

DISTRICT COURT OF PEJA/PEC

P.nr. 259/11

Dt. 30 November 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of the EULEX Judge **Gunnar Øyhaugen** as Presiding Judge, the EULEX Judge **Ingo Risch** and the Kosovan Judge **Shaban Shala** as panel members, assisted by the Recording Officer **Nexhmije Mezini**, in the criminal case against:

SYLEJMAN UKA aka **JAKUP PEJA**, son of **Bajram** and mother **Gjane** – maiden name **Alijaj**, born on 22 April 1969 in **Gjakova**, now residing in **Pejë/Peć**, in “**Salih Jaha**” street nr. 18, completed secondary school, single, good economic status, Albanian, citizen of Republic of Kosovo, in detention on remand since 6 December 2010,

JUSUF VISHAJ, son of **Smajl** and mother **Ajshe** – maiden name **Pavataj**, born on 15 September 1970, in the village of **Beleg**, **Deçani Municipality**, where he resides, mechanic by profession, completed secondary school, married – father of one child, Albanian, citizen of Republic of Kosovo, was in detention on remand from 20 November 2010 until 20 December 2010,

AFRIM UKA, nickname “**Mimi**”, son of **Bajram** and mother **Gjane** – maiden name **Alijaj**, born on 9 August 1975 in **Gjakova**, now residing in **Pejë/Peć** in “**Sali Jaha**” street nr. 20, completed secondary school, married – father of 3 children, average economic status, Albanian, citizen of Republic of Kosovo, was in detention on remand from 20 November 2010 until 5 December 2010,

SHQIPRIM UKA, son of **Asllan** and mother **Vjollca** – maiden name **Thaqi**, born on 3 July 1986 in **Gjakova**, now residing in **Pejë/Peć** in “**Sali Jaha**” street nr. 20; completed secondary school, mechanic by profession, married, of average economic status, Albanian, citizen of Republic of Kosovo, was in detention on remand from 20 November 2010 until 5 December 2010,

Charged with the Indictment of the District Public Prosecutor in **Peja PP.nr.479/10** dated 23 May 2011, and amended on 3 November 2011, as in the following:

- **Sylejman Uka** charged with the criminal offence of *Murder* contrary to Article 146 of CCK,
- **Jusuf Vishaj** charged with the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* contrary to Article 328 paragraph 2 of CCK,

- Afrim Uka and Shqiprim Uka charged with the criminal offence of *Participation in a Brawl* contrary to Article 155 par. 1 in conjunction with Article 23 of CCK,

After having held the main trial hearings in public on 1, 2, 3, 14, 15 and 30 November 2011 in the presence of:

- the Public Prosecutor Peter Korneck,
- the accused Sylejman Uka, Jusuf Vishaj (3, 14, 15 November 2011) Afrim Uka and Shqiprim Uka
- the defense counsels of Sylejman Uka, lawyers Gezim Kollcaku and Klaus Kirchner;
- the defense counsel of Jusuf Vishaj, lawyer Haxhi Cekaj;
- the injured party Hasime Alaj, and her legal representative, lawyer Naser Husaj on 1, 2 and 3 November, and lawyer Nushe Kuka Mekaj on 14, 15 and 30 November 2010;

after the trial panel deliberation and voting held on 30 November 2011, based on Article 383 Paragraph 2 of Kosovo Code Criminal of Procedure (KCCP);

on 30 November 2011, pursuant to Article 392 Paragraph 1 of KCCP, pronounces in public, the following

V E R D I C T

Pursuant to Article 390 par. 1 item 2 of KCCP, the accused **Sylejman Uka** is

ACQUITTED

Of having committed the criminal offence of *Murder* pursuant to Article 146 of CCK, since there are circumstances of Necessary Defence from Article 8 of CCK, which exclude criminal liability,

* * *

Pursuant to Article 390 par. 1 item 3 of KCCP, the accused **Afrim Uka** is

ACQUITTED

Of having committed the criminal offence of *Participation in a Brawl* pursuant to Article 155 par. 1 in conjunction with Article 23 of CCK, because it has not been proven that the accused has committed the act with which he has been charged by the summary indictment.

* * *

Pursuant to Article 389 par. 1 item 1 of KCCP, the summary indictment against **Jusuf Vishaj**, in relation to the criminal offence of *Participation in a Brawl* pursuant to Article 155 par. 1 in conjunction with Article 23 of CCK, is

REJECTED

Since the Prosecutor withdrew the charge during the main trial.

The accused **Jusuf Vishaj** is

FOUND GUILTY

Because he until 20 November 2010 was in unauthorized possession of a weapon and ammunition, a pistol of type "TT", cal. 7.62 mm, with serial number 26276, the weapon which was confiscated by the Police, after the defendant on the critical night at the Cafeteria "Damjana" located in the village Jabllanicë e Leshanit, was in possession of the mentioned weapon during a brawl which he had with the defendants Sylejman Uka and Shqiprim Uka

- By which committed the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* from Article 328 par. 2 of CCK.

* * *

The accused, **Shqiprim Uka**, is

FOUND GUILTY

Because on 20 November 2010, at around 02:10 hours in the Cafeteria "Damjana" located in the village of Jabllanicë e Leshanit, Pejë/Peć Municipality, the defendants Sylejman Uka and Shqiprim Uka on one side and the defendant Isuf Vishaj on the other side, participated in a massive brawl, during which the defendant Sylejman Uka using the handle of an axe, struck the defendant Jusuf in the back of the head. The defendant Shqiprim Uka kicked and hit the defendant Jusuf Vishaj while he was lying on the floor. The defendant Jusuf Vishaj sustained some wounds to his head. This brawl also resulted in the death of the now late Ali Haskaj, from the village of Irzniq Deçan/Deçani Municipality, who in these critical moments had intervened to separate them, while Sylejman Uka from Pejë/Peć remained injured,

- By which he committed the criminal offense of *Participation in a Brawl* from Article 155 par. 1 of the CCK.

