

**DISTRICT COURT OF MITROVICA**  
**P Nr. 215/07**  
**16 February 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 Klaus Jung and Nikolay Entchev as panel members, with the participation of Tara Khan EULEX Legal Officer as Recording Officer, in the criminal case against;

**Enver Hasani**, charged, according to the Indictment of the District Public Prosecutor PP. Nr. 169/2007 dated and filed with the Registry of the District Court of Mitrovica on 10 September 2007, with the following criminal offences;

- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the Provisional Criminal Code of Kosovo ("PCKK")
- **Aggravated Murder**, contrary to Articles 147 Item 9 of the PCKK

After having held the main trial hearing in public on 21, 28 January, 04 and 16 February 2010, all in the presence of the Accused Enver Hasani, his Defence Counsel Rexhep Kacaniku, EULEX Public Prosecutor Maria Bamieh, Injured Parties Selim Bullaku (on the sessions on 21 and 28 January 2010) and Besa Hasani,

After the trial panel's deliberation and voting held on 16 February 2010, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo ("CPCCK"), pronounced in public and in the presence of the Accused, his Defence Counsel, the EULEX Public Prosecutor and the Injured Party Besa Hasani the following

**VERDICT**

The accused **Enver HASANI**, son of Haxhi Hasani and Sherife Halilaj, born on 01 January 1948, in Klloqernica Village, Municipality of Skenderaj, Kosovar Albanian, last known residence at Klloqernica Village, Municipality of Skenderaj, worker, widow with seven grown-up children, average economic status, no known previous conviction, in detention since 31 May 2007

Is



## FOUND GUILTY

- **because** on 31 May 2007 at around 11:30 hours, in his house in Kllo dernica village – Skenderaj, the accused, out of jealousy and to prevent his wife from leaving, killed his wife Raba Hasani using a weapon M-48, Yugoslav made, calibre 7,92x57mm, with serial number 167535, firing at close range, at least three times towards the victim hitting her on the chest and abdomen area. Raba Hasani died at the scene due to the wounds she suffered.

By doing so, the Accused Enver Hasani committed and is criminally liable for the criminal act of

**A, Aggravated Murder**, contrary to Article 147 Item 9 of the Provisional Criminal Code of Kosovo (PCCK)

- **because** the accused was in possession of a weapon M-48, Yugoslav made, with serial number 167535 without a valid authorization card and used the same weapon to kill his wife on 31 May 2007.

By doing so, the Accused Enver Hasani committed and is criminally liable for the criminal act of

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

THEREFORE, the Accused ENVER HASANI is

## SENTENCED

- to 14 /fourteen/ years of imprisonment for the criminal act of Aggravated Murder /Count A/
- to 2 /two/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons /Count B/

The aggregate punishment is determined in 15 /fifteen/ years of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCCK.

The time spent in detention on remand since 31 May 2007 is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.



The weapon M-48, Yugoslav made, calibre 7,92x57mm, with serial number 167535 is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the CPCCK.

The property claims of the injured parties are referred for civil proceedings pursuant to Article 112 Paragraph (2) of the CPCCK.

## REASONING

### A. Procedural Background

Indictment PP nr. 169/2007 dated 10 September 2007 and filed by District Public Prosecutor Shyqyri Sylja charged the Accused with Aggravated Murder contrary to Article 147 Paragraph (9) of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 Paragraph (2) of the PCCK. The Indictment was confirmed on 20 November 2007 and the Main Trial began on 12 February 2008.

However, due to the forced displacement of the Mitrovica District Court staff from the courthouse in March 2008, the main trial was disrupted after a few sessions and could not be completed. The EULEX Chief Prosecutor took over the case on 17 August 2009 and assigned it to District Public Prosecutor Maria Bamieh, who petitioned for EULEX judges to hear the case.

EULEX judges took over the case on 14 October 2009 and held the Main Trial on 21 and 28 January 2010, and 04 and 16 February 2010. Closing arguments from Prosecutor Maria Bamieh and Defence Counsel Rexhep Kacaniku, as well as a statement by Injured Party Besa Hasani, were heard on 16 February 2010. The Verdict was orally rendered the same day.

