

DISTRICT COURT OF MITROVICA

P nr. 357/2007

14 July 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:

SAMI ZEQRIRI, charged with the criminal offence of (I) Attempted Murder under Article 30 Paragraph 1 of the Criminal Code of the Socialist Autonomous Province of Kosovo (KLC) read in conjunction with Article 19 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (YLC) and (II) Murder under Article 30 Paragraph 1 of KLC.

After having held the main trial hearings open to the public on 12, 13 and 14 July 2011, all in the presence of the Accused Sami Zeqiri, his Defence Counsel Muharrem Ramadani, EULEX Public Prosecutor Antonio Pastore, after the trial panel's deliberation and voting held on 14 July 2011, on the same day pursuant to Article 392, Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCCK), pronounced in public and in the presence of the above-mentioned Accused, his Defence Counsel and EULEX Public Prosecutor, the following

JUDGMENT

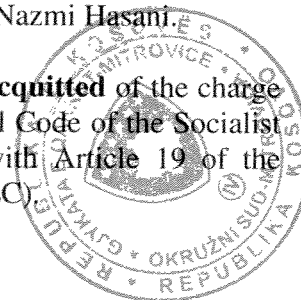
Sami Zeqiri, born on 04 May 1969, in the Kutllovc village, Mitrovica Municipality Kosovo, father's name Sinan, mother's name Xhezide Isufi, with permanent residence in First Tunnel no 77, Municipality of Mitrovica, Kosovo Albanian, completed elementary school, divorce with no children, no family income, currently under detention on remand

is

FOUND NOT GUILTY

Under Count (I) because it has not been proven that the Accused has committed the act with which he is charged. Namely it has not been proven that on 25 January 1995, in Adem Jashari Square, Mitrovica, he intentionally attempted to kill Nazmi Hasani.

Therefore, pursuant to Article 390 Item 3 CPCCK, the Accused is **acquitted** of the charge of Attempted Murder under Article 30 Paragraph 1 of the Criminal Code of the Socialist Autonomous Province of Kosovo (KLC) read in conjunction with Article 19 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (YLC).



The Accused is

FOUND GUILTY

Under Count II, because on 25 January 1995, in Adem Jashari Square, Mitrovica, during a physical fight between the Accused and Hilmi Ferizi on one side, and the late Nazmi Hasani and Gani Hasani on the other side, the Accused drew his pistol and shot at least twice. The fight was taking place in the presence of a number of persons who had gathered around the above-mentioned persons. The Accused, conscious of the possible consequences of shooting in those circumstances, hit with one of his bullets Nexhat Rama, who was passing by the site of the incident, and caused his death which occurred the same day in the Mitrovica hospital as a direct consequence of the injury provoked by the Accused.

By doing so, Sami Zeqiri committed and is criminally liable for the criminal act of Murder under Article 30 Paragraph 1 of KLC.

Therefore, Sami Zeqiri is

SENTENCED

to ten (10) years of imprisonment for the criminal act of Murder.

The time spent in detention on remand from 18 May 2009 until this verdict becomes final is to be credited pursuant to Article 50 Paragraph (1) of the YLC.

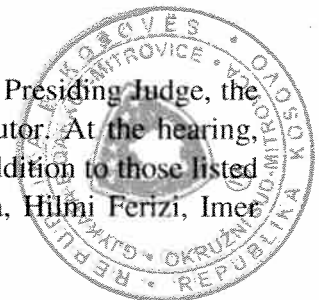
The Accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation.

REASONING

1. Procedural Background

The Indictment in the case was filed by the Mitrovica District Prosecutor on 31 December 2007 and confirmed on 10 January 2008. On 6 April 2011, by decision of the President of the Assembly of EULEX Judges, the case was assigned to the EULEX Judges of the Mitrovicë/a District Court.

