

DISTRICT COURT OF MITROVICA

K nr. 02/2010

05 July 2010

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 Charles L. Smith, III and Nikolay Entchev as panel members, with the participation of Tara Khan EULEX Legal Officer as Recording Officer (except the last day of the trial when she was replaced by EULEX Legal Officer Zane Ratniece), in the criminal case against;

Dragisa DJUKIC, charged, according to the Indictment of the EULEX Public Prosecutor PP. Nr. 72/2008 dated 11 June 2009 and filed with the Registry of the District Court of Mitrovica on 15 June 2009, with the following criminal offences;

- **Aggravated Murder**, contrary to Article 147 Item 4 of the Provisional Criminal Code of Kosovo (PCCK)
- **Attempted Murder** contrary to Article 146 as read with Article 20 of the PCCK
- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the PCCK

After having held the main trial hearing open to the public on 15, 19, 28 April, 24 June and 05 July 2010, all in the presence of the Accused Dragisa Djukic, his Defence Counsel Rexhep Kacaniku, EULEX Public Prosecutor Maria Bamieh, Injured Parties Zoran Minic and Sinisa Djukic, and Legal Representative of Injured Party Zoran Minic Boban Savic (except on the hearing on 24 June and onwards when Miodrag Brkljac took over), after the trial panel's deliberation and voting held on 05 July 2010, on the same day pursuant to Article 392 Paragraph (1) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), pronounced in public and in the presence of the Accused, his Defence Counsel Rexhep Kacaniku, EULEX Public Prosecutor Maria Bamieh, the Injured Parties Zoran Minic and Sinisa Djukic, and Legal Representative of the Injured Party Miodrag Brkljac, the following

JUDGMENT

I.) The accused **Dragisa Djukic**, nickname Gile, son of Milentije Djukic and Milunika Beshivec, born on 08 March 1970, in Jabuka Village, Municipality of Zubin Potok,

Kosovo Serb, last known residence at Arsenija Carnojevica Str. Zubin Potok, completed secondary school, labourer with average income of 15000-16000 Serbian Dinars, married with three children, no previous conviction, in detention since 18 June 2008

A) is

FOUND GUILTY

- **because** the accused was in possession of a weapon AK-47, Yugoslav made, AB-2, calibre 7,62x39 mm, with serial number C-50588 without a valid authorization card for an unknown period of time until 18 June 2008.

By doing so, the Accused Dragisa Djukic committed and 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.

Therefore, the **Accused Dragisa Djukic** is

SENTENCED

- to 2 /two/ years of imprisonment for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**.

The time spent in detention on remand since 19 June 2008 is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

B) The Court

RULES that

- **because** on 18 June 2008 at around 23:00 hours, in Zubin Potok, in Arsenije Carnojevic Street from his house the accused, Dragisha Djukic in a state of temporary mental disorder defined as paranoid psychotic reaction, fired several shots from a semi-automatic weapon AK-47, Yugoslav made AB-2, calibre 7,62x39 mm, with serial number C-50558, whereby he killed Radoslav Minic who bled to death on the way to the hospital due to multiple penetrating gunshot injuries to the body. The accused also shot at Petar Djukic

who suffered gunshot injuries but was on the way of recovery when died due to a blockage of the pulmonary trunk by a blood clot on 01 July 2008 -

the Accused Dragisha Djukic committed, but due to mental incompetency pursuant to Article 12 Paragraph (1) of the PCCK is **criminally not liable** for the criminal act of

Aggravated Murder contrary to Article 147 Items 4 and 11 of the PCCK.

Therefore, the Court imposes the **measure of mandatory psychiatric treatment at liberty** pursuant to Section 5 and Section 12.3 of UNMIK Regulation 2004/34 'On Criminal Proceedings Involving Perpetrators with Mental Disorder';

The measure of mandatory psychiatric treatment at liberty shall be executed, according to the following:

- the measure of mandatory psychiatric treatment shall be executed at the Health Center – Zubin Potok, Specialised Neuropsychiatric Clinic;
- Dragisa Djukic shall report for treatment to Dr. Radmila Jevtic in the Health Center – Zubin Potok, Specialized Neuropsychiatric Clinic on 07 July 2010 at 09:00 and thereafter the ambulatory treatment shall be executed with regular and close supervision of the psychiatrist;

The weapon AK-47, Yugoslav made, AB-2, calibre 7,62x39 mm, with serial number C-50558 is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The accused Dragisa Djukic shall reimburse part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCPCK with the exception of the costs of interpretation and translation. Pursuant to Article 102 Paragraph (2) of the PCPCK he shall not reimburse the costs related to the murder charges. 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 PCPCK.

