

DISTRICT COURT OF MITROVICA
P. nr. 17/09
7 October 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judges Charles Smith as Presiding Judge, and EULEX Judges Caroline Charpentier and Agnieszka Klonowiecka-Milart as panel members, with the participation of EULEX Legal Officer Noora Aarnio as Recording Officer in the criminal case against;

Njazi MULA, charged, according to the Indictment of the Prosecutor PP. nr. 98/08 dated 20 February 2009 and filed with the Registry of the District Court of Mitrovica on 24 February 2009 and amended on 17 February 2010, as confirmed by the Ruling on Confirmation of the Indictment dated 19 February 2010, with the following criminal offences;

- **Murder**, contrary to Article 146 in conjunction with Article 23 of the Criminal Code of Kosovo (CCK),
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 2 of the CCK,

Rasim SHALA, charged, according to the Indictment of the Prosecutor PP. nr. 98/08 dated 20 February 2009 and filed with the Registry of the District Court of Mitrovica on 24 February 2009 and amended on 17 February 2010, as confirmed by the Ruling on Confirmation of the Indictment dated 19 February 2010, with the following criminal offences;

- **Murder**, contrary to Article 146 in conjunction with Article 23 of the CCK,
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 2 of the CCK,

After having held the main trial hearing in public on 4, 5, 6 and 7 October 2010 all in the presence of the accused Njazi Mula and Rasim Shala, their Defence Counsel Bajram Krasniqi and Haxhi Millaku, Injured Party Ramiz Shabani, Authorized Representative of the Injured Party Xhelal Hasani and EULEX Public Prosecutor Neeta Amin, after the trial panel's deliberation and voting held on 7 October 2010, pursuant to Article 392 paragraph (1) of the Criminal Procedure Code of Kosovo (CPCCK) pronounced - on the same day - in public and in the presence of all the Accused, their Defence Counsel, the Injured Party, his Authorized Representative and the EULEX Public Prosecutor the following

VERDICT

The accused **Njazi Mula**, no nickname, son of Fetah Mula and Hamide Gashi, born on 17 November 1976 in Kllodernica Village, municipality of Skenderaj, Kosovo, of Albanian ethnicity, resident of Kllodernica village, municipality of Skenderaj, married, father of 3 children, highest education secondary school, unemployed, of poor economic status, no known previous conviction, in detention from 2 September 2008 until 17 February 2010, thereafter under the security measures of house detention

is

FOUND GUILTY

- **because** on 2 September 2008 at in the morning there was a conflict between the defendants Njazi Mula and Rasim Shala on one side and witness Ramiz Shabani on the other. Tafil Shabani, the brother of Ramiz Shabani, called the defendants Njazi Mula and Rasim Shala to meet and to resolve the dispute. They arranged a meeting at around 17:00 at the parking lot of the Elinda 2 Restaurant in Polac village, municipality of Skenderaj. Njazi Mula and Rasim Shala drove Golf 2 vehicle. Tafil Shabani and Burim Hajdini drove Opel Vectra vehicle. Njazi Mula had the weapon TTM-57 with serial number 863307 and Rasim Shala had the weapon TTM-57 with serial number C57818. At least Njazi Mula directs his pistol at Tafil Shabani. Tafil Shabani took out a weapon AK of calibre 7,62 x 39 mm with the serial number 7948-1 and directed the gun to Rasim Shala. Rasim Shala moved towards Tafil Shabani and grabbed Tafil Shabani's rifle. During the struggle the rifle is discharged resulting in Rasim Shala being shot in the leg. Njazi Mula shot several times at Tafil Shabani. Tafil Shabani received a bullet in the left part of his chest from the gun shots fired by Njazi Mula. Both Tafil Shabani and Rasim Shala fell to the ground because of the sustained injuries. Njazi Mula tried to leave the crime scene. Tafil Shabani's condition deteriorated because of the damage to his internal organs caused by the gunshot to the chest and he died on the same day. Rasim Shala sustained serious injuries from the gun shots to the leg and arm. Therefore the defendant Njazi Mula has deprived the life of the late Tafil Shabani

By doing so, the accused Njazi Mula committed and is criminally liable for the criminal act of **Murder**, contrary to Article 146 in conjunction with Article 23 of Provisional Criminal Code of Kosovo (PCCK),

The accused **Njazi Mula**, is

FOUND GUILTY

- **because** until the date of 2 September 2008 he had illegal possession of the weapon TTM-57 of calibre 7,62 with serial number 863307.

By doing so, the accused Njazi Mula committed and is criminally liable for the criminal act of **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, Paragraph (2) of the PCCK.

The accused **Rasim, SHALA**, no nickname, son of Milazin Shala and Zahide Haxha, born on 15 January 1971 in Lower Kopiliq Village, municipality of Skenderaj, Kosovo, of Albanian ethnicity, resident of Lower Kopiliq village, municipality of Skenderaj, married, father of 3 children, highest education technical secondary school, unemployed (invalid), of poor economic status, no known previous conviction, has not been under security measures

is

FOUND NOT GUILTY

- **because, as described above** he has not deprived the life of the late Tafil Shabani in co-perpetration with the defendant Njazi Mula

Therefore, pursuant to Article 390 paragraph 3 of the CPCK the accused Rasim Shala is **acquitted** of the charges of **Murder**, contrary to Article 146 in conjunction with Article 23 of CCK,

The accused **Rasim Shala**, is

FOUND GUILTY

- **because** until the date of 2 September 2008 he had illegal possession of the weapon TTM-57 of calibre 7,62 with serial number C57818.

By doing so, the accused Rasim Shala committed and is criminally liable for the criminal act of **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, Paragraph (2) of the PCCK.

The **Accused Njazi Mula**, is

SENTENCED

- to 5 /five/ years of imprisonment for the criminal act of Murder.
- to 4 /four/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

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 from 2 September 2008 until 17 February 2010, thereafter under the security measures of house detention, is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

The **Accused Rasim Shala**, is

SENTENCED

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

The weapon TTM-57 of calibre 7,62 with serial number 863307, the weapon TTM-57 of calibre 7,62 with serial number C57818 are hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK. The weapon AK of calibre 7,62 x 39 mm with the serial number 7948-1 that was found and seized in the same occasion will be returned by a separate order as soon as the rightful owner or his Authorized representative presents the valid authorization card.

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

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

On 24 February 2009, the District Public Prosecutor for Mitrovica filed indictment PP. no. 98/08 dated 20.02.2009 with the Registry of Mitrovica District Court. The indictment alleged that the defendant Njazi Mula had committed the criminal acts of

- **Murder**, contrary to Article 146 in conjunction with Article 23 of the CCK
- **Unauthorized Ownership, Possession, Control and Use of Weapons**, contrary to Article 328 paragraph 2 of the CCK

The indictment alleged that the defendant Rasim Shala had committed the criminal acts of

- **Murder**, contrary to Article 146 in conjunction with Article 23 of the CCK
- **Unauthorized Ownership, Possession, Control and Use of Weapons**, contrary to Article 328 paragraph 2 of the CCK

The Indictment was modified on 17 February 2010 but the legal qualification of the criminal acts for Mula and Shala remained the same.

The amended Indictment was confirmed by the Ruling of the EULEX Confirmation Judge on 19 February 2010.

Main Trial hearings were held on 4, 5, 6 and 7 October 2010. Closing arguments were heard from EULEX Prosecutor Neeta Amin, Defence Counsel Bajram Krasniqi and Haxhi Millaku on 7 June 2010. The Verdict was orally rendered the same day.