On 24 May 2011, a pre-trial hearing was held in the presence of the Presiding Judge, the Defence Counsel Muharrem Ramadani and EULEX Public Prosecutor. At the hearing, the Prosecutor filed a written motion to summon new witnesses in addition to those listed in the indictment. Those witnesses are: Nexhip Rama, Sadik Rama, Hilmi Ferizi, Imer



Vllahia (who was identified during the trial as Imer Hasani), Bejtush Kaqanoli, Met Igrishta and Doctor Tefik Gashi as expert witness. The Defence Counsel asked to summon the above-mentioned Hilmi Ferizi also as witness for the defence. Both requests were granted by the Presiding Judge. In his submission to the Presiding Judge of 20 June 2011, the Prosecutor withdrew from his request to summon Bejtush Kaqanoli and Met Igrishta. The Panel was not able to summon Hilmi Ferizi since it could not obtain his address through the ordinary channels. According to the Official Memorandum of the Kosovo Police dated 6 June 2011 (submitted by the Prosecutor on 20 June 2011) Hilmi Ferizi currently lives in Munich, Germany, in an unknown address.

The main trial was held on 12, 13 and 14 July 2011. On 14 July 2011, the Trial Panel pronounced the verdict against the Accused, finding him guilty of Murder under Article 30 Paragraph 1 of KLC and sentencing him to 10 years of imprisonment.

2. 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.

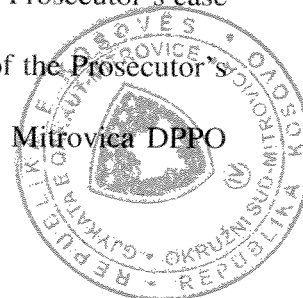
3. List of Evidence Presented

During the course of the main trial the following witnesses were heard:

- (1) Rame Rama – on 12 July (injured party)
- (2) Gani Hasani – on 13 July (witness for the Prosecution)
- (3) Nexhip Rama– on 13 July (witness for the Prosecution)
- (4) Sadik Rama– on 13 July (witness for the Prosecution)
- (5) Imer Hasani– on 13 July (witness for the Prosecution)
- (6) Doctor Tefik Gashi– on 13 July(expert witness for the Prosecution)

On 13 July 2011, the following documents were read into the record:

- (1) Police Report dated 28/02/2011 (pag. 37-43 of the Prosecutor's case file)
- (2) Police Report dated 22/02/2011 concerning the autopsy performed on 25/01/1995 (pag. 44-45 of the Prosecutor's case file)
- (3) Report dated 21/02/2011 and signed by the administrator of the forensic medicine institute of Pristina (pag. 55-56 of the Prosecutor's case file)
- (4) Investigation Police Report dated 23/07/2004 (pag. 83-84 of the Prosecutor's case file)
- (5) Letter dated 27/06/2007 signed by Sami Zeqiri (pag. 108-109 of the Prosecutor's case file)
- (6) Criminal Report submitted on 24/06/03 by Rame Rama to the Mitrovica DPPO (pag. 119-120 of the Prosecutor's case file)



- (7) Order for international arrest warrant issued by the Pre-Trial Judge on 4/-5/2007 (pag. 123-124 of the Prosecutor's case file)

On 13 July 2011, the Panel took as evidence copy of the pages of the notebook belonging to the expert witness Tefik Gashi, containing his notes on the autopsy he performed on the body of Nexhat Rama on 26 January 1995.

During the main trial session on 14 July 2011, the Accused gave a statement and answered questions.

4. Summary of the Presented Evidence

Witness Rame Rama (injured party):

During the hearing on 12 July 2011, the injured party Rame Rama, father of the victim Nexhat Rama, testified that:

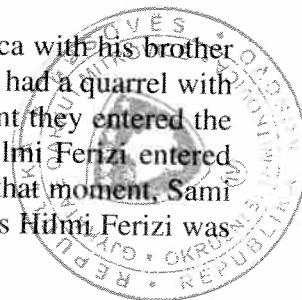
On 25 January 1999 at around midday, he entered a tea shop in Mitrovica close to Ademi Jashari street together with his son Nexhip Rama, Gani Hasani, Nazmi Hasani, Imer from Vllahi village (a police officer) and a young man. He was requested to be mediator in a quarrel between Nazmi Hasani and Hilmi Ferizi from Vidimiriq village. When they entered in the tea shop, Sami Zeqiri was already there. Hilmi Ferizi entered later the tea shop, pulled out a baton and started to fight against Nazmi Hasani. When the fight started, the customers went out. The injured party was by the shop's door when he heard the sound of two or three gun shots. As someone in the crowd said that a man had been shot, he realized that the victim was his son Nexhat Rama, who was passing by at approximately fifteen meters from the shop. He did not see who shot; he did not see a gun.

