

DISTRICT COURT OF MITROVICĚ/MITROVICA

P. nr. 12/2010

10 December 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICĚ/MITROVICA, in the trial panel composed of EULEX Judge Nikolay Entchev, as presiding judge, and EULEX Judges Christine Lindemann-Proetel and Klaus Jung, as panel members, with the participation of EULEX Legal Officer Zane Ratniece, as recording officer, in the criminal case against:

E.K., charged, according to the Indictment of the Public Prosecutor PP nr. 404/09, filed on 18 February 2010, with Attempted Aggravated Murder, under Article 147 item 10 in conjunction with Article 20 of the Criminal Code of Kosovo (the CCK) and Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (2) of the CCK; and

S.B., charged, according to the Indictment of the Public Prosecutor PP nr. 404/09, filed on 18 February 2010, with Incitement to Commit Attempted Aggravated Murder, under Article 147 item 10 in conjunction with Articles 20 and 24 of the CCK and Unauthorized Ownership, Control, Possession or Use of Weapons, Article 328 paragraph (2) of the CCK;

After having held the main trial hearings open to the public on 17, 18, 19, 23 and 30 November and 09 December 2010, in the presence of the Accused *E.K.*, his Defence Counsel *A*, the Accused *S.B.*, his Defence Counsel *B*, EULEX Public Prosecutor Neeta Amin (except that at the hearing on 09 December 2010 was present EULEX Public Prosecutor Petr Klement), the Injured Party *C.D.*, his Authorized Representative Attorney *C* (except that at the hearing on 09 December 2010 the Injured Party was represented by Attorney *D*);

After the trial panel's deliberation and voting held on 09 December 2010, pursuant to Article 392 paragraph (1) of the Criminal Procedure Code of Kosovo (the CPCK), pronounced on 10 December 2010, in public and in the presence of both Accused, their Defence Counsel, EULEX Public Prosecutor Petr Klement, Injured Party and his Authorized Representative Attorney *D*, the following:

JUDGMENT

A.

The Accused *E.K.*, father's name , mother's name , maiden name , born on in Mitrovicë/Mitrovica, Kosovo Ashkali, residing at street ' ' no. , Mitrovicë/Mitrovica, currently on social welfare, married, with children, finished elementary school, in detention on remand from 04.12.2009 until 17.08.2010 and thereafter under house arrest;

is

FOUND NOT GUILTY

Of the charge of Attempted Aggravated Murder, under Article 147 item 10 in conjunction with Article 20 of the CCK;

Because it was not proven beyond reasonable doubt that *E.K.* intended to deprive of life *C.D.* , an inspector at Kosovo Veterinary and Food Agency, when on 24.10.2009 at around 19:00 hours in Shupkovc village, at the intersection of 'Kalabria' and 'Brigada 141' streets, on the bridge, *E.K.* fired with the automatic rifle AK-47, serial number xxxxxx in the direction of *C.D.* and hit with two shots the official vehicle Nissan Terrano, white in colour, plate no. xxxxxx , in which *C.D.* was leaving from Mitrovicë/Mitrovica towards Prishtinë/Priština;

Therefore, pursuant to Article 390 item 3 of the CPCK *E.K.* is ACQUITTED of that charge;

is

FOUND GUILTY

Because *E.K.* on 24.10.2009 at around 19:00 hours in Shupkovc village, at the intersection of 'Kalabria' and 'Brigada 141' streets, on the bridge, fired with the automatic rifle AK-47, serial number xxxxxx in the direction of *C.D.* , an inspector at Kosovo Veterinary and Food Agency, and hit with two shots the official vehicle Nissan Terrano, white in colour, plate no. xxxxxx , in which *C.D.* was leaving from Mitrovicë/Mitrovica towards Prishtinë/Priština;

By doing so, the Accused *E.K.* committed and is criminally liable for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 paragraph (1) of the CCK;

THEREFORE, the Accused *E.K.* is

SENTENCED

To three (3) years of imprisonment.

The time spent in detention on remand from 04.12.2009 until 17.08.2010 and thereafter under house arrest is to be credited pursuant to Article 73 paragraph (1) of the CCK.

B.

The Accused *S.B.*, father's name , mother's name , maiden name , born on in , Kosovo Albanian, residing at street ' ' no. , Mitrovicë/Mitrovica, employee at a freight company, average income per month EUR , single, finished secondary school of economics, in detention on remand from 04.12.2009 until 17.08.2010 and thereafter under house arrest;

is

FOUND GUILTY

Because *S.B.* asked *E.K.* to shoot at Injured Party *C.D.* , an inspector at Kosovo Veterinary and Food Agency, provided for this purpose *E.K.* with the automatic rifle AK-47, serial number xxxxxx , and on 24.10.2009, when at around 18:50 hours *C.D.* was leaving from work at Mitrovicë/Mitrovica customs terminal in the official vehicle Nissan Terrano, white in colour, plate no. xxxxxx , towards Prishtinë/Priština, notified *E.K.* that *C.D.* was leaving, so that *E.K.* would be informed of *C.D.* 's movement, thereby directing *E.K.* to shoot at *C.D.* . *E.K.* on 24.10.2009 at around 19:00 hours in Shupkovic village, at the intersection of 'Kalabria' and 'Brigada 141' streets, on the bridge, fired with the automatic rifle AK-47, serial number xxxxxx in the direction of *C.D.* , an inspector at Kosovo Veterinary and Food Agency, and hit with two shots the official vehicle Nissan Terrano, white in colour, plate no. xxxxxx , in which *C.D.* was leaving from Mitrovicë/Mitrovica towards Prishtinë/Priština;

I. By doing so, the Accused *S.B.* committed and is criminally liable for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 paragraph (1) of the CCK.

Because *S.B.* was in possession of a weapon, the automatic rifle AK-47, serial number *xxxxxx*, without a valid authorization card;

II. By doing so, the Accused *S.B.* committed and is criminally liable for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 paragraph (2) of the CCK;

THEREFORE, the Accused *S.B.* is

SENTENCED

To four (4) years of imprisonment for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 paragraph (1) of the CCK (Count I);

and

To two (2) years of imprisonment for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 paragraph (2) of the CCK (Count II).

The aggregate punishment is determined four (4) years and six (6) months of imprisonment, pursuant to Article 71 paragraph (1) and paragraph (2) item 2 of the CCK.

The time spent in detention on remand from 04.12.2009 until 17.08.2010 and thereafter under house arrest is to be credited pursuant to Article 73 paragraph (1) of the CCK.

The weapon - the automatic rifle AK-47, serial number *xxxxxx*, is hereby confiscated pursuant to Article 60 paragraph (1) and Article 328 paragraph (5) of the CCK.

Both Accused shall reimburse their parts of costs of criminal proceedings pursuant to Article 102 paragraph (1) of the CPCK with the exception of the costs of

interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 paragraph (2) of the CPCK.