Therefore, pursuant to the provisions of Articles, 6, 11, 15, 31, 32, 33, 34, 38, 64 par 1 and 2, 65 par 1, 73 par 1, 99 par 1, Article 328 par. 2 and Article 155 par. 1 of CCK and Articles 99 par 1, 2 item 6, par 3, 102 par. 1, 328 par 1, 385 par. 1 and 2, 386 par 2, 387 par 1 and 2, 391 and 392 of the KCCP, the accused are

SENTENCED

Jusuf Vishaj to 1 (one) year of imprisonment

Shqiprim Uka to 4 (four) months of imprisonment

Pursuant to Article 391 par. 1 sub-par. 5 of KCCP, the time spent in detention by the accused **Jusuf Vishaj** from 20 November 2010 until 20 December 2010, and by the accused **Shqiprim Uka** from 20 November 2010 until 5 December 2010, shall be credited in the punishment.

Pursuant to CCK Article 328 par. 5, Article 54 item 7 and Article 60 item 1, the pistol of type "TT", cal. 7.62 mm, with serial number 26276, seized from Jusuf Vishaj, shall be confiscated and destroyed.

Pursuant to Article 99 par. 2 item 6 of KCCP, the defendants Shqiprim Uka and Jusuf Vishaj shall each pay the costs of these criminal proceedings in a scheduled amount of 100 (one hundred) Euros.

Reasoning

Procedural Background

On 31 May 2011 the EULEX District Public Prosecution in Peja has filed an indictment PP.nr.479/10 dated 23 May 2011 against Sylejman Uka for the criminal offence of *Murder* contrary to Article 146 of CCK and Jusuf Vishaj for the criminal offence of *unauthorized ownership, control, possession or use of weapons* contrary to Article 328 paragraph 2 of CCK, and summary indictment against Afrim Uka and Shqiprim Uka for the criminal offence of *Participation in a Brawl* contrary to Article 155 par. 1 in conjunction with Article 23 of CCK.

The indictment was confirmed on 27 June 2011 by the confirmation judge of the District Court of Peja/Pec, through the ruling KAJ.nr.206/11.

On 9 September 2011 the President of the Assembly of EULEX Judges, deciding upon the request of the President of the District Court of Peja, after a hearing, decided to take over the case and allocate it to the competence of EULEX Judges for further proceedings.

Competence and Panel Composition of the Court

In accordance with Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the main charge against the defendant Sylejman Uka is *Murder*, in violation of Article 146 of the CCK, punishable by imprisonment for at least five (5) years. Therefore, the District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offence, according to the indictment, was committed in the Jabllanice e Leshanit, Peja Municipality, which is within the territory of the District of Pejë/Peć. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Since the present case was allocated to the competence of EULEX Judges by the decision of the President of the Assembly of EULEX Judges dated 9 September 2011, the panel was composed of two EULEX Judges and one Judge from Kosovo pursuant to Article 3.7 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

None of the parties objected to the panel composition.

The Main Trial Sessions

The main trial was held in public on 1, 2, 3, 14, 15 and 30 November 2011 in the presence of the accused the Public Prosecutor Peter Korneck, the accused Sylejman Uka, Jusuf Vishaj (3, 14, 15 November 2011) Afrim Uka and Shqiprim Uka, the defense counsels of Sylejman Uka, lawyers Gezim Kollcaku and Klaus Kirchner; the defense counsel of Jusuf Vishaj, lawyer Haxhi Cekaj; the injured party Hasime Alaj, and her legal representative, lawyer Naser Husaj on 1, 2 and 3 November, and lawyer Nushe Kuka Mekaj on 14, 15 and 30 November 2010.

The main trial had commenced without the defendant Jusuf Vishaj. In the beginning the trial panel's intention was that the case against Jusuf Vishaj would be severed, dealt with separately. However, his defense counsel, Lawyer Haxhi Cekaj promised that his client would attend for the next session. The defendant Jusuf Vishaj appeared in court on 3 November 2011. The trial panel had reopened the main trial and with the consent of the parties, the minutes of 1 and 2 November 2011 were considered as read out.

Jusuf Vishaj was not present on the last day of the hearings – 30 November 2011. The Court decided not to postpone the hearings, due to the fact that Jusuf Vishaj had pleaded guilty and that during the last day only the final speeches should take place.

In accordance with Article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary. Regarding the witness Mabusan Gashi – her testimony was translated from Turkish to Albanian and English and vice-versa – because she knows Turkish better than Albanian.

Evidence administered during the main trial

During the course of the main trial, the trial panel examined the following witnesses:

Injured party *Hasime Alaj* examined on 1 November 2011,
Witness *Enver Gashi* examined on 1 November 2011,
Witness *Faruk Agushi* examined on 2 November 2011,
Witness *Selim Malokaj* examined on 3 November 2011,
Witness *Vjosa Haskaj Isein* examined on 3 November 2011,
Witness *Mark Pjetri* examined on 3 November 2011,
Witness *Mebusan Gashi* examined on 14 November 2011,
Witness *Avni Shala* examined on 14 November 2011.

All four defendants gave their testimony on 15 November 2011.

