

DISTRICT COURT OF MITROVICĚ/MITROVICA

P. nr. 22/2010

8 November 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICĚ/MITROVICA, in the trial panel composed of EULEX Judge Caroline Charpentier, as presiding judge, EULEX Judge Nikolay Entchev and Criminal Judge Ali Kutllovci, as panel members, with the participation of EULEX Legal Officer Anu Juho, as recording officer, in the criminal case against:

S.G., father's name R., mother's name and maiden name M. D., born on in the of in , residing in the same permanent residence, industrial machines operator at , married with children, secondary technical school, monthly incomes 400 Euros per month,

A.G., father's name H., mother's name and maiden name R. O., born on in the of in , residing in the same permanent residence, secondary technical school, car mechanic, married with children, monthly income 300 Euros per month;

A.G., father's name A., mother's name and maiden name Z. M., born in the of in , residing in the same permanent residence, secondary technical school, electrician, unemployed, married with children;

charged with two criminal offences, Aggravated Murder from Article 147 Paragraph (1), Item 4), and one criminal offence Aggravated Murder in Attempt from Article 147, Item 4) as read with Article 20 of the CCK and all these punishable pursuant to item 11 of Article 147 as read with Article 23 of CCK

and with Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328, Paragraph (2) of the Criminal Code of Kosovo (CCK) in real joinder with the criminal offences described above.

B.I., father's name I., mother's name and maiden name F. Z., born on in , residing in Str. " " in , primary school, continues professional mechanical school, not finished, unemployed, married with children, no income;

charged with Attempted Murder in violation of Article 146 in conjunction with Article 20 of the CCK;

Xh.I., father's name I., mother's name and maiden name F. Z., born on , in , residing in Str. " in, Kosovo A., secondary school, single, no income;

charged with Threat in violation of Article 161 Paragraph 4 in conjunction with Paragraph 2 of the CCK;

After the issuance of the decision on change of the venue by EULEX Head of Justice on 11 October 2011;

After having held the main trial hearings open to the public in the court room at Dubrava Detention Center on 17, 18, 19 October and 01, 02, 03 November 2011 and the crime scene visit not open to the public on 20 October 2011, in the presence of the Accused **S.G.**, **A.G.**, **A.G.**, **B. I.** and **Xh I.** (except 20 October 2011), their Defence Counsels Bajram Kaitazi, B. Mehana, Haxhi Millaku, Agim Lushta, Nexhat Beqiri (except on 20 October 2011), EULEX Public Prosecutor Adebayo Kareem, the Injured Parties F. I. (except on 20 October 2011), J. S., who was present only on 17 October 2011 and R.G., who was present on 18 October 2011 and 02 November 2011;

After the trial panel's deliberation and voting held on 04 November 2011, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (the CPCK), pronounced on 08 November 2011, in public and in the presence of the Accused persons, their Defence Counsels, EULEX Public Prosecutor Adebayo Kareem and Injured Party F. I., the following:

JUDGMENT

I Xh.I., father's name I., mother's name and maiden name F. Z., born on , in , residing in Str. " in , Kosovo A., secondary school, single, no income;

Is

FOUND NOT GUILTY

- **because** there is no evidence that **Xh.I.** has threatened R.G. or M.G. on .

Therefore, pursuant to Article 390 Item 3) of the Criminal Procedure Code of Kosovo (CPCK) the accused Xh.I. is acquitted of the charges of **Threat**, contrary to Article 161 Paragraph 4 as read with Paragraph 2 of the CCK (Count 3).

Pursuant to art. 102 of the Criminal Procedural Code of Kosovo (CPCK), the accused is relieved from the duty to reimburse the costs.

II S.G., father's name R., mother's name and maiden name M. D., born on _____ of _____ in _____, residing in the same permanent residence, industrial machines operator at _____, married with _____ children, secondary technical school, monthly incomes 400 Euros per month;

Is

FOUND GUILTY

A. - because on _____ at around _____ in the _____ of the streets _____ and in _____, with the pistol type _____, _____ in colour with serial number _____, **S.G.** shot at I. I. and at M. I., hitting them with bullets and thereby causing their death.

By doing so the accused **S.G.** committed and is criminally liable for the criminal act of

Aggravated Murder, contrary to Article 147 § 11 of the CCK (Count 1).

The Accused **S.G.**

Is

FOUND NOT GUILTY

B. - because it was not proven that on _____ at around _____ in the _____ of the streets _____ and _____ in _____, **S.G.** tried to kill B.I. by shooting at him with pistol type _____, _____ in colour with serial number _____, as a coperpetrator with A.G. and A.G..

Therefore, pursuant to Article 390 Item 3) of the CCK the accused **S.G.** is acquitted of the charge of **Attempted Aggravated Murder**, contrary to Article 147 Item 4 in conjunction with Article 20 of the CCK.

The Accused **S.G.**

Is

FOUND GUILTY

C. –because on **S.G.** had a weapon, pistol type , in colour with serial number containing bullets, without authorization with him in the of the streets and in .

By doing so, the Accused **S.G.** committed and is criminal liable for the criminal offence of

Unauthorized Ownership, Control, Possession or Use of weapons, contrary to Article 328 Paragraph 2 of the CCK.

THEREFORE, the Accused **S.G.** is

SENTENCED

A. To fourteen (14) years of imprisonment for the criminal act of **Aggravated Murder**, under Article 147 item 11 of the CCK (Count I);

B. To one (1) year of imprisonment for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 Paragraph (2) of the CCK (Count II).

The aggregate punishment is determined as fourteen (14) years and six (6) months of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) item 2 of the CCK.

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

The weapon – pistol type , in colour with serial number containing bullets is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

The Accused **S.G.** shall reimburse 300 Euros as of his part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation.

III A.G., father's name H., mother's name and maiden name R. O., born on the of in , residing in the same permanent residence, secondary technical school, car mechanic, married with children, monthly income 300 Euros per month;

Is

FOUND NOT GUILTY

A. - because it was not proven that on the at around in the of the streets and in , **A.G.** with his weapon, pistol type , in colour, serial number , shot at I. I. and M. I. and by doing so caused their death, as a coperpetrator with **S.G.** and **A.G.**.

Therefore, pursuant to Article 390 Item 3) of the CPCK the accused A.G. is **acquitted** of the charges of Aggravated Murder, contrary to 147 Paragraph 1 item 4.

The Accused **A.G.**

Is

FOUND NOT GUILTY

B. - because it was not proven that on at around in the of the streets and in , A.G. tried to kill B.I. by shooting at him with pistol type , in colour with serial number , as a coperpetrator with **S.G.** and **A.G.**.

Therefore, pursuant to Article 390 Item 3) of the CPCK the accused **A.G.** is acquitted of the charge of **Attempted Aggravated Murder**, contrary to Article 147 Paragraph 4 read in conjunction with Article 20 of the CCK.

The Accused **A.G.**

Is

FOUND GUILTY

C. - because on **A.G.** had a weapon, pistol type in colour, serial number , containing bullets, without authorization with him in the of the streets and in .

