

DISTRICT COURT OF MITROVICA
P. nr. 25/10
1 September 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judges Agnieszka Klonowiecka-Milart as Presiding Judge, and Charles Smith, III, and Christine Lindemann-Proetel as panel members, with the participation of EULEX Legal Officer Noora Aarnio as Recording Officer, in the criminal case against;

G.B., no nickname, son of A. B. and Q. B., born on _____ in _____, Kosovo, of A. ethnicity, resident of _____, municipality of _____, single, absolvent in the faculty of management and technology, manager of a private company, of average economic status, no known previous conviction, _____,

charged, according to the Indictment of the Prosecutor PP. nr. 115/08 dated 23 March 2009 and confirmed by the Ruling on Confirmation dated 20 May 2010, with the following criminal offences;

- **Attempted Murder**, under Article 146 in conjunction with Article 20 of the Criminal Code of Kosovo (CCK),
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, under Article 328, paragraph 2 of the CCK,

T.T., no nickname, son of N. T. and S. B., born on _____ in _____, Kosovo, of A. ethnicity, resident of _____, municipality of _____, single, highest education secondary economic school, bus conductor, of average economic status, no known previous conviction,

charged, according to the Indictment of the Prosecutor PP. nr. 115/08 dated on 23 March 2009 and, as confirmed by the Ruling on Confirmation dated 20 May 2010, the criminal offence of **Light Bodily Injury** in co-perpetration with the juvenile F.T., under Article 153, paragraph 1, item 1 of the CCK

F.T., no nickname, son of N. T. and S. B. born on _____ in _____, Kosovo, of A. ethnicity, resident of _____, municipality of _____, single, pupil of secondary economic school, unemployed, of poor economic status, no known previous conviction,

charged, according to the motion for punishment PPM. nr. 02/09 dated 23 March 2009, with the criminal offences of **Light Bodily Injury** in co-perpetration with T.T., under Article 153, paragraph 1, item 1 of the CCK.

After having held the main trial partly closed to the public on 1 September 2010, in the presence of the accused **G.B.**, **T.T.** and **F.T.** [also acting as an injured party], their Defence Counsel Bashkim Mehana, Nexhat Beqiri and Rexhep Kacaniku, Injured Party A.B. and EULEX Public Prosecutor Neeta Amin, after the deliberation and voting held on 1 September 2010, pronounced - on the same day - in the presence of all the Accused G.B., his Defence Counsels Bashkim Mehana, the Injured Party A.B. and the EULEX Public Prosecutor, the following

JUDGEMENT

I. The accused **G.B.** is

FOUND GUILTY

because on _____ in _____, without valid permission issued by a competent authority kept a pistol type “ _____ ” calibre _____ mm with serial no _____ and _____ bullets of same calibre.

By doing so, the accused **G.B.** committed and is criminally liable for the criminal act of **Unauthorized Ownership, Control, Possession and Use of Weapons**, under Article 328, Paragraph (2) of the Criminal Code of Kosovo (CCK).

II. Therefore the Accused **G.B.** is **sentenced to two years of imprisonment.** The period of _____ shall be credited against this punishment.

III. Based upon Article 43 of the CCK the execution of this sentence is **suspended for the verification period of two years.**

IV. The weapon, _____ mm calibre pistol with serial number _____ is confiscated from **G.B.** pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

V. The Accused **G.B.** is obliged to reimburse the costs of criminal proceedings 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.

VI. The **charge of the Attempted Murder**, against the accused **G.B. is rejected** following the withdrawal of the charge by the Public Prosecutor.

VII. The **charge of Light Bodily Injury against** the accused **T.T. is rejected** following the withdrawal of the charge by the Public Prosecutor.

VIII. The **motion for punishment for Light Bodily Injury**, against the accused **F.T., is rejected** following the withdrawal of the charge by the Public Prosecutor.

IX. The costs of the proceedings against **T.T.** and **F.T.** shall be borne out by the State.

Reasoning

On 15 February 2010, the President of the Assembly of EULEX Judges exercised her right to assign EULEX judges to cases falling under the subsidiary competence of EULEX judges pursuant to Article 3.3 of the “Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo” and assigned the case number P 25/10 (**G.B.** and **T.T.**) to the EULEX Judges in the District Court of Mitrovica.

On 2 August 2010, the President of the Assembly of EULEX Judges exercised her right to assign EULEX judges to cases falling under the subsidiary competence of EULEX judges pursuant to Article 3.3 of the “Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo” and assigned the case number PM 1/09 (F.T.) to the EULEX Judges in the District Court of Mitrovica.

