

**DISTRICT COURT OF MITROVICA**  
**P. nr. 134/08**  
**19 November 2009**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF MITROVICA**, in the trial panel composed of EULEX Judges Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Angela Kaptein and Christine Lindemann-Proetel as panel members, with the participation of EULEX Legal Officer Tara Khan as Recording Officer, in the criminal case against;

**DJ.P.**, charged, according to the Amended Indictment of the Special Prosecution Office PP. nr. 71/08 dated and filed with the Registry of the District Court of Mitrovica on 02 July 2009, with the following criminal offences;

- **Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance**, contrary to Article 115 paragraph (3) as read with paragraph (1) of the Criminal Code of Kosovo (CCK)
- **Commission of Terrorism**, contrary to Article 110 paragraphs (2) and (1) as read with Article 109 paragraph (1), subparagraphs 2, 7 and 10 of the CCK
- **Attempted Aggravated Murder**, contrary to Articles 146 and 147 as read with Article 20 of the CCK

After having held the main trial hearing in public on 27, 29, 30 July, 03 August, 01, 03, 24, 30 September, 13, 15, 21 October, 05, 11, 17 and 19 November, all in the presence of the accused DJ.P., his Defence Counsel Miodrag Brkljac and/or Ljubomir Pantovic, and EULEX Public Prosecutor Isabelle Arnal, after the trial panel's deliberation and voting held on 19 November 2009, pursuant to Article 392 paragraph (1) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), pronounced - on the same day - in public and in the presence of the Accused, his Defence Counsel and the EULEX Public Prosecutor the following

**VERDICT**

The accused **DJ.P.**, nickname **Dj.**, son of Dj. Lj. and V. S., born on \_\_\_\_\_ in \_\_\_\_\_, Republic of Serbia, of S. ethnicity and Serbian citizenship, last known residence at \_\_\_\_\_, Municipality of \_\_\_\_\_, Republic of Serbia, single, living with parents, highest education three years of vocational school, unemployed, family income 200-300 Euro/month, no known previous conviction, in detention since \_\_\_\_\_

Is

## FOUND GUILTY

- **because** on [redacted] at around [redacted] am the accused climbed up to the cupolas of the I. B. Mosque in [redacted] and placed a flag symbolizing the orthodox Christian religion on top of one of the cupolas. In this way **DJ.P.** publicly incited and spread religious and ethnic intolerance between the in-majority Muslim Albanians and in-majority orthodox Christian Serbs living in Kosovo. His act was likely to disturb public order.

By doing so, the accused **DJ.P.** committed and is criminally liable for the criminal act of

**A, Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance**, contrary to Article 115 paragraph (1) of the Provisional Criminal Code of Kosovo (PCCK).

- **because** on [redacted] at around [redacted] **DJ.P.**, armed with a knife and a pistol entered the fenced yard of the Kosovo Police [redacted] Station and with the intention to deprive his victim of life, at close range, he shot at police officer E.P. - who was executing his duty to protect the legal order - with the pistol “ [redacted] ” brand model [redacted], calibre [redacted] mm, serial number [redacted], causing grievous bodily injury. Then **DJ.P.** walked backwards facing E.P. who fired several shots at him. The accused, already injured and when outside of the fence, dropped his pistol and went to the entrance of the police station, entered the building with a knife in his hand that fell before he entered the station. He went towards police officer A.Xh. - who having witnessed E.P. being shot, fled inside the police station building - ignoring her order to stop. Sergeant Xh. fired several shots in the direction of **DJ.P.**, until he fell due to his injuries.

By doing so, the accused **DJ.P.** committed and is criminally liable for the criminal act of

**B, Attempted Aggravated Murder**, contrary to Article 147 item 10 of the PCCK in conjunction with Article 20 Paragraph (1) of the PCCK with regard to his actions against E.P..

**C, The charge of Commission of Terrorism**, contrary to Article 110 paragraphs (1) and (2) as read with Article 109 paragraph (1) items 2, 7, and 10 of the PCCK is hereby **rejected** pursuant to Article 389 item 1) of the Provisional Criminal Procedure Code of Kosovo.

THEREFORE, the accused **DJ.P.** is

## **SENTENCED**

- to 6 /six/ months of imprisonment for the criminal act of Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance /Count A/
- to 6 /six/ years of imprisonment for the criminal act of Attempted Aggravated Murder /Count B/

The integrated punishment is determined in 6 /six/ years and 3 /three/ months of imprisonment, pursuant to Article 71 paragraph (1) and paragraph (2) item 2 of the PCCK.

The time spent in detention on remand since \_\_\_\_\_ is to be credited pursuant to Article 73 paragraph (1) of the PCCK.

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 paragraph (1) of the PCCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 paragraph (2) of the PCCK.

The property claims of the injured parties E.P. and A.Xh. are referred for civil proceedings pursuant to Article 112 paragraph (2) of the PCCK.

## **REASONING (STATEMENT OF GROUNDS)**

### **A. PROCEDURAL BACKGROUND – THE INDICTMENT**

On 12 December 2008, the District Public Prosecutor for Mitrovica filed indictment PP. no. 71/08 dated 12.12.2008 with the Registry of Mitrovica District Court. The indictment alleged that the defendant had committed the criminal acts of

- Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance, contrary to Article 115 paragraph (3) as read with paragraph (1) of the Provisional Criminal Code of Kosovo (PCCK)
- Commission of Terrorism, contrary to Article 110 paragraph (2) and (1) as read with Article 109 paragraph (1), subparagraphs 2, 7 and 10 of the PCCK.