### B. Competence of the Court

Under Article 23 Item 1) i) of the CPCCK, 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 CPCCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.



As set forth above, the charge of Aggravated Murder pursuant to Article 147 Item 9 of the PCKK allows for the imposition of a minimum sentence of ten years of imprisonment. Further, the indictment in this case alleges that the accused committed the acts in Kllojernica village of Skenderaj Municipality.

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

On 14 October 2009 the President of the Assembly of EULEX Judges assigned the case to EULEX judges based on Articles 3.3 and 3.5 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

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 Klaus Jung and Nikolay Entchev as panel members. All three judges are assigned to the District Court of Mitrovica.

### **C. Summary of Evidence Presented**

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

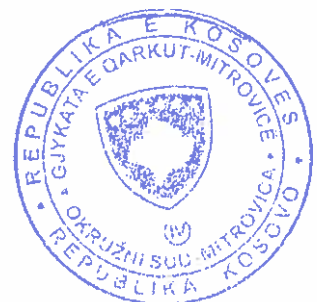
- (1) Selim Bullaku – Injured Party, 28 January 2010
- (2) Besa Hasani – Injured Party, 28 January 2010
- (3) Skender Hasani – brother of Accused, 02 February 2010

During the course of the main trial the statements of the following witnesses were read out:

- (4) Lumturije Hasani – Injured Party, statement of 03 September 2007, read on 04 February 2010
- (5) Patriot Hasani – Injured Party, statement of 03 September 2007, read on 04 February 2010

On 04 February 2010, the following documents were read into the record:

- (6) Police Report 2007-BI-161 dated 31 May 2007 at page 90 of Prosecution bundle.
- (7) Police Report by Toger Muhamet Kajtazi dated 31 May 2007 at page 110 of Prosecution bundle excluding the part of the report where the Accused gives information about the criminal offence committed.
- (8) Crime Scene Investigation Report by Kasim Osmani and Fadil Gashi dated 31 May 2007 at page 105 of Prosecution Bundle.



- (9) "List of Evidence" Police Report by Kasim Osmani dated 14.08.2007 at page 151 of Prosecution Bundle.
- (10) Forensics Identification Report by Nexhmije Deliu dated 31 May 2007 at page 136 of Prosecution Bundle.
- (11) Letter written by Accused at page 25 of Prosecution Bundle.
- (12) Letter written by Accused dated 17 January 2008 at page 60 of Prosecution Bundle.
- (13) OMPF Medical Examiner's Report MA07-129 dated 20 June 2007 at page 167 of Prosecution Bundle.
- (14) Forensics Report by Fejsal Lutfiu at page 158 of Prosecution Bundle.
- (15) Forensics photographs on pages 185-196 of Prosecution Bundle.

During the main trial session on 04 February 2010 the Accused did not give a statement, but answered questions from the Prosecutor, Injured Party Besa Hasani and the Panel members.

#### **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:

Over a period of a few years prior to the critical event, the Accused Enver Hasani and his wife, victim Raba Hasani, were experiencing marital difficulties stemming from the Accused's strong, albeit baseless, suspicion that his wife was having an inappropriate relationship with Ibish Hasani. The Accused eventually insisted that his wife undergo a swearing ceremony to prove her fidelity, which took place before several members of the family including their adult daughter Besa Hasani and the victim's brother Selim Bullaku. Despite this ceremony, and the victim's consistent denial of any wrongdoing, the Accused's suspicion and jealousy persisted, causing further problems in the marriage and leading up to the murder.

On 31 May 2007 at around 11:30 hrs, the Accused and his wife were home alone in their house in Kllo dernica village, Skenderaj Municipality. The Accused had consumed at least one beer. He had stayed home from work. After they had some coffee, the Accused saw that his wife was picking up clothing and asked what she was doing. She replied that she wanted to go to Skenderaj. They then had a verbal argument regarding whether she needed the Accused's permission in order to go to Skenderaj. The Accused became angry and, in order to prevent his wife from leaving, as well as out of jealousy, he picked up his M-48 Yugoslav made, calibre 7,92x57mm rifle with serial number 167535, and shot his wife, Raba Hasani, at least three times at close range, killing her instantly.