REASONING

I. PROCEDURAL HISTORY

On 18.02.2010, the District Public Prosecutor for Mitrovicë/Mitrovica Xhevdet Bislimi filed the Indictment PP nr. 404/09, with the Registry of the District Court of Mitrovicë/Mitrovica.

According to the Indictment the Accused *E.K.* was charged with the criminal offences of Attempted Aggravated Murder, Article 147 item 10 in conjunction with Article 20 of the CCK, and Unauthorized Ownership, Control, Possession or Use of Weapons, Article 328 paragraph (2) of the CCK. The Accused *S.B.* was charged with the criminal offences of Incitement to Commit Attempted Aggravated Murder, Article 147 item 10 in conjunction with Articles 20 and 24 of the CCK, and Unauthorized Ownership, Control, Possession or Use of Weapons, Article 328 paragraph (2) of the CCK.

The Indictment was confirmed on 17.03.2010 by the Confirmation Judge Ferit Osmani.

II. JURISDICTION OF THE COURT

2.1. *Subject matter and territorial jurisdiction*

According to Article 23 paragraph (1) of the CPCK, 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 offences allow imprisonment of at least five years.

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

The charged criminal offences were allegedly committed in Shupkovc village, Municipality of Mitrovicë/Mitrovica and also in Mitrovicë/Mitrovica.¹ Therefore, pursuant to Article 27 paragraph (1) of the CPCK, the District Court of Mitrovicë/Mitrovica had also territorial jurisdiction over the case.

2.2. Jurisdiction of EULEX judges

Article 3.3 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 02.08.2010, the President of the Assembly of EULEX judges, upon the petition of Defence Counsel of *S.B. Attorney E*, decided to assign to the case EULEX judges of District Court of Mitrovicë/Mitrovica.

III. APPLICABLE LAW

3.1. Applicable substantive law

The substantive law applicable to the case is the one in force at the time, when the criminal offence was committed. In October 2009, and more specifically on 24.10.2010, when the alleged criminal offences were committed, in force was the Criminal Code of Kosovo (CCK).

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 (CPCK). Therefore, the court followed the procedure pursuant to the CPCK.

IV. SUMMARY OF THE EVIDENCE PRESENTED

¹ Indictment PP nr. 404/09, pp.1-3 (translation in the English Language)

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

- 1) Injured Party *C.D.*, on 17.11.2010
- 2) *E.G.*, colleague of the Injured party *C.D.* and acquaintance of the Accused *S.B.*, on 17.11.2010
- 3) *B.D.*, brother of the Injured Party *C.D.*, on 17.11.2010
- 4) *L.M.*, brother of the wife of the Accused *S.B.*, on 18.11.2010
- 5) *M.N.*, a police officer, on 19.11.2010
- 6) *M.P.*, a police officer, on 23.11.2010
- 7) *M.R.*, a police officer, on 23.11.2010
- 8) *M.S.*, a police officer, on 30.11.2010

4.2. The following documents were put forward to be used as evidence by the EULEX Public Prosecutor Neeta Amin, and have been considered as read out based on agreement by the parties:²

- 1) Police file cover sheet, case number 2009-BI-343
- 2) Criminal charges, 05.12.2009, case number 2009-BI-343
- 3) Statement of *C.D.* to Kosovo Police, 24.10.2009, case number 2009-BC-2254³
- 4) Minutes of witness-victim interrogation of *C.D.*, Kosovo Police, 26.10.2009
- 5) Minutes of witness-victim interrogation of *C.D.*, Kosovo Police, 10.11.2009, case number 2009-BI-343
- 6) Minutes of witness-victim interrogation of *C.D.*, Kosovo Police, 04.12.2009, case number 2009-BI-343
- 7) Interview of *C.D.* before District Public Prosecutor, 20.01.2010, PP nr.404/2009
- 8) Statement of *E.K.* to Kosovo Police, 04.12.2009, case number 2009-BI-343
- 9) Statement of *S.B.* to Kosovo Police, 04.12.2009, case number 2009-BI-343
- 10) Ballistic examination report, date of receipt 29.01.2010, date of examination 03.03.2010, reference number 2009-BI-343
- 11) Submission of Attorney *C* on behalf of *C.D.*, 02.11.2010, with attached: three Receipts from University Clinical Center of Kosovo, issued to *C.D.*, 30.12.2009, 06.01.2010, 12.01.2010 and three Reports from Clinic psychologist, 30.12.2009, 06.01.2010, 12.01.2010
- 12) Memorandum of Prosecutor Jusuf Mejzini, 11.03.2010, PPN nr.12/10

² Minutes of the main trial hearing 18.11.2010, pp.17-19 (minutes in the English Language)

³ On the Statement the case number was indicated 2008-BC-2254

- 13) Submission of C.D. to Public Prosecutor, 08.03.2010, PP nr.404/2009
- 14) Submission of C.D. concerning the indictment PP nr.404/2009, 08.03.2010
- 15) Authorization for undertaking investigative actions of Public Prosecutor Xhevdet Bislimi, 29.03.2010, PP nr.404/09
- 16) Initial Incident Report, 24.10.2009, 26.10.2009, case number 2009-BC-2254, reference number 2009-BI-343
- 17) Driving license of C.D. , xxx ; Vehicle registration document, xxx
- 18) Report of police officer , 24.10.2009, case number 2009-BC-2254
- 19) Report from the incident location by sergeant and forensic officer , 24.10.2009
- 20) Photo album, 09-117, 24.10.2009, 25.10.2009, by officer
- 21) Crime scene examination report, Mitrovicë/Mitrovica Regional Forensic Unit, forensic file 09-117, compiled by , supervisor
- 22) IPKO phone call listing, 30.11.2009⁴
- 23) Memorandum of M.N. to Public Prosecutor, received by Prosecution Office 20.11.2009
- 24) Flash report, 24.10.2009, case number 2009-BC-2254
- 25) Notes of the holding center, for S.B., 04.12.2009⁵
- 26) Request for ballistic expertise of Mitrovicë/Mitrovica District Public Prosecutor, 13.01.2010, PP nr.404/2009
- 27) Request for weapon examination to Mitrovicë/Mitrovica District Public Prosecutor, 16.12.2009

V. ASSESSMENT OF THE PRESENTED EVIDENCE

5.1. Factual findings

Based on the evidence presented during the course of the main trial, the court considered the following facts as proven:

Sometimes before 24.10.2009 the Accused S.B. spoke to the Accused E.K. about shooting at the Injured Party C.D. , an inspector at Kosovo Veterinary and Food Agency. S.B. asked E.K. to use the weapon against C.D. , and also promised to pay E.K. a certain amount of money thereof. Two days before

⁴ IPKO phone call listing ruled admissible evidence at the hearing on 23.11.2010. Minutes of the main trial hearing 23.11.2010, pp.13, 14 (minutes in the English Language)

⁵ The Notes of the holding center ruled admissible evidence later at the hearing on 18.11.2010. Minutes of the main trial hearing 18.11.2010, pp.39, 40 (minutes in the English Language)

24.10.2009, in Mitrovicë/Mitrovica, S.B. provided E.K. with the automatic rifle AK-47, serial number xxxxxx, to use that weapon against C.D.. On 24.10.2009, at around 18:50 hrs, C.D. was leaving from his work at Mitrovicë/Mitrovica customs terminal in the official vehicle Nissan Terrano, white in colour, plate no. xxxxxx. S.B. at that time was present at the customs terminal and saw C.D. leaving from work. S.B. called on the phone to E.K. and informed E.K. that C.D. was leaving. As usually, C.D. drove in the official vehicle towards Prishtinë/Priština. E.K. was waiting for C.D. to pass in Shupkocv village, at the intersection of 'Kalabria' and 'Brigada 141' streets. When C.D. was at the said intersection, on the bridge, E.K. fired in the direction of C.D. and hit with two shots the rear part of the vehicle.

