

DISTRICT COURT OF MITROVICA

P nr. 127/2008

16 September 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX Judges Klaus Jung and Hajnalka Veronika Karpati as panel members, with the participation of Tara Khan EULEX Legal Officer as Recording Officer, in the criminal case against:

Xhevat HAXHA, charged according to Indictment PP. nr. 108/08 filed on 24 November 2008 by Public Prosecutor Shyqyri Sylja with Attempted Murder, defined in Article 146 as read with Article 20 of the Provisional Criminal Code of Kosovo (PCCK), and Unauthorized Ownership, Control, Possession or Use of Weapons, defined in Article 328 Paragraph (2) of the PCCK;

After having held the main trial hearings open to the public on 13, 14, 15 and 16 September 2010, all in the presence of the Accused XHEVAT HAXHA, his Defence Counsel Xhafer Maliqi, EULEX Public Prosecutor Adebayo Kareem, Injured Party Nazmi Mehmeti and his Legal Representative Abit Asllani (except on 16 September 2010);

After the trial panel's deliberation and voting held on 16 September 2010, on the same day pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, Defence Counsel Xhafer Maliqi, EULEX Public Prosecutor Adebayo Kareem, Injured Party Nazmi Mehmeti and his Legal Representative Abit Asllani, the following:

JUDGMENT

The accused **Xhevat HAXHA**, son of Xhafer Haxha and Xhyla Rexhepi, born on 03 May 1960 in Village of Prekaz, Municipality of Skenderaj/Srbica, Kosovo-Albanian, currently residing at nr. 33 Xhafer Deva Street, Mitrovica, completed primary school, former tradesman, currently unemployed, with average income of 80 Euros per month from social services benefits, married with nine children, no previous conviction;

is



FOUND GUILTY

I.) Because on 09 October 2008 at approximately 17:00 hrs, during a dispute between XHEVAT HAXHA and Injured Party Nazmi Mehmeti over the inconsequential subject of parking, XHEVAT HAXHA drew his pistol weapon - a Zastava M-70 9x19mm calibre handgun with no serial number - which he was carrying and fired at least three shots at Nazmi Mehmeti, hitting him in the left hand, chest and head.

By doing so, XHEVAT HAXHA committed and is criminally liable for the criminal act of Attempted Murder in violation of Article 146 of the PCCK.

II) - Because XHEVAT HAXHA was in possession of a weapon - a Zastava M-70 9x19mm calibre handgun with no serial number - without valid authorization and used that weapon in an attempt to deprive Nazmi Mehmeti of his life.

By doing so, XHEVAT HAXHA committed and is criminally liable for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of to Article 328 Paragraph (2) of the PCCK.

Therefore, XHEVAT HAXHA is

SENTENCED

- to 12 /twelve/ years imprisonment for the criminal act of Attempted Murder /Count I/
- to 4 /four/ years imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons /Count II/

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

The time spent in detention on remand from 09 October 2008 until 25 January 2010 is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

The weapon – a Zastava M-70 9x19 mm calibre handgun with no serial number - is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The accused XHEVAT HAXHA shall reimburse 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 CPCK.

Reasoning

A. Procedural Background

Indictment PP nr. 108/08 filed with the District Court of Mitrovica by Public Prosecutor Shyqyri Sylja on 24 November 2008, charged Xhevat Haxha with Attempted Murder under Article 146 as read with Article 20 of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph (2) of the PCCK. The indictment was confirmed on 29 December 2009.

EULEX Judges took over the case on 15 February 2010. The Main Trial was held on consecutive days from 13-16 September 2010 before the panel of EULEX judges. The closing statements of Prosecutor Adebayo Kareem, Defence Counsel Xhafer Maliki, and Injured Party Nazmi Mehmeti were heard on 16 September 2010. The verdict was orally rendered the same day.

B. Competence of the Court

Under Article 23 Item 1) i) of the Criminal Procedure Code of Kosovo (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.

