

DISTRICT COURT OF MITROVICË/MITROVICA

P-352/2007

8 February 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICË/MITROVICA, in the trial panel composed of EULEX Judge Caroline Charpentier, as presiding judge, and EULEX Judges Hajnalka-Veronika Karpati and Jonathan Welford-Carroll as panel members, with the participation of EULEX Legal Officer Francesco de Sanctis as recording officer, in the criminal case against:

Ymer Krasniqi, charged under indictment filed on 27 December 2007 and confirmed on 23 December 2009, with Murder under Article 146 and Unauthorized Ownership, Control, Possession or use of Weapons under Article 328 Paragraph 2 of the Provisional Criminal Code of Kosovo (PCCK), in detention from 01 October 2007 to 07 February 2011.

After having held the main trial hearing in public on 7 and 8 February 2011, all in the presence of the accused Ymer Krasniqi, his Defence Counsel Nexhat Beqiri and EULEX Public Prosecutor Adebayo Kareem, after the trial panel's deliberation and voting held on 8 February 2011, pursuant to Article 392 Paragraph (1) of the CPCK, pronounced in public and in the presence of the Accused, his Defence Counsel and the EULEX Public Prosecutor the following

JUDGEMENT

A.

The charge of Murder under Article 146 of the Provisional Criminal Code of Kosovo (PCCK) against **Ymer Krasniqi**, [REDACTED]

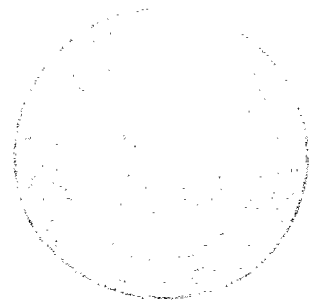
[REDACTED]
[REDACTED]
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[REDACTED] in detention from 01 October 2007 to 07 February 2011 is rejected pursuant to Article 389 item 1 of the Criminal Procedure Code of Kosovo (CPCK)

- because on 8 February 2011 in the main trial session the prosecution has withdrawn the charges against **Ymer Krasniqi**

B.

Ymer Krasniqi is



FOUND GUILTY

because on 01 October 2007 in Stanovc I Ulet Village, Vushtrri Municipality he was found in possession of a weapon, namely a revolver type TT-M-57 caliber 7.62 mm, without having a valid weapon authorization card.

By doing so, the accused Ymer Krasniqi committed and is criminally liable for the criminal act of

Unauthorized Ownership, Control, Possession and Use of Weapons, contrary to Article 328, Paragraph (2) of the Provisional Criminal Code of Kosovo (PCCK).

Therefore the Accused **Ymer Krasniqi** is

SENTENCED

to ~~1/one/~~ year of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons

The time spent in detention on remand from 01 October 2007 to 07 February 2011 is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

The revolver type TT-M-57 caliber 7.62 mm is hereby confiscated pursuant to Article 328 Paragraph (5) of the PCCK.

Pursuant to art. 102 par. 4 of the Criminal Procedural Code of Kosovo (CPCCK), the accused is relieved from the duty to reimburse the costs.

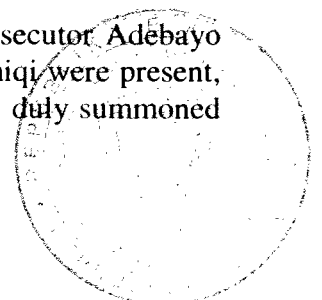
REASONING

A. Procedural Background

The District Public Prosecutor of Mitrovica in the indictment PP.nr. 299/07 dated 27 December 2007 charged Ymer Krasniqi with Murder contrary to Article 146 of the Provisional Criminal Code of Kosovo (CPCCK) and Unauthorized ownership, control, possession or use of weapons contrary to article 328 paragraph 2 of the CPCCK.

The indictment was confirmed on 23 December 2009. EULEX Judges took over the case on 2 December 2010.

