.11, 12 (the Record in the English Language)

As a result, the court may not rely on the Minutes of Witness Hearing, dated 22 December 2008, before District Public Prosecutor Xhevdet Bislimi, where the testimony of F.B. is contained. This is irrespective that A.B. had testified that, after he had left his wife A.D. on the floor at the health center, he entered the car of F.B.⁹

It is opinion of the trial panel that statements of witnesses referred to above consistently identify that in the morning of 18 September 2008 the Accused at the health center in S. Village physically assaulted his wife the Injured Party A.D., knocked her down on the floor, and tied a rope around the Injured Party's neck tightening it. The Accused's guilty plea is further supported by other evidence adduced by the Public Prosecutor.

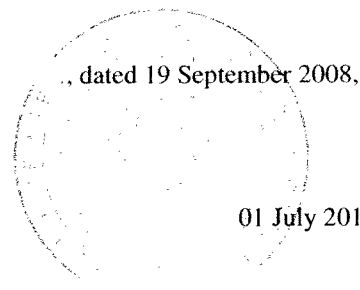
Reports

c. **The Forensic Identification Report**, Regional Forensic Unit, Mitrovicë/Mitrovica, case file no. KPS , dated 18 September 2008, stated that on 18 September 2008 at around 10:00 hrs the Regional Forensic Unit was informed about the incident at the health center in S. Village. According to the Report, in the health house corridor and in the room there were red stains, suspected to be the victim's blood; near the door, on the left, a rope, approximately one meter and 80 centimeters (1.80 m) long, was found, which was suspected to be used for committing the offence.

The Report stated that around 12:00 hrs the Regional Forensic Unit left from the crime scene and went to Vushtrri/Vučitrn Police Station. At the Police Station, from Officer Shaban Salihu they received A.D.'s clothes- a white robe, a scarf and a pair of shoes. There were stains, suspected to be the victim's blood, on the robe and scarf.

The Photo Album, no. , dated 18 September 2008, by the Regional Forensic Unit, KPS , contains photographs showing: the stains, looking blood, in the corridor of the health center (photos no.6, 7, 16); the stains, looking blood, in the room of the health center (photos no.13, 14, 15, 16, 17, 18, 19, 20, 22, 23); the rope on the floor of the health center room (photos no.14, 15, 16, 17, 18, 21); the robe with stains, looking blood (photos no.25,

⁹ Interview of A.B. before Kosovo Police Service, case no.2008- , p.3 (in the English translation)



26); the scarf with stains, looking blood (photo no.27); the rope with hair around it and with a stain on the rope looking blood (photos no.29, 30).

Therefore, the Forensic Identification Report, with the Photo Album further support the guilty plea of the Accused. It contains the evidence, identifying that Injured Party was attacked at the health center, the Injured Party sustained injuries, as stains suspected to be her blood were found on the floor at the emergency center. Moreover, the rope was also found at the health center. This supports the Accused's statement that he had used the rope and had tightened the rope around the Injured Party's neck.

d. The Crime Scene Investigation Report, dated 19 September 2008, confirms that stains, suspected to be the victim's blood, were in the corridor of the health center; in the room of the health center there was even more stains; also the rope was found in the room of the health center. According to information collected by the Officers the victim of the offence was A.D., and suspect A.B.

Also according to the **Initial / Incident Report**, case no.2008, reference no.2008-, dated 18 September 2008, A.B. was suspected of committing the criminal offence of Attempted Murder, in health center in S. Village. The victim of the offence was identified A.D.

The **Crime Scene Record, Sketch**, by Officer X., identified the crime scene in the health center in S. Village.

e. The Discharge List for A.D., reg.no., from the University Clinical Centre of Kosovo, Neurosurgery Clinic, states that A.D. was admitted to the Neurosurgery Clinic on 18 September 2008, which is the day of commission of the criminal offence. She was admitted because of the injuries on her head. At the Clinic A.D. was conscious, sleepy, with isochoric pupils. She stayed at the Clinic from 18 September 2009 until 22 September 2008.

