

DISTRICT COURT OF MITROVICA
K nr. 32/2009
22 April 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding Judge, EULEX Judges Klaus Jung and Nikolay Entchev as panel members, with the participation of Tara Khan EULEX Legal Officer as Recording Officer, in the criminal case against;

R.V., charged, according to the Indictment of the District Public Prosecutor PP. Nr. 75/2008 dated 05 June 2009 and filed with the Registry of the District Court of Mitrovica on 15 June 2009, with the following criminal offences;

- **Aggravated Murder**, contrary to Articles 146 and 147 Item 3 of the Provisional Criminal Code of Kosovo ("PCCK") as read with Article 23 of the PCCK;
- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the PCCK;

and

D.V. pursuant to the Motion for Punishment of the District Public Prosecutor Office KTM Nr. 10/08, dated and filed on 16 September 2008 for the criminal offences of

- **Aggravated Murder**, contrary to Article 147 Item 3 of the PCCK as read with Article 23 of the PCCK
- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328 Paragraph (2) of the PCCK

After having held the main trial hearing closed to the public on 23, 24 February, 22, 24, 25 March and 22 April 2010, all in the presence of the Accused **R.V.** and **D.V.**, their Defence Counsel Ljubomir Pantovic and Miodrag Brkljac, EULEX Public Prosecutor Neeta Amin (except for the hearing on 22 April 2010 when she was replaced by EULEX Public Prosecutor Maria Bamieh), Injured Parties S.D. and D.T., after the trial panel's deliberation and voting held on 22 April 2010, pursuant to Article 392 Paragraph (1) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), pronounced in public and in the presence of the Accused, his Defence Counsel Miodrag Brkljac, EULEX Public Prosecutor Maria Bamieh and the Injured Parties S.D. and D.T., the following

VERDICT

I.) The accused **R.V.**, son of U. V. and O. M. , born on , in , Municipality of , Kosovar S. , last known residence at , Municipality of , completed high school, locksmith by profession, with average income of 35000-40000 Serbian Dinars, married with children, no previous conviction, in detention since

Is

FOUND GUILTY

A) - **because** on at around hours, close to the house of T.D., in – municipality of , the accused, in a state of mental distress, provoked by continuous grave insult and threatening SMS text messages sent by the victim in the period of two weeks prior to the incident, and being brought by the victim through no fault of his own into a state of severe shock by the victim’s final SMS message threatening his family and sent to his daughter’s mobile phone, killed T.D. using a weapon , made by “ ” – , Model , calibre with serial number , by firing at the vehicle of the victim who was in the driver’s seat returning home. T.D. died at the scene due to multiple penetrating gunshot injuries to the head and chest.

By doing so, the Accused **R.V.** committed and is criminally liable for the criminal act of

Murder Committed in a State of Mental Distress, contrary to Article 148 of the PCCK.

B) - **because** the accused was in possession of a weapon , made by “ ” – , Model , calibre , with serial number without a valid authorization card and used the same weapon to kill T.D. on .

By doing so, the Accused **R.V.** committed and is criminally liable for the criminal act of

Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK.

II.) The accused **D.V.**, son of R.V. and N. K. , born on , in , Kosovar S. , last known residence at , Municipality of , completed high school, occasional labourer, with average income of less than 200 Euros/month, not married, no previous conviction, in detention from until

Is

FOUND NOT GUILTY

Because it was not proven that on _____ at around _____ he accompanied his father, **R.V.** and that he helped him in any way when **R.V.** killed T.D. close to the victim's house in _____. It was also not proven that he used or hid or helped to hide the murder weapon with serial number _____.

THEREFORE, the accused **D.V.** is

Acquitted

Of committing the criminal offence of **Aggravated Murder** under Article 147 Item 3 as read with Article 23 of the PCCK, pursuant to Article 390 Item 3) of the PCPCK and

Of committing the criminal offence of **Unauthorized Ownership, Control, Possession or Use of Weapons** contrary to Article 328 Paragraph (2) of the PCCK, pursuant to Article 390 Item 3) of the PCPCK.

The **Accused R.V.** is

SENTENCED

- to 6 /six/ years of imprisonment for the criminal act of Murder Committed in a State of Mental Distress /Count A/
- to 2 /two/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons /Count B/

The aggregate punishment is determined in 7 /seven/ years of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCCK.

