

DISTRICT COURT OF MITROVICA

P. nr. 24/09

10 June 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judges Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Charles Smith and Klaus Jung as panel members, with the participation of EULEX Legal Officer Noora Aarnio as Recording Officer in the criminal case against;

Hajriz GASHI, charged, according to the Indictment of the Prosecutor PP. nr. 104/08 dated and filed with the Registry of the District Court of Mitrovica on 10 March 2009, as confirmed by the Ruling on Confirmation of the Indictment dated 11 January 2010, and amended at the main trial hearing on 29 April, with the following criminal offences;

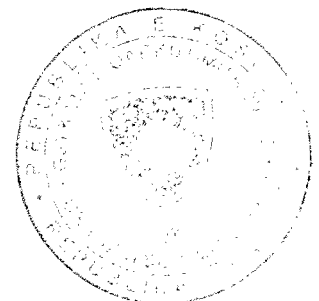
- **Murder**, contrary to Article 146 of the CCK,
- **Attempted Murder**, contrary to Article 146 as read with Article 20 of the CCK, and
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 1 of the CCK,

Shaqir GASHI, charged, according to the Indictment of the Prosecutor PP. nr. 104/08 dated and filed with the Registry of the District Court of Mitrovica on 10 March 2009, as confirmed by the Ruling on Confirmation of the Indictment dated 11 January 2010, and amended at the Hearing on 29 April, with the following criminal offences;

- **Incitement to commit Murder**, contrary to Article 146 as read with Article 24 of the CCK,
- **Incitement to commit Attempted Murder**, contrary to Articles 146 as read with Articles 20 and 24 of the CCK, and
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 1 of the CCK,

Kasum GASHI, charged, according to the Indictment of the Prosecutor PP. nr. 104/08 dated and filed with the Registry of the District Court of Mitrovica on 10 March 2009, with the following criminal offence;

- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 1 of the CCK, and



After having held the main trial hearing in public on 30, 31 March, 27, 29 April, 31 May and 10 June, all in the presence of the accused Hajriz Gashi, Shaqir Gashi and Kasum Gashi, their Defence Counsel Adem Vokshi, Zeqir Maxhuni and Arif Hasi, Injured Party Jonuz Gashi, Legal Representative of the Injured Party Fadil Hoxha and EULEX Public Prosecutor Neeta Amin, after the trial panel's deliberation and voting held on 10 June 2010, pursuant to Article 392 paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK) pronounced - on the same day - in public and in the presence of all the Accused, their Defence Counsel, the Injured Party, his Legal Representative and the EULEX Public Prosecutor the following

VERDICT

The accused **Hajriz GASHI**, no nickname, son of Shaqir Gashi and Nurije Rexhepi, born on 12 June 1988 in Kryshevc Village, municipality of Skenderaj, Kosovo, of Albanian ethnicity, resident of Kryshevc village, municipality of Skenderaj, single, living with parents, highest education secondary school, unemployed, of poor economic status, no known previous conviction, in detention from 20 September 2008 until 11 January 2010, thereafter under the security measures of reporting to the police and prohibition of approaching specific persons

is

FOUND GUILTY

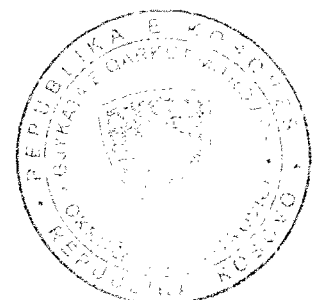
- **because** on 20 September 2008 at around 13:00, in the neighbourhood "Gashi", Kryshevc village, municipality of Skenderaj with the automatic rifle AK 47 of calibre 7,62x39mm with serial number C-43367 fired 10 shots in the direction of Abedin Gashi and Kasum Gashi., hitting each with one bullet and thereby causing the immediate death of Abedin Gashi and causing serious bodily injury to Kasum Gashi on his right arm.

By doing so, the accused Hajriz Gashi committed and is criminally liable for the criminal act of

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

The accused **Hajriz GASHI**

is



FOUND NOT GUILTY

- **because** it could not be excluded that he acted in necessary defence pursuant to Article 8 Paragraph (2) of the PCCK when on 20 September 2008 at around 13:00, in the neighbourhood "Gashi", Kryshevc village, municipality of Skenderaj with the automatic rifle AK 47 of calibre 7,62x39mm with serial number C-43367 fired 10 shots in the direction of Abedin Gashi and Kasum Gashi., hitting each with one bullet and thereby causing the immediate death of Abedin Gashi and causing serious bodily injury to Kasum Gashi on his right arm.

Therefore, pursuant to Article 390 Item 3) of the Criminal Procedure Code of Kosovo (CPCCK) the accused Hajriz Gashi is **acquitted** of the charges of

Murder, contrary to Article 146 of the CCK, and **Attempted Murder**, contrary to Article 146 as read with Article 20 of the CCK.

The accused **Shaqir, GASHI**, nickname Shaqe, son of Hajriz Gashi and Mehmere Shala, born on 21 August 1960 in Kryshevc Village, municipality of Skenderaj, Kosovo, of Albanian ethnicity, resident of Kryshevc village, municipality of Skenderaj, married, father of 7 children, highest education primary school, unemployed, of poor economic status, no known previous conviction, in detention from 20 September 2008 until 11 January 2010, thereafter under the security measures of reporting to the police and prohibition of approaching specific persons

is

FOUND NOT GUILTY

- **because** it was not proven that on 20 September 2008 at around 13:00, in the neighbourhood "Gashi", Kryshevc village, municipality of Skenderaj he incited his son Hajriz Gashi to shoot with the automatic rifle AK 47 of calibre 7,62x39mm with serial number C-43367 at Abedin Gashi and Kasum Gashi. It was also not proven that he had any knowledge about the weapon in possession of his son and that he himself used the weapon.

Therefore, pursuant to Article 390 Item 3) of the CPCCK, the accused Shaqir Gashi is acquitted of the charges of

Incitement to commit Murder, contrary to Article 146 as read with Article 24 of the CCK, **Incitement to commit Attempted Murder**, contrary to Article 146 as read with Articles 20 and 24 of the CCK and **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, Paragraph (1) of the CCK.



The accused **Kasum GASHI**, no nickname, son of Jonuz Gashi and Hava Jashari, born on 9 April 1978 in Kryshevc Village, municipality of Skenderaj, Kosovo, of Albanian ethnicity, resident of Kryshevc village, municipality of Skenderaj, unmarried, highest education secondary school, income of 400 euros/month, no known previous conviction,

Is

FOUND GUILTY

- **because** on 20 September 2008 at around 13:00, in the neighbourhood "Gashi", Kryshevc village, municipality of Skenderaj with the pistol Crvena Zastava M-57 of calibre 7,62x25 mm with serial number C-139535 he fired three shots at the direction of the window of Shaqir Gashi's house.

