

DISTRICT COURT OF MITROVICA
K. Nr. 244/2007
05 May 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Klaus Jung and Nikolay Entchev as Panel Members, with the participation of EULEX Legal Officer Francesco de Sanctis as Recording Officer in the criminal case against;

KUJTIM SAHITI, charged, according to the Indictment of the District Prosecutor PP. Nr. 232/2007 dated 24 September 2007, with the criminal offence of

- **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (2) of the Provisional Criminal Code of Kosovo (PCCK),

MARKO JABLANOVIC, charged, according to the Indictment of the District Prosecutor PP. Nr. 232/2007 dated 24 September 2007, as orally amended by the EULEX Prosecutor on the main trial sessions of 03 and 04 of May, with the following criminal offences;

- **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (3) in conjunction with Articles 20 and 23 of the PCCK,
- **Unauthorized Ownership, Control, Possession or Use of Weapons** under Article 328 Paragraph (2) of PCCK

SLOBODAN KOSTOVIC, charged, according to the Indictment of the District Prosecutor PP. Nr. 232/2007 dated 24 September 2007, as orally amended by the EULEX Prosecutor on the main trial sessions of 03 and 04 of May, with the criminal offence of

- **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (3) in conjunction with Articles 20 and 23 of the PCCK,

After having held the main trial hearing in public on 03, 04 and 05 of May 2011, all in the presence of the accused Kujtim Sahiti, Marko Jablanovic and Slobodan Kostovic, their Defence Counsel Zeqir Maxhuni, Ljubomir Pantovic (replaced by Dejan Vasic on 04 May 2011) and Xhafer Maliqi, and EULEX Prosecutor Petr Klement, after the trial panel's deliberation and voting held on 05 May 2011, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), on 05 May 2011 pronounced in

public and in the presence of all the Accused, their Defence Counsel, and the EULEX Prosecutor the following

VERDICT

I) The **Accused Kujtim SAHITI**, no nickname, son of Bedri Sahiti and Mirena Shefkije, born on 26 March 1987 in Mitrovica, Kosovo, of Albanian ethnicity, resident of Vushtri, Adem Jashari Str., single, no children, living in the same household with parents and 2 sisters, without own income, highest education administrative law school without degree, unemployed, of poor economic status, no known previous conviction, in detention on remand from 10 August 2007 until 30 August 2007 and under house arrest from 31 August 2007 until 28 September 2007,
is

FOUND GUILTY

- **because** on 09 August 2007 at about 15:00 hours, near the railway bridge at the Roma Camp in Mitrovica sold 12 packages of narcotic substances in plastic bags, total net weight of 51,12 gram to the Accused Marko Jablanovic and Slobodan Kostovic. The expertise confirmed the content of the bags as Marijuana (Cannabis) containing tetrahydrocannabinol (THC). The accused did not have authorization to sell narcotic substances.

By doing so, the **Accused Kujtim SAHITI** has committed and he is criminally liable for the criminal act of

Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances, contrary to Article 229, Paragraph (2) of the PCCK;

II) The **Accused Marko JABLANOVIC**, nickname Divljak, son of Dragan Jablanovic and Snezana Milicevic, born on 13 February 1983 in Novi Pazar, resident of Leposavic, Dositea Obradovic Str. of Serbian ethnicity, single, no children, highest education medical high school, unemployed, of poor economic status, previously convicted for unauthorized ownership, possession and use of weapon with the final judgment of the District Court of Mitrovica K. Nr. 28/09, sentenced to 6 months of imprisonment, date of commission of that criminal offence: 22 February 2009, in detention on remand from 09 August 2007 until 30 August 2007 and under house arrest from 31 August 2007 until 28 September 2007;
is

FOUND GUILTY

- **because** on 09 August 2007 at about 15:00 hours, near the railway bridge at the Roma Camp in Mitrovica, without authorization to purchase narcotic substances, he bought 6 plastic bags containing Marijuana (Cannabis) with an approximate net weight of 25,5 gram from Kujtim Sahiti. He intended to use the drug himself and distribute it among his friends.