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

The weapon _____, made by “ _____ ” – _____, Model _____, calibre _____, with serial number _____ is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The accused **R.V.** shall reimburse his part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCPCK 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 PCPCK.

Pursuant to Article 103 Paragraph (1) of the PCPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the PCPCK, the necessary expenses of the defendant **D.V.** and the remuneration and necessary expenditures of his defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

The property claim of the injured parties is partially awarded:

Within 15 days after this verdict becomes final, the Accused **R.V.** is obliged to pay 3.950 (three thousand nine hundred and fifty) Euros for material damages to the Injured Party S.D..

The remainder of the property claim is referred for civil proceedings pursuant to Article 112 Paragraph (2) of the PCPCK.

REASONING

A. Procedural Background

Indictment PP nr. 75/08 dated 05 June 2009 and filed with the District Court of Mitrovica by EULEX Prosecutor Neeta Amin on 15 June 2009, charged the Accused **R.V.** with Aggravated Murder in violation of Articles 146 and 147 Paragraph (3), as read with Article 23 (Co-Perpetration) of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons, in violation to Article 328 Paragraph (2) of the PCCK. EULEX judges took over the case on 14 October 2009. The Indictment was confirmed on 14 December 2009.

District Public Prosecutor Ismet Ujkani filed the Motion for Punishment PPM nr. 10/08 against Accused **D.V.** on _____, charging him with Co-Perpetration of Aggravated Murder in violation of Article 147 Paragraph (3) as read with Article 23, and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the Criminal Code of Kosovo ("CCK").

The two cases against **R.V.** and **D.V.** were joined by order of the Presiding Judge of the Main Trial Panel on 17 February 2010. The Main Trial was held on 23 & 24 February, 22, 24 and 25 March and 22 April 2010. The closing argument of Prosecutor Neeta Amin and the statement of Injured Party S.D. were heard on 25 March 2010. The closing arguments of Defence Counsel Ljubomir Pantovic and Miodrag Brkljac were heard on 22 April 2010. The Verdict was orally rendered the same day.

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.

The Accused were charged with the criminal offence of Aggravated Murder pursuant to Article 147 of the PCCK, which allows for the imposition of a minimum sentence of ten years of imprisonment. The Indictment in this case alleged that the Accused committed the criminal acts in _____ located in _____ Municipality, which lies within the Mitrovica District.

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

On 14 October 2009 the President of the Assembly of EULEX Judges issued a decision for EULEX to take over case P. nr 32/09 against **R.V.** based on Articles 3.3 and 3.5 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors (“Law on Jurisdiction”) and assigned it to EULEX judges in the Mitrovica District Court. On 15 February 2010, the President of the Assembly of EULEX Judges issued a decision to take over case PPM nr. 10/08 against **D.V.** and also assigned it to EULEX judges in the Mitrovica District Court.

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 Judges Klaus Jung and Nikolay Entchev as panel members.

C. Summary of Evidence Presented

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

- (1) S.D. – Injured Party, 23 February 2010
- (2) D.Dj. – 24 February 2010
- (3) V.K. – Police Officer, 24 February 2010
- (4) S.M. – Police Officer, 22 March 2010
- (5) N.V. – 22 March 2010
- (6) D.Dj. – 22 March 2010
- (7) R.M. – 22 March 2010
- (8) I.M. – 22 March 2010
- (9) N.B. – 24 March 2010
- (10) N.M. – Expert Witness, 24 March 2010

On 25 March 2010, the following documents were read into the record:

- (11) Forensics Report dated .
- (12) Psychological Report dated 08 April 2009 together with the Report on Mental Health Status of R.V. dated 06 May 2009.
- (13) Autopsy Report of T.D. dated .
- (14) Forensic ID Report dated .
- (15) Descriptions, photos and sketches of the crime scene.
- (16) Initial Incident Report dated .
- (17) Investigation Report by S.M..
- (18) Officers Report by B.R. dated .
- (19) Case Initiation Report by A.C..

During the main trial session on 25 March 2010, both Accused gave statements and answered questions.

