

DISTRICT COURT OF MITROVICA

K nr. 32/2009

22 April 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, 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;

Radivoje VIRIJEVIC, charged, according to the Indictment of the District Public Prosecutor PP. Nr. 75/2008 dated 05 June 2009 and filed with the Registry of the District Court of Mitrovica on 15 June 2009, with the following criminal offences;

- **Aggravated Murder**, contrary to Articles 146 and 147 Item 3 of the Provisional Criminal Code of Kosovo ("PCCK") as read with Article 23 of the PCCK;
- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the PCCK;

and

██████████ pursuant to the Motion for Punishment of the District Public Prosecutor Office KTM Nr. ████████, dated and filed on 16 September 2008 for the criminal offences of

- **Aggravated Murder**, contrary to Article 147 Item 3 of the PCCK as read with Article 23 of the PCCK
- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the PCCK

After having held the main trial hearing closed to the public on 23, 24 February, 22, 24, 25 March and 22 April 2010, all in the presence of the Accused Radivoje Virijevic and ██████████, their Defence Counsel Ljubomir Pantovic and Miodrag Brkljac, EULEX Public Prosecutor Neeta Amin (except for the hearing on 22 April 2010 when she was replaced by EULEX Public Prosecutor Maria Bamieh), Injured Parties Slavica Devedzic and Dragica Tanaskovic, after the trial panel's deliberation and voting held on 22 April 2010, pursuant to Article 392 Paragraph (1) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), pronounced in public and in the presence of the Accused, his

Defence Counsel Miodrag Brkljac, EULEX Public Prosecutor Maria Bamieh and the Injured Parties Slavica Devedzic and Dragica Tanaskovic, the following

VERDICT

I.) The accused **Radivoje VIRIJEVIC**, son of Uros Virijevic and Olga Milentijevic, born on 17 August 1965, in Zecevic Village, Municipality of Zubin Potok, Kosovar Serbian, last known residence at Veliko Rudare Village, Municipality of Zvecan, completed high school, locksmith by profession, with average income of 35000-40000 Serbian Dinars, married with two children, no previous conviction, in detention since 21 June 2008

Is

FOUND GUILTY

A) - **because** on 20 June 2008 at around 23:00 hours, close to the house of Todor Devedzic, in Veliko Rudare village – municipality of Zvecan, the accused, in a state of mental distress, provoked by continuous grave insult and threatening SMS text messages sent by the victim in the period of two weeks prior to the incident, and being brought by the victim through no fault of his own into a state of severe shock by the victim's final SMS message threatening his family and sent to his daughter's mobile phone, killed Todor Devedzic using a weapon AK-47, made by "Zastava" – Kragujevc, Model M-70 AB, calibre 7,62, with serial number 13637, by firing at the vehicle of the victim who was in the driver's seat returning home. Todor Devedzic died at the scene due to multiple penetrating gunshot injuries to the head and chest.

By doing so, the Accused Radivoje Virijevic committed and is criminally liable for the criminal act of

Murder Committed in a State of Mental Distress, contrary to Article 148 of the PCKK.

B) - **because** the accused was in possession of a weapon AK-47, made by "Zastava" – Kragujevc, Model M-70 AB, calibre 7,62, with serial number 13637 without a valid authorization card and used the same weapon to kill Todor Devedzic on 20 June 2008.

By doing so, the Accused Radivoje Virijevic committed and is criminally liable for the criminal act of

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

II.) The accused [REDACTED], born on [REDACTED], in Mitrovica, Kosovar Serbian, last known residence at Veliko Rudare Village, Municipality of Zvecan, completed high school, occasional labourer, with average income of less than 200 Euros/month, not married, no previous conviction, in detention from 21 June 2008 until 18 September 2008

Is

FOUND NOT GUILTY

Because it was not proven that on 20 June 2008 at around 23:00 he accompanied [REDACTED] Radivoje Virijevec and that he helped him in any way when Radivoje Virijevec killed Todor Dzevedzic close to the victim's house in Veliko Rudare village. It was also not proven that he used or hid or helped to hide the AK-47 murder weapon with serial number 13637.

THEREFORE, the accused [REDACTED] is

Acquitted

Of committing the criminal offence of **Aggravated Murder** under Article 147 Item 3 as read with Article 23 of the PCCK, pursuant to Article 390 Item 3) of the PCCK and

Of committing the criminal offence of **Unauthorized Ownership, Control, Possession or Use of Weapons** contrary to Article 328 Paragraph (2) of the PCCK, pursuant to Article 390 Item 3) of the PCCK.

The **Accused Radivoje Virijevec** is

SENTENCED

- to 6 /six/ years of imprisonment for the criminal act of Murder Committed in a State of Mental Distress /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 7 /seven/ 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 21 June 2008 is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

The weapon AK-47, made by “Zastava” – Kragujevc, Model M-70 AB, calibre 7,62, with serial number 13637 is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The accused Radivoje Virijevec shall reimburse his part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCCK 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 PCCK.