5.2. Evidence establishing the factual findings

1) Statements of the Accused in relation to criminal offences

A vital role in the criminal proceedings was played by the **Statements** of the Accused E.K. and S.B., **04.12.2009, before Kosovo Police**.

During the course of the main trial both Accused denied everything what had been recorded in those Statements and claimed that:

- Statements before Kosovo Police had been extorted by force and
- Rights prior to the Statements had not been read to the Accused and
- Assistance of defence counsel had not been provided.⁶

a. In view of these allegations, the court devoted a considerable part of criminal proceedings to their examination. The court heard testimonies of the police officers who were involved in taking the Statements from the Accused and other related actions. The court assessed whether the Statements had been taken in accordance with the procedure in the CPCK:

First, voluntariness of the Statements

According to Article 155 paragraph (1) and Article 235 of the CPCK a statement of the defendant shall be inadmissible if during examination the defendant's freedom to express what he/she wants has been impaired by ill-treatment, physical interference, torture, coercion, or the defendant has been threatened with measures not permitted under the law.

⁶ Minutes of the main trial hearing 18.11.2010, pp.23-30, 32, 35-38, 42, 49, 53 (minutes in the English Language)

The voluntariness, which is also enshrined in the CPCK, is a fundamental requirement of the admissibility of statements obtained from the defendant. Therefore, the court duly assessed the allegations made by the Accused in this regard.

The Accused *E.K.* claimed that during his examination at Kosovo Police on 04.12.2009 he was beaten by the police officers M.N. and M.R. .⁷ *E.K.* alleged that he had been mistreated a lot, beaten up and forced to sign the Statement. *E.K.* had not told the police anything; they were telling him 'say this about *S.B.* and say that'; they were also telling that he (*E.K.*) had shot at somebody. Even though *E.K.* signed the Statement he did so as he could not bear the beating anymore.⁸

Later during the trial *E.K.* also stated that even before being taken to the police station, he was beaten by the police officers M.S. and M.R. , while the police officers were taking him in the car to the police station; the two police officers were also beating him at the police station.⁹

The court found that allegations of *E.K.* could not be upheld and voluntariness in giving the Statement had not been violated based on the following:

- The police officer ***M.N.*** was examined at the main trial hearing on 19.11.2010. He confirmed that he and the police officer ***V.Z.*** were present while the Statement was taken from *E.K.* on 04.12.2009.¹⁰ The court verified that signatures of both police officers,- ***M.N.*** and ***V.Z.***, were on ***E.K.'s Statement to Kosovo Police, 04.12.2009.*** ***M.N.*** testified that *E.K.* himself pointed towards *S.B.* in commission of the criminal offence, no force was applied against *E.K.*, and no signs of violence could be seen on *E.K.*, he did not complain of being mistreated.¹¹
- The police officers ***M.R.*** and ***M.S.*** were examined at the main trial hearing on 23.11.2010, and 30.11.2010, respectively. ***M.R.*** and ***M.S.*** confirmed that they and ***M.N.*** on 04.12.2009 brought *E.K.* to the police station. ***M.R.*** and ***M.S.*** denied subjecting *E.K.* to

⁷ *ibid*, p.25

⁸ *ibid*, pp.23-25

⁹ Minutes of the main trial hearing 30.11.2010, pp.10-12; Minutes of the main trial hearing 23.11.2010, p.20 (minutes in the English Language)

¹⁰ Minutes of the main trial hearing 19.11.2010, pp.10, 11 (minutes in the English Language)

¹¹ *ibid*, pp.6, 10, 11, 15

any mistreatment, and they did not see any of their colleagues mistreating *E.K.*¹²

- The court also noted that there was no record that when *E.K.* was brought before the pre-trial judge for **detention hearing on 05.12.2009** that he would have raised to the pre-trial judge the issue of being mistreated by the police officers. No such issue was raised by *E.K.* also at the **confirmation of indictment hearing on 17.03.2010**. With regards to detention hearing on 05.12.2009, *E.K.* claimed that he had told about beating, but 'there had been only one signature and only one month in detention'.¹³ However, there was no record of such statement made by *E.K.* at the detention hearing. Further, the issue of mistreatment had not been raised at any other stage of criminal proceedings, neither by *E.K.* nor his Defence Counsel, until the start of the main trial. In view of the seriousness of allegations, the court would expect that *E.K.* or his Defence Counsel raise the issue at a first available opportunity and not wait until the main trial.

According to the testimony of the Accused *S.B.*, he was beaten at the Police Station on 04.12.2009 by the police officers *M.S.* and *M.T.* . The Accused provided various periods of time for how long the assault had lasted,- for one or one and a half hours, for two or two and a half hours. He was continuously being beaten on both sides of his back, face, and also hit with a water bottle, and threatened with the sticks. *S.B.* stated that police officers wrote in his Statement 'whatever they wanted'.¹⁴ Further, *S.B.* at the main trial hearing on 18.11.2010 claimed that it had been three police officers who were assaulting him,- *M* and other two , and that they were 'asking the questions and answering the questions themselves'.¹⁵

At the main trial hearing on 23.11.2010, the Accused stated that it was *M.R.* , who from the moment *S.B.* arrived at the police station on 04.12.2009, held him in custody for 'about an hour and a half to two hours' and was assaulting him.¹⁶ However, at the main trial hearing on 30.11.2010, the Accused stated that it had been police officer *M.R.* together with the police officer *M.S.* who initially beat him at the police station and kept him for five to six hours.¹⁷

¹² Minutes of the main trial hearing 23.11.2010, pp.18, 19; Minutes of the main trial hearing 30.11.2010, pp.9-12 (minutes in the English Language)

¹³ Minutes of the main trial hearing 18.11.2010, p.24 (minutes in the English Language)

¹⁴ *ibid*, pp.36-38, 51, 52; Minutes of the main trial hearing 30.11.2010, p.9 (minutes in the English Language)

¹⁵ Minutes of the main trial hearing 18.11.2010, pp.51, 52, 56 (minutes in the English Language)

¹⁶ Minutes of the main trial hearing 23.11.2010, p.18 (minutes in the English Language)

¹⁷ Minutes of the main trial hearing 30.11.2010, pp.13, 14 (minutes in the English Language)