Main trial hearings were held on 7 and 8 February 2011. EULEX Prosecutor Adebayo Kareem, Defense Council Nexhat Beqiri and the defendant Ymer Krasniqi were present, while the injured party Mustafe Krasniqi, father of the victim, although duly summoned



on 8 February did not attend the trial. Closing arguments were heard from EULEX Prosecutor Adebayo Kareem, Defense Council Nexhat Beqiri and the defendant Ymer Krasniqi on 8 February 2011. The Verdict was orally rendered the same day.

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.

The Accused is charged with the criminal offences of Murder under Article 146 of the Provisional Criminal Code of Kosovo (PCCK) which allows the imposition of a penal sentence of at least five years imprisonment and Unauthorized Ownership, Control, Possession or use of Weapons under Article 328 Paragraph 2 of the Provisional Criminal Code of Kosovo (PCCK) which allows the imposition by a fine of up to 7 500 Euros or by imprisonment of one to eight years. The indictment alleged that the Accused committed the criminal act in Stanovc I Ulet Village, Vushtrri Municipality that lies within Mitrovica District.

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

C. Legal Qualification - Law applied

The criminal offenses of murder and unlawful possession of weapon are dated on 01 October 2007. At that time, the Provisional Criminal Code of Kosovo, which entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 Paragraph (1) of the Provisional Criminal Code, the law in effect at the time of commission of the act shall be applied to the perpetrator. There was no change in the law prior to this verdict that would be more favourable to the Accused, pursuant to Article 2 Paragraph (2) of the PCCK.

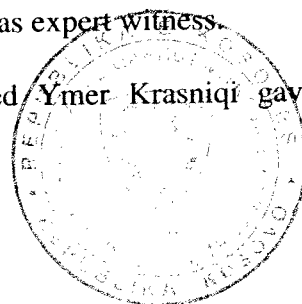
Therefore, the Court made reference to the provisions of the PCCK as the applicable law at the time of commission of the act.

D. Evidence

1. Evidence presented during the proceedings

On 8 February 2011, Lufti Raci, expert in ballistics was heard as expert witness.

During the trial session, on 8 February 2011, the accused Ymer Krasniqi gave a statement.



During the course of the main trial, the EULEX Public Prosecutor presented the below mentioned documents as evidence:

(1) Forensics Identification report (investigation report) – dated 02.10.2007.

The report describes that the police went to the defendant house, searched the house and seized a pistol TT M-57 7,62 mm and a magazine with 5 cartridges of caliber 7,62 x 25 mm, not fired.

(2) List of seized/impounded items (1 pistol TT M-57 7,62 mm and 1 magazine with 5 cartridges of caliber 7,62 x 25 mm, not fired) – dated 01.10.2007.

2. Admissibility of evidence

The police report dated 02 October 2007 and the list of seized items dated 01 October 2007 are the results of a house search at the defendant's premises done by the police on 01 October 2007. The question of the admissibility of such evidence rose during the main trial session since the Court is of the opinion that the police didn't follow the procedure for house search foreseen by the Code.

The Code indicates either under article 240 of the CPCK that a pre-trial judge shall authorize a house search or states under article 245 (1) of the CPCK the conditions that allow the police to enter a house without an order of a pre-trial judge “ (...) if necessary and to the extent necessary”.

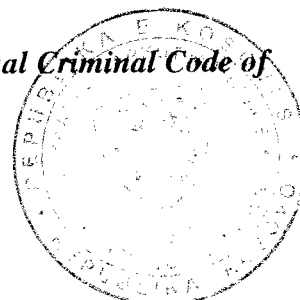
It results from the case file that there is no decision of a pre-trial judge to authorize such investigative action. However, taking into account the seriousness of the crime and the timeframe of the investigation, in this particular case, the Court considers that the police acted under article 245 of the CPCK. Nonetheless, it appears from the file that provision 245 (3) and (6) of the CPCK were violated since at least a verbal order shall have been given by a pre-trial judge or by a prosecutor and that the police should have report in writing to one of those after the search.

For all the above reasons, the Court considers that the police searched the house of the defendant unlawfully and declares the related Forensics Identification report dated 02.10.2007 as inadmissible evidence as prescribed under Article 246 Paragraph (6) pf the CPCK.