D. Evaluation of Presented Evidence

1. Factual Findings

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

N.V., the wife of Accused **R.V.**, had engaged in an extramarital affair with a married family friend, T.D., for approximately eight years. The relationship ended and on **R.V.** learned about the affair from his wife, N..

After the termination of their relationship, T.D. sent SMS text messages to the mobile phone of N.V. over the course of fifteen days, from to . **R.V.** was in possession of the mobile phone during this time. The text messages repeatedly asked for N. to contact T., and contained threats such as “You will stay mine even if you have to die”¹ and “N. from tomorrow you will be mine or dead.”²

During these fifteen days of receiving messages, **R.V.** asked his cousins R.M. and I.M. to tell T.D. to stop sending threatening text messages and to leave the V. family alone. On or about , they spoke to T., who responded “I love N. and I am not interested in my own wife and children.” T. also asked the cousins to bring N. to him, and stated that he would marry N.. The cousins informed **R.V.** about the conversation. Afterwards, T. continued to send threatening text messages to the V. mobile phone.

¹ Transcript of SMS text message sent from victim’s mobile to V. mobile on at hrs.

² Transcript of SMS text message sent from victim’s mobile to V. mobile on at hrs.

R.V. then instructed his wife, N., to speak with N.B., T.D.'s commander at the Serbian MUP police station in _____ where T. was employed. She informed B. that T. was sending threatening text messages and asked him to intervene. When B. discussed the issue with T., he denied sending messages or having any contact with the V. family. Afterwards, T. continued to send threatening text messages to the V. mobile phone.

Shortly before or on _____, **R.V.** met B. in the street and complained to him that T. was continuing to send text messages.

On _____, T. sent three _____ text messages to the V. mobile phone. The first message was sent at _____ hrs and included the threat "I told C. I would kill both you and me but I would not let you leave me for another man." The second message sent at _____ hrs included the threat "I will first bury you because you have brought me and ruined me totally this is my last warning to you." The third message sent at _____ hrs included the threat "Leave N. alone because she is mine and will stay mine dead or alive."

On _____ between _____ and _____ hrs, T.D. sent three SMS text messages to the mobile phone of D.Dj., daughter of N.V. and Accused R.V.. The first text message stated that if N. did not contact him, T. would "kill her and bury everything that lives". It also stated "N. must be mine dead or alive." The second text message warned that N. should sort things out with T. "so that there would not be graves rather than a marriage feast" and also threatened that T. would first kill N. and then himself.

On _____ at _____ hrs, T.D. sent the following text message to the V. mobile which was in possession of **R.V.**: "And I want her to give me back everything that she has taken or I will kill her because she is not going to fool me like she has you I will not let her walk around because she was mine and will stay mine because I see that you are pimping her for money to everyone." At this time, **R.V.** was at his home with his wife N. V. , his son D.V., D.Dj. and her husband D.Dj.. At approximately _____ hrs, D. and D.Dj. decided to return home. As they were leaving, D.Dj. informed R.V. that she had received threatening messages from T.D. on that day and showed him the text message referring to graves.

D. and D.Dj. departed, leaving **R.**, N., and D.V. at their home. **R.V.** then took an mm calibre automatic rifle from his property and went on foot towards the home of T.D.. When he saw T. approaching his home in his vehicle, **R.V.** fired approximately _____ bullets from his automatic _____ rifle in the direction of T.'s vehicle. The vehicle was hit by _____ bullets, and T.D. was hit by at least _____ bullets plus numerous bullet fragments and other foreign objects. T.D. died in the driver's seat of his vehicle.

R. left the rifle in the bushes and returned home. A few minutes later, the family of T.D. phoned the V. home seeking assistance and **R.** and **D.V.** went to the crime scene. At the scene, R. was arrested by the police and taken to the police station where he confessed to killing T.D. and disclosed the location of the rifle.

With regard to the weapon:

R.V. pled guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCK. He testified that he found the mm calibre automatic rifle with the serial number manually erased (but with serial number on inner parts) on the property of the school where he worked. He took possession of the rifle without obtaining a valid license, and then used it in the killing of T.D..

2. Evidence Establishing the Factual Findings

There were no eyewitnesses to the tragic event which occurred on in . However, through the numerous and corroborating witness statements, the transcripts of SMS text messages, the documentary evidence in the case file, the crime scene report, the forensics and ballistics reports and the autopsy report, the factual situation was sufficiently clarified.