The court found that aforementioned allegations of *S.B.* could not be upheld and voluntariness in giving the Statement had not been violated based on the following:

- As an initial observation, the court considered that *S.B.* provided differing numbers and names of the police officers, who allegedly mistreated him, as well as the periods of time. As such, the claim of *S.B.* lacked precision and in parts was inconsistent.
- The police officer *M.R.* at the main trial hearing on 23.11.2010 denied any pressure being used against *S.B.* *M.R.* testified that he and *M.S.* located *S.B.* on 04.12.2009 and were the first to speak to him. *S.B.* pointed towards the site, where the weapon, which had been used to shoot in direction of Injured Party, was dumped. Before taking any statement from the Accused, both police officers went to the site to search for the weapon. The Statement from the Accused was taken afterwards, and *M.R.* did not participate in it.¹⁸ The police officer *M.S.* denied any force being used against the Accused and corroborated the testimony of *M.R.* as to actions taken on 04.12.2009. According to *M.S.*, the last time he was in contact with *S.B.* on 04.12.2009 was at the site where the weapon was found.¹⁹
- According to the Statement, the police officers *M.P.*, *M.N.* and *M.T.* took the Statement from *S.B.* The police officer *M.N.* at the main trial hearing on 19.11.2010 denied any force or pressure being used against *S.B.*. He confirmed that he and other two colleagues took the Statement. *M.N.* testified that Statement was taken after *M.S.* and *M.R.* had located *S.B.* on 04.12.2009 and had gone with *S.B.* to search for the weapon.²⁰ *M.P.* at the main trial hearing on 23.11.2010 confirmed that he, *M.N.* and *M.T.* took the Statement from *S.B.*. *M.P.* denied any pressure being put on *S.B.*, and he could not see any injuries on *S.B.*. *M.P.* participated only in taking the Statement.²¹
- According to the **Notes of the Holding Centre, 04.12.2009**, which were signed by *S.B.* (page 7 of the Notes), it was marked that *S.B.* was not injured or suffering from any illness, and it was marked that doctor was not required.
- The court also noted that there was no record that when *S.B.* was brought before the pre-trial judge for **detention hearing on 05.12.2009** that he would

¹⁸ Minutes of the main trial hearing 23.11.2010, pp.14-18, 23-25, 27, 30, 31 (minutes in the English Language)

¹⁹ Minutes of the main trial hearing 30.11.2010, pp.4-6, 13-16, 19-21 (minutes in the English Language)

²⁰ Minutes of the main trial hearing 19.11.2010, pp.5-10, 16, 17 (minutes in the English Language)

²¹ Minutes of the main trial hearing 23.11.2010, pp.3-7 (minutes in the English Language)

have raised to the pre-trial judge the issue of being mistreated by the police officers. **S.B.** at the main trial stated that he had injuries on both sides of his face also at the time of detention hearing.²² According to the **minutes of detention hearing 05.12.2009** the hearing was held by pre-trial judge Emine Mustafa, assisted by Recording Clerk Ali Kutllovci, also Attorneys **E** and **G**, and Public Prosecutor Shyqyri Sylja were present. However, according to the minutes of detention hearing, neither pre-trial judge nor any of the parties addressed the issue of **S.B.**'s alleged injuries. No such issue was raised by the Accused also at the **confirmation of indictment hearing on 17.03.2010**.

With regard to detention hearing on 05.12.2009, **S.B.** claimed that there was no hearing held at all, it lasted maybe only one or two minutes; **S.B.** stayed outside the courtroom in the corridor with the police officers, who were preventing him to say a single word, and he was not given an opportunity to say anything.²³ The police officer **M.N.** at the main trial hearing on 19.11.2010 confirmed that he and the police officer **M.R.** took **S.B.** for the detention hearing to the courthouse in Vushtrri/Vučitrn. Both police officers stayed outside the courtroom, in the corridor and they did not enter the courtroom.²⁴ The police officer **M.R.** at the main trial hearing on 23.11.2010 fully corroborated the said testimony of **M.N.**²⁵ According to the **minutes of detention hearing, 05.12.2009**, both Accused were present at the hearing, the hearing lasted from 13:35 until 14:00 hrs, and the Accused also made certain statements during the hearing.

In view of aforementioned, the court found that voluntariness in giving the Statements by the Accused on 04.12.2009 had not been violated.

Second, rights read to the Accused prior the Statements

Article 231 paragraph (2) of the CPCK foresees the rights, which must be read to the defendant before any examination. Pursuant to Article 235 of the CPCK if the defendant is not informed of these rights, the statement of the defendant shall be inadmissible. The Accused **E.K.** and **S.B.** claimed that before they gave their Statements on 04.12.2009 to Kosovo Police the rights were not read to them.²⁶ Therefore, the court examined these allegations made by the Accused:

²² Minutes of the main trial hearing 18.11.2010, p.54 (minutes in the English Language)

²³ *ibid*, pp.47, 48

²⁴ Minutes of the main trial hearing 19.11.2010, pp.12, 21 (minutes in the English Language)

²⁵ Minutes of the main trial hearing 23.11.2010, p.17 (minutes in the English Language)

²⁶ Minutes of the main trial hearing 18.11.2010, pp.28, 49 (minutes in the English Language)

- The court verified that in the **Statements, 04.12.2009**, before Kosovo Police in the Albanian Language, the warning pursuant to Article 231 paragraph (2) of the CPCK was recorded. The Statements were signed by both Accused.
- The police officer **M.N.**, who interviewed *E.K.* and also *S.B.* on 04.12.2009, at the main trial hearing confirmed that the regular procedure in taking a statement from the defendant is that first the defendant is informed of his rights, including the rights to remain silent.²⁷
- The police officer **M.P.**, who participated in taking the Statement from *S.B.* on 04.12.2009, at the main trial hearing confirmed that he saw *S.B.* and his Defence Counsel reading the Statement. *S.B.* was asked whether he wanted to add anything or injustice had been done. After reading the Statement, *S.B.* signed it.²⁸

In view of aforementioned, the court considered that on 04.12.2009 a proper warning had been given to both Accused prior their Statements.