The Defendant is charged with the criminal offences of Attempted Murder, defined in Article 146 as read with Article 20 of the PCCK, and Unauthorized Ownership, Control, Possession or Use of Weapons defined in Article 328 Paragraph (2) of the PCCK. The criminal offence of Murder carries a minimum sentence of imprisonment for five years, while the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons is punishable by one to eight years. The Indictment alleged that the Defendant committed the criminal act in Mitrovica, which lies within Mitrovica District.

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

On 15 February 2010, following a hearing, the President of the Assembly of EULEX Judges issued a decision for EULEX judges to take over the case pursuant to Article 3.3



of the Law on Jurisdiction¹ and assigned it to EULEX judges in the Mitrovica District Court. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX Judges Klaus Jung and Hajnalka Veronika Karpati as panel members.

C. Summary of Evidence Presented

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

- (1) Nazmi Mehmeti (Injured Party), 13 September 2010
- (2) Elfate Haxha, 14 September 2010
- (3) Naim Salihu, 14 September 2010
- (4) Police Officer Xhevat Jusufi, 14 & 15 September 2010
- (5) Zeqir Tahiri, 14 September 2010
- (6) Bekim Hodaj, 15 September 2010
- (7) Armend Bunjaku, 28 April 2010

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

- (8) Officer's Report by Bedri Ferati, 09 October 2008.
- (9) Officer's Report by Adnan Deliu, 09 October 2008.
- (10) Officer's Report by Saim Jonuzi, 10 October 2008.
- (11) List of Confiscated Items, 10 October 2008.
- (12) Forensics Identification Report by Xhemaljedin Ramaxhiku, 09 October 2008.
- (13) Forensics Report by Safet Vehapi, 13 October 2008 with photographs (p. 103-123 of the Prosecution bundle).
- (14) Report of Forensic Examination by Lutfi Raci, 26 December 2008.
- (15) Description of photos by Safet Vehapi (p. 161 of Prosecution bundle).
- (16) Photo album (p. 164-169 of Prosecution bundle).
- (17) 3 medical reports by Drs. Ilir Ahmegjekaj and Serbeze Kabashi-Muqaj (p. 170-175 of Prosecution bundle).
- (18) Discharge List by Drs. Feti Ahmeti and Arsim Morina.

On 16 October 2010, the following documents were read into the record:

- (19) Medical report by Vera Kukaj.
- (20) Medical report by Drs. Nehat Baftiu, Sokol Hajdini and Burbuqe Bruqi.

The Defendant chose not to make a statement or answer questions during the main trial.

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



D. Evaluation of Presented Evidence

1. Testimony of the Injured Party

With regard to the facts of the incident, Nazmi Mehmeti testified as follows:

On the afternoon of 09 October 2008, Nazmi Mehmeti was sitting in front of his jewelry shop located on Xhafer Street in Mitrovica with Armend Bunkaju, the owner of the shop adjacent to his. His nephew arrived in his car and stopped in front of Pantina Commerce shop, which was 10-15 meters away from Mehmeti. The owner of Pantina arrived in his van behind the nephew and wanted him to move his car so that he could unload goods for his shop. At that moment, Xhevat Haxha arrived in his car and stopped right in front of the nephew's car, close enough so that their license plates were touching. Therefore, the nephew could not move his car. From his seat in front of the shop, Mehmeti called out to Haxha and asked him to pull forward. Haxha moved his car about half a meter and the nephew was able to pull out and left. Haxha then moved his car to in front of Mehmeti and came out of his car towards Mehmeti. Mehmeti got up to go into his store and had his back turned towards Haxha. Mehmeti's hands were in his pockets. Armend Bunjaku was positioned in between Haxha and Mehmeti. Mehmeti was about two meters away from his shop when he heard a gun being cocked and turned around. At that moment, Haxha began shooting his gun over Armend Bunjaku and towards Mehmeti. The distance between Haxha and Mehmeti was approximately two to three meters. Mehmeti was at first hiding behind Bunjaku and was basically in his arms when he felt a bullet enter his body. He then tried to run away, in order to save himself and not place Bunjaku in further danger. Haxha chased him and shot him again. Mehmeti fell to the ground, and when he lifted his head up to see, Haxha shot him in the head. In total, Mehmeti was hit by four bullets: two bullets hit his left wrist, one bullet entered his front left armpit area, and one hit the left side of his head.