On 16 April 2009 the Special Prosecution Office of the Republic of Kosovo (SPRK) took over the case from the Mitrovica District Prosecution Office and on 02 July 2009 filed an Amended Indictment dated 30 June 2009 extending the charges to the criminal act of Attempted Aggravated Murder, contrary to Article 147 item 10 of the Criminal Code of Kosovo (CCK) in conjunction with Article 20 paragraph (1) of the CCK and referring to

the relevant provisions of the Criminal Code of Kosovo concerning the original two charges.

The Amended Indictment of the SPRK was confirmed by the Ruling of the Confirmation Judge on 06 July 2009.

During the main trial session on 17 November 2009, the SPRK Public Prosecutor withdrew the charge of Commission of Terrorism pursuant to Article 52 of the CPCK and orally amended the Amended Indictment accordingly.

## **B. COMPETENCE OF THE COURT**

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

As set forth above, the charge of Commission of Terrorism pursuant to Article 110 Paragraph (2) allows for the imposition of a minimum sentence of 15 years of imprisonment. In addition, the indictment in this case alleges that the accused committed the acts in

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

Pursuant to Section 3.1 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in the EULEX Kosovo, EULEX judges assigned to criminal proceedings will have the jurisdiction and competence over any case investigated or prosecuted by the SPRK. As discussed above, the SPRK took over the case from the Mitrovica District Prosecution Office on 16 April 2009. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Criminal Judge Hajnalka Veronika Karpati as presiding judge and EULEX Criminal Judges Angela Kaptein and Christine Lindemann-Proetel as panel members. All three judges are assigned to the District Court of Mitrovica.

None of the parties objected to the panel composition.

## **C. SUMMARY OF EVIDENCE PRESENTED**

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

- (1) A.Xh. – Injured Party, 27 July 2009
- (2) E.P. – Injured Party, 29 July 2009
- (3) G.H. – Security Guard, 30 July 2009
- (4) F.T. – Security Guard, 30 July 2009
- (5) Sh.N. – Police Officer, 30 July 2009
- (6) R.N. – Police Officer, 30 July 2009
- (7) B.F. – Police Officer, 03 August 2009
- (8) A.D. – Police Officer, 03 August 2009
- (9) Sh.R. – Neighbour, 03 August 2009
- (10) R.P. – Police Officer, 01 September 2009
- (11) B.K. – Owner of Restaurant , 01 September 2009
- (12) S.H. – Waiter at bar, 03 September 2009
- (13) M.D. – Owner bar, 03 September 2009
- (14) J.V. – Police Officer, investigator, 24 September 2009
- (15) M.B. – Police Officer, 24 September 2009
- (16) A.N. – Police Officer, 24 September 2009
- (17) M.P. – Police Officer, 24 September 2009
- (18) N.S. – Medical Doctor, 30 September 2009
- (19) Sh.M. – Assistant Anaesthesiologist, 30 September 2009
- (20) F.A. – Police Officer, 13 October 2009
- (21) A.A. – Acting Head of Counter Terrorism Unit, 15 October 2009
- (22) S.I. – Nurse, 21 October 2009
- (23) A.K. – Police Officer, 21 October 2009
- (24) L.D. – Police Officer, 21 October 2009
- (25) Q.T. – Ballistic Expert, 05 November 2009
- (26) B.F. – Muezzin, 03 September 2009
- (27) A.M. – Imam, 15 October 2009

During the course of the main trial the statements of the following witnesses were read out:

- (28) L.T. - Police Officer, statement on , read on 01 September 2009
- (29) S.A. – civilian at the Police Station, statement on , read on 01 September 2009
- (30) T.T. – Bartender in Bar, statement on , read on 21 October 2009

During the course of the main trial the following evidence was submitted by the EULEX Public Prosecutor and entered into evidence:

- (1) Original photos 1, 2, 5, 6, on 27 July 2009 (Exhibits 1 and 2)
- (2) Photo of suspect lying on floor, on 30 July 2009, (Exhibit 8)
- (3) KPS Informative Report dated \_\_\_\_\_, on 24 September 2009, (Exhibit 9)
- (4) KPS Informative Report dated \_\_\_\_\_, on 24 September 2009 (Exhibit 10)
- (5) Original Sketches drawn by F.A., on 13 October 2009 (Exhibit 11)
- (6) "Video Camera Pictures", colour prints, on 13 October 2009 (Exhibit 12)
- (7) Police Report with notes dated 07/10/09, on 21 October 2009 (Exhibit 13)
- (8) Medical reports dated \_\_\_\_\_, on 21 October 2009 (Exhibit 14 A,B)

During the course of the proceedings of the main trial the following evidence was submitted by the Defence Counsel and entered into evidence:

- (1) A drawing of two guns, by DC Brkljac on 05 November 2009 (Exhibit 15)
- (2) Emblem of Red Beret submitted on 17 November 2009 (Exhibit 16)

When filing the indictment the following evidence was submitted by the EULEX Public Prosecutor and entered into evidence during the course of the proceedings of the main trial:

- (1) Expert Opinion on DNA Analysis dated Zagreb, 25/08/2008 prepared by Natasa Ortinsky
- (2) Ballistic Expertise dated 10/07/2008 prepared by Q.T.
- (3) Crime Scene Reports, Medical Records, Forensic Reports and other documentary

During the course of the proceedings of the main trial the following evidence was taken:

- (1) A second expertise on DNA Analysis dated 04/11/2009 prepared by the KP Central Laboratory, B.M. (upon the proposal of the Public Prosecutor)
- (2) Psychiatric Evaluation of the accused dated 09 October 2009, prepared by R. J., neuro-psychiatrist (upon the proposal of both parties)
- (3) A site inspection of the mosque was carried out on 15 September 2009 upon the proposal of the Public Prosecutor and the minutes taken there were read at the session on 24 September 2009 pursuant to Article 367 of the PCPCK.