By doing so, the Accused **A.G.** committed and is criminal liable for the criminal offence of

Unauthorized ownership, Control, Possession or Use of Weapon contrary to Article 328 Paragraph (2) of the CCK.

THEREFORE, the Accused **A.G.** is

SENTENCED

A. To one (1) year of imprisonment for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 Paragraph (2) of the CCK (Count II).

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

The weapon - pistol type , in colour, serial number , containing bullets, is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

The Accused **A.G.** shall reimburse 100 Euros as of his part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation.

IV A.G., father's name A., mother's name and maiden name Z.M., born in the of in , residing in the same permanent residence, secondary technical school, electrician, unemployed, married with children;

is

FOUND GUILTY

A - because on _____ at around _____ in the _____ of the streets _____ and in _____, with the pistol type _____ with serial number _____, **A.G.** shot into direction of M. I., hitting her with a bullet and thereby causing her death.

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

Murder, contrary to Article 146 of the CCK.

The Accused **A.G.**

Is

FOUND NOT GUILTY

B. - because it was not proven that on _____ at around _____ in the _____ of the streets _____ and _____ in _____, **A.G.** tried to kill B.I. by shooting at him with pistol type _____ serial number _____, as a coperpetrator with **S.G.** and **A.G.**.

Therefore, pursuant to Article 390 Item 3) of the CCK the accused **A.G.** is **acquitted** of the charge of Attempted Murder, contrary to Article 146 of the CCK read in conjunction with Article 20 of the CCK.

The Accused **A.G.**

is

FOUND GUILTY

C. - because on _____ **A.G.** had a weapon, pistol type _____ with serial number _____, containing bullets, with him without authorization in the _____ of the streets _____ and _____ in _____.

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

Unauthorized ownership, Control, Possession or Use of Weapon contrary to Article 328 Paragraph (2) of the CCK.

THEREFORE, The Accused **A.G.** is

SENTENCED

A. To four (4) years of imprisonment for the criminal act of **Murder**, under Article 146 of the CCK (Count I);

C. To one thousand (1.000) Euros fine for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons**, under Article 328 Paragraph (2) of the CCK (Count II).

The aggregate punishment is determined four (4) years of imprisonment and one thousand (1.000) Euros fine, pursuant to Article 71 Paragraph (1) and Paragraph (2) item 2 of the CCK.

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

The weapon - pistol type _____ with serial number _____, is hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

The Accused **A.G.** shall reimburse his part 300 Euros of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation.

V. B.I., father's name I., mother's name and maiden name F. Z., born on _____, residing in Str. " _____ " in _____, primary school, continues professional mechanical school, not finished, unemployed, married with children, no income;

/s

FOUND GUILTY

A. - because on _____ in the _____ of the streets _____ and _____ in _____, he speeds up his vehicle, type _____, and drives it in the direction of the victim A.G., with the intention to deprive him of his life, and manages to run him over, knock him in the leg and force him to the wall. As a consequence, A.G. fell over the vehicle's hood. His action remained an attempt since he had to leave the crime scene after having heard gunshots and having realized that he hit the victim.

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

Attempted Murder against A.G., contrary to Article 146 read in conjunction with Article 20 of the CCK.

THEREFORE, the Accused **B.I.** is

SENTENCED

A. To seven (7) years of imprisonment for the criminal Act of Attempted Murder, under Article 146 in conjunction with Article 20 of the CCK.

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

The vehicle _____ is hereby confiscated pursuant to Article 54 Paragraph 2 and Article 60 Paragraph (1) of the CCK.

The Accused **B.I.** shall reimburse 300 Euros as of his part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation.

REASONING

A. Procedural Background

The District Prosecutor of Mitrovica in the Indictment PP nr. 405/09 filed on 26 May 2010, charged **S.G.**, **A.G.** and **A.G.** with the criminal offences of Aggravated Murder, in violation of Article 147 Paragraph 1, Item 4) and 11) and with Aggravated Attempted Murder in violation of Article 147, Paragraph 1, Item 4) and 11) read in conjunction with Articles 20 of the Criminal Code of Kosovo and with Article 23 of the Criminal Code of Kosovo (CCK) and charged also with

Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the Criminal Code of Kosovo in real joinder with the criminal offences described above. **B.I.** was charged with Attempted Murder in violation of Article 146 read in conjunction with Article 20 of the CCK. **Xh.I.** was charged with Threat in violation of Article 161 Paragraph (4) read in conjunction with Paragraph 2 of the CCK.

The Indictment was confirmed on 14 June 2010. On 02 December 2010, the President of the Assembly of EULEX Judges assigned the case to EULEX judges based on Article 3.3 of Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

Main trial hearings were held on 17, 18, 19 October and 01, 02, 03 November 2011 at Dubrava Detention Center and a site visit was held on 20 October 2011. Closing arguments were heard from EULEX Public Prosecutor Adebayo Kareem and Defence Counsels on 03 November 2011.

The verdict was orally rendered on 08 November 2011.

B. Competence of the Court

Under Article 23 Item 1 i) of the CPCK, 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 CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The Accused persons are charged with as follows:

- **S.G., A.G. and A.G.** with the criminal offences of with Aggravated Murder, in violation of Article 147 Paragraph (1), Item 4) and Item 11) which allows the imposition of a penal sentence of at least ten years imprisonment, with Aggravated Attempted Murder in violation of Article 147, Paragraph (1), Item 4) and 11) read in conjunction with Articles 20 and 23 of the CCK, which allows the imposition of a penal sentence of three-quarters of at least ten years imprisonment and with Unauthorized Ownership, Control, Possession or Use of Weapons, in violation of Article 328, Paragraph (2) of the Criminal Code of Kosovo (CCK) in real joinder with the criminal offences described above, which allows the imposition of a fine of up to 7500 Euros or by imprisonment of one to eight years,

- **B.I.** with Attempted Murder in violation of Article 146 of the CCK read in conjunction with Article 20 of the CCK, which allows the imposition of a penal sentence of three-quarter of at least five years imprisonment and
- **Xh.I.** with Threat in violation of Article 161 Paragraph (4) in conjunction with Paragraph (2) of the CCK, which allows the imposition of a fine or by imprisonment of up to two years.

The Indictment alleged that the Accused committed the criminal acts in that lies within Mitrovica District.

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

C. Legal Qualification – Law applied

Pursuant to Article 2 Paragraphs (1) and (2) of the CCK, the law in effect at the time of the commission of the criminal offence shall be applied to the perpetrator unless a new law is more favourable for the accused. The criminal acts were committed on 04 December 2009 under the new Criminal Code of Kosovo (CCK) that entered into force on 06 January 2009.

D. Evidence

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

- 1) F. I.
- 2) J. S. R.G.
- 3) F. K.
- 4) R. I.
- 5) S. M.
- 6) V. M.
- 7) M. G.

During the course of the main trial, a site visit was conducted on _____ on Street in _____ in the presence of EULEX Public Prosecutor Adebayo Kareem, the Accused persons **S.G., A.G., A.G.** and **B.I.**, their Defence Councils Bajram Kajtazi, B. Mehana, Haxhi Millaku and Agim Lushta and witnesses F. K. and R. I..