The property claim of the Injured Party is referred for civil proceedings pursuant to Article 112 Paragraph (3) of the PCPCK.

Reasoning

A. Procedural Background

Indictment PP nr. 72/08 dated 11 June 2009 and filed with the District Court of Mitrovica by EULEX Prosecutor Maria Bamieh on 15 June 2009, charged the Accused Dragisa Djukic with Aggravated Murder in violation of Article 147 Paragraph (4) of the Provisional Criminal Code of Kosovo (PCCK), Attempted Murder in violation of Article 146 as read with Article 20 of the PCCK, and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK.

EULEX judges took over the case on 18 November 2009. The Indictment was confirmed on 25 January 2010.

The Main Trial was held on 15, 19 and 28 April 2010, 24 June 2010, and 05 July 2010. The closing statements of Prosecutor Maria Bamieh, Injured Party Representative Miodrag Brkljac, and Defence Counsel Rexhep Kacaniku were heard on 05 July 2010. The verdict was orally rendered the same day.

B. Competence of the Court

Under Article 23 Item 1) i) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), 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 PCPCK, 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 offence of Aggravated Murder pursuant to Article 147 of the PCCK, which allows for the imposition of a minimum sentence of ten years of imprisonment. The Indictment in this case alleged that the Accused committed the criminal acts in Zubin Potok, which lies within Mitrovica District.

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

On 18 November 2009, the President of the Assembly of EULEX Judges issued a decision for EULEX judges to take over the case pursuant to Article 3.3 of the Law on Jurisdiction¹ and assigned it to EULEX judges in the Mitrovica District Court. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Criminal Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Charles L. Smith, III and Nikolay Entchev as panel members.

¹ Law nr. 03/L-053, Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

C. Summary of Evidence Presented

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

- (1) Sinisa Djukic (Injured Party), 15 April 2010
- (2) Beranka Djukic, 15 April 2010
- (3) Predrag Djukic (Injured Party), 19 April 2010
- (4) Milomir Djukic, 19 April 2010
- (5) Police Officer Miodrag Vucic, 19 April 2010
- (6) Sasa Duric, 28 April 2010
- (7) Police Officer Srecko Vuckovic, 28 April 2010
- (8) Expert Witness Dr. Radmila Jevtic, 28 April 2010
- (9) Expert Witness Dr. Fahri Drevinja, 28 April 2010
- (10) Ljiljana Bozovic, 24 June 2010

On 15 April 2010, the following documents were read into the record:

- (11) Statement of Vladimir Kosanin, 11 June 2009.
- (12) Statement of Mileta Djukic, dated 04 June 2009.

On 24 June 2010, the following documents were read into the record:

- (13) Statement of Petar Djukic, 18 June 2008.
- (14) Autopsy Report of Radoslav Minic, 19 June 2008.
- (15) Autopsy Report of Petar Djukic, 01 July 2008.
- (16) Psychiatric Expertise for Djukic Dragisa from the Village of Jabuka-Zubin Potok Municipality”, Dr. Radmila Jevtic, 22 October 2009.
- (17) Psychological Evaluation Report of Dragisa Djukic, Dr. Nada Morina, 10 August 2009.
- (18) Report on Mental Health Status of Dragisa Djukic born on 1970 in Zubin Potok, Drs. Nada Morina and Fahri Drevinja, 07 August 2009.
- (19) Initial Incident Report, Police Officer Ljiljana Ristic, Srgt. Milenko Djukic, and Cpt. Drazo Bozovic, 18 June 2008.
- (20) Report on the Course of the Investigation, Police Officer Sasa Duric, 20 June 2008.
- (21) Forensics Laboratory Investigation Forms.
- (22) Record from the Crime Scene, KPS Mitrovica.
- (23) Police Officer’s Report, Police Officer Milenko Djukic, 19 June 2008.
- (24) Report on the Course of the Investigation, Police Officer Sasa Duric, 19 June 2008.
- (25) Report on Death of Late Minic Radoslav, Dr. Miroslav Milosevic, 20 June 2008.
- (26) Report on Death (Radoslav Minic), Dr. Miroslav Dancetovic.
- (27) Criminal Report, Police Officer Sasa Duric, 20 June 2008.