N.V. testified that she had an affair with the victim T.D. for eight years between 2000 and 2008. According to N.V., the relationship had ended by , however she was receiving SMS text messages from T.D. after the termination of the affair.³ Both N.V. and **R.V.** testified that on , **R.** noticed that N. was receiving many text messages which were upsetting her, and that he took the mobile phone from her. At this time, N. informed **R.** about her affair with T.D..⁴

N.V.'s mobile phone was temporarily confiscated by the Kosovo Police and Officer V.K. made a verbatim record of the SMS text messages saved in the mobile which had been received from T.D.'s two mobile phone numbers.⁵ The record shows that on , T.D. sent six text messages to the mobile phone of N.V.. The record also establishes that during the fifteen day period from to , T. continued to send numerous daily SMS text messages to the V. mobile phone, text messages in total, many of which included threats to the life of N.V..

R.V., R.M. and I.M. gave consistent and corroborating testimony that during this time period, on or about , **R.** asked R. and I. to speak to T.D. about the threatening text messages. **R.** asked them to tell T. to stop sending messages and not to contact the V. family any more. R. and I.M. spoke with T. as **R.** requested, but T. responded "I love N., I am not interested in my wife and children." They described T.'s behaviour as "not

³ Minutes of the Main Trial Hearing, 22 March 2010, p. 6-8.

⁴ Testimony of N.V. , Minutes of the Main Trial Hearing, 22 March 2010, p. 7-8; Testimony of R. V. , Minutes of the Main Trial Hearing, 25 March 2010, p. 3 & 8.

⁵ Testimony of V.K., Minutes of the Main Trial Hearing, 24 February 2010, p. 19-22; Testimony of S. M. , Minutes of the Main Trial Hearing, 22 March 2010, p. 4-5; Minutes of messages sent from tel. nr. and to tel. nr. .

normal” and “aggressive”. R. and I. reported back to **R.** the details of the conversation with T., and informed him that it was not possible to speak to T. as a normal man.⁶

As shown by the police record of SMS text messages, T.D. continued sending threatening text messages to the V. mobile phone after his conversation with R. and I.M..

R.V. then decided to send his wife N. to N.B., the police commander who was T.D.’s superior. N.V. went to B.’s office and informed him about the threatening text messages being received from T.. At this time, the mobile was still with **R.V.**, and therefore N. could not show B. the messages, however he told N. he would speak with T.. N. informed **R.** that B. would speak with T.. However, when B. discussed the issue with T., he denied sending any text messages.⁷

As shown by the police record of SMS text messages, T.D. still continued sending threatening text messages to the V. mobile phone after his conversation with N.B..

R.V. saw N.B. in the street on or about _____ and informed him that T.D. was continuing to send threatening text messages. It was a short conversation as B. was in a rush, but he promised to speak to T. again.⁸

On _____, T.D. sent three text messages to the V. mobile phone threatening the life of N.V., which are detailed above and recorded in the police record of SMS text messages.

On _____, T.D. sent three text messages to the mobile phone of D.Dj., threatening the life of N.V. as detailed above and recorded in the police record of SMS text messages. D.Dj. was at home in _____ when she received the messages.⁹

As shown by the police record of SMS text messages, on _____ at _____ hrs T.D. sent an SMS text message to the V. mobile phone threatening the life of N.V. and accusing R. of pimping N. to others for money (detailed above). **R.** was in possession of the mobile at this time and read this message.¹⁰

D.Dj. and **R.V.** provided detailed, consistent and corroborating evidence regarding their interaction on the evening of _____. The general factual circumstances of this evening were further corroborated by the testimonies of D.Dj., N.V., and D.V.. On _____, D. and D.Dj. went to the home of **R.** and N.V. and stayed there for three to four hours. N., **R.** and D.V. were present in the house. At approximately _____ hrs, D. and D. decided

⁶ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 3 & 9; Testimony of R.M., Minutes of the Main Trial Hearing, 22 March 2010, p. 36-40; Testimony of I. M., Minutes of the Main Trial Hearing, 22 March 2010, p. 42-44.

⁷ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 3; Testimony of N. V., Minutes of the Main Trial Hearing, 22 March 2010, p. 9, 16; Testimony of N. B., Minutes of the Main Trial Hearing, 24 March 2010, p. 3-4.