During the main trial session on 17 November 2009 the accused, DJ.P. gave a statement and answered questions.

## D. EVALUATION OF PRESENTED EVIDENCE

### 1. Factual Findings

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

On [redacted] in the late night hours the accused **DJ.P.** arrived in [redacted] and after spending around one and a half hours in the [redacted] bar drinking wine, he walked over the [redacted] to [redacted] at around [redacted] on [redacted]. He continued walking direction south until he saw the I. B. mosque. He climbed up to the cupolas on a metallic rod and placed a flag with a cross on it symbolizing his orthodox Christian religion on top of one of the cupolas.

Then he headed back direction north and at around [redacted] passed the [redacted] building, walked towards the bridge but turned to the right, made a circle and headed back towards Police Station. He passed twice the UNMIK Security Post at [redacted] building and the external, small security post, Static One of the Police Station. At around [redacted] when he appeared the third time, the police officer on duty at Static Point One, R.N., went outside the post and the accused came towards his direction. The police officer asked for his identification documents but the accused pretended to be deaf-mute. Officer N.. waved at him to follow, which the accused did, and they went to the outside of the fence of the police station. Officer N.. indicated to his colleague, Sh.N. who was on duty at Static Point 2, the information post inside the station, to approach them. Officer N. also tried to communicate with the accused but in vain. They called Sergeant A.Xh. who was in charge of the morning shift. She also tried to communicate with the accused using gestures, however without any result as the accused continued pretending not to understand anything. Officers N.. and N. checked the backpack of the accused by ordering him to take it off and open it. The accused did it, opened the bag and shook it, showing that there was nothing in it. The officers were satisfied with this, they did not check the backpack thoroughly and did not perform any body search. Sergeant Xh. went inside to call an interpreter for sign language, however she could not get through. Officer N. returned to his post inside the station. A.Xh. went outside again, followed by police officer E.P.. In this moment outside the fence there were the accused and Balkan security guard G.H. who came to warn the police officers that he found the accused suspicious and aggressive, judging from his reactions when he had drawn a house and wrote [redacted] on it in order to find out where he lived. (The accused had grabbed G.H.'s hand when he wanted to touch a small insect in his reception cabin.) Inside the fence were A.Xh., who upon the information from the security guard contacted a unit in [redacted], and E.P.. When Sergeant Xh. and Officer P. came out of the station building, at around [redacted], Officer N.. returned to his post Static One.

A.Xh. instructed E.P. to take the accused inside the police station until the assistance from [redacted] would arrive. E.P. went outside the gate, approached the accused, took him by his arm and instructed him to come with him. They walked side by side, with the accused on the right side of Officer P.. When they entered the gate, inside the police yard,

the accused put his right hand into his pocket, pulled out his pistol and immediately fired at close range at the police officer, hitting his right side at the height of the waist. Then the accused walked backwards away from E.P. but constantly facing him. The injured police officer pulled out his gun and fired 9 shots at his attacker. DJ.P., already injured and outside the gate close to the Balkan security kiosk, dropped his pistol and went towards the entrance of the police station building. He slammed the door with his shoulder and while doing so, dropped the knife that was in his hand before entering the station. Inside the station, at a distance of two to two-and-a-half meters he encountered A.Xh. who had fled inside the building as soon as E.P. was shot. Sergeant Xh. shouted at him to stop but the accused kept moving towards her. A.Xh. moved backwards facing the accused and shot at him times until DJ.P. fell due to his injuries.

Both Police Officer E.P. and the accused DJ.P. were taken to the University Clinic in Pristina.

E.P. suffered a wound caused by firearm in the right side of the waist. The bullet is still inside his body due to contraindications to a surgical removal.

A.Xh. injured her arm, tendon on the upper and lower side of the arm.

DJ.P. suffered a wound caused by firearm in the area of the neck in the right glutons. He suffered fracture of the right upper arm bone and deep laceration on both thigh bones. The fourth finger of the left hand was smashed and hanging, and had to be amputated. There was a laceration on the third finger on the left hand.

## **2. Evidence concerning the flag incident**

There was no direct evidence connecting the **accused** with the flag on the mosque until he himself gave a **statement** and answered questions on the session of 17 November 2009. He had been warned according to the law that what he said could be used as evidence against him. He admitted that he took a bus in and went to where he spent some time in a coffee shop. He walked and found the mosque. He climbed up to the cupolas using a metallic rod and placed the flag he had in his backpack on one of the cupolas. On the way down the rod, he fell on a kind of roof but somehow managed to climb down. He did not damage anything.

The statement of the accused is supported by indirect evidence. The **video recording** shows him at around (Camera 08) in the of the addressing an international police officer and then KP police officers before crossing the direction and passing in front of the police units without being stopped at (Camera 10). At around (Camera 01) he passes by Static Point 1 of the Police Station returning from direction south to .

Given the statement of the accused it is logical to conclude that in these 47 minutes he walked to the mosque, climbed up to the cupolas, placed the flag, climbed back and headed to the north again.

Neither the **first** nor the **second DNA expertise** could identify the blood traces on the flag with the DNA sample of the accused. It could also not be established whether the contaminants found on the flag had been of recent origin (as suggested by the prosecutor referring to the broken window of the mosque) or old ones. However, in view of the accused's statement that the flag belonged to him and that he had it in his backpack with the aim of putting it on the cupola, the traces on the flag lose significance.

The statement of the accused is also supported by the statements of the only two **witnesses** heard in connection with the flag incident: that of B.F., the muezzin of the mosque and that of A.M., the imam of the mosque.