By doing so, the **Accused Marko JABLANOVIC** has committed and he is criminally liable for the criminal act of

Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances, contrary to Article 229, Paragraph (1) of the PCCK;

III) Furthermore, the **Accused Marko Jablanovic** is

FOUND GUILTY

- **because** during an unknown period of time until 09 August 2007, without authorization he was in possession of 364 bullets of calibre 7,62 and a tear pot type M-3F containing chemicals called 'CS', that were found in his car without registration number on 09 August 2007.

By doing so, the **Accused Marko JABLANOVIC** committed and he is criminally liable for the criminal act of

Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328, Paragraph (2) of the PCCK;

IV) The Accused **Slobodan KOSTOVIC**, nickname Kosta, son of Jovica Kostovic and Vera Bozic, born on 11 May 1981 in Kraljevo, resident of Leposavic, 39 Ludaska Str., of Serbian ethnicity, single, with no child, highest education electrical school, lives with parents and 5 siblings with no income, supported by parents, of poor economic status, no known previous conviction, in detention on remand from 09 August 2007 until 30 August 2007 and under house arrest from 31 August 2007 until 28 September 2007;
is

FOUND NOT GUILTY

- **because** it was not proven that he, on 09 August 2007, near the railway bridge at the Roma Camp in Mitrovica, purchased 6 plastic bags of narcotic substance containing marijuana in an approximate net weight of 25,5 gram from Kujtim Sahiti with the intent to resell or distribute them or that he attempted to export part of the

drugs. No evidence challenged his statement that he bought the drugs for personal use only.

Therefore, pursuant to Article 390 Item 3) of the Criminal Procedure Code of Kosovo (CPCK) the accused Slobodan Kostovic **is acquitted** of the charge of

Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances, contrary to Article 229, Paragraph (3) of the PCKK.

The Accused **Kujtim Sahiti** is

SENTENCED

to **two /2/ years of imprisonment and for a fine of fifty /50/ Euro** for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances.

The sentence of imprisonment **shall not be carried out** if the accused does not commit any other criminal offence **for a period of three (3) years** according to Article 44 Paragraphs (1), (2) and (4) of the PCKK.

In case of revocation of the suspended sentence the time spent in detention on remand from 10 August 2007 until 30 August 2007 and the time spent under house arrest from 31 August 2007 until 28 September 2007 are to be credited pursuant to Article 73 Paragraph (1) of the PCKK.

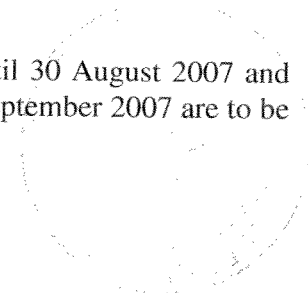
The Accused **Marko Jablanovic** is

SENTENCED

- to one /1/ year of imprisonment and for a fine of fifty /50/ Euro for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances
- to one /1/ year of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The aggregate punishment is determined in **one /1/ year and six /6/ months of imprisonment and 50 Euro fine**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCKK.

The time spent in detention on remand from 09 August 2007 until 30 August 2007 and the time spent under house arrest from 31 August 2007 until 28 September 2007 are to be credited pursuant to Article 73 Paragraph (1) of the PCKK.



The 12 plastic bags containing seedling substance green in colour, total net weight of 51,12 gram, as well as the two mobile phones (one gray Sony Ericson, one blue-black Samsung) seized from the Accused Marko Jablanovic are hereby confiscated pursuant to Article 229 Paragraph (5) and Article 60 Paragraph (1) of the PCCK.

The 364 bullets of calibre 7,62, 2 pieces of extensions of rocket launcher and the tear pot of type of M-3F are hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The black Mobile phone Motorola seized from the Accused Slobodan Kostovic shall be returned to Slobodan Kostovic.