⁸ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 3; Testimony of N. B., Minutes of the Main Trial Hearing, 24 March 2010, p. 3-4.

⁹ Testimony of D. Dj., Minutes of the Main Trial Hearing, 22 March 2010, p. 27.

¹⁰ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 3.

to return to their own home. **R.V.** walked them to the door, and right before leaving D. informed R. about the text messages she had received from T. earlier in the day. She showed R. the text message received at hrs which read “tell N. not to flee but to sit down with me to sort things out in a nice way, so that there would not be graves rather than a marriage feast” and “I am capable of anything I will kill first her and then myself.” D. and D.Dj. then left the V. home.

According to the testimony of **R.V.**, which was generally consistent with his statement to police given on and his statement to prosecutor Ismet Ujkani given on 13 October 2008, upon seeing the text message sent to D.Dj., he “lost his mind completely”. After D. and D.Dj. left, D.V. was watching TV and N. V. went into the bathroom. In a state of mental distress, **R.V.** exited his house and took an automatic rifle from his shed. He walked over to the neighboring home of T.D. and waited in the bushes. When he saw T. approaching his house in his vehicle, **R.V.** began firing at him with the automatic rifle. He fired until the magazine was empty.

Police, forensics and autopsy reports establish that shots were fired from the rifle, of which impacted the vehicle of T.D.. bullets along with several additional bullet fragments and/or other foreign objects penetrated the body of T.D., who died in the driver’s seat of his vehicle as a result of his wounds.¹¹

R.V. left the rifle in some bushes and returned home after the shooting. Some minutes later, a member of the D. family phoned the V. house asking for assistance. **R.** returned to the crime scene and was arrested and taken to the police station where he confessed to killing T.D. and told the police the location of the rifle.¹²

3. Credibility of Witnesses

The Court found that the testimonies of two Accused and of the witnesses were generally consistent and clear, and corroborated one another. They were therefore deemed credible.

The Court notes that there were some inconsistencies between the statement of Accused **R.V.** to the police on , his statement to the public prosecutor on 13 October 2008, and his testimony before the Court. However, these inconsistencies were mainly comprised of the Accused’s inability to recall certain details of the night of during his testimony. Some of those details had been provided by him in his prior statements. Therefore, the prior statements and the testimony of the Accused did not directly contradict one another, but rather the Accused recalled more details immediately following the event, as would be logically expected. The Court also notes that **R.V.** stated

¹¹ Forensic Identification Report by V. K. file nr. 2006-BG-014, ; Report on Criminality Examination - Fire Weapon and Found Parts, Central Crime Laboratory of the Kosovo Police Service, by Ballistics Examiner H. H. ; Autopsy Report, Office on Missing Persons and Forensics, rep. nr. MA 08-138, .

¹² Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 4; Statement of R.V. to Police, ; Investigation Report by S.M. , nr. 2000-BG-064.

to the Prosecutor that he personally went to speak to N.B. about the threatening SMS text messages from T.D.. However, it was confirmed during the main trial hearings that it was N.V. who went to the office of B. and not **R.**¹³ This discrepancy could be a transcribing error in the recording of the statement, or a misstatement by **R.** due to confusion stemming from his distressed mental state.

4. D.V.

With regard to Accused **D.V.**, who was charged by the Prosecution with Co-Perpetration of Aggravated Murder and Unauthorized Ownership, Control, Possession or Use of Weapons, it was not established beyond a reasonable doubt during the Main Trial that **D.V.** participated in any way in the killing of T.D.. The testimonies of N.V. and **R.V.** corroborate **D.V.**'s testimony before the Court that he was home watching a soccer match on television at the time when **R.V.** shot and killed T.D.. Furthermore, there was no evidence submitted that **D.V.** assisted **R.V.** in any way before or after the commission of the murder.

The Court notes that forensic laboratory tests concluded that gun primer residue was found on both the right and left hands of **D.V.**¹⁴ However, based solely on this test result, the Court can not concretely determine whether the primer residue originated from the automatic rifle at the moment of the shooting of T.D. or from contact with **R. V.** and items which he handled. Therefore, it can not be established that **D.V.** participated in the actual shooting of T.D..