During the hearing, the Prosecutor and the Court confronted Rame Rama with his previous statement given to the police on 22 July 2004, in which he stated that he saw Sami Zeqiri holding a small gun during the incident. As an answer, he replied that he did not read what the police had written since he had forgiven the Accused and reconciled with him.

Witness Gani Hasani (injured party):

During the hearing on 13 July 2011, the injured party Gani Hasani, brother of Nazmi Hasani, testified that:

On 25 January 1999 in the afternoon, he went to a tea shop in Mitrovica with his brother Nazmi Hasani and Rame Rama in order to meet with Hilmi Ferizi who had a quarrel with his brother. Rame Rama was about to act as a mediator. At the moment they entered the tea shop neither Hilmi Ferizi nor the Accused were there. Later, Hilmi Ferizi entered and hit him on his neck with a baton, like those used by the police. At that moment, Sami Zeqiri was out of the shop, four to five meters distant from the door. As Hilmi Ferizi was



getting out of the tea shop, Nazmi Hasani grabbed a piece of wood and hit Hilmi Ferizi. Then he went out of the tea shop with Nazmi Hasani and Hilmi Ferizi. While Hilmi Ferizi ran away, the Accused, who was outside, pulled out a small gun, possibly a berretta or a 6.35 mm, pointed it at him and Nazmi Hasani and shot at them four or five times from a close range (five to six meters). At the moment of the shooting he was close to Nazmi Hasani together with a group of people (five to twenty people). After the shooting he chased the Accused for one hundred to two hundred meters holding an axe that he took from the tea shop immediately after Sami Zeqiri had shot. He did not see Nexhat Rama being shot since the victim was not close to him but some thirty meters far in the middle of a crowd.

Witness Nexhip Rama (witness for the Prosecution):

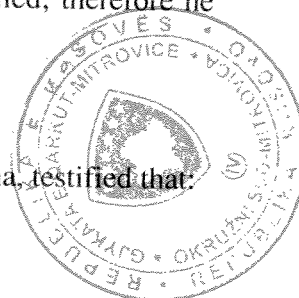
During the hearing on 13 July 2011, Nexhip Rama, brother of Nexhat Rama, testified that:

On the 25 January 1995, at around 15.00 a.m he was in a teashop in Mitrovica with his father Rame Rama, Imer from Vllahi village, Nazmi Hasani and Gani Hasani. When he entered he did not see either Sami Zeqiri or Hilmi Ferizi there. The witness knew that Hilmi Ferizi had a quarrel with the Hasani brothers. He was sitting in the teashop for two minutes when Hilmi Ferizi came and suddenly hit Gani Hasani with a police baton. At that moment, he exited the tea shop. He saw his brothers Sadik and Nexhat Rama outside passing by the teashop. Sadik and Nexhat Rama stopped at about ten to fifteen meters from the entrance of the teashop as they noticed that something was happening. He saw Nazmi Hasani assaulted Hilmi Ferizi with an axe and hit him on the arm. Then he heard two or three gun shots. At the beginning of his testimony the witness stated that he had not seen who was shooting whereas during his testimony he indicated that he saw Sami Zeqiri shooting the last shot in the direction of the ground with a small revolver in his hand. He also said that while he was outside, during the shooting, he saw Hilmi Ferizi, Gani and Nazmi Hasani in front of the Accused at a distance of two to three meters. Sami Zeqiri and Hilmi Ferizi were outside the shop, while Nazmi (armed with an axe) and Gani Hasani were inside. At the moment of the shooting his brother Nexhat Rama was on the opposite side of the Hasani brothers at a distance of fifteen meters from the teashop. He heard his brother saying that he had been hit by something. They took him to hospital where two and half hours later, he passed away.