B. COMPETENCE OF THE COURT

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

As set forth above, the charge of Murder pursuant to Article 146, allows for the imposition of a sentence of imprisonment of at least five years. Furthermore, the indictment in this case alleges that the accused committed the acts in Polac, Skenderaj.

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

On 18 November 2009, the President of the Assembly of EULEX Judges exercised her right to assign EULEX judges to cases falling under the subsidiary competence of

EULEX judges pursuant to Article 3.3 of the “Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo” and assigned this case to the EULEX Judges in the District Court of Mitrovica.

C. Summary of Evidence Presented

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

- (1) Ramiz Shabani– Injured Party, 4 October 2010
- (2) Burim Hajdini – Witness, 5 October 2010
- (3) Nazmi Leku – Witness, 5 October 2010
- (4) Fadil Xani – Witness, 6 October 2010
- (5) Shemsedin Geci – Witness, 6 October 2010
- (6) Shkelzen Selimi – Witness, 6 October 2010

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

- (7) Initial Incident report dated 2 September 2008
- (8) Report on search of house and persons (Mula) dated 2 September 2008
- (9) Report on search of house and persons (Shala) dated 2 September 2008
- (10) KPS Shemsedin Geci - Officer’s report dated 2 September 2008
- (11) KPS Hazir Haziri - Report on Crime Scene Inspection, with photos attached, dated 2 September 2008
- (12) KPS Selman Mecini - KPS Vehbi Mangjolli- Officer’s report dated 3 September 2008
- (13) KPS Bajram Recaj - Officer’s report dated 3 September 2008
- (14) KPS Lulzim Geci - Investigator’s report dated 3 September 2008
- (15) Kasim Osmani - Criminal Report dated 5 September 2008
- (16) KPS Hazir Haziri - Report on crime scene inspection, with photos attached dated 5 September 2008
- (17) KPS Kasim Osmani – Forensic directorate, Crime scene sector, Request, undated
- (18) Forensic Identification file # 08-094 including the photographs
- (19) Arben Plana - Investigator’s report dated 10 September 2008
- (20) Rrahim Berbatovci - Autopsy report dated 3 September 2008
- (21) Dr. Prasanna Dassanayake - Autopsy report dated 3 September 2008 including the photographs attached
- (22) Doctor’s note for injured Rasim Shala dated 2 September 2008
- (23) Doctor’ transcript undated
- (24) Hysni Shala - Description of Case file content
- (25) Listing of evidence
- (26) Chain of custody

- (27) KPS Lutfi Rraci – Criminal Examination Report
- (28) Enes Kalludra – Expert Analysis Report, including expert form analysis of Central Crime Laboratory (A), Central Forensic Laboratory Expertise/Analysis Form (B), Central Forensic Laboratory Expertise/Analysis Form (A), Template for Forensics Examination at the KPS Laboratory (A), and Template for Forensics Examination at the KPS Laboratory (B), undated
- (29) Flurim Sahitaj - Forensic examination report, Dactiloscopia sector, including the request for Expertise/Analysis of Evidence in the Forensic Central Laboratory (A) and the request for Expertise/Analysis of Evidence in the Forensic Central Laboratory (B) dated 27.11.2008
- (30) KPS Hysni Shala - Report from the inspection of crime scene dated 4 September 2010
- (31) KPS Flamur Fetahu- Forensics Identification Report including sketch of the crime scene and photo album cover, dated 3 September 2008

During the main trial session on 6 October 2010 the Accused Njazi Mula answered questions. Rasim Shala exercised his right not to give a statement. The request of the Defence Counsel Xhelal Hasani to consider the statement of Kasim Xani as read was granted.

The injured party Ramiz Shabani stated in his testimony that he was working as a corporal for 2nd Brigade for Kosovo guard (TMK), at Blinaj, in the municipality of Lipjan. Njazi Mula was the deputy commander of the brigade. Rasim Shala was the immediate commander of Ramiz Shabani. Shala's immediate supervisor was the Commander Bekim Osmani, Mula was the deputy Commander. From the period of 2005 until the incident Ramiz Shabani and Shala had never had a disagreement after working hours.

Shabani testimony dealt purely with the nature of the dispute. A month prior to the shooting a dispute arose over working hours. Shabani had stated his opinion on working hours in front of the entire barracks. Mula replied in front of the entire barracks that he would expel Shabani. Mula did not have this authority. Two or three days prior to the shooting which is the subject of this case, a serious dispute arose between Shabani, Shala and Mula once again related to working hours. Shabani wanted to leave work early to help his wife attend to a sick child. Mula and Shala refused his repeated request. He went home without permission which he had not done before.

On September 2 Shabani was summoned to the office of Shala. Upon entering, he sat by Shala and remained seated until Mula entered. Shala was in a harsh mood and verbally confronted Shabani accusing him of being a "double dealer" which Shabani took as being very offensive. Shala asked why Shabani had left barracks early on the day referred to above. Shabani noticed a black TT type pistol in an open drawer near Shala. Shabani had never attacked his superior officers, but said he had been attacked by them before. He was afraid that if he tried to use any force against Shala, that Shala would shoot him. Shabani was unarmed.

Mula then entered the room with his TTM-57 pistol visible in his belt. He had his hand on the handle of the pistol. He was obviously angry and mentioned dismissing a member of the barracks from Bleinaj. Shabani suspected that they might be talking about him. Mula addressed and questioned Shabani in the same manner as did Shala. Shabani tried to explain the need for his absence. Mula accused him of fabricating this excuse. This culminated in Mula slapping Shabani in the face. Shala was standing about one meter from Shabani. As it appeared to Shabani that Mula was pulling his gun, Shabani left the office and while leaving either Mula or Shala kicked him from behind. He did not know which of them kicked him.

Shabani wanted to lodge a complaint against Shala and Mula. The members of the disciplinary commission at the barracks were Shala and Mula so Shabani had no choice but to make the complaint in the office of the Commander, Osmani. He told Osmani that he had been attacked by Mula and Shala physically and with a gun. Osmani told Shabani that he understood that three members had left the barracks without permission and he had forgiven it as they probably had good reason to do it. Osmani refused Shabani's request for the matter to be referred to the public order inspectors and told Shabani that this was a private issue and that Shabani should deal with it. Shala entered Osmani's office at this point. Shabani asked Osmani for an exit permit as he felt threatened. Osmani agreed to the permit even though Shala opposed it. Shabani went outside the office and in five minutes Shala brought him the exit permit. Shabani went home.

On his way home Ramiz Shabani by chance met his nephew Burim Hajdini. Hajdini was driving his father's vehicle. They drove in their separate vehicles, to Hajdini's house to allow Hajdini to leave his vehicle there. Ramiz Shabani did not tell him about the incident with Mula and Shala.

In Drenas Ramiz Shabani saw Leku standing in front of a mechanical shop, wearing a uniform. Ramiz Shabani asked Leku if he had left the barracks without permission. Leku said that he had left with permission as there was malfunction of the clutch of his vehicle. Ramiz Shabani told Leku that he had left before the end of his duty and that Shala and Mula had attacked him. Shabani stated that Leku was sorry to hear this. Hajdini was in a separate vehicle and could not have heard what Ramiz Shabani and Leku were talking about. After the conversation Leku stayed at his shop and Ramiz Shabani and Hajdini continued in the direction of Terstenik.