Documentary Evidence

- Police Flash Report case number 2010-DA-2560 dated 20.11.2010;
- Police Officers Report case no. 2010-DA-2560 dated 20.11.2010 drafted Police Officer Haxhi Kastrati;
- Police Officers Report case no. 2010-DA-2560 dated 20.11.2010 drafted Police Officer/Sergeant Riza Mahaj;
- List of Weapons Recovered from Afrim Uka regarding pistol TT M57 cal. 7.62 Jugoslav production, serial number 26276, with one cartridge and 4 bullets, and pistol "HELWAN" cal. 9mm, Egypt production, serial number 1057899, with one cartridge and 4 bullets. Also pictures of the mentioned pistols;
- Release Form with case history issued by the Regional Hospital in Peja – Surgery Ward on the defendant Sylejman Uka with number 10648 dated 6.12.2010 issued by Dr. Bujar Vrella, Surgeon;
- Crime Scene Report dated 20.11.2010 drafted by Riza Mahaj, sketch of the crime scene and list of evidence drafted by office Ahmet Lajqi and photo album of the crime scene prepared officer Bekim Pergjegjaj;
- Autopsy Report MA 10 - 308 dated 20.11.2010 regarding the victim Ali Haskaj drafted by Dr. Flamur Blakaj and foto album of the autopsy containing 48 pages and 94 pictures prepared by Officer Haki Lekaj;
- Ballistics report number 2010-2375 dated 20.12.2010 examined and drafted by Qëndrim Topalli, Expert for Firearms and Toolmarks Examination, in relation to the pistol TT M57, pistol "HELWAN" and one bullet found at the crime scene;
- Ballistics report number 2010-2375 dated 1.02.2011 examined and drafted by Qëndrim Topalli, Expert for Firearms and Toolmarks Examination, in relation to one bullet taken out from the defendant Sulejman Uka's body;
- Forensic Expertise on the examination of the axe reference number 2010-2375/2011-812 dated 8 June 2011;

- Report on Gun Shot Residue number 511-01-115/1-2491/11.SK dated 16/05/2011 from the Forencis Science Center in Zagreb, Republic of Croatia, examined and drafted by Mirko Zebic, Senior Expert in Firearms and Toolmarks Examination;
- Peja Regional Hospital report on the examination of Jusuf Vishaj, reference number 15763 dated 20.11.2010, prepared by Dr. Mithat Jakupi;
- Medical examination of Mebusan Gashi without any date or reference number, examined by Dr. Menderes Nila and pictures of her wounds;
- Medical examination of Jusuf Vishaj without any date or reference number, examined by Dr. Menderes Nila and pictures of his wounds;

Summary of the accused and the witness's statements:

The Accused Sylejman Uka:

Sylejman Uka is charged with the criminal offence of murder contrary to Article 146 of CCK. He has pleaded not guilty.

In summary, his evidence to the Court was as follows:

He was in his Pizzeria until around 2 o'clock in the morning of the 20th November 2010. His brother – Afrim Uka was a musician who was playing in the Cafeteria “Damjana”, located in the village of Jabllanicë e Leshanit, Pejë/Pec. He decided to go and help Afrim Uka to carry all the musical instruments, amplifiers and boxes. He went inside the cafeteria. He saw Jusuf Vishaj and a person called Gashi and also his brothers Afrim Uka and Shqiprim Uka. He did not know Jusuf Vishaj from before.

He noticed that Jusuf Vishaj had a pistol attached to his belt on his front side. He immediately returned to his car and took an axe from the car. His idea was to get rid of Jusuf Vishaj's gun as soon as possible, because he was afraid that Jusuf Vishaj could kill his brothers.

He hit Jusuf Vishaj with the handle of the axe and in this way knocked him out. Jusuf Vishaj tried to pull his pistol, but he did not manage to pull the pistol due to his speed of movement. He removed the pistol and he threw it sideways. The pistol was picked up by his brother Afrim Uka. He punched Jusuf Vishaj 2, 3, 4, 5 times. During those moments somebody hit him behind his head with a bottle. Afrim Uka tried to pull him away – and “Tuli” (the owner of the cafeteria) – grabbed Jusuf Vishaj. At that time he turned around to see who hit him from behind. When he turned back his head, he saw Ali Haskaj pushing his gun against his chest – and saying that he was Ali Haskaj and that he could burn him in flames.

He did not know Ali Haskaj at all. At that moment he told him that he was “Jakup Peja” and showed him his hand saying that he had nothing to do with him.

Ali Haskaj attacked him and pushed his gun against his chest. He never saw Ali Haskaj loading the gun. He tried to protect himself by lifting his left hand in front of his chest and with his right hand he grabbed Ali Haskaj's hand holding the weapon and pulled it towards himself – while at the same time lifting Ali Haskaj's arm upwards. He did this in order to avoid certain death – because it was a life or death situation.

Sylejman Uka demonstrated the situation using a member of the court's staff to be Ali Haskaj. He showed how Ali Haskaj pulled the weapons trigger and in which way he was shot – into his chest and downwards. And then Ali Haskaj was shot – and it was Ali Haskaj himself who pulled the trigger. This happened while he was twisting Ali Haskaj's hand. He heard three or four other shots – and one of them hit Ali Haskaj. When they fell on the ground, he took the gun from Ali Haskaj's hand

He explained that he did not go to this cafeteria with the intention of killing. He had no reasons at all to kill Ali Haskaj – but what happened was that he protected his brother Afrim Uka and his nephew Shqiprim Uka – and that he acted in necessary defense.

Since he was seriously wounded, he was taken to hospital by his brothers.

Regarding the axe – he testified that he never used this axe against Ali Haskaj and that he did not have the axe in his hands when he was confronted by him. Furthermore, he did not have any knowledge or information in respect of the wounds which were later discovered on Ali Haskaj's head.

The Accused Afrim Uka:

He has pleaded not guilty. In the indictment he was charged with participation in a brawl pursuant to CCK Article 155 par. 1 read with Article 23.

In summary, his evidence to the Court was as follows:

He testified that five nights before the critical night (20 November 2010) – he was performing music in Rahoshiq at the premises of Bashkim Bidi. Just before the end of the working hours, Jusuf Vishaj came to this restaurant with two other persons. Jusuf Vishaj threw some euros to them in order to make them continue to play music. The owner of the premises had finished the working hours and had told them to stop the music. However, Jusuf Vishaj insisted that they should continue to play the music. For this reason they continued to play and played two more songs. Then the owner came and stopped the music.

While they were packing the instruments in the car, Jusuf Vishaj approached him and said, "You stopped the music". He answered: "No, I did not do it, that was done by the owner as it was the end of working hours". Jusuf Vishaj swore and the owner took Jusuf Vishaj and pulled him away. Jusuf Vishaj followed him when he was driving home – almost to his house. He did not stop as it was 3 am and Jusuf Vishaj was drunk and

together with two other people. He informed his family about this event. He later also called Jusuf Vishaj's brother and explained the whole event to him.