Third, assistance of defence counsel

According to Article 231 paragraph (2) item 4) and paragraph (3) of the CPCK the defendant before any examination shall be informed of the right to receive the assistance of defence counsel and to consult with him/her prior to as well as during the examination. As verified by the court above, the Accused were informed of this right prior their Statements. At the main trial *E.K.* claimed that Defence Counsel *G*, appointed *ex officio*, came at the end of his Statement, signed the Statement and left.²⁹ *S.B.* claimed that after he had been beaten for six hours at the police station, Defence Counsel *E*, appointed *ex officio*, came and *S.B.* at that time even did not know that he was an attorney. The Defence Counsel did not consult him at all.³⁰

The court found that aforementioned allegations of the Accused could not be upheld based on the following:

- None of the police officers, who were examined during course of the main trial, could specify who exactly had called defence counsel to come to the police station on 04.12.2009. Nevertheless, the police officer **M.N.**, who interviewed *E.K.* and also *S.B.*, testified at the main trial that every

²⁷ Minutes of the main trial hearing 19.11.2010, p.5 (minutes in the English Language)

²⁸ Minutes of the main trial hearing 23.11.2010, pp.6, 7 (minutes in the English Language)

²⁹ Minutes of the main trial hearing 18.11.2010, p.23 (minutes in the English Language)

³⁰ Ibid, p.37

attorney who comes to the police station is explained what case she/he will participate in. Further, *M.N.* confirmed that defence counsel of *E.K.* and *S.B.* were present during entire course of their Statements.³¹ The police officer *M.P.*, who participated in taking the Statement from *S.B.*, at the main trial testified that Attorney *E*, Defence Counsel for *S.B.*, arrived before *S.B.* gave the Statement, he talked to *S.B.* and only then the Accused gave the Statement.³²

- The court verified that on the **Statements 04.12.2009** there were signatures of Attorneys *E* and *G*, respectively.
- Further, the court assessed that following the Statements both Attorneys continued to represent the Accused. At the **detention hearing on 05.12.2009** Attorney *E*, Defence Counsel for *S.B.*, argued on behalf of his client that there was no risk of flight or influencing *C.D.*, as *S.B.* had entirely admitted criminal offence and had expressed regret, and promised that he would not commit in future criminal offences.³³ Also Attorney *G*, Defence Counsel for *E.K.*, asked for another measure to be imposed against his client. Also, Attorney *E* on 10.08.2010 filed a motion with the court to terminate detention on remand against *S.B.* and impose a measure of bail instead.

In view of aforementioned considerations, the court finding is that Accused had received an appropriate assistance of defence counsel.

Another issue which was raised by Attorney *B*, Defence Counsel of *S.B.*, was that there were discrepancies in the hours recorded in the *S.B.*'s **Statement 04.12.2009**. In particular, according to the Statement, the interview commenced at 16:44 hrs and finished at 15:45 hrs. Furthermore, pursuant to the **Notes of the holding center**, for *S.B.*, 04.12.2009, the Accused *S.B.* had been arrested at 16:00 hrs. *M.N.* at the main trial confirmed that there had been mistakes made as to exact time, when the interview commenced and ended, but what was relevant was the time of arrest.³⁴ In view of testimonies of police officers considered in this judgment above, the court had no doubts as to the fact, that *S.B.* had given the Statement. The testimonies heard during course of the main trial confirmed that *S.B.* on 04.12.2009 gave the Statement to Kosovo Police. Therefore, inconsistencies in the hours recorded in the Statement, could not lead to a

³¹ Minutes of the main trial hearing 19.11.2010, pp.10-14 (minutes in the English Language)

³² Minutes of the main trial hearing 23.11.2010, p.3 (minutes in the English Language)

³³ Minutes of detention hearing 05.12.2009, p.2 (translation in the English Language)

³⁴ Minutes of the main trial hearing 19.11.2010, pp. 13, 16-18 (minutes in the English Language)

conclusion that Statement had not been given by the Accused, neither they rendered the Statement invalid.

In view of all foregoing, the court considered that Statements of the Accused *E.K.* and *S.B.*, 04.12.2009, before Kosovo Police were not to be declared inadmissible and as such remained in the evidence. The court continued with examination of the content of the Statements.

b. *E.K.* was the first suspect identified by Kosovo Police. He was examined by Kosovo Police on 04.12.2009. In the **Statement to Kosovo Police, 04.12.2009**, *E.K.* told that he knows *S.B.* since childhood. In the Statement *E.K.* did not testify that on 24.10.2009 he shot at *C.D.*. He pointed towards *S.B.*, that *S.B.* came to him around two (2) months ago and asked to steal a Jeep of a customs official, with whom *S.B.* was having problems. Even though *E.K.* agreed to do this for 300 EUR, that agreement was not implemented. Later *S.B.* came to *E.K.* again and offered 500 EUR to shoot at a customs official. *S.B.* promised to find a weapon for this purpose, however *E.K.* refused. Later *S.B.* told *E.K.* that he had finished the job.

c. After *E.K.* had pointed towards *S.B.*, Kosovo Police contacted *S.B.*. In the **Statement to Kosovo Police, 04.12.2009**, *S.B.* confirmed that he had problems with *C.D.*, as *C.D.* was taking money from him to complete the work. *S.B.* therefore asked *E.K.* to use the weapon against *C.D.* and two days before 24.10.2009 provided *E.K.* at his house in Mitrovicë/Mitrovica with the weapon, Kalashnikov. On 24.10.2009, *S.B.* was at Mitrovicë/Mitrovica customs terminal. After *S.B.* saw *C.D.* driving away from the customs terminal, at around 19:00 hrs, *S.B.* by phone informed thereof *E.K.*, who was waiting for *C.D.* to pass. While *S.B.* was at a restaurant near the customs terminal, he heard shots. After the shots *E.K.* was calling *S.B.*, however *S.B.* did not answer the phone as he was afraid that *E.K.* could have killed *C.D.*. The next day *S.B.* met *E.K.*, who told him that he shot at *C.D.* but did not kill him, as *C.D.* had continued driving. *S.B.* gave *E.K.* 200 EUR. The next day *S.B.* picked up the weapon, Kalashnikov, which he dismantled and threw in some bushes in Koshtova village after three (3) weeks.³⁵

³⁵ The court identified that last version of translation in the English Language of *S.B.*'s Statement, 04.12.2009, before Kosovo Police, which was provided by EULEX Public Prosecutor was not

Therefore, *S.B.* in the **Statement to Kosovo Police, 04.12.2009**, pointed towards involvement of *E.K.* in shooting at *C.D.* . Furthermore, *S.B.* testified to be in possession of a weapon, Kalashnikov, which later was used by *E.K.* against *C.D.* on 24.10.2009.

2) *Other evidence regarding commission of criminal offences by E.K. and S.B.*

Pursuant to Article 157 paragraph (2) of the CPCK the court shall not find the accused guilty based solely, or to a decisive extent, upon statements given by the defendant to the police or public prosecutor.

The court therefore considered in connection with the **Statements** of the Accused before Kosovo Police, 04.12.2009, the testimonies of witnesses and other evidence presented by EULEX Public Prosecutor during course of the main trial.

d. **Report from the incident location** by sergeant and forensic officer , 24.10.2009, and also **Report** of police officer , 24.10.2009, case number 2009-BC-2254, provided that on 24.10.2009, at about 19:15 hrs they were notified of a case against *C.D.* , which had occurred on Mitrovicë/Mitrovica - Prishtinë/Priština highway. They went to the scene. They also approached customs officers at the customs check point, who told that they had heard shots fired three - four times from the direction of customs terminal but they did not see anything as it was dark. Further, in the **Crime scene examination report**, Mitrovicë/Mitrovica Regional Forensic Unit, forensic file 09-117, it was specified that incident had occurred on 24.10.2009 on Mitrovicë/Mitrovica - Prishtinë/Priština highway, in Shupkovc village, on the bridge. Photographs were taken of the vehicle that *C.D.* had been driving that evening when the incident occurred. This was also stated in the **Flash report**, 24.10.2009, case number 2009-BC-2254. The **Initial Incident Report**, 24.10.2009, 26.10.2009, case number 2009-BC-2254, reference number 2009-BI-343, further specified the place of incident at the intersection of 'Kalabria' and 'Brigada 141' streets.

