

# SUPREME COURT of KOSOVO

**Ap – Kž – 251/2010**  
**12 October 2010**  
**Prishtinë/Priština**

## IN THE NAME OF THE PEOPLE

**The Supreme Court of Kosovo**, in a panel composed of EULEX Judge Martti Harsia as Presiding Judge, with EULEX Judges Norbert Koster and Lars Dahlstedt and Supreme Court Judges Salih Toplica and Gyltene Sylejmani as panel members, assisted by Legal Officer Sampsa Hakala acting in the capacity of the recording clerk.

In the criminal case against defendant **Shpend Hoti**, , date of birth .  
 , place of birth  
 , name of father , name of mother and maiden name of mother  
 , last residence in .  
 charged with the criminal offences of **Aggravated Murder**, contrary to Article 147, items 4, 5 and 9 of the Provisional Criminal Code of Kosovo (PCCCK) and **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 paragraph 1 of the PCCCK.

Acting upon the appeal of the defendant filed through his Defence Counsel Ilaz Kadolli on 15 July 2010 against the Judgment of the District Court of Prizren in case no. KP No. 145/2007, dated 13 March 2008, whereby the District Court of Prizren found the defendant guilty of the criminal offences charged and sentenced him to 18 years of imprisonment for count 1 and to pay a fine of 5.000 Euros for count 2.

After having received the response from the District Prosecution filed on 2 August 2010 and the opinion and motion of the State Prosecutor of Kosovo filed on 19 August 2010.

in a session, held open to public on 12 October 2010, after a deliberation and voting renders this

## JUDGMENT

**The appeal of the defendant Shpend Hoti filed through Defence Counsel Ilaz Kadolli against the judgment of the District Court of Prizren in case no. KP No. 145/2007, dated 13 March 2008, is hereby PARTLY GRANTED.**

**The judgement of the District Court of Prizren in case P. No. 145/2007, dated 13 March 2008 is MODIFIED as to the punishment:**

**1. For the offence of Aggravated Murder, contrary to Article 147, items 4, 5 and 9 of the PCCK, Shpend Hoti is sentenced to a term of imprisonment of eighteen (18) years.**

**2. For the offence of Unauthorized Ownership, Possession or Use of a Weapon, contrary to Article 328 paragraph 1 of the PCCK, Shpend Hoti is sentenced to pay a fine of 2.500 Euros.**

**3. Pursuant to Article 73 of the PCCK, the time spent by Shpend Hoti in detention on remand since his arrest on 4 July 2006 shall be credited against and included in the 18 years of imprisonment which has been ordered.**

**4. The fine of 2.500 Euros shall be paid within 120 days from the date on which this Judgment becomes final. Failure to pay the fine within that deadline will result in the fine being collected by compulsive means.**

## **REASONING**

### **I Procedural history**

On 4 July 2006 at approximately 11:00 hours C . . . was shot dead in the city of Prizren. The defendant Shpend Hoti was arrested shortly after the shooting had occurred and the weapon, a Zastava .357 Magnum caliber revolver, was seized by the police.

A criminal investigation against Shpend Hoti was initiated on 7 July 2006 and the International Public Prosecutor in Prizren District filed an indictment against Shpend Hoti, dated 27 June 2007 for the criminal offences of Aggravated Murder under article 147 items 4), 5) and 9) of the Criminal Code of Kosovo (PCCK), Causing General Danger under article 291 (3) of the PCCK and Unauthorized ownership, control and possession or use of weapons under Article 328 (2) of the PCCK.

On 29 August 2007 the indictment was confirmed on Counts 1 and 3: of Aggravated Murder and Unauthorized ownership, control and possession or use of weapons. The remaining count was dismissed.

The main trial started on 25 October 2007 in the presence of the Public Prosecutor, of the defendant and his defence counsel and the counsel for the injured parties. At the request of the defence counsel a competency evaluation of the defendant was ordered and the main trial was suspended pending the result of the evaluation from the experts.

On 28 February 2008 the District Court of Prizren issued a separate ruling on the mental competency of the defendant Shpend Hoti. The court considered that Shpend Hoti was not mentally incompetent at the time of the commission of the crime and did not suffer from diminished mental capacity. According to the ruling Hoti did not suffer from a

mental illness, mental disorder, or disturbance in mental development that so affected his mental functioning as to make him unable to understand or control his actions or unable to understand that he was committing a criminal offence. No appeal was filed against this ruling.

The main trial continued on 13 March 2008 in the presence of the Public Prosecutor, of the defendant and his defence counsel and the counsel for the injured parties. During the main trial the defendant pleaded guilty to the two charges. At the end of the hearing the judgment was announced whereby Shpend Hoti was found guilty of Aggravated Murder and Unauthorized ownership, control and possession or use of weapons and imposed the sentence of 18 years of imprisonment together with a 5.000 Euros fine.

Shpend Hoti was ordered to be kept on detention remand until the judgment became final.

According to the case file documentation the Judgment of the first instance was served to the defendant Shpend Hoti personally in Dubrava prison on 12 July 2010.

The defence counsel Ilaz Kadolli filed an appeal against the verdict on 15 July 2010.

The Response of the District Prosecution was filed on 2 August 2010 and the opinion of the State Prosecutor was received on 19 August 2010.

## **II The appeal and response of the Public Prosecutor**

The appeal of Lawyer Ilaz Kadolli, filed on 15 July 2010, challenges the first instance Judgment in respect of the decision on punishment. The defence counsel proposes to modify the first instance verdict by imposing a more lenient sentence for both offences.

