

**DISTRICT COURT OF MITROVICA**  
**P. Nr. 13/10**  
**31 May 2011**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF MITROVICA**, in the trial panel composed of EULEX Judges Hajnalka Veronika Karpati as Presiding Judge, EULEX Judges Klaus Jung and Nikolay Entchev as panel members, with the participation of EULEX Legal Advisor Kabil Merovci as Recording Officer, in the criminal case against;

**Zaim Hajra**, charged with Murder, contrary to Article 146 of the Criminal Code of Kosovo (CCK) and with Unauthorized Ownership, Control, Possession, or Use of Weapon, contrary to Article 328, Paragraph (2) of the CCK according to the Indictment of the District Public Prosecutor PP nr. 385/09, dated 22 February 2010, filed with the Court on 23 February 2010, as amended by the EULEX Prosecutor dated 23 May 2011 and submitted to the Court on 30 May 2011;

**Muhamet Hajra**, charged with Unauthorized Ownership, Control, Possession, or Use of Weapon, contrary to Article 328, Paragraph (1) of the CCK according to the Indictment of the District Public Prosecutor PP nr. 385/09, dated 22 February 2010, filed with the Court on 23 February 2010 as amended by the EULEX Prosecutor dated 23 May 2011 and submitted to the Court on 30 May 2011

After having held the public hearing concerning the acceptance of the Plea Agreement dated 24 May 2011, on 30 May 2011, in the presence of the accused Zaim Hajra and Muhamet Hajra, their Defence Counsel Shefqet Ibrahim and Mahmut Halimi, EULEX Public Prosecutor Petr Klement and Injured Parties Xhemajl Hajra, Bashkim Halili, Nuhi Hyseni, and Batrije Hajra, after having accepted the Plea Agreement on 30 May 2011, and after it has been registered with the Court on 30 May 2011 and after having held the public hearing concerning sentencing on 31 May 2011, in the presence of the Accused, their Defence Counsel, the EULEX Public Prosecutor, Injured Parties Nuhi Hyseni and Batrije Hajra, after the trial panel's deliberation and voting held on 31 May 2011, pursuant to Article 308A Paragraph (15) of the Criminal Procedure Code of Kosovo (CPCK) pronounced in public and in the presence of the Accused, their Defence Counsel, the EULEX Public Prosecutor, the Injured Parties present, the following

**JUDGMENT**

The accused **Zaim Hajra**, son of Xhemajl Hajra and Naile Terakaj, born on 25 May 1984, in Rakinica village, Municipality of Skenderaj, Kosovar Albanian, residing in Rakinica Village, married, father of two children, with average economic status, highest education secondary school, auto-mechanic by profession, with an income of

approximately 200-300 Euros/month, no known previous conviction, in detention since 28 November 2009,

Having pleaded guilty to the criminal offences of Murder in violation of Article 146 of the Criminal Code of Kosovo (CCK), and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK, pursuant to the Plea Agreement dated 24 May 2011 and the Court having accepted the Plea Agreement on 30 May 2011, as registered with the Court on 30 May 2011

is

### **SENTENCED**

- to 7 /seven/ years of imprisonment for the criminal act of Murder
- to 3 /three/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The aggregate punishment is determined in **8 /eight/ years of imprisonment**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the CCK.

The time spent in detention on remand since 28 November 2009 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

The accused **Muhamet Hajra**, son of Ferat Hajra and Ganimete Nazifi, born on 04 July 1983, in Rakinica village, Municipality of Skenderaj, Kosovar Albanian, residing in Rakinica Village, married, father of two children, with average economic status, highest education secondary school, auto mechanic by profession, with an income of approximately 300 Euros/month, no known previous conviction, in detention since 28 November 2009,

Having pleaded guilty to the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (1) of the CCK, pursuant to the Plea Agreement dated 24 May 2011 and the Court having accepted the Plea Agreement on 30 May 2011, as registered with the Court on 30 May 2011

is

### **SENTENCED**

- to 3 /three/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The time spent in detention on remand since 28 November 2009 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

The semi automatic rifle, "Type 56" serial number 11279836 and the handgun "SIG" type P210, with serial number A110873 are hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

## **REASONING**

### **A. PROCEDURAL BACKGROUND**

The District Public Prosecutor for Mitrovica in the indictment PP. no. 385/09 dated 22 February 2010 charged both Accused with Aggravated Murder contrary to Article 147 Item 4 of the Criminal Code of Kosovo (CCK), two counts of Attempted Murder contrary to Article 146 as read with Article 20 and 23 of the CCK and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK.

The main trial was scheduled to commence on 24 May 2011 and continue on 30, 31 May and 01 June 2011, but the start was adjourned due to ongoing plea negotiations between the parties. On 30 May 2011 the EULEX Prosecutor informed the Court that a guilty plea agreement had been finalized and signed by the parties and the Deputy Chief EULEX Prosecutor. On 30 May 2011, the EULEX Prosecutor filed a partial withdrawal and amendment to the Indictment, dated 23 May 2011, charging the Accused Zaim Hajra with criminal offence of Murder, contrary to Article 146 of the CCK and Unauthorized Ownership, Control, Possession or Use the Weapon, contrary to Article 328 Paragraph (2) while the Accused Muhamet Hajra, with Unauthorized Ownership, Control, Possession or Use the Weapon, contrary to Article 328 Paragraph (1). All other charges from the former Indictment were dropped by the Prosecutor.