By doing so, the accused Kasum Gashi committed and is criminally liable for the criminal act of

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

The **Accused Hajriz Gashi** is

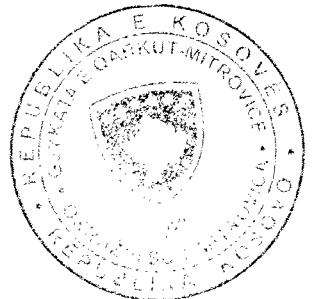
SENTENCED

- to 4 /four/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons

The time spent in detention on remand from 20.9.2008 until.11 January 2010 is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

The **Accused Kasum Gashi** is

SENTENCED



- to 3 /three/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The automatic rifle AK 47 of calibre 7,62x39mm with serial number C-43367, the automatic weapon AK-47, calibre 7,62x39mm, with serial number 8402983 and the pistol Crvena Zastava M-57 of calibre 7,62x25 mm with serial number C-139535 are hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCKK.

The accused Hajriz Gashi and the accused Kasum Gashi shall reimburse their parts of 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.

Pursuant to Article 103 Paragraph (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the CPCK, the necessary expenses of the defendant Shaqir Gashi and the remuneration and necessary expenditures of his defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

On 10 March 2009, the District Public Prosecutor for Mitrovica filed indictment PP. no. 104/08 dated 10.03.2009 with the Registry of Mitrovica District Court. The indictment alleged that the defendant Hajriz Gashi had committed the criminal acts of

- **Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 of the CCK
- **Attempted Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 in conjunction with Article 20 of the CCK

The indictment alleged that the defendant Shaqir Gashi had committed the criminal acts of

- **Incitement to Commit Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 in conjunction with Article 24 of the CCK
- **Incitement to Commit Attempted Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 in conjunction with Articles 20 and 24 of the CCK



The indictment alleged that the defendant Kasum Gashi had committed the criminal act of

- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328, Paragraph (1) of the CCK.

The Indictment was confirmed by the Ruling of the EULEX Confirmation Judge on 11 January 2010 with modifications. The confirmed charges for the Accused **Hajriz Gashi** were

- **Murder**, contrary to Article 146 of the CCK,
- **Attempted Murder**, contrary to Article 146 as read with Article 20 of the CCK.

The confirmed charges for the Accused **Shaqir Gashi** were

- **Incitement to commit Murder**, contrary to Article 146 as read with Article 24 of the CCK,
- **Incitement to commit Attempted Murder**, contrary to Articles 146 as read with Articles 20 and 24 of the CCK, and

In case of the Accused **Kasum Gashi** the indictment was confirmed with the original charge.

During the main trial session on 27 April 2010, the EULEX Public Prosecutor orally amended the indictment adding the charge of the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328, Paragraph (1) of the CCK for Shaqir Gashi, confirming the same on the session on 29 April 2010 and adding the same charge for Hajriz Gashi in this second oral amendment.

In her closing speech, without amending the indictment, the Prosecutor suggested that the evidence presented during the main trial points in the direction of the existence of required elements of aggravated murder and attempted aggravated murder.

Main Trial hearings were held on 30 and 31 March, 27 and 29 April, 31 May and 10 June 2010. Closing arguments were heard from EULEX Prosecutor Neeta Amin, Injured Party Jonuz Gashi, Legal Representative of the Injured Party Fadil Hoxha, and Defence Counsel Adem Vokshi, Zeqir Maxhuni and Arif Hasi on 10 June 2010. The Verdict was orally rendered the same day.

B. COMPETENCE OF THE COURT

Under Article 23 Item 1) i) of the CPCK, district courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 paragraph (1) of the CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

As set forth above, the charge of Murder pursuant to Article 146, allows for the imposition of a sentence of imprisonment of at least five years. Furthermore, the



indictment in this case alleges that the accused committed the acts in Kryshevc, Skenderaj.

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

On 18 November 2009, 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 this case to the EULEX Judges in the District Court of Mitrovica.

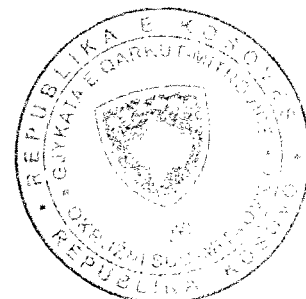
C. Summary of Evidence Presented

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

- (1) Jonuz Gashi– Injured Party, 30 March 2010
- (2) Rasim Gashi – Witness, 31 March 2010
- (3) Muje Gashi – Witness, 31 March 2010
- (4) Jahe Gashi – Witness, 31 March 2010
- (5) Lumturije Gashi – Witness, 27 April 2010
- (6) Mirsade Gashi – Witness, 27 April 2010
- (7) Arsim Gerxhaliu – Expert Witness, 27 April 2010

During the course of the main trial, the following documents were read and entered into evidence:

- (8) KP Officer’s Investigation Report dated 21 September 2008
- (9) Continuation sheet no 1 of the Police Report dated 20 September 2008
- (10) Report of the police officer dated 20 September 2008
- (11) Report on Crime Scene Examination compiled 21 September 2008
- (12) Request for assistance dated 22 September 2008
- (13) Examination Report of the Firearm Section of Traseology Department of Forensic Science Center “Ivan Vucetic” in Zagreb, dated 13 January 2009
- (14) The sketch of the crime scene, 08-104/2008-BI-235
- (15) List of photographs from the crime scene by Mitrovica Regional Crime Squad, Regional Forensic Unit together with the Identifying Forensic Report
- (16) List of Measures and Legend by Mitrovica Regional Crime Squad,
- (17) Autopsy Report dated 22 September 2008
- (18) Medical Documentation concerning Kasum Gashi’s injuries and treatment submitted by Defence Counsel Arif Hasi on 12.04.2010.
- (19) Pictures 123 A-C submitted by the Prosecutor on 29 April 2010



- (20) 3 Aerial Pictures of the neighbourhood submitted by the legal Representative of the Injured Party, Fadil Hoxha on 29 April 2010
- (21) Investigator's Report by Kosovo Police, Investigation Unit, Skenderaj Police Station dated 20.9.2008
- (22) The Identifying Forensic Report by Regional Crime Squad, Regional Forensic dated 20.9.2008
- (23) Report of Crime Examination by KP Central Crime Laboratory Fire weapon and tool traces department, examination dated 11.12.2008

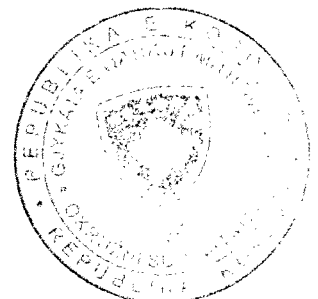
During the main trial session on 29 April 2010 the Accused Hajriz Gashi gave a statement and answered questions. During the main trial session on 31 May Shaqir Gashi gave a statement and answered questions. Kasum Gashi exercised his right not to give a statement.

The injured party Jonuz Gashi stated that his son Kasum Gashi had met with Shaqir Gashi earlier on 20th September 2008 and Kasum Gashi had prevented Shaqir Gashi from going through their land.