- (28) Forensics Identification Report, Police Officer Sasa Duric, 19 June 2008.
- (29) List of Weapons Found, Police Officer Srecko Vuckovic, 19 June 2008.
- (30) Police Sketch, p. 149 of Prosecution Binder.
- (31) Description of Photo Album, 20 June 2008.
- (32) Police Interoffice Memo, Sgt. Dejan Lazarevic, 27 March 2009 (p. 243 of Prosecution Binder).
- (33) Discharge List with Epicrisis (Petar Djukic), Dr. Ljubomir Jaksic, 01 July 2008.
- (34) Death Certificate (Petar Djukic), Dr. Ljubomir Jaksic, 01 July 2008.

During the main trial session on 24 June 2010, the Accused gave a statement and answered questions.

D. Evaluation of Presented Evidence

1. Factual Findings

Upon the evidence presented during the course of the main trial, the Court considers the following facts as proven:

On 18 June 2009, at approximately 22:00 hrs, Dragisa Djukic phoned Sinisa Djukic because he saw an unknown car parked in front of their residence. Sinisa Djukic went outside and spoke with the driver, who said the car had broken down. He then told the driver to move the car and returned inside.

Shortly thereafter, Dragisa Djukic phoned Sinia Djukic a second time regarding another vehicle parked near their residence and wanted him to alert the police. Sinisa Djukic went outside again, where he met his uncle Petar Djukic. Then Radoslav Minic arrived in his vehicle.

Sinisa Djukic, Petar Djukic and Radoslav Minic stood outside in front of the Djukic residence and talked. Then Sinisa Djukic walked away from the other two men towards the business premises located on the property. At that moment, Dragisa Djukic began firing an AK-47 7.62x39mm caliber automatic rifle from the attic window of the house towards Petar Djukic and Radoslav Minic. At least 13 shots were fired,² hitting both Petar Djukic and Radoslav Minic. Radoslav Minic collapsed on the ground, Sinisa Djukic took cover near the house, and Petar Djukic fled away from the house.

Sinisa Djukic immediately drove Radoslav Minic to the Zubin Potok Health Center in Minic's car. Radoslav Minic had sustained two serious gun shot wounds which caused his death at 23:00 hrs on 18 June 2008.³

² 13 bullet cases of caliber 7.62x39mm were discovered by police at the crime scene, Forensic Laboratory Investigation Form, nr. 2008-bh-094.

³ Autopsy Report (Radoslav Minic), Faculty of Medicine in Pristina, Institute of Pathological Anatomy, S nr. 1906/08, 19 June 2008.

Petar Djukic sustained three gun shot wounds, in the right leg, left shoulder and right hand.⁴ He was treated in the intensive unit of the Health Care Center in Mitrovica and was recovering when he died suddenly 14 days later, on 01 July 2008, from a blockage of the pulmonary trunk due to a blood clot.

2. Evidence Establishing the Factual Findings

Apart from the Accused, Sinisa Djukic is the only eye-witness to survive the event. The Court found that his testimony on 15 April 2010 regarding the factual events of the critical night to be credible and reliable. It is also corroborated by the testimonies of Police Officers Sasa Duric and Srecko Vuckovic, the partial testimony of Dragisa Djukic (regarding the part of the night which he could recall), and the forensics evidence. Sinisa Sjukic testified to as follows.

On 18 June 2009, at approximately 22:00 hrs, Sinisa Djukic was home when he received a phone call from his brother, the Accused Dragisa Djukic, regarding a vehicle which was parked outside of the front of the residence which they shared. Sinisa Djukic went outside and recognized a person by the name Vlaskovic in a red Golf. They spoke briefly and Sinisa Djukic told him to move his car. At this time, the lights of Dragisa Djukic's house were turned off, and Dragisa Djukic yelled from inside the house to the unknown person to move his car. After the man moved his car, Sinisa Djukic returned inside his home.

A few minutes later, Sinisa Djukic received a second phone call from Dragisa Djukic regarding a different vehicle parked near their house. Sinisa Djukic returned back outside of the front of the house, during which time their uncle, Petar Djukic, arrived. While they were talking, Radoslav Minic, who was performing some electrical work on the premises, arrived in his vehicle and parked in the parking lot.

After the three men spoke briefly in front of the house, Sinisa Djukic headed towards the business premises on the property, while Radoslav Minic and Petar Djukic collected some tools from Minic's car. As they were walking back towards the house, there was a sudden burst of gunfire. From his position on the terrace next to the house, Sinisa Djukic could see that the flames from the gun shots were coming from the direction of the house, but he could not see the shooter. He saw bullet casings dropping from the direction of the house and heard Dragisa Djukic yell "What are you doing there?" Sinisa Djukic shouted "Don't shoot, it is us!"

