

MUNICIPAL COURT OF PEJË/PEĆ
P. Nr. 560/09

IN THE NAME OF THE PEOPLE

THE MUNICIPAL COURT OF PEJË/PEĆ, in the trial panel composed of the EULEX Judge Gianfranco Gallo as Presiding Judge, the EULEX Judge Verginia Micheva-Ruseva and the Kosovan Judge Sadri Blakaj as panel members, assisted by the Recording Officers Svetoslava Savova and Valentina Gashi, in the criminal case against the accused:

GANI ÇEKU, born on 31 January 1982, in Pejë/Peć, male, father's name Gazmend, mother maiden's name Safete Rizaj, Kosovo Albanian, residing in Fusha e Pejës, single, of poor economic status, secondary school education, previously not convicted, in liberty.

Charged according to the Indictment PP. Nr. 1487/2007, dated 23 November 2007, filed with the Court on 27 November 2007, with the following criminal offence:

Grievous Bodily Harm, in violation of Article 154 paragraph 1 point 3 of the Criminal Code of Kosovo ("CCK")

because:

On the night of 13/14 August 2007, the defendant, Kosovo Police officer, while on duty, stopped the vehicle driven by the injured party, Ragip Muriqi, who obstructed the police order to step out of the car and after an altercation, Gani Ceku arrested him, inflicting him several body injuries.

After having held the main trial hearings in public on 17 March 2010, 18 March 2010, 31 March 2010 and 1 April 2010, in the presence of:

- The defendant and his defense counsel appointed *ex-officio*, Mr. Sokol Mushkollaj;
- The Municipal Public Prosecutor Ms. Lirije Morina;
- Injured Party's defense counsel, Mustafa Kastrati.

The trial panel, following deliberation and voting on 1 April 2010, pursuant to Article 391 Paragraph (1) of the Kosovo Code of Criminal Procedure ('KCCP'),

On 1 April 2010, pursuant to Article 392 Paragraph (1) of the KCCP, pronounces in public and in the presence of the accused, the Public Prosecutor and the injured party's defense counsel the following verdict:

GANI ÇEKU
is
ACQUITTED

of committing the criminal offence of Grievous Bodily Harm, in violation of Article 154 paragraph 1 point 3 of the Criminal Code of Kosovo, committed in Peja on 14 August 2008, because it has not been proven that the accused has committed the act which he has been charged with.

REASONING

Procedural history

On 27 November 2007, the Municipal Public Prosecutor of Pejë/Peć filed the indictment PP. no.1487/2007 with the Municipal Court of Pejë/Peć, against the defendant Gani Ceku, for having committed the criminal offence of *Grievous Bodily Harm, in violation of Article 154 paragraph 1 point 3 of the Criminal Code of Kosovo ('CCK')*.

According to the indictment, on 14 August 2007, at approximately 00.30h, in Pejë/Peć, at the junction with the stone bridge/Ûrra e Zallit, the police officer Gani Ceku stopped the vehicle driven by the injured party, Ragip Muriqi, who was driving at a high speed and ordered him to present the identification documents. When the injured party gave them, Ceku hit him on his hand, ordered him to get out of the vehicle and when Muriqi refused, he opened the door of the vehicle and pulled the injured party out. The defendant then turned his arm behind the back by pushing him forcibly down on the asphalt thus causing him a fracture of the great tuberosity of the humerus. According to the indictment, by these actions, the defendant committed the criminal offence of 'Grievous Bodily Harm', in violation of Article 154 paragraph 1 point 3 of the Criminal Code of Kosovo ('CCK').

The indictment was filed on 27 November 2007 and confirmed on 13 December 2007 by the ruling KA.nr.96/07 of the Municipal Court of Pejë/Peć.

The main trial started before the Municipal Court of Pejë/Peć on 5 March 2008 and, on 12 March 2008, the judgment P.nr.10/08 was rendered, convicting the defendant and sentencing him to 120 days of imprisonment.

On 9 July 2008, the District Court of Pejë/Peć, deciding upon the appeals of the defendant and the injured party, issued the decision AP.nr.49/08, rejecting both appeals as ungrounded.

On 5 September 2008, the defendant filed, with the Municipal Court of Pejë/Peć, a request for reopening the criminal proceedings, as new exculpatory evidence had been discovered. The new facts referred to a new eyewitness, Haki Lekaj and forensic expertise as to the injuries sustained by the injured party. On 24 September 2008, the Presiding Judge requested the defendant to provide the evidence supporting the new facts, as required by Article 444 (2) of the KCCP, within 8 days. As the defendant only acted on 9 October 2008, the court dismissed on 6 February 2009, by ruling KP.nr.1/09, the request for reopening the criminal proceedings, pursuant to Article 445 (1)5 of the KCCP, non-compliance with the provisions set out under Article 444 of the KCCP.

