

MUNICIPAL COURT OF MITROVICA

P. nr. 61/09

19 January 2010

IN THE NAME OF THE PEOPLE

THE MUNICIPAL COURT OF MITROVICA, EULEX Criminal Judge Hajnalka Veronika Karpati as Trial Judge, with the participation of Tara Khan EULEX Legal Officer as Recording Officer, in the criminal case against;

L.R., charged, according to the Summary Indictment PP. Nr. 40/09 dated and filed with the Registry of the Municipal Court of Mitrovica on 18 August 2009, with the criminal offence of **Slight Bodily Injury**, contrary to Article 153 Paragraph (1) Item 1 as read with Paragraph (2) of the Criminal Code of Kosovo (CCK);

After having held the main trial hearing in public on 13, 14 and 19 January 2010, all in the presence of the accused **L.R.**, his Defence Counsel Zeqir Maxhuni, EULEX Public Prosecutor Neeta Amin, Injured Party B.N. (except the hearing on 19 January 2010), Legal Representative of the Injured Party Vasic Dejan;

On 19 January 2010, pursuant to Article 473 Paragraph (2) of the PCPCK pronounced in public and in the presence of the Accused, his Defence Counsel, the EULEX Public Prosecutor and the Legal Representative of the Injured Party the following

VERDICT

The accused **L.R.**, nickname Dj. , son of Xh. R. and Xh. B. , born on , in , Kosovo, of A. ethnicity, last residence at Street, , single, living with parents, attending high school, member of Security Forces of Kosovo with an allowance of 200 Euro/month, no previous conviction,

Is

FOUND NOT GUILTY

- **because** on at around , when the accused **L.R.** together with his friend B.U. had crossed the and walked to the , at the first intersection after the , at the traffic lights in street in , they were surrounded and attacked by a group of approximately 10 young men who hit the Accused and his friend by fists and

kicks. In order to avoid more serious injuries and free himself from the group of attackers, the Accused pulled out a knife from the inside pocket of his jacket and made swinging moves with it, whereby he caused an injury of slight nature, an 11 cm long wound on the left side of the hip, to B.N. who stood in the group of attackers. At this moment the members of the group stopped the beating, stepped back a bit and in this way the Accused and his friend could escape the group and flee towards the and back to . The Accused acted in necessary defence.

THEREFORE, the accused **L.R.** is

Acquitted

Of the charge of committing the criminal offence of **Slight Bodily Injury** under Article 153 Paragraph (1) Item 1 and Paragraph (2) of the Provisional Criminal Code of Kosovo, pursuant to Article 390 Item 1) of the PCPCK and Article 8 Paragraph (1) of the PCCK.

All the items confiscated from the accused **L.R.**, as listed in the Certificate of Confiscation dated 31/12/2008, shall be returned to the accused pursuant to Article 117 Paragraph (3) of the PCPCK.

All the items confiscated from B.U., as listed in the Certificate of Confiscation dated , shall be returned to B.U. pursuant to Article 117 Paragraph (3) 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 and the remuneration and necessary expenditures of defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

The property claim of the injured party N.B. is referred for civil proceedings pursuant to Article 112 Paragraph (3) of the PCPCK.

REASONING

A. Procedural Background

EULEX Prosecutor Neeta Amin filed the Summary Indictment with the Municipal Court of Mitrovica on 20 August 2009. Main Trial hearings were held on 13, 14, and 19 January 2010. Closing arguments were heard from EULEX Prosecutor Neeta Amin,

Legal Representative of the Injured Party Dejan Vasic, and Defence Counsel Zeqir Maxhuni on 19 January 2010. The Verdict was orally rendered the same day.

B. Competence of the Court

Under Article 21 Paragraph (1) of the PCPCK, municipal courts are competent to hear criminal cases involving charges punishable by a fine or by imprisonment of up to five years. Pursuant to Article 27 Paragraph (1) of the PCPCK, territorial jurisdiction is proper with the court within whose territory the crime is alleged to have been committed.

As set forth above, the charge of **Slight Bodily Injury** in violation of Article 153 Paragraph (1) Item 1 and Paragraph (2) of the PCCK allows for the imposition of a sentence of imprisonment of up to three years. Furthermore, the summary indictment in this case alleges that the accused committed the acts in

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

On 14 October 2009, 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 3.5 of the “Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo” and assigned this case to the EULEX Judges in the District Court of Mitrovica. The case was allocated to EULEX Judge Hajnalka Veronika Karpati as Presiding Judge.