## 2. Evidence Establishing the Factual Findings

There were no eyewitnesses to the events which occurred in the morning of 31 May 2007. However the Court was able to sufficiently clarify the factual situation from the numerous and corroborating witness statements, the documentary evidence of the case file, the crime scene report, the photo documentary, the ballistic report, the autopsy report, and the Accused's own admissions.

### a. Summary of the Accused's Testimony

During the main trial session on 04 February 2010, the Accused voluntarily answered questions from the Prosecutor, Injured Party Besa Hasani and the Panel. In the words of the Accused, the events leading immediately up to his killing of his wife were as follows:

The Accused was at home alone with his wife on the morning of 31 May 2007. After they had coffee together, the Accused saw that his wife was gathering clothing from around the couch. The Accused asked her what she was doing and she replied that she was preparing the clothes because she wanted to go to Skenderaj. The Accused then told his wife that she needed his permission in order to go to Skenderaj because he was her husband. She refused to ask for his permission, and stated that she did not need to ask him because he was a tired, old man who was dead even though he was still alive. Due to this "verbal attack" by his wife, the Accused got upset and "lost control".<sup>1</sup> He picked up his rifle, which was lying in the same room, and shot her.

The Accused could not recall the details of the actual shooting, including how many times he fired the rifle. However, the autopsy report confirms that Raba Hasani was shot at least three times at close range using a rifled firearm, that each of the bullet wounds was individually fatal, and that the victim would have suffered an instantaneous death from these wounds.<sup>2</sup>

With regard to his belief of an ongoing relationship between the victim and Ibish Hasani, the Accused testified that he "never" suspected his wife of having such a relationship<sup>3</sup> and "never accused her" of such.<sup>4</sup> When questioned why the victim was made to perform a swearing ceremony before the family, the Accused stated that his wife thought he suspected her of something, but he did not.<sup>5</sup>

The Accused also testified that he never physically abused the victim during their marriage and that they got along very well.<sup>6</sup> He further testified that the victim enjoyed great freedom in their marriage – that "she could go wherever she wanted."<sup>7</sup>

<sup>1</sup> Minutes of the Main Trial hearing on 04.02.2010, p. 19, 22 & 23.

<sup>2</sup> OMPF Medical Examiner's Office Autopsy Report dated 20 June 2007, p. 7.

<sup>3</sup> Minutes of the Main Trial hearing on 04.02.2010, p. 13 & 16.

<sup>4</sup> Minutes of the Main Trial hearing on 04.02.2010, p. 19.

<sup>5</sup> Minutes of the Main Trial hearing on 04.02.2010, p. 17.

<sup>6</sup> Minutes of the Main Trial hearing on 04.02.2010, p. 22.



*b. Partial Acceptance of the Accused's Testimony*

With regard to the morning of 31 May 2007, the Court accepted the Accused's testimony as credible only in so far as he described the objective factual circumstances which occurred on that critical morning. For example, the Court accepts that the victim was picking up clothing for the purpose of preparing to leave the house to go to Skenderaj, as testified by the Accused and supported by photographs of the crime scene.

However, with regard to the Accused's subjective treatment of the victim during their marriage, the Court found that the Accused's testimony was not credible. Specifically, the Court rejects the Accused's denial of long-term abuse of the victim in the years prior to the killing and of his suspicions and jealousy regarding an alleged relationship between the victim and Ibish Hasani. These denials are directly challenged by the testimonies of the children and brother of the victim – and in one instance by the Accused himself – and the Court gave credit to these witness statements (as detailed below).

Of particular note is the Accused's claim that the victim was able to enjoy freedom of movement in their marriage. He testified that the victim was free to come and go from the house. However this is in direct contradiction to his own explanation that their argument on the critical morning stemmed from the victim's desire to leave the house *without* his permission. Other witness testimonies confirm that the victim needed the permission of the Accused to go somewhere and was not allowed to travel outside the home alone.