On 13 January 2009, by the decision P. No. 142/08, the District Court of Pejë/Peć, deciding upon the appeal against the ruling KP.nr.1/09 of the Municipal Court, granted the appeal and allowed the reopening of the criminal proceedings, ordering the immediate schedule of a new trial and staying the execution of the sentence until the judgment becomes final. The District Court found that, pursuant to Article 403 (1)1 of the KCCP, there was a substantial violation of the criminal procedure, as the constitution of the court was not in compliance with the requirements of Article 444, which foresees that ‘a request for reopening criminal proceedings shall be decided by the three-judge panel of the court which adjudicated in first instance in the previous proceedings’.

On 4 May 2009, the Municipal Court of Pejë/Peć issued the Ruling KP No. 7/09 dismissing the request for revision pursuant to Article 445 (2)4, for lack of evidence.

On 27 July 2009, the District Court of Pejë/Peć, by the decision PN No. 94/09, granted the appeal of the defendant against the Ruling KP No.1/09, considering that the new facts were relevant and had to be taken in consideration.

On 8 December 2009, the President of the Assembly of EULEX Judges, deciding upon the request of the injured party for taking over the case, assigned the case to EULEX Judges.

Competence of the court

In accordance with Article 21 (1) of the Kosovo Code of Criminal Procedure, Municipal Courts have jurisdiction to adjudicate at first instance criminal offences punishable by a fine or by imprisonment of up to five years, unless the District Court has jurisdiction to adjudicate such criminal offence.

The offence of Grievous Bodily Harm foreseen by Article 154 (1)3 of the CCK is punishable by imprisonment of six months to five years: “*Whoever inflicts bodily harm upon another person or impairs the health of another person to such an extent that it may*

result in [...] temporarily and substantially weakening a vital organ or a vital part of the body of the other person [...] shall be punished by imprisonment of six months to five years”.

The criminal offence, according to the indictment, was committed in Pejë/Peć and, therefore, pursuant to Article 27 (1) of the KCCP, the Municipal Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Pursuant to Article 444 (1) of the KCCP, a request for reopening criminal proceedings shall be decided by the three-judge panel of the court which adjudicated in first instance in the previous proceedings. Pursuant to Article 420 (1)3, the court of second instance, when annuls the judgment, returns the case to the court of first instance for retrial and decision. Considering the above, the court competent to adjudicate the reopening of criminal proceedings is the Municipal Court of Pejë/Peć.

The offence falls within the scope of Article 3(3) of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, which sets forth the subsidiary competence of EULEX Judges. Article 3(3) states that, in cases of subsidiary competence, EULEX Judges can take over the case upon appointment by the President of EULEX Judges, following a request by either party of the proceeding or by the President of the respective Court, for any reason when this is considered necessary to ensure the proper administration of justice.

In this case, two EULEX judges have been appointed by the President of EULEX Judges on 8 December 2009, following a request from the injured party to substitute the local judges with EULEX judges. A Kosovo judge has been part of the Panel throughout the trial, pursuant to article 4.7 of Law on Jurisdiction.

None of the parties objected to the composition of the panel.

The Main Trial

The trial resumed on 17 March 2010 and continued in public on 18 March 2010, 31 March 2010 and 1 April 2010 in the presence of the defendant Gani Ceku and his ex-

officio appointed defense counsel, Mr. Sokol Mushkollaj, the Municipal Public Prosecutor Ms. Lirije Morina and the Injured Party's defense counsel, Mr. Mustafa Kastrati. New witnesses were heard and new material evidence was presented.

In accordance with Article 15 of the KCCP, international interpreters translated court proceedings and the entire case file into Albanian and English, as necessary.

Summary of the evidence presented

The court heard the witnesses Haki Lekaj (session on 18 March 2010), Saud Koliq (session on 31 March 2010) and Hajdar Ahmeti (session on 31 March 2010). With the consent of the parties, pursuant to art.368 par.1 item3 of the PCCK, the court acquired and considered as read out the following reports, documents and statements:

- The statements given by the injured party Ragip Muriqi and by the witnesses Xhevat Ibraj and Haki Lekaj.
- The following reports and documents:

Use of Force Form, dated 13.08.2007, issued by Kosovo Police;

Penal Denouncement of the injured Party Ragip Muriqi, dated 06.09.2009,

Kosovo Police Inter-office Memorandum, dated 30.09.2007;

Report of the Commission for the Assessment of the Use of Force, dated 03.10.2007;

Kosovo Police Inter-office Memorandum, dated 04.10.2007;

Kosovo Police Entry Registry for 13.08.2007;

Medical Checklist of the injured party Ragip Muriqi, 13.08.2007, Kosovo Police/Dr. Brahim Beqiri;

Medical Report Neurologist, dated 15.08.2007, issued by Dr. Mithat Sh. Bala, Neuro-psychiatrist;

Medical Report – Orthopedist, dated 14.08.2007, issued by Dr. Isa F. KalIQani – Orthopedist;

Medical Report – Orthopedist, dated 22.08.2007, issued by Dr. Isa F. KalIQani – Orthopedist;

Medical Report – Orthopedist, dated 25.08.2007, issued by Dr. Bedri Bkalli – Orthopedic and Traumatologist Specialist

Medical Report, dated 03.09.2007, issued by the Faculty of Medicine/Institute of Forensics – Dr. Flamur Blakaj and Dr. Naim Haliti