B.F. stated that he was in charge of locking all the doors of the mosque, which he did on the evening prior to the incident at around        hrs. He also stated that the broken window of the Annex had already been broken before the flag incident occurred. He confirmed and repeated his statement also at the site inspection during which he showed the Court and the parties around.

On several questions A.M. consistently confirmed that the window had been broken on the previous day before the flag was put on the cupola. The muezzin had called him and informed him about the broken window the day before the flag incident. Concerning the flag incident, A.M. called the police. They did not consider the broken window a serious issue as they use that Annex only on Fridays for praying. When confronted with the police report in connection with the flag incident, which stated that pieces of glass had been found on the carpet, he said that either it was not thoroughly cleaned the day before or not cleaned immediately because they did not use that Annex every day. He also confirmed that it was the muezzin's task to lock all the doors of the mosque.

Both witnesses confirmed that nothing had been desecrated or damaged inside the mosque. In this way their testimonies fully supported the statement of the accused and the Court based the factual findings on these testimonies.

As the leading investigator of both incidents, **witness J.V.** confirmed the findings at the crime scene and confirmed the police reports prepared by him.

### **3. Evidence concerning the shooting incident**

The accused stated that after he had climbed down the mosque and reached the crossroad, he lost his memory and was not aware of anything that happened afterwards. His next recollection of events is when his father and his defence counsel visited him in the hospital.

However, concerning the events that happened at the Police Station that night, there is ample evidence on which the Court could rely when establishing the precise flow of events.

The movement of the accused in the 10-15 minutes prior to the shooting is captured by Cameras 1 and 2. It is clearly seen on the **video recording** that he passed Static Point One three times before he being addressed by police officer R.N. at around . It is also shown that after around a minute the police officer accompanied him in the direction of the police station, and that the same police officer returned to his post ten minutes later, at around .

This is exactly how **witness** R.N. described the events: The witness noticed that the unknown person was walking around two or three times, first to the direction of the bridge towards the market, then he returned, and each time he passed the police station he spent some time looking at it. From this the witness realized that something was wrong with this person, and when the person came opposite Static Point One and put his scarf or towel on his head, the witness went out of his security post. The person noticed this and started moving in his direction. The witness asked for his identification documents, but he just made gestures indicating the he was deaf-mute and pointed in different directions as if he did not understand. When the witness realized that they could not communicate, he waved at the person to follow him and they went to the outside of the police station fence. He called his colleague Sh.N., who was at Static Point 2, inside the fence. Sh.N. came and tried to use gestures to communicate with the person but in vain. They called A.Xh. who was in charge of the shift. She came to the fence, staying inside. She also tried to communicate with the person but could not. The person had a backpack on his shoulders and the witness pointed at it and gestured for him to open it. He took it off, opened and shook it to show that there was nothing inside. Then A.Xh. went back to the station to call for an interpreter. She returned with E.P. and at that point the witness decided to return to his post as there were enough police officers around.

R.N.'s statement is also confirmed by the statement of **witness** Sh.N., the police officer at Static Point Two (the small information post inside the station). He described in exactly the same way how the person pretended to be deaf-mute, how he tried to communicate with him using gestures, how they called A.Xh., how they searched the backpack, and who was inside and outside the fence. Sh.N. also testified that A.Xh. advised him to go back inside the police station where a party was waiting for him. A.Xh. also went inside and took E.P. to go back to the person outside.

The arrival, behaviour and actions of the accused before the shooting started, as described by witnesses N. and N. are also confirmed by the statement of the Balkan security guard, **witness** G.H.. He also described that the accused walked up and down in front of their kiosk. He found this suspicious, which is why he told the female police officer to "check him out", but they checked only the backpack, not the body, and then they said "Leave him, he is not normal". After they searched him, this person approached the UNMIK reception kiosk and pretended to be mute. In order to find out where he was from, the

witness drew a house and wrote “ ”. The person nodded his head. There was a small insect in his reception area which the witness wanted to remove, and in that moment the person grabbed his hand indicating that he did not want it to be touched. The witness informed the female officer that the person was from and warned her to check him again. The female officer called the reinforcement from .

The other Balkan security guard, **witness** F.T. also gave the same account about the arrival and behaviour of the accused, the search of the backpack, the officer saying “Let him go, he is retarded”, and the incident with the insect and the aggressive reaction of the accused, as his colleague.

**Injured Party** A.Xh. who on was on the morning shift that started at midnight, was the responsible person for the security zone of , in the highest rank. She described the behaviour of the accused and the events prior to the shooting the same way as witnesses N., N., G. and T.. She also tried to communicate with the unknown person in vain. Then she tried to get in touch with an interpreter for sign language, but could not. When the UNMIK security guard showed her the paper with the drawing of a house and “ ” written on it and informed her that the person acknowledged that he was from , she took it as true and called via radio a unit in . She also confirmed that outside the fence, approximately half a meter away, was standing the unknown person with officer N.. on his left side, and the UNMIK security guard on his right. She was opposite to them, inside the fence with officer N.. She also confirmed that R.N. went back to his post, and in the meantime E.P. arrived but she could not recall how he got there. She instructed him to get the person inside until the unit from arrive.

Concerning the shooting outside and inside the police station, the Court based the factual findings on the numerous witness statements, the crime scene report with photo documentation, the ballistic expertise and the DNA expertise.