Police Officers Sasa Duric and Srecko Vucotic testified that the police on-site inspection established that the shots had been fired from the attic of the house.

Upon being hit by the gun shots, Radoslav Minic collapsed on the ground. Petar Djukic fled in the direction away from the house and was also hit by gun shots. According to the testimony of Officer Srecko Vucotic and the Forensics Identification Report dated 19

⁴ Autopsy Report, Faculty of Medicine in Pristina, Institute of Pathological Anatomy, 01 July 2008.

June 2008, the police recovered 13 cartridges of 7.62x39 mm caliber from the crime scene.

Sinisa Djukic immediately drove Radoslav Minic to the hospital in Minic's car, and then returned home where he saw a wounded Petar Djukic in front of the house and an ambulance. Dragisa Djukic was also present. Sinisa Djukic asked Dragisa Djukic why he had fired at them. Dragisa started pulling at his hair and asked "what were you doing here?" Sinisa Djukic then asked where the weapon was located, and Dragisa Djukic told him it was upstairs.⁵

Officer Sasa Duric, who was the first to arrive on the scene with Officer Miodrag Vucic, confirmed that when they arrived, Dragisa Djukic and Sinisa Djukic were standing in front of the house. Sasa Duric testified that the police asked what had happened and Sinisa Djukic stated that Dragisa Djukic had fired shots. Then Dragisa Djukic admitted such, stating "I did what I did". Officer Srecko Vuckovic also corroborated that Sinisa Djukic informed the police that Dragisa Djukic had fired shots at the men.

Sinisa Djukic went inside the house and located the automatic rifle upstairs. There were two clips tied together, and Sinisa Djukic removed the clips from the rifle, and also removed a bullet from the chamber. He brought the rifle downstairs. Police Officer Srecko Vucovic testified that Sinisa Djukic informed the police of the location of the rifle, which he had placed on a laundry barrel in one of the rooms on the first floor of the house. The police confiscated the rifle and two magazines taped together. One magazine was empty while the other contained 28 bullets.

3. Testimony and Credibility of Witness Beranka Djukic

The Court found that the testimony of Beranka Djukic was not credible due to the substantial contradictions between her statement given to police on 19 June 2008 and her testimony in the Courtroom.

Beranka Djukic testified that on the critical night, Dragisa Djukic was in the kitchen when Beranka Djukic went into their son's bedroom and fell asleep. She was awakened by the sound of gunfire and ran into the corridor where she saw Dragisa Djukic standing and a rifle on the ground.

That account differs substantially from Beranka Djukic's statement to the police, which was given immediately following the event when the details of the event were freshest in her memory. At that time, she provided, *inter alia*, the following specific details:

⁵ In both his statement to police on 19 June 2008 and his statement to the Prosecutor on 12 January 2009, Sinisa Djukic testified that Dragisa Djukic informed him of the location of the weapon inside the house. During Sinisa Djukic's testimony before the Court on 15 April 2010, he did not recall that Dragisa Djukic answered his question. However, the Court believes that the statements to the police and prosecutor which were taken nearer in time to the event present the more full recollection.

- Dragisa Djukic told Beranka Djukic that he would stay awake to watch for people who might try to steal from them.
- Dragisa Djukic went to the upper floor of the house with a mattress in order to guard the house from there.
- Beranka Djukic tried to convince Dragisa Djukic not to guard the house all night as he had to drive the next morning.
- Beranka Djukic heard shooting coming from the upper floor where Dragisa Djukic was located, and she yelled to him “Do not shoot, do you want to kill Raca, Miso and Pero!”
- After the shooting, Dragisa Djukic came down from the upper floor with a rifle in his hand.

Beranka Djukic was directly questioned about these details during her testimony. She denied that any of the above statements were true, attributing the fact that they were in her police statement to her “state of shock” when the police interviewed her on 19 June 2008. Nevertheless, she confirmed to the Court that after the interview, the police read her statement back to her and she signed it without any objections. She further testified that she received a copy of her statement from the police that same day, yet she still did not object to the information contained, even when she admittedly recognized that the information was not accurate. In fact, Beranka Djukic did not make any attempt to correct these allegedly inaccurate statements until almost a full year later, when she was interviewed by the Public Prosecutor on 26 May 2009.

