

Having pleaded guilty to the criminal offences of Aggravated Murder in violation of Article 147 Item 10) of the Criminal Code of Kosovo (CCK) and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK pursuant to the Plea Agreement dated 09 November 2010 and the Court having accepted the Plea Agreement on 22 November 2010, as registered with the Court on 22 November 2010

is

SENTENCED

- to 12 /twelve/ years of imprisonment for the criminal act of Aggravated Murder
- to 2 /two/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The aggregate punishment is determined in **13 /thirteen/ years of imprisonment**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the CCK.

The time spent in detention on remand since 25 March 2009 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

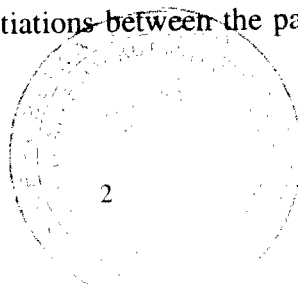
The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article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

REASONING

A. PROCEDURAL BACKGROUND

The District Public Prosecutor for Mitrovica in the indictment PP. no. 256/04 dated 25 March 2010, as amended on 06 and 19 April 2010 and confirmed by the Ruling KA No.15/10 on 02 June 2010 charged Mensur Isufi with Aggravated Murder contrary to Article 147 Items 3) and 10) of the Provisional Criminal Code of Kosovo (PCCK) and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraphs (1) and (2) of the PCCK.

The main trial was scheduled to commence on 10 November 2010 but the start was adjourned due to ongoing plea negotiations between the parties. On 22 November 2010



the EULEX Prosecutor informed the Court that a guilty plea agreement had been finalized and signed by the parties and the Chief Public Prosecutor.

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 Aggravated Murder pursuant to Article 147 of the CCK allows for the imposition of a minimum sentence of 10 years of imprisonment. In addition, the indictment in this case alleged that the accused had committed the acts in Duboqak-Palevina.

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

On 02 August 2010 the President of the Assembly of EULEX Judges assigned the case to EULEX judges based on Article 3.3 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 Christine Lindemann-Proetel and Nikolay Entchev as panel members. All three judges are assigned to the District Court of Mitrovica.

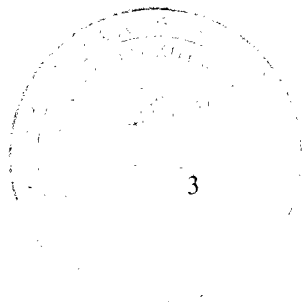
None of the parties objected to the panel composition.

C. THE PLEA AGREEMENT

A Plea Agreement was presented to the Court in a public hearing pursuant to Article 308A Paragraph (9) of the CPCK on 22 November 2010.

The Accused Mensur Isufi pleaded guilty to Aggravated Murder in violation of Article 147 Item 10 of the Criminal Code of Kosovo (CCK) and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraphs (1) and (2) of the CCK, with the correct qualification under Article 328 Paragraph (2) of the CCK as accepted by the Court.

The Plea Agreement contained the following factual findings:



“On 11 September 2004, the suspect went to a place called Duboqak – Palevina, along with his paternal uncle’s sons named R and B, in order to cut some wood in the government forest along with his uncle’s sons, R and B. Whilst they were cutting the wood, forester H came there. H was assigned to guard governmental forest and after exchange between this man and the suspect, the suspect pulled out a pistol and shot at the forest guard. The victim died at the scene. This was witnessed by R and B. The forest is a state forest.”

The Accused, Mensur Isufi did not have a valid weapon authorization card for the pistol. The weapon was not seized during the investigation and its whereabouts remained unknown.

Injured Parties K son of the victim H, and P, brother of the victim were present at the public hearing on 22 November 2010. The Injured Parties confirmed that they had been informed by the prosecutor about the Plea Agreement.

Pursuant to Article 308A Paragraph (5) of the CPCK, the Injured Party must be given an opportunity to present a statement to the court regarding the property claim. In the present case, none of the Injured Parties - after they were given the relevant instruction - submitted such a claim, but expressed their wish to seek compensation at a later stage through civil litigation. They were given the opportunity to present their comments on the plea agreement whereby P, in the name of the family, expressed his dissatisfaction with the proposed sentence.

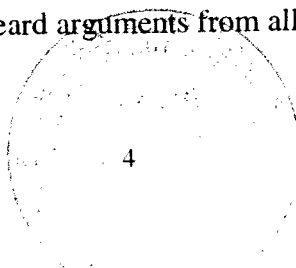
The Plea Agreement was accepted by the Court on the day of the hearing pursuant to Article 308A Paragraph (10) and (15) of the CPCK.