Pursuant to Article 103 Paragraph (1) of the PCCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the PCCK, the necessary expenses of the defendant [REDACTED] 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.

The property claim of the injured parties is partially awarded:

Within 15 days after this verdict becomes final, the Accused Radivoje Virijevec is obliged to pay 3.950 (three thousand nine hundred and fifty) Euros for material damages to the Injured Party Slavica Devedzic.

The remainder of the property claim is referred for civil proceedings pursuant to Article 112 Paragraph (2) of the PCCK.

REASONING

A. Procedural Background

Indictment PP nr. 75/08 dated 05 June 2009 and filed with the District Court of Mitrovica by EULEX Prosecutor Neeta Amin on 15 June 2009, charged the Accused Radivoje Virijevec with Aggravated Murder in violation of Articles 146 and 147 Paragraph (3), as read with Article 23 (Co-Perpetration) of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons, in violation to Article 328 Paragraph (2) of the PCCK. EULEX judges took over the case on 14 October 2009. The Indictment was confirmed on 14 December 2009.

District Public Prosecutor Ismet Ujkani filed the Motion for Punishment PPM nr. [REDACTED] against Accused [REDACTED] on 16 September 2008, charging him with Co-Perpetration of Aggravated Murder in violation of Article 147 Paragraph (3) as read with

Article 23, and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the Criminal Code of Kosovo ("CCK").

The two cases against Radivoje Virijevic and [REDACTED] were joined by order of the Presiding Judge of the Main Trial Panel on 17 February 2010. The Main Trial was held on 23 & 24 February, 22, 24 and 25 March and 22 April 2010. The closing argument of Prosecutor Neeta Amin and the statement of Injured Party Slavica Devedzic were heard on 25 March 2010. The closing arguments of Defence Counsel Ljubomir Pantovic and Miodrag Brkljac were heard on 22 April 2010. The Verdict was orally rendered the same day.

B. Competence of the Court

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

The Accused were charged with the criminal offence of Aggravated Murder pursuant to Article 147 of the PCCK, which allows for the imposition of a minimum sentence of ten years of imprisonment. The Indictment in this case alleged that the Accused committed the criminal acts in Veliko Rudare village located in Zvecan Municipality, which lies within the Mitrovica District.

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 issued a decision for EULEX to take over case P. nr 32/09 against Radivoje Virijevic based on Articles 3.3 and 3.5 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors ("Law on Jurisdiction") and assigned it to EULEX judges in the Mitrovica District Court. On 15 February 2010, the President of the Assembly of EULEX Judges issued a decision to take over case PPM nr. 10/08 against Darko Virijevic and also assigned it to EULEX judges in the Mitrovica District Court.

Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Criminal Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Klaus Jung and Nikolay Entchev as panel members.

C. Summary of Evidence Presented

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

- (1) Slavica Devedzic – Injured Party, 23 February 2010
- (2) Dragomir Djuric – 24 February 2010
- (3) Veselin Kadic – Police Officer, 24 February 2010
- (4) Svetislav Milosavljevic – Police Officer, 22 March 2010
- (5) Nada Virijevic – 22 March 2010
- (6) Danijela Djuric – 22 March 2010
- (7) Radisa Milentijevic – 22 March 2010
- (8) Ivan Milentijevic – 22 March 2010
- (9) Nebojsa Boljevic – 24 March 2010
- (10) Nada Morina – Expert Witness, 24 March 2010

On 25 March 2010, the following documents were read into the record:

- (11) Forensics Report dated 23 October 2008.
- (12) Psychological Report dated 08 April 2009 together with the Report on Mental Health Status of Radivoje Virijevic dated 06 May 2009.
- (13) Autopsy Report of Todor Devedzic dated 30 June 2008.
- (14) Forensic ID Report dated 21 June 2008.
- (15) Descriptions, photos and sketches of the crime scene.
- (16) Initial Incident Report dated 21 June 2008.
- (17) Investigation Report by Svetislav Milosavljevic.
- (18) Officers Report by Branko Radosavljevic dated 21 June 2008.
- (19) Case Initiation Report by Annunziata Ciaravolo.

During the main trial session on 25 March 2010, both Accused gave statements and answered questions.

D. Evaluation of Presented Evidence

1. Factual Findings

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

Nada Virijevic, the wife of Accused Radivoje Virijevic, had engaged in an extramarital affair with a married family friend, Todor Devedzic, for approximately eight years. The relationship ended and on 06 June 2008 Radivoje Virijevic learned about the affair from his wife, Nada.