It is opinion of the trial panel that evidence sufficiently supports the guilty plea of the Accused. The evidence clearly identifies that in the morning of 18 September 2010, around 10:00 hrs, the Accused had attacked his wife the Injured Party A.D. at her workplace at the health center in S. Village. In attack on his wife A.B.

had used the rope. He knocked his wife A.D. down on the floor, and put the rope around her neck and tightened it. A.B. left his wife laying on the floor at the health center. A.D. testified that she became conscious only at the clinic in Prishtinë/Priština. The witness G.G. found A.D. on the floor, with a blackened face. Only after G.G. screamed A.D. moved her head, but did not open her eyes. Therefore, the condition in which A.D. was left by the Accused A.B. was as if he had tried to deprive his wife A.D. of life, but had not succeeded. This is irrespective that, on 19 September 2008, A.B. testified to Kosovo Police Service that when he saw his wife's stomach still moving, he let her down and left the health center.¹⁰ A.B. afterwards at the hearing on 28 June 2010 pled guilty to the charge of Attempted Murder. The nature of attack on A.D., causing bleeding injuries, knocking her down on the floor, and continuing the attack by tightening a rope around her neck, which is a vital part of the body, reflect that Accused tried to murder his wife. Therefore, the trial panel considers that Accused's guilty plea to the charge of Attempted Murder is sufficiently supported by the evidence.

5.3. *The Accused's mental condition at the time of commission of criminal offence of Attempted Murder*

As mentioned previously during course of criminal proceedings the suspicion arose regarding the Accused's mental condition. For this reason the psychiatric examination of the Accused was ordered.

a. The Report of the University Clinical Centre of Kosovo for A.B., dated 05 March 2010, was compiled by the experts, based on the order of judge Ferit Osmani, dated 09 February 2010. According to the Report the examination of A.B. was conducted at the University Clinical Centre from 18 February 2010 until 05 March 2010. The Report stated that at the time of commission of the charged criminal offence A.B. was in a state of 'complete mental incompetence', he was not capable to judge the significance of the offence, or to control his actions.

In view of conclusions made in the Report regarding Accused's mental condition at the time of commission of criminal offence, the court ordered further clarification regarding his mental condition.

¹⁰ Interview of A.B. before Kosovo Police Service, case no.2008, dated 19 September 2008

b. The Additional Report of the University Clinical Centre of Kosovo for

A B. , no. , dated 04 June 2010, was compiled based on the order of presiding judge EULEX judge Charles L. Smith, III, dated 17 May 2010. The Additional Report stated that on 18 September 2008, at the time when the criminal offence was committed:

- A B. suffered from delusional disorder, which is of a permanent character;
- A B. could not understand or control his actions;
- A B. could not understand that he was in fact committing a criminal offence;
- A B.'s ability to understand or control his actions was excluded.

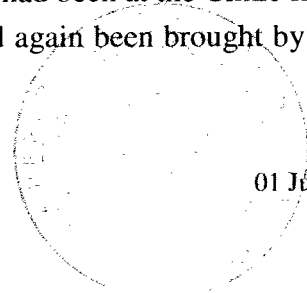
Therefore, as it follows from the Report, dated 05 March 2010, and the Additional Report, dated 04 June 2010, A B. at the time of commission of Attempted Murder suffered from delusional disorder, due to which he was not able to understand or control his actions or to understand that he was committing a criminal offence.

The court assessed the Report, dated 05 March 2010, and the Additional Report, dated 04 June 2010, against other evidence contained in the file.

c. The Report to the Medical Commission regarding A B. , card no. , reg.no. , dated 05 December 1989, stated that A B. had been at the Neuropsychiatric Clinic in Prishtinë/Priština already in year 1989: from 11 May 1989 until 26 June 1989 and from 08 September 1989 until 20 October 1989. The diagnosis was provided _____.