**Injured party** E.P. in the capacity of witness stated that he went out to take the unknown person, inside either on his own initiative or on the order of Sergeant Xh.. He took him very gently by his arm as he thought he was a deaf-mute person. He told him “Come with me” and they walked side by side, with the person on his right side. When they entered the gate, this person put his right hand in the right pocket of his hooded jacket, pulled out a gun and fired at the right side of E.P.’s waist and hit him there. He felt pain. The person started to back away from him, always facing him, and he had something in his hand. The witness expected him to shoot again, therefore he pulled out his duty gun, with serial number “ ” and started to shoot in his direction. Then the suspect lowered himself and made himself a smaller target, stepped back 2-3 meters from the entrance door, stopped there and then returned and entered the gate of the fence and started to go in the direction of the entrance of the police station. During this time the witness continued shooting at the unknown person. He had magazines and he changed the magazine that was initially in his weapon assuming that the first one was emptied. Upon questioning, he confirmed that the accused shot only once at him and he heard one shot. He emphasized that he could speak about what happened outside the station building, he had no access to what happened inside. He remembered that sergeant Xh. was somewhere around, close to

the fence and she let out a loud scream when he was shot. Also the security guard might have been around, but he was not paying attention to who was around.

**Injured party A.Xh.** in the capacity of witness stated that after she told E.P. to take the unknown person inside, they waved at him to come and the person started to walk towards them. E.P. went to the gate, the person approached him and E.P. placed his right arm around the person's back in a very tender way. They started walking towards the station with the person on E.P.'s right. She was 2-3 meters away from them, in front of them. At some point, E.P. and the person became parallel to each other, very close, almost attached to each other and the person acted in a very rapid way, pulling out a gun from the part of the belt on the right side with his right hand. He pointed it at E.P. and shot immediately, making the noise of a bang. He immediately created a distance from E.P. and started to go towards her. She was shocked, she knew that she did not have a bullet proof jacket, she pushed the entrance door of the station and fled inside. She bumped into the threshold and fell down with her arms and legs on the floor and could not get up. She was somehow blocked. She tried to stand up with all her force, but her legs and arms were not functioning. Sh.N. helped her up. During all this time she heard shots from outside and she thought that E.P. was dead, that the person had killed him. When she stood up, she pulled out her gun, and made two or three steps in the hallway. She wanted to get out to help E.P., but the person slammed through the door from outside and came towards her in an aggressive way. He was 2-2,5 meters away from her. She shouted with all her voice, but could not remember what. She was withdrawing from him all the time and he was coming towards her all the time. She started shooting, but he kept coming towards her. When she reached the second hallway she continued shooting at him, but he did not fall and kept coming towards her. She shot 2 or 3 times again and she saw his legs trembling. Then she pushed herself on the side and she saw the person falling down. Upon questioning she added that when the person entered the station he had something in his hand, but could she not see what it was. She had her official Model serial number . She could not tell how many bullets she fired, but knew that she had not emptied the magazine that contained cartridges plus in the chamber.

The statements of the Injured Parties are supported by the statement of witness **R.N.** in pertinent part:

After the witness went back inside the cabin at Static Point One, he sat down, then he heard a shot fired. He could not see who fired. Immediately after this he heard other shots, but the first one was separate, with a small pause before the other shots. When he heard the other shots he drew his weapon from the holster, ran out and leaned on one of the police vehicles in front of the station. After the shots stopped, he straightened himself up to see where the shots were coming from and saw the unknown person entering the police station. The person was sort of crouched and he did not use his hands to open the door of the police station, but hit the door with his left shoulder. After this person entered, the witness heard A.Xh.'s voice, she yelled loudly and then he heard more shots. He wanted to go inside the station, but finally did not enter the fence because he saw E.P.

who said this person had shot him. So, he grabbed E.P. by his shoulder and put him in the vehicle of the unit from        that had come to assist and departed for the medical centre.

The witness gave a very accurate description of the events. At        Camera 1 captured the reacting movements of the police officer as he got out of the cabin, his weapon in his hands, positioning himself behind a vehicle and then heading towards the police station. The last moments of his account of the events were also captured by Camera 1 showing a police vehicle arriving in front of the police station at        and some policemen returning to the vehicle and heading towards the Health Centre at        .

Also the statement of witness Sh.N. is in conformity with the statement of A.Xh.. Witness N. stated that after Sergeant Xh. and E.P. had gone out of the police station to attend to the unknown person, shots were heard, initially one-two, then a pause and then a noise like from firecrackers. He left the party he was with and went to the entrance door, but could not exit as A.Xh. opened the door from outside and fell in front of him. He grabbed her by the hand and lifted her up while hearing shots. A.Xh. told him: “Watch out, he has a weapon, he fired at E.P..” She pushed him, she moved 2-3 steps inside the station and he approached the party who was in a small room with glass walls in the hallway. The person arrived quickly and entered through the door in a defensive position with his shoulders. At that moment when he hit the door, something fell on the ground. A.Xh. ordered him to stop and started firing. At that moment Sh.N. ordered the party to lay down. He could see that the suspect was moving only in A.Xh.’s direction, very brutally, trying to reach her. However, in the first turn of the hallway he started to slow down and stumble. At this point he told A.Xh. not to fire any more and the suspect fell down.

The other police officers inside the station at the time of the shooting, **witness B.F.** who was in the interview room, **witness A.D.** who was in the so called “sergeant’s room”, **witness R.P.** who was by the cells taking data, **witness M.B.** who was the radio technician at the radio base within the station, and **witness L.T.** at the station’s office, could not add any new details to the case, however they could corroborate small details of the previous witness statements concerning the shots they heard, the way the accused entered the station building, the sequence of the shooting by A.Xh. inside the station, the aftermath of the events, in what state and where the injured accused was, etc. The same refers to the statements of **witness S.A.**, a civilian who was being interviewed at the police station by L.T. and in the office with her when the shooting happened, **witness Sh.R.**, who lives in the neighbouring house on the opposite side of the road and **witness B.K.**, the owner of        Restaurant located in front of the police station on the opposite side of the road.