For these reasons, the Trial Panel acquitted **D.V.** of all charges.

E. Rejected Motions

During the Main Trial hearings, there were two motions orally submitted by Injured Party S.D. regarding proposals for witnesses to be heard. Both motions were rejected by the Trial Panel because the Injured Party could not establish the relevance of the proposed witnesses' testimony to the case at hand.

On 23 February 2010, Injured Party S.D. proposed that I.M. (sister of T.D.) and Z.A. (daughter of S. and T.D.) be summoned as witnesses.¹⁵ She submitted that these two witnesses would testify about how N.V. had threatened T.D.. During the Main Trial hearing on 24 February 2010, the Trial Panel announced its decision to reject the proposed witnesses because "the Injured Party did not substantiate that the two witnesses

¹³ Testimony of N. V. , Minutes of the Main Trial Hearing, 22 March 2010, p. 9; Testimony of N. B. , Minutes of the Main Trial Hearing, 24 March 2010, p. 3.

¹⁴ Examination Report by Senior Expert V. N. , Forensic Science Center Ivan Vucetic (Zagreb, Croatia), 23 October 2008.

¹⁵ Minutes of the Main Trial Hearing, 23 February 2010, p. 11-13.

proposed could have relevant information concerning the case”.¹⁶ The Trial Panel explained that there was no corroborating evidence in the record of SMS text messages that N.V. had threatened T.D., and that the details of the relationship and interaction between N.V. and T. D. were not the subject of the trial.

On 22 March 2010, Injured Party S.D. proposed that M.S. be summoned as a witness to testify that T.D. had complained to him three days prior to the murder that the V. family would not leave him alone and were threatening him. The Trial Panel issued its decision on the same day, rejecting the proposal because it was not established that the witness had information relevant to the case. Transcripts of the messages sent to N.V. and D.Dj. prove that T.D.’s threats continued until the last day. Even if there was any kind of threat from N.V., it would not change the relevant factual situation.¹⁷

F. Legal Qualification

1. Applicable Law

The criminal acts were committed on . At that time, the Provisional Criminal Code of Kosovo (PCCK) which entered into force on 06 April 2004 was the applicable law. Pursuant to Article 2, Paragraph (1) of the PCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator. Furthermore, there was no change in the law that would be more favourable to the perpetrator, pursuant to Article 2, Paragraph (2) of the PCCK.

Due to the special circumstances in North Mitrovica and the northern municipalities of the Mitrovica district, with regard to the criminal procedural code, the Trial Panel refers to the Provision Criminal Procedure Code of Kosovo (PCPCK) which entered into force on 06 April 2004. The Court notes that the applied paragraphs of the PCPCK are fully identical with the Kosovo Code of Criminal Procedure which entered into force on 06 January 2009.

2. Murder Committed in a State of Mental Distress

It has been concretely established that the Accused **R.V.** is guilty of committing the act of killing T.D., as he has admitted this to the police and before the Court and corroborating witness statements back his confession. However, upon the totality of the evidence presented during the Main Trial, the Court finds that the elements of the criminal offence of Aggravated Murder pursuant to Article 147 Paragraph (3) of the PCCK, charged in the Indictment, were not proven.

¹⁶ Minutes of the Main Trial Hearing, 24 February 2010, p. 2.

¹⁷ Minutes of the Main Trial Hearing, 22 March 2010, p. 46-48.

Rather, the circumstances surrounding the killing of T.D. provide a textbook example of the classification of Murder Committed in a State of Mental Distress pursuant to Article 148 of the PCKK. This criminal offence consists of the following elements:

- The perpetrator is brought into a state of severe shock.
- The shock is caused by an attack, maltreatment or grave insult by the murdered person.
- The perpetrator is brought into this state through no fault of his own.
- The perpetrator kills the victim while in this state.

All of these elements have been established by the evidence.

Over the period of _____, R.V. was brought into a state of severe shock caused by the maltreatment and grave insult of T.D..

The progression of **R.V.** into this state began on _____ with the shock of learning of his wife's eight-year affair with T.D., a neighbor and close friend whom **R.** had helped over the years because the D. family was displaced from _____. **R.** testified that his reaction to this news was very bad and that he could not calm down.¹⁸ He felt "humiliated as a man, totally humiliated, even ashamed of any small child that I saw on the street."¹⁹ He could not stop asking himself how his wife could have done this, and how and where they were able to meet each other over the course of eight years without his knowledge.²⁰ However, despite his shock and humiliation, **R.** decided to forgive his wife for the affair.