The Discharge List for A B. , reg.no. , from the University Clinical Centre of Kosovo, Neuropsychiatry Clinic, provided that Accused had been at the Clinic from 16 August 2000 until 28 August 2000. The Accused had been brought by the police along with family members because of aggression and unstable behavior towards his family members. The Discharge List states that at the Clinic A B. was very aggressive, he had negative attitude towards the family members, paranoid content, unstable dysphoric mood.

The Discharge List for A B. , reg.no. , from the University Clinical Centre of Kosovo, Psychiatry Department, stated that Accused had been at the Clinic from 12 December 2007 until 15 December 2007. A B. had again been brought by police



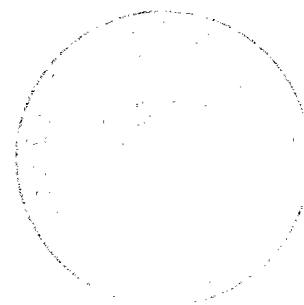
and his family because of the aggravation of his illness which manifested in domestic violence. The Discharge List *inter alia* states that A.B. was in an unstable mood, thinking fast, with delusive ideas of jealousy, references and suspicions, regarding perception, he affirmed acoustic hallucinations, and he was not conscious of his state.

The Expertise Report of the University Clinical Centre of Kosovo, compiled based on the court order of 13 October 2008, states that Accused 'had been treated for years for the psychiatric disorder, which flew chronically, described in episodes of remission but also aggravation, depending whether the therapy was used or not'. Further it states that 'delusive ideas that derive from pathology substrate lead to behavior and actions, for which the patient has no fair judgment'.

The Psychological Report, no. , dated 20 November 2008, regarding A.B. states that analysis of the psychological material indicates a schizoid-paranoid structure of the personality, difficulties in controlling himself; absence of proper psychic control – are psychotic characteristics.

In view of aforementioned reports, it is assessed that already in year 1989 A.B.'s mental condition has not been well, and he was diagnosed with _____ . The following reports confirm that his mental condition has not been stable throughout the years, and there have been aggravations. The reports confirm that already before commission of the criminal offence he had been aggressive towards his family members, and had delusive ideas of jealousy, paranoia, hallucinations.

Therefore, it is opinion of the trial panel that court can rely on the conclusions made in the Report of the University Clinical Centre of Kosovo for A.B. , dated 05 March 2010, and Additional Report of the University Clinical Centre of Kosovo for A.B. , no. dated 04 June 2010,- that on 18 September 2008, at the time of commission of Attempted Murder A.B. suffered from delusional disorder, due to which he was not able to understand or control his actions or to understand that he was committing a criminal offence.



VI. CONCLUSIONS ON THE LAW AND FACTS REGARDING CRIMINAL LIABILITY

A. B. pled guilty to the charge of Attempted Murder. At the main trial hearing the court verified that A. B. understood the nature and consequences of the guilty plea. The court also verified that A. B. made the guilty plea voluntarily after sufficient consultations with his Defence Counsel.¹¹ Therefore, the trial panel considers that guilty plea meets requirements provided for in Article 315 Paragraph (1) Items 1) and 2) of the CPCK.

Next, based on assessment of evidence carried out above, it is concluded that

A. B.'s guilty plea is supported by the facts of the case contained in the Indictment and by the evidence as per Article 315 Paragraph (1) Item 3) of the CPCK. As elaborated in this Ruling above, the evidence identifies that on 18 September 2008 at around 10:00 hours, in the health centre in S. Village, A. B. physically assaulted his wife A. D., by punching on her head and face, knocked her down on the floor, shut her mouth and then pulled out a rope from his pocket and tied it around her neck. The manner and circumstances in which the act was committed identify that A. B. attempted to deprive his wife A. D. of life.

Therefore, it is determined that A. B. committed the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the PCCK.

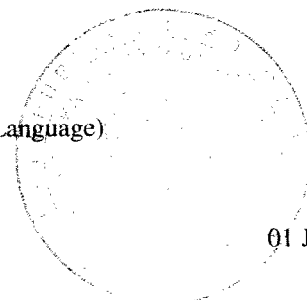
However, Article 11 Paragraph (1) of the PCCK provides that a person is criminally liable if he or she is *mentally competent* and has been found guilty of the commission of a criminal offence.