Medical Report, dated 27.08.2007, issued by the Clinic of Radiology and Oncology 'Rezonanca' – Dr. H. Ymeri;

Copy of the Hospital's Registry Log, dated 14.08.2007;

Medical Report of the defendant Gani Ceku, dated 13.08.2007, issued by Peje/Pec Hospital/Emergency;

Photo of Gani Ceku's injuries

Medical Form on Duty related Injuries, dated 13.08.2007, issued by Kosovo Police Medical Service

During the trial were presented as new evidences: police report Nr 308-SHRK-2007 prepared by the witness Hajdar Ahmeti, dated 8 April 2008 related to the disciplinary procedure against the defendant, and decision No 4-7876/07 dated 05.09.2007 of Minor offences court in Peja/Pec. These two documents were acquired as evidences by the court.

The court *ex officio* requested the criminal record of the defendant from the Municipal Court of Pejë/Peć and the outcome was that the defendant had not previous convictions.

Summary of the testimony of the witnesses

The witness **Haki Lekaj** during the hearing on 18 March 2010 stated that, on the night of 13/14 August 2007, while he was heading home, which is situated across the river in Peja/Pec, past the bridge Ura e Zallit, he noticed a police patrol car stationary in the middle of the road and police officers diverting cars to prevent traffic jams. He approached and found his colleagues Gani Ceku, Sadat Gjogoviq and Xhevat Ibraj. Mr. Lekaj informed that while he was having a conversation with them, a white vehicle VW Golf 2, coming from the centre of the town, made a U turn next to the bridge. Gani Ceku stopped the vehicle and went towards it. The witness stated that he was too far away to hear the exact conversation (5-6 meters), but he was able to see them. He noticed that they were talking about documents and he heard Gani telling the driver several times to come out of the vehicle, but the person was not complying with the order. He then saw

the police officer opening the door of the car and asking the driver again to step out. At that point, the person lifted his arm towards the police officer's face and Ceku grabbed the person by his left shoulder and a short scuffle took place. Another police officer, Sedat Gjogoviq, intervened and helped Ceku restraining the driver and placing him against the police vehicle. The two police officers handcuffed the injured party and put him in the police car. The witness could not remember whether the injured party was floored or not, or if pepper spray had been used.

The witness Saud Koliq, the police officer who supervised the disciplinary procedure against Gani Ceku, was presented by the defendant. During the hearing on 31 March 2010 the witness stated that he was not directly involved in the internal investigation, the investigating officer was Mr. Hajdar Ahmeti. According to the witness, Gani Ceku was accused of three counts, specifically the violation of the Article 135 of the CCK, the professional misconduct and the improper use of force. Mr. Koliq was not able to provide any details about the witnesses examined during the disciplinary procedure, as he only supervised the investigation. At the end, he was the one who gave the final comments and the recommendation for the disciplinary action. Mr. Koliq informed that Gani Ceku has been found guilty only on one count, the commission of a criminal offence, as the other two counts were unfounded due to the fact that they could not be proven. He explained that the disciplinary measure of dismissal was taken only because Ceku had been found guilty by a court and therefore, according to the police internal rules, it was mandatory to issue the disciplinary sanction.

The witness Hajdar Ahmeti, the police officer who conducted the investigation, during the hearing on 31 March 2010 testified that the disciplinary procedure had been initiated by the injured party, Ragip Muriqi. The entire procedure, from the very first night when the incident took place until Gani Ceku was dismissed, took place under his supervision. During the investigation, he collected all the relevant evidence and interviewed all the witnesses involved in the matter, Ragip Muriqi, Visar Muriqi, Dr. Isak Haliqani, Sergeant Halil Shala who was the supervisor of the shift at the time, Sedat Gjogoviq, Xhevat Ibraj and the accused Gani Ceku. Haki Lekaj was not examined, as during the investigation no witness has ever mentioned his name. Mr. Ahmeti testified that the decision to dismiss

Gani Ceku was taken solely on the basis of the Ruling of the Municipal Court of Pejë/Peć. According to the witness, the dismissal was mandatory because of the guidelines of the Kosovo Police Force which impose to dismiss a member of the police force if such person is convicted for the violation of the criminal law.