During the course of the main trial, the following documents were read and entered into evidence:

- 1) Forensics Laboratory, Firearms and Tool Marks Sector: Expert report (pages 50 – 56 in volume I)
- 2) GSR report dated 17 May 2010 (pages 64 – 67 in volume I)
- 3) The Autopsy report of M. Sadiku (pages 95 – 105 in volume I)
- 4) Police criminal report (page 9 in volume II)
- 5) Photo album (pages 23 – 109 in volume II)
- 6) Police official note (page 165 in volume II)
- 7) Police officer's report (page 169 in volume II)
- 8) Police officer report (page 171 in volume II)
- 9) Application for ballistic report (page 185 in volume II)
- 10) Laboratory reports (page 193, 199 – 206 in volume II)
- 11) The Court Order pertaining to the ballistic report (page 208 in volume II)
- 12) Initial report of Police Officers R. I. and F. K. (page 239 in volume II)
- 13) Police Officer report (page 247 in volume II)
- 14) List of seized weapons of A.G. (page 304 in volume II)
- 15) List of seized weapons of S.G. (page 308 in volume II)
- 16) List of seized weapons of A.G. (page 310 in volume II)
- 17) Medical description form of A.G. (page 326 in volume II)
- 18) Medical report relating to the treatment of B.I. (page 8 in volume III)
- 19) Photo of the injuries of B.I. (page 10 in volume III)
- 20) Investigator's report (page 14 – 15 in volume III)
- 21) Crime Scene examination report (page 20 – 27 in volume III)
- 22) List of evidence (pages 28 – 33 in volume III)
- 23) Drawing of the crime scene (pages 34 – 36 in volume III)
- 24) List of evidence (page 78 in volume III)
- 25) Pictures of the defendants (pages 90 – 93 in volume III)
- 26) Preliminary autopsy report of I. I. (pages 94 – 95 in volume III)
- 27) Pictures relating to the autopsy of I. I. (pages 99 – 193 in volume III)
- 28) Preliminary autopsy report of M. S. (pages 193 – 194 in volume III)
- 29) Photo album relating to M. S. (pages 198 – 280 in volume III)
- 30) Administration of evidence issued by the medical centre in Vushtrri (court binder III)
- 31) Medical file of A.G. from Gjilan and Dubrava Detention Centers (court binder III)

During the trial session, the accused **B.I.** on 01 November 2011 and the accused **S.G.** on 02 November 2011 gave their statements and answered questions. **Xh.I.**, **A.G.** and **Ahmed G.** remained silent during the trial.

E. Summary of the Presented Evidence/Factual findings

The background of the incident that happened on Street in on is due to an alleged sexual relationship between two neighbours M. I. and M.G.. According to **R.G.**, neighbour of the I.'s family for 12 years, there was no incident between the two families so far. G. and I. families were not used to socialize together except for important celebrations. During the trial, it has been confirmed that the tensions started when **Xh.I.** told his B.I., released from prison that during this time his M. I. had sexual intercourse with **R.G.'s**, M.G..

Xh.I. remained silent during the police investigation when interviewed on as he did during the main trial.

R.G. stated that in the morning after , **B.I.** came to his house and forced him to go to his house in . Once in his house, **B.I.** pulled out a gun from his waist and put it on the table. He informed **R.G.** about the alleged sexual relationship between M. I. and M.G.. M. I. was present and she looked like as if she has been beaten up. **R.G.** denied the alleged relationship. **B.I.** requested 25,000 Euros to solve the problem. **B.I.** promised to fix a date for the payment and told **R.G.** that *"you have to give me the money, if not you will have to move outside your house. You will have to move."* As soon as **R.G.** arrived home, he called his **S.G.**. No one else was aware of the problem. Later on, **R.G.** and **S.G.** met with J. S., the father of the deceased M. I.. They invite him to the "oda" where later on **B.I.** went. **R.G.** told the I.'s that he doesn't owe them anything. Since the situation escalated, **R.G.** went together with **S.G.** and J. S. to the police in order to report the I.'s. The police recommended to **R.G.** to find a mediator in order to solve the dispute.

S. M. acted as a mediator, upon the request of **R.G.**, between the G. and I. families the week after . He visited I. I. two or three times. Although they were about to solve the matter, the I. family kept distancing themselves from the G. family. S. M. met with I. I.. He tried to persuade him in saying, *"let him swear along with twenty-four wise men that there is no trick to this"*. At first, I. I. suggested that R.G. should take the oath to which he replied that *"if needed I will bring 150 old wise men. I swear to this along 150 wise old men"*. According to S. M., they managed to set a date to go to the mosque and take the oath but it failed. Then Isa I. suggested that if the G. family left the house, they would be able to come to an agreement. **R.G.** responded to this offer by stating, *"if needed, I will leave, because I don't want any problem. He can pick out three people, who can assess the value of the house. I. can give the money and I will leave."* I. I. refused. A day or two later Isa I. together with a couple of other people and his

son came to S. M.'s house and told him that *"this matter cannot be resolved the way you think it should be"*. As a consequence S. M. replied that the mediation failed and ended on that day by informing **R.G.**

Witness V. M. indicated that he was with his father at Isa I.'s house but he didn't hear the discussion between the mediator and the others.

B.I. stated on [redacted] that he went to **R.G.**'s house in order to discuss about the dispute between the two families. There, he got to know S., A. and **A.G.**. He denied that he beat up his [redacted] in order to pressure her on admitting that she had sexual relationship with M.G.. **B.I.** stated that he never requested money from **R.G.** or asked the G.s to leave their residence since the issue was not by coercion but was based on free will of his wife and M.G..

Witness J. S. stated that there were discussions regarding Xh.I.'s alleged violent behaviour and sexual abuse of M. I. before the incident on [redacted]. He heard for the first time about the alleged relationship between his daughter M. and M.G. one month before his daughter died. He indicated that he visited **R.G.** and his M. in order to ask them if the allegations were true which they denied. On [redacted], after [redacted], **R.G.** came with a young man to pick him up to go to his home in [redacted] where twelve people were gathered. S. M. was there as mediator. He informed him about I. I. wishes that the G. should *"leave the house in order to reconcile"*. According to J. S., his [redacted] told him the following day that she had a sexual relationship with M.G.. However J. S. indicated that she was lying because she was shocked and she didn't know what she was saying. He was not present on [redacted] Street in [redacted] on [redacted].

Witness M. G., R.G.'s [redacted] stated that one day **B.I.** visited their house and asked **R.G.** to follow him in order to discuss about the dispute. M. G. didn't follow his [redacted]. **R.G.** told her afterwards that **B.I.** asked him 25,000 Euros. She quoted her [redacted]' words *"If you are not going to give me that money, I will throw you out of the house."* She said that after the meeting with **B.I.**, **R.G.** met with J. S.. She remembered that **R.G.** reported the incident to the police and sent S. M. to reconcile. M. G. did not see anything that have a direct link with the reconciliation or with the incident that took place on [redacted].