The Court finds that the differences in her police statement and her testimony are too great to attribute to possible simple misstatements during her police interview. Neither does the Court believe that the statements were conjured up by the police. Furthermore, if Beranka Djukic had erroneously provided such details while in a state of shock, details which the Court notes would be in harmony with the events of that night according to the testimony of others, the Court does not find it credible that she would agree to the statement after hearing it read aloud, sign the statement, receive a copy and yet still not correct the statement for almost a year.

The Court also noted that when questioned during her testimony, Beranka Djukic was hesitant and elusive when her answers might be viewed as harmful to her husband’s case. For example, she was asked clearly and directly by the Public Prosecutor whether Dragisa Djukic had “any weapon on him” when she saw him in the corridor immediately after the shooting. She relied “No.”⁶ Later, she was confronted with her statement to police that she saw Dragisa Djukic with a rifle in his hand, to which she replied “he did not have anything in his hands.”⁷ Only upon being asked a third time did she admit that she did see a weapon in the corridor with Dragisa Djukic which had not been there before.⁸ It is clear that during her testimony, Beranka Djukic was concerned with showing the Accused, her husband, in the best light possible.

⁶ Minutes of the Main Trial Hearing, 15 April 2010, p. 20.

⁷ Minutes of the Main Trial Hearing, 15 April 2010, p. 24.

⁸ Minutes of the Main Trial Hearing, 15 April 2010, p. 26.

For these reasons, the Court accepts Beranka Djukic's statement which was given to police on 19 June 2008 as credible and a more accurate account of the events of that night, and rejects the modification of the events attempted in her Court testimony. The Court therefore based its factual findings upon her police statement.

4. Statement of Deceased Victim Petar Djukic

On 20 June 2008, Petar Djukic was interviewed by the police while in the hospital. His statement was given in general terms, without providing minute details, and generally corroborates the account given by Sinisa Djukic above – that the three men were standing outside of the front of the house speaking when suddenly shots were fired. However, there is one significant contradiction in the statement; Petar Djukic stated that Dragisa Djukic was outside the house with Sinisa Djukic and Radoslav Minic when Petar Djukic arrived, and that Dragisa Djukic was speaking to the men and then shook hands and went inside the house.

It is possible that under the stress of his injuries and/or due to effects of medication, Petar Djukic was not in the best condition to provide a clear and accurate recollection at the time of the police interview. However, due to his unfortunate death, there was no opportunity for this discrepancy to be clarified during a later interview or before the Court.

As according to the accounts of Sinisa Sjukic, Dragisa Djukic, and Beranka Djukic, Dragisa Djukic was not outside of the house speaking with the men at any time that evening, and because Petar Djukic can not be further questioned on this fact, the Court considers it not proven. In any event, due to the Court's finding that at the precise moment of the shooting, Dragisa Djukic was not mentally competent (explained in detail below), the possibility that he may have been standing outside and speaking with the men prior to the event would not have any bearing on the outcome of the verdict.

5. Testimony of the Accused

The Accused gave a statement and answered questions on 24 June 2010. Of the critical night, he recalled the following:

His wife Beranka Djukic went into the bedroom with their son at about 22:00 hrs. Dragisa Djukic locked the entrance door and rested some tiles against the door for security reasons. He saw that the hatch to the attic was open and the attic windows were also open. When he went into the attic to close the windows, he saw a red Golf outside of the house with someone sitting inside it. He phoned Sinisa Djukic to tell him about the Golf. He also yelled at the person from the upstairs "Move that from here!"

A short time after that car had left, Dragisa Djukic recalled seeing two persons on the road outside, and heard one of them say "There he is, we can not do anything to him but

we will do his son.” This alarmed him and he phoned his brother a second time to alert him to call the police.

Dragisa Djukic could not remember anything else that happened that night after that after that point. He could not recall picking up the rifle, firing the weapon, or coming downstairs afterwards and seeing his wife.

E. Mental Competence of the Accused

On 24 June 2009, the Pre-Trial Judge issued an Order for a psychiatric examination and analysis of the Accused in order to assess whether he suffered from any mental disability or decreased mental capacity at the time of the commission of the criminal offence. Extensive psychoanalysis and testing were carried out, and the results analyzed and reported upon in three written expertises.