After Ramiz Shabani and Hajdini had left the vehicle in Terstenik they came back to Leku's mechanical shop with Ramiz Shabani's vehicle. Ramiz Shabani saw Shala and Mula there in their uniforms talking to Leku, and they did not join them. He went for coffee with Hajdini and afterwards went to Ramiz Shabani's house.

At his house Ramiz Shabani met an electrician and his brother Tafil Shabani. Tafil Shabani asked Ramiz Shabani why he was home early. Ramiz Shabani told him he had problems with Shala and Mula. Tafil Shabani asked if it was the Mula from Kllodernica that he knew. Ramiz Shabani affirmed that it was. Since the Shabanis had a nephew of their father, Hoxha, in Kllodernica, Tafil Shabani said he would send Hoxha to find out

what this issue was all about and to make amends with Mula. The Shabanis discussed briefly the amends to be made and Tafil Shabani said that if it was the way Ramiz Shabani had explained then the amends would be achieved quickly, there and then.

Ramiz Shabani left his brother, the electrician and Hajdini there having juice and went to the house where he lived approximately 150 meters away to take off his uniform. Ramiz Shabani left the vehicle at the house being built as well as the keys to the vehicle and his mobile phone.

When Ramiz Shabani returned to work on the house he did not see his vehicle there. The electrician told Ramiz Shabani that someone called from an unknown number. The caller had told that they were at the meeting place and asked if Ramiz Shabani was on his way. The electrician had told the caller that Ramiz Shabani had left as he did not know he was still there.

Ramiz Shabani went to Tafil Shabani's house where he met Tafil Shabani's wife. He asked where Tafil Shabani went and she said she did not know. She also told him that the shotgun/hunting rifle was not in its usual location. It is also possible that she said that Tafil Shabani and Hajdini had gone somewhere with Ramiz Shabani's car.

Ramiz Shabani tried to call Tafil Shabani but his phone was either switched off or there was no coverage. Ramiz Shabani did not try to call Hajdini or Hoxha as he did not have a number for them. Ramiz Shabani tried to call Tafil Shabani again and this time the phone rang but no one picked up. Ramiz Shabani went to the electrician to ask if Tafil Shabani and Hajdini had said in which direction they were going. They had not, and the electrician did not see them leaving either.

Ramiz Shabani, then, went to his uncle's, house next door.. While there Osmani called Ramiz Shabani and confirmed that Shabani was home Then Osmani told Ramiz Shabani that things had gone bad, that Tafil Shabani was killed, and that Shala has been taken to the health centre in Drenas wounded. Ramiz Shabani did not get any details of the incident by phone.

The Witness Burim Hajdini stated that on 02 September 2008 Hajdini had to drive his father's to Drenas.

He says that once in Drenas he met Ramiz Shabani by chance. They set off together because Hajdini had left his father's car in Drenas and Ramiz Shabani had to go home for some electrical work. Hajdini and Ramiz Shabani rode in the same car until arriving in Kozhicë where Hajdini worked for his uncle Tafil Shabani about 150 meters from Ramiz Shabani's house.

While driving to Kozhicë, Hajdini and Ramiz Shabani noticed Leku but they continued towards Ramiz Shabani's house. Hajdini did not hear any conversation between Leku and Ramiz Shabani

At 4.30 o'clock Tafil Shabani asked Hajdini to take him to the village of Polac. Hajdini drove Tafil Shabani to village of Polac with Ramiz Shabani's dark green Vectra. When asked why he had told to the Police when interviewed on 3.9.2008 that they had gone in his blue Vectra, Hajdini said that he was very lost at the time and that he did not know what he was talking about. The Vectra did not belong to Hajdini. It was registered under Ramiz Shabani's name.

It took them between half an hour to one hour to get to Polac, as the road was a dirt track. While driving Hajdini did not see anything in the back of the vehicle and he did not know that Tafil Shabani had a weapon. Tafil Shabani told Hajdini that he was going to talk about his brother, that there was a problem and that they had to agree on something. Although not certain, it is possible that Tafil Shabani told Hajdini that Ramiz Shabani had been beaten up at work. Hajdini does not know whether Tafil Shabani initiated the contact with the people he was supposed to meet. Hajdini did not know who they were going to meet.

At village of Polac they went to Restaurant Elita-2. The cafeteria was closed. Tafil Shabani told Hajdini the names of the two people they were to meet; Njazi Mula and Rasim Shala. Hajdini knew Mula by face.

There was another vehicle at Restaurant Elita-2, a black Golf II that belonged to Mula, as well as a yellow Jetta that was parked a bit further. Tafil Shabani told Hajdini to park in the car park, with the front of their car facing the road.

Hajdini claims that he saw six people, four of whom he saw clearly. According to Hajdini, two of them were in the vehicle next to Hajdini's car, and the others were about 15 meters away by the cafeteria and behind the wall of the cafeteria. Hajdini saw weapons on three of those people. He is not familiar with firearms but they were handguns and they looked like the TT's in the photos that he has seen in the Prosecutor's files. In Hajdini's opinion he and Tafil Shabani were ambushed.

According to Hajdini Shala was the first person to get out of the car. He pulled his pistol out. Mula also had his pistol pointing at Tafil Shabani. Hajdini got out of the car in which he was riding first and as he got out he heard shots. Then Tafil Shabani went to get the rifle from the boot of the car and told Hajdini "Go away nephew." At this point Shala was not shooting. Hajdini did not hear any conversation between Tafil Shabani and Mula and/or Shala before the shooting started.

On the question as to who shot first Hajdini replied that the very first shot in the whole event come from further down. So it was none of the people by the car, Mula, Shala, Tafil Shabani or Hajdini that started the shooting. Out of the four people by the cars, Tafil Shabani was the first one to shoot. Tafil Shabani shot Shala in the leg and then Mula shot at the direction of Tafil Shabani and Shala.

Hajdini also gave two versions of the struggle over the gun. He testified that Shala was shot in the leg and then Shala grabbed Tafil Shabani's rifle. He also testified that Shala jumped on Tafil Shabani's rifle, they struggled for the rifle and then Shala was shot in the leg. Tafil Shabani shot and hit Shala once. Hajdini saw that Shala grabbed Tafil Shabani's rifle with two hands. Hajdini testified that he does not know what happened to the pistol Shala had pulled out before. In contradiction to that he also testified that Tafil Shabani grabbed Shala's pistol after Shala had first grabbed Tafil Shabani's rifle.

Hajdini claimed that while Shala and Tafil Shabani struggled, that others near by were shooting at Tafil Shabani. At that time Mula was shooting as much as he could, from the top of the hood of his car, towards Tafil Shabani. He was not far, about 4 or 5 meters away. Hajdini did not see anybody shoot in the air. Hajdini is not sure who wounded Shala on his chest. Shala did not shoot at Tafil Shabani. According to Hajdini the others further down, all four of them, also shot. Hajdini does not know what kind of gun those others further down had nor does he know how many shots could there have been from those others.

Shala fell to the ground and Tafil Shabani fell over Shala. After seeing this Hajdini claims to have "lost himself" and ran away.

The witness Nazmi Leku stated that he had previously worked together and was a close friend with Ramiz Shabani, Shala and Mula. To Leku's knowledge Ramiz Shabani and Mula have also been on very good terms, and never had any misunderstandings between them. Nazmi Leku has not worked with the TMK for the last two years.