Expert Psychologist N.M. testified that based on her professional experience, adultery is an offence normally not pardoned in the southern Balkans, and in **R.'s** specific environment, such incidents are universally condemned. In this social environment, **R.** suffered a severe stress upon learning about his wife's affair and was ashamed before his own family and his neighbourhood. Further, **R.** continued to be under stress even after he pardoned his wife's infidelity, and had to use more energy than normal in order to function in his daily life.²¹

The stress further accumulated after the pardoning of the affair, caused by the persistent and aggressive behaviour of T.D.. For fifteen days, **R.V.** continued to be humiliated, stressed and harassed by constant SMS text messages from T.D. in which he made it clear that he considered that N.V. belonged to him and did not accept the termination of their relationship. In addition, T.'s messages contained daily threats to the life of N.V.. **R.V.** testified that each time he received another text message from T., he felt as if his mind was being "ground by a millstone". This feeling was always present during those fifteen days, but intensified at some moments.²²

The stress was even further compounded by the fact that all peaceful efforts made by **R.V.** to alleviate the situation failed to have any positive effect. He first told T.D. over

¹⁸ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 6.

¹⁹ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 9.

²⁰ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 9-10.

²¹ Testimony of N.M., Minutes of the Main Trial Hearing, 24 March 2010, p. 6-7

²² Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 5

the phone on _____ that their friendship was over and they would never again enter each other's house.²³ However T. then began sending threatening text messages to the mobile phone of N.V.. **R.** next sent his cousins, R. and I., to confront T. about the messages and tell him to stop harassing the V. family. This had no effect on T., who continued to send constant threatening text messages. **R.** then sent his wife, N., to T.'s work superior to ask him to exert influence on T. in order to stop him from sending more text messages. This also had no effect on T., and the messages continued.

According to Psychologist N.M., the constant text messages sent by T.D. exposed **R.** to "repeated provocations" and resulted in the daily accumulation of stress.²⁴ His stability was being further and further diminished by these subsequent events.²⁵

Finally, on _____, after the initial shock of the affair and fifteen days of accumulating stress, **R.V.**'s mental distress culminated in a state of severe shock. At _____ hrs he received another text message from T.D. which accused **R.** of "pimping" N. to other men for money. At that moment, this message disturbed **R.** "more than other previous messages" and he felt especially insulted.²⁶ At approximately _____ hrs, his daughter D. informed him that T. had sent her text messages on that day as well, and showed him the text she received which warned about graves rather than a wedding. **R.** testified that upon seeing this message, he "lost his mind completely", didn't know what to do and his mind went completely blank.²⁷

According to the Psychological Report,

The psychological-social-emotional pressure and the accumulated stress to which [R.V.] was subjected brought about an intra-psychological personality conflict which entailed a massive consumption of psychological energy and resulted in a personality disorder in the functional stability integration and the reduction of his adaptive capabilities.

From a psychiatric point of view, persons confronted with such an experience are "under intensive affective pressure which affects their conscience and reason in a narrow sense of the word" at the critical moment in time.

Expert psychologist N.M. affirmed in her testimony that at the critical time, **R.V.** was suffering from this condition, known as "Affective Tunnel". In the hours prior to the murder, **R.** was "severely irritable" as a result of the accumulated stress of the text messages he received, which were emotionally destabilizing him.²⁸

²³ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 9.

²⁴ Testimony of N.M., Minutes of the Main Trial Hearing, 24 March 2010, p. 6.

²⁵ Testimony of N.M., Minutes of the Main Trial Hearing, 24 March 2010, p. 10.

²⁶ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 3.

²⁷ Testimony of R.V., Minutes of the Main Trial Hearing, 25 March 2010, p. 4.

²⁸ Testimony of N.M., Minutes of the Main Trial Hearing, 24 March 2010, p. 6.

R.V. was brought into this state of severe shock through no fault of his own.

It is clear that **R.V.** was brought into this state of severe shock directly by the actions of T.D. – specifically his refusal to accept the termination of his relationship with N.V. and his constant insulting and threatening text messages despite the attempted interventions of third parties.