The Court found the testimony of Nazmi Mehmeti to be credible. His testimony was generally consistent with the statement he gave to police on 13 November 2008. The Defence Counsel argued that the testimony of Mehmeti was inconsistent with his prior statement. He based this argument on three discrepancies. First, in the police statement, Mehmeti said that he asked Armend Bunjaku to get them tea immediately before the incident, but he did not mention this in his testimony. Second, Mehmeti testified that he called out to Haxha to move his car, however this was not in his police statement. Lastly, Mehmeti testified that he had his hands in his pockets during the time before Haxha began shooting, but this was not included in the police statement. When these discrepancies were put to the witness, he recalled that he had asked Bunjaku to fetch some tea, but that Bunjaku did not go because three of the shops were unmanned at the time. With regard to the other two facts, Mehmeti explained that the police conducted their interview in the hospital when he was in a critical health condition, and unable to provide a comprehensive account of the incident. The Court notes that the interview occurred approximately one month after the incident, and that Mehmeti had sustained



serious wounds to the body and to the head. Therefore, the Court accepts his explanations as reasonable and credible.

2. Testimony of Elfate Haxha

Elfate Haxha testified that she was inside the shop of her father (the Defendant) when she heard a “noise” from outside. Upon questioning by the parties, Elfate Haxha could not describe in any detail the “noise” which she said she heard. In fact, at one point, she stated that she was unconscious when she heard the noise.² Upon hearing this noise, she went outside to see what was happening. She saw her father near his car parked in front of the Pantina store.

It is unclear what Elfate Haxha saw next. She testified that she saw Nazmi Mehmeti coming from the direction of his shop and going towards Xhevat Haxha³ and that Nazmi Mehmeti was threatening and cursing at her father.⁴ However, during various points of questioning by the Public Prosecutor, she contradicted whether she actually saw Mehmeti cursing:

Public Prosecutor: Where was Nazmi Mehmeti when you came out?

Elfate Haxha: I did not see him.⁵

Public Prosecutor: Were you able to see both your father and Nazmi Mehmeti?

Elfate Haxha: I saw my father by his car, and I saw he had to come to eat.⁶

Public Prosecutor: You were able to see your father and Nazmi Mehmeti?

Elfate Haxha: I was there, my father was opposite the shop, I did not know they had problems.⁷

Elfate Haxha further testified that she saw Mehmeti throw stones at her father. However, upon questioning by the Public Prosecutor it was clarified that she did not actually see Mehmeti throw a stone at her father’s car:

Public Prosecutor: And you heard him stone your father?

Elfate Haxha: I saw stones at my father’s car.

Public Prosecutor: Did you see who threw the stones at your father?

Elfate Haxha: I did not see.

Public Prosecutor: So, you could not see and it could have been done by anybody then.

² Minutes of the Main Trial Hearing, 14.09.2010, p. 4.

³ Minutes of the Main Trial Hearing, 14.09.2010, p. 5.

⁴ Minutes of the Main Trial Hearing, 14.09.2010, p. 4 & 6.

⁵ Minutes of the Main Trial Hearing, 14.09.2010, p. 5.

⁶ Minutes of the Main Trial Hearing, 14.09.2010, p. 7.

⁷ Minutes of the Main Trial Hearing, 14.09.2010, p. 7-8.



Elfate Haxha: The stones came from Nazmi Mehmeti's shop.

Public Prosecutor: But you did not see him throw them?

Elfate Haxha: I don't know who threw the stones, but they came from his shop.⁸

Lastly, Elfate Haxha testified that she then returned to their shop, told her mother and two sisters what she saw, and all four of them lost consciousness as a result. She testified that she fainted solely due to the shock of seeing her father being cursed.