Leku and Ramiz Shabani met on 2nd September 2008, during working hours. Although Leku was on leave he was summoned for a ceremony meeting in KFOR. They were all lined up that day. It was there that the others learned that Leku had had the ceremony of circumcision of his son at home. They said they would pay a visit to congratulate Leku and that they would let Leku know by phone in advance.

Leku did not know about Ramiz Shabani wanting to go home early that day, nor did he find that out later.

Leku's car broke down on his way back from work. As he was dismantling the car to locate the problem, Ramiz Shabani and others stopped by Leku's place. After 2 o'clock, while Leku was working on his car, Ramiz Shabani and his nephew Hajdini stopped by. They were driving with Ramiz Shabani's car. Leku offered them a drink but they only stayed up to five minutes talking about Hajdini's repatriation, and the time for them to come and visit Leku. Ramiz Shabani did not tell Leku about the problems at his work.

Leku then borrowed his brother's car, an Opel Vectra, to go to buy the spare parts. Travelling to Skenderaj, Leku saw a Police car in front of him and it cut him off. From then on Leku drove behind them. The Police car stopped all of a sudden and Leku had to avoid crashing into them. As the Police car stopped it moved off of the road and it was

stopped near a ditch but still blocking the way, so Leku had no choice but to park. Leku saw the Police running with weapons, he got scared and thought they had some problem with him. Leku parked the car with the intention to ask them why they drove in such an obstructive manner and stopped in the manner they did as Leku nearly crashed his car into them.

When Leku first came into the car park behind the Police, he did not hear any shooting. He saw only Mula, Shala, Tafil Shabani, and the Police at the crime scene. There were two cars at the car park, Opel Vectra and one Golf 2. The doors of the cars were wide open. Later people were coming from all directions; five or six, maybe more. The situation was somewhat chaotic because other vehicles were stopping by and people were getting out of their cars.

When Leku got out of his car he overheard the Police say:” Stop shooting! Stop shooting!” and then “Lie down”. Leku saw two people lying on the ground on top of each other. The person underneath was lying on his back. This was Shala, although Leku recognised him only after approaching to help them. Shala shouted, “Help! Is there anyone who can help?” He kept shouting loudly, asking for help. The person on top was facing down. There was a rifle there and the person on top was holding a handgun, model TT, by the handle in his right hand. The handgun was unloaded. It was open. Their heads were to the same direction. However, he also testified that the person on top had both his arms around the neck of Shala.

Further away there was also another person, Mula lying on his stomach in the courtyard of the restaurant holding a handgun in his hand. Leku did not see any shooting coming from that gun. Mula was about 10 to 15 meters from where Leku was. Mula and Leku did not speak at the site of the incident.

The Police officers were asking for help from people there. There were two Police officers next to Rasim. Leku recognized Shala after he approached. He helped to put Shala aboard a vehicle.

Leku did not hear any shooting as he approached Shala.

The witness Fadil Xani stated that he does not personally know the suspects Njazi Mula and Rasim Shala.

On the day of the shooting, at 5.10 pm Xani was travelling on foot from his house to where he worked with the heavy machinery behind the large hill nearby. Xani saw a Vectra vehicle at the restaurant on his way to the heavy machinery. The place where the incident took place was 15 meters from his house and work place. The restaurant could not be seen from where he was working because there was a hill between them. The restaurant was closed because Xani’s mother had recently passed away.

Once he got to the work site, Xani heard from 4 to 6 gunshots, with considerable pauses between the shots. Xani was not able to determine the type of fire arm.

Once Xani heard the shots he stopped the machine and went to the restaurant. He first saw the crime scene from the road opposite of the restaurant. There were two vehicles present at the crime scene; a Golf was parked facing the brick fence and the Vectra that Xani had seen earlier on his way to the heavy machinery was still there as well. Xani saw two people lying on the ground - one was on top of the other. He was 20-30 meters from them. There was a long-barrel weapon very close to the people lying on the ground. Xani is not sure if he saw any other weapon on the two bodies lying down. Xani was not there longer than 5 to 10 seconds before the police arrived. The police did not permit anyone to approach.

Xani also saw one person holding a weapon and walking backwards. Xani could no longer remember what kind of weapon the person walking backwards was holding. When he was read from his statement to the police "I saw a person with a weapon of a small caliber, short, I noticed him while he was walking backwards in the Drenas direction and pointing the weapon in the direction where the incident had occurred" he confirmed that this is correct. Xani did not see this person firing the gun. In the main trial hearings Xani recognized Mula as the person walking backwards.

Xani also saw a person running in the direction of his house. Xani does not know if this person had a weapon.

Xani testified that the police might have stopped cars passing by to ask for help, although he was not sure of this fact. A driver of a vehicle and the police first helped to get the wounded person in a vehicle. Xani did not have access to him or touch him. Xani approached to help only when he was asked to do so by the police. The police asked Xani to help remove the second person and put him inside the vehicle, and Xani did this. Xani himself assessed that this person might be dead because he was not moving and was sort of yellow and heavy when they lifted him. Xani did not see anything on his hands or anyone remove objects from his hands.

2 or 3 days later Xani informed the police that it appeared that gunshots had been fired towards the restaurant as there was a bullet hole on the door and on the wall. There is no evidence to connect these bullet holes to the incident in 2 September 2008.

The witness Shemsedin Geci stated that on 2.9.2008 Geci and his colleague Shkelzen Selimi were on patrol duty. They were driving towards Skenderaj. Geci did not pay attention as to whether someone was following them. They did not hear any shooting but their attention was caught by a young man running along the road, then crossing the road and continuing running heading towards Skenderaj. Later Geci learned he was the victim's nephew. Geci and Selimi headed towards him but did not stop him because they arrived at the crime scene.

When they approached the car park of Restaurant Elita-2 there were two vehicles there. One of them was an Opel Vectra. The distance between the vehicles for one another was one to two meters. Geci did not notice any other vehicles.

Geci saw two persons lying on the ground on top of one another. They had their heads towards the fence and their legs towards the road. About ½ meter from them, approximately by the belly, was a handgun of TT make and a long barrelled rifle. The weapons were close to each other, on the right hand side of the person lying beneath.

By the restaurant Geci also saw a person holding a handgun with the barrel directed from up to down, pointing in the direction of the two persons on the ground but not shooting. Geci cannot clearly determine if the handgun was aimed at the two persons on the ground.

Geci saw no other people at the car park.

Geci knew both Mula and Shala from before but he did not recognize them when he came to the crime scene. Only later did he understand who they were.

As Geci and Selimi pulled over close to the crime scene the person still standing and holding the weapon was in front of them and the two lying on the ground were beside the police car, close to Geci. Geci got out of the vehicle with his weapon in his hand and told the person holding the handgun, which Geci later learned was Njazi Mula, to drop the handgun. Mula did as told. Geci's colleague Selimi handcuffed Mula. Mula asked for help.

The person lying on the ground, underneath, was facing upwards and he had a serious wound on his leg. Later Geci found him to be Rasim Shala. Shala screamed out that his leg was cut and asked for help. Geci did not see any weapons on Shala. Shala did not tell Geci what had happened, nor did Geci ask.

The person on top was facing the ground. The person on top was quite heavy so Shala could not move him. Geci grabbed him and asked assistance from a person that was there. The person on top was not screaming and did not complain about being moved so Geci ignored everything regarding his condition. Geci saw blood but he did not see injuries on him. This is likely to be the same blood that is marked with number 7 [blood] in the sketch the police made of the crime scene. Geci could not tell how the hands of the two lying on the ground were placed.