The Accused Kujtim Sahiti and the Accused Marko Jablanovic shall reimburse their parts 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.

Pursuant to Article 103 Paragraph (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the CPCK, the necessary expenses of the Accused Slobodan Kostovic and the remuneration and necessary expenditures of his defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

The original Indictment of the District Prosecutor PP. Nr. 232/2007 is dated 24 September 2007 and was confirmed on 12 November 2007. The case was taken over by EULEX Judges on 2 December 2010.

Pursuant to Article 376 Paragraph 1 CPCK, the Indictment was orally amended by the EULEX Prosecutor two times, respectively on the main trial sessions of 3 and 4 of May 2011. In both occasions the amendment regarded the qualification of the offence under the second count of the Indictment. Under that count in the original indictment, the Accused Jablanovic and Kostovic were charged under Article 229, Paragraph 1 in conjunction with Paragraph 4 Item 1 and with Article 23 PCCK. At the hearing of 3 May, the Prosecutor amended the indictment by dropping reference to Paragraph 4 Item 1, and maintaining the charge exclusively under Article 229, Paragraph 1 in conjunction with Article 23 PCCK. Paragraph 4 Item 1 makes reference to the commission of the offence as a member of a group; however a group must consist of at least three persons, while in

the present case only the Accused Jablanovic and Kostovic were charged under Article 229 Paragraph 1. On 4 May the Prosecutor orally amended that count by charging the Accused Jablanovic and Kostovic under Article 229, Paragraph (3) in conjunction with Articles 20 and 23 of the PCCK. The Prosecutor accordingly changed the factual description of the charge by making reference to the statements given by the Accused Jablanovic and Kostovic in court that they intended to go to the coast in Montenegro and bring with them at least part of the marijuana they bought from the Accused Sahiti.

B. COMPETENCE OF THE COURT

The District Court of Mitrovica is competent to hear this case pursuant to Article 23 item 1) i) and Article 27 paragraph (1) of the CPCK. The panel was composed of EULEX Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Klaus Jung and Nikolay Entchev as panel members. There were no objections by the parties to the composition of the panel.

C. SUMMARY OF EVIDENCE PRESENTED

During the course of the main trial the following material evidence was submitted by the EULEX Public Prosecutor and entered into evidence:

1. Ruling on confirmation of indictment and minutes from confirmation hearing dated 12 November 2007.
2. Criminal Report dated 11 August 2007
3. Report of French KFOR EOD Unit No. CR 61/25
4. Certificates of Confiscation dated 9 and 10 August 2007
5. Initial/Incident Report dated 9 August 2007
6. Application and Order for examination of suspicious narcotic substance
7. Criminalistic Examination Report no. 2007/1519 dated 20 August 2007
8. Official Note dated 10 August 2007, signed by Mehmet Terbunja - Police Officer, was read out with the consent of the parties

During the main trial sessions on 3, 4 and 5 May, the three Accused gave statements and answered questions.

D. EVALUATION OF PRESENTED EVIDENCE

The Court found the factual description of the criminal case as described in the enacting clause to be proven beyond a reasonable doubt upon the evidence evaluated below.

In their testimony in Court, the Accused Jablanovic and Kostovic gave an account of their first meeting with the Accused Sahiti and of how they got in contact with him as a possible supplier of marijuana. According to Jablanovic's testimony, he and Kostovic met Sahiti for the first time in occasion of a dog fight organized in Mitrovica North; in that occasion Sahiti offered Jablanovic a small quantity of marijuana (sufficient for one cigarette) and gave him his mobile phone number. The Court, for reasons that will be explained below, regards as credible the testimony of Jablanovic in this as well as other regards. Moreover, the meeting at the dog fight event and the fact that it was Jablanovic who got the number from Sahiti were confirmed by Kostovic in his testimony. Kostovic also stated that he learned from Jablanovic that they could buy marijuana from Sahiti, which assertion is consistent with Jablanovic testimony. Even Sahiti confirmed that he met Jablanovic and Kostovic at the dog fight event and that he gave his mobile number, albeit stating that he gave it to Kostovic and not to Jablanovic. On the other had, Sahiti firmly denied that he offered drugs to the other two Accused. However, the Court, for the reasons that will be illustrated below, did not consider his testimony in this as well as other regards as credible.