According to the appeal the Court of first instance did not take into account properly the mitigating circumstances which are:

- The relatively young age of the defendant Shpend Hoti at the time the crimes were committed.
- The fact that Shpend Hoti pleaded guilty and has expressed deep repent of his actions.
- The fact that Hoti suffered from a psychic disorder called “Antisocial personality disorder” as shown by medical reports.

In the Supreme Court session held on 12 October 2010 the Defence Counsel also pleaded for the personal circumstances of the defendant. More particularly the Defence Counsel referred to some occurrences in Shpend Hoti’s family relations that had occurred during time spent in detention on remand.

The Chief Prosecutor from the District Prosecution in Prizren with his response states that the appeal is unfounded and must be rejected. The prosecution maintains that the first instance Court assessed all circumstances in the judgment including lenient circumstances. The prosecutor states that the imposed sentence is in proportion with the committed acts, high risk and consequences of the acts, behavior of the defendant and other circumstances.

The State Prosecutor with his opinion to the Supreme Court of Kosovo moves the Court to reject the appeal and to affirm the judgment of the first instance court. The State Prosecutors considers that there exist the three mitigating circumstances in this case as proposed in the appeal. The State Prosecutor, however, finds that due to the gravity of the criminal offence the imposed punishment should not be reduced.

### **III Court findings**

The appeal filed on behalf of the defendant Shpend Hoti is timely filed and admissible.

As stated before, Shpend Hoti pleaded guilty to both charges. The pleas of guilty were accepted by the Court of first instance and the question of guilt as such has not been challenged by the appeal of the defence counsel. The issues raised in the appeal relate only to the punishment imposed by the Court of first instance. Thus the sentencing of the defendant shall be examined.

When determining the punishment the purpose of the punishment and all the circumstances that are relevant to the mitigation or aggravation of the punishment have to be taken into consideration<sup>1</sup>. The punishment shall be, within the limits provided by the law for such criminal offence, proportionate to the gravity of the offence and the conduct and circumstances of the offender.

As to the punishment imposed for the criminal offence of Aggravated Murder the appeal is not grounded. The limits provided by law for this criminal offence are imprisonment of at least ten years or of long term imprisonment. The term of imprisonment imposed by the Court of first instance is appropriate taking into account the pertinent circumstances relating to the criminal offence and to the defendant.

The undisputed circumstances relating to the killing of G require a severe sentence. According to the unchallenged facts of the case, Shpend Hoti acting without warning or provocation and out of unscrupulous revenge took the life of C by shooting from a very close range, and in a ruthless and violent manner, six shots from a .357 Magnum caliber revolver into the back of C who was sitting at a table in front of a sweet shop in the Shadervan square area near the center of Prizren. It is the opinion of the Supreme Court that the conduct of Shpend Hoti intentionally endangered the life of at least three other persons who were sitting close to Shpend Hoti at the time of the shooting.

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<sup>1</sup> See Article 64 of the PCCK on General Rules on Calculating Punishments.

The criminal act committed by Shpend Hoti fulfills three out of twelve of the prescribed legal criteria of an Aggravated Murder although any of these aggravating circumstances would qualify the criminal offence as Aggravated Murder: In killing G , Shpend Hoti intentionally endangered the life of more than one persons as per item 4 of Article 147 of the PCCK, Shpend Hoti deprived G of his life while acting ruthlessly and violently as per item 5 of Article 147 of the PCCK and Shpend Hoti deprived G of his life because of unscrupulous revenge or other base motive as per item 9 of Article 147 of the PCCK.

The extreme consequences of the criminal offence as well as the ruthless and determined manner in which the criminal offence was conducted by the defendant underline the gravity of the offence, calling for a sanction of a long duration.

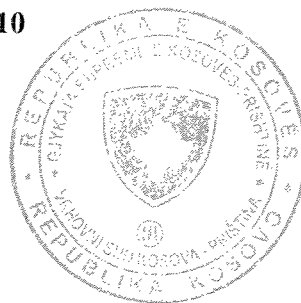
As to the conduct and personal circumstances of the defendant the Supreme Court maintains that there exist some mitigating circumstances relating to the young age of Shpend Hoti and his entering of a guilty plea. Furthermore, it has been shown by medical evidence that Shpend Hoti suffered from anti-social personality disorder at the time of the criminal offence. However, all of these have been duly determined as well as taken into consideration by the Court of first instance in respect of sentencing.

As to the charge related to the Unauthorized possession of a firearm the Court considers that a fine of 2.500 Euros is an appropriate punishment. Some days before the murder of G on 26 June 2006, Shpend Hoti was arrested by Police for illegal possession of another weapon, a Beretta 7,65 mm pistol, and was sentenced to pay a fine of 1.000 Euros for that offence. Therefore the punishment is measured higher than 1.000 Euros as the criminal offence has been repeated by the offender.

For these reasons it is decided as in the enacting clause.

**Dated this 12 October 2010.**  
**Ap.-Kž. No. 251/2010**

Prepared in English, an authorized language.



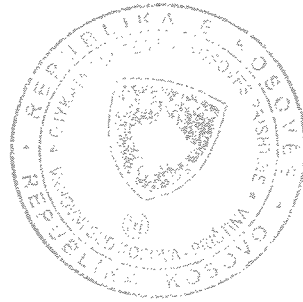
**Presiding Judge**

*Martti Harsia*

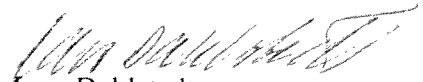
Martti Harsia

**Member of the Panel**

  
Norbert Koster



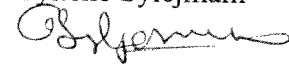
**Member of the Panel**

  
Lars Dahlstedt


**Member of the Panel**

Salih Toplica  


**Member of the Panel**

Gyltene Sylejmani  


**Recording clerk**

  
Sampsa Hakala