Naturally there were minor discrepancies in the statements of the witnesses due to the sudden and very fast flow of the events (at        the first shootings outside – officer N.’s reactions captured by camera 1, one minute seven seconds later, at        the vehicle of unit already heads towards the Health Centre with the injured E.P. inside and at        the first aid vehicle arrives in the station). Furthermore, this was an unusual, unexpected event. Depending on the different characters, different physical and psychological state of

the witnesses, it is very natural that even when they go through the same event they recall details differently. A good example of this is G.H.'s statement concerning the first shot. He consequently gave the answer on pertinent questions that the accused first shot at the sergeant, but he missed, he hit the door. The sergeant ran inside and then the accused shot at E.P.. He himself admitted that he was very traumatized by these events, and anyhow the forensic evidence, the crime scene report indicating the exact locations where the spent cartridges were found and the ballistic report identifying from which weapon they came, supported the statement of the other witnesses. Thus the Court considers this part of the otherwise reliable witness statement as mere mistake in the recollection of the events due to the suffered trauma.

The very detailed and precise **Forensic Crime Scene Report** prepared and confirmed at the main trial session by **witness F.A.**, with the attached evidence list, photo album and measurements list, together with the **Ballistic Expertise** prepared and confirmed at the main trial session by **expert witness Q.T.** made it possible for the Court to establish how many shots were fired, where and from which weapon they were fired, and what was the movement of the injured **DJ.P.**

Altogether cartridges of calibre and cartridge of calibre were found. These were fired from different weapons.

cartridges of calibre were found outside, of them in the yard on the left side and one in front of the entrance gate of the police station yard. These were fired from the pistol " " model calibre with serial number " ". This weapon is the duty weapon of police officer E.P..

cartridges of calibre were found inside the police station building, of them in the hall in front of the entrance door and at the end of the hall. These were fired from pistol " " model calibre with serial number " ". This weapon is the duty weapon of sergeant A.Xh..

The cartridge of calibre was found in the yard of the police station, at the left corner of the building. As the ballistic report describes it more precisely, this is a shell part of the bullet calibre mm and it was fired from the pistol " " model calibre mm with serial number " ". This is the weapon that **DJ.P.** had with him on that night and according to his own statement he always carried it when he was a shepherd, for self protection and to scare away the wolves. This pistol was found on the left hand side of the gate of the police station yard near the Balkan Security Kiosk (UNMIK Security Post) with a damaged bullet in the chamber.

The forensic crime scene report also confirms the movement of the injured accused as the blood traces were photographed and the distances measured. A small pool of blood was found next to the pistol, blood scattered in the asphalt in front of the Kiosk, then blood spraying going in the direction of the entrance door of the police station, blood stains in the entrance door of the police station, in largest concentration at the height of the door lock, blood stains on the door lock, blood stains in the floor near the desk

situated in the hall, on the table near the entrance door, blood stains in the first part of the hall continuing towards the last part of the hall and a pool of blood where the accused was laying after he had fallen. Samples were taken of these blood traces and the first **DNA expertise** confirmed that they matched the DNA profile of **DJ.P.**

The Crime Scene Report also confirms the statement of A.Xh. that the accused had something in his hands and the statement of Sh.N. that when the person hit the door, something fell on the ground. A folding knife with closed blade was found in front of the door of the police station.

#### **4. Evidence concerning the terrorism charge**

In connection with the terrorism charge several witnesses were heard to clarify whether the accused had a membership card of the T.L. Group among his belongings and to inform the Court about the activities of the T.L. Group and the R. B..

As the Public Prosecutor withdrew the terrorism charge before the conclusion of the main trial, the Court disregards evaluation of the statements of **witnesses** A.N., M.P., Sh.M., Ali Arucaj, S.I., A.K., L.D..

#### **5. Evidence concerning the state of mind of the accused, his consumption of alcohol and his deeply religious feelings**

The psychiatric evaluation of **DJ.P.** offers a clear picture of the state of mind of the accused. None of the parties contested the expertise and asked for the examination of the expert in person, and none of them asked for a new expertise. R. J.. included in her final expertise the Psychological Report dated 05/11/2009, performed by N.M., specialist in clinical psychology, at the Pristina University Clinic, Department of Psychiatry.

The expert's findings are summed up below:

- 1) DJ.P. had not suffered and did **not** suffer from any **mental illness** or passing mental infliction or disorder at the time of the commission of the act.
- 2) Due to his impulsive personality and accumulated affective and emotional stress, he was probably **mentally unbalanced**.
- 3) During the examination he displayed insufficient criticism and understanding of his present situation. There are indications of a "borderline" personality which

does not go beyond the borders of mental manifestations, however, can be characterized as a **psychotic personality**.

The expert concluded that at the time of the commission of the act the **mental capacity** of the accused to control himself and understand the consequences of his acts was **limited, but not to a major degree**. His **capacity to reason** and **make decisions** was **limited**.

The expert opinion is unambiguous and free of contradictions. Therefore, the panel fully accepted it and relied upon it in its findings (see also under Point F).

The panel could observe some signs of DJ.P.'s psychotic personality during the main trial, his out of place and out of connection bursts of laughter on one hand, or total apathy towards what was happening around/with him on the other hand.