On 19 November 2010 he had a music job at "Tuli's" place – Cafeteria "Damjana". He saw Jusuf Vishaj there with Mebusan Gashi. When the work was over, he began packing the instruments into his vehicle. When he had packed the instruments, he sat with his brother Shqiprim Uka and waited to leave and go home. In the meantime Jusuf Vishaj was about to leave. Jusuf Vishaj came to their table. He asked Jusuf Vishaj what he owed him. Jusuf Vishaj said with an insulting and high-toned voice that he stopped the music.

He saw Jusuf Vishaj falling down suddenly. Then he saw the pistol. At that moment he does not know if it was he or Sylejman Uka who grabbed the pistol, but the pistol ended up in his hands. He and his brother Shqiprim Uka did not hit or kick Jusuf Vishaj.

He saw his brother – Sylejman Uka – with his hand touching the back of his head with blood. He believes that it was Mebusan Gashi who had hit him with a bottle. The wound began to bleed and she attempted to hit him again. He attempted to move Sylejman Uka away, not to be hit. The owner of the cafeteria came and tried to lift Jusuf Vishaj and he (Afrim) helped him with the intention of taking Jusuf Vishaj outside.

Ali Haskaj stood up and loaded his gun and said something like "Ali Haskaj" – he does not know whether he swore. Ali Haskaj was holding the gun saying he would do this and that, but he does not remember what Ali Haskaj said exactly. At that moment when he turned his head to see if Jusuf Vishaj was taken outside, he saw Ali Haskaj and Sylejman Uka struggling. He saw Ali Haskaj holding the gun against the chest of Sylejman Uka. Then Sylejman Uka said: "Sit down, I have no problems with you".

He also told Ali Haskaj to sit down as they had no issues with him. At those seconds, the gun went off. The first two shots were close, but the rest he does not know. When they fell he was not sure if they helped Sylejman Uka on to his feet. Sylejman Uka gave him Ali Haskaj's pistol and said that he had sustained a wound. He took both pistols and he and Sylejman Uka walked outside. They got into a vehicle and left in the direction of the hospital. On the way the police were behind them and escorted them. When they came to the hospital, he explained to the police what had happened with the two pistols – Jusuf Vishaj's pistol and Ali Haskaj's pistol.

The Accused Shqiprim Uka:

In the indictment he was charged with participation in a brawl contrary to CCK Article 155 par. 1 read in conjunction with Article 23. He has pleaded not guilty.

In summary, his evidence to the Court was as follows:

He testified that a few days before the critical night his uncle Afrim Uka had been chased by Jusuf Vishaj all the way to his home. This night they were talking with Jusuf Vishaj

about the car chase – and while they were talking about the misunderstanding, Jusuf Vishaj was knocked down – and fell from his chair. After Jusuf Vishaj fell down, he appeared with a weapon in his hand. Afrim Uka took the weapon away from Jusuf Vishaj.

He denies that he himself hit or kicked Jusuf Vishaj this night. He saw that it was his uncle Sulejman Uka who hit Jusuf Vishaj – with the handle of an axe.

What happened then, while he was sitting at his table, was that Ali Haskaj – (which he did not know) – stood up with a handgun and approached them. Ali Haskaj said something like: “I am Ali Haskaj – what are you doing here?” Ali Haskaj then pointed the handgun at the chest of his uncle Sylejman Uka from a distance of about 1 – 1.5 meters. At this time the axe was with Afrim Uka.

Sylejman Uka said to Ali Haskaj: “Put the gun down. We have no issue with you”. All of a sudden Ali Haskaj shot Sylejman Uka twice in his chest. They fought and then he heard one or three gunshots and he saw both of them almost falling down.

The accused Jusuf Vishaj:

In the indictment Jusuf Vishaj was charged with participation in a brawl contrary to CCK Article 155 par. 1 read with Article 23. The prosecutor withdrew this charge during the main trial.

Jusuf Vishaj was also charged with having committed the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons from CCK Article 328 par. 2. He has pleaded guilty regarding this issue.

In summary, his evidence to the Court was as follows:

On the critical night (20 November 2010) he was in the cafeteria where everything happened. He was there together with Mebusan Gashi. He denied that he had any “arguments” with one of the Uka family members prior to that day. He also denied that he has followed Afrim Uka after Afrim Uka finished his music performance few days earlier.

He was in the cafeteria until the music was about to end. When he was leaving, he saw Afrim Uka, Enver Gashi and Shqiprim Uka at a table. Afrim Uka asked him if it was possible for him to stop and answer a question. He gave his car keys to Mebusan Gashi and told her to go and wait at the vehicle. As soon he pulled a chair with the intention of sitting there, somebody hit him behind his head – and after that he knew nothing. He knew that the blow came from behind and that the people sitting in front of him did not hit him.

When Tuli (the owner) took him out of the cafeteria, he had regained consciousness a little. He never heard any shots.

He denied that he had tried to extract his weapon. On this critical night he explained that he had bullets in the magazine of the weapon.

He said that he had possessed this weapon since the war. He had the gun on him all the time – also this night. When he was asked the reason for that, he answered: “No, no reason at all”. He confirmed that his weapon was the pistol TT 7.62, which was shown to him in the court.

Injured party Hasime Alaj:

She is the widow of the victim – Ali Haskaj. She told the court that Ali Haskaj carried a weapon sometimes, but not often, because there was no need for him to carry one. She did not tell the court anything else of importance to this case.

The witness Enver Gashi:

On the critical night he was together with Shqiprim Uka. He was drinking beer in Gjakova and he had about 10 bottles of beer. Then they went to the cafeteria owned by Avni Shala (nickname – “Tuli”). He was sitting at a table together with Afrim Uka and Shqiprim Uka.