The Court found the testimony of Elfate Haxha to be unclear, and to contain illogical statements and numerous contradictions within itself, as well as contradictions to the statement she gave police on the night of the incident. Therefore, her testimony is deemed not credible.

In her statement to the police, which was given on the same night as the incident, Elfate Haxha stated that she saw Nazmi Mehmeti curse at her father and throw a stone at his car, and then Xhevat Haxha pulled out a gun and fired at Mehmeti. When confronted with this statement in Court, Elfate denied that she saw her father pull out a gun and shoot.⁹ She did not say that she did not hear shooting, but that she heard "noise" without being able to be more descriptive. She also claimed that she did not speak to the police, that the police did not record her statement accurately, and that she was unconscious at the time of the interview:

Public Prosecutor: Did you say this to the police, the statement I just read?

Elfate Haxha: No, just the first part. About the other part saying that my dad drew a weapon and shot, I did not see that happen.

Public Prosecutor: Did you speak to the police that day?

Elfate Haxha: No.

Presiding Judge: You just said that you told the first part of the statement, not the other, so did you talk to the police that day?

Elfate Haxha: About what he just said, I do not know how to read or write, so I do not know what he put there.

Presiding Judge: But he just read a statement, and you said that you said the first part but not the second part, so are you saying you spoke to the police but they did not write everything correctly?

Elfate Haxha: No. I said I was unconscious, so I do not know who came to that statement.

Public Prosecutor: You didn't talk to the police?

Elfate Haxha: No.

Public Prosecutor: At the beginning of your testimony, you said you were unconscious when the police talked to you?

Elfate Haxha: I said I was unconscious, now I don't know how it came to that statement.¹⁰

⁸ Minutes of the Main Trial Hearing, 14.09.2010, p. 6-7.

⁹ Minutes of the Main Trial Hearing, 14.09.2010, p. 8 & 11.

¹⁰ Minutes of the Main Trial Hearing, 14.09.2010, p. 11.



After her testimony, the Court summoned KP Officer *Xhevat Jusufi*, who had taken the statement from Elfate Haxha. Officer Jusufi recalled the incident and remembered taking the statement of Elfate Haxha in the hallway of her family home. He testified that she did not appear sick or ill and that he informed her of her rights. He wrote down her statement, read it back to her verbatim, and then she signed the document on each page.

The Court believes that the statement which Elfate Haxha gave to the police is the accurate account of what she witnessed during the incident for several reasons.

The statement was given a short time after the incident occurred, when the event was fresh in her memory. It is signed on each page with the name “ELFATE” in capital letters. The last page contains an acknowledgment that “The damaged party or complainant hereby states that the statement has been read out to her and was signed without any remarks” and her signature appears below that. Although Elfate Haxha testified that she was illiterate, it is possible and reasonable that an illiterate person can know how to sign their name. The Court notes that her name appears in capital block letters rather than a script signature, and is even misspelled on the second page where it appears as “ELFAE”. The Court finds that this a reasonable manner in which Elfate Haxha, as an illiterate person, would sign a document.

In addition, the factual account in the statement corresponds with the statement of witness Naim Salihu (described in full detail below) who heard a young female at the incident call out “Dad move away” immediately before the shooting began.

Furthermore, the Court also finds Eflate Haxha testimony that four people – Elfate Haxha, her mother and her two sisters – lost consciousness over the mere fact that Mehmeti was cursing at Xhevat Haxha unbelievable. It is more logical and credible that Elfate Haxha witnessed her father pulling out a gun and shooting at Mehmeti, as she described in her police statement, and suffered traumatically due to this.

3. Testimony of Naim Salihu

Naim Salihu testified that at the time of the incident, he was going to a shop to purchase cigarettes. As soon as he entered the shop, he heard gunshots. He exited the shop and saw two men, one chubby and one skinny, who were about 2-3 meters away from him. They were arguing over the parking of one of their vehicles. One man said “You can not park here” and the other replied “Just wait a little and I will be gone.” The skinny man then pulled out a gun and immediately fired at the chubby man. The two men were about three or four meters apart. The skinny man fired four or five times and the chubby man was hit by the bullets.