The accused **G.B.** pleaded guilty to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph 2 of the Criminal Code of Kosovo.

The court is satisfied that the material gathered in the case file sufficiently supports the charge and the plea entered by the accused.

In the statement that the defendant **G.B.** gave at the police station on he explained that the pistol “ ’, mm calibre with serial number had been the property of his grandfather and had been inherited by him after the grandfather’s death in 1991. For most of the time, however, the weapon had remained buried underground.

The document on confiscation of items no. 2009-BI -248, dated 7 November 2008 confirms the fact that a pistol type “ ”, mm calibre with serial number and four bullets of the same calibre were confiscated from the defendant.

The punishment applicable for unauthorised possession of weapons under Article 328 paragraph 2 of the CCK spans from a fine up to 7500 Euros to imprisonment from one to eight years. Such untraditionally wide range of available sanction leaves the court with a great deal of discretion in deciding individual cases. The Panel in this case decided that two years of imprisonment, suspended for the probation period of two years, would best serve the purposes of punishment under Article 34 of the CCK.

The Panel in this case considered as a matter of general prevention that frequency of crimes committed with the use of weapons in Kosovo, often resulting in death or serious injury, call for sanctioning illegal possession of weapons with imprisonment of more than minimal duration. The Panel is committed to sending a signal that easy availability of fire weapons and the resort to the use of them as means of resolving conflicts will not be tolerated with impunity.

The Panel took as an aggravating factor the long term of possessing the weapon without the valid authorization, during which the accused had maintained the illegal possession of the weapon and had not attempted to legalise it. Likewise, the Court held against the accused that he actually had carried the weapon on him, in public spaces, keeping it ready for use. If the attitude demonstrated by this conduct were to remain unqualified and unchanged, the two year imprisonment would be proportionate to the dangerousness of the crime.

The Panel took as a mitigating factor that the weapon had been a family heirloom and was kept, to some extent, out of sentiment. There is no indication of any actual use of the weapon prior to the event encompassed by the charges. That the weapon was actually put into use on resulted from an unprovoked violent incident, where the brother of **G.B.** had been attacked by the T. brothers and **G.B.** intervened. As a result there were victims on both sides.

The Court found that there were circumstances denoting positive prognosis regarding the accused.

The consequences of the event where a young man got injured and the ensuing criminal proceedings should have a deterrent effect on the accused as well as other participants in the event.

Moreover, the conflict that had given rise to the violent incident had come to an end by the time of the trial. The parties on both sides repeatedly assured the Court of the peaceful settlement that had taken place between them and those who had been injured declared that they did not want to pursue prosecution and did not intend to file civil claims. The Court therefore considered that the restorative purpose of punishment was satisfied.

The accused has no prior criminal record. It transpires from the file that he has strong family ties, is committed to developing business and educating himself.

Therefore it was the Court's opinion that putting the defendant on probation would be sufficient to correct the behaviour of the accused and prevent re-offending.

According to the Article 44 of the CCK a suspended sentence may be imposed on a perpetrator of a criminal offence punishable by imprisonment of up to ten years if the provisions of the mitigation of the punishment are applied.

According to the Article 66 item 2 of the CCK the Court may apply mitigations when the Court finds that there are particularly mitigating circumstances which indicate that the purpose of punishment can be achieved by imposing a lesser punishment.

In addition to mitigating factors discussed *supra*, the Court considered that the accused from the beginning of the investigation has shown remorse. He admitted his guilt from the outset of the proceedings, voluntarily surrendered the weapon to the police officers, and was co-operative with law enforcement in giving evidence regarding the weapon as well as other facts relevant for the charges. The Court noted that according to the Law on Supplementation and Amendment of the Provisional Criminal Code of Kosovo, the mitigation of punishment has been foreseen as one of the consequences of the plea agreement. While in this case, technically speaking, there is no "plea agreement", the Court considered nevertheless that the accused had offered his guilty plea instantly and consistently. The mitigation of punishment in this case would thus be consistent with the current criminal policy of Kosovo, as reflected in the abovementioned Law.

The additional punishment of confiscation of the weapon is mandatory under the law pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

All the remaining charges were withdrawn by the Prosecutor which results in this Court ruling on the rejection of charges based on Article 398 CPCK.

District Court of Mitrovica
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Done in English, an authorized language

Agnieszka Klonowiecka-Milart

Presiding Judge

Charles Smith III

Panel Member

Noora Aarnio

Recording Officer

Christine Lindemann-Proetel

Panel Member

Legal remedy: The parties 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 CPCK.