The injured party Ragip Muriqi, during the hearing on 5 March 2008 in front of the previous court panel, testified that, on the night of 13/14 August 2007, sometime after midnight, while he was driving his vehicle VW Golf 2, accompanied by his cousin Visar Muriqi, was stopped by the accused Gani Ceku and asked to present his identification documents. He stated that he had handed the documents through the open window and had asked the police officer the reason for stopping him at the top of the street, and not down. In reply, Ceku hit his hand with his own hand. The injured party said that after that he had informed the defendant of his direction, pointing it with his hand, but he was hit again and ordered to step out of the vehicle. Muriqi requested the defendant to first verify the documents and then he would get out. The police officer told him to get out of the vehicle immediately and, at the same time, he opened the door of the vehicle and grabbed him by his left arm, pulled him out, turned his arm behind the back, hit him on the abdomen and pushed him down to the ground. Then he pulled him up and pushed him against the vehicle. At that moment, another police officer intervened to assist and grabbed him by his other arm and both the police officers handcuffed him. The accused also utilized pepper spray against him. Muriqi stated that he did not threaten Ceku, nor did he offend him or resist in any way. The police then placed him in the police car and transferred him to the police station, where he gave a statement. While he was in the police car, the accused, who was driving, punched him twice on the face. That night, he was transported to the General Hospital in Pejë/Peć, but no proper medical check was performed. He informed the doctor that he was having great pains on his left shoulder, who recommended him to do an X-Ray scan and see an orthopedist. The injured party said that he was left in Istog/Istok Police Station until 08:00h a.m. and then transferred to the Minor Offence Court in Pejë/Peć, where he was convicted and sentenced to a fine for non compliance with police order and driving under the influence of alcohol. Immediately afterwards, he went to the hospital where was examined by Dr. Isa Kaliqani,

orthopedist, who told him that he had a bone fracture of his left shoulder which was later confirmed by a CT scan. Muriqi stated that he did not know why he was stopped by the police, as he was not drunk and was not driving fast.

The witness Mr. Xhevat Ibraj, during the hearing on 5 March 2008 in front of the previous court panel, stated that on the night of 13/14 August 2007 he was on duty, together with the accused Gani Çeku and Sedat Gjogoviq and their vehicle was parked by the stone bridge/Urra e Zallit; he was looking towards the bridge, Sedat towards the Rugova Valley, while the accused was behind them, at a distance of 2-3 meters. He did not witness the moment of the stop or the conversation between the accused and the injured party. He only saw the accused pushing the injured party against his vehicle VW Golf 2 and searching him. He approached and assisted Ceku to handcuff Muriqi and place him in the police vehicle in order to transport him to the police station. At the moment Ragip Muriqi was arrested, he was warned about his arrest. At the station, he was admitted by shift leader Sergeant Ali Shala who then dealt with the case. To his knowledge, the injured party was transferred to the hospital that night for examination and it was concluded that he was in good condition. An alcohol test was conducted and the result was positive. He did not notice if the injured party had been floored. He did not know the reason why Gani Ceku acted in that manner. He smelled alcohol when he approached the injured party and his passenger.

The witness Visar Muriqi, an injured party's relative and friend, during the hearing on 12 March 2008 in front of the previous court panel, stated that the defendant Gani Ceku had stopped them that night and had asked Ragip for documents. He also stated that when Ragip handed the documents, the defendant hit him on the hand twice. The defendant ordered Ragip to get out of the vehicle. As Ragip was getting out of the vehicle, the defendant pulled him by his arm and started to kick and punch him and pushed him down to the ground. His two colleagues, who were close, did not undertake any action. Gani lifted up the injured party from the ground and pushed him against the vehicle; his two colleagues assisted him to handcuff Ragip Muriqi. Visar was then compelled to drive Ragip's vehicle to the police station. The witness stated that he was surprised by the

police officer's behavior as he used pepper spray against Ragip without any reason, since Ragip did not offend him or react in any way.

The statement of the defendant Gani Ceku

The defendant, in the hearing on 31 March 2010, stated that on that night he was on duty with Sedat Gjogoviq and Xhevat Ibraj, at the junction with the stone bridge/Urra e Zallit. It was around midnight and, since there was a lot of traffic, they blocked vehicles access to the main avenue, towards the Hotel Royal. The injured party Ragip Muriqi made a speedy turn in this junction and headed towards the avenue, in the direction of Hotel Royal, overtaking the police car parked in the middle of the road. Ceku stated that he had stopped Ragip Muriqi to warn him about the temporary restriction that he just broken. Ceku moved away from his colleagues approximately 5-6 meters and approached the injured party's car, saluted him and asked for his documents. As the injured party testified, the defendant also stated that Muriqi had handed the documents through the open window asking why he had been stopped. Ceku informed that he had smelled alcohol and thus ordered the driver to get out of the vehicle. Muriqi defied the order and requested for his documents to be checked first. Ceku repeated the order, warning him that disobeying meant defying the order of an official person and he could be arrested. Then the defendant opened the door of the vehicle as he noticed that Muriqi had failed to comply with his order and he suspected that he might be dealing with a person who was in possession of drugs or firearms. He addressed the driver to get out of the car, then touched him on the shoulder and again told him to get out of the car. Muriqi got out of the vehicle. The defendant was surprised by this movement and therefore, as soon as Ragip got out of the vehicle, he pushed him and stepped away. Due to the push, the injured party fell down; when he stood up, he grabbed Ceku from his chest, breaking a button of his shirt. The police officer then grabbed Muriqi by his right arm and turned it behind his back in order to handcuff him. In response, Muriqi grabbed Ceku's fourth finger of the left hand and twisted it and the accused used the pepper spray in order to put him under control. Gain Ceku stated that he was assisted with the handcuffing by his colleague Sedat Gjogoviq. The defendant argued that neither the push against the vehicle nor the fall were strong enough to cause the fracture suffered by the injured party.