C. Summary of Evidence Presented

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

- (1) N.B. – Injured Party, 13 January 2010
- (2) B.M. – Witness, 13 January 2010
- (3) S.B. – Police Officer, 13 January 2010
- (4) B.U. – Witness, 14 January 2010

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

- (5) KP Officer’s Report dated
- (6) Original sketch drawn by B.U. on
- (7) Receipt of payment to University of dated

On 14 January 2010, the following documents were read into the record:

- (8) KP Certificate of Items Confiscated from the Accused on
- (9) KP Certificate of Items Confiscated from B.U. on

- (10) Five photographs of the knife confiscated from the Accused.
- (11) KP memorandum to the Police Station from Investigator E.A. dated .
- (12) RCS Investigator's Report by Investigator E.A. dated .
- (13) RCS Investigator's Report by Investigator E.A. dated .
- (14) KP memorandum to the Police Station from Srgt. A.P. and Investigator E.A. dated .
- (15) Two RCS Investigator's Reports by Investigator E.A., both dated .
- (16) KP Officer Report by N.M. dated .
- (17) KP Officer Report by M.J. dated .
- (18) KP Officer Report by Sh.I. dated .
- (19) KP Officer Report by N.M. dated .
- (20) Request for lab analysis of the knife confiscated from the Accused.
- (21) Chain of custody form regarding the confiscated knife.
- (22) Request for Evidence Examination at KPS Criminalistic Lab dated regarding whether human blood is found on the confiscated knife.
- (23) Court Order for DNA Analysis on the confiscated knife.
- (24) Prosecution Order for DNA Analysis of blood sample from N.B. dated .
- (25) Results of DNA Analysis on confiscated knife dated .
- (26) Medical Report of B.U. dated .
- (27) Medical Report of the Accused dated .

During the main trial session on 14 January 2010 the Accused gave a statement and answered questions.

D. Evaluation of Presented Evidence

1. Factual Findings

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

On the , the Accused purchased a knife in . Afterwards, around hrs, he met his friend B.U.. They ran some errands together and then went to eat. While eating, the Accused agreed to accompany U. to to meet in person a female with whom U. had been chatting online. They took a minibus from to . While on the minibus, at hrs, U. sent an SMS text message to the female informing her that he was coming to with a friend. He also attempted to call her from his mobile.

There was no response from the female by the time the Accused and U. disembarked from the minibus in . U. attempted to call her from the Accused's mobile. They then walked to the in in order to try to call her again. Since U. could not reach her, they went to a café near the , where they stayed for approximately one hour talking. They then went for a walk and saw the , which was close to the café.

The Accused and U. saw that there were many people walking on the _____, and that police officers and KFOR soldiers were stationed on the _____. Because the situation appeared good, they decided to _____ to see _____. They _____, and walked approximately 100 meters into on _____ Street, while talking to each other in Albanian. At that point, someone from behind called out to them in Serbian. They turned to see who had called them, and were surrounded by approximately ten boys and young men of Serbian ethnicity. The Serbian male who was in front of the Accused asked in Serbian, “Odakle ste?”, but the Accused and U. just looked at each other because neither one spoke nor understood Serbian. That person then punched the Accused on the left side of his face, and the other members of the Serbian group began immediately hitting and kicking them. Both the Accused and U. put their hands up to protect their faces and fell to kneeling positions on the ground while continuously being hit.

The beating continued for approximately 3-4 minutes when the Accused remembered that he had the new knife on him. He reached into the inside pocket of his jacket and pulled out the knife, took it out of its cover, and began swinging it around in order to fend off the attack. During the swinging, he felt the knife come into contact with a person in the group when he stabbed Injured Party N.B. in the left side of his lower back. The Accused then turned around with the knife to show it to the attackers who were behind him, and then turned back around. As a result, the attackers paused and backed away a small distance.

The Accused and U. used this opportunity to escape the group. U. began running first towards the _____ and called out to the Accused, who immediately ran after him. The Accused began running with the knife still in his right hand, which he held inside the right side pocket of his sweatpants. They saw that members of the group were chasing them and throwing stones at them. When the Accused reached _____ and felt safe, while still running, he put the knife in its cover and returned it to his pocket. On the _____ of the _____, they surrendered to KP officers stationed there. The police searched the Accused and confiscated the knife. They were then taken to the _____, where U. passed out and had to be revived. They were then taken to the _____ Health Center and treated for their injuries.

As a result of the attack, the Accused sustained injuries to his hands, chest area, and abdomen. B.U. suffered a brain concussion as well as injuries to his face, neck and hands.

As a result of the stabbing, Injured Party N.B. suffered a cut injury of approximately 11 cm in his left gluteus area.

2. Evidence Establishing the Factual Findings

The factual findings described above are proven by the following testimonies and documentary evidence.

The Accused testified that on the _____, he was walking in neighbourhood of Pristina when he saw a stand selling knives, wallets and other items. He purchased a knife for the purpose of hiking and fishing and because it was cheap.