The circumstances concerning this first meeting provide a logical background and explanation of the events that followed. On 09 August 2007, the Accused Jablanovic and Kostovic were driving from Leposavic to Mitrovica in the Fiat Coupé of Jablanovic. Their intention was to buy some marijuana before heading, on the same day, to the coast in Montenegro where some friends from Serbia were waiting for them. Jablanovic was planning to consume the marijuana together with his friends at the coast. Both Jablanovic and Kostovic are habitual consumers of marijuana. For these reasons, they called Sahiti and asked him to meet in Mitrovica to buy from him an equivalent of 20 Euro of marijuana. Jablanovic and Kostovic intended to share the marijuana in equal parts between the two of them.

As Sahiti agreed on the phone to sell them the marijuana, he told them to meet near the railway bridge on the south side of Mitrovica. After parking the car close to the Roma camp in Mitrovica, Jablanovic and Kostovic passed the bridge on foot and arrived to the convened location. As Sahiti was not there yet they called him on his mobile phone several times to check whether he was coming. Sahiti arrived after a while (30 minutes to an hour) together with two other persons, whom Jablanovic and Kostovic did not know. Sahiti delivered them the marijuana packed in 12 plastic bags for a total net weight of 51,12 gram. The bags were inside a plastic bottle.

Carrying with them the plastic bottle containing the marijuana, Jablanovic and Kostovic crossed the railway bridge on foot, reached the car, and after driving the car for a short distance, they were stopped by the police at around 15:00 hrs. During a search on the vehicle, the police found the bottle with the bags of marijuana and, in the trunk of the car, 364 bullets of calibre 7,62, 2 pieces of extensions of rocket launcher and a tear pot of type of M-3F containing chemical called 'CS'. The items in the trunk belonged to Jablanovic.

This account of the events that took place on 9 August 2007 is based on the following pieces of evidence: the testimonies given in Court by Jablanovic and Kostovic; the statements given by the former in front of the police and the prosecutor respectively on 10 August 2007 and 17 September 2007 and by the latter in front of the police and the prosecutor respectively on 10 August 2007 and 21 August 2007; the findings regarding the seized marijuana contained in the Criminalistic Examination Report dated 10 September 2007 (see pp. 91-94 of the Prosecutor's case-file); the Criminal Report dated 11 August 2008 filed by the Kosovo Police against the three Accused (see pp. 39-42 of the Prosecutor's case-file); the Report of the French KFOR EOD Unit No. CR 61/25, including photographic evidence of the drugs and other items found in the vehicle (see pp. 43-59 of the Prosecutor's case-file); the certificate of confiscation regarding the marijuana and the other items found in the vehicle (see pp. 60-61 of the Prosecutor's case-file).

With regard to the evaluation of this evidence, it must be said that the testimonies of the Accused Jablanovic and Kostovic are mainly converging and are also consistent with the statements given by them in front of the police and the prosecutor. It has to be noticed that while both Accused mentioned in their testimonies (both in Court and at the investigative stage) that the quantity of marijuana they received was divided in 10 bags, the Criminalistic Examination report dated 10 September 2007 (see pp. 91-94 of the Prosecutor's case-file) mentions instead 12 bags. This discrepancy is easily explicable since the Accused may not remember well or may have thought that the bags were 10, especially considering that the bags were kept inside a plastic bottle and were therefore not clearly visible. The Court, in fact, did not find any evidence that the two Accused had asked Sahiti to sell them the marijuana already divided in small bags. The testimonies of the Accused Jablanovic and Kostovic consistently indicate that they just asked him marijuana for an equivalent of 20 Euro. This is important because the indictment alleges that Jablanovic and Kostovic asked Sahiti to pack the marijuana in small bags with a view to prove their intention to re-sell or distribute the drug.