Afterwards, they placed Muriqi in the police car and drove him to the police station. In the vehicle, there were the three police officers (Ceku driving, Xhevat Ibraj sitting next to him, Sadat on the back seat) and the injured party who was sitting next to Sadat.

The defendant denied having hit the injured party while driving to the police station. He also informed that the finger that the injured party had twisted was bruised and swollen and therefore he went to a doctor.

In two main points the statements of the defendant given in front of the panel are in contradiction with his previous statements. In the hearing of 12 March 2008 the defendant stated that Muriqi had opened the door of the vehicle. He also stated that he had grabbed the left hand of the injured party and turned it back in order to handcuff him, that his colleague Sedat Gogovic had taken the left hand of the injured party and then they both had handcuffed him. Asked about the contradictions between the two statements, the defendant explained that he stood by the statement given to the panel on 31 March 2010.

Final speeches

Public prosecutor

In his final speech the public prosecutor supported his summery indictment as to all its charges. According to her, from the evidence administered during the main trail it is undisputable that that the defendant committed the criminal offence of causing bodily injuries to the injured party Muriqi. According to the prosecutor it was clear that, since the injured party was driving very fast, the defendant ordered him to get out of the car and, when the injured party presented his documents, the defendant hit him with his hand, opened the door of the vehicle, pulled the injured party out and twisted his arm at the back, crushed him on the road, then pushed him against the vehicle and finally used a spray and handcuffed him. From these actions the injured party suffered injures and, in particular, had his left arm broken. In conclusion, the prosecutor asked the court to find the accused guilty for the criminal offence he was charged with and to sentence him in accordance to the law.

Defense council Mustafa Kastrati

The defense council Mustafa Kastrati, representing the injured party Muriqi, stated that the evidence administered during the main trial confirmed the factual situation established by the previous court panel. According to the defense council, the statement of the new witness Haki Lekaj did not offer anything new and his statement did not comply with what had actually happened. The force used by the defendant was disproportionate with the situation also having in mind that there was no resistance from the side of the injured party. The defense council supported the indictment and asked the court to pronounce the defendant guilty of the charge.

Defense council Sokol Mushkollaj

The defense council Sokol Mushkollaj, representing the defendant Ceku, asked the court to clear the defendant of the charge. He argued that the medical reports brought suspicion as to the nature of the injury, also taking in mind that Muriqi was examined immediately on 13.08.2007 by doctors of the regional hospital in Peja/Pec and it sounded strange that they did not notice that Muriqi had a broken arm. On the second place the defense council emphasized that the eyewitness Sadat Gogoviq was missing and his statements could not be heard by the court. On the third place he stressed that the injured party admitted that he did not follow the police order and for that he was convicted by the Minor Offences court. The decision of the court was never appealed. Finally he asked the court to acquit the defendant.

The defendant Gani Ceku

The defendant stated that he stood by the speech of his defense council.

Factual and Legal findings

Assessing all the administered evidence, the panel considers that the defendant did not commit the criminal offence of Grievous Bodily Harm (Article 154 paragraph 1 point 3 of the Criminal Code of Kosovo).

From the evidence presented throughout the course of the proceedings, the reconstruction of the events assessed by the panel is the following.

On the night of 12/13 August 2007, the defendant Gani Ceku, a Kosovo Police officer, was part of a police patrol supervising the traffic in the center of Pejë/Peć, together with Sadat Gjogoviq and the witness Xhevat Ibraj. They had stopped the access of vehicles towards hotel Royal by parking their duty vehicle in the middle of the road. Around 00.30 h on 13 August, the injured party Ragip Muriqi was driving his own vehicle VW Golf 2 and beside him in the vehicle was sitting his relative and friend Visar Muriqi. The injured party approached not at a low speed the place where the three police officers were positioned, overtook the police vehicle and headed towards hotel Royal. The defendant Ceku stopped the vehicle VW Golf 2 driven by Ragip Muriqi and asked him to present his identification documents. Muriqi, after making a comment as to the place where he had been stopped, handed over the documents. The defendant noticed that the driver was smelling alcohol and requested him to step out of the car. The driver refused, asking the police officer to check the documents first.

The development of the following events is described in contrasting fashions by the injured party on the one side and by the defendant on the other side; also the statements of the witnesses can be divided into two groups as to the description of the events.

According to the injured party and the witness Visar Muriqi, the defendant opened the door of the vehicle and grabbed him by his left arm, pulled him out, turned his arm behind the back, hit him on the abdomen and pushed him down to the ground. Then the defendant pulled him up and pushed him against the vehicle. At that moment, another police officer intervened to assist and grabbed him by his other arm and both police officers handcuffed him. According to the injured party, he did not offend the defendant and, as to the use of alcohol, he explained that he had a beer with his friend Muriqi and was not tipsy.