The court assessed that **Photo album**, 09-117, 24.10.2009, 25.10.2009, contained photographs of the vehicle, Nissan Terrano, white in colour, plate no. xxxxxx

complete in the part where *S.B.* testified what he did with the weapon. The court in this part followed the Statement in the Albanian Language.

(photograph number 5), that C.D. had been driving. The photographs (number 6-20) showed:

- One entrance hole in the left side of the vehicle, near the rear light, and a broken window at passenger seat, in the right side of the vehicle. The trajectory showed exit through the window at passenger seat, in the right side of the vehicle.
- Another entrance hole was in the left side of the vehicle, in the window at passenger seat, with an exit hole in the right side of the roof above passenger seat.

Therefore, the evidence considered above beyond reasonable doubt confirmed that part of **S.B.'s Statement, 04.12.2009**, - that on 24.10.2009, at around 19:00 hrs, on Mitrovicë/Mitrovica - Prishtinë/Priština highway, shots were fired in the direction of C.D., while he was driving in the vehicle towards Prishtinë/Priština. The evidence referred to above identified that vehicle was hit with two shots and specified the location where the vehicle was hit with two shots.

e. From testimony of the Injured Party C.D. it followed that on 24.10.2009, at around 19:00 hrs, on the road from Mitrovicë/Mitrovica to Prishtinë/Priština, while crossing the bridge, he heard a big noise, a shot and saw that two back windows of the vehicle had been broken. He also testified that he had finished his work at around 18:50 hrs and before leaving from his work, at Mitrovicë/Mitrovica customs terminal he started the vehicle engine and in the meantime greeted other employees at the customs terminal and also the Accused S.B..³⁶

This corresponded with the **Statement, 04.12.2009**, of S.B. to Kosovo Police, that on 24.10.2009 he was at Mitrovicë/Mitrovica customs terminal, and at around 19:00 hrs he saw C.D. starting the engine of the vehicle and heading towards Prishtinë/Priština. S.B. then informed on the phone E.K. that C.D. had left.

f. **Ballistic examination report**, date of receipt 29.01.2010, date of examination 03.03.2010, reference number 2009-BI-343, contained examination results only for a part of automatic rifle AK-47, made in China,- a frame with the

³⁶ Minutes of the main trial hearing 17.11.2010, pp.6-8, 12, 14 (minutes in the English Language); The statement was consistent with C.D. 's **Statement to District Public Prosecutor** on 20 January 2010

serial number xxxxxx . The report concluded that without other parts of the automatic rifle it was impossible to make the test shooting. Also police officers *M.S.* and *M.R.* testified at the main trial that they attended the site along the road Mitrovicë/Mitrovica – Zubin Potok, where parts of the weapon were found. It was not possible to conclude from their testimonies exactly how many parts were found. According to witnesses they were looking for the weapon along the road in groups together with personnel from forensics and other police officers.³⁷ The photographs taken at the site showed parts of automatic rifle, including the frame of the weapon which looked the same as in the photograph of the Ballistic examination report.

Therefore, the evidence assessed above identified that automatic rifle AK-47 had been dismantled before throwing away along the road Mitrovicë/Mitrovica – Zubin Potok. In this regard the court considered that *S.B.* in the **Statement, 04.12.2009**, before Kosovo Police testified that after picking up the weapon from *E.K.* he dismantled the weapon and threw the weapon away in Koshtova village. The said village is located on the road Mitrovicë/Mitrovica – Zubin Potok, where parts of the weapon were found.

g. *E.K.* in the **Statement, 04.12.2009**, to Kosovo Police, did not testify that he shot at *C.D.* on 24.10.2009. *E.K.* stated that previously he had refused an offer of *S.B.* to shoot at a customs official. Whereas, *S.B.* in his **Statement, 04.12.2009**, testified that *E.K.* had agreed to shoot at *C.D.* and on 24.10.2009 it was *E.K.* who was waiting for *C.D.* to pass in order to shoot at him.

The court concluded from the evidence presented by EULEX Public Prosecutor that it was not possible for *S.B.* to see *C.D.* leaving from work at Mitrovicë/Mitrovica customs terminal on 24.10.2009, at around 19:00 hrs, and be in a position at the same time at the intersection of 'Kalabria' and 'Brigada 141' streets to wait for *C.D.* to pass and fire in his direction. Therefore, it had been another person, who fired the shots in direction of *C.D.* . According to *S.B.*'s **Statement, 04.12.2009**, to Kosovo Police, *E.K.* on the next day of incident had told him that after having shot at *C.D.* , he saw that vehicle of *C.D.* continued driving. Since *S.B.* was not at the location of shooting, it was impossible for him to know whether *C.D.* kept driving or stopped at the location to figure out what had happened and called the police from the location of incident or nearby the location. Moreover, as *C.D.* testified at

³⁷ Minutes of the main trial hearing 23.11.2010, pp.16, 18, 23, 24, 29, 30; Minutes of the main trial hearing 30.11.2010, pp.6, 7, 18, 19, 24 (minutes in the English Language)

the main trial, he was not even sure what exactly had happened and in that moment he did not suspect anyone shooting at him and thought it was some explosion.³⁸ C.D. testified that indeed after the incident he kept driving and reached the police station to report the case. Also the **Report from the incident location** by sergeant and forensic officer , 24.10.2009, stated that C.D. arrived in the damaged vehicle at Mitrovicë/Mitrovica South Police Station.

The court assessed that without being at the intersection of 'Kalabria' and 'Brigada 141' on 24.10.2009, when the incident occurred, E.K. would not be able to provide to S.B. such details regarding the incident.