A couple of minutes before 1 o'clock, his sons Abedin Gashi and Kasum Gashi were collecting the walnuts in the orchards and he was in his yard. He heard 4 or 5 short and rapid bursts of an automatic weapon. The sound came from the house of his neighbour Shaqir Gashi. Jonuz Gashi began to leave his yard to go and see what was happening. His son Kasum Gashi came to the yard with his arm broken and bleeding.

Kasum Gashi told Jonuz Gashi that Shaqir Gashi had raided them on the only road back to the house from the walnut orchards. Jonuz Gashi didn't hear this himself but according to Kasum Gashi Shaqir Gashi had told Abedin Gashi to remove the electric wire. According to Kasum Gashi when Abedin Gashi had been answering to the demands Shaqir Gashi had told his son Hajriz Gashi: "Shoot! What are you waiting for?" It had been his intention to kill both Abedin and Kasum Gashi there. Hajriz Gashi had shot at them from the first floor balcony.

Jonuz Gashi and Kasum Gashi went to the street with the intention to get to Abedin Gashi. When they tried to get closer Shaqir Gashi was shooting at them with the automatic weapon from the first floor balcony saying: "Come and get him." and also "Come, come and I will also throw bombs at you and I will kill you even if it's the last thing I do." Hajriz Gashi was also at the balcony. Bullets flew all around them and they didn't dare to go closer. After having shot with interrupted bursts of fire 4 or 5 times which lasted for a very short time, Shaqir Gashi went inside the house and they went to Abedin. When they, together with Rasim Gashi, were trying to put Abedin Gashi in a vehicle 2 police officers, who had heard the shots, came to the scene.



The Accused Hajriz Gashi stated that on 20th September 2008 in the early morning he took the cattle to the field. While still at the field at around 11.15 or 11.20 he saw his father, Shaqir Gashi, arrive in a tractor with his brother and sister in the tractor. His brother and sister were crying and they told him that on the way there they had met Abedin Gashi and Kasum Gashi who were holding weapons in their hands. According to the brother and sister Kasum Gashi had threatened to kill his father and come to his house and kill them all. He asked his father about this but he had said “Leave it alone, nothing happened”. On the way home they took a longer route so as not to have any trouble with Abedin Gashi and Kasum Gashi.

After returning home and unloading the hay Hajriz Gashi went back to field. Before he left his father warned him “If you see them don’t make any trouble” referring to Abedin Gashi and Kasum Gashi.

After returning home the second time he went into the 1st floor bathroom of the house to wash his hands and to change his clothes. While washing his hands he heard that his father Shaqir Gashi on one side and Abedin Gashi and Kasum Gashi on the other were having a conversation but he couldn’t distinguish what the conversation was about. Their voices came from below, about 10 meters away, through the open balcony door.

He went to the room which has a window towards the street and he saw Abedin Gashi and Kasum Gashi standing on the road facing where his father may have been, on the balcony on the ground floor. He did not see his father. Abedin Gashi was closer, about 4 metres from the ground floor balcony corner, and Kasum Gashi behind him, maybe 10 - 12 metres from the ground floor balcony corner. Neither Kasum Gashi nor Abedin Gashi had anything in their hands but he saw a handle of a white hand gun in Kasum Gashi’s waist on the left side. The conversation had stopped. Kasum Gashi pulled out the hand gun and pointed it with his right hand at Hajriz Gashi’s father.

At this point he withdrew from the window. Because of the threats earlier that day he was afraid. He went to another room, got on top of the chairs, removed some wood from the ceiling and got out his automatic rifle. He had found the rifle two or three years earlier. He had found it already loaded. He had hid it and he did not tell anyone about it because he thought if he told his father he would take it away and hand it over.

He went back to the hallway and placed the weapon on the ground. By this time he had not heard any shots so he thought the situation had calmed down. He then went to the balcony to see what was going on, and from a corner leaned over to look. He could not see his father who was underneath him. Kasum Gashi was at the same location where Hajriz Gashi had seen him previously and Abedin Gashi was in front of Kasum Gashi. As soon as Kasum Gashi saw him Kasum Gashi addressed him by cursing ‘where are you going, motherfucker’, pointed the gun in his direction, and started shooting and going around Abedin Gashi. Kasum Gashi shot twice and then four or five times with gaps in between. Hajriz Gashi withdrew to the corner in order not to be killed. He then heard a female voice from the ground floor yelling “They killed him, they killed him”. He



thought that his father had been killed. Later he saw the windows that were broken/pierced.

He went to the hallway to take the gun and then he went out on the balcony. He extended both of his arms out from the balcony to shoot. He shot in the direction of Kasum Gashi and Abedin Gashi who were approximately 10 meters away but he could not aim at anyone as Kasum Gashi also had a weapon. Hajriz Gashi did not verbally warn Kasum Gashi before he shot. While shooting he did not hear any other firearms being used.

His intention was not to kill anyone but by shooting and scaring Kasum Gashi and Abedin Gashi, and causing them to flee from the house, save his family and himself. He has grown up in the same place together with Abedin Gashi although most of the time Abedin Gashi was abroad, and he had liked Abedin Gashi.

The whole incident took 30, 40 or 50 seconds, not even a full minute. After the shooting he backed inside the house and entered the hallway to go to the ground floor. In the stairs he saw his father Shaqir Gashi who then took the weapon from him as he was too afraid to let go of it. Hajriz Gashi continued to the sitting room on the ground floor where his mother, his 2 younger sisters, brother and the sister who fainted were all crying.

When in the sitting room he saw through the window Rasim Gashi and Kasum Gashi on the street near the house, about 70 to 80 metres away, walking towards the house. He did not see any injuries on Kasum Gashi. Kasum Gashi had an automatic rifle in his right hand, but he used both hands to point it towards the house. Rasim Gashi had something in his hand but Hajriz Gashi could not tell what it was. Rasim Gashi was yelling in a loud voice saying "Let's go inside and throw the bomb at them". At this point Hajriz Gashi did not see Abedin Gashi. Then two police officers, Jahe Gashi and Muje Gashi, came running to the scene.

He did not see Abedin Gashi's body but he saw that they took someone and placed them in the vehicle. His father phoned the police from the sitting room after the body was taken away. During this whole incident he never saw his father with a weapon.

The Accused Shaqir Gashi stated that until 3 years before the war his family and the family of Jonuz Gashi had good relations. Two months prior to the day in question Jonuz Gashi and Kasum Gashi came in front of his house and threatened him. Kasum had a weapon on his waist, uncovered. Jonuz Gashi was always interested in creating problems with them.

