

DISTRICT COURT OF MITROVICA
P. nr. 25/10
1 September 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judges Agnieszka Klonowiecka-Milart as Presiding Judge, and Charles Smith, III, and Christine Lindemann-Proetel as panel members, with the participation of EULEX Legal Officer Noora Aarnio as Recording Officer, in the criminal case against;

Gezim Begolli, no nickname, son of Adem Begolli and Qefsere Brahimi, born on 13 December 1987 in Mitrovica, Kosovo, of Albanian ethnicity, resident of Stan Terg village, municipality of Mitrovica, single, absolvent in the faculty of management and technology, manager of a private company, of average economic status, no known previous conviction, in house detention from 7.11.2008 until 25.11.2008 and under the security measures reporting at the police station from 25.11.2008 until 24.3.2009,

charged, according to the Indictment of the Prosecutor PP. nr. 115/08 dated 23 March 2009 and confirmed by the Ruling on Confirmation dated 20 May 2010, with the following criminal offences;

- **Attempted Murder**, under Article 146 in conjunction with Article 20 of the Criminal Code of Kosovo (CCK),
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, under Article 328, paragraph 2 of the CCK,

Tahir Tahiri, no nickname, son of Nezir Tahiri and Safije Balaj, born on 22 February 1984 in Mitrovica, Kosovo, of Albanian ethnicity, resident of Trepca Village, municipality of Mitrovica, single, highest education secondary economic school, bus conductor, of average economic status, no known previous conviction,

charged, according to the Indictment of the Prosecutor PP. nr. 115/08 dated on 23 March 2009 and, as confirmed by the Ruling on Confirmation dated 20 May 2010, the criminal offence of **Light Bodily Injury** in co-perpetration with the juvenile NN , under Article 153, paragraph 1, item 1 of the CCK

NN

charged, according to the motion for punishment PPM. nr. 02/09 dated 23 March 2009, with the criminal offences of **Light Bodily Injury** in co-perpetration with Tahir Tahiri, under Article 153, paragraph 1, item 1 of the CCK.

After having held the main trial partly closed to the public on 1 September 2010, in the presence of the accused Gezim Begolli, Tahir Tahiri and NN [also acting as an injured party], their Defence Counsel Bashkim Mehana, Nexhat Beqiri and Rexhep Kacaniku, Injured Party Adnan Begolli and EULEX Public Prosecutor Neeta Amin, after the deliberation and voting held on 1 September 2010, pronounced - on the same day - in the presence of all the Accused Gezim Begolli, his Defence Counsels Bashkim Mehana, the Injured Party Adnan Begolli and the EULEX Public Prosecutor, the following

JUDGEMENT

I. The accused **Gezim Begolli** is

FOUND GUILTY

because on 7 November 2008 in Stan Terg, without valid permission issued by a competent authority kept a pistol type "Crvena Zastava" calibre 7.62 mm with serial no C-208959 and four bullets of same calibre.

By doing so, the accused **Gezim Begolli** committed and is criminally liable for the criminal act of **Unauthorized Ownership, Control, Possession and Use of Weapons**, under Article 328, Paragraph (2) of the Criminal Code of Kosovo (CCK).

II. Therefore the Accused Gezim Begolli is **sentenced to two years of imprisonment**. The period of house arrest from 7 November 2008 until 25 November 2008 shall be credited against this punishment.

III. Based upon Article 43 of the CCK the execution of this sentence is **suspended for the verification period of two years**.

IV. The weapon, Crvena Zastava 7.62 mm calibre pistol with serial number C-208959 is confiscated from Gezim Begolli pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

V. The Accused Gezim Begolli is obliged to reimburse the costs of criminal proceedings 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.

VI. The **charge of the Attempted Murder**, against the accused **Gezim Begolli is rejected** following the withdrawal of the charge by the Public Prosecutor.

VII. The **charge of Light Bodily Injury against the accused Tahir Tahiri is rejected** following the withdrawal of the charge by the Public Prosecutor.

VIII. The **motion for punishment for Light Bodily Injury**, against the accused **NN**, **is rejected** following the withdrawal of the charge by the Public Prosecutor.

IX. The costs of the proceedings against Tahir Tahiri and **NN** shall be borne out by the State.

Reasoning

On 15 February 2010, the President of the Assembly of EULEX Judges exercised her right to assign EULEX judges to cases falling under the subsidiary competence of EULEX judges pursuant to Article 3.3 of the "Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo" and assigned the case number P 25/10 (Gezim Begolli and Tahir Tahiri) to the EULEX Judges in the District Court of Mitrovica.

On 2 August 2010, the President of the Assembly of EULEX Judges exercised her right to assign EULEX judges to cases falling under the subsidiary competence of EULEX judges pursuant to Article 3.3 of the "Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo" and assigned the case number PM 1/09 (**NN**) to the EULEX Judges in the District Court of Mitrovica.

The accused Gezim Begolli pleaded guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph 2 of the Criminal Code of Kosovo.