R.G. stated that on [redacted] at around [redacted] hrs, his **S.G.** came to his place with **A.G.**. **A.G.** was there already. When they left the house, he walked in front of his [redacted] S. and I. I. was waiting for them at the gate. **R.G.** stated that as soon as **S.G.** went out I. I. grabbed his arm and asked him if he would have something to

tell. **R.G.** couldn't hear what they were discussing about but meanwhile **B.I.** and his M. I. drove by. Both of them came out of the car, M. I. was screaming. They jumped on his back and hit him. **R.G.** asked them to leave. **B.I.** left with his but **S.G.** continued scuffling with I. I.. **R.G.** slapped his S. three times and ordered him to stop. Three or four minutes later **B.I.** drove back his , with high speed. **R.G.** quoted the warnings he heard "*Be careful because he is going to hit you!*" According to him, A. and **A.G.** moved away by jumping on the side of the road. **B.I.** drove towards **A.G.** who got stuck on the wall and fell down underneath the car. **R.G.** grabbed his head when he heard A. screaming "*What are you doing?*" and he couldn't see what happened afterwards. He indicated that he didn't hear any gun shot although when he came around he saw I. I. lying on the ground at approximately ten meters away from him. **R.G.** mentioned that **Xh.I.** didn't threat him the day before the .

Witness F. K., traffic police officer, stated that he was on duty in with R. I. on at around . He saw a man driving a red with a female as a passenger. They stopped and told them "*There are some people killing one another, while you are just standing here. What are you doing here?*" The driver of the made a u-turn very aggressively at the and drove towards area on the highway of in the direction of . F. K. and his colleague followed him at a distance of approximately 150 to 200 meters. They could see the all the time. F. K. stated that he saw the going from the right to the left side of the road entering a small dirt road, going upwards a gravel street, lowering his speed. F. K. stated that he saw five or six people standing on the upper street when the arrived and hit a man with a beard. The driver hit the person with the front part of the vehicle. The man had to lean on his left side towards a wall next to him. Meanwhile F. K., after stopping the police car on the right side of the highway, heard gunshots and realized that one person was on the ground. Afterwards, he heard other gunshots. F. K. stated that after the agreement with his colleague, he took the right side of the road and his colleague took the left side. He ran while bending over and went by the wall higher than the highway where he took his position. He saw two people standing in front of him, one of them holding a gun. He shouted verbal orders "*Stop, this is the police. Throw away your weapon.*" The man with a gun threw his gun away without any resistance, he ordered him to lie down on the ground and handcuffed him. The other one lied down as well. From his place, he saw the parked and another person with a weapon at about fifteen to twenty meters away from him. He gave him the same verbal order. He also saw a woman lying on the ground next to the vehicle.

Questioned about distance between people on the crime scene, F. K. stated that the person with the beard who was hit by the car was at about seven to eight meters away from the one who fell on the ground after the shot.

Witness R. I., police officer, stated that a man in a [redacted] accompanied by a female stopped in front of them and asked them to follow him which they did from [redacted] distance since the [redacted] was very fast and dangerous. They were still close enough to keep in their sight the vehicle. At some point, the [redacted] left the highway and turned left in a narrow street. R. I. parked the police car on the right side of the highway. Meanwhile he saw a group of people standing in a circle and the [redacted] hitting a bearded man, pushing him against a wall with the front left side. The victim managed to put his hands on the hood but remained underneath the car. He realized that something serious was happening. While opening the door, he heard gunshots. R. I. continued on foot along the secondary gravel road. He saw the [redacted] turning left behind an electric pylon, where it parked. R. I. went to the corner of the road while his colleague approached the line of fire. R. I. quoted F. K. warning people "*This is the police, stop*". R. I. repeated the same order from a distance of five to six meters from where two people were standing. An armed man threw his weapon away. R. I. stated that he handcuffed the armed person and took control over the other one by hand gripping him. R. I. described the armed person, he was bigger than him, chubby, not fat but stocky, blond and fair type. He saw a female lying on the ground next to the [redacted] by the front seat passenger's door.

Both police officers stated that they saw two people coming towards them after giving their identification as police officers and offering them help. R. I. also stated that he arrested two other people, who were neighbours. One of them was an elder person wearing a black beret and the other was younger. He couldn't see the driver of the [redacted] until the other police unit went and took him outside the house where he escaped. R. I. stated that when the additional police unit came on the crime scene they found a weapon on the bearded man. He noticed some damages on the bumper of the [redacted].

B.I. stated that on [redacted] at around [redacted] he was driving with his [redacted] M. I. to his [redacted]'s house. When he arrived, he saw **S.G.** first, then **A.G.** and then **A.G.** coming towards his vehicle. **R.G.** was following them. **B.I.** indicated that **S.G.** told him "*Do not move or otherwise I will fuck your mother and blow your head off*" and he replied, "*shoot because I am not scared at all*" and after that **S.G.** would have punched him on his nose. Then **A.G.** pushed **B.I.** against the wall. **B.I.** tried to separate them but **S.G.** hit **B.I.** with the handle of his gun. **B.I.** stated that he

couldn't find the police number so he drove towards the city center. He stopped by a police patrol and told them that three persons were endangering the life of his father with weapons. The police followed him at a distance of approximately fifty meters. Before arrival where the incident took place, still on the asphalted road, **B.I.** heard a gun shot but hasn't seen anything. He stated that once he got to his father, he lost control of his vehicle and noticed that **A.G.** was shooting in his direction, three times whilst his father was on the ground. **B.I.** stated that he couldn't stop his vehicle because he was too close from where the people were standing. Therefore, he drove away and saw **A.G.** shooting at him on his left wrist. Then he lost control and he wasn't any longer aware of the situation. He acknowledged that his vehicle hit someone. He said that when he went out of his vehicle **S.**, **A.** and **A.G.** ran towards him and shoot at him. **B.I.** jumped over the wall of his yard and hid there. He heard the door of his vehicle opening and his wife screaming "*let off my hair*" and then an undetermined voice yelling "*not the wife*". Then he heard three gunshots but hasn't seen anything. The police found him and took him to the University Clinic of Prishtina. **B.I.** stated that neither his nor his had a weapon the critical day.