On 20th September 2008 he saw Kasum Gashi and Abedin Gashi running from their house down through the arable land towards him. Kasum Gashi was holding a rifle on his right hand side. Abedin Gashi had a hand gun on his waist on his right hand side that he was holding for it not to fall and with his left hand he was waving to Shaqir Gashi to stop. He stopped. Abedin Gashi came close to the tractor and Kasum Gashi stayed 2 meters behind him. Abedin Gashi told him three times "Shaqir, I will kill you." Shaqir Gashi



asked Abedin Gashi to let him go through. Kasum Gashi said to Abedin Gashi “Let’s go, we will see about him later.” Kasum Gashi went close to Shaqir Gashi’s children and said something to them. Because of the noise of the tractor and since the children were sitting on the furthest end of the trailer, some 4-5 meters from Shaqir Gashi, he could not hear what Kasum Gashi said to them. Shaqir Gashi told Kasum Gashi and Abedin Gashi that if they mind him going through their land he will never do it again and that that there was no need for them to come armed to meet him. He turned back and did not go through their land but through someone else’s property. After the children got off the tractor he asked them what Kasum Gashi has said to them and his daughter told him that he had told her that “I will come to your house and I will fuck your mother and kill every one of you.”

When Hajriz Gashi came to help him to unload the straw Hajriz Gashi asked him what had happened so the children must have told him about the earlier incident. He did not want his son to know what had happened because he was afraid of problems and he was scared that Hajriz Gashi, being a young man, might do something. After they had unloaded the tractor Hajriz Gashi went to take the cattle back and he told Hajriz Gashi that if Hajriz Gashi meets Abedin Gashi and Kasum Gashi he should go away from them.

Later he went out to help Hajriz Gashi to take the cows in. After having helped his son, as he was on his way in the house, he saw Rasim Gashi passing on the road next to the house with a tractor. He stopped at the ground floor balcony of his house to take his shoes off. He was on the left hand side of the balcony when he saw Kasum Gashi and Abedin Gashi on the road approximately 4 or 5 meters from the corner of the house and about 10 to 12 meters from him. They were facing him. Abedin Gashi was closer and Kasum Gashi was about half a meter behind him. Abedin Gashi was standing still and Shaqir Gashi told him to remove the cable and water pipe passing through Shaqir Gashi’s field. Kasum Gashi pulled a white pistol from his belt on the left side. He loaded it, cocked it and pointed it at the direction of Shaqir Gashi and his house. Kasum Gashi started moving toward Shaqir Gashi and his house. Kasum Gashi said something in the genre of “Shall I fire towards him and fuck his mother?” to Abedin Gashi. When Shaqir Gashi saw the pistol he got scared and started to move inside the house. While entering the house he heard two shots: “Bang, bang!” and he saw his daughter, who was in the hallway, faint. During the whole of this incident he did not see his son.

When he entered the house he heard shooting in at least one burst, maybe more, from an automatic rifle. The shooting came from his house. Then there was a mixture of shots. He briefly looked after his daughter who had fainted. Then he went up to the top of the staircase near the balcony door and saw his son Hajriz Gashi pacing around looking frightened and quite lost. Hajriz Gashi was holding an automatic weapon type AK 47. He had never seen that weapon before. He asked his son to give him the weapon. He heard continuous shooting from outside. Hajriz Gashi gave him the weapon and he held it in his left hand until the police came but did not use it. He went to the balcony in order to see what had happened. From the balcony he was able to see the lower part of the legs of someone lying on the ground. He also saw Kasum Gashi standing at the gate of his house and being given a Kalashnikov automatic weapon. He also saw Rasim Gashi with a



weapon and something else in his other hand. When Hajriz Gashi saw Kasum Gashi and Rasim Gashi armed he got scared that they would enter the house. He said to Shaqir Gashi "Father, give me the weapon because they will enter our place." He told Hajriz Gashi that he would never allow them to enter. Kasum Gashi and Rasim Gashi started coming towards his house and at about 35 or 40 meters from him Rasim Gashi was threatening him by saying: "I will throw hand grenades and exterminate each and every one of you." Kasum Gashi said similar threats. He did not see any injuries on Kasum Gashi. He told them to "Come and take him!" referring to the person he had seen lying on the ground. He warned Kasum Gashi and Rasim Gashi loudly and clearly by saying "If you enter the court yard of my house I will shoot you." and they went away. One of the first to come close to Abedin Gashi was Jahe Gashi. He did not see Jonuz Gashi coming to collect Abedin Gashi's body.

He went in the house and down the stairs and called the police commander. Then he tried to calm his family. About 10 to 15 minutes later the police arrived.

Witness Lumturije Gashi, daughter of Shaqir Gashi stated that on 20th September 2008 at 1 pm she was in the 1st floor sitting room at home. Her younger sister Arlinda and younger brother Afrim came in. They were crying and told her that while they were on their way to collect wheat with their father they had met Abedin Gashi, who had a hand gun, and Kasum Gashi, who had a long rifle. They also told that Abedin Gashi and Kasum Gashi had shouted at their father. Abedin Gashi had not allowed them to pass through the road and had turned them back to another road. While they had been sitting at the back of the tractor Kasum Gashi had told them "I will kill all of you."

As soon as the younger siblings had told this to her she went outside to the balcony to ask her father, Shaqir Gashi, what had happened. They didn't, however, have time to talk because she saw Abedin Gashi and Kasum Gashi by the corner of the house about 4 meters away on the right hand side. She also saw Rasim Gashi on the road coming from his house to their court yard. Then she saw Kasum Gashi pulling out a white hand gun, load it and direct it towards her father with his right hand. She did not hear her father say anything. Kasum Gashi swore "I will fuck your mother. This is the end of you." She got scared and ran inside. When she reached the hall she heard shots –"Bang, bang". She was scared that the shots have killed her father and she fainted. She did not hear any other shots.

After she recovered having fainted she saw her father as he was slapping her face and she also saw her brother Hajriz Gashi. Neither of them was holding a weapon. She heard her father calling the police. She heard her father saying "Come and take him." three times.

After the police had arrived she saw, through the window, Kasum Gashi holding a long gun with both hands and Rasim Gashi with a black weapon. They were running towards their court yard. She also saw Jahe Gashi coming to their court yard and Muje Gashi on the narrow alley.



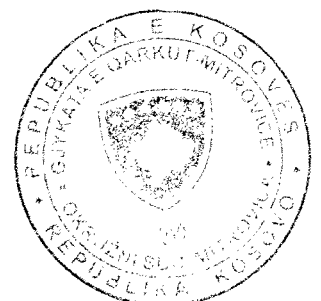
She did not know of any dispute between her family and Kasum Gashi's family relating to access to land. Nor had her father told her about what had happened between him and Abedin Gashi relating to an electric wire.

Witness Rasim Gashi, son of the injured party Jonuz Gashi stated that on the 20th September 2008 from 8:10 until 12.30 he was at his uncle Ramadan Gashi's house with his father Jonuz Gashi. His brothers Abedin Gashi and Kasum Gashi were on the way to the walnut orchards to collect the walnuts. After returning home and having changed his clothes, at around 12.40, he went to the orchards with a tractor to help his brothers. He used the road next to Shaqir Gashi's house to drive to the walnut orchards. This road goes through Muharem's field so he did not cross Jonuz Gashi's field. When he arrived at his brothers they had already harvested all the walnuts. Neither Abedin Gashi nor Kasum Gashi told him of anything that had happened to them when they were going to the field. He did not see or otherwise know if Abedin Gashi or Kasum Gashi had a weapon with him. They loaded the sacks of walnuts in the tractor and then he returned home taking the same route back. He drove alone because there was no room for his brothers in the tractor. His brothers followed him on foot about 100 meters behind him. After he entered the neighbourhood he could not see his brothers anymore.