As a consequence of the declaration of inadmissibility of the abovementioned report, the list of seized items has to be also declared as inadmissible since the unlawful house search generated an unlawful seizure of items. Remain admissible evidence the declaration of the parties during the main trial.

E. Commission of crime and criminal liability

1. On the charge of Murder under article 146 of the Provisional Criminal Code of Kosovo (PCCK)



On 8 February 2011, at the main trial hearing, the EULEX Public Prosecutor withdrew the charge of murder against Ymer Krasniqi after the testimony of Lufti Raci, expert in ballistics called as witness.

Therefore, pursuant to Article 389 Item 1) of the CPCK the court rejected the charge of murder.

2. *On the charge of unauthorized Ownership, Control, Possession or use of Weapons under Article 328 Paragraph 2 of the Provisional Criminal Code of Kosovo (PCCK)*

The indictment PP.nr. 299/07 dated 27 December 2007 charges the Accused Ymer Krasniqi with Unauthorized Ownership, Control, Possession or use of Weapons since it is said that on 1st October 2007, in Stanovc I Ulet Village, Vushtrri Municipality, he was found in possession of a weapon, namely a revolver type TT-M-57 calibre 7.62 mm, without having a valid weapon authorization card.

Despite the fact that on one hand the evidence presented by the EULEX public prosecutor at the main trial are declared inadmissible by the Court, it is on the other hand deemed important for the Court to take into consideration the declaration made by the defendant during the main trial in the course of which he admitted implicitly possessing the weapon in question by saying "*I had no intention of causing anything bad to someone. I assisted the police in finding it*". His statement during the main trial implies that he owned that weapon namely a pistol type TT-M-57 calibre 7.62 mm, in his own house. Moreover, he was the one who indicated to the police the specific place where it was found. Finally, he didn't produce the documents that prove that he has authority to possess this gun.

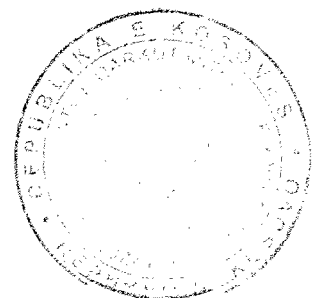
Thus, the Accused is found guilty of the unlawful possession of weapon.

F. Determination of Punishment

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the PCCK.

The Court considered as mitigating circumstances the fact that the defendant acknowledged the possession of the weapon and that he collaborated with the police in finding it. There is no aggravating circumstance in this case.

For the criminal offence of Unauthorized Ownership, Control, Possession or use of Weapons under Article 328 Paragraph 2 of the Provisional Criminal Code of Kosovo (PCCK), the law foresees a punishment of a fine up to 7500 Euros or imprisonment from one to eight years.



Taking into consideration all the above-mentioned circumstances, the Court found a sentence of one year of imprisonment appropriate to serve the purposes of punishment under Article 34 of the PCCK.

G. Confiscation

Pursuant to Article 328 Paragraph (5) of the PCCK, the Court orders the confiscation of the seized pistol type TT-M-57 calibre 7.62 mm and of the seized magazine with 5 cartridges of calibre 7,62x25mm.

H. Costs

The Court found the Accused Ymer Krasniqi guilty of Unauthorized Ownership, Control, Possession or use of Weapons under Article 328 Paragraph 2 of the Provisional Criminal Code of Kosovo (PCCK).

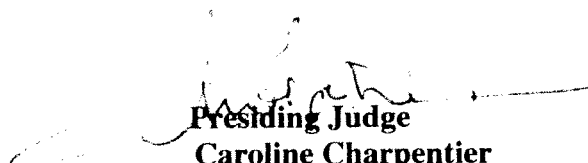
However, pursuant to article 102 paragraph 4 of the Criminal Procedural Code of Kosovo (CPCCK), Ymer Krasniqi is entirely relieved from the duty to reimburse the costs.

**District Court of Mitrovica
P. nr. 352/2007**

Prepared in English, an authorized language.



**Recording Officer
Francesco de Sanctis**



**Presiding Judge
Caroline Charpentier**

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 CPCCK.