This testimony is generally consistent with the statement which Naim Salihu gave to police at 18:30 on 09 October 2010, the night of the incident. He told police that he was heading in the direction of the bakery when he saw two men arguing. Nearby was a woman with a girl. He heard one man say to the other “Don’t swear, don’t swear”. The



with a girl. He heard one man say to the other “Don’t swear, don’t swear”. The girl went between the men and said “Dad move away.” The two men moved away a bit, about two meters apart, and then one man pulled out a gun from the right side of his waistband and shot the other in the lower part of his body. The wounded man got up and tried to flee but the other man shot him again around his head.

There is one discrepancy between Salihu’s testimony and statement – whether there were any females present during the argument between the two men. During his testimony, Salihu was specifically asked about other persons present and said that there were only the two men. However, when the police statement was read out to him, he conceded that his memory had faded and was now refreshed, and that what he told to the police immediately following the incident was the full and accurate account of what he saw. The Court found that Naim Salihu was credible, and accepted his explanation for the discrepancy. The statement to the police will be viewed by the Court as the more complete account of what Salihu witnessed.

4. Testimony of Zeqir Tahiri

Zeqir Tahiri testified that at the time of the incident he was inside his shop on Xhafer Deva Street with some customers. He heard two or three gun shots and went outside. He saw Nazmi Mehmeti with a head injury, leaning onto a car near an electrical pole and then falling on the ground. Zeqir Tahiri ran over and, together with Armend Bunjaku, put Nazmi Mehmeti into a car to be taken to the hospital. He testified that he did not see Xhevat Haxha shoot Mehmeti, and only saw Haxha pass by on the way to his house.

His testimony differs from the statement taken by police from Zeqir Tahiri at 18:00 hrs on the night of the incident. Tahiri told police that he was inside the shop when he heard gunfire. He then saw Nazmi Mehmeti sheltering behind a vehicle and an electrical pole. He saw a black gun and said to Xhevat Haxha “Don’t shoot!” Haxha was approximately three meters away from Tahiri. Haxha fired his gun at Mehmeti three times. Then Zeqir Tahiri and Armend Bunjaku placed Mehmeti into a car and took him to the medical center.

Zeqir Tahiri was questioned in the Courtroom regarding the discrepancy between his testimony and statement – namely whether he witnessed Haxha shoot Mehmeti. Tahiri maintained that he did not see Haxha with a gun and he did not see Haxha shoot Mehmeti. He further testified that the police statement was not read out to him before he signed it, and he did not read it before signing it.

The Court finds that the statement given by Zeqir Tahiri to the police within a few hours of the incident is the true account of what he had witnessed. During his testimony, Tahiri told a substantially different version. To have such a drastically different recollection of such an important and memorable event is suspicious, and the Court believes that this change in testimony could very well be the result of intimidation, or at the very least, a monumental lapse of memory. Police Officer Xhevat Jusufi was summoned back to



Court a second time in order to testify regarding this witness. He recalled interviewing Tahiri and testified that it is his normal practice to write the statement of the witness and then to read the statement back to the witness. He recalled Tahiri signing the statement in his presence. The testimony of the Police Officer was believable, and there was no reason for him to fabricate the statement as was insinuated by Tahiri. Further, the version of the offence given in the police statement was reasonably consistent with the other statements made by witnesses and the Injured Party.

5. Testimony of Bekim Hodaj

Bekim Hodaj testified that he was inside his bakery on Xhafer Deva Street when he heard a noise which he thought was fireworks. He did not leave his store, but later heard from customers who came in that there had been a shooting. According to his testimony, he did not witness any part of the incident whatsoever.

On the night of the incident, Bekim Hodaj gave a statement to police which was substantially different from his testimony. He stated that he heard three gun shots while inside his bakery and looked outside. He saw a person named Xhevat holding a dark hand gun and firing at Nazmi Mehmeti, who was trying to hide behind cars and a lamp post. When Bekim Hodaj was confronted with his prior statement, he claimed that the police had added the extra information. He could not recall whether the statement had been read out to him before he signed it, but he was adamant that he did not read it himself before signing.