A vehicle arrived in the car park while Geci was looking after the persons on the ground and Geci and his colleague stopped two civilian vehicles. Geci asked three people to help him but he does not remember who they were. Because the weapons were still on the ground one of the police officers continued to guard them.

Geci put the wounded in the vehicles to be taken to get first aid. After this Geci removed the weapons so that no one else had access to them. The rifle had a bullet in the chamber and the hand gun was emptied, the chamber open. Geci put the weapons in a bag and called back-up to assist them. Geci secured the crime scene with the tape and then back-up arrived. Geci left and the other officers took over the crime scene. Geci did not attend to the bullet shells at the crime scene as the crime inspection would deal with them. Soon after they arrested the person they had seen running away.

The witness Shkelzen Selimi stated that he was on duty on 02 September 2008 with a colleague of his, Shemsedin Geci, who was driving the car. They saw a man running in front of their vehicle from the direction of Morina towards to Skenderaj some 70-80 meters from the Restaurant Elita-2. This man was Burim Hajdini

Once they came close to the Restaurant Elita-2 they saw two people lying on the ground on top of each other and they stopped the vehicle.

Then, almost at the end of the restaurant, they saw a third man with a weapon pointing in the direction of the people lying on the ground. Selimi did not see anyone else at the car park. Selimi did not hear any shooting while he and Geci were at the scene.

There were two vehicles at the car park, a blue Opel Vectra and possibly a Golf 2. The Golf was parked properly. Selimi does not remember how the Vectra was parked. In front of the Golf, there was the wall. The distance between the two vehicles was not great, not more than 2-3 meters. The distance between the two people lying on the ground and the vehicles was approximately 2 to 4 meters.

When Selimi exited the vehicle he heard someone asking for help: "My leg has bee hurt". The man who was crying for help was underneath, lying on his back. At first Selimi did not go near the two people lying on the ground as he was concentrating on the man with the weapon. Later Selimi understood the weapon to be a TT revolver and recognized the person holding it as Njazi Mula. Selimi and Geci drew their weapons and asked Mula to drop his. Mula immediately cooperated with the police orders and Selimi went to handcuff Mula. Mula did not ask for help but once they arrested him he asked them to provide security to him by saying "Take me as they are coming to kill me ". Once Selimi had handcuff Mula he was keeping an eye on Mula as the one lying down was saying: "They are going to kill me".

Selimi does not remember if he saw any injuries on the person on top of the other on the ground. There were weapons next to the two people lying on the ground but Selimi does not remember where exactly they were because Geci removed the weapons. After Geci

collected the weapons Selimi understood them to be a TT and a ten bullet magazine rifle. Geci also collected the pistol Mula had dropped and put it with the other two weapons.

Once Selimi's colleagues had collected the suspect and the weapons, then he and Geci approached the two lying on the ground. Geci put one of them in the civilian vehicle and asked people to take the victim to the hospital. Selimi did not speak to the driver of that vehicle.

Shkelzen Selimi does not know the number of the bullet shells recovered at the crime scene as this was the task of the crime technicians.

The defendant Njazi Mula stated that he and Shala are friends, as are all 55 members of the Brigade. Mula and Shala were at war together and after the war in KPC. They socialize together but they never talked about weapons. Apart from war time Mula has not seen a weapon on Shala so Mula did not know if Shala carried a weapon.

When Mula is not wearing his uniform he always carries his pistol at his waist for security reasons because he would have meetings at midnight and later. He had never had to use the weapon. The weapon had belonged to his brother who fell during the war. Mula does not know if Shala knew that he had the weapon as he had not shown it or used it.

As to the dispute over working hours, Mula testified that Shabani never asked Mula for a permission to leave early, and denies ever telling Shala that Shabani could not leave early. On the contrary, Mula testified that he had, through Shala, once given a permission to Shabani to leave early.

On 2 September Mula went to the office of the Commander to receive his tasks for the day and Osmani ordered Mula, who at that time was a Head of the Disciplinary Commission in the Brigade, to take statements from three members who were absent three days before. One of them was Ramiz Shabani.

Because of the order from Osmani Mula went to Shala's office. Ramiz Shabani was there with Shala and the subject of their conversation was Ramiz Shabani's absence. Mula asked what had happened because Ramiz Shabani had never before left without permission. Ramiz Shabani replied that his son had been ill and his wife had called him. Mula asked why Ramiz Shabani had not told them about his son being ill as Mula would had taken him home himself in his vehicle. Mula had done this before. Ramiz Shabani replied that he did not care to ask anyone but he would leave whenever he wanted. Because Ramiz Shabani was speaking loudly and in a manner that made it impossible to

communicate with him Mula asked Ramiz Shabani to leave the office and informed the Commander. Mula testified that it could be that Mula's voice was somehow raised when he told Ramiz Shabani to leave but there was no reason for him to run. The meeting was conducted in an official manner. Mula did not at any stage slap Ramiz Shabani on the face or deny Ramiz Shabani a permission to go home. Rasim Shala had not been threatened with guns. Mula did not have his Black TT -pistol on him but in fact it was in his vehicle.

Afterwards Mula learned that Ramiz Shabani had gone to see Osmani although he did not have the right to do so. According to the internal rules Ramiz Shabani should have gone to Osmani with Shala. As far as Mula knows Ramiz Shabani went to ask for permission to leave and told Osmani that an argument had broken out between Mula and Shala on one side and Ramiz Shabani on the other side and that he had been threatened by them. Nevertheless, according to Mula, there was no anger on this issue and it was not personal but official.

On 2 September Tafil Shabani called Shala using the phone of Ramiz Shabani when they left work. Mula does not know what Shala and Tafil Shabani spoke about, apart from Tafil Shabani asking to speak to Mula. Shala handed the phone to Mula and he spoke to Tafil Shabani. Mula first asked who he was speaking to. Tafil Shabani told Mula he was the elder brother of Ramiz Shabani. Tafil Shabani asked if they could meet in the centre of Skenderaj to sit and talk over about some official words Mula had had with Ramiz Shabani. Tafil Shabani also wanted to speak about Ramiz Shabani's problems and the reason for his absences as well as the possibility to grant permission to Ramiz Shabani as he had works going on in his home. So, regards the meeting with Tafil Shabani, it was supposed to be friendly.

In a friendly manner Mula told Tafil Shabani that Mula and Shala could come to the home of Shabani and discuss the matter. Tafil Shabani replied; "No. We should meet in Skenderaj." They set the meeting time for 18.00 in Skenderaj. Mula agreed to meet Tafil Shabani because all the families of the Brigade had good relations and he met with all family members of their personnel. Mula had once been at the home of Shabani's to express his condolences but Mula does not remember if Tafil Shabani was there. If not then Mula had not met Tafil Shabani before. So it phone conversation was the first time Mula spoke to Tafil Shabani.

Mula and Shala were wearing uniforms. As they were not allowed to hang around in cafés in uniform Mula drove Shala to his home and then went home. He had lunch with his family. At about 4.30 pm Tafil Shabani called Mula again and asked if Mula could come at 5.00 pm instead of 6.00 pm as Tafil Shabani had some business to do after work. Tafil Shabani asked to meet in village of Polac by the trees where there is a gas station. Mula agreed and informed Shala also as they had agreed to go together. Mula picked Shala up in his car and they headed towards Skenderaj. Mula's vehicle was a Black Golf

2 and in it Mula arranged a place by the gearbox to keep his TT pistol. During the journey Mula and Shala were discussing on what to buy for their children as they had received their salaries on that day.