He was back in front of the gate of Jonuz Gashi's house before one o'clock, parked the tractor slightly away from the gate, switched the engine off and began offloading the sacks of walnuts. At this point he heard someone saying "You are done today." but he could not see Shaqir Gashi or Hajriz Gashi nor the balcony of Shaqir Gashi's house. The distance between him and the voice was 30-35 meters. The words were spoken loudly enough for the entire neighbourhood to hear them so he could hear them clearly. Rasim Gashi recognised Shaqir Gashi voice. He did not hear anyone else speaking.

After the words "You are done today." Shaqir Gashi ordered his son Hajriz Gashi to shoot by saying "Shoot! What are you waiting for?" and repeating the same words again. This is when Rasim Gashi heard the first shots. They came from Shaqir Gashi's house and they were shots fired with interruptions. Then Shaqir Gashi ordered his son to throw bombs to kill both Abedin Gashi and Kasum Gashi.

When he heard the shots his parents came at the gate of Jonuz Gashi's house. After hearing the shots, some 10 minutes after he arrived with tractor, he saw also his brother Kasum Gashi came to Jonuz Gashi's house. Kasum Gashi told him that Hajriz Gashi was shooting from the balcony and that Abedin Gashi was killed and remained on the spot. Together with his parents he moved to about 7-8 meters from the gate trying to go to Abedin Gashi and from this point Rasim Gashi could see Shaqir Gashi standing alone on the first floor balcony of his house. Shaqir Gashi was holding an automatic weapon in his hand in a position to shoot and was shouting "I will fuck your mother. I will exterminate you all." Then Shaqir Gashi shot with rapid shooting with interruptions, with Kalashnikov, so they could not get nearer to Abedin Gashi.



Rasim Gashi did not hear shots fired by another weapon apart from the automatic weapon. Rasim Gashi did not go and get a weapon himself because it was more important for him to collect his brother Abedin Gashi and get help rather than getting a weapon. He and his parents did not manage to get the body of Abedin Gashi from the road before the police officers arrived. Abedin Gashi remained laying on the ground for 10-15 minutes before the police arrived and lost his life.

Two police officers, who are also witnesses in this case, arrived and met Kasum Gashi who was wounded. They asked Kasum Gashi what happened. He told them that he was shot by Shaqir Gashi from the balcony. The police officer drove with the vehicle of Rasim Gashi's brother to the hospital in Skenderaj. It took them approximately 25 minutes to drive there because the village roads are dirt roads.

Witness Muje Gashi stated that he is a distant relative of Shaqir Gashi.

On 20th September 2008 at around 1 o'clock he was going to work. He travelled there by car together with Jahe Gashi. Jahe Gashi was waiting for him in the car at the crossroads between his house and Jonuz Gashi's house.

As he was on his way to meet Jahe Gashi his son kept insisting that he buy his son something from the shop before going to work. So he tried to go to the shop with his son but it was closed. As he was knocking at the shop door he heard gun shots. He did not hear any screaming or yelling. He saw the daughter of the owner and asked her if she could open the shop. He also asked if someone has gotten engaged.

He could see Jonuz Gashi's house from the shop only if he went a little bit downwards, which he did. He saw the road and the entire house and a lot of people. He recognised Jonuz Gashi, Kasum Gashi and their family members the names of which he does not know. While he was standing by the shop a lot of kids went to Jahe Gashi and said to him that something had happened to Kasum Gashi and Shaqir Gashi. Then Jahe came to him and they went to the many people to see what was happening. He only saw Kasum Gashi when they went to the front gates of Jonuz Gashi's house, and also Jonuz Gashi was there. Kasum Gashi had blood all over his arm going downwards. He asked Kasum Gashi what happened. He said "Shaqir killed us."

He told them to help Kasum Gashi but either Jonuz Gashi or his wife left Kasum Gashi and went to see how Abedin Gashi was. They told him to get Abedin Gashi, who was on the street, if possible. He and Jahe were the first ones to go to see Abedin Gashi, and many relatives living in the neighbourhood came by. It must have been some 3 - 4 minutes between when he heard the gun shots to when he went to see Abedin Gashi. While he was approaching Abedin Gashi he did not hear any threats made by Shaqir Gashi or Hajriz Gashi or anyone else nor was anyone trying to stop him. In fact he did not see Shaqir Gashi or Hajriz Gashi at all that day.



He saw Abedin lying on the ground. He did not see a weapon next to Abedin, or with anyone else that day. He saw a few stains of blood in the body of Abedin Gashi and he ran to him to help him. Together with Jahe he requested the sons of Ramadan to get them a car. A minute or two later the car arrived and they put Abedin at the back seat and Kasum Gashi as well. He was driving them to the ambulance at Skenderaj. It did not take them very long to get there.

Witness Jahe Gashi stated that he is a distant relative of Shaqir Gashi.

On 20th September 2008 at about one o'clock he was in his village going to work. He was going to meet with Muje Gashi in the village close to this field where they meet every day. This was about 100 meters away from Jonuz Gashi's house.

He waited for about ten minutes for Muje Gashi to get to his vehicle. He did not hear anything because the radio was on and he was not paying attention. Before Muje Gashi arrived a group of kids of relatives came by and told him that an incident had occurred between Shaqir Gashi and Jonuz Gashi's sons. From his vehicle he could not see to the location where Abedin Gashi's body was. He exited his car and met Muje Gashi. Together they headed towards these relatives.

Once he got near Jonuz Gashi's house he met Kasum Gashi who was wounded on his arm. They did not have time to speak much but he asked Kasum Gashi who he had trouble with or who did he cause trouble to. Kasum Gashi said that they had some problems with Shaqir Gashi and that he thought Abedin was killed and stuck there on the road close to Shaqir Gashi's house. Kasum Gashi also asked if he can collect Abedin Gashi from where he was. He promised to do so.

Abedin Gashi was lying on the ground approximately 10 meters from the house of Shaqir Gashi. He did not see any weapons lying on the ground. He was the first to approach Abedin Gashi but later Muje Gashi came with other relatives, family members of Abedin Gashi and distant relatives. Nobody tried to stop him when he was approaching Abedin Gashi. Contrary to this statement the Defense Council Arif Hasi explained to the Court that the Albanian expression 'me nxjerre' used by Jahe Gashi is to extract someone, also implying that there was an obstacle to do so. They did not speak to Abedin Gashi because they just tried to help him as soon as possible. He could not tell if Abedin Gashi was still alive.

He asked the son of Ramadan for a car so that he could drive him. They first put Abedin Gashi in the back seat of the car and then Kasum Gashi to the front seat. It took no more than 15-20 minutes to get Abedin and Kasum to the health centre in Skenderaj.