For the same reasons regarding witness Zeqir Tahiri above, the Court found that Bekim Hodaj's testimony was not credible and the statement he gave to police is the accurate and true account. His statement is consistent with the police statements given by other witnesses and the testimony of the Injured Party. It contains details regarding the Defendant and the gun which were completely omitted from his testimony. These are important and memorable details which were given to the police officer immediately after the shooting, when the event was fresh in the witness's memory. Although Police Officer Jusufi did not specifically recall Bekim Hodaj, he remembered taking his statement in his bakery and reiterated his practice of reading out every statement to each witness having them sign it. When Hodaj was confronted with the discrepancies over what he witnessed, he professed that the only thing he actually witnessed was the Injured Party leaving in a car to get medical attention. However, he could not satisfactorily explain how he knew that the Injured Party was inside that particular car or why he would even notice that one car since, according to his testimony, he did not leave his shop at all and was not paying attention to what was going on outside.

6. Testimony of Armend Bunjaku

Armend Bunjaku had not previously been interviewed by police or prosecution. According to his testimony, on 09 October 2008, he was sitting with Nazmi Mehmeti



outside of their shops on Xhafer Deva street. A customer arrived and Bunjaku went into his shop. He heard a verbal commotion outside. He went outside and saw Xhevat Haxha and Nazmi Mehmeti exchanging words. Armend Bunjaku placed himself in between the two men in order to separate them. Haxha pulled out a gun and started shooting in the direction of Mehmeti. Mehmeti did not have anything in his hands. He started running away and was hit by a bullet in his left hand. Mehmeti tried to hide but was hit by another bullet in the head and fell to the ground. Armend Bunjaku and Zeqir Tahiri went over to Mehmeti to place him into a car to be brought for medical attention.

The Court found the testimony of Armend Bunjaku to be credible and corroborated by the police statements of the other witnesses. He could not remember all of the details of the event, however this was reasonable since two years had passed during which time neither the police nor the prosecution had spoken to him about the shooting. Without an official statement taken from the witness closer in time to the event, there was no possibility to refresh his memory.

E. Factual Findings

In view of the findings above, the Court considers the following facts as proven:

On 09 October 2008, Nazmi Mehmeti and Armend Bunjaku were sitting in front of their shops on Xhafer Street. An argument developed between Xhevat Haxha and Nazmi Mehmeti over the issue of parking of vehicles. Armend Bunjaku heard the argument and placed himself between the two men in order to separate them. Xhevat Haxha pulled out his pistol – a Zastava M-70 9x19mm caliber handgun. Mehmeti was unarmed. The two men were a few meters apart when Haxha began firing his weapon. Haxha fired at least three bullets in the direction of Mehmeti. Mehmeti tried to run away and take cover behind a vehicle, but was hit by at least three bullets in the left hand, the left shoulder and the left side of his head.

F. Legal Qualification

1. Applicable Law

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



2. Legal Qualification

Xhevat Haxha is charged with Attempted Murder as defined in Articles 146 and 20 of the PCKK. Murder is committed when the perpetrator unlawfully deprives another person of his or her life. An attempted murder is committed when the perpetrator takes an immediate and intentional action towards depriving another person of his or her life, although the killing itself is not achieved.

The following facts indicate that Xhevat Haxha attempted to deprive Nazmi Mehmeti of his life:

- Xhevat Haxha intentionally pulled out a pistol during a verbal argument with Nazmi Mehmeti, who was unarmed.
- Haxha intentionally fired at least three bullets in the direction of Nazmi Mehmeti.
- Haxha began firing his weapon towards Mehmeti from a short distance of a few meters.
- Haxha continued to fire his weapon at Mehmeti as Mehmeti ran away.
- When firing, Haxha was not aiming towards Mehmeti's feet or up into the air, but towards the body of Mehmeti and as such was able to hit him several times including once in the head.