### **B. COMPETENCE OF THE COURT**

Under Article 23 Item 1)-i) of the CPCK, district courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 paragraph (1) of the CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

As set forth above, the charge of Murder pursuant to Article 146 of the CCK allows for the imposition of a minimum sentence of 5 years of imprisonment. In addition, the indictment in this case alleged that the accused had committed the acts in Rakinica village, Municipality of Skenderaj.

Therefore, the Mitrovica District Court is the competent judicial body to hear this criminal proceeding.

On 09 February 2011 the President of the Assembly of EULEX Judges assigned the case to EULEX judges based on Article 3.3 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Hajnalka Veronika Karpati as Presiding Judge, Klaus Jung and Nikolay Entchev as panel members.

None of the parties objected to the panel composition.

### **C. THE PLEA AGREEMENT**

A Plea Agreement was presented to the Court in a public hearing concerning the acceptance of the plea agreement pursuant to Article 308A Paragraph (9) of the CPCK on 30 May 2011.

The Accused Zaim Hajra pleaded guilty to Murder in violation of Article 146 of the Criminal Code of Kosovo (CCK), and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the CCK, while the Accused Muhamet Hajra pleaded guilty to Unauthorized Ownership, Control, Possession or Use of the Weapon contrary to Article 328 Paragraph (1) of the CCK.

The Plea Agreement contained the following factual findings:

“On 28 November 2009, at approximately 3:30 in Rakinica, Skenderaj, after they got to know that Shqipe Hajra- sister of the defendant Zaim Hajra, and Bastrije Hajra- sister of the defendant Muhamet Hajra, were going out with their boyfriends Bashkim Halili and Nuhi Hyseni, Zaim Hajra took “SIG” pistol, serial No. A110873 of 9x19 mm cal. and Muhamet Hajra took semi automatic hunting gun, “Tenner”, serial No. 112729836 of 7.62x39 mm cal. and an axe. Then the defendants went in Zaim Hajra’s vehicle Seat Toledo to the village road, parked the car across the road in order to block it and hid themselves close.

The injured parties arrived at the place in Bashkim Halili’s vehicle “Shiroko”, Reg. plate No. 339-KS-368, and stopped before the barrier. The defendants went out of their hiding place and appeared near the victims’ car where Zaim Hajra fired with the “SIG” pistol towards Shqipe Hajra who was sitting next to the driver Bashkim Halili. The bullet hit Shqipe Hajra’s upper part of her nose, went through the cranial cavity and then out from behind of the head causing brain injuries as a result of which the victim died. The same bullet then scratched Bashkim Halili in his neck. Muhamet Hajra was keeping in back sight the injured parties by pointing the hunting gun “Tenner” to their direction, but after the shot had been fired, he said “Oh Zaim, what have you done, you killed Shqipe, may God kill you”. Then the defendants beat Bashkim Halili and Nuhi Hyseni by butts of their, pulled the body of Shqipe Hajra out the vehicle, loaded her into their car and took her to a hospital in Skenderaj. The defendants then went back and searched for Bashkim Halili and Nuhi Hyseni, who took shelter in the police station in Skenderaj which the

defendants attempted to enter by force, but they were hindered and finally arrested by Kosovo Police Officers.

The Accused Zaim Hajra, since an unknown date until 28 November 2009, possessed the "Sig" pistol, type P210, with serial no. A110873 of 9x19 mm cal. and seven cartridges of the same caliber without any valid permission from the competent authority".

The Accused Muhamet Hajra, since an unknown date until 28 November 2009, possessed the semi automatic rifle, "Type 56" serial number 11279836, without any valid permission from the competent authority.

Injured Parties Xhemajl Hajra, Bashkim Halili, Nuhi Hyseni, and Bastrije Hajra were present at the public hearing on 30 May 2011. The Injured Parties confirmed that they had been informed by the prosecutor about the Plea Agreement.

Pursuant to Article 308A Paragraph (5) of the CPCK, the Injured Party must be given an opportunity to present a statement to the court regarding the property claim. In the present case, all the Injured Parties - after they were given the relevant instruction and after it was explained to them what the property claim means- stated that they are not going to submit such a claim. They were given the opportunity to present their comments on the plea agreement and all of them stated that they do not have anything against the plea agreement.

The Plea Agreement was accepted by the Court on the day of the hearing pursuant to Article 308A Paragraph (10) and (15) of the CPCK with the following corrections:

On the first paragraph of the Albanian version of the plea agreement in relation with the defendant Zaim Hajra, the qualification of the charge should read – Article 328 Paragraph (2) of the PCCK instead of Article 328 Paragraph (1) of the PCCK.