He did not see or hear Shaqir Gashi nor see Hajriz Gashi that day.

Witness Mirsade Gashi exercised his right not to give testimony.



Expert-witness, forensic doctor Arsim Gerxhaliu stated that on 20th September 2008 the late Abedin Gashi was hit by a single bullet that injured the middle of his lungs and the trachea. In his opinion the cause of death is correctly reported in the Autopsy report dated 21.9.2008.

The life of Abedin Gashi could not have been saved even if he had received medical assistance within 1 minute.

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 the morning of 20th September 2008 when Shaqir Gashi was on his way to a field he met Kasum Gashi and Abedin Gashi. They prevented Shaqir Gashi from going through their land.

Later on the same day Kasum Gashi and Abedin Gashi travelled the road by the house of Shaqir Gashi. While travelling the road Kasum Gashi and Abedin Gashi met Shaqir Gashi. Abedin Gashi and Shaqir Gashi discussed the issue of the removal of the electric cable.

These facts are supported by the statements of Shaqir Gashi and Jonuz Gashi.

The accused **Hajriz Gashi** had possession of an automatic rifle AK 47 of calibre 7,62x39mm with serial number C-43367 and that he used this rifle to shoot in the direction of Abedin Gashi and Kasum Gashi from the first floor balcony of the house of Shaqir Gashi killing Abedin Gashi and causing serious injuries to Kasum Gashi.

This fact is supported by Hajriz Gashi's statement in which he admitted having found and then hidden the rifle in the house. He also admitted having used it to shoot in the direction of Abedin Gashi and Kasum Gashi in order to protect his family from a perceived attack by Abedin Gashi and Kasum Gashi. The rifle was found at the scene of the crime by the police. Shaqir Gashi denied having knowledge of the gun or having ever used it.

The accused **Kasum Gashi** had a pistol Crvena Zastava M-57 of calibre 7,62x25 mm with serial number C-139535 with him and at some point he shot in the direction of the upstairs room in the house of Shaqir Gashi.



This fact is supported by Kasum Gashi's guilty plea to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons. His guilty plea in turn was supported by statements of Hajriz Gashi and Shaqir Gashi who in their testimony stated that they saw Kasum Gashi with a gun. It is also supported by the Investigation Report that states that a pistol Crvena Zastava, serial number C-139535 seized from Jonuz Gashi's house, the sketch of the crime scene which shows where the cartridge shells were found, and Ballistic Report that states that 5 of the shells match the pistol seized from Jonuz Gashi's house. It is further supported by the fact that on the first floor window of Shaqir Gashi's house there were three bullet holes as stated in the Report of Crime Scene Examination.

As a consequence of Hajriz Gashi's use of weapon Abedin Gashi suffered gunshot injuries to the chest whereby the lungs and the thoracic vertebra have been damaged. This injury caused extensive bleeding, hypovolemic shock and death. His life could not have been saved even by immediate medical assistance.

This fact is supported by the Autopsy Report and Expert-witness Dr. Arsim Gerxhaliu's testimony.

As a consequence of Hajriz Gashi's use of weapon Kasum Gashi suffered a bullet wound that caused fracture of the highest degree in his right arm. The arm has been shortened by 3cm after a necessary surgical intervention (osteosynthesis) on 28 October 2008. At the same time the radial nerve has been reconstructed through a suralis transplant, however, it is questionable if the radial nerve will recuperate.

This fact is supported by the medical documentation of the Pristina University Clinic and the Clinic of Wels-Grieskirchen.

2. Evidence concerning the murder and attempted murder by Hajriz Gashi

As stated above, Hajriz Gashi has admitted to shooting towards Abedin Gashi and Kasum Gashi and thereby killing Abedin Gashi and causing serious injuries to Kasum Gashi. Hajriz Gashi has, however, claimed that he committed the act to protect himself and his family from an attack by Kasum Gashi who was shooting at them, and had earlier threatened to kill his father and come to his house and kill them all.

The main issue of this trial, in consideration of the murder and attempted murder by Hajriz Gashi, was therefore whether the accused Hajriz Gashi did indeed act in necessary defence or he intended to deprive Abedin Gashi and Kasum Gashi of their lives as alleged in the indictment.

2.1 Hajriz Gashi's version



Hajriz Gashi's statement corresponds to a certain degree with the statement of Shaqir Gashi. They both describe how Abedin Gashi and Kasum Gashi on one hand and Shaqir on the other are discussing and how Kasum Gashi pulls out the weapon and shoots two times. They both also tell that Hajriz Gashi gave the weapon to Shaqir Gashi on the steps near the first floor balcony door after the shooting and after that point none of them used the weapon. Shaqir Gashi called the police from the sitting room on the ground floor.

Witness Lumturiye Gashi stated that she was at the balcony together with Shaqir Gashi when Kasum Gashi drew his weapon and pointed it at Shaqir Gashi. Shaqir Gashi does not mention her being at the balcony with him. Instead Shaqir Gashi explicitly states that he only saw his daughter when he entered the house. Therefore the Court deems Lumturiye Gashi's statement in regards to the events before her fainting implausible, influenced by the family relationship.

Witness Muje Gashi stated that when he saw Kasum Gashi the latter had told him that "Shaqir killed us." This statement is repeated by Rasim Gashi and Jahe Gashi.

The Court finds that there are two parts of Hajriz Gashi's statement that seem to lack logic. The first of these being Hajriz Gashi's explanation as to why he, after getting out his automatic rifle, placed the weapon on the ground of the hallway to go and take another look out of the window even though he knew that Kasum Gashi had earlier that day threatened the life of his father and indeed the life of his whole family, and even though he had seen Kasum Gashi pointing a gun at a close distance to the direction he believed his father to be at. The second of these being the claim that, albeit not verbally warning the attackers before shooting at them or shoot in the air, his purpose of him shooting was merely to scare Abedin Gashi and Kasum Gashi away.

Hajriz Gashi's statement is not corroborated by the Report of Crime Scene Examination that states that on the first floor window of Shaqir Gashi's house there were three holes. The Court can think of no logical explanation as to why Kasum Gashi would have shot in that direction if he had just seen Hajriz Gashi at the first floor balcony. This is corroborated by the sketch of the crime scene which indicates that there are two bullets found close to one another on the road with view to the ground floor balcony and another group of three bullets further down the road closer to the window. This suggests that Kasum Gashi shot, moved and then shot again.

There is, furthermore, inconsistency in the statement of Hajriz Gashi concerning the timing of the incident. Hajriz Gashi stated that the whole incident took 30, 40 or 50 seconds, not even a full minute and that after he backed inside the house and saw his father Shaqir Gashi in the stairs. The Court comes to the conclusion that it would take more than a minute for Kasum Gashi to shoot, for Hajriz to go back inside and go to the hallway to pick up the gun, for him to get back to the balcony and to shoot in the direction of Abedin Gashi and Kasum Gashi. Then he backed inside the house and saw his father. The timing of the statement contradicts the statement of Shaqir Gashi who stated that when he entered the house he heard the shooting from an automatic rifle from his house. He first briefly looked after his daughter who had fainted and then he went up



to the top of the staircase near the balcony door to find his son pacing around. All this would most likely have taken longer than a minute.