The Prosecutor confronted him with his statement given to the police on 22 July 2004, in which he had stated that he saw Sami Zeqiri holding a gun inside the tea shop while arguing with Nazmi and Gani Hasani. Nexhip Rama replied that he had not seen the Accused with the gun inside the teashop; when he gave the statement to the police he wanted to take revenge against Sami Zeqiri but now they have reconciled; therefore he said that the true account is the one given during the public hearing.

Witness Sadik Rama (witness for the Prosecution):

During the hearing on 13 July 2011, Sadik Rama, brother of Nexhat Rama, testified that:



On 25 January 1995 he came to Mitrovica with Nexhat Rama at 8.00 am to apply for a passport at the Office of Internal Affairs. After that, he was walking back home with Nexhat Rama. When they reached Adem Jashari Square, at ten meters opposite to the teashop, he heard one shot; he heard Nexhat Rama said that he was hit. He saw him hit on the right side under the ribs. He did not see anyone fighting or shooting. Only later his brother Nexhip Rama told him that a fight had started in the teashop.

Witness Imer Hasani (witness for the Prosecution):

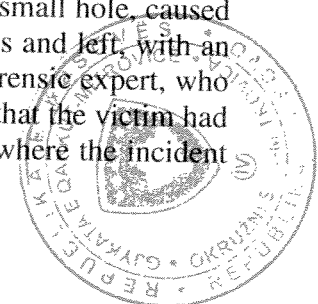
During the hearing on 13 July 2011, Imer Hasani, brother-in-law of Gani Hasani testified that:

On 25 January 1995 he was in his police uniform in Mitrovica in a tea shop with Rame Rama and his son. Nazmi Hasani and Gani Hasani were not sitting at their table. At some point he and Rame Rama went out of the shop where a group of people were gathering. He remembered Nazmi Hasani with an axe in his hand running towards the door of the shop and Hilmi Ferizi with something like a baton standing by the door of the shop. At that moment he also saw Sami Zeqiri, standing five to ten meters from the group of twenty people and at around twenty meters from Nazmi Hasani. He saw the Accused shooting twice, once in the air and the once on the ground. After the shooting he saw Hilmi Ferizi running away. He heard that someone in the crowd was hit by a bullet and brought to the hospital. He asserted that Nexhip Rama was very distant from the tea shop at the moment of the shooting.

Expert witness Dr. Tefik Gash (witness for the Prosecution):

During the hearing on 13 July 2011, the expert witness Doctor Tefik Gashi testified that:

On 26 January 1995, he performed the autopsy of Nexhat Rama, pursuant to the order of the investigative judge Blagoje Militic. He recognized his signature on the protocol book of recorded autopsy, shown to him by the Prosecutor (see pp. 39-43 of the Prosecutor's case file, submitted as evidence during the trial). He read from the protocol book the short diagnosis of the death written by him in Latin. The diagnosis indicated as cause of death a homicide, in a violent manner, due to an injury by firearm at the ribs cage. The expert witness commented that he did not know the reasons why the complete report of the autopsy went missing (see in this regard pp. 55-56 of the Prosecutor's case-file submitted as evidence during the trial). Nevertheless, he was able to recall the details of the autopsy thanks to his personal notes. From the notes, he indicated that the cause of death of Nexhat Rama was due to an internal hemorrhage, caused by the entry of a single bullet. The bullet entered close to his back right side, fifteen cm from the spine, at the level of the 9th rib and 127 centimeters from the heel. The entry was a small hole, caused by a 6.35 mm bullet, which from the entry point went towards upwards and left, with an angle of 45 to 60 degrees. The bullet remained inside the body. The forensic expert, who had made the analysis at the time of the incident, was able to establish that the victim had been hit from a distance of approximately ten meters. Since the place where the incident



took place was flat, and based on the forensic examination, it was established that the victim, when he was hit, was not standing in a vertical position but was bending forward, in the process of running away.

Upon a question of the defense counsel, the expert, on the basis of his findings, absolutely excluded that the bullet in question had ricocheted before hitting the victim. He motivated this conclusion from the trajectory of the bullet, his caliber and the characteristics of the entry hole, which were those proper of a direct hit.