After the termination of their relationship, Todor Devedzic sent 71 SMS text messages to the mobile phone of Nada Virijevic over the course of fifteen days, from 06 to 20 June 2008. Radivoje Virijevic was in possession of the mobile phone during this time. The text messages repeatedly asked for Nada to contact Todor, and contained threats such as “You

will stay mine even if you have to die”¹ and “Nada from tomorrow you will be mine or dead.”²

During these fifteen days of receiving messages, Radivoje Virijevic asked his cousins Radisa Milentijevic and Ivan Milentijevic to tell Todor Devedzic to stop sending threatening text messages and to leave the Virijevic family alone. On or about 12 June 2008, they spoke to Todor, who responded “I love Nada and I am not interested in my own wife and children.” Todor also asked the cousins to bring Nada to him, and stated that he would marry Nada. The cousins informed Radivoje Virijevic about the conversation. Afterwards, Todor continued to send threatening text messages to the Virijevic mobile phone.

Radivoje Virijevic then instructed his wife, Nada, to speak with Nebojsa Boljevic, Todor Devedzic’s commander at the Serbian MUP police station in Zvecan where Todor was employed. She informed Boljevic that Todor was sending threatening text messages and asked him to intervene. When Boljevic discussed the issue with Todor, he denied sending messages or having any contact with the Virijevic family. Afterwards, Todor continued to send threatening text messages to the Virijevic mobile phone.

Shortly before or on 20 June 2008, Radivoje Virijevic met Boljevic in the street and complained to him that Todor was continuing to send text messages.

On 19 June 2008, Todor sent three text messages to the Virijevic mobile phone. The first message was sent at 05:57 hrs and included the threat “I told Cula I would kill both you and me but I would not let you leave me for another man.” The second message sent at 06:05 hrs included the threat “I will first bury you because you have brought me and ruined me totally this is my last warning to you.” The third message sent at 12:44 hrs included the threat “Leave Nada alone because she is mine and will stay mine dead or alive.”

On 20 June 2008 between 12:52 and 13:06 hrs, Todor Devedzic sent three SMS text messages to the mobile phone of Danijela Djuric, daughter of Nada Virijevic and Accused Radivoje Virijevic. The first text message stated that if Nada did not contact him, Todor would “kill her and bury everything that lives”. It also stated “Nada must be mine dead or alive.” The second text message warned that Nada should sort things out with Todor “so that there would not be graves rather than a marriage feast” and also threatened that Todor would first kill Nada and then himself.

On 20 June 2008 at 19:43 hrs, Todor Devedzic sent the following text message to the Virijevic mobile which was in possession of Radivoje Virijevic: “And I want her to give me back everything that she has taken or I will kill her because she is not going to fool me like she has you I will not let her walk around because she was mine and will stay

¹ Transcript of SMS text message sent from victim’s mobile to Virijevic mobile on 08 June 2008 at 15:50 hrs.

² Transcript of SMS text message sent from victim’s mobile to Virijevic mobile on 12 June 2008 at 14:35 hrs.

mine because I see that you are pimping her for money to everyone.” At this time, Radivoje Virijevec was at his home with his wife Nada Viriejvic, [REDACTED], Danijela Djuric and her husband Dragomir Djuric. At approximately 22:30 hrs, Danijela and Dragomir Djuric decided to return home. As they were leaving, Danijela Djuric informed Radivoje Virijevec that she had received threatening messages from Todor Devedzic on that day and showed him the text message referring to graves.

Danijela and Dragomir Djuric departed, leaving Radivoje, Nada, and [REDACTED] at their home. Radivoje Virijevec then took an AK-47 M70 7.62x39mm calibre automatic rifle from his property and went on foot towards the home of Todor Devedzic. When he saw Todor approaching his home in his vehicle, Radivoje Virijevec fired approximately 28 bullets from his automatic AK-47 rifle in the direction of Todor’s vehicle. The vehicle was hit by 25 bullets, and Todor Devedzic was hit by at least five bullets plus numerous bullet fragments and other foreign objects. Todor Devedzic died in the driver’s seat of his vehicle.

Radivoje left the rifle in the bushes and returned home. A few minutes later, the family of Todor Devedzic phoned the Virijevec home seeking assistance and Radivoje and [REDACTED] went to the crime scene. At the scene, Radivoje was arrested by the police and taken to the police station where he confessed to killing Todor Devedzic and disclosed the location of the rifle.

With regard to the weapon:

Radivoje Virijevec pled guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK. He testified that he found the AK-47 M70 7.62x39mm calibre automatic rifle with the serial number manually erased (but with serial number 13637 on inner parts) on the property of the school where he worked. He took possession of the rifle without obtaining a valid license, and then used it in the killing of Todor Devedzic.

2. Evidence Establishing the Factual Findings

There were no eyewitnesses to the tragic event which occurred on 20 June 2008 in Veliko Rudare. However, through the numerous and corroborating witness statements, the transcripts of SMS text messages, the documentary evidence in the case file, the crime scene report, the forensics and ballistics reports and the autopsy report, the factual situation was sufficiently clarified.