*c. Testimonies of Credible Witnesses*

While the testimonies of the children of the Accused and victim – Besa Hasani, Lumturije Hasani, and Patriot Hasani – as well as of the brother of the victim – Selim Bullaku – can not provide any concrete details of the critical event on 31 May 2007, they do provide a clear picture of the long-term abuse of victim Raba Hasani by the Accused during their marriage, the victim's fear of the Accused, and the Accused's persistent suspicions and accusations of an affair between the victim and Ibish Hasani. These testimonies are consistent and credible, and corroborate one another.

**Selim Bullaku** testified that the Accused informed him that Ibish Hasani had been alone with his wife (victim Raba Hasani) and that he had suspicions about both of them. Approximately two months after this discussion, the Accused made the victim swear on the head of her son and on the head of Selim Bullaku that she did not have any relationship with Ibish Hasani. The victim was forced to perform this swearing ceremony in front of Selim Bullaku and other members of the family. The victim later told Selim Bullaku that despite the swearing ceremony, the Accused continued to suspect her of having a relationship with Ibish Hasani and never truly reconciled with her.

<sup>7</sup> Minutes of the Main Trial hearing on 04.02.2010, pp. 13, 18-19.



Selim Bullaku also testified that on one occasion the victim left her marital home for several days and went to stay at the home of her daughter, Besa Hasani, because of a fight with the Accused regarding Ibish Hasani and because she was afraid of the Accused. She took her two children, Patriot and Lumturije, with her because she was afraid that the Accused would harm them. After this, the victim “did not dare” to return home on her own.<sup>8</sup> However, the family members intervened and brought her back to her home with the Accused, upon when she informed Selim Bullaku that she was afraid of the Accused because he had threatened her and had previously sexually violated her with a water hose and a beer bottle.<sup>9</sup> The victim told Selim Bullaku that after this violence, she was never at ease with the Accused.

According to Selim Bullaku, the murder occurred over one year after the swearing ceremony and approximately five to six months after the victim had left home for a few days and stayed with Besa Hasani.

**Besa Hasani** testified before the Court on 28 January 2010. According to her testimony, the problems in her parents’ marriage which led to the murder started around 2003/2004. The Accused was drinking, and would exert a great deal of pressure on the victim, which Besa Hasani believes caused her mother to have fainting spells. The victim was required to ask permission from the Accused in order to leave the house for any reason. When the Accused would allow her to go out somewhere, she would not be allowed to go alone but would have to be accompanied by the Accused or one of their children. In addition, the Accused was always accusing his wife of having a relationship with Ibish Hasani, and this continued even after the victim underwent the swearing ceremony.

Besa Hasani also testified about the Accused’s violent behaviour towards his children. On one occasion he threw an axe towards his daughter Lumturije Hasani, and on another occasion he hit Besa Hasani two or three times in the head with a torch and threatened to “go get my rifle”.<sup>10</sup>

Besa Hasani corroborated Selim Bullaku’s testimony regarding the incident when the victim left her house with her children Patriot and Lumturije and stayed with Besa Hasani out of fear of the Accused. During the victim’s stay, she informed Besa Hasani for the first time about the various ways in which the Accused had abused her – including beating her, tying a rope around her neck, pointing a rifle at her neck, accusing her of having an affair with Ibish Hasani, and sexually violating her with a beer bottle.<sup>11</sup> The victim told Besa Hasani that while the Accused was violating her with the beer bottle he stated “Maybe this bottle is enough for you because I am not as big as Ibish, is he this big?”<sup>12</sup>

<sup>8</sup> Minutes of the Main Trial hearing on 28 January 2010, p.6.

<sup>9</sup> Minutes of the Main Trial hearing on 28 January 2010, p. 6 & 10; Statement of Selim Bullaku to Public Prosecutor dated 03.09.2007.

<sup>10</sup> Minutes of the Main Trial hearing on 28 January 2010, p. 12.

<sup>11</sup> Minutes of the Main Trial hearing on 28 January 2010, p. 12-13.