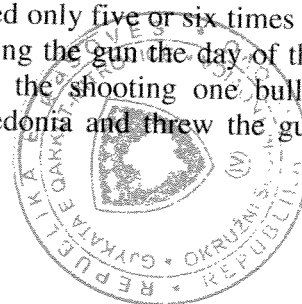
At the end of the testimony, the Panel ordered to make a copy of the pages of the expert's notebook related to the autopsy in order to include them as material evidence in the case-file.

Accused Sami Zeqiri:

During the hearing on 13 July 2011, the Accused was examined and gave the following statement:

On 25 January 1995, he left his house at 10.00 am and went to Mitrovica where he met Hilmi Ferizi. At around 12.30-13.00, they entered the tea shop to have tea. As soon as they entered, Rame Rama, Gani Hasani and Nazmi Hasani stood up from their table and a fight started. He said that Hilmi Ferizi first hit Nazmi Hasani with a police baton, then Nazmi and Gani Hasani, armed with axes, countered by attacking him and Hilmi Ferizi. Gani Hasani had a short axe while Nazmi Hasani had a longer one. The Accused did not know that a quarrel had been ongoing between Hilmi Ferizi and the Hasani brothers. Hilmi Ferizi never asked him to go to the tea shop to help him in his quarrel with the Hasani Brothers. He indicated that he was already in the tea shop and greeted Rame Rama and Nazmi Hasani as usual. He did not know that Hilmi Ferizi had a police baton with him. He considered that the Hasani brothers attacked him because he entered the tea shop with Hilmi Ferizi. Although they managed to get out of the tea shop, he found himself between Gani and Nazmi Hasani, at around three to four meters. They were trying to hit him with their axes. Hilmi Ferizi managed to run away. To protect himself, he pulled out a gun. While trying to escape, he shot twice, first in the air and second time on the ground, hoping that the Hasani brothers would stop attacking him. When he shot in the air he was approximately 10 meters away from the tea shop and managed to reach Adem Jashari Square. He did not aim at them. He said that the bullet that killed Nexhat Rama hit him after it ricocheted. He did not see Nexhat Rama at the crime scene. He escaped the Hasani's brothers by reaching military barracks. Later he went home and he was told that he had hit someone with his gun.

The Accused stated that his gun was a 6.35 mm which he carried only five or six times in twelve years. He could not give any reason why he was carrying the gun the day of the incident. The gun had three bullets in the magazine. After the shooting one bullet remained. After the incident he fled to Europe through Macedonia and threw the gun away in Macedonia.



5. Assessment of the Presented Evidence

Evidence regarding Count 1 – attempted murder of Nazmi Hasani (art. 30 par. 1 KLC and art. 19 YLC)

All witnesses, except Sadik Rama, were inside the tea shop when the fight between Hilmi Ferizi and the Hasani brothers started. They were also part of the crowd outside the shop when the Accused, as he admitted, shot with his gun. Therefore they were all eyewitnesses of the crucial facts which are the object of Count 1 of the indictment. However, all their testimonies, as heard in court, differed on numerous and important facts.

They significantly diverge on the representation of the actions of the Accused, more specifically regarding the key questions as to whether he entered the tea shop with Hilmi Ferizi, what was his distance from the Hasani brothers, when he shot and where he aimed when he shot.

Rame Rama stated that Sami Zeqiri was already in tea shop when Hilmi Ferizi entered and started the fight with the Hasani brothers. He also stated that he did not see who had fired. This last statement is unconvincing considering that he also stated that he was nearby the entrance of the shop, thus, according to the other witnesses, very close to the spot where the Accused shot. Rame Rama, moreover, in his statement to the police stated that he saw the Accused shooting.

Gani Hasani, who was in the tea shop together with Rame Rama, gave a very different account. He stated that when Hilmi Ferizi entered the shop and hit Nazmi Hasani, Sami Zeqiri was out of the shop, at four to five meters from the door. He also stated that the Accused, once they were all outside, pulled out a small gun, pointed it at him and at Nazmi Hasani and shot at them 4 or 5 times from a close range (five to six meters), without actually hitting any of them. At that point Hilmi Ferizi had already run away. It appears that his statement is too vague regarding the positions of the people during the gun shooting. Gani Hasani did not see the victim. As a result it cannot be established in a credible way how, while the Accused shot at the Hasani brothers at a distance of few meters, he hit instead the victim. He was not able to say whether the victim was located on his same trajectory. Finally, although not impossible, it seems unlikely that Sami Zeqiri, while shooting at the Hasani brothers four or five times from a close range (from five to six meters) did not manage to hit any of them.