Nada Virijevec testified that she had an affair with the victim Todor Devedzic for eight years between 2000 and 2008. According to Nada Virijevec, the relationship had ended by 06 June 2008, however she was receiving SMS text messages from Todor Devedzic after the termination of the affair.³ Both Nada Virijevec and Radivoje Virijevec testified that on 06 June 2008, Radivoje noticed that Nada was receiving many text messages

³ Minutes of the Main Trial Hearing, 22 March 2010, p. 6-8.

which were upsetting her, and that he took the mobile phone from her. At this time, Nada informed Radivoje about her affair with Todor Devedzic.⁴

Nada Virijevec's Nokia mobile phone was temporarily confiscated by the Kosovo Police and Officer Veselin Kandic made a verbatim record of the SMS text messages saved in the mobile which had been received from Todor Devedzic's two mobile phone numbers.⁵ The record shows that on 06 June 2008, Todor Devedzic sent six text messages to the mobile phone of Nada Virijevec. The record also establishes that during the fifteen day period from 06 to 20 June 2008, Todor continued to send numerous daily SMS text messages to the Virijevec mobile phone, 71 text messages in total, many of which included threats to the life of Nada Virijevec.

Radivoje Virijevec, Radisa Milentijevec and Ivan Milentijevec gave consistent and corroborating testimony that during this time period, on or about 12 June 2008, Radivoje asked Radisa and Ivan to speak to Todor Devedzic about the threatening text messages. Radivoje asked them to tell Todor to stop sending messages and not to contact the Virijevec family any more. Radisa and Ivan Milentijevec spoke with Todor as Radivoje requested, but Todor responded "I love Nada, I am not interested in my wife and children." They described Todor's behaviour as "not normal" and "aggressive". Radisa and Ivan reported back to Radivoje the details of the conversation with Todor, and informed him that it was not possible to speak to Todor as a normal man.⁶

As shown by the police record of SMS text messages, Todor Devedzic continued sending threatening text messages to the Virijevec mobile phone after his conversation with Radisa and Ivan Milentijevec.

Radivoje Virijevec then decided to send his wife Nada to Nebojsa Boljevic, the police commander who was Todor Devedzic's superior. Nada Virijevec went to Boljevic's office and informed him about the threatening text messages being received from Todor. At this time, the mobile was still with Radivoje Virijevec, and therefore Nada could not show Boljevic the messages, however he told Nada he would speak with Todor. Nada informed Radivoje that Boljevic would speak with Todor. However, when Boljevic discussed the issue with Todor, he denied sending any text messages.⁷

⁴ Testimony of Nada Virijevec, Minutes of the Main Trial Hearing, 22 March 2010, p. 7-8; Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 3 & 8.

⁵ Testimony of Veselin Kandic, Minutes of the Main Trial Hearing, 24 February 2010, p. 19-22; Testimony of Svetislav Milosavljevic, Minutes of the Main Trial Hearing, 22 March 2010, p. 4-5; Minutes of messages sent from tel. nr. 063/8279182 and 064/0037653 to tel. nr. 062/1990837.

⁶ Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 3 & 9; Testimony of Radisa Milentijevec, Minutes of the Main Trial Hearing, 22 March 2010, p. 36-40; Testimony of Ivan Milentijevec, Minutes of the Main Trial Hearing, 22 March 2010, p. 42-44.

⁷ Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 3; Testimony of Nada Virijevec, Minutes of the Main Trial Hearing, 22 March 2010, p. 9, 16; Testimony of Nebojsa Boljevic, Minutes of the Main Trial Hearing, 24 March 2010, p. 3-4.

As shown by the police record of SMS text messages, Todor Devedzic still continued sending threatening text messages to the Virijevec mobile phone after his conversation with Nebojsa Boljevic.

Radivoje Virijevec saw Nebojsa Boljevic in the street on or about 20 June 2008 and informed him that Todor Devedzic was continuing to send threatening text messages. It was a short conversation as Boljevic was in a rush, but he promised to speak to Todor again.⁸

On 19 June 2008, Todor Devedzic sent three text messages to the Virijevec mobile phone threatening the life of Nada Virijevec, which are detailed above and recorded in the police record of SMS text messages.