Indeed, the only piece of evidence in that regard is Jablanovic's admission in Court that he planned to consume the marijuana that he bought from Sahiti together with his friends at the coast. He also stated that he was not going to sell the drug to them but that he would have share it with his friends free of charge. Although this key fact was not mentioned in Jablanovic's investigative statements, it must also be noticed that the question of whether he was planning or not to share the marijuana with someone else was not explicitly posed during the questioning. As far as Kostovic is concerned, he consistently stated, in court and during his investigative statements, that he was planning to bring only some of the drug with him, just for personal use, while keeping the rest at home in Leposavic for future personal consumption.

While the Court trusts the testimony of Jablanovic regarding his intention to share the marijuana, it has some doubts regarding the truthfulness of Kostovic's statement that he was going to use the marijuana exclusively on his own. However, the fact that he was going on vacation together with Jablanovic and join the same company of friends where marijuana would have presumably be consumed, cannot be taken as sufficient evidence

to infer his intention to share his part of marijuana with other people. Similarly, the quantity of marijuana that he bought is not, as such, sufficient to reach any conclusion regarding his intention to sell or distribute the drug. Therefore, there is no sufficient evidence supporting any allegation that he bought the drug with the intent to resell or distribute it further.

Another key point concerns the identification of Sahiti by Jablanovic and Kostovic. In their testimony they stated that, when meeting Sahiti, they would not know his name and surname but just his nickname "Kujto". This considering, the evidence concerning the identification of Sahiti by the two Accused as the person who they first meet at the dog fight and then sold them the marijuana, becomes particularly important. The testimony of Jablanovic and Kostovic regarding their identification of Sahiti, which took place in the Police Regional Center in Mitrovica, is confirmed by the Official Note of Kosovo police officer Mehmet Terbunja dated 10 August 2007. In this note, Mr. Terbunja wrote that the police apprehended the Accused Kujtim Sahiti on 10 August 2007 on the basis of his physical description given by Jablanovic. Jablanovic mentioned in particular Sahiti's red birthmark on his left arm. At the police station, both Jablanovic and Kostovic recognized Sahiti as the person nicknamed "Kujto" who had sold them the marijuana the day before. It must be added that the Court established, during the trial, the existence of Sahiti's birthmark, as the Accused himself showed it to the Court.

With regard to the overall credibility of the testimony of the Accused Jablanovic, the Court found it credible for the following reasons: it is consistent with the previous statements given during the investigative stage; the Accused, particularly by pleading guilty to the charge regarding the possession of weapons and by admitting his intention to share the drug with his friends, displayed a clear intention to tell the truth in the course of his testimony, regardless of whether this could have negative repercussions on his case. It is true that Jablanovic mentioned that he had been beaten by the police during his interrogation. However, regardless of whether this is true or not, Jablanovic confirmed in court that, despite the beatings, he told the truth to the police regarding the 9 August events. Furthermore, Kostovic testimony matches with the one of Jablanovic without major discrepancies.

On the other hand, the Court did not find credible the testimony of Sahiti, who denied having sold marijuana to the other two Accused on the critical day or on any other occasion. The Court believes that his statements are clearly motivated by the will to exculpate himself. It is not credible, in particular, that Kostovic, as Sahiti stated in his testimony, would tell him in prison that he (Kostovic) and Jablanovic had been forced to indicate him (Sahiti) as the marijuana supplier. It is not indeed clear why Kostovic would make him such "confession", especially considering that there was no friendship between the two of them since, according to Sahiti's version of the facts, they had actually met only in occasion of the dog fight event in Mitrovica.

E. LEGAL QUALIFICATION

The criminal acts were committed in August 2007. At that time, the Provisional Criminal Code of Kosovo (PCCK) was the applicable law. Pursuant to Article 2, Paragraph (1), the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator.