Neuropsychiatrist's Expertise⁹

Neuropsychiatrist Dr. Radmila Jevtic examined the Accused on four separate occasions in the Mitrovica Detention Center from June to September 2009. Psycho-testing on the Accused was also performed on 12 August 2009. In her written expertise, Dr. Jevtic finds that the Accused does not suffer from any permanent mental disorder or disease. However, the Psycho Test showed an “imbalance of personality, accumulated fatigue, psycho-emotional pressure and accumulated fear ... as well as a strong feeling of fear and threat and a paranoid experience of reality, [all of] which caused the mental de-compensation of the patient, which by its intensity and quality was, *tempore criminis*, of psychotic extent.” Dr. Jevtic opines that the Accused suffered from paranoia and at the time of the criminal offence, was obsessed with the fear that someone was going to try to kill his son. She concludes that:

at the time of the perpetration of the charged criminal offence, Dragisa Djukic was in a state of temporary mental disorder of the type of Paranoid Psychotic Reaction followed by a strong affective “trigger, the affect which hindered his logical thinking due to affect-narrowed consciousness /influence of affect on consciousness and reasoning.”

Psychological Evaluation Report¹⁰

In her expertise, Dr. Nada Morina found that the Accused suffered from a disturbance in the balance of his personality, which was characterized by a “strong intra-psycho-tension and an over-reaction to external provocation”. She concludes that this personality

⁹ “Psychiatric Expertise for Djukic Dragisa from the Village of Jabuka-Zubin Potok Municipality”, Dr. Radmila Jevtic, 22 October 2009.

¹⁰ “Psychological Evaluation Report” of Dragisa Djukic, Dr. Nada Morina, 10 August 2009.

“disbalance”, together with accumulated fatigue and stress, psychological-emotional tensions, a feeling of fear and endangerment, and a paranoid perception of reality, caused a psychical de-compensation, which at the moment of the criminal offence was of psychotic level in both intensity and quality.

University Clinic Report on Mental Health Status¹¹

The report on the mental health status of the Accused submitted by the University Clinic and signed by Drs. Fahri Drevinja and Nada Morina is based on the neuropsychological examination, clinical examinations from 21 July 2009 to 07 August 2009, laboratory analyses and research, and additional methodology. The report concludes that the criminal offence was a direct result of the psychopathological substrate, characteristic of mental disorder known as delusive disorder/paranoia. At the time when he fired the weapon, Dragisa Djukic was highly mentally incompetent, could not understand the seriousness of the criminal offence and had no control over his actions. The doctors propose that criminal accountability is excluded and Dragisa Djukic should be put into mandatory psychiatric treatment in a prison hospital.

Drs. Radmila Jevtic and Fahri Drevinja testified as experts before the Court. They each adopted and supported the findings of their reports and provided detailed explanation of their conclusions.

The Court is fully satisfied with the expertise, and accepts in their entirety the expert reports and the testimonies of Drs. Radmila Jevtic and Fahri Drevinja. Therefore, it is determined that at the time of the criminal offence, Dragisa Djukic was suffering from a temporary mental incompetence as defined in Article 12 Paragraph (1) of the PCCK, and was not able to understand or to control his actions.

F. Legal Qualification

1. Applicable Law

The *substantive law* applicable in the case is the Criminal Code which was in force at the time when the criminal offence was perpetrated. The criminal act was committed on 18 June 2008. The criminal code in effect at that time was the Provisional Criminal Code of Kosovo (PCCK) which entered into effect on 06 April 2004.

Article 2 Paragraph (1) of the PCCK provides that in the event of a change in the applicable law prior to the final verdict, the law more favorable to the perpetrator shall be applied. In this case, the current law – the Criminal Code of Kosovo (CCK) which entered into effect on 06 January 2009, is not more favorable to the Accused in this particular case. Therefore, the PCCK is the applicable substantive law.

¹¹ “Report on Mental Health Status of Dragisa Djukic born on 1970 in Zubin Potok”, 07 August 2009.

With regard to the applicable *procedural law*, due to the special circumstances in North Mitrovica and the northern municipalities of the Mitrovica district, the Trial Panel refers to the Provision Criminal Procedure Code of Kosovo (PCPCK) which entered into force on 06 April 2004. The Court notes that the applied paragraphs of the PCPCK are fully identical with the Kosovo Code of Criminal Procedure (KCCP) which entered into force on 06 January 2009.

In addition, because of the mental incompetence of the Accused during the commission of the criminal offence, UNMIK Reg. nr. 2004/34 on Criminal Proceedings Involving Perpetrators with a Mental Disorder is also applicable as *lex specialis*.