Nexhip Rama, similarly to Gani Hasani, stated that when the fight in the shop started, Sami Zeqiri was at the entrance of the shop. Regarding the shooting incident, he contradicted himself during his testimony in court. First he stated that he had not seen who was shooting. But just few minutes later, he affirmed that he was able to see Sami Zeqiri shooting the last shot in the direction of the ground with a small revolver in his hand. The witness was also able to see, while he was outside, that at the moment of the shooting, Hilmi Ferizi, Gani and Nazmi Hasani were in front of the Accused at two or three meters. The four of them were by the door of the tea shop; namely Sami Zeqiri and



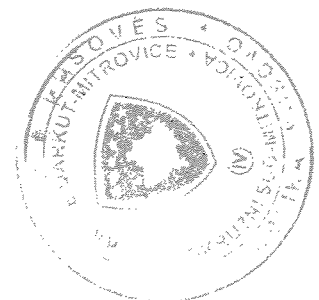
Hilmi Ferizi were outside the shop, while Nazmi Hasani, armed with an axe and Gani Hasani were inside. Considering that the witness admitted that he did not see the entire shooting incident but only the last shooting, it seems very difficult to believe that, in that short moment, he could capture a clear picture of the four above-mentioned persons. For these reasons his testimony is not completely reliable.

Imer Hasani did not see the Accused in the tea shop but only outside. According to him, and differently from what stated by Gani Hasani and Nexhip Rama, the Accused, at the moment of the shooting was at five to ten meters away from the group of people and at around twenty meters away from Nazmi Hasani. He stated that fifteen to twenty people were standing between Sami Zeqiri and Nazmi Hasani.

The Accused stated that he entered the shop together with Hilmi Ferizi. After the start of the fight, he found himself outside the shop surrounded by Gani and Nazmi Hasani, who at a distance of approximately three to four meters were trying to hit him with their axes. In an attempt to escape from this danger, he shot twice, once in the air and then on the ground, hoping that the Hasani brothers would stop attacking him.

The only witness claiming that the Accused tried to kill Nazmi Hasani is the brother of the late. However his testimony is too vague and cannot be taken solely into consideration to establish the Count 1. The witness avoided to answer key questions. The Prosecutor faced difficulties to get an answer as to whether, before the shooting, there had been any physical fight between Hilmi Ferizi and his brother. He did not answer the question as to whether the Accused or the Hasani brothers attacked first. He referred instead to the fact that he is a father of eleven children and is neither a thief nor an Al-Qaida member, and that he came to court to tell the truth. Furthermore, he asserted, without any supporting facts, that Hilmi Ferizi and Sami Zeqiri, when they entered the tea shop, had already a plan to kill. This assumption is not compatible with the fact that the witness could not remember the reason of the quarrel between his brother and Hilmi Ferizi.

From all the statements, there is not a single testimony matching with another regarding the basic facts related to Count 1. Various reasons shall explain those discrepancies such as the very long time elapsed since the events; by the fact also that the events took place in a short timeframe and in the middle of a crowd, in a rather confused scenario. It was also noticed during the hearing that the witnesses Rame Rama and Nexhip Rama changed their statements since they reconciled. The discrepancies between the testimonies, which cannot be corroborated with any piece of evidence of the case file, are so significant that the Panel deems impossible to establish, at least with some degree of clarity, the facts related to Count 1, particularly that when the Accused shot at least two times he did intent to kill Nazmi Hasani. Therefore, it was not proved that Sami Zeqiri attempted to kill Nazmi Hasani.