Therefore, based on the linking elements considered above the court found that E.K. on 24.10.2009, at around 19:00 hrs at the intersection of 'Kalabria' and 'Brigada 141' streets, on the bridge, fired in the direction of C.D. , and hit with two shots the official vehicle, in which C.D. was leaving towards Prishtinë/Priština.

h. At the main trial Injured Party C.D. stated that even if he suspected S.B. and E.K., the real inciter was somebody else.³⁹ Besides, as a result of this incident C.D. had experienced certain psychological problems and needed to seek an assistance of a psychologist.⁴⁰

During initial stage of criminal proceedings C.D. stated that he did not suspect anyone in relation to the incident on 24.10.2009, he did not have any disagreements with the Accused S.B.. Later C.D. stated that S.B. could not be the real inciter and that somebody else was standing behind the offence against him. C.D. described the nature of his work and indicated persons with whom he had contacts in relation to his work.⁴¹ In submissions to the Public Prosecutor C.D. had asked to conduct a thorough investigation, to

³⁸ Minutes of the main trial hearing 17.11.2010, p.8 (minutes in the English Language)

³⁹ *ibid*, p.10

⁴⁰ **Submission of Attorney C** on behalf of C.D. , 02.11.2010, with attached: three **Receipts** from University Clinical Center of Kosovo, issued to C.D. , 30.12.2009, 06.01.2010, 12.01.2010 and three **Reports** from Clinic psychologist, 30.12.2009, 06.01.2010, 12.01.2010

⁴¹ **Minutes of witness-victim interrogation of C.D.** , Kosovo Police, 26.10.2009; **Minutes of witness-victim interrogation of C.D.** , Kosovo Police, 10.11.2009, case number 2009-BI-343; **Minutes of witness-victim interrogation of C.D.** , Kosovo Police, 04.12.2009, case number 2009-BI-343; Also, **Interview of C.D.** before District Public Prosecutor, 20.01.2010, PP nr.404/2009

interview other persons, and undertake further investigative actions.⁴² However, the court was not presented any further evidence that would allow the court to examine allegations made by C.D. .

However, the court summoned *ex officio* several witnesses. C.D. 's colleague E.G. was examined at the main trial hearing on 17.11.2010. According to the testimony of E.G. , she had known the Accused S.B. for more than two (2) years, both professionally and privately. They had met on several occasions and E.G. had also taken S.B. in her official vehicle. E.G. was surprised when she learned of the suspicions against S.B., and did not know the other Accused E.K.⁴³

It was assessed by the court that testimony of E.G. did not provide indication towards any other inciter as suspected by the Injured Party.

i. The court, however, noted that E.G. was informed that persons had been sent on the initiative of S.B.'s brother in law L.M. to the family of C.D. to seek reconciliation, following the arrest of S.B.⁴⁴ This corroborated the testimony of C.D. , who also stated that several people were sent to his brothers in order to seek a pardon for S.B.. Besides, S.B.'s sister had called C.D. crying and apologizing for what had happened.⁴⁵ Further, L.M. , brother of the wife of the Accused S.B., at the main trial confirmed that it had been his initiative to send persons to D. 's family for reconciliation in relation to the act of the Accused S.B.. Even though L.M. during examination did not specify for what act of S.B. *in particular* the reconciliation was sought, L.M. also stated that when he understood what had happened he deemed it necessary to approach D. 's family for an apology.⁴⁶

From the aforementioned testimonies the court could not make any conclusions as to whether indeed as claimed by C.D. there was somebody else involved in the 24.10.2009 incident against C.D. besides E.K. and S.B.. From the testimonies the court concluded that D. 's family had been approached on behalf of the Accused S.B. for reconciliation. Even in light of a custom which is still

⁴² Submission of C.D. to Public Prosecutor, 08.03.2010, PP nr.404/2009; Submission of C.D. concerning the indictment PP nr.404/2009, 08.03.2010

⁴³ Minutes of the main trial hearing 17.11.2010, pp.22, 23, 27, 28, 33 (minutes in the English Language)

⁴⁴ *ibid*, p.33

⁴⁵ *ibid*, p.20

⁴⁶ Minutes of the main trial hearing 18.11.2010, pp.5-7, 11 (minutes in the English Language)

followed in areas of Kosovo following a criminal activity to seek reconciliation between the families through most senior and respected persons, these testimonies can not be interpreted as indicating towards the Accused S.B. in commission of the criminal offence against C.D. .

VI. LEGAL QUALIFICATION OF THE ACTS OF THE ACCUSED

6.1. *Legal qualification of the act of E.K.*

E.K. according to the Indictment PP nr. 404/09 was charged with Attempted Aggravated Murder, under Article 147 item 10 in conjunction with Article 20 of the CCK and Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (2) of the CCK.

First, the charge of Attempted Aggravated Murder, Article 147 item 10 in conjunction with Article 20 of the CCK

First of all the court assessed that Article 20 of the CCK defines Attempt as *intentional* immediate action taken toward the commission of an offence, where the action is not completed or the elements of the intended offence are not fulfilled. In view of Articles 147 and 20 of the CCK, an Attempt to commit Aggravated Murder requires that *intentional* action be taken *toward depriving another person of his/her life*. The court found that there was not convincing evidence to conclude that E.K. had intention to deprive C.D. of life. The evidence indicated that E.K. was asked by S.B. to shoot at C.D. , but it was not proven that the intention of that shooting was to kill the injured party. Thus, the court could not find that later, on 24.10.2009, E.K.'s intention was to kill C.D. . The circumstances, in which E.K. on 24.10.2009 fired in direction of C.D. were not such as to identify that E.K. desired or anticipated death of Injured Party. The evidence showed that trajectories of the two shots went through the rear part of the vehicle by passenger seats and no too close to the driver's seat which brings doubt as whether the shots were intended to hit the Injured party or just to threaten him by hitting his vehicle. According to S.B.'s statement before Kosovo Police after he heard shots, he didn't answer telephone calls from E.K. because he was afraid C.D. could have been killed which is an indication of a lack of intention to deprive of life the Injured Party. For those reasons the court could not beyond reasonable doubt determine that E.K.'s intention was to kill C.D. . Therefore, the court deemed it unnecessary to examine other elements under

Article 147 item 10 in conjunction with Article 20 of the CCK, and *E.K.* was found not guilty and acquitted of that charge, pursuant to Article 390 item 3 of the CPCK.

Second, the charge of Unauthorized Ownership, Control, Possession or Use of Weapons, Article 328 paragraph (2) of the CCK

The court found that *E.K.* on 24.10.2009, at around 19:00 hrs used the weapon, automatic rifle AK-47, serial number xxxxxx, in shooting in direction of *C.D.*, while he was driving in the vehicle towards Prishtinë/Priština, and hit with two shots the vehicle. From Statements of the Accused before Kosovo Police the court concluded that *S.B.* had problems with *C.D.* in relation to his work and this was the reason of shooting at him on 24.10.2009. In view of the circumstances in which the weapon was fired in direction of the Injured Party *C.D.* and that vehicle was hit with two shots, the court found that *E.K.* had used the weapon in an intimidating, unauthorized manner.

This act of *E.K.* therefore was qualified as Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (1) of the CCK. *E.K.* consequently was found guilty of that criminal offence.

6.2. *Legal qualification of the act of S.B.*

S.B. according to the Indictment PP nr. 404/09 was charged with Incitement to Commit Attempted Aggravated Murder, under Article 147 item 10 in conjunction with Articles 20 and 24 of the CCK, and Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (2) of the CCK.