Therefore, to find A. B. criminally liable for the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the PCCK, it is required that

A. B. at the time of commission of the criminal offence was *mentally competent*.

According to Article 12 Paragraph (1) of the PCCK a person, who committed a criminal offence is considered mentally incompetent if, at the time of the commission of a criminal offence, he or she suffered from a permanent or temporary illness, mental disorder or disturbance in mental development that affected his or her mental functioning so that such person was not able to understand or control his or her actions or to understand that he or she was committing a criminal offence.

¹¹ Record of the Main Trial, 28 June 2010, p.5 (the Record in the English Language).



The Report of the University Clinical Centre of Kosovo for A.B., dated 05 March 2010, and Additional Report of the University Clinical Centre of Kosovo for A.B., no. , dated 04 June 2010, state that on 18 September 2008, at the time of commission of Attempted Murder, A.B. suffered from a mental illness delusional disorder, which is of permanent character, and due to which he was not able to understand or control his actions or to understand that he was committing a criminal offence.

Therefore, it is determined that A.B. committed the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the PCCK, in state of mental incompetence.

Therefore, A.B. is criminally not liable for the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the PCCK, pursuant to Article 11 Paragraph (1) and Article 12 Paragraph (1) of the PCCK.

VII. APPLICABLE MEASURE OF MANDATORY PSYCHIATRIC TREATMENT

Because it was established by the court that A.B. committed the Attempted Murder, contrary to Article 146 as read with Article 20 of the PCCK, in a state of mental incompetence, the trial panel further considered the application of a measure pursuant to the UNMIK Regulation No. 2004/34.

According to Section 3.1 of the UNMIK Regulation No. 2004/34, the measures that may be imposed on a perpetrator who has committed a criminal offence while in a state of mental incompetence or in a state of diminished mental capacity are:

- Mandatory psychiatric treatment and custody in a health care institution ('mandatory psychiatric treatment in custody'); or
- Mandatory psychiatric treatment at liberty.

Further Sections 4 and 5 of the UNMIK Regulation No. 2004/34 provide for the grounds for imposing mandatory psychiatric treatment in custody (Section 4) and at liberty (Section 5).

The difference for the grounds for imposing mandatory psychiatric treatment in custody (Section 4) and at liberty (Section 5) is that Section 4 requires that to impose mandatory psychiatric treatment in custody, a criminal offence that perpetrator has committed is punishable by imprisonment of at least three (3) years. The other grounds for both types of measures are the same, and are discussed further:

First, there is a serious danger that the perpetrator will commit a criminal offence involving an act of violence or infliction of bodily harm on another person.

The **expert witnesses** Ass. Dr. H.H. , psychiatrist, and D.D. , neuropsychiatrist, from the University Clinical Centre of Kosovo, at the main trial hearing on 30 June 2010 confirmed that A.B. at the time of commission of Attempted Murder and also currently suffers from delusional disorder, which is a permanent illness and has its good and bad times. A.B. mainly has delusions that have overwhelmed him with jealousy and the feeling of grandeur and persecution.¹² Expert witnesses also confirmed that it is possible that A.B. may repeat the violent offence or show other signs of violence.¹³

It is assessed by the trial panel that evidence in the case file indicates that before commission of Attempted Murder on 18 September 2008, A.B. had been aggressive towards his family members. This is stated in the **Discharge List** for A.B. , reg.no. , from the University Clinical Centre of Kosovo, Neuropsychiatry Clinic, also in the **Discharge List** for A.B. reg.no. , from the University Clinical Centre of Kosovo, Psychiatry Department, where it is also provided that aggravation of his illness had manifested in domestic violence. The **Expertise Report** of the University Clinical Centre of Kosovo, compiled based on the court order of 13 October 2008, stated that Accused 'had been treated for years for the psychiatric disorder, which flew chronically, described in episodes of remission but also aggravation, depending whether the therapy was used or not'. Further it states that 'delusive ideas that derive from pathology substrate lead to behavior and actions, for which the patient has no fair judgment'. The **Psychological Report**, no. , dated 20 November 2008, regarding A.B. states that analysis of the psychological material indicates a schizoid-paranoid structure of the personality, difficulties in controlling himself; absence of proper psychic control.