<sup>12</sup> Minutes of the Main Trial hearing on 28 January 2010, p. 13.



Besa Hasani also confirmed that after the family brought the victim back to her home with the Accused, and they allegedly reconciled, they continued to have problems and quarrels.

According to the statement of **Patriot Hasani**,<sup>13</sup> during the last 2-3 years, his parents quarrelled often and he was awakened from his sleep many times by the Accused's verbal threats to his wife. On one occasion Patriot witnessed the Accused threaten the victim with a weapon. Patriot stated that there were three reasons for the fighting – the Accused's drinking, money issues, and the Accused's suspicion that his wife was having a relationship with Ibish Hasani. When the family tried to convince the Accused that the victim was not having an affair with Ibish Hasani, he accused them of being on the victim's side and threatened to kill them as well. For this reason, Patriot and his sister went to stay with Besa Hasani in Skenderaj.

The statement of **Lumturije Hasani**<sup>14</sup> is consistent with Besa Hasani and Patriot Hasani in all aspects. Lumturije Hasani stated that her parents' marital problems began in 2003. Her father, the Accused, put pressure on her mother and threatened her. These threats were a result of three reasons: alcohol, money, and the Accused's belief that the victim was having an affair with Ibish Hasani. Lumturije corroborated that she, her mother and Patriot Hasani went to stay with Besa Hasani for some days because the Accused had threatened them and her mother was afraid to return home. Lumturije's statement also corroborates that the Accused compelled the victim to swear in the presence of family members that she was not having an affair with Ibish Hasani. However, despite this swearing, the Accused continued to suspect and maltreat his wife. In fact, Lumturije stopped her education in order to stay home and protect her mother from the Accused.

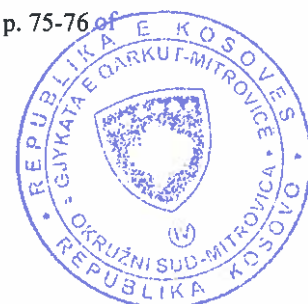
*d. Testimony of Skender Hasani*

The Court also heard the testimony of the brother of the Accused, **Skender Hasani**, on 04 February 2010. Skender Hasani's testimony did not add any relevant additional information to the evidence. Firstly, Skender Hasani did not witness the criminal offence, and only found out about the murder of the victim through his daughter. Secondly, the witness conveyed that when his daughter went to the home of the Accused on the critical day, she was only told by the Accused that he had killed his wife "for his own reasons" without any further specification.<sup>15</sup> Lastly, although the witness and his family lived in close proximity to the home of the Accused and the victim, and although the witness stated that he was close to the family, the Court found that his testimony could not be relied upon due to his lack of knowledge about the marital problems between the Accused and his wife. Skender Hasani testified that he did not have any knowledge of the

<sup>13</sup> Minutes of hearing of witness before District Public Prosecutors Office, 03 September 2007, p. 80 of Prosecution bundle.

<sup>14</sup> Minutes of hearing of witness before District Public Prosecutors Office, 03 September 2007, p. 75-76 of Prosecution bundle.

<sup>15</sup> Minutes of the Main Trial Hearing on 04 February 2010, p. 4 & 5.



Accused's concerns about Ibish Hasani, despite the fact that this suspicion was well known within the Accused's family and the victim's brother Selim Bullaku. He also testified that the only reason he was aware of for the victim having stayed at the home of Besa Hasani was because the victim was ill, whereas the testimonies of Selim Bullaku, Besa Hasani, Patriot Hasani, and Lumturije Hasani established that the three of them left the house following threats from the Accused and that the victim was afraid to return.

The only statement by Skender Hasani which was corroborated by other witnesses is that the Accused drank a great deal of alcohol, and "it was like water to him."<sup>16</sup>

*e. The Court's Conclusions*

In consideration of all the witness testimonies, as well as the statements of the Accused, the Court reached the following conclusions.