First, the charge of Incitement to Commit Attempted Aggravated Murder, Article 147 item 10 in conjunction with Articles 20 and 24 of the CCK

As it follows from Article 24 of the CCK inciter is a person who intentionally induces another person to commit a criminal offence. Therefore, to qualify the act of *S.B.* under Article 147 item 10 in conjunction with Articles 20 and 24 of the CCK it must firstly be established that *S.B.* induced *E.K.* to deprive *C.D.* of life. Even though the evidence established that *S.B.* prior 24.10.2009 asked *E.K.* to shoot at *C.D.* and provided *E.K.* with the weapon, the court did not deem this sufficient to support an Attempted Murder charge as it was not proven that the intention of that shooting was to kill the injured party. Moreover it was not proven that *S.B.* had at any moment intended to deprive of life the Injured Party. The circumstances which were chosen by the Accused to fire in direction of *C.D.* were not such as to establish beyond reasonable doubt that on 24.10.2009 *S.B.*'s intention

was for *E.K.* to kill *C.D.* . Thus, the court could also not find that later, on 24.10.2009, *E.K.*'s intention, acting under the influence of *S.B.*, was to kill *C.D.* . The trajectories of the two shots that went through the rear part of the vehicle by passenger seats and no too close to the driver's seat as well as *S.B.*'s statement before Kosovo Police that after he heard shots, he didn't answer telephone calls from *E.K.* because he was afraid *C.D.* could have been killed do not indicate an intention to deprive of life the Injured Party. EULEX Public Prosecutor in her closing statement referred to information provided by *S.B.* to police officers on 04.12.2009, when *S.B.* was contacted by the police and before the Statement was given by *S.B.*. Since no such information was properly recorded in compliance with the procedure in the CPOK, the court, while acknowledging the interests of investigation, could not assess such information. The court, consequently, could not beyond reasonable doubt determine that *S.B.* had induced *E.K.* to deprive *C.D.* of life. Therefore, the court deemed it unnecessary to examine other elements under Article 147 item 10 in conjunction with Articles 20 and 24 of the CCK.

The court found that act of *S.B.* qualified as Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (1) of the CCK. *S.B.* directed *E.K.* to use the weapon, automatic rifle AK-47, serial number xxxxxx , against *C.D.* in an intimidating, unauthorized manner. And, *E.K.* on 24.10.2009, at around 19:00 hrs, fired with the weapon in direction of *C.D.* while he was driving in the vehicle towards Prishtinë/Priština. *S.B.* therefore was found guilty of Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (1) of the CCK.

Second, the charge of *Unauthorized Ownership, Control, Possession or Use of Weapons, Article 328 paragraph (2) of the CCK*

The court found that *S.B.* before 24.10.2009, had provided *E.K.* with the weapon, automatic rifle AK-47, serial number xxxxxx . As such *S.B.* had been in an unauthorized possession of a weapon. Therefore, the court found *S.B.* guilty of the charge of Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (2) of the CCK.

VII. DETERMINATION OF PUNISHMENT

7.1. Punishment of the criminal offence of E.K.

Article 328 paragraph (1) of the CCK foresees the punishment of a fine of up to 10 000 EUR or imprisonment of one to ten years. In determining the punishment the court pursuant to Article 64 paragraph (1) of the CCK took into consideration the circumstances that are relevant to mitigation or aggravation of the punishment. As a mitigating circumstance the court considered that prior shooting in direction of *C.D.* on 24.10.2009, the Accused *E.K.* was in possession of a weapon, automatic rifle AK-47, serial number *xxxxxx*, only for a period of two days. Further, it had not been an initiative of *E.K.* to use the weapon against *C.D.*. The Accused *S.B.*, who by education and economic status is 'stronger' than *E.K.*, had directed *E.K.* to use the weapon against *C.D.*. The court also took into consideration that *E.K.* is provider of a family with five children.

As an aggravating circumstance the court considered that *E.K.* had used the weapon in an intimidating, unauthorized manner against official person, as Injured Party *C.D.* also at the time was inspector at Kosovo Veterinary and Food Agency.

In view of aforementioned and also in order to deter *E.K.* from committing criminal offences in the future the court imposed the punishment of three (3) years of imprisonment for Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (1) of the CCK.

The time spent in detention on remand from 04.12.2009 until 17.08.2010 and thereafter under house arrest is to be credited pursuant to Article 73 paragraph (1) of the CCK.

7.2. Punishment of the criminal offences of S.B.

a. Article 328 paragraph (1) of the CCK foresees the punishment of a fine of up to 10 000 EUR or imprisonment of one to ten years. In determining the punishment the court pursuant to Article 64 paragraph (1) of the CCK took into consideration the circumstances that are relevant to mitigation or aggravation of the punishment. As a mitigating circumstance the court considered that *S.B.* had not been previously convicted of criminal offence.

As aggravating circumstances the court considered that *S.B.* directed *E.K.* to use the weapon, automatic rifle AK-47, serial number *xxxxxx*, in an intimidating, unauthorized manner against official person. As Injured Party *C.D.* also at the time was inspector at Kosovo Veterinary and Food Agency. Furthermore, as a result of the act of the Accused *S.B.* in directing *E.K.* to use the weapon against

C.D. , serious consequences were created for *C.D.* . In particular, *C.D.* needed to seek an assistance of a psychologist.

In view of aforementioned and also in order to deter *S.B.* from committing criminal offences in the future the court imposed the punishment of four (4) years of imprisonment for Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (1) of the CCK.

b. Article 328 paragraph (2) of the CCK foresees the punishment of a fine of up to 7 500 EUR or imprisonment of one to eight years.

In view of the fact that *S.B.* had not been convicted before of a criminal offence, the court imposed punishment of two (2) years of imprisonment for Unauthorized Ownership, Control, Possession or Use of Weapons, under Article 328 paragraph (2) of the CCK.

The aggregate punishment was determined four (4) years and six (6) months of imprisonment, pursuant to Article 71 paragraph (1) and paragraph (2) item 2 of the CCK.

The time spent in detention on remand from 04.12.2009 until 17.08.2010 and thereafter under house arrest is to be credited pursuant to Article 73 paragraph (1) of the CCK.

VIII. PROPERTY CLAIM

Attorney *C* , Authorized Representative of *C.D.* , in his closing statement expressed that he did not want to burden the criminal proceedings with determining basis for the compensation of damages. He asked the court to advise the Injured Party to civil litigation. No specific claim was filed during entire course of the main trial, as well as no evidence was put forward to the court in relation to compensation of damages. Therefore, the court, pursuant to Article 112 paragraph (2) of the CPCK instructs the Injured Party *C.D.* that he may pursue his property claim in civil litigation.

IX. COSTS OF CRIMINAL PROCEEDINGS

Both Accused shall reimburse their parts of costs of criminal proceedings pursuant to Article 102 paragraph (1) of the CPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 paragraph (2) of the CPCK.

District Court of Mitrovicë/Mitrovica P nr. 12/2010

Prepared in English, an authorized language.

Recording officer:

Presiding judge:

Zane Ratniece
EULEX Legal Officer

Nikolay Entchev
EULEX Judge

Panel members:

Christine Lindemann-Proetel
EULEX Judge

Klaus Jung
EULEX Judge

Legal remedy: Authorized persons may file an appeal in written form against this judgment to the Supreme Court of Kosovo through the District Court of Mitrovicë/Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398 paragraph (1) of the CPCK.