The Accused Sahiti was charged and found guilty of the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances pursuant to Article 229 Paragraph (2) of the PCCK which states:

Whoever, without authorization, distributes, sells, transports or delivers substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances, with the intent that they shall be distributed, sold or offered for sale shall be punished by a fine and by imprisonment of one to eight years.

The Decision on the Establishing of the List of Narcotics¹ designates tetrahydrocannabinol (THC) as a narcotic. The Criminalistic Examination Report dated 10 September 2007 established that the marijuana found in the vehicle of Jablanovic contained THC. According to the facts established above, Sahiti sold the 51.12 grams of marijuana to the other two Accused for the price of 20 Euro; by selling the drug he committed the offence under the above-mentioned provision.

The Accused Jablanovic and Kostovic were charged as co-perpetrators with attempt to commit the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances pursuant to Article 229 Paragraph (3) of the PCCK which states:

Whoever, without authorisation, exports or imports substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances shall be punished by a fine and by imprisonment of three to ten years.

The Court re-qualified the charge against the Accused **Jablanovic** and convicted him under Article 229 Paragraph (1) of the PCCK which states:

Whoever, without authorisation, purchases or possesses with the intent to sell or distribute or offers for sale substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances shall be punished by a fine and by imprisonment of one to five years.

The Court did not find that the conduct of the Accused Jablanovic could be qualified under Article 229 Paragraph (3) as suggested by the Prosecutor. Indeed, the mere intention expressed by the Accused to bring the marijuana to Montenegro is not sufficient

¹ No. 1094, Federal Executive Council, 21 December 1978.

to qualify his conduct as an attempt to export drugs in Montenegro. Under Article 20 of the PCKK, which defines “attempt”, an immediate action to export the drugs would instead be required. Such immediate action would have occurred in the event, for instance, that Jablanovic had been caught with the drug by the police while approaching or attempting to cross the border. In the present case, instead, the Accused was stopped and arrested by the police while he was still in Mitrovica, few minutes after he bought the drug.

The Court instead found the Accused Jablanovic guilty under Article 229 Paragraph (1) since, according to the facts established above, he purchased half of the marijuana found in his vehicle (for a net weight of approximately 25,5 gram) from Kujtim Sahiti and intended not only to consume the drug, but also to distribute it to his friends in Montenegro.

The Accused Jablanovic was also charged and found guilty of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328, Paragraph (2) of the PCKK which reads:

Whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorisation Card for that weapon shall be punished by a fine of up to 7,500 euro or by imprisonment of one to eight years.

The Court accepted the guilty plea on this charge given by Jablanovic at the hearing on 3 May 2011. It established the fulfilment of the requirements under Article 315 paragraph 1 of the PCKK. The Report of the French KFOR EOD Unit No CR 61/25 established that the tear pot of M-3F type was found to contain chemicals called ‘CS’, which is listed as a weapon under Article 107 Paragraph 28 PCKK. With regard to the bullets calibre 7,62, it is true, as argued by the Jablanovic’s defence counsel, that there is no evidence, such as a ballistic expertise, that the bullets were functional and not rusty and unusable. However, pursuant to Article 107 Paragraph 28, the definition of “weapon” encompasses instruments, including all forms of ammunitions, designed for inflicting bodily harm, ie regardless of whether they are still functional or not. The Court did not consider as a weapon the two pieces of extensions of rocket launcher, since they are just parts of a weapon. The Court, however, for safety reasons decided to confiscate them as well.

The Accused Kostovic, on the other hand was found not guilty because, on the basis of the facts established above, it was not proven that he purchased the marijuana with the intent to resell or distribute it further or that he attempted to export the drug. Article 229 PCKK indeed does not criminalize the purchase of drugs for personal consumption.