On the way to meet Tafil Shabani, Mula received phone calls from him. Tafil Shabani called twice to ask where they were and how long we would be. Mula told him where we were – at the Village of Kopiliq or thereabouts. Shala also called Tafil Shabani when they were at Llaushë to ask if Ramiz Shabani was with him but someone else answered the phone. This person told Shala that they had left, including Ramiz Shabani.

Tafil Shabani called Mula on his phone again asking if Shala was with him. Mula said “Yes” and asked where they were to meet. Tafil Shabani replied that he was by the gas station. Mula told him to approach Restaurant Elita-2 and to order as they would be there in a few minutes. Tafil Shabani promised to wait for them there and Mula was expecting to meet Tafil Shabani and Ramiz Shabani. From Tafil Shabani’s last call it took Mula five to ten minutes take to get to Restaurant Elita-2.

When Mula and Shala arrived at Restaurant Elita-2 Ramiz Shabani’s Vectra was there. Mula pulled over very close, one and half meters, to the Vectra. The front of the Vectra was facing the road and Mula’s Golf is facing the wall. The Golf was closer to the wall and the Vectra was closer to the road. There were two persons standing outside the vehicle and near it - one on driver’s side and one on passenger’s side. Mula did not you recognize them. Ramiz Shabani was not there.

While Mula and Shala were pulling over to the car park, and Shala was getting out of the car and Mula turning the engine out, Tafil Shabani opened the front passenger door and from underneath his seat took out the long barrelled rifle. Shala was facing he road. Tafil Shabani moved behind Mula’s vehicle. Shala was still close to the door of the car and raised his hands. Shala said: ”For God’s sake! We did not agree to meet for this but to have coffee”. Tafil Shabani aimed the rifle right at Shala’s chest. Mula got out of the car from the driver’s side, turned around to see what was happening and stayed here, close to the door. Mula thought Tafil Shabani was going to shoot at Mula and Shala and kill them. In Mula’s opinion they were betrayed and ambushed and it was clearly Tafil Shabani’s purpose to meet Mula and Shala to kill them both.

Shala jumped and by mere luck grabbed Tafil Shabani’s rifle by the barrel and lowered it. Tafil Shabani never let go of the rifle. Then the gun went off and hit Shala on the leg. This was the first shot Mula heard. Shala yelled “Oh God”. After having wounded Shala Tafil Shabani pointed the weapon at Mula, who was maybe 7-10 meters away, but Shala grabbed hold of Tafil Shabani weapon again and lowered it down. He was hanging on to the rifle, even though wounded. Mula was scared because he had just seen Tafil Shabani shoot at Shala and though that if he shot in the air it would stop Tafil Shabani from

shooting at him. Still by the door of his vehicle Mula pulled his weapon by the waist and shot 4 times in the air. Tafil Shabani was still holding on to the rifle with his right hand and Shala was still holding on to the barrel of the rifle when Tafil Shabani drew a weapon with his left hand and shot at Mula at least once, maybe twice. When Shabani shot at Mula, Mula had his TT -pistol in his right hand. He was holding it lowered, to the side of his leg, and it was remained open. It might have been out of bullets or stuck. Mula usually carries the pistol with seven bullets.

Mula dropped to the ground so he could flee and was not able to see what was going on between Tafil Shabani and Shala. The weapon that Tafil Shabani drew was black but Mula could not see the type of the weapon. In Mula's opinion Tafil Shabani was shooting at Mula to kill him. Mula tried to figure out a place to go as not to be hit. He then turned his back to Tafil Shabani and heard a gunshot.

In his statement to the police, dated 2.9.2008 **witness Kasim Xani** stated that while he was working in front of the Restaurant Elita-2 behind a hilly land he heard shots. He went to the hill from where the restaurant could be seen and saw a person at the far end of the parking of the restaurant with a revolver in his hand. This person was shooting in the direction of the parking located in front of the restaurant. At that moment the police patrol arrived.

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:

It is undisputed that two or three days before 2 September 2008 Mula, Shala and Ramiz Shabani met at the office of Shala to discuss the absences of Ramiz Shabani. This fact is supported by the statements of both Ramiz Shabani and Mula. Mula and Shala both state that Ramiz Shabani told that his son had been ill and his wife had called him. Furthermore their statements concur in that Mula's voice was raised at the end of the meeting. The Court further finds that the meeting was not conducted purely in an official manner. There clearly was a work related dispute between Ramiz Shabani, Mula and Shala and some harsh words were exchanged between them possibly resulting in a physical attack upon Ramiz Shabani. This conclusion is supported by the undisputed fact that after the meeting Ramiz Shabani went to speak to Commander Osmani and claimed that Mula and Shala had threatened him. Further the Court finds that Mula and Shala were in a superior position to Shabani.

On 2 September 2008 Ramiz Shabani's brother, Tafil Shabani on one side and Mula and Shala on the other side agreed to meet to discuss this dispute about the absences of Ramiz Shabani. This fact is supported by the statement of Ramiz Shabani who stated that he had told Tafil Shabani that he had problems with Shala and Mula and Tafil Shabani said he would send Hoxha to find out what was this issue all about and to make amends with Mula. When Ramiz Shabani returned from having changed his uniform the electrician working at Ramiz Shabani's house told him that someone called from an unknown number and said that they were at the meeting place. This fact is also supported by the statement of Hajdini who stated that Tafil Shabani asked Hajdini to take him to the village of Polac. While they were driving Tafil Shabani told Hajdini that he was going to talk about his brother, that there was a problem and that they had to agree on something. Possibly Tafil Shabani told Hajdini that Ramiz Shabani had been beaten up at work. This fact is also supported by the statement of Mula who stated that when Mula and Shala left work Mula spoke on the phone with Tafil Shabani and Tafil Shabani asked if they could meet in the centre of Skenderaj to sit and talk over about some official words Mula had had with Ramiz Shabani. Mula agreed to meet Tafil Shabani because all the families of the Brigade had good relations and he met with all family members of their personnel. The court finds that Tafil Shabani, Mula and Shala agreed to meet at Restaurant Elita-2 to discuss the dispute.

On 2 September 2008 Tafil Shabani's and Burim Hajdini were the first to arrive at the car park of Restaurant Elita-2. This fact is supported by the statements of Fadil Xani, who stated that as he was travelling on foot from his house to where he worked with the heavy machinery behind the large hill he saw a Vectra vehicle at the restaurant. Fadil Xani's statement is also supported by the fact that the Vectra had been parked facing the road, which indicates that the driver had had time to park the vehicle. It is also clearly found by the Court that Tafil Shabani and Burim Hajdini were the first to arrive and parked facing the road, and that Mula and Shala arrived second and parked facing the wall with the back of their car facing the road.

On 2 September 2008 Njazi Mula was in the possession of a TT pistol and he fired his pistol while at the car park. These facts are not disputed but confirmed by Mula himself. This statement is also supported by the undated Criminal Examination Report by Lutfi Rraci that states that seven shell casing of the type used in a TT pistol like Mula's (7.62 X 25 mm) were found at the scene and that four of these seven shell casings match forensically as having been fired from the pistol with serial number 863307 which Mula admitted was his. The Court further finds that the other three shell casings matched none of the weapons at the crime scene. The only other shell casing found at the scene was of the type used in the long rifle identified as belonging to Tafil Shabani (7.62 X 39 mm) however no forensics were performed on this shell casing to determine if it had, in fact, been fired by Tafil Shabani's rifle. No other shell casings were found at the scene by investigating officers.