It was in this state of severe shock that R.V. killed T.D..

The Psychological Report concluded that at the moment of committing the criminal act, **R.V.** was “under the influence of affective tension and stability disorder of integrative mental functions that reduced his mental ability to control and understand his actions”. This is supported by the testimony of **R.V.** regarding his accumulated stress and emotional state on the night of _____ when he “lost his mind” and killed T.D..

3. Criminal Liability of R.V.

It is clear from the Psychological Report and the testimony of Expert Psychologist N.M. that **R.V.** was in a state of diminished accountability at the time of the murder. He was emotionally exhausted and his control over his actions was reduced.²⁹

However, he can not be considered as mentally incompetent nor 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 essentially. Article 12 paragraph 2 requires “substantially diminished” ability.

G. Sentencing

When imposing the criminal sanction, the Court must bear in mind both the general purpose of punishment – 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 the present case, the Trial Panel came to the conclusion that only by applying the imposed sentence of imprisonment would the above-mentioned double purpose be reached.

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the PCCK. The panel took as mitigating circumstances the family status of the accused, his health condition, that he has no previous criminal record, and that he pleaded guilty to the charge of unlawful possession and use of weapon and admitted the fact that he had killed T.D.. The panel also took into consideration that **R.V.** did make real efforts to solve the problem between him and his former close friend peacefully, and that he tried to stay calm and come to

²⁹ Testimony of N.M., Minutes of the Main Trial Hearing, 24 March 2010, p. 6.

terms with what was for him a very shameful event. The Trial Panel took as aggravating circumstance the victim's family status, that he was the father of six children.

For the criminal offence of Murder Committed in a State of Mental Distress, the law foresees a punishment of imprisonment of one to ten years. Considering all the mitigating and aggravating circumstances, the Trial Panel imposed a punishment of six years of imprisonment for this criminal act.

For the criminal offence of Unauthorized Ownership, Control Possession or Use of Weapon, the law foresees a fine or imprisonment of one to eight years. The Trial Panel imposed a punishment of two years of imprisonment for this criminal act.

As the Accused has committed two criminal acts, pursuant to the rules of calculation of a compounded sentence, the aggregate punishment must be higher than each individual punishment but not as high as the sum of the prescribed punishments. Therefore, the Court imposed an aggregate punishment of seven years of imprisonment.

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.

H. Confiscated Items

The weapon used in the criminal offences, an automatic rifle, made by " " – , Model , calibre , with serial number manually erased (but with serial number 13637 on inner parts), is confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

I. Costs

As **R.V.** was found guilty, he must reimburse his part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs will be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCPCK.

Due to the acquittal of D.V. of all charges, pursuant to Article 103 Paragraph (1) of the PCPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the PCPCK, his necessary expenses, and the remuneration and necessary expenditures of his defence counsel, as well as the costs of interpretation and translation will be paid from budgetary resources.

J. Compensation Claim

On 10 March 2010, Injured Party S.D. submitted a compensation claim on behalf of herself, her children, and the victim's siblings. She submitted documents supporting her claim on 20 April 2010.

The property claim of the injured parties is partially awarded. Within fifteen days after this verdict becomes final, the Accused **R.V.** is obliged to pay 3.950 (three thousand nine hundred and fifty) Euros for material damages to S.D.. This represents the material damage in connection with the costs of funeral expenses and connected ordinances in compliance with religious and local customs and erection of a tombstone, which were supported by documents and invoices.

It would have required further inquires and proof to establish whether and to what extent the claim for the original purchase price of the vehicle and the claims for fear and suffering are justified, which would have delayed the criminal procedure significantly.

Therefore, the panel instructed the Injured Party to file a separate law suit in civil litigation for the remainder of the property claim, pursuant to Article 112 Paragraph (2) of the PCPCK.

District Court of Mitrovica K. nr. 32/09

Prepared in English, an authorized language.

Recording Officer

Presiding Judge

Tara Khan

Hajnalka Veronika Karpati

Panel Member

Panel Member

Klaus Jung

Nikolay Entchev

Legal remedy:

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the

date the copy of the judgment has been received, pursuant to Article 398 Paragraph (1) of the PCPCK.