2. *With Regard to the Charges of Aggravated Murder and Attempted Murder*

The Indictment charges the Accused with Aggravated Murder, contrary to Article 147 Item (4) of the PCCK, with regard to the killing of Radoslav Minic, and Attempted Murder, contrary to Article 146 as read with Article 20 of the PCCK, with regard to the shooting of Petar Djukic. However, the Court finds that the factual circumstances correctly fall under the legal qualification of Aggravated Murder contrary to Article 147 Items (4) and (11) of the PCCK.

Item (4) of Article 147 qualifies a killing as an “aggravated” murder if in the process of depriving a person of his life, the perpetrator intentionally endangers the life of another persons. When Dragisa Djukic intentionally fired his automatic rifle at the men standing outside of the front of his house, he caused the death of Radoslav Minic and endangered the life of Sinisa Djukic due to the close proximity of the men and the Accused’s use of a lethal weapon. Item (11) of Article 147 qualifies a killing as “aggravated” murder if the perpetrator intentionally commits two or more murders. When read together with Article 20 of the PCCK, this provision encompasses the attempted murder of Petar Djukic in addition to the killing of Radoslav Minic.

3. *State of Temporary Mental Incompetence*

Article 11 of the PCCK bars criminal liability for criminal acts committed while the perpetrator is mentally incompetence. As explained above, at the time of the commission of the criminal act, Dragisa Djukic was in a state of temporary mental incompetence, and therefore is not criminally liable for his actions.

UNMIK Reg. 2004/34 dictates the grounds for imposing mandatory psychiatric treatment in cases where the perpetrator suffers from mental incompetence. Section 5 of the Regulation states that the Court “shall impose a measure of mandatory psychiatric treatment at liberty” where the Court determines that there is a serious danger that the perpetrator will commit a future violent criminal offence against another person and psychiatric treatment at liberty will remove this danger. Article 12.3 provides that if the

Accused is found to have been mentally incompetent at the time of the commission of the criminal offence, the Court “shall issue a ruling to impose a measure of mandatory psychiatric treatment” if where the grounds of Section 5 are satisfied and the Public Prosecutor filed a motion to impose a measure of mandatory psychiatric treatment.

During their expert testimony, both Dr. Radmila Jevtic and Dr. Fahri Drevinja were directly questioned about the danger which Dragisa Djukic would pose to others in the future. Dr. Jevtic testified that there always exists a possibility of a recurrence of another episode of extreme stress and delusional paranoia. However, in the majority of cases such a condition does not repeat, and in the particular case of Dragisa Djukic, the patient is more inclined to commit suicide rather than homicide in the future due to his depression and guilt over the act he committed. Dr. Drevinja testified that if Dragisa Sjukic does not undergo regular therapy, there is risk that he might experience another future mental de-compensation, however this possibility is decreased. He confirmed Dr. Jevtic’s statement that there is a greater risk that the Accused would commit suicide rather than homicide.

Both experts agreed that Dragisa Djukic would benefit from psychiatric treatment. Dr. Drevinja testified that the Accused should be put under the strict control of a psychiatrist for a limited time, primarily in order to prevent suicide, but also to prevent danger to others. He opined that the Accused should be institutionalized for a period of approximately two years and then his mental condition could be re-evaluated and re-assessed. Dr. Jevtic also testified that Dragisa Djukic should be under the control of a psychiatrist, and specifically, that he should receive monthly injections against paranoia and oral medication. Both experts agreed that now that the Accused’s family members are informed about Dragisa Djukic’s condition, they are better able to pick up on signs or symptoms of a future episode, and will be on alert to read whether his condition is deteriorating.

The Court finds that the grounds for imposition of mandatory psychiatric treatment under Article 5 of the UNMIK Regulation are met. There is a danger that Dragisa Djukic could commit a future violent criminal offence, and this risk can be addressed by psychiatric treatment. Furthermore, during her closing statement on 05 July 2010, Prosecutor Maria Bamieh orally submitted a motion that if the Court does not find that the Accused is criminally liable for his acts due to mental incompetence, then the Court should order mandatory psychiatric treatment pursuant to the UNMIK Regulation. Therefore the legal preconditions for ordering mandatory psychiatric treatment under the law are satisfied, and thereby orders Dragisa Djukic to undergo mandatory psychiatric treatment while at liberty.

4. With Regard to the Weapons Charge

Dragisa Djukic pled guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK. He testified that his sister and brother-in-law had brought the weapon, an AK-47, Yugoslav made, AB-2, calibre 7,62x39 mm, with serial number C-50558, from Montenegro during the war and

had left the weapon in his house approximately two years prior to the event. Dragisa Djukic was aware of the presence of the weapon in his home without a valid authorization card for an unknown period of time until 18 June 2008. Therefore, he is guilty of and criminally liable for the unauthorized *possession* of the weapon during this period.