The Accused had a history of mistreating and abusing his wife in the years leading up to the murder. The victim enjoyed little freedom, and could only leave the house upon the permission of the Accused and while accompanied. The victim was physically abused by the Accused, including being sexually violated by the Accused using a beer bottle and a water pipe. The Court drew this last conclusion based on its finding that the testimonies of Besa Hasani and Selim Bullaku were credible, and that it is unrealistic that the victim, described as a simple wife and housemother from a small village, would invent such stories which would be extremely shameful and humiliating for her.

The Accused had become obsessed with his suspicion that the victim and Ibish Hasani were having an affair. This suspicion was not grounded on any rational basis. As pointed out by Defence Counsel in his closing, Ibish and the victim spent only a few minutes alone together during a time when there were many guests in the house. However, the fact that such a suspicion was unrealistic or irrational does not belie the conclusion that the Accused harboured it. In fact, it appears that the Accused held a persistent and strong belief that this relationship existed, and could not be swayed from this destructive belief by a formal swearing ceremony or the assurances of his close family members.

On 31 May 2007, the Accused killed his wife for two reasons; Out of jealousy stemming from his obsessive suspicions of her having an affair with Ibish Hasani, and in order to prevent her from leaving the house and going to Skenderaj.

The Court notes that it was not sufficiently established during the trial whether the victim intended to go to Skenderaj for a short visit, or whether she intended to leave her husband. The Accused testified that the victim intended for both of them to move together to Skenderaj. However, the Court heard ample evidence of abuse of the victim at the hands of the Accused, and cannot rule out that the victim was in the process of leaving her marital home, as she had done once previously out of fear of the Accused.

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<sup>16</sup> Minutes of the Main Trial Hearing on 04 February 2010, p. 4.



However, the exact intention of the victim on this point is not necessary for the adjudication of this trial.

## **E. Legal Qualification**

### *1. Applicable Law*

The panel referred to the Provisional Criminal Code of Kosovo as that was the criminal code in effect when the criminal acts were committed. The application of the new law, the Criminal Code of Kosovo would not be more favourable for the Accused. Under the law, in such a case, the law in effect at the time of commission of the criminal act shall be applied. With regard to the procedure code, the panel refers to the Criminal Procedure Code of Kosovo as the law in effect when the criminal case is tried.

### *2. Aggravated Murder vs Murder Committed in a State of Mental Distress*

There is no question as to the guilt of the Accused of committing a murder, as he admitted to killing his wife before the Court. The issue raised is whether it was an act of Aggravated Murder as charged by the Prosecution, or Murder Committed in a State of Mental Distress as argued by Defence Counsel.

The Court found that the act committed by the Accused constituted Aggravated Murder under the legal qualification of Item 9 of Article 147 of the PCCK – a killing where the perpetrator deprives another person of his or her life because of unscrupulous revenge or other base motives. In the case at hand, the Court found that the Accused had developed an obsession with the idea that his wife and Ibish Hasani were engaged in a relationship. The evidence shows that this belief was deep and stubborn. Even after compelling his wife to perform a swearing ceremony before the family, the Accused could not rid himself of the feeling of jealousy he had over the alleged affair. For this reason, the couple experienced marital problems which continued after the swearing ceremony, and culminated on the critical day when the victim tried to leave the house and the Accused killed her. He was moved to commit the murder by the base motive of jealousy, which was indivisibly intertwined with his desire to prevent his wife from leaving.

The Court rejects the argument of the Defence Counsel that the act falls under the qualification of Murder Committed in a State of Mental Distress pursuant to Article 148 of the PCCK. Article 148 is applicable when the perpetrator of the killing was brought, through no fault of his own, into a state of sever shock caused by an attack, maltreatment or grave insult by the murder victim. In the current case, the required elements are not satisfied. First, there was no evidence that the victim attacked or maltreated the Accused. Rather, the victim suffered years of abuse from the Accused. In addition, her alleged statement to the Accused on the critical morning that he was a tired, old man whose permission she did not need, does not rise to the level of an “attack” as claimed by the



Accused. Nor does her decision to leave the house without his permission constitute a grave insult. Secondly, the manner in which the act was committed does not establish that the Accused was in a state of severe shock. The Accused used a rifle which had to be manually cocked in between each firing, and shot the victim three times. Therefore, he had to have the mental awareness and self control in order to load and cock the rifle in between each shot.