According to the defendant Ceku, he repeated the order to get out of the vehicle more than one time and, since he was receiving the same refusal, he opened the door of the vehicle and informed the driver that he was liable to arrest for disobeying an official

order. Once outside the car, because of his brisk movement, Muriqi was pushed by Ceku and fell to the ground. According to Ceku he did not push him heavily, but the injured party was unstable because he was under influence of alcohol. Then Muriqi stood up and grabbed Ceku on the chest and as a result a button of the defendant's shirt was taken off. Ceku took his right hand and turned it behind his back in order to handcuff him, but he could not manage it as Muriqi grabbed his forth finger of the left hand and twisted it. At that point, Ceku used the pepper spray against Muriqi and placed him against the car in order to handcuff him. The two other police officers approached and helped Ceku to handcuff Muriqi.

The statement of the witness Haki Lekaj supports the version of the defendant: according to him Ceku opened the door of the vehicle VW Golf 2, grabbed Muriqi on the left shoulder, then a short scuffle followed and Sedat Gogovic intervened and they both handcuffed Muriqi.

The witness Hhevat Ibraj, the other police office that was on the spot, saw that Ceku pushed Muriqi against the vehicle and he assisted Ceku to handcuff him.

In order to scrutinize the event the court shall consider also the events following after handcuffing the injured party.

First of all, it is undisputable that the police officers put Ragip Muriqi in the police car and transported him to the police station. At 00.58 h, on 13.08.2007, the police officers called the duty police officer and the following message was recorder "We are coming towards police station with an arrested person for disobeying the order and assault on official person".

The defendant submitted a report for using force form-OC spray on the offender Muriqi. In the report he wrote down the following explanation: "*While I was on duty with my colleagues, Sergeant Xhevat Ibra and Sedat Dzogovic the abovementioned offender (Ragip Muriqi), after disobeying order of an official person and because at the moment*

was suspected that he is under the influence of alcohol. After few continuous given orders ordering him to get out of his vehicle, the same one did not obey. At the moment when he wanted to get out of the car he attempted to hit me but I avoided this pushing him with the dominant hand, when the offender felt. At the moment when I went with my colleagues to handcuff him, he grabbed me on my shirt picking of the slug of the shirt and again attempted to hit me, but did not succeed. While I was trying to restrain him, the suspect achieved to catch one finger of the left hand. Seeing his physical preparation even through we were three colleagues it was not possible to put him under control using soft force empty handed. At the moment when the suspect injured my finger, and for this I have a medical report, immediately I have assessed and I have considered reasonably to use the spray trying to use in a small amount, only to make possible to put the suspect under control. After using the spray we immediately put the suspect under control and we arrested him.”

During the night on 13.08.2007, at 04.45 h., Muriqi was examined in Peja/Pec Kosovo Police service and, according to the medical checklist No9052, there were no obvious signs of grave injuries; the diagnosis was: “*Contusio corporis*” (injury of the body).

On 14.08.2007, the injured party was examined by an orthopedist who established the diagnosis “*Contusio pars cervicalis vertebrae, regio scapulae dex et dorsi*” (injury in the part of the neck and the shoulder from the back). The patient was directed to make X-ray examination and to take medicines against pain.

On 15.08.2007 Ragip Muriqi was examined by a neuropsychiatrist. According to the report, the specialist established that Muriqi was hit with a stick on his right arm, neck and back and his diagnoses was “*Sy carvico-cervicalae posttraumatic*” (post trauma in the neck and head). The specialist required X ray check.

On 22.08.2007 Muriqi was again examined by orthopedist who prescribed to continue taking tablets for pain and to have leave days.

On 25.08.2007 Muriqi was examined by orthopedic and traumatological specialist in Pristina who prescribed two weeks leave and medicines against pain.

On 27.08.2007 after computer tomography examination it was established a fracture of major left *humerus* with a minor dislocation.

On 03.09.2007, on his request, Muriqi was examined by a commission of two doctors from the Faculty of Medicine, Institute of forensics in Pristina. On the basis of the medical examination already described above, the commission concluded that the prescribed damages – fractions of *tuberculum maius* (greater tuberosity) of the left humerus, contusion of soft tissues of left shoulder joint, of the right shoulder region and back region and contusion of soft tissues of the pelvis region of the right side, caused by mechanic act of a hard and heavy tool, altogether are part of grievous body injury.

The defendant Ceku was also examined on 13.08.2007 by Emergency in Peja/Pec and it was established that he had received contusion of the forth finger of the left hand. On 13.08.2007 Ceku took one day sick leave.

On 03.10.2007 a disciplinary panel assessed the use of force (spray OC) by the defendant and, according to the conclusion, Ceku used force in agreement with instruction given to police officers.

On 06.09.2007 the injured party filed a penal denouncement with the public prosecutor against the defendant for caused bodily injuries. He also filed a complaint in KP. Against Ceku were initiated criminal procedure and disciplinary procedure. As a result, he was dismissed from job.

With a judgment dated 14.08.2007 of the Minor Offences Court in Peja/Pec, Ragip Muriqi was found liable as to the fact that, on 13.08.2007, at around 02.10h near the "Ûra – e – Zallit" bridge in Peja/Pec, was driving his vehicle Golf under the influence of alcohol - 1.38 ‰ alcohol in his blood.