In view of aforementioned, it is opinion of the trial panel that there is a serious danger that A.B. will commit a criminal offence involving an act of violence or infliction of bodily harm on another person.

Second, mandatory psychiatric treatment is necessary to remove this danger.

¹² Record of the Main Trial, 30 June 2010, pp.5, 6 (the Record in the English Language)

¹³ Record of the Main Trial, 30 June 2010, p.8 (the Record in the English Language)

The **expert witness** Ass. Dr. H. K. psychiatrist, from the University Clinical Centre of Kosovo, at the main trial hearing on 30 June 2010 confirmed that for A. B. psychiatric treatment is required. He also confirmed that if A. B. does not follow the psychiatric treatment plan his condition will deteriorate.¹⁴ According to the **Expertise Report** of the University Clinical Centre of Kosovo, compiled based on the court order of 13 October 2008, A. B.'s condition has been chronic, described in episodes of remission and aggravation, depending on whether the therapy was used or not.

A. B.'s wife A. D. testified that A. B. was given medication for his illness for the first time in 1989. When A. B. did not follow the therapy his behavior was bad.¹⁵ She also agreed that treatment of A. B. is needed, and if A. B. does not receive any treatment after the trial, his behavior will not be good.¹⁶

Therefore, in view of aforementioned, and the serious criminal offence, which A. B. is determined to have committed, Attempted Murder, it is assessed by the trial panel that to remove the danger that A. B. will commit a criminal offence involving an act of violence or infliction of bodily harm on another person mandatory psychiatric treatment of A. B. is necessary.

The trial panel is of the opinion that A. B. has demonstrated a high danger in attempting to deprive his wife A. D. of life. Evidence in the case file as elaborated above indicates that A. B. has been aggressive towards his family also in the past. A. B. lives together with his wife. Despite the fact that already in year 1989 A. B. was diagnosed a mental illness, there is no record that A. B. has followed a regular psychiatric treatment. The Discharge List, reg.no. , and also the Discharge List, reg.no. , show that A. B. was placed in the Clinic for few days and then again released. According to the Discharge List, reg.no. , after three days at the Clinic, A. B. left. He had been brought to the Clinic by police and his family because of the aggravation of his illness which manifested in domestic violence. Irrespective of being admitted to the Clinic for a couple of times, A. B. , as established in this Ruling above, on 18 September 2008 attacked his wife and tried to murder her.

¹⁴ Record of the Main Trial, 30 June 2010, pp.6, 8 (the Record in the English Language)

¹⁵ Record of the Main Trial, 28 June 2010, p.9 (the Record in the English Language)

¹⁶ Record of the Main Trial, 28 June 2010, p.8 (the Record in the English Language)

Therefore, the trial panel is very doubtful that A.B.'s mandatory psychiatric treatment at liberty will prevent A.B. from again committing an act of violence or infliction of bodily harm on another person. This far it has not proved to be possible to carry out A.B.'s treatment. Thus, the court would impose the mandatory psychiatric treatment in custody. According to Section 3.1 (a) of the UNMIK Regulation 2004/34, mandatory psychiatric treatment in custody can only be executed in a *health care institution*. Currently in Kosovo there does not exist such health care institution where mandatory psychiatric treatment in custody can be executed. The witness experts, when they proposed the treatment plan for A.B. at liberty, they also confirmed that such plan is proposed because there is no health care institution in Kosovo.¹⁷ For this reason the court is not in a position to impose mandatory psychiatric treatment in custody, because there does not exist a health care institution where such treatment can be executed, as required by the UNMIK Regulation 2004/34.

Therefore, the court instead imposes the measure of mandatory psychiatric treatment at liberty, pursuant to Section 5 and Section 12.3 of the UNMIK Regulation No. 2004/34.