Evidence regarding Count 2 – murder of Nexhat Rama (art. 30 par. 1 KLC)

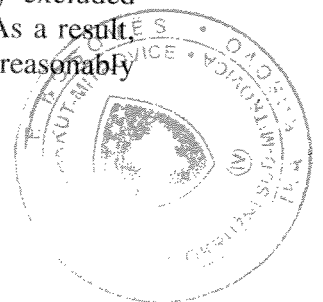
With some minor exceptions, all witnesses who were inside the tea shop and then were part of the crowd, are consistent, in their testimonies, on the following facts:

The fight started inside the tea shop and was initiated by Hilmi Ferizi who hit Nazmi Hasani with a baton. Nazmi Hasani stroke back Hilmi Ferizi either with a piece of wood or an axe. Imer Hasani stated that he did not see these events as he already left the shop with Rame Rama. This version is contradicted by witnesses Rame Rama and Nexhip Rama.

Sami Zeqiri, who had accompanied Hilmi Ferizi, admitted that he shot 2 times while he was outside the tea shop. Only Rame Rama stated that he did not see him, although he had declared the opposite to the police during the investigation. All the witnesses agree that the shooting took place in the middle or at proximity of a number of people (numbers vary from 10 to 15) who had exited the tea shop. Sami Zeqiri was the only person in the crowd who was seen having a gun. All witnesses, including Sadik Rama who was walking next to Nexhat Rama, stated that the victim was at some distance but not too far from the Accused at the moment of the shooting. Accounts regarding the distance differ within a range of 10 to 30 meters. According to the expert witness the victim had been hit from a distance of approximately 10 meters. This picture of the incident is fully consistent with the statement given by the Accused in court.

From the combined statements of the eyes witness and of the expert witness, the panel considers this evidence to be sufficient to prove beyond reasonable doubt that the Accused killed Nexhad Rama by shooting with his gun. With regard to the intentions of the Accused, it could not be proved that when shooting he aimed at the victim. However, by shooting in the middle or in the proximity of a crowd, the Accused could foresee the concrete possibility of hitting and eventually killing someone and he deliberately accepted that risk. Therefore, he had committed the murder with eventual intent.

With regard to the proof of the risk, the Panel holds that from the testimonies of Imer Hasani and Nexhip Rama the fact that the Accused shot only in the air and on the ground is not credible. Imer Hasani is not a credible witness as he stated that he was not present when the fight started inside the tea shop, while both Rame Rama and Nexhip Rama stated the opposite. Nexhip Rama is also not a credible witness as he had declared to the police that he saw Sami Zeqiri with the gun already inside the tea shop, a circumstance denied during his testimony in court. Nexhip Rama justified his statement to the police with the fact that at that time he wanted to take revenge against Zeqiri. Since this is possibly true, the Panel consistently deems that his testimony in court is also unreliable since it may be influenced by his different feelings towards the Accused now that they allegedly reconciled. Moreover the expert witness Tefik Gashi persuasively excluded that, before hitting the victim, the bullet had ricocheted against the ground. As a result the Panel does not believe that Sami Zeqiri shot in a way in which he could reasonably exclude the concrete possibility of killing someone.



The Panel rejects also the argument of necessary defense. From the evidence heard in court, there is no doubt about the fact that the Accused knew about the quarrel between Ferizi and the Hasani brothers and that he was prepared to enter into a fight with them in order to help Hilmi Ferizi. A strong indication in this sense comes from the fact that he was armed that day, while, as the Accused himself stated, he was not usually carrying a gun with him. Besides, just before shooting, he participated in the fight by opposing the Hasani brothers together with his friend Hilmi Ferizi. Therefore, even supposing that the Accused was under the threat of a real and imminent attack, it is doubtless that the attack was unlawful since it was Hilmi Ferizi who initiated the fight by attacking Nazmi Hasani.

From the testimonies given by all the witnesses as well as by the expert witness, it has been proven beyond any reasonable doubt that the victim died as a result of the bullet which hit him.

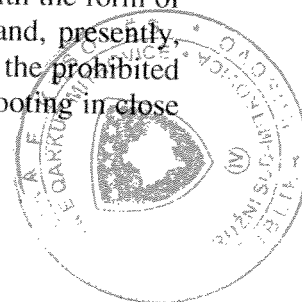
In view of the findings above, the Court considers that the facts described in the enacting clause under Count 2 are proven.