Because the Court finds that at the time of the shooting, Dragisa Djukic was mentally incompetent, he can not be criminally liable for the act of unauthorized *use* of the weapon on the night of 18 June 2008.

G. Rejected Motions

During the main trial hearing on 28 April 2010, Defence Counsel Kacaniku made an oral motion for the Trial Panel to conduct an on-site crime scene visit in order to personally view the configuration of the field, specifically the direct sight line from the attic window to the crime scene. The Legal Representative of the Injured Party Boban Savic expanded the Defence Counsel's proposal, and requested a reconstruction of the scene be performed. After deliberation, the trial panel rejecting both motions because the documentation of the case file included crime scene reports and ample photographs of the scene. Therefore, the trial panel already had all the necessary information and documentation in order to come to a judgment.

During the main trial hearing on 24 June 2010, Legal Representative of the Injured Party Miodrag Brkljac proposed that the Trial Panel order additional expertise from the expert doctors who testified, in order to allow them to consider new information and evidence which came to light after they had completed their initial examination of the Accused and review of the case file. The Legal Representative specifically raised the point that the testimony of Beranka Djukic was radically different from her first statement to police. After deliberation, the Trial Panel rejected the motion because the written expertises together with the expert testimonies were clear and complete, with a unified conclusion. Any questions left unanswered by the written expertises were posed to the experts during their testimony. Furthermore, the witness testimonies before the Court could not have had any effect on the mind of the Accused at the time of the commission of the criminal act.

H. Sentencing

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 Accused has no previous criminal record, that he admitted this criminal offence - he pled guilty to the charge of unlawful possession of weapon, and that he has to provide for his wife and three children.

The Court took as an aggravating circumstance that in Kosovo society, the unauthorized possession of weapons is highly spread and that these weapons pose a special danger in that are commonly used to solve any kind of conflict. As the Accused himself expressed, he should not have possessed that weapon and if he did not have access to such a weapon, the killings would not have occurred.

For the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK the law foresees a punishment of a fine or imprisonment of one to eight years. The Court imposed a sentence of two years of imprisonment for this criminal act.

Dragisa Djukic has been in detention on remand since 19 June 2008, a period of over two years. Pursuant to Article 73 Paragraph (1) of the PCCK, time served in detention on remand is to be credited to the imposed punishment of imprisonment. Therefore, the Accused has already served in full the two years of imprisonment to which he was sentenced, and was ordered released immediately.

I. Confiscated Items

The weapon, an AK-47, Yugoslav made, AB-2, calibre 7,62x39 mm, with serial number C-50588, is confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

J. Costs

As Dragisa Djukic was found guilty of Unauthorized Ownership, Control, Possession or Use of Weapons, he must reimburse the part of the costs of the criminal proceedings related to this charge pursuant to Article 102 Paragraph (1) of the PCPCK, with the exception of the costs of interpretation and translation. Pursuant to Article 102 Paragraph (2), he shall not reimburse the costs related to the murder charges. 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 PCPCK.

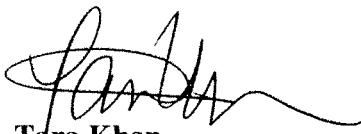
K. Compensation Claim

On 28 April 2010, Legal Representative Boban Savic submitted a compensation claim on behalf of Injured Parties Zoran Minic (brother of victim) and Jagoda Minic (mother of victim) in the amount of 178,240.00 euro for damages stemming from the killing of Radoslav Minic. It is undisputed that the compensation claim arises from the act of the Accused. Nevertheless, because the Court holds that the Accused is not criminally liable for his act, the criminal trial panel can not compel the Accused to compensate the Injured Party for damages arising from his act, pursuant to Article 112 of the PCPCK.

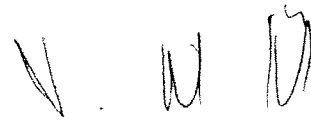
For this reason, the property claim of the Injured Party is referred for *civil* proceedings pursuant to Article 112 Paragraph (3) of the PCPCK.

**District Court of Mitrovica
K. nr. 02/2010**

Prepared in English, an authorized language.



**Tara Khan
Recording Officer**



**Hajnalka Veronika Karpati
Presiding Judge**



**Charles L. Smith, III
Panel Member**



**Nikolay Entchev
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 Article 398 Paragraph (1) of the PCPCK.