On 20 June 2008, Todor Devedzic sent three text messages to the mobile phone of Danijela Djuric, threatening the life of Nada Virijevec as detailed above and recorded in the police record of SMS text messages. Danijela Djuric was at home in Mali Zvecan when she received the messages.⁹

As shown by the police record of SMS text messages, on 20 June 2008 at 19:43 hrs Todor Devedzic sent an SMS text message to the Virijevec mobile phone threatening the life of Nada Virijevec and accusing Radivoje of pimping Nada to others for money (detailed above). Radivoje was in possession of the mobile at this time and read this message.¹⁰

Danijela Djuric and Radivoje Virijevec provided detailed, consistent and corroborating evidence regarding their interaction on the evening of 20 June 2008. The general factual circumstances of this evening were further corroborated by the testimonies of Dragomir Djuric, Nada Virijevec, and [REDACTED]. On 20 June 2008, Danijela and Dragomir Djuric went to the home of Radivoje and Nada Virijevec and stayed there for three to four hours. Nada, Radivoje and [REDACTED] were present in the house. At approximately 22:30 hrs, Danijela and Dragomir decided to return to their own home. Radivoje Virijevec walked them to the door, and right before leaving Danijela informed Radivoje about the text messages she had received from Todor earlier in the day. She showed Radivoje the text message received at 12:59 hrs which read “tell Nada not to flee but to sit down with me to sort things out in a nice way, so that there would not be graves rather than a marriage feast” and “I am capable of anything I will kill first her and then myself.” Danijela and Dragomir Djuric then left the Virijevec home.

According to the testimony of Radivoje Virijevec, which was generally consistent with his statement to police given on 21 June 2008 and his statement to prosecutor Ismet Ujkani given on 13 October 2008, upon seeing the text message sent to Danijela Djuric, he “lost his mind completely”. After Danijela and Dragomir Djuric left, [REDACTED]

⁸ Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 3; Testimony of Nebojsa Boljevic, Minutes of the Main Trial Hearing, 24 March 2010, p. 3-4.

⁹ Testimony of Danijela Djuric, Minutes of the Main Trial Hearing, 22 March 2010, p. 27.

¹⁰ Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 3.

was watching TV and Nada Virijevic went into the bathroom. In a state of mental distress, Radivoje Virijevic exited his house and took an automatic AK-47 rifle from his shed. He walked over to the neighboring home of Todor Devedzic and waited in the bushes. When he saw Todor approaching his house in his vehicle, Radivoje Virijevic began firing at him with the automatic rifle. He fired until the magazine was empty.

Police, forensics and autopsy reports establish that 28 shots were fired from the AK-47 rifle, 25 of which impacted the vehicle of Todor Devedzic. Five bullets along with several additional bullet fragments and/or other foreign objects penetrated the body of Todor Devedzic, who died in the driver's seat of his vehicle as a result of his wounds.¹¹

Radivoje Virijevic left the rifle in some bushes and returned home after the shooting. Some minutes later, a member of the Devedzic family phoned the Virijevic house asking for assistance. Radivoje returned to the crime scene and was arrested and taken to the Zvecan police station where he confessed to killing Todor Devedzic and told the police the location of the rifle.¹²

3. Credibility of Witnesses

The Court found that the testimonies of two Accused and of the witnesses were generally consistent and clear, and corroborated one another. They were therefore deemed credible.

The Court notes that there were some inconsistencies between the statement of Accused Radivoje Virijevic to the police on 21 June 2008, his statement to the public prosecutor on 13 October 2008, and his testimony before the Court. However, these inconsistencies were mainly comprised of the Accused's inability to recall certain details of the night of 20 June 2008 during his testimony. Some of those details had been provided by him in his prior statements. Therefore, the prior statements and the testimony of the Accused did not directly contradict one another, but rather the Accused recalled more details immediately following the event, as would be logically expected. The Court also notes that Radivoje Virijevic stated to the Prosecutor that he personally went to speak to Nebojsa Boljevic about the threatening SMS text messages from Todor Devedzic. However, it was confirmed during the main trial hearings that it was Nada Virijevic who went to the office of Boljevic and not Radivoje.¹³ This discrepancy could be an transcribing error in the recording of the statement, or a misstatement by Radivoje due to confusion stemming from his distressed mental state.

¹¹ Forensic Identification Report by Veselin Kadic, file nr. 2006-BG-014, 21 June 2008; Report on Criminality Examination - Fire Weapon and Found Parts, Central Crime Laboratory of the Kosovo Police Service, by Ballistics Examiner Hyrije Hoxha; Autopsy Report, Office on Missing Persons and Forensics, rep. nr. MA 08-138, 30 June 2008.

¹² Testimony of Radivoje Virijevic, Minutes of the Main Trial Hearing, 25 March 2010, p. 4; Statement of Radivoje Virijevic to Police, 21 June 2008; Investigation Report by Svetislav Milosavljevic, nr. 2000-BG-064.

¹³ Testimony of Nada Virijevic, Minutes of the Main Trial Hearing, 22 March 2010, p. 9; Testimony of Nebojsa Boljevic, Minutes of the Main Trial Hearing, 24 March 2010, p. 3.

[REDACTED]

With regard to Accused [REDACTED], who was charged by the Prosecution with Co-Perpetration of Aggravated Murder and Unauthorized Ownership, Control, Possession or Use of Weapons, it was not established beyond a reasonable doubt during the Main Trial that [REDACTED] participated in any way in the killing of Todor Devedzic. The testimonies of Nada Virijevic and Radivoje Virijevic corroborate [REDACTED] testimony before the Court that he was home watching a soccer match on television at the time when Radivoje Virijevic shot and killed Todor Devedzic. Furthermore, there was no evidence submitted that [REDACTED] assisted Radivoje Virijevic in any way before or after the commission of the murder.