In his account of the events preceding the criminal acts there are several signs of a psychotic personality:

He saw destruction of a cross on an orthodox church broadcasted daily on the television. He switched off the television, but the picture stuck in his head, non-stop he had to think of it, just could not get rid of it. It caused anxiety, he could not sleep. After a sleepless night he went out to do his duties. While he was digging, he heard a voice telling him to go to Kosovo, find a mosque and put a flag on it. He heard many voices, but this one was very distinctive. He continued digging but whenever he heard this voice, he felt as if his head would explode. Finally he threw away the tools, went to the house, drank 5-6 rakia to calm himself, but the pressure was huge. He went to the bus station and bought a ticket to . He did not remember how he got to . While there, he was feeding the pigeons and all of a sudden there was a bus with “ ” written on it. The voice told him to get on the bus. The voice was constantly present in his head. He found a coffee shop in and drank alcohol to calm down. Then he went to the mosque. The voice told him not to damage or harm anything in the mosque.

His behaviour as described by himself is reflected in the psychiatric expertise: DJ.P.'s **asocial personality** and an **impulsive need to prove himself** motivated his act. He consumed alcohol both as an impulsive need and to pluck up courage to prove himself. He is aware of the negative effects of his urge to drink and the resulting debauchery.

Concerning his drinking habits, he told the Court that during the winter before the event he was consuming quite a lot of alcohol when there was no work. He stopped drinking after four months. He started to drink again because of the intolerable pressure in his head and to calm himself down.

Unfortunately, after the accused had been delivered to the University Clinic in Pristina, no alcohol concentration of the blood was tested. The amount of alcohol he consumed

before carrying out the criminal acts can only be estimated upon his own testimony and upon the witness statements confirming **DJ.P.**'s admission.

**Witness M. D.**, owner of b        bar confirmed the presence of **DJ.P.** in the bar. **Witness S.H.**, waiter, remembered that the person ordered a small bottle of Vranac wine and then another two bottles. **Witness T.T.** also stated that the accused smoked a lot, drank three or four small bottles of wine and one or two more drinks. He seemed to be very lost.

**Witness G.H.** also noticed that the accused was either drunk or under drugs, and his eyes were strange. **Witness Sh.N.** described the accused's behaviour as being very calm, "well prepared", however, his lips were dry. **Witness R.N.** described the person as very pale and tired, he was sweating and somehow scared.

**DJ.P.**'s strong devotion to his orthodox Christian religion is reflected in his statements given to the Court and also in his statements given to the psychiatric expert. Among the belongings of the accused there were religious pictures, small religious booklets and other religious items found. He stated that he always carried these items with him. The Court assessed that the accused is indeed a deeply religious person.

## **6. Rejected Motions**

During the main trial session on 01 September 2009 the panel rejected the proposal to call two witnesses submitted by the Ppublic Prosecutor at the confirmation hearing and confirmed at the session of 27 July 2009

The summoning of DNA expert N.O. was rejected because up to that time none of the parties had had any objections or had asked for clarifications concerning her DNA expertise, and her travelling from Croatia would have been time and cost consuming. (The Public Prosecutor later satisfied herself with asking for written clarifications from the expert, however, in view of the result of the second DNA analysis there was no need to wait for those clarifications.)

The examination of police officer N. H. was rejected as his only role in the case had been to escort the defendant from the hospital to the detention centre. The report he submitted did not contain any other information other than what the defendant had said on the way. That report had been declared as inadmissible evidence by the panel's separate decision dated 10 August 2009. As the Public Prosecutor had not substantiated that this police officer could have other relevant information concerning the case, the request was not granted.

## **E. LEGAL QUALIFICATION**

The criminal acts were committed on . At that time the Provisional Criminal Code of Kosovo (PCKK), that entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 paragraph (1) of the PCKK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator. There was no change in the law that would be more favourable for the accused. Although he was charged according to the Criminal Code of Kosovo that entered into force on 06 January 2009, the relevant Articles are identical in both Codes. Therefore, the Court made reference to the provisions of the PCKK as the applicable law at the time of commission of the criminal offences.

**A)** By putting the flag symbolizing the orthodox Christian religion on the cupola of the mosque, the accused committed the criminal act of Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance, contrary to Article 115 paragraph (1) of the PCKK. In the current sensitive socio-political environment in Kosovo it is undisputable that to put a symbol of the orthodox Christian religion on top of a mosque is very likely to disturb public order and is suitable for publicly inciting and spreading religious and ethnic intolerance. The law does not require the actual disturbance of public order as a consequence of the act.

The Public Prosecutor charged the accused with the qualified form of the criminal act making reference to paragraph (3) due to the broken window of the mosque. However, both the muezzin and the imam of the mosque confirmed the statement of the accused that nothing had been desecrated or damaged inside the mosque and the window had been broken the day before. Therefore, the panel found the accused guilty in committing the criminal offence as per Article 115 Paragraph (1) of the PCKK and made no reference to paragraph (3).

**B)** Concerning the incident at the police station, the accused committed the criminal act of Attempted Aggravated Murder, contrary to Article 147 item 10 of the PCKK in conjunction with Article 20 of the PCKK. The Public Prosecutor charged him with the same criminal act, however making reference to items 5 and 11 as well.

The Court found as proven without reasonable doubt that the intention of the accused was to kill police officer E.P. and rejected the version of the defence that his only intention was to cause grievous bodily harm. Using a weapon and shooting at such close distance to the area of the body where vital organs are, clearly shows that the accused wanted to kill. He was determined to kill. He committed the criminal act with direct intent, a complete awareness of the situation and the consequences of the action. It was only mere luck that the result was grievous bodily harm and not death. It was undisputed that E.P. had been executing his duty to protect legal order, therefore the reference to item 10.