After questioning the Accused, their Defence Counsels and the Public Prosecutor, the Court determined that the Plea Agreement met the conditions under Article 308A Paragraph (12); the Accused understood the nature and the consequences of the guilty plea, they voluntarily made the guilty plea after sufficient consultation with their defence counsels, they were not coerced in any way and were not forced to plead guilty. Furthermore, the guilty plea is supported by the facts and evidence of the case, testimonies of the witnesses, statements of the Accused and documentary evidence of the case file. Therefore, pursuant to 308A Paragraph (15) of the CPCK, the Court ordered that the Plea Agreement be filed with the Court and scheduled the sentencing hearing for 31 May 2011.

The Plea Agreement was filed with the Court on the same day, 30 May 2011.

#### **D. THE SENTENCING**

On 31 May 2011 the panel heard arguments from all parties regarding sentencing. The parties presented the mitigating and aggravating circumstances. Injured Parties Nuhi Hyseni and Bastrije Hajra attended this hearing. After deliberation, the Panel imposed the punishment pursuant to Article 308A Paragraph (15) of the CPCK.

When imposing the criminal sanction the court has to bear in mind both the general purpose of punishment – that is to suppress socially dangerous activities by deterring others from committing similar criminal acts and the specific purpose, to prevent the offender from re-offending.

In the present case the Panel is convinced that with the imposed sentence of imprisonment the individual purpose of the punishment will be reached. However, from the point of view of the second purpose of the punishment, the social aspect, the imposed punishment is explicitly lenient. The murder of a sister just because she is dating somebody is a grave case of criminal act and the sentence should send a message to society that such treatment of women cannot be tolerated and should be punished accordingly. The court has to emphasize that solely due to the plea agreement and due to the fact that the mitigating circumstances of this specific case outnumber the aggregating ones, it did not impose a longer punishment of imprisonment for the murder. The panel could not consider it as mitigating circumstance that the accused acted according to the moral requirements of the local society's tradition.

Concerning the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapon in case of both accused, the court emphasizes that it took into consideration when imposing the 3 years of imprisonment as punishment that the danger to society of this criminal act is especially high. As other criminal cases in the region and all over Kosovo show, there is an unfortunate tendency in this society to solve problems, let it be problems within the family or problems between neighbours, with weapons that are so easily at hand.

The panel took as mitigating circumstances the family status of both the accused, that they are the only provider for their families, that they have no previous criminal record, that they pleaded guilty to the amended charges of murder and unlawful possession and use of weapon and with higher gravity the reconciliation with the injured parties, their readiness to forgive.

The panel took as aggravating circumstances the manner the criminal act was committed, during the night, setting up an ambush and the young age of the victim.

In the present case for the criminal offence of murder pursuant to Article 146 of the CCK, the law foresees a minimum punishment of 5 years of imprisonment. For the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapon pursuant to Article 328, Paragraph (2), the law foresees a punishment by fine of up to 7.500 €, or by imprisonment of one (1) to eight (8) years, ( the charge against Zaim Hajra).

For the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapon pursuant to Article 328, Paragraph (1), the law foresees a punishment by fine of up to 10.000 €, or by imprisonment of one (1) to ten (10) years, (the charge against Muhamet Hajra).

Considering all the mitigating and aggravating circumstances the Panel sentenced the Accused Zaim Hajra to seven (7) years of imprisonment for the criminal act of murder pursuant to Article 146 of the CCK, and three (3) years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapon pursuant to Article 328, Paragraph (2).

The Panel sentenced the Accused Muhamet Hajra to three (3) years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapon pursuant to Article 328, Paragraph (1).

Zaim Hajra committed two criminal acts. Pursuant to the rules of calculation of compounded sentence, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments. The panel imposed 8 years of imprisonment as aggregate punishment pursuant to Article 71 Paragraphs (1) and (2) Item 2 of the CCK.

Both Accused have been in detention on remand since 28 November 2009. This period of time is to be credited in the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

#### **E. THE APPLICABLE LAW**

The criminal acts were committed on 28 November 2009. At that time the Criminal Code of Kosovo (CCK) that entered into force on 06 January 2009 was the applicable law. Pursuant to Article 2 Paragraphs (1) and (2) of the CCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator unless a new law is more favourable for the accused. The accused pleaded guilty to the criminal offences pursuant to the CCK.

#### **F. CONFISCATION**

The semi automatic rifle, "Type 56" serial number 11279836 and the handgun "SIG" type P210, with serial number A110873 were confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

#### **G. COSTS**

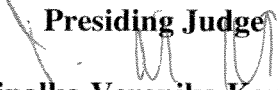
The accused Zaim Hajra pleaded guilty to the criminal offence of Murder pursuant to Article 146 of the CCK, and Unauthorized Ownership, Control, Possession or Use of Weapon pursuant to Article 328, Paragraph (2), while the Accused Muhamet Hajra, pleaded guilty to the criminal offence of Unauthorized Ownership, Control, Possession or

Use of Weapon pursuant to Article 328, Paragraph (1). Therefore they have to reimburse their part of the 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.

**Recording Officer**

  
**Kabil Meroyci**

**Presiding Judge**

  
**Hajnalka Veronika Karpati**

**LEGAL REMEDY:** This judgment concerning sentencing became final on the day of its announcement as it does not fall under Article 308A Paragraph (8) Item 1 of the CPCK.