S.G. stated that he knew **B.I.** since he is his neighbour's son but he never socialized with him. On he came back from work at and brought his car to the mechanic. Since he needed money he called **A.G.** to get a ride to **A.G.'s** place in order to ask for money. Since **A.G.** was not at his place, they went to **R.G.'s** place where **A.** was waiting for the prayer time. They left **R.'s** place all together and saw **I. I.** by the door of their house who told them "*Why did you come here? You have to leave this house, get your family and get out of here.*" **S.G.** replied, "*My sent you a mediator. Regarding your request to leave our house, I have sent people and I will answer by anyway you want.*" **I.** answered: "*I asked you to leave the house and I am not interested in these people. I will show you in two minutes that I will force you out of the house.*" During the discussion, **R.G.** slapped his who was disrespectful to **I. I.** Meanwhile, **B.I.** and **M. I.** drove by and **I. I.** told his son, "*Fucking kill him, run him over with the car.*" **B.I.** and **M. I.** exited the car, grabbed his jacket, took him by the throat and removed him from the gate. **S.G.** punched him back in self-defence. He mentioned that **A.** and **A.G.** didn't know what it was all about since they didn't know the neighbours. **S.G.** got separated from **I. I.**; they continued the conversation. **B.** and **M. I.** drove away. They returned with the police five minutes later. **S.G.** stated that **B.I.** speed up his car on the gravel road towards the group. They fled sideways except **A.G.** who was pushed to the wall. **S.G.** heard shots and saw **A.G.** dragged, fallen down and hanging on the car mirror. He also saw **I. I.** firing at the car that had the passenger window open. Then, **I. I.**

turned the gun towards **S.G.**. By the time I. I. cocked his weapon and chambered another bullet, **S.G.** in self-defence fired back without control. He doesn't remember how many times he shot at him but he insisted on that fact that he didn't want to kill him. When I. I. fell on the ground his gun fell next to **A.G.**. **S.G.** indicated that he kicked the gun away from Isa I. towards A. who took it. **S.G.** stated that the stopped by a small door. He saw M. I. sitting on her two knees. At the time **Xh.I.** was at the door with a weapon; meanwhile his mother F. I. grabbed him and told him "Go away, now the police arrives!" In **S.G.**'s point of view **Xh.I.** or I. I. shot at M. I..

S.G. stated that he brought his gun from as a relict after the war and he carried it to protect himself from dogs, wild animals and people. He was working on shifts at and he had to walk through the woods to get to the bus stop. He recognised that he doesn't have any gun licence.

A.G. indicated to the prosecutor on that he left his home on the when **S.G.** asked him to visit **R.G.** in . They drove to **A.G.**'s place first to ask for some money for **S.G.** but he had already left to **R.G.**'s place. At R.'s place were present **R.G.**, his M. G., A. G., his and **A.G.**. They didn't discuss about the dispute between **R.G.**'s and I. I.'s families. He was inside the yard when he saw **S.G.** dicussing with I. I. but he didn't hear the conversation. When he reached the yard's door he saw **B.I.** driving towards **S.G.**. **A.G.** heard Isa I. and **B.I.** telling them "I told you that I don't want to see you around, you have to leave your house because you ashamed us". **S.G.** replied that "I don't have anything in this, we do not owe you at all in this matter". Straight after, I. I., **B.I.** and M. I. started punching **S.G.**. They hit each other. **A.G.** heard I. I. telling his son to leave the place. **S.G.** continued discussing with his and his neighbour outside the gate. **A.G.** and himself were standing approximately fifteen meters away from I. I., R. and **S.G.**. **A.G.** saw **B.I.** driving over **A.G.**, squeezing him on the wall. At the same moment he heard gunshots and thought that I. I. fired at **A.G.**. **A.G.** said that as a reaction, he pulled out his gun and shot in the air four to five times without specifying the direction. He stated that he had thirteen bullets with him and he has five bullets in his weapon. When police officer ordered him to drop off his gun, he complied with the order.

A.G. indicated to the police that the driver of the was but he didn't recognize him. **A.G.** stated that he had with him his gun, a , . He said that he always carries it with him as a war souvenir. He didn't see weapons with any other persons. He doesn't know if **A.G.** is used to have a gun.

A.G. stated to the prosecutor on 19 February 2010 that on _____ he visited **R.G.** before going to the _____. He stayed there approximately one hour. During the visit **R.G.** told him about the dispute with I. I.. When he left, **R.G.**, **A.G.** and **S.G.** escorted him to the door. I. I. was by the door. **S.G.** told him “*I. my neighbour, I have sent my people in order to get reconciled*”. **B.I.** and M. I. went out of the car and B. told **S.G.** “*I have to divorce this woman because of you.*” M. I. asked after S.’s brother. S. replied “*If you would have face, you would not go out and make a shame to yourself.*” At this moment they started to push each other. **B.I.** has told S. that it will not remain like this. I. I., **R.G.** and **S.G.** continued discussing. Apparently **B.I.** entered the road driving the _____ fast and hit him with the front part of his car. **A.G.** couldn’t remember whether he rolled over the car hood or whether he was pushed against the wall. He lost conscience. He tried to get up but he couldn’t and he slumped again. He heard some gunshots but he didn’t know where they come from. After he regained conscience he found a weapon very close to him, took it and put it on his waist. A. stated that when the car hit him, I. I. was standing approximately two meters away. The police arrived and he handed over the weapon. **A.G.** indicated that he sustained bodily injuries in both of his legs, under and above his knees, in the left hand side of his pelvis, compression in the chest and shock in the head. He had also vomited. He was under therapy and took medicament after the incident. **A.G.** denied that he shot at anyone. He also stated that he didn’t see anybody else with weapons.

F. Assessment of the presented evidence

I. Concerning the facts on

Evidence regarding **Xh.I.** on the charge of threat against **R.G.** and **M.G.** on

During the course of the main trial, nor the injured party **R.G.** or the witnesses from the G.’s family have reported that **Xh.I.** have committed threat on the towards R. or M.G.. To the contrary, **R.G.** formally denied having suffered of any threat made by **Xh.I.**. As per M.G., absent at the main trial (living abroad), there is no evidence in the case file, or element brought by the witnesses during the hearing to support the allegation of threat towards him. The only statement of M.G. available in the case file is dated _____, three days previous the alleged threat. Afterwards there is no more statement from M.G. who is currently leaving abroad.

Due to the lack of evidence against **Xh.I.** to support the allegations that he would have threatened **R.G.** and M.G. on _____, pursuant to Article 390 Item 3) of the CPCK, the court acquits **Xh.I.** of the charges of threat, contrary to Article 161 Paragraph 4 as read with Paragraph 2 of the CCK.

II. Concerning the facts on

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

On _____ at about _____, in the alley of the G. and I.' s families, in _____, an altercation due to an alleged sexual relationship between two neighbours M. I. and M.G. started between **S.G.** on one side and I. I. on the other side, where were also present **R.G.**, **A.G.** and **A.G.**. Soon after, **B.I.** and his _____ M. I. arrived by car. The last two left quickly in order to seek for the police support since the discussion was vehement. Once they come back, the situation escalated. The consistent and invariable statements from the witnesses, the defendants and the police officers presents at the crime scene, support the facts that gunshots were heard when **B.I.** approaches the crowd of people in his _____ followed by a car of two police officers and that the situation escalated when **A.G.** go hit by **B.I.**'s car. It is also uncontested that as soon as the police officers F. K. and R. I. arrived and requested from A., A. and **S.G.** to drop off their weapon they did it without any resistance. **B.I.** got injured by a bullet in his left hand and was arrested in his house. Isa I. was lying on the ground, found dead when the police arrived. M. I. was transported to the hospital alive but didn't survive because of her wounds.