Xhevat Haxha took an immediate and intentional action when he pulled out his gun and began firing at Nazmi Mehmeti. Haxha's use of a lethal weapon from a short distance of a few meters firing in the manner described establishes that Haxha intended to kill Mehmeti.

The Court notes that the criminal offence could have been qualified differently, as Attempted Aggravated Murder pursuant to Article 147 Paragraph (4) as read with Article 20 of the PCKK. Armend Bunjaku had placed himself between the two arguing men. At that moment, while Bunjaku was still physically separating the two, Xhevat Haxha pulled out his gun and fired the first shot towards Nazmi Mehmeti. By doing so, Haxha endangered the life of Armend Bunjaku. When a murder is attempted in a manner which intentionally endangers the life of another person other than the intended victim, the act may be qualified as aggravated murder.

While the Court is not bound by the legal qualification of the act presented by the Prosecution in the Indictment (principle of *iura novit curia*), it is, however, bound by the facts alleged in the Indictment.¹¹ In the Enacting Clause of the Indictment against Xhevat Haxha, there is no mention of the presence of Armend Bunjaku at the crime scene at all. During the main trial, the Public Prosecutor did not amend the factual allegations in the Indictment to reflect the presence of Armend Bunjaku in the line of fire when Xhevat Haxha began shooting at Nazmi Mehmeti. Although this fact came out during the testimonies of the Injured Party and the witnesses during the main trial, because the

¹¹ See Article 386 Paragraph (1) of the CPCK.



Indictment was not amended, the Court could not consider the endangerment of Armend Bunjaku's life and re-qualify the criminal offence accordingly.

3. *Necessary Defense*

In his closing, Defense Counsel Xhafer Maliqi asserted that Xhevat Haxha acted in necessary defense pursuant to Article 8 of the CCK, but that he acted disproportionately to the degree of danger posed by the Injured Party, thereby exceeding the limits of necessary defense. According to the defense, Nazmi Mehmeti initiated an attack on Xhevat Haxha by swearing at him and physically approaching him with the intent to assault him. Haxha reacted to this attack by firing his weapon once at Mehmeti. Mehmeti then continued the attack, bringing Haxha into a state of deep trauma and causing him to fire two more shots at Mehmeti.

The evidence does not support the defense's version of the facts. There was no real and imminent attack by Nazmi Mehmeti to trigger the exculpatory defense of necessary defense. The testimonies of Nazmi Mehmeti and Armend Bunjaku establish that Xhevat Haxha and Nazmi Mehmeti were engaged in a *verbal* argument when Armend Bunjaku stepped in between them and separated them. Mehmeti was unarmed. There is no testimony by any witness that Mehmeti took any *physical* action to indicate an attempt to physically assault Haxha. An argument or cursing is not a real attack as envisioned by Article 8 of the PCKK. The testimonies of Nazmi Mehmeti, Armend Bunjaku and Naim Salihu, as well as the police statements of Elfate Haxha and Zeqir Tahiri all consistently confirm that Haxha pulled out a gun and began firing at Mehmeti without any physical provocation. The testimonies of Nazmi Mehmeti and Armend Bunjaku, and the police statements of Naim Salihu and Bekim Hodaj further confirm that Armend Bunjaku was running away, attempting to flee and seek shelter from the bullets behind a vehicle, when Haxha continued to fire his weapon towards him, hitting him in the head. Therefore, the defense that Haxha was acting in necessary defense to avert a real and imminent attack is without merit.

G. Rejected Motions

On 14 September 2010, Defense Counsel Maliqi proposed that the police statement of Elfate Haxha be declared inadmissible under Article 89 of the CPCK because Elfate Haxha professed to be illiterate while on the stand. The Court rejected this motion on 15 September 2010. Article 89 applies to persons against whom an investigative action is undertaken. Elfate Haxha was interviewed as a witness and not a suspect, therefore she was not the subject of an investigative action. Furthermore, if Article 89 was applicable, because the statement was read out to Elfate Haxha and she signed each page, the technical requirements of Article 89 would have been met.