Following the results of the medical examinations of the injured party and of the defendant and, in particular, taking in consideration the fact that Muriqi had sustained injuries on the left and the right shoulder, on the back and on the right side of the pelvis region and Ceku on the finger of his left hand and had also a missing button on his duty shirt, it can be concluded that between the defendant and the injured party there was a fight or at least a scuffle.

Both of them confirmed that the defendant pushed Muriqi who fell on the ground on his back. This fact is also corroborated by the injuries diagnosed in the first medical examination conducted on the injured party on the same day of the incident.

The subsequent medical examination specified that these injuries were in the region of the neck and the head. No injuries were found on the front side of the body of Muriqi, notwithstanding the version given by the injured party, according to which the defendant also hit and punched him while he was on the ground and finally kicked him in his abdomen.

Therefore this part of his version is not corroborated by the objective evidence. This casts a shadow of doubt on his version of the facts.

Furthermore, the injury sustained by the defendant shows that the injured party tried to assault him. It is also undisputable, according to the evidence presented that the defendant utilized spray OC and at least two police officers - the defendant and one of his colleagues - had to intervene in order to handcuff Muriqi and push him to the vehicle: this shows clearly that the injured party was violently reacting to the police officers actions.

According to the Prosecutor, the defendant caused grievous bodily injuries to Muriqi by breaking his *tuberculum maius* (greater tuberosity) of the left *humerus* and also caused light injuries on the area of the right shoulder, by pulling the injured party out of the vehicle, turning his arm behind his back and pushing him violently on the asphalt.

As it is well known, *humerus* is the bone of the upper forelimb, extending from shoulder to elbow. The greater tuberosity of the *humerus* is situated lateral to the head of the *humerus* and posteriolateral to the lesser tuberosity.

According to Art.154, par.1, i.3 of the CCK whoever inflicts bodily harm upon another person or impairs the health of another person to such extent that it may result in temporarily and substantially weakening a vital organ or a vital part of the body of the other person shall be punished by imprisonment of 6 months to 5 years.

The criminal act of inflicting a bodily harm can be executed in two ways, by injuring somebody or by seriously damaging his health. The bodily injury is a lesion of the physical integrity and includes any separation, destruction or damage of any part of a human body. Health damage is primarily an act of causing physical or mental sickness, permanently or temporarily.

The fracture of *tuberculum maius* (greater tuberosity) of the left *humerus* is a grievous bodily injury that temporarily weakens the left arm of the human body.

It was established that the injured party suffered this type of injury.

The panel is supposed to answer to the question whether the defendant has caused this injury to Ragip Muriqi on the critical night.

First and foremost, it noteworthy that the Prosecutor did not prove whether or not the above fracture was actually caused by the defendant on the very night of the incident.

In fact, the fracture of the *tuberculum maius* (greater tuberosity) of the left *humerus* was diagnosed only on 27.08.2007, 14 days after the critical night. It suspicious that, notwithstanding the injured party was examined immediately after the arrest and also on the following days, the doctors did not diagnose any injury on the left *humerus*.

Until 27.08.2007 all doctors who examined the injured party established injuries in the area of the neck, the head and the shoulder but nobody found the fracture on the *humerus*.

Therefore, it must be affirmed that it is not certain when the injured party sustained the above fracture and whether it occurred on the night of the incident or afterwards: in other words, the lapse of time between the scuffle with the police officer and the first diagnosis of the fracture is too long to reach the certainty, beyond reasonable doubt, that the fracture was caused by the actions undertaken by the defendant the night of the incident.

Furthermore, the opinion of the medical commission dated 03.09.2007 does not answer to the question if the fracture of the *tuberculum maius* (greater tuberosity) of the left *humerus* of the injured party was a result of the conduct of the defendant against Muriqi. On the point it is worth noticing that the opinion was given on demand of the injured party and therefore just taking in consideration circumstances and facts given by Muriqi (see the medical report No 80, dated 3 September 2007).

Therefore, from the evidence presented in the main trial, it can not be assessed whether the fracture occurred on the night of the incident or afterwards.

On the point, if it is not arguable that the defendant pushed the injured party on the ground, on the other hand no solid evidence has been presented that the defendant broke his arm when he hit the ground.

On the contrary the evidence leads to a different conclusion, thinking that, after the defendant fell down, he was able to react and to fight with the police officer. It appears that his arms were working properly, if he could engage himself in a scuffle and oblige the police to use pepper spray in order to calm him down.

It is also possible that the fracture was caused by the torsion of the arm of the injured party, when the police officers handcuffed and arrested him, since the brisk and rather violent action necessary in order to handcuff a reluctant and resisting person, might have caused such an injury; however, on the other hand, it must be repeated that it is suspicious that the injury was discovered only two weeks after the incident.

Therefore it must be concluded that there is not sufficient evidence as to the existence of the fracture at the moment of the incident.

Moreover, even assuming that the fracture had been caused by the action of the police officer the night of the incident, it must be affirmed that his conduct falls under the provision of Necessary Defence.

In fact, and the argument is also valid as to the other light injures sustained by Muriqi (injuries which, unlike the fracture, were found on the very night of the arrest - contusion of the soft tissues of the shoulder region, back region and pelvis region of the right side-), it is worth mentioning that, as it was reported by most of the eyewitnesses, between the defendant and the injured party there was a sort of quarrel. This circumstance is corroborated by the fact that also the police officer was injured.