1. Evidence regarding **B.I.**. On the charge of attempted murder against A.G.

It is not contested that on _____ **B.I.** was in _____ with his _____ M. I. driving his vehicle a _____, plate number _____ and hit **A.G.** against a wall. **R.G.** on his statement at the main trial said that people were screaming and warning that the was too fast and may kill someone. After this, **R.G.** said that he covered his eyes and didn't see anything else until the arrival of the police. S., A. and **A.G.** confirmed **R.G.**'s version. They also indicated that the fast arrival of **B.I.** triggered the rest of the incident since they got scared and started shouting. They all declare that when **B.I.** arrived with his _____, he was driving really fast and he drove over **A.G.** by pushing him against a brick wall with the front left side of his car. This is corroborated by the pictures of the car that clearly show the front left

side of the vehicle destroyed after a an impact with some hard object (see photo album dated , pictures number and 4 and 15).

A.G. indicated in his statement to the public prosecutor on the 19 February 2010 that he was the only one not able to escape. After being hit by the car, he rolled over the car hood and lost conscience before picking up Isa I.'s weapon.

B.I. acknowledges that he drove over **A.G.** but he explains that he did it after he lost control of his vehicle.

The Court rejects the argument of losing control of the car. The material evidences contain in the case file and the testimonies of the witnesses, police officers included, exclude this possibility. In addition, from the site inspection done on 20 October 2011, the panel is of the opinion that if **B.I.** would have lost control of his car, he would not have been able to manage to take the curve, in the L shape at the end of the dirt road, he would have had to stop his car earlier and not right in front of this house door.

Although, it is not proven that **B.I.** has a direct intent to kill A.G. with his car, he was nevertheless conscious of the risk of causing death of some of the people while speeding up his car in a group of people as it was. Therefore, from the different elements, it is proven that **B.I.** speeded up his vehicle, drove it where A.G. was, managed to drive him over; knocked him in the legs and force him to the wall. As a consequence, A.G. felt over the vehicle's hood.

The action remained unfinished since **B.I.** had to leave the crime scene after having heard gunshots and having realized that he hit the victim.

Therefore, the Court declares **B.I.** guilty of the criminal act of Attempted Murder against **A.G.**, contrary to Article 146 in conjunction with Article 20 of the CCK.

2. Evidence regarding **S.G.**

2.a) On the charge of aggravated murder of I. I. and M. I.

It is undisputable that on **S. G.** was present at his 's house with **A.G.** and **A.G.**. On their way out they met with I. I. who was waiting outside. A verbal argument started. **R.G.** indicated during the trial that he slapped his S. who was being disrespectful towards I. I.. When **B.I.** and his arrived by car, the

situation worsened. Therefore, following I. I. advices, they left to call the police. When they come back, shortly followed by the police car, **B.I.** said that he heard gunshots. This was confirmed at the main trial by the two police officers that were following the . Besides, they also said that they haven't seen any gun shot fired from the red car. After the gunshots were heard **B.I.** and the two police officers witnessed I. I. falling on the ground. This was never contested.

R.G. is the only witness who denied that **S.G.** and I. I. had a gun in their hand. His statement is not corroborated by the declaration of **S.G.** himself who acknowledged several times during the investigation and at the main trial that he had a gun (reference number pistol seized on the crime scene: type of caliber mm, , serial number , exhibit D#9) and that he shot at I. I.. While he recognized in his interview with the Prosecutor dated 22 January 2010 that he shot five times at the victim, he couldn't remember during the main trial how many times he shot at him. **A.G.** confirmed **S.G.'s** shots in his statement to the public prosecutor on the 14 April 2010 however he didn't mention in which direction he shot.

The autopsy report of I. I., dated indicates that during the X-ray examination of the entire body of the victim, neither bullet nor metal fragment was detected. The ballistic report dated 9 August 2010 doesn't identify either any empty cartridges matching with any of the defendants weapon next to the body. However, it doesn't exclude any of those since the report indicates for instance that as per the delivered exhibit D#4.1 (one jacket and three metallic fragment) found next to I. I.'s body, they don't have ballistic characteristic for examination. Despite the lack of ballistic evidence, from the autopsy report, that concludes that the victim died from multiple gunshot injuries, it has been clearly established that Isa I. has eight holes caused by gunshots in his body, four holes of entrance and four holes of exit wounds. This material evidences corroborates **S.G.'s** statement who indicates that he shot several times at the victim.

As per the possession of the weapon by I. I., S. and **A.G.** constantly indicated that A. picked up I. I.'s weapon after he fell on the ground. This excludes **A.G.** of having shot at I. I..

As per the possibility of **A.G.** to shot at I. I., it is detailed below but due to lack of evidence, even though he had a gun and fired it, it is not proven that he killed Isa I..

Therefore, from the statement of **S.G.** acknowledging shooting at the victims several times, shots confirmed by other witnesses and the autopsy report indicating that four projectiles caused death by going through the victim's body, the Court is convinced that **S.G.** is guilty of the murder of I. I..

Self-defense should be excluded in this case since no evidence support this version except **S.G.'s** statement as developed above. Despite the shooting, **S.G.** indicated during the main trial that he had no intention to kill I. I.. It is undisputable that although he had a gun, he didn't pull it out from the beginning of the argument but waited that the tension reached its climax when **B.I.** came back driving dangerously fast with his car. **S.G.** indicated that he pulled out his gun only when Isa I. started shooting at the in the direction of his cousins A. and **A.G.**.

M. I., 23 years old, was found lying on the ground outside of her 's car, parked in front of the I.'s house gate, on the passenger side. At the main trial, **B.I.** indicated that he did not notice her being hit by a bullet while they still were in the car. However, he mentioned that he heard her screaming " *let go off my hair*".

M. I.'s autopsy report dated indicates that she has nine holes caused by gunshots in her body, four holes of entrance, four holes of exit wounds and one bullet found on her left chest. It concludes that she died from a hemorrhagic shock from gunshot injuries.

None of the defendant acknowledged having shot at her.

However, from the ballistic report dated (ref 2010- 0123), two findings are linked with M. I.'s death.

First finding is related to the bullet found in her left chest. The bullet is identified as being shot from **A.G.** pistol (see ballistic report (ref 2010- 0123) page 5 "*based on the microscopic comparisons it results that one bullet from exhibit D#33 (projectile taken from the body of M. I.) has the same individual ballistic characteristics with the bullets fired during the test shooting by the pistol of caliber mm from exhibit F6 (pistol seized from A.G.'s hands on the crime scene), this means that one bullet from exhibit D#33 was fired from the pistol of caliber mm with the serial number .*")

Second finding is about the empty cartridge found next to her body (reference to exhibit D#17). The conclusion of the ballistic report indicates that only one empty cartridge was identified and match with one of the defendant's pistol "*based on*

the conducted microscopic comparisons it results that one empty cartridge of caliber mm from exhibit D#17 (picture of the empty cartridge found next to the victim body) has the same individual ballistic characteristics with the empty cartridges fired during the test shooting by pistol from exhibit D#9 (picture of S.G.'s pistol seized on the crime scene) which means that only one empty cartridge from exhibit D#17 was fired from pistol Type of caliber 7 mm with serial number ."

From this second finding, taken into consideration the location of the empty cartridge and the body of the victim, both next to each other, it is established that **S.G.** shot at M. I. at least once. Moreover, taken into account the nature and the place of the injuries suffered by the victim, it appears that it matches with the position where **S.G.** was arrested.