However, **D.J.P.**'s intention could be proven only with regard to his actions against E.P.. He had two bullets in his weapon, he fired one shot at E.P.. Although the second bullet that remained in the chamber was damaged, the ballistic expert gave a clear answer that it

could not have been damaged by an attempt to fire. There is no evidence that the accused intended to use his weapon a second time. He dropped his weapon when he got injured and went to the entrance of the police station with a knife in his hand. However, when he entered the police station by slamming it with his shoulder, he dropped the knife. Still he continued to go in the direction of A.Xh.. There is no proof that after he attempted to kill E.P., he had the intention to kill A.Xh. or any other police officer. He did not shoot the second bullet and he did not even open the folding knife when he had it in his hand (it was found closed in front of the entrance of the station). He had a second knife with him, but he never took it out. He kept moving ahead in the direction of A.Xh. but with nothing in his hands and already injured.

As the accused's intention towards A.Xh. and the other police officers could not be established, the Court made no reference to item 11 of Article 147, which refers to two or more intentionally committed murders.

However, the Court still considers A.Xh. as Injured Party. She is injured party in connection with the criminal act committed against E.P.. When she saw her colleague having been shot, she ran inside, fell and injured herself. She cut the tendons on the upper and lower side of the arm.

The Court also made no reference to item 5 of Article 147. Item 5 refers to the case when someone deprives another person of his life while acting ruthlessly and violently. An act of murder is always violent. In order to consider it as an aggravated form of murder the degree of brutality should exceed the regular degree of violence in the act of taking another person's life. On the objective side, it should inflict severe, long lasting pain and extreme suffering. On the subjective side, the perpetrator should demonstrate extreme insensitivity towards the suffering of the victim. Neither point applies to the present case.

The accused is criminally liable for his actions. The psychiatric expertise gave a clear answer that he cannot be considered as mentally incompetent, not even to have diminished mental capacity as required by Article 12 of the PCCK, as his capacity to control himself and understand the consequences of his acts were limited, but not to a major degree. Article 12 paragraph (2) requires "substantially diminished" ability.

C) Pursuant to Article 389 item 1 of the PCPCK, the Court had to reject the charge of Commission of Terrorism contrary to Article 110 paragraphs (1) and (2) of the PCCK as read with Article 109 paragraph (1) items 2, 7, and 10 of the PCCK, as the Public Prosecutor withdrew that charge before the conclusion of the main trial, during the session on 17 November 2009.

In the verdict and throughout the trial the Court referred to the relevant provisions of the Provisional Criminal Procedure Code of Kosovo due to the special circumstances in North Mitrovica. The applied provisions of the PCPCK are fully identical with the provisions of the Criminal Procedure Code of Kosovo.

## **F. DETERMINATION OF PUNISHMENT**

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

The Court took as an aggravating factor that the accused committed the criminal offence in a malicious way, pretending to be a disabled person and thus gaining the trust and sympathy of the police officers. A further aggravating circumstance is that he caused grievous bodily injury with long term possible consequences as the bullet is still inside the body of the injured party.

However, the mitigating circumstances outweigh the aggravating circumstances. The accused has no previous criminal record, and the fact remains that one of his criminal acts is an attempt, although not as a consequence of his action. A particularly mitigating circumstance is his unbalanced mental state, his psychotic personality, and his limited decision making capacity as described in the psychiatric evaluation. The Court holds that this circumstance is such particularly mitigating circumstance as required in Article 66 item 2 of the PCCK, which allows the panel to impose a lesser punishment than the minimum prescribed by law in Article 67 of the PCCK.

For the criminal act of Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance, pursuant to Article 115 paragraph (1) of the PCCK, the law foresees a punishment of fine or imprisonment of up to 5 years. Considering all the mitigating and aggravating factors, the panel imposed 6 months of imprisonment for this criminal act.

For the criminal act of Attempted Aggravated Murder, pursuant to Article 147 of the PCCK the law foresees a punishment of imprisonment of at least 10 years or of long-term imprisonment. By applying Article 66 item 2 and Article 67 paragraph (1) item 2 of the PCCK, the panel imposed a punishment of 6 years of imprisonment.

The accused committed two criminal acts. Pursuant to the rules of calculation of compounded sentence, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments. The panel imposed an integrated punishment of 6 years and 3 months of imprisonment pursuant to Article 71 paragraphs (1) and (2) item 2) of the PCCK.

The accused has been in detention on remand since . That period is to be credited in the imposed punishment of imprisonment pursuant to Article 73 paragraph (1) of the PCCK.

## **G. COSTS**

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

## **H. COMPENSATION CLAIM**

At the beginning of the main trial, the Injured Parties were reminded that they may file a motion to realize property claim within the criminal proceedings, pursuant to Article 355 paragraph (2) of the PCPCK.

Injured Party E.P. filed a compensation claim dated 12/10/2009 for the amount of 4.150 Euro for material damages and 29.000 Euro for damages to person, 33.150 Euro in total. He submitted some documents concerning a projectile removal surgery receipt of approximately 3.000 Euro and specialist visits' receipts of about 60 Euro. He also attached some medical documentation. Injured Party A.Xh. filed a compensation claim dated 12/10/2009 in the amount of 950 Euro for material damages and 8.000 Euro for immaterial damages, 8.950 Euro in total. She stated in her claim that the Kosovo Police have paid for her medical treatment but she had extra costs. She did not submit any supporting documentation.

It would have required further inquiries and proof to establish whether and to what extent these claims are justified which would have significantly delayed the criminal procedure. Therefore, the Court instructed the injured parties to file a separate law suit in civil litigation pursuant to Article 112 paragraph (2) of the PCPCK.

**District Court of Mitrovica  
P. nr. 134/08**

Prepared in English, an authorized language.

Recording officer

Presiding Judge

Tara Khan

Hajnalka Veronika Karpati

**Legal remedy:**

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