The Court notes that forensic laboratory tests concluded that gun primer residue was found on both the right and left hands of [REDACTED].¹⁴ However, based solely on this test result, the Court can not concretely determine whether the primer residue originated from the AK-47 automatic rifle at the moment of the shooting of Todor Devedzic or from contact with Radivoje Virijevic and items which he handled. Therefore, it can not be established that [REDACTED] participated in the actual shooting of Todor Devedzic.

For these reasons, the Trial Panel acquitted [REDACTED] of all charges.

E. Rejected Motions

During the Main Trial hearings, there were two motions orally submitted by Injured Party Slavica Devedzic regarding proposals for witnesses to be heard. Both motions were rejected by the Trial Panel because the Injured Party could not establish the relevance of the proposed witnesses' testimony to the case at hand.

On 23 February 2010, Injured Party Slavica Devedzic proposed that Ilinka Milojevic (sister of Todor Devedzic) and Zorica Antonijevic (daughter of Slavica and Todor Devedzic) be summoned as witnesses.¹⁵ She submitted that these two witnesses would testify about how Nada Virijevic had threatened Todor Devedzic. During the Main Trial hearing on 24 February 2010, the Trial Panel announced its decision to reject the proposed witnesses because "the Injured Party did not substantiate that the two witnesses proposed could have relevant information concerning the case".¹⁶ The Trial Panel explained that there was no corroborating evidence in the record of SMS text messages that Nada Virijevic had threatened Todor Devedzic, and that the details of the relationship and interaction between Nada Virijevic and Todor Devedzic were not the subject of the trial.

¹⁴ Examination Report by Senior Expert Vedran Nuic, Forensic Science Center Ivan Vucetic (Zagreb, Croatia), 23 October 2008.

¹⁵ Minutes of the Main Trial Hearing, 23 February 2010, p. 11-13.

¹⁶ Minutes of the Main Trial Hearing, 24 February 2010, p. 2.

On 22 March 2010, Injured Party Slavica Devedzic proposed that Milan Stevic be summoned as a witness to testify that Todor Devedzic had complained to him three days prior to the murder that the Virijevec family would not leave him alone and were threatening him. The Trial Panel issued its decision on the same day, rejecting the proposal because it was not established that the witness had information relevant to the case. Transcripts of the messages sent to Nada Virijevec and Danijela Djuric prove that Todor Devedzic's threats continued until the last day. Even if there was any kind of threat from Nada Virijevec, it would not change the relevant factual situation.¹⁷

F. Legal Qualification

1. Applicable Law

The criminal acts were committed on 20 June 2008. At that time, the Provisional Criminal Code of Kosovo (PCCCK) which entered into force on 06 April 2004 was the applicable law. Pursuant to Article 2, Paragraph (1) of the PCCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator. Furthermore, there was no change in the law that would be more favourable to the perpetrator, pursuant to Article 2, Paragraph (2) of the PCCCK.

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

2. Murder Committed in a State of Mental Distress

It has been concretely established that the Accused Radivoje Virijevec is guilty of committing the act of killing Todor Devedzic, as he has admitted this to the police and before the Court and corroborating witness statements back his confession. However, upon the totality of the evidence presented during the Main Trial, the Court finds that the elements of the criminal offence of Aggravated Murder pursuant to Article 147 Paragraph (3) of the PCCCK, charged in the Indictment, were not proven.

Rather, the circumstances surrounding the killing of Todor Devedzic provide a textbook example of the classification of Murder Committed in a State of Mental Distress pursuant to Article 148 of the PCCCK. This criminal offence consists of the following elements:

- The perpetrator is brought into a state of severe shock.

¹⁷ Minutes of the Main Trial Hearing, 22 March 2010, p. 46-48.

- The shock is caused by an attack, maltreatment or grave insult by the murdered person.
- The perpetrator is brought into this state through no fault of his own.
- The perpetrator kills the victim while in this state.

All of these elements have been established by the evidence.

Over the period of 06 to 20 June 2008, Radivoje Virijevec was brought into a state of severe shock caused by the maltreatment and grave insult of Todor Devedzic.

The progression of Radivoje Virijevec into this state began on 06 June 2008 with the shock of learning of his wife's eight-year affair with Todor Devedzic, a neighbor and close friend whom Radivoje had helped over the years because the Devedzic family was displaced from Skenderaj/Srbica. Radivoje testified that his reaction to this news was very bad and that he could not calm down.¹⁸ He felt "humiliated as a man, totally humiliated, even ashamed of any small child that I saw on the street."¹⁹ He could not stop asking himself how his wife could have done this, and how and where they were able to meet each other over the course of eight years without his knowledge.²⁰ However, despite his shock and humiliation, Radivoje decided to forgive his wife for the affair.