Therefore, the Court declares **S.G.** guilty for the murder of M. I..

As per the qualification of the crimes, **S.G.** was initially charged with aggravated murder under Article 147 item 4 and 11 of the CCK "*deprives another person of his or her life and in doing so intentionally endangers the life of one or more persons*". However, from the debate during the trial and from the material evidences in the case file, the Court only considers the charges under Article 147 Para (11) of the CCK taken into consideration these two murders "*intentionally commits two or more murders (...)*" since **S.G.**, by shooting with his weapon towards the victims intentionally intent to deprive their lives.

1.b) On the charge of Attempted Aggravated Murder of B.I.

Due to the absence of evidence gathered in the case file or evoked during the trial, the panel found the accused **S.G.** not guilty of the criminal act of attempted murder against **B.I.**, contrary to Article 147 Paragraph (1) item 4 and 11 as read with Article 20 of the CCK.

Therefore, the panel acquits **S.G.** of the charge of attempt of aggravated murder of **B.I.**.

2.c) On the charge of Unauthorized Ownership, Control, Possession or Use of Weapons

The Court acknowledges the guilty plea of the accused during the investigation, reiterated during the main trial and declares **S.G.** guilty of unauthorized

ownership, control, possession or use of weapon, namely a pistol type , , serial number no. of calibre mm seized on the crime scene on in contrary to Article 328 Paragraph (2) of the CCK.

3. Evidence regarding A.G.

3.a) On the charge of Aggravated Murder of I. I. and M. I.

It is an undisputed fact, although **A.G.** remained silent during the main trial that he previously acknowledged to the police in his statement dated and confirmed to the Public Prosecutor on the 14 April 2010 that on the , in , once the first shots were fired, he pulled out his gun and shot in the air four or five times.

B.I. indicated at the main trial that he saw **A.G.** shooting at his father three times, whilst he was lying on the ground.

The ballistic report dated 09 August 2010 (ref 2010- 0123) confirms **A.G.'s** statement since it indicates that the empty cartridge fired from **A.G.'s** pistol is the one identified under exhibit D#20 (see crime scene photo album dated). From the photo album dated , it appears that the empty cartridge of **A.G.'s** weapon is found pretty far from where I. I.'s body was. No other empty cartridge or bullet of **A.G.** weapon was found next to the victim body. Therefore, there is no evidence to support the allegation of murder.

The Court is of the opinion that the statement of **B.I.** against **A.G.** and the sole empty cartridge from **A.G.'s** weapon found on the ground are not sufficient to characterize the murder.

Therefore, the Court declares **A.G.** not guilty of the murder of I. I..

As per the charge concerning M. I.'s murder, there is no evidence (no empty cartridge, no empty shell, no bullets, no testimony) to support the allegation that **A.G.** would have shot at her.

Therefore, due to lack of evidence, the Court declares **A.G.** not guilty of the charges of aggravated murder contrary to Article 147 Paragraph (1) Item 4 and 11 read in conjunction with Article 20 of the CCK and acquits him of this charge

*3.b) On the charge of Attempted Aggravated Murder of **B.I.***

Due to the lack of evidence gathered in the case file or evoked during the trial, the panel found the accused **A.G.** not guilty of the criminal act of attempted murder against **B.I.**, contrary to Article 147 Paragraph (1) item 4 and 11 as read with Article 20 of the CCK.

Therefore, the panel acquits A.G. of the charge of attempt of aggravated murder of **B.I.**.

3.c) On the charge of Unauthorized Ownership, Control, Possession or Use of Weapons

The Court acknowledges the guilty plea of **A.G.** who during the investigation (police interview dated _____, public prosecutor interview dated 14 April 2010) and at the main trial explicitly recognized that owns and carries his weapon since the war. His statement was confirmed by **S.G.** who indicates to the public prosecutor on 22 January 2010 “ *A. always carried his weapon with him since after the war*”.

Therefore, the Court declares **A.G.** guilty of unauthorized ownership, control, possession or use of weapon, namely a pistol _____ of calibre _____ mm with serial number _____ seized on the crime scene on _____ in Mitrovica contrary to Article 328 Paragraph (2) of the CCK.

*4. Evidence regarding **A.G.***

*4.a) On the charge of Aggravated Murder of *I. I. and M. I.**

It is undisputable that **A.G.** when he got arrested on _____ in Mitrovica had a gun (reference pistol seized: _____ of caliber _____ mm, serial number _____). The two police officers that arrived on the crime scene asked him to stop and he gave himself up with no resistance. **A.G.** explains the possession of this gun by saying that he picked it up on the ground when *I. I.* fell down, hit by bullets. His statements are invariable since his interview by the Public Prosecutor on 19 February 2010. The statements of **S.G.** corroborate it during the investigation and at the main trial when he said, “*the gun I. had in his arm fell next to A. when I. fell (...) the biggest mistake was that A. took his gun*”.

From the different evidence in the file, it is not contestable to draw the conclusion that **A.G.** took the weapon he had in his possession from Isa I. after the latter fell on the ground, hit by bullets shot by **S.G.**, as proven with the above details, then it is not possible that he committed Isa I.'s murder. Besides, no material evidence supports either this possibility.

The sole possession of a weapon by **A.G.** is not enough to support the charge against **A.G.** of murder of I. I.. Therefore, the court declares **A.G.** not guilty for the murder of I. I..

As per the death of M. I., the court is convinced that **A.G.** shot at the victim from distance with a handgun of calibre mm, serial number since one of his bullet found on her left chest (see autopsy report 07 December 2009 MA 09 329) contributes to her death.

As material evidence, the ballistic report dated 09 August 2010 (ref 2010- 0123) indicates that a projectile taken from the body of the victim M. I. (D#33) has the same individual characteristics with the bullets fired during the test shooting by the pistol of caliber mm identified as being **A.G.** pistol. That means that one bullet from exhibit D#33 was fired from the pistol with serial number .

It has been indicated that both I. I. and **A.G.** were temporary in possession of the pistol with serial number . However, it has to be excluded that I. I. shot at M. I. since he was at the right-hand side of the car and it was not possible for him to shoot and hit M. from that position since no traces, bullet holes, etc... are found at that side of the car, nor there is blood inside the car. Besides, the late was already lying on the ground, hit by bullets when **B.I.** parked his car in front of his house and when his when out of his car. It is at this moment that she got shot at.

From the different statements of the case file, reiterate at the main trial, it is clear that **A.G.** got disorientated after being driven over by **B.I.'s** car. Although **A.G.** remained silent at the main trial, he nevertheless indicated in front of the public prosecutor on the 19 February 2010 that "*when the hit me and I got hurt, I fell down and lied in prone position on the ground and lost conscience (...) when I regained conscience, I tried to stand up, but I couldn't so I slumped again. In this moment, I saw the gun, which was a pistol, and put it on my waist (...)*". **A.G.** always denied that he used the gun. **S.G.** and **A.G.** statements support his statement. However, their versions are contradicted by **B.I.'s** statements who all

over the investigation and at the main trial, constantly indicated that **A.G.** shot at him when he was in his car and afterwards. He mentioned that once he managed to enter his yard, after he parked, he heard people screaming “*Not the woman*” and then he heard a gunshot (see police interview dated 04 December 2009 and public prosecutor interview dated 14 April 2010). The bullet found in M. I.’s body corroborates **B.I.’s** version.