6. Legal Qualification

Under Count 2, the Accused is found guilty of Murder under Article 30 Paragraph 1 of the Criminal Code of the Socialist Autonomous Province of Kosovo (KLC), which reads: "whoever takes another person's life shall be punished with at least five years of imprisonment". Murder must be committed with intent. Under Article 13 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (YLC) "a criminal act is intentional if the offender is conscious of his deed and wants its commission; or when he is conscious that a prohibited consequence might result from his act or omission and consents to its occurring". The latter notion of intent is usually referred as *dolus eventualis*, as opposed to the former which is known as direct intent.

The incriminated event took place on 25 January 1995. At that time the KLC and the YLC were the applicable laws. Pursuant to Article 2 Paragraph (1) of the Criminal Code of Kosovo (CCK), the law in effect at the time a criminal offence was committed 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 CCK. On the basis of these provisions and pursuant to UNMIK regulation 1999/24, as amended by UNMIK Regulation 2000/59, the KLC and the YLC are the applicable laws in this case.

The facts established above and described in the enacting clause fulfil all the elements of Murder. Nexhat Rama died as a direct result of being hit by a bullet which was shot by the Accused. Sami Zeqiri committed this act with intent, more precisely with the form of intent known as *dolus eventualis* foreseen under Article 13 of the YLC and, presently, under Article 15 CCK as eventual intent. The Accused was conscious that the prohibited consequence could result from his act and consented to its occurring by shooting in close proximity of a crowd of people.



7. Sentencing

When imposing the criminal sanction, the Court bear in mind 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 come 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 41 Paragraph (1) of the YLC (the equivalent of this provision can be found in Article 64 Paragraph (1) of the CCK) while remaining within the sentencing limits provided by law.

In this case, the Panel, when imposing the sentence of ten years of imprisonment, took into consideration as aggravating circumstances the fact that the shooting took place in a public place which shows utter disregard for the public safety; moreover, the victim was an innocent person who was not involved in the ongoing fight.

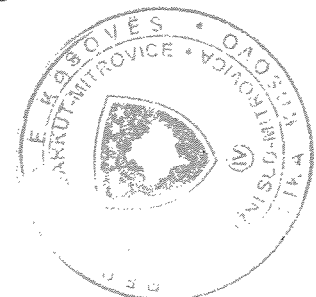
As mitigating circumstances, the court considered the considerable lapse of time between the incident and the trial. As shown by the Accused letter to the District Prosecutor Office dated 27/06/2007 (see pp. 108-109 of the Prosecutor's case file submitted as evidence during the trial) this delay was not entirely caused by the unavailability of the Accused. This circumstance justifies a degree of mitigation. Therefore the imposed punishment was deemed to be proportionate to the gravity of the offence, the conduct of the Accused and all relevant circumstances, while fulfilling the purposes of punishment.

8. Costs

The Accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation.

9. Injured Parties

Rame Rama, as father of the victim of Murder (Count II) Nexhat Rama, and Gani Hasani, as brother of the victim of Attempted Murder (Count I) Nazmi Hasani (who died years after the present case), were injured parties in this case. They were both instructed about their rights as injured parties. They decided to attend only the hearings in which they testified, namely 12 July 2011 for Rame Rama and 13 July 2011 for Gani Hasani. Neither of them filed a property claim. Pursuant to art. 112 para. 2 of the CPCK, the injured parties are instructed that they may pursue a property claim in civil litigation.



**District Court of Mitrovica
P. nr. 357/2007**

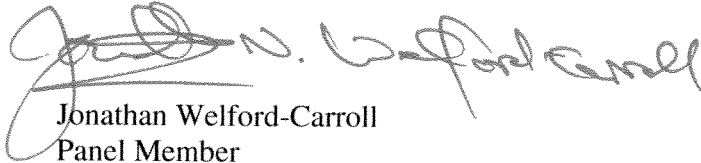
Prepared in English, an authorized language.



Francesco de Sanetis
Recording Officer



Caroline Charpentier
Presiding Judge



Jonathan Welford-Carroll
Panel Member



Hajnalka Veronika Karpati
Panel Member

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 Articles 398 and 399 of the CPK.