Expert Psychologist Nada Morina testified that based on her professional experience, adultery is an offence normally not pardoned in the southern Balkans, and in Radivoje's specific environment, such incidents are universally condemned. In this social environment, Radivoje suffered a severe stress upon learning about his wife's affair and was ashamed before his own family and his neighbourhood. Further, Radivoje continued to be under stress even after he pardoned his wife's infidelity, and had to use more energy than normal in order to function in his daily life.²¹

The stress further accumulated after the pardoning of the affair, caused by the persistent and aggressive behaviour of Todor Devedzic. For fifteen days, Radivoje Virijevec continued to be humiliated, stressed and harassed by constant SMS text messages from Todor Devedzic in which he made it clear that he considered that Nada Virijevec belonged to him and did not accept the termination of their relationship. In addition, Todor's messages contained daily threats to the life of Nada Virijevec. Radivoje Virijevec testified that each time he received another text message from Todor, he felt as if his mind was being "ground by a millstone". This feeling was always present during those fifteen days, but intensified at some moments.²²

The stress was even further compounded by the fact that all peaceful efforts made by Radivoje Virijevec to alleviate the situation failed to have any positive effect. He first told Todor Devedzic over the phone on 06 June 2008 that their friendship was over and they

¹⁸ Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 6.

¹⁹ Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 9.

²⁰ Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 9-10.

²¹ Testimony of Nada Morina, Minutes of the Main Trial Hearing, 24 March 2010, p. 6-7

²² Testimony of Radivoje Virijevec, Minutes of the Main Trial Hearing, 25 March 2010, p. 5

would never again enter each other's house.²³ However Todor then began sending threatening text messages to the mobile phone of Nada Virijevic. Radivoje next sent his cousins, Radisa and Ivan, to confront Todor about the messages and tell him to stop harassing the Virijevic family. This had no effect on Todor, who continued to send constant threatening text messages. Radivoje then sent his wife, Nada, to Todor's work superior to ask him to exert influence on Todor in order to stop him from sending more text messages. This also had no effect on Todor, and the messages continued.

According to Psychologist Nada Morina, the constant text messages sent by Todor Devedzic exposed Radivoje to "repeated provocations" and resulted in the daily accumulation of stress.²⁴ His stability was being further and further diminished by these subsequent events.²⁵

Finally, on 20 June 2008, after the initial shock of the affair and fifteen days of accumulating stress, Radivoje Virijevic's mental distress culminated in a state of severe shock. At 19:43 hrs he received another text message from Todor Devedzic which accused Radivoje of "pimping" Nada to other men for money. At that moment, this message disturbed Radivoje "more than other previous messages" and he felt especially insulted.²⁶ At approximately 22:30 hrs, his daughter Danijela informed him that Todor had sent her text messages on that day as well, and showed him the text she received which warned about graves rather than a wedding. Radivoje testified that upon seeing this message, he "lost his mind completely", didn't know what to do and his mind went completely blank.²⁷

According to the Psychological Report,

The psychological-social-emotional pressure and the accumulated stress to which [Radivoje Virijevic] was subjected brought about an intra-psychological personality conflict which entailed a massive consumption of psychological energy and resulted in a personality disorder in the functional stability integration and the reduction of his adaptive capabilities.

From a psychiatric point of view, persons confronted with such an experience are "under intensive affective pressure which affects their conscience and reason in a narrow sense of the word" at the critical moment in time.

Expert psychologist Nada Morina affirmed in her testimony that at the critical time, Radivoje Virijevic was suffering from this condition, known as "Affective Tunnel". In the hours prior to the murder, Radivoje was "severely irritable" as a result of the

²³ Testimony of Radivoje Virijevic, Minutes of the Main Trial Hearing, 25 March 2010, p. 9.

²⁴ Testimony of Nada Morina, Minutes of the Main Trial Hearing, 24 March 2010, p. 6.

²⁵ Testimony of Nada Morina, Minutes of the Main Trial Hearing, 24 March 2010, p. 10.

²⁶ Testimony of Radivoje Virijevic, Minutes of the Main Trial Hearing, 25 March 2010, p. 3.

²⁷ Testimony of Radivoje Virijevic, Minutes of the Main Trial Hearing, 25 March 2010, p. 4.

accumulated stress of the text messages he received, which were emotionally destabilizing him.²⁸

Radivoje Virijevec was brought into this state of severe shock through no fault of his own.

It is clear that Radivoje Virijevec was brought into this state of severe shock directly by the actions of Todor Devedzic – specifically his refusal to accept the termination of his relationship with Nada Virijevec and his constant insulting and threatening text messages despite the attempted interventions of third parties.

It was in this state of severe shock that Radivoje Virijevec killed Todor Devedzic.