At the main trial the expert witnesses described the psychiatric treatment plan for A.B. to be executed at the University Clinical Center of Kosovo in Prishtine/Priština. The expert witness Dr. O.D. recommended that A.B. spends two (2) to three (3) months at the Clinic, with a guaranteed therapy there. The mandatory treatment at liberty was proposed due to absence of a health care institution. However, the expert witnesses could not confirm that it would be possible to admit A.B. to the Clinic at present moment. According to expert witness Dr. O.D., up to four (4) weeks are needed to prepare for A.B.'s admission to the Clinic and the best would be for A.B. to start the treatment on 01 September 2010, as some of the doctors are on leave.¹⁸

In view of above stated opinions of expert witnesses, the court, therefore, decides that:

- the measure of mandatory psychiatric treatment at liberty to be executed at the University Clinical Center of Kosovo in Prishtine/Priština; and
- starting from 01 September 2010 A.B. be admitted for stationary treatment at the University Clinical Center of Kosovo in Prishtine/Priština.

¹⁷ Record of the Main Trial, 30 June 2010, p.10 (the Record in the English Language)

¹⁸ Record of the Main Trial, 30 June 2010, pp.10,11 (the Record in the English Language)

As established by the court in this Ruling above there is a serious danger that A.B. will commit a criminal offence involving an act of violence or infliction of bodily harm on another person. It is also assessed that A.B. lives together with his wife, and, as determined by the court in this Ruling, A.B. on 18 September 2008 had attempted to murder his wife. Therefore, in order to remove the danger which

A.B. can cause, it is decided by the court that:

- A.B. is required to report for treatment at the University Clinical Center of Kosovo in Prishtine/Priština on 01 July 2010;
- until 01 September 2010, A.B. be executed ambulatory treatment at the University Clinical Center of Kosovo in Prishtine/Priština, with regular and close supervision of the psychiatrist.

It is noted by the trial panel that the above stated measures are best available for the court in order to prevent the danger from the side of A.B., in absence of a health care institution pursuant to requirements of the UNMIK Regulation No. 2004/34.

Therefore, in view of all foregoing it has been decided as in the enacting clause of this Ruling.

The court shall monitor the execution of the mandatory psychiatric treatment at liberty as imposed against A.B. pursuant to Section 26.1 of the UNMIK Regulation 2004/34.

COSTS

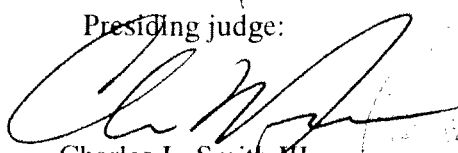
Because A.B. was determined criminally not liable for the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the PCCK, pursuant to Article 103 Paragraph (1) of the Criminal Procedure Code of Kosovo the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the Code, the necessary expenses of the defendant and the remuneration and necessary expenditures of defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources..


PROPERTY CLAIM


No property claim was filed by the Injured Party A.D. However, if property claim had been filed, the court would be obliged to reject the property claim, because A.B.

was determined criminally not liable for the criminal offence of Attempted Murder contrary to Article 146 as read with Article 20 of the PCCK.


District Court of Mitrovicë/Mitrovica
P Nr. 02/2009

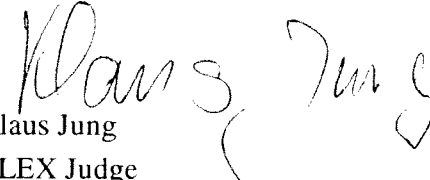
Presiding judge: 
Charles L. Smith, III
EULEX Judge

Recording officer: 
Zane Ratniece
EULEX Legal Officer



Panel members:


Hajnalka Veronika Karpati
EULEX Judge


Klaus Jung
EULEX Judge

LEGAL REMEDY: Authorized persons may file an appeal against this Ruling to the Supreme Court of Kosovo through the District Court of Mitrovicë/Mitrovica within eight (8) days from the date the copy of the Ruling has been received, pursuant to Section 12.4 of the UNMIK Regulation 2004/34.