F. DETERMINATION OF PUNISHMENT



When imposing the criminal sanction, the Court must bear in mind both the general purpose of punishment – 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 Trial Panel came to the conclusion that only by applying the imposed sentence of imprisonment would the above-mentioned double purpose be reached.

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the PCCK, while remaining within the sentencing limits provided by law.

The Court punished the Accused Sahiti and Jablanovic for the offences under Article 229 PCCK with sentences situated in the lower range of punishment prescribed under the law, namely: two years imprisonment to Sahiti, one year to Jablanovic and 50 Euro fine to each of them. The value protected by that provision is to defend the society from the spreading of drugs, the use of which has dangerous effects on the health of individuals and on the social order and values. In the present case the Court took into consideration the modest amount of the drug that was sold and the fact that THC or cannabis, although designated as a narcotic, is considered a drug with a low potential of harm for the society.² As a conclusion it assessed the intensity of the danger to the protected value as low and thus not requesting a more severe punishment. The minimum fine of 50 Euro was imposed also considering the poor economic status of the two Accused.

Considering that the Accused Sahiti did not have any previous conviction and that there is no indication that in the last 4 years he had any conflict with the Law, the Court decided to suspend the sentence of imprisonment against him according to Article 44 Paragraphs (1), (2) and (4) of the PCCK.

With regard to the Accused Jablanovic, the Court imposed the minimum punishment of one year imprisonment for the offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph (2) of PCCK. The Court decided in this manner considering the low level of dangerousness of the weapons found in his possession. The photos of the bullets admitted as evidence, in particular, seem to indicate that the bullets were rather rusty, a fact that was also stated by Jablanovic in his testimony in court.

As a result, the Court imposed on Jablanovic the aggregate punishment of one year and six months of imprisonment pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCCK. The Court, however, did not deem suitable to suspend the sentence in his case. This is because of his previous criminal conduct; namely on 7th December 2009 the Mitrovica District Court sentenced Jablanovic by final judgement to six months of prison

² On the social dangerousness of cannabis see *Report of the Global Commission on Drug Policy*, June 2011 p. 12 where it cites the scientific study of Nutt, D., King, L.A., Saulsbury, W. and Blakemore, C. (2007) "Development of a rational scale to assess the harm of drugs of potential misuse" *Lancet* Vol. 369 (9566) pp.1047-53. The study ranks cannabis at the lower range of actual and potential harms drugs could cause to society and at a much lower level of risk than heroin, cocaine or alcohol.

for Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph (2) of PCCK.

G. Confiscated Items

The 12 plastic bags containing seedling substance green in colour, total net weight of 51,12 gram, as well as the two mobile phones (one gray Sony Ericson, one blue-black Samsung) seized from the Accused Marko Jablanovic were confiscated pursuant to Article 229 Paragraph (5) and Article 60 Paragraph (1) of the PCCK.

The 364 bullets of calibre 7,62, 2 pieces of extensions of rocket launcher and the tear pot of type of M-3F were confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The black Mobile phone Motorola seized from the Accused Slobodan Kostovic shall be returned to Slobodan Kostovic as he was acquitted.

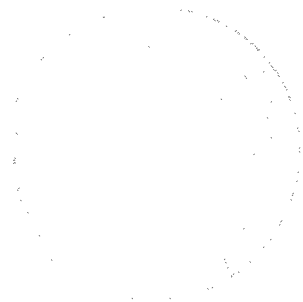
H. Costs


Having been convicted, the Accused Kujtim Sahiti and Marko Jablanovic shall reimburse their parts 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.

Due to the acquittal of Slobodan Kostovic, pursuant to Article 103 Paragraph (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the CPCK, the necessary expenses of the Accused Slobodan Kostovic and the remuneration and necessary expenditures of his defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

District Court of Mitrovica
K. nr. 244/2007

Prepared in English, an authorized language.





Francesco de Sanctis
Recording Officer



Hajnalka Veronika Karpati
Presiding Judge

Legal remedy:

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of 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.