In this night he saw Ali Haskaj in the cafeteria. Ali Haskaj was a friend of his. Ali Haskaj was drunk when he entered the cafeteria. He saw Jusuf Vishaj together with a woman. He also saw Sylejman Uka, who entered the cafeteria when Jusuf Vishaj was sitting at their table.

The witness Enver Gashi was very unclear regarding his testimony for the court. He was therefore many times confronted with his previous statements given at the Prosecutors office.

It seems that the witness realized that somebody hit Jusuf Vishaj, who fell down on the floor. He never clearly stated who hit Jusuf Vishaj – only that the person who hit Jusuf Vishaj came from his table.

After Jusuf Vishaj fell – around that time – he saw Ali Haskaj standing with a gun in his hand. He also saw that Ali Haskaj put a bullet into the gun. Everyone can react when they see a gun. And people just started leaving the place as fast as they could.

Ali Haskaj came towards them.

He heard Ali Haskaj saying: "I am so and so." He also heard Sylejman Uka say something similar. He heard this when he was on his way out. He also indicated that Ali Haskaj pulled his pistol to protect Jusuf Vishaj.

On his way out he heard shots, but he did not turn his head to see what happened.

The witness Faruk Agushi:

This witness did not say anything of importance.

The witness Selim Malokaj:

This witness did not say anything of importance. But from the testimony of the witness Vjosa Haskaj Isein, it is evident that Selim Malokaj knew more about what happened on this critical night than he told the court.

The witness Vjosa Haskaj Isein:

This witness in her testimony, did not say anything of real importance, except for making it very probable that the witness Selim Malokaj knew more about the case than he told the court. She admitted in the court that her conversation with Selim Malokaj and his family, was recorded by her.

She also told the court that Selim Malokaj told her that Shqiprim Uka had placed a gun in his mouth and told him never to speak about what happened on that evening.

The witness Mark Pjetri:

Mark Pjetri was working in the cafeteria "Damjana" as a waiter the critical night.

He noticed that Jusuf Vishaj wanted to give Afrim Uka a drink – to which Afrim Uka responded that he does not want any drinks from him. Mark Pjetri therefore suspected that there was a misunderstanding between them.

He noticed a brawl by the entrance of the cafeteria. He saw Jusuf Vishaj lying on the ground and he saw Shqiprim Uka kicking him – while other customers wanted to leave the place. It seems for him that Shqiprim Uka kicked Jusuf Vishaj in the back.

He saw Sylejman Uka standing by the door with an axe in his hand. He also saw this girl who was together with Jusuf Vishaj (Mebusan Gashi). She intervened by coming in and yelling. He remembers seeing her taking a bottle and he saw her hitting Sylejman Uka. While Jusuf Vishaj was taken outside in the vehicle, she went to the kitchen.

Then he saw Ali Haskaj stand up and he saw that he pulled out a handgun. When he pulled out the gun, he believed that he cocked the weapon. He was holding his gun and he said: "Stop men" and he thinks he said again "Stop men, it's Ali Haskaj" – and in this way Mark Pjetri learned his name. He also observed that Ali Haskaj – after he had pulled out his gun and cocked it, made two or three steps from his table and came in front of his table.

He also said: "The last thing that I saw as I remember, I was sort of paralyzed, just standing not as far as I remember from Sylejman Uka and Ali were discussing. I heard two shots. Employee Rina came and took me to the kitchen and then I heard another three shots."

Later, when he came out from the kitchen, he saw Ali Haskaj laying on the floor and making noise of hardly breathing.

He also stated that he did not see Afrim Uka hitting anyone.

The witness Mebusan Gashi:

On the critical night she was in the cafeteria together with Jusuf Vishaj. They were to leave the cafeteria when the music ended about 2 – 2.30 am. Then Jusuf Vishaj was called from another table and he gave her the car keys and told her to wait outside in the vehicle.

When she was inside the vehicle, she saw someone hitting him with a small axe and he fell on the ground. The man who hit with the axe was Sylejman Uka. She also saw that he was kicked and punched fists. Two persons did this – Sylejman Uka and his paternal uncle's son (Shqiprim Uka). She did not see Afrim Uka kick or hit.

She ran immediately inside in order to help Jusuf Vishaj, but she was punched in the face by Sylejman Uka. And she was hit by the axe in her back and she still has a scar there. Sylejman Uka was the person who hit her with the axe. She tried to defend herself and she threw a bottle, but she did not know if she hit his head or not. She was carried to the kitchen, while Jusuf Vishaj was brought outside to the vehicle. She went to join Jusuf Vishaj. When she got out of the kitchen, she saw Ali Haskaj – and she heard him saying: "What did you do to this guy, he was here with this woman". She did not see if Ali Haskaj had something in his hands. She did not see anything more from the crime scene. She left the place together with Jusuf Vishaj in his car.

The witness Avni Shala:

He is the owner of cafeteria "Damjana". He was in his cafeteria on the critical night.

Afrim Uka, Shqiprim Uka and Sylejman Uka were in the cafeteria this night. Sylejman Uka arrived soon after the music stopped. He (Avni Shala) was sitting at a table with Ali Haskaj. Then he heard a noise. When he turned his head, he saw people fighting by the door. It was Sylejman Uka who was hitting Jusuf Vishaj and he saw him falling down – and saw him bleeding. He stood up and separated them. Afrim Uka helped him – and Jusuf Vishaj was taken outside to his car – whereas Afrim Uka dealt with Sylejman Uka. He saw that Sylejman Uka was holding a small axe in his hand. He also saw that Sylejman Uka attempted to hit Jusuf Vishaj.

When he was lifting Jusuf Vishaj up to bring him outside, Mebusan Gashi threw a bottle at Sylejman Uka.

When he was outside, bringing Jusuf Vishaj into his car in the driver seat, he heard gunshots from inside the bar. He heard two or three shots. There were time intervals between the first and last shot. The first and the second shot were close to each other. The third may have been delayed.

When he walked in, Ali Haskaj was lying down in front of the table where he had left him. At this time Sylejman Uka was holding a handgun in his hands.