It is undisputed that Tafil Shabani was killed and that Rasim Shala was injured on his leg and to the right side of his chest close to the neck during the exchange of gun shots at the car park of Restaurant Elita-2

2. Evidence concerning the murder by Njazi Mula

As stated above, Njazi Mula has admitted to shooting four times in the air after Tafil Shabani had shot Shala in the leg and while Tafil Shabani and Shala were struggling for the rifle.

Mula stated that Hajdini and Tafil Shabani were already at the car park of the Restaurant Elita-2 when he and Shala arrived there. This statement supported by the statement of Fadil Xani who stated that when he was travelling on foot from his house to where he worked he saw a Vectra vehicle at the restaurant on his way to the heavy machinery. It is also indirectly supported by the pictures taken by the police investigating the case that indicates that the Vectra vehicle was reversed to the car park and parked with its rear towards the fence. This fact supports the courts finding that Tafil Shabani and Hajdini were under no threat at the time they arrived at the location of the shooting as it is unlikely that someone would park in this manner if threatened. Further, the Court does not believe Mula's claim that Tafil Shabani immediately pulled the rifle out from under the seat of his vehicle. First of all this is completely contrary to Hajdini's statement that he saw no such weapon in the car, but perhaps more importantly is considered practically impossible for a weapon of the size of Tafil Shabani's rifle could be stored under the front seat of the vehicle and pulled out in an reasonable manner. The testimony that it was in the trunk as stated by Hajdini is more plausible and believed by the court.

According to the undated Criminal Examination Report by Lutfi Rraci four of the shell casings found on the crime scene were matched to Mula's pistol. The only other casings at the scene, three in number, matched to none of the weapons found at the scene of the shooting. Three of these four shell casings matched to Mula's pistol were found in the vicinity of the staircase of the restaurant, near Mula's car. The forensic evidence supports Hajdini stating that Mula was shooting as much as he could, from the top of his bonnet, towards Tafil Shabani.

The Court finds Mula's statement of him shooting into the air unbelievable for the following reasons: first, Mula stated that while immediately after being shot at by Tafil Shabani he was holding his TT -pistol lowered to the side of his leg and then he dropped to the ground. The Court finds, it unbelievable that one being shot at, while holding a pistol in his hand, would hold the gun at his side and then drop to the ground; second, Hajdini who was an eye witness to the event clearly noted that Mula was shooting at the direction of Tafil Shabani and Shala; third, witness Fadil Xani saw Mula walking backwards near the restaurant holding a weapon and pointing the weapon in the direction of Tafil Shabani and Shala who were on the ground. It is inconsistent that Mula would hold his gun down while being fired at but a moment later point it at the two people lying on the ground helpless; fourth, witness Kasim Xani stated that he saw a person at the far end of the parking of the restaurant with a revolver in his hand shooting in the direction of the parking located in front of the restaurant. Finally, according to the undated Criminal Examination Report by Lutfi Rraci no shell casing matched the pistol with

serial number C 57818 alleged by Mula to have been used by Tafil Shabani. Therefore the forensic evidence does not support the statement of Mula in so far as he stated that Tafil Shabani drew a weapon with his left hand and shot at Mula at least once, maybe twice. Furthermore, this indicates that Mula was not shot at before he fired his weapon.

According to the investigator's report dated 3.9.2008 the police found 11 long weapon cartridges of caliber 7.62 X 39mm, and the same as could be used on Tafil Shabani's weapon, at the crime scene. From the photograph number 8 attached to the forensic identification file # 08-094 one can see that these 11 cartridges were intact. According to the abovementioned report one empty cartridge of the same caliber was found as well. This shell was never tested but was found near the rifle and is of the same calibre as the other unfired cartridges.

There were no shell casings found to support Hajdini's statement of there being other people further down that fired the first shot neither is it supported by a statements of anyone else at the crime scene. Hajdini was clearly wrong, or, in the danger of the moment, confused – in his words “lost” - as to the existence of these “others”.

It has therefore been proven that no more than one bullet was shot by Tafil Shabani hitting Shala in the leg during the struggle over the gun and that the only other shots fired were fired by Mula, four in number. This also is supported by the statement of Fadil Xani who heard four to six shots. It follows that one of the four shots Mula fired hit and killed Tafil Shabani. The Article 146 of the Provisional Criminal Code of Kosovo describes murder as “whoever deprives another person of his or her life” The actions of Mula match this legal description.

3. Evidence concerning the Unauthorized Ownership, Control, Possession and Use of Weapons by Njazi Mula

Mula pleaded guilty to the unauthorized possession of the weapon, a TTM-57 serial number 863307. The Plea is supported by the statements of Fadil Xani, Geci and Selimi.

4. Evidence concerning the murder by Rasim Shala

Hajdini stated that Shala pulled out a weapon but he did not shoot at Tafil Shabani. The forensic evidence supports Hajdini's statement as there were no shell casings found from the crime scene that matched the weapon of Shala, TTM-57 serial number C57818.

Witness Leku testified that the handgun he saw in the people lying on the ground was unloaded, open. In his testimony Mula does not mention Shala shooting at Tafil Shabani. In fact, Mula does not mention Shala having a weapon at all.

There is no evidence showing the intent on Shala's part to commit the offence of Murder nor is it proven that he substantially contributed to its commission. Shala simply reacted

to the situation he found himself in and engaged in a struggle over the weapon held by the victim Tafil Shabani. During the struggle the weapon was discharged in some manner and he was injured. This struggle over a weapon does not constitute intent or contribution to the crime. Therefore, the requisites of the criminal offence are not established.

Therefore the Court finds that the evidence presented to find Shala guilty as a co-perpetrator in the murder of Tafil Shabani is insufficient.

5. Evidence concerning the Unauthorized Ownership, Control, Possession and Use of Weapons by Rasim Shala

Ramiz Shabani testified that both Mula and Shala regularly had unregistered weapons on their person and in their office. Hajdini testified that he saw Shala pull his pistol out. Geci testified that he saw was a handgun of TT make, on the right hand side of the person lying beneath [Shala], about ½ meter from them.

Leku testified that the person on top [therefore Tafil Shabani] was holding a pistol in his right hand. This is not in consistent with the statement of Geci who was amongst the first to approach the people lying on the ground. It is also unbelievable that Tafil Shabani would have a pistol in one hand, a long rifle with a bayonet attached in the other hand and struggling with Shala all at the same time. It is further unbelievable in that Leku not only stated that Shabani had a pistol in one hand, at the same time he stated that Shabani (the one on top) had both hands around Shala's throat. These statements are inconsistent and somewhat contradictory. According to his own testimony Leku was a close friend with Ramiz Shabani, Shala and Mula. This might have affected Leku's testimony as to who was holding the weapon. The Court further notes that there is no record of the victim Tafil Shabani having such a weapon. It is also completely illogical that he would have gone to the trouble to extract a bulky rifle from the boot or even under the seat of the vehicle had he had a pistol on his person.

The Court finds that the testimonies of Ramiz Shabani, Hajdini and Geci are sufficient to convince the panel that Shala is guilty of the offence of unauthorized possession of the weapon, TTM-57 serial number C57818.

6. Rejected Motions

Defence Counsel Haxhi Millaku requested the Court to inspect the crime scene to survey it, so that the Panel would have true picture of it and to objectively understand the matter. Because of the detailed sketch and the photos presented as evidence by the Public Prosecutor the Panel has sufficient information of the crime scene. Visiting the crime scene would not bring additional relevant information. Therefore the panel decided to reject this request.