Undoubtedly, **A.G.**, soon after having being driven over **B. I.’s** car, took the weapon that was on the ground and used it although he was completely under a high state of mental distress and disorientated by the shock he got. It is not proven that he intentionally shot at M. I. however, it is certain that one of his bullet contribute to her murder.

Therefore, the Court found **A.G.** guilty of the murder of M. I.. Only guilty of a murder, the Court modifies the initial charges against **A.G.** from Aggravated Murder to Murder in violation of Article 146 of the CCK.

*4.b) on the charge of Attempted Aggravated Murder of **B.I.***

Due to the lack of evidence gathered in the case file or evoked during the trial, the panel found the accused A.G. not guilty of the criminal act of Attempted Murder against **B.I.**, contrary to Article 147 Paragraph (1) item 4 and 11 as read with Article 20 of the CCK.

Therefore, the panel acquits **A.G.** of the charge of attempt of aggravated murder of **B.I.** contrary to Article 147 Paragraph (1) item 4 and 11 as read with Article 20 of the CCK.

4. c) On the charge of Unauthorized Ownership, Control, Possession or Use of Weapons

Being found guilty of the murder of M. I. committed with a handgun type of calibre mm, serial number , the Court declares **A.G.** guilty of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK.

G. Determination of Punishment

When imposing the criminal sanction, the Court bears in mind 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 determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the CCK while remaining within the sentencing limits provided by law.

B.I.

The Court considered as aggravating circumstances the fact that **B.I.** endangered the health of more than one person by fast driving in a narrow street where a group of people was standing and that he had previous convictions. The Court deemed that there were no mitigating circumstances.

For the criminal act of Attempted Murder in violation of Article 146 as read in conjunction with Article 20 of the CCK, the law foresees imprisonment of at least five years. The Court imposes a punishment of 7 years of imprisonment to **B.I.** for this criminal offence.

B.I. has been in detention on remand since . Detention on remand is to be credited in the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

S.G.

Regarding Aggravated Murder

The Court considered as aggravating circumstances the fact that **S.G.** shot at vulnerable and defenceless victims.

The Court considered as mitigating circumstances that after the initial conflict in front of the gate the G.s and I. I. managed to handle the situation peacefully. It is also well noticed that although **S.G.** underwent a high level of stress, he didn't use his weapon since the beginning of the dispute. It is only after he was provoked since few days and finally by the fast arrival of **B.I.** that in a reaction of one committing a criminal offence and witnessing his family in a life danger that he reacted violently. **S.G.** didn't have any previous convictions.

For the criminal act of Aggravated Murder in violation of Article 147 Paragraph (1) item 11 of the CCK, the law foresees a punishment of imprisonment of at

least ten years or of long-term imprisonment. The Court imposes a sentence of fourteen (14) years of imprisonment to S.G. for this criminal offence.

Regarding Unauthorized Ownership, Control, Possession or Use of Weapons

The Court considered as aggravating circumstances the fact that **S.G.** had the weapon in his possession for many years.

The Court considered as mitigating circumstances that **S.G.** didn't use the weapon from the beginning of the dispute despite the fact that he was attacked. He only used it when he was seriously provoked.

For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the CCK, the law foresees a punishment of a fine of up to 10.000 Euros or imprisonment of one to ten years. The Court imposes a sentence of one (1) year of imprisonment to S.G. for this criminal offence.

The Accused **S.G.** 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 punishment. The panel imposed an integrated punishment of 14 years and 6 months imprisonment pursuant to Article 71 Paragraph (1) and (2) item ii) of the CCK.

S.G. has been in detention on remand since . Detention on remand is to be credited in the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

A.G.

The Court considered as aggravating circumstances the fact that **A.G.** was in possession of a weapon for a long time, since the end of the war and used it.

The Court considered as mitigating circumstances the fact that **A.G.** didn't have previous convictions.

For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the CCK, the law foresees a punishment of a fine of up to 10.000 Euros or imprisonment of one to ten years.

The Court imposes a sentence of one year of imprisonment to **A.G.** for this criminal offence.

A.G. has been in detention on remand from _____ until _____, when released by this Court. Detention on remand is to be credited in the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

A.G.

Regarding Murder

The Court deemed that there were no aggravating circumstances in the case whereas the Court considered as mitigating circumstances the commission of infraction under high mental distress, namely after being run over by a car. **A.G.** didn't have any previous convictions.

For the criminal act of Murder in violation of Article 146 of the CCK, the law foresees punishment of imprisonment of at least five years. But the Court imposes a punishment of four years of imprisonment to **A.G.** for this criminal offence due to the condition in which the crime was committed, namely the high level of disorientation of the defendant at the time of the crime.

Regarding Unauthorized Ownership, Control, Possession and Use of Weapon

The Court considered as aggravating circumstances the fact that **A.G.** grabbed and used the weapon. As mitigating circumstances the Court considered that he was in a state of mental distress. It was not proven that he was possessing weapon before _____. **A.G.** didn't have previous convictions.

For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the CCK, the law foresees a punishment of a fine of up to 10.000 Euros or imprisonment of one to ten years. The Court imposes a sentence of 1.000 Euros fine to **A.G.** for this criminal offence.

A.G. has been in detention on remand from _____ until 08 November 2011 and under house arrest from the moment of pronouncement of the verdict on 08 November 2011. Detention on remand and house arrest are to be credited in the

imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

H. Confiscation

Pursuant to Article 328 Paragraph (5) of the CCK, the Court orders the confiscation as follows:

The weapon used to commit the criminal offence (**S.G.**) – pistol type , in colour with serial number containing bullets is confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

The weapon used to commit the criminal offence (**A.G.**) - pistol type , in colour, serial number , containing bullets, is confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

The weapon used to commit the criminal offence (**A.G.**) - pistol type with serial number , is confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the CCK.

The vehicle used to commit the criminal offence – plate number is confiscated pursuant to Article 328 Paragraph (5) of the CCK.

I. Costs

S.G., A.G., A.G. and B.I. were found guilty, therefore, they must reimburse the costs of criminal proceedings as follows:

- **S. G.** shall reimburse 300 Euros as of his part of the costs of criminal proceedings,
- **A.G.** shall reimburse 100 Euros as of his part of the costs of criminal proceedings,
- **A.G.** shall reimburse 300 Euros as of his part of the costs of criminal proceedings,
- **B.I.** shall reimburse 300 Euros as of his part of the costs of the criminal proceedings,

pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation.

When found not guilty **Xh.I.** is relieved from the duty to reimburse the costs of criminal proceedings.

District Court of Mitrovica

P. nr. 22/10

Prepared in English, an authorized language.

Presiding Judge

Caroline Charpentier

Panel Member

Nikolay Entchev

Panel Member

Ali Kutllovci

Recording Officer

Anu Juho

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.