After questioning the Accused, his Defence Counsel and the Public Prosecutor, the Court determined that the Plea Agreement met the conditions under Article 308A Paragraph (12); the Accused understood the nature and the consequences of the guilty plea, he voluntarily made the guilty plea after sufficient consultation with his defence counsel, he was not coerced in any way and was not forced to plead guilty. Furthermore, the guilty plea is supported by the facts and evidence of the case, testimonies of the witnesses, statements of the Accused and documentary evidence of the case file. Therefore, pursuant to 308A Paragraph (15) of the CPCK, the Court ordered that the Plea Agreement be filed with the Court and scheduled the sentencing hearing at 14:30 on the same day.

The Plea Agreement was filed with the Court on the same day, 22 November 2010, at 13:30.

D. THE SENTENCING

On 22 November 2010 the panel heard arguments from all parties regarding sentencing.



After deliberation, the Panel imposed the punishment pursuant to Article 308A Paragraph (15) of the CPCK.

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 CCK.

In the case of Mensur Isufi the Court took as aggravating factors that the victim had to provide for a family with five children and that the Accused committed the criminal offence while being engaged in illegal activity.

The Court took as mitigating circumstances that the accused had no previous criminal record, he pleaded guilty and expressed remorse for what he had committed. However, as the remorse was expressed only years later and not in a convincing way, the Court could not afford much weight to it when imposing the sentence.

For the criminal act of Aggravated Murder pursuant to Article 147 of the CCK, the law foresees a punishment of at least 10 years of imprisonment. Considering all the mitigating and aggravating factors, the panel imposed 12 years of imprisonment for this criminal act.

For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons pursuant to Article 328 Paragraph (2) of the CCK the law foresees a punishment of a fine or an imprisonment of 1 to 8 years. The panel imposed 2 years of imprisonment.

The Accused committed two criminal acts. Pursuant to the rules of calculation of compounded sentence, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments. The panel imposed an aggregate punishment of 13 years of imprisonment pursuant to Article 71 paragraphs (1) and (2) Item 2) of the CCK.

The accused Mensur Isufi has been in detention on remand since 25 March 2009. This period of time is to be credited in the imposed punishment of imprisonment pursuant to Article 73 paragraph (1) of the CCK.

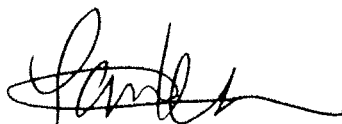
E. THE APPLICABLE LAW

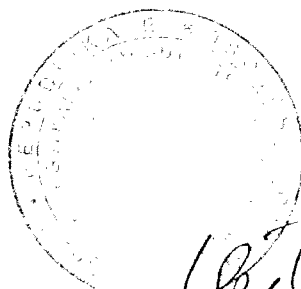
The criminal acts were committed on 11 September 2004. At that time the Provisional Criminal Code of Kosovo (PCCK), that entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 paragraphs (1) and (2) of the PCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator unless a new law is more favourable for the accused.

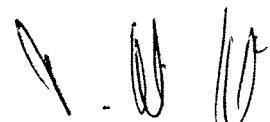
However, some changes, including the institution of "Plea Agreement" were introduced in the Criminal Procedure Code of Kosovo by the Law No. 03/L-003 that entered into force on 06 January 2009 and also the Provisional Criminal Code of Kosovo was amended by the Law No. 03/L-002 that entered into force on 06 January 2009. Obviously, the provisions concerning a plea agreement can be applied only by reference to the "new" laws, the Criminal Code of Kosovo (CCK) and the Criminal Procedure Code of Kosovo (CPCCK). Therefore, the Criminal Code of Kosovo is more favourable for the accused and the Court made reference to this law in the Judgment concerning sentencing.

F. COSTS

The accused was found guilty, therefore, he must reimburse the costs of criminal proceedings pursuant to Article 102 paragraph (1) of the CPCCK, 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 CPCCK.


Recording Officer
Tara Khan




Presiding Judge
Hajnalka Veronika Karpati

Panel members:


Christine Lindemann-Proetel


Nikolay Entchev

Legal remedy:

This judgment concerning sentencing became final on the day of its announcement as it does not fall under Article 308A Paragraph (8) Item 1) of the CPCCK.