On 15 September 2010, Defense Counsel Maliqi proposed that the police statement of Zeqir Tahiri be declared inadmissible under Article 87 of the CPCK because it was not



appropriately signed by the witness. The Court rejected this motion because each page of the statement bears the signature of Zeqir Tahiri. The fact that Tahiri may not have read the statement before he signed it does not effect its admissibility.

On 15 September 2010, Defense Counsel Maliqi proposed that the Court make a reconstruction of the crime scene in the presence of forensics and ballistic experts. The Court rejected the motion because such a reconstruction would not add anything of value to the evidence. The testimonies of the witnesses and the evidence already before the Court were sufficient to establish the facts of the case.

H. 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 Panel came to the conclusion that only by applying the imposed sentence of imprisonment would the above-mentioned double purpose be reached. The shooting of Nazmi Mehmeti was a senseless act of extreme violence committed by one neighbor against another over the inconsequential issue of parking. Xhevat Haxha committed such an act against a person with whom he had no prior dispute and with whom he had been neighbors for over ten years. Thus, the imposed punishment is intended to prevent Haxha from perpetrating violence against another neighbor, friend or person over a small disagreement while sending a message to society that such unnecessary, violent over-reactions to a mundane issue which should be and can be settled amicably will not be tolerated.

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 Court considered as mitigating circumstances the fact that the Defendant has nine children and no previous criminal record. With regard only to the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons, the Court also considered a mitigating circumstance the fact that the Defendant pled guilty.

The Court took as aggravating circumstances the especially senseless and violent act of the Defendant, the grave injuries inflicted on the victim, the ongoing suffering of the victim, the fact that the victim has been rendered permanently invalid and the devastating effect of this on his person, his family and his finances, the fact that the Defendant was carrying a loaded weapon during his daily activities in a crowded urban area where many people and children are present, the fact that the Defendant did not make any efforts towards reconciliation either personally or through an intermediary during the two years since the criminal offence, and the lack of remorse shown by the Defendant.¹²

¹² The Court could not consider as sincere the apology offered by Xhevat Haxha which was given only when facing the Court at the end of the trial, when self-serving.



For the criminal offence of Murder in violation of Article 146 of the PCCK, the law foresees a minimum punishment of five (5) years of imprisonment. When a perpetrator attempts to commit a criminal offence which is punishable by a minimum sentence of three (3) years imprisonment, the attempt itself shall be punishable (Article 20 Paragraph (2) PCCK), however the punishment imposed shall be no more than three-quarters of the maximum punishment prescribed for the criminal offence (Article 65 Paragraph (2) PCCK). The maximum punishment of imprisonment allowed by law is twenty years (Article 38 Paragraph (1) PCCK), therefore the maximum punishment allowed for the criminal offence of Attempted Murder is fifteen years. By applying the cited Article and considering all of the mitigating and aggravating circumstances, the Court imposed a sentence of twelve (12) years of imprisonment for this criminal act.

For the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK, the law foresees a punishment of a fine or by imprisonment of one to eight years. The Court imposed a sentence of four (4) years of imprisonment for this criminal act.

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

Xhevat Haxha has been in detention on remand from 09 October 2008 until 25 January 2010. That period is to be credited in the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the PCCK.

I. Confiscated Items

The weapon used to commit the criminal offences - a Zastava M-70 9x19mm calibre handgun with no serial number - is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

J. Costs

The Defendant 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.



District Court of Mitrovica
P. nr. 127/08

Prepared in English, an authorized language.

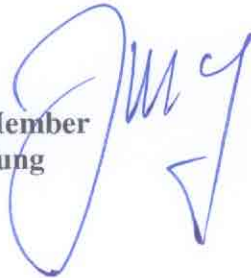


Recording Officer
Tara Khan



Presiding Judge
Charles L. Smith, III

Panel Member
Klaus Jung



Panel Member
Hajnalka Veronika Karpati



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