Therefore, since there was a violent reaction of the injured party to the legal order given by the police officer, it must be acknowledged that the defendant reacted in Necessary Defence as per Art. 8 of the CCK.

In fact it can be fairly sustained that the above injuries were perpetrated by the defendant while he was responding to the violent action of the injured party (who in fact injured the defendant). The circumstance that the above injures were not too grave (and absolutely compatible with the brisk and violent action of a forced arrest) complies perfectly with the principle of proportionality foreseen by Art. 8, par. 2, of the CCK.

Having recalled the provision as to Necessary Defence entails the assessment whether the action of stopping and arresting the injured party performed by the defendant was or not legitimate.

On the point, it is noteworthy recalling that, pursuant to the Law on Traffic, participants on traffic are obliged to respect the traffic regulations, the traffic signs placed on the road and also the signs and commands of an authorized person.

As stated by both the injured party and the defendant, the former committed a breach of the temporary rule set up by the patrol and therefore was rightfully stopped.

Pursuant to Article 20 of the Law on Public Peace and Order, *'with 30 days imprisonment will be sentenced for minor offence [...] the one that does not act in accordance with order of the official authorized person, competent for stopping the movement, presence or stay in a determined place in conditions where the public peace and order and security are endangered or there is possibility that public peace and order can be endangered'*. It is undisputable that Gani Ceku was an official authorized person, as he was a Kosovo Police officer and that he was, as a member of a police patrol in charge of supervising and controlling the public traffic, competent for stopping the vehicle driven by the injured party.

Pursuant to Article 298 (1) of the CCK, *'whoever drives a motor vehicle while intoxicated with alcohol or other intoxicating substances and, as a result, is evidently unable to drive safely and thereby endangers public traffic, human life, physical safety or property on a large-scale shall be punished by imprisonment of up to three years'* ('Endangering Public Traffic while Intoxicated').

It has been ascertained that, during the check, Ceku noticed that the driver was smelling alcohol and therefore ordered him to step out of the car. Considering that driving under the influence of alcohol is clearly forbidden by the Kosovo law, the defendant's order was clearly lawful.

Pursuant to Article 210 of the KCCP, *'if a person is caught in the act of committing a criminal offence prosecuted ex officio or is being pursued, the police or any other person shall be authorized to arrest him or her provisionally even without a court order'*.

Driving under the influence of alcohol is a criminal offence and as such it can lead to a lawful arrest, pursuant to the above mentioned article. Furthermore, non-compliance with a police order is, pursuant to Article 226.1.25 of the LSBRM, a minor offence.

It has been established, following performance of alcohol test at the police station, that Ragip Muriqi had a level of intoxication with alcohol of 1.38 %. Moreover, Muriqi has been convicted and sentenced to a fee by the Court for Minor Offences of Pejë/Peć, by

Judgments Nr. Regj. 4-7876/07 and 4-7875/07 of 14 August 2007, for both offences driving under the influence of alcohol and incompliance with a police order. Therefore, the Court believes that the defendant's order given to the injured party to get out of the car and his subsequent decision to arrest him after the quarrel were both legitimate and therefore his conduct after the violent reaction of the injured party can be considered under the sphere of Necessary Defence, since the reaction of the injured party was unlawful.

In conclusion, a basic principle in criminal law laid down in art.3 par.1 of the CCK in accordance to art.6 par.2 of the European Convention on Human Rights is the presumption of innocence: pursuant to this principle, the burden of proof stays with the prosecution. The prosecution did not comply with this obligation, since the doubt that the fracture was not caused by the action of the defendant still lingers after the conclusion of the main trial.

For the above reasons, the court deems first of all that there is no clear evidence that the fracture of the *humerus* occurred on the night of the incident.


Secondly, even if the fracture occurred the night of the incident, that injury and the other lighter injuries were caused by the defendant acting in Necessary Defence, because of the unlawful reaction perpetrated by the injured party; therefore the defendant cannot be considered liable for the above injuries.

Costs of the criminal proceedings

The costs will stay in burden of the court following the acquittal of the defendant pursuant to art.103 par.1 of the KCCP.

Recording Officer

Valentina Gashi



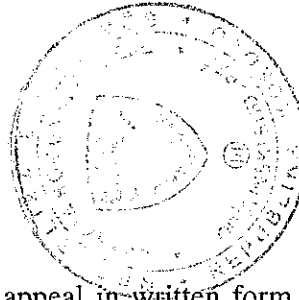
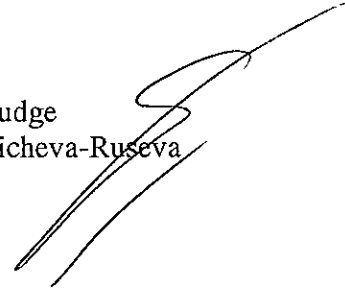
Presiding Judge

Gianfranco Gallo



Reporting Judge

Verginia Micheva-Ruseva



Legal Remedy

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