Defense Council Xhelal Hasani requested that the statements of Musa Gashi and Muharrem Leku given to the police on 3.9.2008 were considered as read. The Court rejected this request because the witnesses have not been given the chance to decline from testifying as stipulated in the Article 160 of the CPCK.

E. LEGAL QUALIFICATION

1. Law applied

The criminal acts were committed on 2 September 2008. At that time the Provisional Criminal Code of Kosovo (PCCK), that entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 paragraph (1) of the PCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator, unless the application of a subsequent law would be more favourable for the accused. There was no change in the law that would be more favourable for the accused. Although the accused were charged according to the “Criminal Code of Kosovo” (CCK), the change in the law that entered into force on 06 January 2009 and introduced this new name of the criminal codification did not entail any material amendment relevant to this case. The provisions applicable in this case, remained exactly the same.

2. Necessary defence

Mula’s defence was that he did not shoot Tafil Shabani but in the air. As stated above, it has been established that the accused Njazi Mula caused the death of Tafil Shabani and possibly serious injuries to Rasim Shala.

The court examined whether acts of Njazi Mula could have fallen under the legal scope of necessary defence. According to Article 8 paragraph 2 of the CCK an act is committed in necessary defense when a person commits the act to avert an unlawful, real and imminent attack from himself or another person and the nature of the act is proportionate to the degree of danger posed by the attack. The court found that in the case before it the constituent elements of necessary defence were not present.

Undisputedly, both Mula and Shala went to the rendez-vous carrying weapons ready to use, which readily indicates a confrontational, if not provocative, attitude. This indication is strengthened by the prior incident of both of them brandishing weapons at Ramiz Shabani earlier that day. As concerns the course of action at the crime scene, Hajdini stated that Tafil Shabani armed himself only after seeing the weapons on Mula and Shala. Hajdini was undisputedly unarmed.

Mula stated that while he and Shala were pulling over to the car park Tafil Shabani took out the long barrelled rifle from underneath his seat. As stated before, the Court finds it

unlikely or nearly impossible for the long rifle to have been stored and extracted in any reasonably quick manner under the front seat of this vehicle. Accordingly, the Court finds it unproven that Mula and Shala were under threat at the time they arrived at the location of the shooting.

Mula claimed that he pulled his gun out from his waist only after he had witnessed Tafil Shabani shoot at Shala. Since Mula had earlier stated that he carried his gun for his protection the Court finds it unlikely that he would watch his friend being shot without using, or at least pulling out, his weapon. Mula's statement is also unbelievable in that his statement in court was that the pistol is carried in a location by the "gear box" of his car. If that was the case, how did it suddenly become placed in his belt upon leaving the car. His story about the location of his and Tafil Shabani's weapons brings serious doubt as to his testimony.

The Court deems it therefore proven that the four people put themselves in a situation where both parties were threatening and at the same time threatened with a weapon, which excludes the element of "attack". The court believes that by a greater weight of credible evidence, Mula and Shala began this incident by getting out of their car armed. Tafil Shabani, in order to equalize the situation drew his rifle from the car. According to Mula's statement Shala was the first to act in this situation as he jumped and grabbed the rifle of Tafil Shabani. Only after this did the gun go off and hit Shala on the leg. Hajdini gave two versions of the struggle over the gun; one stating that Shala was first shot in the leg and then he grabbed the rifle; and one stating that Shala jumped on rifle, they struggled and then Shala was shot in the leg. The Court accepts that in an occasion where a person is suddenly caught up in a possibly life threatening situation his perceptions and memories of the situation can be affected. Exactly this was described by Hajdini when he stated that he "lost himself". Therefore the Court considers Mula's account, Shala acting first, as proven. Furthermore, both Hajdini and Mula state that Mula only fired his gun after Tafil Shabani had shot Shala in the leg and while they were struggling for the gun.

To conclude, the Court states that there was no attack by Tafil Shabani on Mula or another. In fact, Tafil Shabani was confronted by two armed men and then attacked by Shala who grabbed the rifle and struggled with Tafil Shabani resulting in the discharge of the weapon. At this point, only after this struggle, Mula discharged his weapon four times hitting Tafil Shabani once fatally.

At this point Tafil Shabani was both outnumbered and engaged in a struggle with Shala and therefore no longer aiming his weapon at either Mula or Shala. Of course all of this could have been avoided if no one came to this simple discussion armed. Because all were armed, one is dead, one impaired for life and one facing the serious crime of murder. This is precisely why the law prohibits brandishing of weapons under severe penalties and why those who brandish firearms may not invoke the necessary defence when their opponent responds by actually firing.

Therefore, Court excludes this defence.

F. DETERMINATION OF PUNISHMENT

When imposing the criminal sanction the Court has to bear in mind both the general purpose of punishment – that is to suppress socially dangerous activities by deterring others from committing similar criminal acts, and the specific purpose – to prevent the offender from re-offending. In determining the duration of punishment, the Court has to evaluate all mitigating and aggravating factors, pursuant to Article 64 paragraph (1) of the PCCK.

For the criminal act of Murder pursuant to Article 146 of the PCCK, the law foresees a punishment of at least five years of imprisonment.

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

In case of the murder by the accused Mula the Panel took as an mitigating factor the fact that there was a struggle involving 3 persons with weapons, that he did not initiate the meeting, that his friend was injured and that he may have overreacted to the situation.

In case of the unauthorized possession of a weapon by the accused Mula the Panel took as an aggravating factor the fact that he has held the weapon in his possession for at least 10 years, carries it loaded on his person, that he seems to regard the law against such matters as irrelevant as to him, and the grave consequences of the use of weapons in this specific case.

Considering the mitigating factors, the panel imposed 5 years of imprisonment for the criminal act of Murder in case of Mula. Considering the aggravating factors, the panel imposed 4 years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in case of Mula. Pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCCK the panel determined the aggregate punishment in seven years of imprisonment.

The accused Mula has been in detention on remand from 2 September 2008 until 17 February 2010 and thereafter under the security measures of house detention. That period is to be credited in the imposed punishment of imprisonment pursuant to Article 73 paragraph (1) of the PCCK.

In case of the unauthorized possession of a weapon by the accused Shala the Panel took as an mitigating factor the fact that his weapon must have been unloaded at all times as no casings were found, he was under some control of his superior officer although off duty, and was severely injured as a result of this activity.

Considering the mitigating factors, the panel imposed 2 years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in case of Rasim Shala.

The panel confiscated the three weapons that have been used on the day of the event.

G. COSTS

The accused Njazi Mula and the accused Rasim Shala were found guilty, therefore, they must reimburse the costs of criminal proceedings pursuant to Article 102 paragraph (1) of the CPCK, except the costs of interpretation and translation throughout the criminal proceedings. A separate ruling on the amount of the costs shall be rendered by the Court when such data is obtained pursuant to Article 100 paragraph (2) of the CPCK.

H. COMPENSATION CLAIM

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

Injured Party Ramiz Shabani did not file a motion to realize property claim.

District Court of Mitrovica
P. nr. 17/09

Prepared in English, an authorized language.



Presiding Judge
Charles Smith



Panel Member
Caroline Charpentier



Panel Member
Agnieszka Klonowiecka-Milart



Recording Officer
Noora Aarnio

Legal remedy:

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