Hajriz Gashi also stated that when in the ground floor sitting room, after having shot towards the direction of Abedin Gashi and Kasum Gashi, he saw no injuries on Kasum Gashi but instead Kasum Gashi was holding an automatic weapon with both hands. He does not, however, dispute that Kasum Gashi got injured from his shots. The Court is of the opinion that Kasum Gashi's injuries were so severe that he could not have held a weapon with his injured hand.

As well as inconsistencies there are also unresolved contradictions between Hajriz Gashi's statement and Shaqir Gashi's statement. Hajriz Gashi recalled that Kasum Gashi said "Where are you going, motherfucker." to him after seeing him looking through the first floor window but Shaqir Gashi does not mention such words being spoken at all in his statement. Furthermore, Hajriz Gashi states that he heard a female voice yelling "They killed him." but Shaqir Gashi does not mention this in his statement although he was at this point within the house, in the ground floor near the sitting room. Finally, Hajriz Gashi recalled hearing Rasim Gashi yell in a loud voice "Let's go inside and throw the bomb at them." but again Shaqir Gashi does not mention this at all in his statement. The Court deems it not plausible that such omissions in Shaqir Gashi's statement would be result of a failure in his memory.

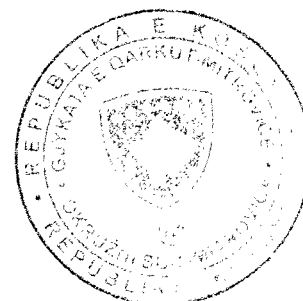
Furthermore, Hajriz Gashi stated that he heard two shots, then four or five shots. He states that while he was shooting he did not hear any other firearms being used nor does he speak of any other shots he might have heard. Shaqir Gashi states that after hearing the shooting from an automatic rifle he heard a mixture of shots.

Finally, in his statement Hajriz Gashi does not mention asking his father to give him back the weapon. Shaqir Gashi states that after seeing Rasim Gashi armed Hajriz Gashi got scared and said "Father, give me the weapon because they will enter our place."

2.2 Jonuz Gashi's version

Jonuz Gashi stated that just before one o'clock he was in his yard and he heard 4 or 5 shots and rapid bursts of an automatic weapon. He did not state having heard any discussion or shouting himself before the shooting. At this point he did not see who was shooting. When asked if there was a difference between the shots Jonuz Gashi heard while still in his yard and the ones he saw Shaqir Gashi firing later, he stated that he could not distinguish a difference. Later in his testimony he stated that in general he could tell the distinction between an automatic weapon and a rifle.

Jonuz Gashi stated that Kasum Gashi had told him that Shaqir Gashi had told Hajriz Gashi to "Shoot! What are you waiting for?" and that Hajriz Gashi therefore shot at Kasum Gashi and Abedin Gashi. The Court states that it is contrary to common sense that



Jonuz Gashi himself, who was out in his garden, did not hear the order if indeed it was spoken outside, at the house next door to Jonuz Gashi's.

Both Hajriz Gashi and Shaqir Gashi deny that this order was given.

There is an unresolved contradiction between Jonuz Gashi's statement and Rasim Gashi's statement. Rasim Gashi does not mention hearing any discussion between Shaqir Gashi and Abedin Gashi or Kasum Gashi before the shooting although he was near where the discussion took place.

Jonuz Gashi and Rasim Gashi statement in their testimonies that they did not hear shots fired by another weapon apart from the automatic weapon is contradictory to the proven fact that there were shots fired from two different types of gun, pistol and automatic rifle.

Witness Muje Gashi recalls hearing shots but could not tell more about them. Witness Jahe Gashi did not hear the shots at all.

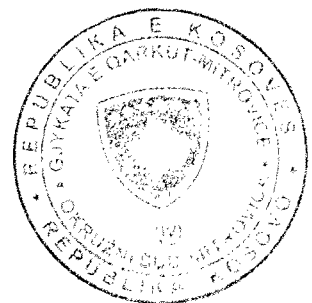
Therefore, as in the statements of all the people heard in the court there were inconsistencies and there were further contradictions between the different statements, the Court finds it impossible to establish that any of the people heard spoke the absolute truth.

3. Evidence concerning the incitement to murder and incitement to attempted murder by Shaqir Gashi

Shaqir Gashi and Hajriz Gashi do not in their respective statements mention talking to each other before seeing each other in the first floor corridor and Shaqir Gashi asking Hajriz Gashi to surrender the weapon.

Had the intention of Shaqir Gashi been to kill both Abedin Gashi and Kasum Gashi it seems reckless thing to do to put himself in danger to be shot with the weapons he had seen them carrying earlier that day by standing out in the balcony rather than staying inside just waiting for them to pass by and using the fire arm himself. The Court finds that the alleged ambush and intention to kill Abedin Gashi and Kasum Gashi by Shaqir Gashi seems to lack logic.

Rasim Gashi states that he heard the first shots after Shaqir Gashi said "You are done today." so loudly that the whole neighbourhood could hear this and ordered his son Hajriz Gashi repeatedly to shoot by saying "Shoot! What are you waiting for?" Allegedly Shaqir Gashi also ordered Hajriz Gashi to throw bombs and kill both Abedin Gashi and Jonuz Gashi. Jonuz Gashi, who was in the yard of the house next door, does not in his statement mention hearing Shaqir Gashi speaking any of those phrases. Witness Muje Gashi, when asked if he had heard anything else apart from the gun shot, like yelling for example, also confirmed without any hesitation that he did not.



Therefore the Court could not establish beyond reasonable doubt that Shaqir Gashi in any way incited his son to kill Abedin Gashi and to try to kill Kasum Gashi.

4. Evidence concerning the Unauthorized Ownership, Control, Possession or Use of Weapons by Shaqir Gashi

Shaqir Gashi denies ever seeing the weapon before his son Hajriz Gashi handed it over to him in the corridor. He denies ever firing it.

Hajriz Gashi stated that he found the weapon two or three years earlier and hid it in the house without telling his father about it. When asked how it is possible that a son would not tell such an important issue to his father Hajriz Gashi explained that he was afraid that his father would take the weapon from him.

The Court finds that Jonuz Gashi's statement is indirectly contradicted by the Identifying Forensic Report that states that they found 8 cartridge shells in the first floor balcony. In addition they found one cartridge shell in the hallway near the balcony door and one cartridge shell on the ground near the balcony. Furthermore, the Ballistic Report states that the weapon seized from Shaqir Gashi's house had a magazine with the capacity of 37 bullets and 22 bullets. The Court deems it therefore unlikely, that both Hajriz Gashi and Shaqir Gashi had shot bursts with the weapon.

Muje Gashi and Jahe Gashi in their respective statements deny anyone trying to stop them from approaching Abedin Gashi's body.