The court is satisfied that the material gathered in the case file sufficiently supports the charge and the plea entered by the accused.

In the statement that the defendant Gezim Begolli gave at the police station on 7 November 2008 he explained that the pistol 'Crvena Zastava', 7.62 mm calibre with serial number C-208959 had been the property of his grandfather and had been inherited by him after the grandfather's death in 1991. For most of the time, however, the weapon had remained buried underground.

The document on confiscation of items no. 2009-BI -248, dated 7 November 2008 confirms the fact that a pistol type 'Crvena Zastava', 7.62 mm calibre with serial number C-208959 and four bullets of the same calibre were confiscated from the defendant.

The punishment applicable for unauthorised possession of weapons under Article 328 paragraph 2 of the CCK spans from a fine up to 7500 Euros to imprisonment from one to eight years. Such untraditionally wide range of available sanction leaves the court with a great deal of discretion in deciding individual cases. The Panel in this case decided that two years of imprisonment, suspended for the probation period of two years, would best serve the purposes of punishment under Article 34 of the CCK.

The Panel in this case considered as a matter of general prevention that frequency of crimes committed with the use of weapons in Kosovo, often resulting in death or serious injury, call for sanctioning illegal possession of weapons with imprisonment of more than minimal duration. The Panel is committed to sending a signal that easy availability of fire weapons and the resort to the use of them as means of resolving conflicts will not be tolerated with impunity.

The Panel took as an aggravating factor the long term of possessing the weapon without the valid authorization, during which the accused had maintained the illegal possession of the weapon and had not attempted to legalise it. Likewise, the Court held against the accused that he actually had carried the weapon on him, in public spaces, keeping it ready for use. If the attitude demonstrated by this conduct were to remain unqualified and unchanged, the two year imprisonment would be proportionate to the dangerousness of the crime.

The Panel took as a mitigating factor that the weapon had been a family heirloom and was kept, to some extent, out of sentiment. There is no indication of any actual use of the weapon prior to the event encompassed by the charges. That the weapon was actually put into use on 7 November 2008 resulted from an

unprovoked violent incident, where the brother of Gezim Begolli had been attacked by the Tahiri and NIK and Gezim Begolli intervened. As a result there were victims on both sides.

The Court found that there were circumstances denoting positive prognosis regarding the accused.

The consequences of the event where a young man got injured and the ensuing criminal proceedings should have a deterrent effect on the accused as well as other participants in the event.

Moreover, the conflict that had given rise to the violent incident had come to an end by the time of the trial. The parties on both sides repeatedly assured the Court of the peaceful settlement that had taken place between them and those who had been injured declared that they did not want to pursue prosecution and did not intend to file civil claims. The Court therefore considered that the restorative purpose of punishment was satisfied.

The accused has no prior criminal record. It transpires from the file that he has strong family ties, is committed to developing business and educating himself.

Therefore it was the Court's opinion that putting the defendant on probation would be sufficient to correct the behaviour of the accused and prevent re-offending.

According to the Article 44 of the CCK a suspended sentence may be imposed on a perpetrator of a criminal offence punishable by imprisonment of up to ten years if the provisions of the mitigation of the punishment are applied.

According to the Article 66 item 2 of the CCK the Court may apply mitigations when the Court finds that there are particularly mitigating circumstances which indicate that the purpose of punishment can be achieved by imposing a lesser punishment.

In addition to mitigating factors discussed *supra*, the Court considered that the accused from the beginning of the investigation has shown remorse. He admitted his guilt from the outset of the proceedings, voluntarily surrendered the weapon to the police officers, and was co-operative with law enforcement in giving evidence regarding the weapon as well as other facts relevant for the charges. The Court noted that according to the Law on Supplementation and Amendment of the Provisional Criminal Code of Kosovo, the mitigation of punishment has

been foreseen as one of the consequences of the plea agreement. While in this case, technically speaking, there is no "plea agreement", the Court considered nevertheless that the accused had offered his guilty plea instantly and consistently. The mitigation of punishment in this case would thus be consistent with the current criminal policy of Kosovo, as reflected in the abovementioned Law.

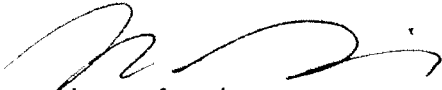
The additional punishment of confiscation of the weapon is mandatory under the law pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

All the remaining charges were withdrawn by the Prosecutor which results in this Court ruling on the rejection of charges based on Article 398 CPCK.


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Done in English, an authorized language

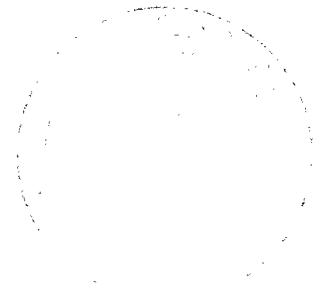

Agnieszka Klonowiecka-Milart
Presiding Judge


Noora Aarnio
Recording Officer


Charles Smith III
Panel Member


Christine Lindemann-Proetel
Panel Member

Legal remedy: The parties 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.