He approached Ali Haskaj. He could not speak. He could only hear a groan-like noise coming out from him. He saw that Afrim Uka grabbed Sylejman Uka by his arms, took his weapon away, and they left out. At the same time Afrim Uka said: “Syla is injured. Sylejman is injured”. Others followed and he was left inside on his own.

Evaluation of Presented Evidence

Factual Findings:

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

1. A brawl took place at 20th November 2010 at about 2 am in Cafeteria Damjana.

Jusuf Vishaj was hit several times by Sylejman Uka with the handle of a small axe. Jusuf Vishaj had a pistol on him. Jusuf Vishaj was also hit and kicked by Shqiprim Uka. During this brawl, Sylejman Uka hit Mebusan Gashi in her face. She hit Sylejman Uka in the back of his head with a bottle. Sylejman Uka hit her on her back with the axe. All of them except Shqiprim Uka were wounded. The pistol was taken away from Jusuf Vishaj.

The court does not find it proven that Jusuf Vishaj attacked anybody during this brawl. Further, the court does not find it proven that Afrim Uka hit or kicked anybody during this brawl.

2.

After Jusuf Vishaj fell on the floor and was taken outside, Ali Haskaj stood up and went towards Sylejman Uka with a pistol in his hand – and at the same time loaded the pistol with bullets. He was saying something like “I am Ali Haskaj” and he also acted in an aggressive way, most probably as a reaction to what had happened just before with Jusuf Vishaj. He pointed this loaded pistol at Sylejman Uka’s chest. Sylejman Uka tried to grab the pistol to avoid being shot at. He managed to turn Ali Haskaj’s hand with the pistol, downwards. In this position Ali Haskaj fired two shots at Sylejman Uka – where both shots hit him in his chest and downwards. Because of the direction of the bullets, Sylejman Uka was not fatally wounded. They were then fighting further and another shot was fired, which hit Ali Haskaj. This shot proved to be fatal.

It is not clear if this shot happened when Ali Haskaj had the pistol in his hand or if this happened at a time when Sylejman Uka had managed to get hold of the pistol.

3.

In the Cafeteria “Damjana” Jusuf Vishaj had on him a loaded pistol belonging to him – TT caliber 7,62. The weapon – “Crvena Zastava” was made in former Yugoslavia.

Jusuf Vishaj was not in possession of a Weapon Authorization Card.

The Courts Reasoning and Conclusions:

In consideration of all the witness testimonies, as well as the statements of all the accused and the other evidence presented, the Court has reached the following conclusions:

1.

Participated in a brawl – CCK Article 155 (1) as read with CCK Article 23 (Co-Perpetration):

Afrim Uka:

There is insufficient evidence to find the accused Afrim Uka guilty of brawling – CCK Article 155 (1) – CCK Article 23. There is no evidence supporting the charge that he participated in this brawl, which took place on 20 November 2010 in the Cafeteria “Damjana”, located in the village Jabllanicë e Leshanit, Pejë/ Pec Municipality. On the contrary, according to different witness’s statements, the panel cannot exclude that he tried to stop this brawl as best as he could.

The witness Mebusan Gashi observed what happened with Jusuf Vishaj, but she did not see that Afrim Uka kicked or hit Jusuf Vishaj. The witness Avni Shala testified that when he tried to separate Sylejman Uka and Jusuf Vishaj Afrim Uka helped him. The witness Mark Pjetri who observed what happened with Jusuf Vishaj, has stated that he did not see Afrim Uka hitting anyone.

This point of view is also supported by the Public Prosecutor. In his final speech – the public prosecutor requested the court to acquit Afrim Uka of the charges against him. His grounds for this point of view, was that he admitted that there was no evidence in the case that Afrim Uka was involved in the brawl. On the contrary – the Public prosecutor mentioned that many neutral witnesses testified that Afrim Uka tried to calm things down.

Therefore – based on the above mentioned assessments – pursuant to Article 390 item 3 of KCCP, Afrim Uka is acquitted of having committed the criminal offence of Participation in a Brawl – pursuant to Article 155, par. 1 in conjunction with Article 23 of CCK.

Jusuf Vishaj:

During the main trial, the Public prosecutor withdraw the charge against Jusuf Vishaj regarding the issue of having participating in the brawl pursuant to Article 155 par. 1 in conjunction with Article 23 of CCK.

According to KCCP Article 389 item 1, when the Public Prosecutor withdraws the charge, the court shall render a judgment rejecting the charge.

Therefore – pursuant to Article 389 item 1 of KCCP, the summary indictment against Jusuf Vishaj, in relation to the criminal offence of *Participation in a Brawl*, pursuant to Article 155 par. 1 in conjunction with Article 23 of CCK, is rejected.

Shqiprim Uka:

The court finds it proven that Shqiprim Uka on 20 November 2010 – at about 02.10 am – participated in a brawl in the Cafeteria “Damjana”, located in the village Jabllanicë e Leshanit, Pejë/Pec Municipality. Sylejman Uka – using the handle of an axe – struck Jusuf Vishaj several times in the back of his head. Shqiprim Uka participated in this brawl in the way that he kicked and hit Jusuf Vishaj.

Shqiprim Uka has denied that he hit and kicked Jusuf Vishaj. However, the Court finds that this is not true.

The witness Mark Pjetri has on 15th December 2010 – in front of the District public Prosecutor in Pejë/Pec – stated that he saw Shqiprim Uka kicking Jusuf Vishaj while he was on the ground.

In the court, Mark Pjetri has said the same. He said that he saw Jusuf Vishaj lying on the ground and he saw Shqiprim Uka kicking him. It seems for this witness that Shqiprim Uka kicked Jusuf Vishaj in the back.

The witness Mebusan Gashi has on 15th December 2010 – in front of the District public Prosecutor in Pejë/Pec – stated as follows: *“I saw that Jusuf fell down on the ground, I*

thought that he is dead, after which Shqiprim and the person who stroke him with an axe were hitting him in the head, respectively in his eyes while Jusuf was laid on the ground”

In the court, Mebusan Gashi stated that she saw that Jusuf Vishaj was kicked and punched and that two persons did this – Sylejman Uka and Shqiprim Uka.