The Psychological Report concluded that at the moment of committing the criminal act, Radivoje Virijevec was “under the influence of affective tension and stability disorder of integrative mental functions that reduced his mental ability to control and understand his actions”. This is supported by the testimony of Radivoje Virijevec regarding his accumulated stress and emotional state on the night of 20 June 2008 when he “lost his mind” and killed Todor Devedzic.

3. Criminal Liability of Radivoje Virijevec

It is clear from the Psychological Report and the testimony of Expert Psychologist Nada Morina that Radivoje Virijevec was in a state of diminished accountability at the time of the murder. He was emotionally exhausted and his control over his actions was reduced.²⁹ However, he can not be considered as mentally incompetent nor to have diminished mental capacity as required by Article 12 of the PCKK, as his capacity to control himself and understand the consequences of his acts were limited but not essentially. Article 12 paragraph 2 requires “substantially diminished” ability.

G. Sentencing

When imposing the criminal sanction, the Court must bear in mind both the general purpose of punishment – 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 the present case, the Trial Panel came to the conclusion that only by applying the imposed sentence of imprisonment would the above-mentioned double purpose be reached.

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the PCKK. The panel took as mitigating circumstances the family status of the accused, his health condition, that he has no previous criminal record, and that he pleaded guilty to the charge of unlawful

²⁸ Testimony of Nada Morina, Minutes of the Main Trial Hearing, 24 March 2010, p. 6.

²⁹ Testimony of Nada Morina, Minutes of the Main Trial Hearing, 24 March 2010, p. 6.

possession and use of weapon and admitted the fact that he had killed Todor Devedzic. The panel also took into consideration that Radivoje Virijevec did make real efforts to solve the problem between him and his former close friend peacefully, and that he tried to stay calm and come to terms with what was for him a very shameful event. The Trial Panel took as aggravating circumstance the victim's family status, that he was the father of six children.

For the criminal offence of Murder Committed in a State of Mental Distress, the law foresees a punishment of imprisonment of one to ten years. Considering all the mitigating and aggravating circumstances, the Trial Panel imposed a punishment of six years of imprisonment for this criminal act.

For the criminal offence of Unauthorized Ownership, Control Possession or Use of Weapon, the law foresees a fine or imprisonment of one to eight years. The Trial Panel imposed a punishment of two 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 seven years of imprisonment.

The Accused has been in detention on remand since 21 June 2008. That period is to be credited in the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the PCCK.

H. Confiscated Items

The weapon used in the criminal offences, an AK-47 automatic rifle, made by "Zastava" – Kragujevc, Model M-70 AB, calibre 7,62, with serial number manually erased (but with serial number 13637 on inner parts), is confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

I. Costs

As Radivoje Virijevec was found guilty, he must reimburse his part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs will be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCCK.

Due to the acquittal of [REDACTED] of all charges, pursuant to Article 103 Paragraph (1) of the PCCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the PCCK, his necessary expenses, and the remuneration

and necessary expenditures of his defence counsel, as well as the costs of interpretation and translation will be paid from budgetary resources.

J. Compensation Claim

On 10 March 2010, Injured Party Slavica Devedzic submitted a compensation claim on behalf of herself, her children, and the victim's siblings. She submitted documents supporting her claim on 20 April 2010.

The property claim of the injured parties is partially awarded. Within fifteen days after this verdict becomes final, the Accused Radivoje Virijevic is obliged to pay 3.950 (three thousand nine hundred and fifty) Euros for material damages to Slavica Devedzic. This represents the material damage in connection with the costs of funeral expenses and connected ordinances in compliance with religious and local customs and erection of a tombstone, which were supported by documents and invoices.

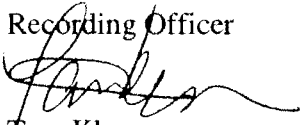
It would have required further inquiries and proof to establish whether and to what extent the claim for the original purchase price of the vehicle and the claims for fear and suffering are justified, which would have delayed the criminal procedure significantly.

Therefore, the panel instructed the Injured Party to file a separate law suit in civil litigation for the remainder of the property claim, pursuant to Article 112 Paragraph (2) of the PCPCK.

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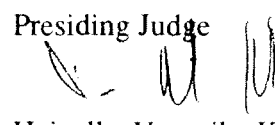
Prepared in English, an authorized language.

Recording Officer



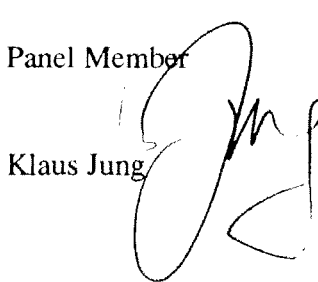
Tara Khan

Presiding Judge



Hajnalka Veronika Karpati

Panel Member



Klaus Jung

Panel Member



Nikolay Entchev

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 PCPK.