### *3. Criminal Liability of the Accused*

The Court found that the Accused is not relieved of criminal liability due to any temporary or permanent mental deficiency or disease. The psychiatric expertise performed pursuant to a Court Order provides a clear answer that the Accused cannot be considered as mentally incompetent or suffering from diminished mental capacity as required by Article 12 of the PCCK. The expert doctors concluded that at the time of the commission of the criminal offence, the Accused did not suffer from any permanent or temporary mental illness or disorder, and his capacity to control himself and understand the consequences of his acts were “decreased but not essentially”.<sup>17</sup> Article 12 Paragraph 2 of the PCCK requires that for a diminished mental capacity, the actor’s ability to understand or control his actions or omissions must be “substantially diminished”.

### **F. Sentencing**

When imposing the criminal sanction, the Court must bear in mind both the general purpose of punishment – that is to suppress socially dangerous activities by deterring others from committing similar criminal acts – and the specific purpose, which is to prevent the offender from re-offending. In the present case, the Panel came to the conclusion that only by applying the imposed sentence of imprisonment would the above-mentioned double purpose be reached. The Accused’s cold-blooded murder of his wife after long-term abuse was a grave case of criminal act, and the sentence imposed should send a strong message to society that such treatment of women cannot be tolerated and should be punished accordingly.

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 old age of the Accused, the fact that he has no previous criminal record, his health condition, and that he partly admitted the criminal offences - he pled guilty to murder and unlawful possession and use of weapon. The Court took as aggravating circumstances the long-term abuse to which the Accused subjected his wife, the victim’s old age, and the fact that she was mother of seven children. Also, a special aggravating circumstance is the manner in which the

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<sup>17</sup> Report on Examination of Mental Status of Enver Hasani by Drs. Fahri Drevinja, Nazife Sylejmani, and Nada Morina, Department of Psychiatry, University Clinical Center of Kosova, 21 April 2008.



criminal act was committed - in cold blood, execution style at close range, with a weapon which required manually cocking before each of the three bullets fired into the victim's body.

For the criminal offence of Aggravated Murder in violation of Article 147 Item 9 of the PCCK, the law foresees a minimum punishment of ten (10) years of imprisonment. By applying the cited Article and considering all of the mitigating and aggravating circumstances, the Court imposed a sentence of fourteen (14) years of imprisonment for the Aggravated Murder.

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 by imprisonment of one to eight years. The Court imposed a sentence of two (2) years of imprisonment for this criminal act.

As the Accused has committed two criminal acts, pursuant to the rules of calculation of a compounded sentence, the aggregate punishment must be higher than each individual punishment but not as high as the sum of the prescribed punishments. Therefore, the Court imposed an aggregate punishment of fifteen (15) years of imprisonment.

The Accused has been in detention on remand since 31 May 2007. That period is to be credited in the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the PCCK.

#### **G. Confiscated Items**

The weapon used to commit the criminal offences - an M-48, Yugoslav made, calibre 7,92x57mm rifle with serial number 167535 - is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

#### **H. 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. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the CPCK.

#### **I. Compensation Claim**

On 16 February 2010, Besa Hasani, as Injured Party, filed a property claim on behalf of herself and in the name of her brother and sisters as well. The claim was orally announced on the last day of the main trial sessions, after the closing argument of the Public Prosecutor. It would have required further inquires and proof to establish whether and to what extent the claim was justified, which would have delayed the criminal



procedure significantly. Therefore, the panel instructed the Injured Parties to file a separate law suit in civil litigation.

**District Court of Mitrovica**  
**P. nr. 134/08**<sup>18</sup>

Prepared in English, an authorized language.

Recording Officer



Tara Khan



Presiding Judge



Hajnalka Veronika Karpati

**Legal remedy:**

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398 Paragraph (1) of the CPCK.

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<sup>18</sup> The correct case number is P.Nr.215/07