Therefore there was no evidence to establish beyond reasonable doubt that Shaqir Gashi used the weapon himself or had any knowledge of it.

5. Rejected Motions

Defence Council Arif Hasi requested the defendant Kasum Gashi to be heard in the capacity of a witness in this case as he is also an injured party.

The Presiding Judge rejected this motion as according to the law it is not possible to hear a defendant in the capacity of a witness. Witnesses are obliged to answer questions and tell the truth while that obligation does not apply in case of the accused. It would be a serious violation of the accused rights to examine him as a witness and compel him to answer questions and tell the truth.



E. LEGAL QUALIFICATION

1. Law applied

The criminal acts were committed on 14 June 2008. At that time the Provisional Criminal Code of Kosovo (PCCK), that entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 paragraph (1) of the PCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator. There was no change in the law that would be more favourable for the accused. Although they were charged according to the Criminal Code of Kosovo that entered into force on 06 January 2009, the Court made reference to the provisions of the PCCK as the applicable law at the time of commission of the criminal offence. However, when acquitting, they had to be acquitted from the original charges.

2. Necessary defence

As stated above, it is clear and undisputed that the accused Hajriz Gashi caused the death of Abedin Gashi and caused serious injuries to Kasum Gashi.

According to Article 8 paragraph 1 of the PCCK, however, an act committed in necessary defense is not a criminal offence. Therefore in such a case the accused must be acquitted.

According to Article 8 paragraph 2 of the PCCK an act is committed in necessary defense when a person commits the act to avert an unlawful, real and imminent attack from himself or another person and the nature of the act is proportionate to the degree of danger posed by the attack.

In this case, the Court could neither establish that Hajriz Gashi indeed acted in necessary defence, nor could it be excluded due to the numerous contradictions and inconsistencies in the statements on both sides as discussed under D/2. Therefore, Hajriz Gashi was acquitted of the charges of Murder contrary to Article 146 of the CCK and Attempted Murder contrary to Articles 146 and 20 of the CCK, pursuant to Article 390 Item 3 of the CPCCK and **not** under Article 390 Item 1 of the CPCCK as read with Article 8 Paragraph (1) of PCCK.

Shaqir Gashi was charged with Incitement to Commit Murder contrary to Articles 146 and 24 of the CCK and Incitement to Commit Attempted Murder contrary to Articles 146, 20 and 24 of the CCK. As discussed under D/3, the evidence presented during the course of the main trial was not sufficient to prove beyond reasonable doubt that he had incited his son to kill Abedin Gashi and try to kill Kasum Gashi. Therefore he was acquitted pursuant to Article 390 Item 3 of the CPCCK.



3. Unauthorized Ownership, Control, Possession or Use of Weapons

The Public Prosecutor charged the accused Hajriz Gashi and Kasum Gashi with the Unauthorized Ownership, Control, Possession or Use of Weapons making reference to Article 328 Paragraph (1). However, as the panel could not exclude on either side that the weapon was used in necessary defence, the panel established the guilt of both accused in the privileged form of the same criminal offence, pursuant to Article 328 paragraph (2) of the PCCK.

Shaqir Gashi was also charged with Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph (1). However, as discussed under D/4, there was no evidence that he had any knowledge about the automatic rifle AK 47 used by his son on the critical day or that he himself had used it. Therefore, he was acquitted of this charge pursuant to Article 390 Item 3 of the CPCK.

F. DETERMINATION OF PUNISHMENT

When imposing the criminal sanction the Court has to 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 – to prevent the offender from re-offending. In determining the duration of punishment, the Court has to evaluate all mitigating and aggravating factors, pursuant to Article 64 paragraph (1) of the PCCK.

By determining the sentence, in case of both accused the Panel took as an aggravating factor the grave consequences of the use of weapons in this specific case.

The Panel took as a mitigating factor the fact that neither of the accused had previous criminal record.

For the criminal act of Ownership, Control, Possession or Use of Weapons, pursuant to Article 328 paragraph (2) of the PCCK, the law foresees a punishment of up to 8 years of imprisonment.

Considering the mitigating and aggravating factors, the panel imposed 4 years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in case of Hajriz Gashi.

The panel imposed 3 years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in case of Kasum Gashi, taking into consideration that he himself was injured in the course of these tragic events.



The accused Hajriz Gashi has been in detention on remand from 20.9.2008 until 11 January 2010. That period is to be credited in the imposed punishment of imprisonment pursuant to Article 73 paragraph (1) of the PCCK.

The panel confiscated the two weapons that have been used on the day of the event and the other AK 47 that was found in Jonuz Gashi's home. The fourth weapon, a shotgun that was found and seized in the same house, will be returned by a separate order as soon as Jonuz Gashi or his legal representative presents the valid authorization card for that weapon.

G. COSTS

The accused Hajriz Gashi and Kasum Gashi were found guilty, therefore, they must reimburse the costs of criminal proceedings pursuant to Article 102 paragraph (1) of the CPCK, except the costs of interpretation and translation throughout the criminal proceedings. 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.

As the accused Shaqir Gashi was acquitted of all the charges, he does not have to reimburse the costs of criminal proceedings. It will be paid from budgetary resources pursuant to Article 103 Paragraph (1) of the CPCK.

H. COMPENSATION CLAIM

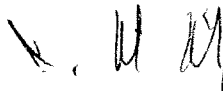
At the beginning of the main trial, the Injured Party was reminded that he may file a motion to realize property claim within the criminal proceedings, pursuant to Article 355 paragraph (2) of the CPCK.

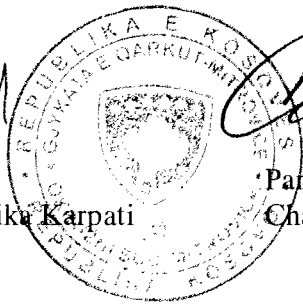
Injured Party Jonuz Gashi did not file a motion to realize property claim.

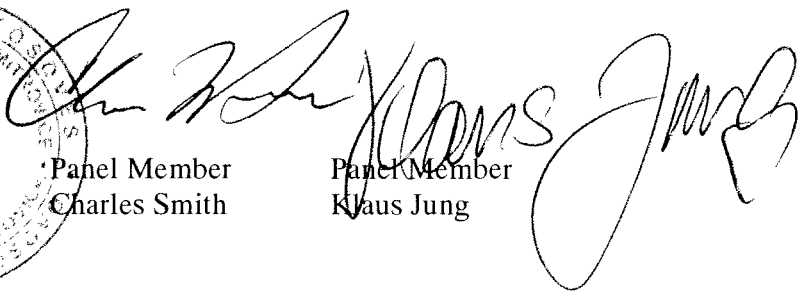
**District Court of Mitrovica
P. nr. 24/09**



Prepared in English, an authorized language.


Presiding Judge
Hajnalka Veronika Karpati


Panel Member
Charles Smith


Panel Member
Klaus Jung


Recording Officer
Noora Aarnio

Legal remedy:

Authorized persons may file an appeal in written form against this verdict through the District Court of Mitrovica to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.