Photographs taken of Jusuf Vishaj shortly after this incident, showing wounds on his face, eyes and head, support what the witness has stated she observed.

Based on these two witnesses testimonies – both in front of the Public Prosecutor shortly after this brawl (15 December 2010) and their testimonies in the court (Mark Pjetri on the 3 November 2011 and Mebusan Gashi on the 14 November 2011), the Court finds it proven beyond reasonable doubt that Shqiprim Uka participated in this brawl and hit and kicked Jusuf Vishaj.

The Court also finds that it is proven that in this brawl Jusuf Vishaj was wounded, Sylejman Uka was seriously wounded and that Ali Haskaj during the continuation of the brawl was fatal injured and shortly after passed away.

Therefore the Court finds that Shqiprim Uka is guilty of having committed the criminal offence of “*Participation in a Brawl*” contrary to Article 155 par. 1 in conjunction with Article 23 of CCK.

Sylejman Uka and Mebusan Gashi:

Sylejman Uka and Mebusan Gashi are not indicted regarding this brawl. Therefore, the Court does not deal with them regarding this issue.

2.

Criminal offence of Murder pursuant to Article 146 of CCK:

Sylejman Uka:

When the brawl regarding Shqiprim Uka, Sylejman Uka, Mebusan Gashi and Jusuf Vishaj was nearly over, Jusuf Vishaj had fallen on the floor and was going to be taken outside to his car. The Court finds it proven that then Ali Haskaj stood up and went towards Sylejman Uka with a pistol in his hand. When he was approaching Sylejman Uka he loaded the pistol with bullets. In the Courts opinion, this was an extremely threatening act. Then he was saying something like “I am Ali Haskaj”.

How Ali Haskaj approached Sylejman Uka with his pistol in his hand, loading the pistol and pointing the pistol against Sylejman Uka’s chest, is explained in detail by Sylejman Uka. His description of what took place is supported by several witnesses/defendant’s testimonies.

Afrim Uka has stated that Ali Haskaj stood up and loaded his gun and said "Ali Haskaj". Ali Haskaj was holding the pistol saying he would do this and that. He saw that Sylejman Uka and Ali Haskaj were struggling. He saw Ali Haskaj holding the pistol against the chest of Sylejman Uka. He heard that Sylejman Uka said: "Sit down, I have no problems with you". In those seconds, the pistol went off.

Shqiprim Uka has in his testimony stated that Ali Haskaj stood up with a handgun and approached them. Ali Haskaj said something like: "I am Ali Haskaj – what are you doing here". Ali Haskaj then pointed the handgun at the chest of Sylejman Uka from a short distance. Sylejman Uka said to Ali Haskaj: "Put the gun down. We have no issue with you". All of sudden Ali Haskaj shot Sylejman Uka twice in his chest. They fought and then he heard one or three gunshots and he saw both of them almost falling down.

The witness **Enver Gashi** has testified that after Jusuf Vishaj fell – he saw Ali Haskaj standing with a gun in his hand. He also saw that Ali Haskaj put a bullet in to the gun. Ali Haskaj came towards them. He heard Ali Haskaj saying: "I am so and so". He also heard Sylejman Uka say something similar. He heard this when he was on his way out. He also indicated that Ali Haskaj pulled his pistol to protect Jusuf Vishaj. On his way out he heard shots.

The witness **Mark Pjetri** stated that he saw Ali Haskaj stand up and he saw that he pulled out a handgun and he believed that he cocked the weapon. Ali Haskaj made two or three steps from his table and came in front of his table. Then he heard shots.

Further the Court finds it proven – based on the above mentioned testimonies – that Ali Haskaj pointed this loaded pistol at Sylejman Uka's chest.

The Court finds it proven that Sylejman Uka's reaction to this threat was that he tried to grab the pistol in order to avoid being shot at and that he managed to turn Ali Haskaj's hand with the pistol, downwards. In this position Ali Haskaj fired two shot at Sylejman Uka – where both shots hit him in his chest and downwards. Because of the direction of the bullets, Sylejman Uka was seriously wounded but not fatally wounded. They were then fighting further and some shots were fired, which one of them hit Ali Haskaj. This shot proved to be fatal.

The wounds which Sylejman Uka got from these two shots, clearly support that these shots were fired when Sylejman Uka and Ali Haskaj were very close to each other and that the pistol was pointing down when the shots were fired at Sylejman Uka's chest.

The way this shooting took place is to a certain degree also supported by the testimonies of **Afrim Uka, Shqiprim Uka and Mark Pjetri**.

In the Court's opinion, Sylejman Uka had no other motive to hurt or kill Ali Haskaj except for acting in "self-defense".

The Court's opinion is that in this situation Sylejman Uka had the right to defend himself with every means. Ali Haskaj's approach against him with a loaded gun, pointing at his chest and shooting him two times in his chest, was an extremely dangerous attack. It is not clear to the Court whether this shot happened when Ali Haskaj had the pistol in his hand or if this happened at a time when Sylejman Uka had managed to get hold of the pistol. But under these circumstances Sylejman Uka had the right to defend himself with all means in order not to be shot at again – and also to shoot at Ali Haskaj if he managed to get hold of his pistol – bearing in mind that Sylejman Uka already was seriously wounded by Ali Haskaj.

Therefore – based on the above mentioned facts – the Court does not find that there is sufficient evidence showing that Sylejman Uka did not act in necessary defense, and that he did not exceed the limit of necessary defense. Pursuant to Article 390 par 1 item 2 of KCCP, the accused Sylejman Uka is acquitted of having committed the criminal offence of murder pursuant to Article 146 of CCK, since there are established sufficient circumstances of Necessary Defense from Article 8 of CCK, which exclude criminal liability.

3.

The Criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons from Article 328 par. 2 of CCK:

Jusuf Vishaj:

The Court finds it proven that Jusuf Vishaj from the end of the war and until 20th November 2010 was in unauthorized possession of weapon and ammunition, a pistol of type "TT" cal. 7,62 mm, with serial number 26276. This weapon was confiscated by the police after Afrim Uka had given this pistol to the police. Jusuf Vishaj was in possession of this pistol during the brawl on the 20 November 2010 – and the pistol was loaded.

Jusuf Vishaj has himself confessed that he had this pistol in his possession since the war – and that he also had this pistol on him on the 20 November 2010, when the brawl took place – and that the pistol was loaded. He has pleaded guilty to this charge in the indictment.

The fact that he had this pistol on himself, when the brawl took place, is also confirmed by Sylejman Uka and Afrim Uka.

Therefore, Jusuf Vishaj is to be convicted of having committed the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* from Article 328 par. 2 of CCK.

Motions of the Parties

The representative of the injured party requested that the medical expert who performed the autopsy on the body of the victim Ali Haskaj, be summoned as an expert witness in order to explain the fatal wounds, the entry point and the exit point of the wounds and which weapon was used. Further, the expert could explain the wounds in the victim's head.

The Court found that it was not necessary to hear such an expert during the main trial. In the Court's opinion the written material in this respect was sufficient.

The representative of the injured party requested a ballistics expert to be summoned in order to explain who used which gun, since there were two guns found and considering that on the hands of the victim no gun powder traces were found. Therefore it should be determined who actually shot the gun. The prosecutor requested an expert to explain the report on gun-shot residue prepared in Croatia. According to the prosecutor the expert would explain the meaning of the substances indicated in the boxes of the table in the report.

Also this request was rejected as in the Court's opinion there was no doubt at all that Jusuf Vishaj had one pistol and Ali Haskaj had one pistol. Further it is unlikely that an expert – due to the fact that no gunpowder traces were found on the hands of the victim – could establish who actually shot. The Court already has the written report. Furthermore, as described above, the Court finds it obvious that the two shots that hit Sylejman Uka's chest were fired by the victim Ali Haskaj. Whether Sylejman Uka shot Ali Haskaj or Ali Haskaj himself pulled the pistol's trigger when he was shot, is not important regarding the question about necessary defense. The Court has concluded that it was necessary defense anyway.

The prosecutor also requested that the court postpones the trial in order to receive the previous convictions of the defendant Sylejman Uka from Germany. The Court found that the main trial should not be postponed for this reason. The prosecutor should have managed to provide the Court with such material before the scheduled closing speeches. Furthermore, if Sylejman Uka previously had been convicted of serious crimes, he still had the right to defend himself – using necessary defense.

Sentencing/Determination of Punishment:

When imposing the criminal sanctions 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 punishment, the Court has to evaluate all mitigating and aggravating factors, pursuant to Article 64 paragraph (1) of CCK.

Jusuf Vishaj:

According to CCK Article 328 paragraph 2, the punishment for such offense is a fine up to 7.500 Euro or imprisonment from one to eight years.

The Court considers that a punishment of imprisonment for one year is an appropriate sentence.

The Court finds that in Kosovo it is important to give strong signals that unauthorized ownership of weapons will be punished severely. An aggravating circumstance in this case is that Jusuf Vishaj brought his gun loaded to a restaurant – and that most of the time – since the war – he has had his weapon on him.

A mitigating circumstance is that he told the Court that he used to carry this weapon on him.

Pursuant to CCK Article 328 par. 5, Article 54 item 7 and Article 60 item 1, the pistol of type “TT”, cal. 7,62 mm, with serial number 26276, seized from Jusuf Vishaj, shall be confiscated and destroyed.

Pursuant to Article 391 par 1 sub-par 5 of KCCP, the time spent in detention by the accused Jusuf Vishaj from 20 November 2010 until 20 December 2010, shall be credited in the punishment.

Shqiprim Uka:

According to CCK Article 155 par 1 in conjunction with Article 23 – participation in a brawl – the punishment for such offense is a fine or by imprisonment of up to one year.

The Court considers that a punishment of imprisonment for 4 months is an appropriate sentence.

An aggravating circumstance is that Shqiprim Uka kicked Jusuf Vishaj while he was lying down on the floor and that he was attacking Jusuf Vishaj together with Sylejman Uka.


Pursuant to Article 391 par 1 sub-par 5 of KCCP, the time spent in detention by the accused Shqiprim Uka from 20 November 2010 until 5 December 2010, shall be credited in the punishment.

Costs:

Pursuant to Article 102 paragraph 1 in conjunction with Article 99 paragraph 2, subparagraph 6 of KCCP, the cost of the criminal proceedings in relation to the criminal offences Jusuf Vishaj and Shqiprim Uka are found guilty of, shall be reimbursed by them in a scheduled amount of 100 – one hundred – Euros each.

DISTRICT COURT OF PEJA/PEC
P.nr.259/11
Dated this 30th day of November 2011

Panel Member



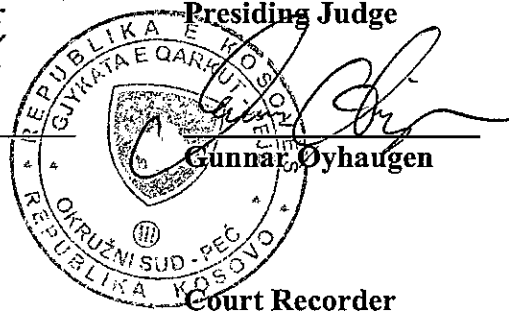
Ingo Risch

Panel Member



Shaban Shala

Presiding Judge





Gunnar Øyhaugen

Court Recorder



Nexhmije Mezini

Legal Remedy

Authorized persons may file an appeal against this verdict in written form, through the District Court of Peja/Pec to the Supreme Court of Kosovo, within fifteen days from the date the copy of the judgment has been served, pursuant to Article 398 Par. 1 of the KCCP.