Both **the Accused** and Witness B.U. testified consistently to the following:

The Accused and U. met in _____ around _____ hrs, whereupon they ran some errands together at the university and then went to eat. While eating, U. persuaded the Accused to come with him to _____ so that he could meet a female whom he had been talking to over the Internet. They took a minibus, and while on the bus U. sent an SMS to the female informing her that they were coming to _____. U. also attempted to call the female from both his and the Accused's mobile phones.

A metering record of SMS text messages sent from U.'s mobile phone indicates that the text was sent on _____ hrs.¹ Metering records of phone calls made from U.'s and the Accused's mobile phones indicate that _____ calls were made to the female from U.'s mobile at _____,² and _____ calls were made from the Accused's mobile at _____.³

When the Accused and U. disembarked from the minibus in _____, they walked to the post office to try to phone the female again, however a man was answering the phone. Therefore, they decided to go to a nearby café, where they stayed for approximately one hour and then went for a walk. They approached the _____, which was very close to the café, and saw that there were many people walking back and forth _____. They also saw that there were KP officers and KFOR soldiers stationed _____. The situation appeared good and U. proposed that they _____. The Accused was uncertain at first, but eventually agreed. The Accused had never been to _____ before. They walked _____, and continued walking while speaking to one another in Albanian language in a normal tone of voice.

Video surveillance of the _____ shows the Accused and U. crossing over to the _____.⁴

When they had walked approximately 100 meters from the _____ on _____, they heard someone calling out to them from behind. Both the Accused and U. turned around, and were surrounded by an aggressive group of people consisting of approximately ten Serbian boys and young men.

The member of the group who was standing in front of the Accused asked "Odakle ste?" in Serbian, which means "Where are you from?" Since neither the Accused nor U. spoke nor understood Serbian, they just looked at each other in a manner which indicated that they did not understand. The Accused began to say "m'fal" in Albanian when the Serbian

¹ Prosecution bundle p. 184 (English).

² Prosecution bundle p. 193 (English).

³ Prosecution bundle p. 183 (English).

⁴ Criminal Charges Report dated _____ by E. A. _____, Prosecution bundle p. 256 (English).

male who spoke punched the Accused in the left side of his face. Other members of the group immediately also began punching and kicking both the Accused and U.. The same male who addressed the Accused continued punching him as well. Both the Accused and Witness U. raised their hands in front of their faces for protection and went down towards the ground in kneeling positions. They were unable to escape and the beating continued for approximately 3-4 minutes.

The Court believes that the group consisted of approximately ten people and contained a mixture of males of a youthful age and in their 20's. In his statement to the EULEX Prosecutor, **the Accused** stated that the members of the group were "at least over 25 years old" with heavy builds.⁵ During his testimony, he added "I know that in that group some people were younger, but there were a lot of them. I could not see who was young and who was old. I know there were young people there too."⁶ He recalled that the one who first punched him was taller than him and "not of a young age."⁷ Witness U. estimated that there were approximately ten persons in the group, some tall and some short, and that they were older than 20. He did not recall any schoolchildren or young boys, however, he "did not get a good look because it happened in one second"⁸ and he was traumatized by the hard hits he received. Due to the sudden attack and the numerous incoming punches and kicks, and the fact that the Accused and U. had their hands covering their faces for protection and thereby obstructing their views, neither one had the opportunity to observe each individual member of the group. It is therefore realistic and understandable that they would not have noticed and recalled more specifically the ages and physical descriptions of all the individual persons in the group. Furthermore, Officer M.J. reported that he saw 5-10 persons chasing the Accused back to the , and that these persons were mostly juveniles.⁹

The Court further believes that there were additional persons who were not part of the initial "attacking group" but were in the immediate vicinity of the scene of the incident and were in that sense part of the group of overall persons. This is explained in further detail below.

The beating continued for approximately 3-4 minutes while the Accused and U. were unable to escape, but only to continue crouching and covering their heads in protection. Video surveillance of the show two figures which the police believe to be the Accused and U. , and running back over the .¹⁰ As the fight began almost immediately upon their entry into some 100 meters from the , then the Accused and U. were being punched and kicked for the majority of the five minutes which passed.

⁵ Minutes of the Suspect Hearing, , Prosecution bundle p. 26 (English).

⁶ Minutes of the Main Trial Hearing, 14 January 2010, p. 22 (English).

⁷ Minutes of the Main Trial Hearing, 14 January 2010, p. 22 (English).

⁸ Minutes of the Main Trial Hearing, 14 January 2010, p. 13 (English).

⁹ Officer Report by M.J. dated , Prosecution bundle p. 246 (English).

¹⁰ Criminal Charges Report dated by E.A., Prosecution bundle p. 256 (English).

The Accused gave a detailed account of what occurred next. While the beating was ongoing, he remembered that the knife he had purchased earlier that morning was still in the inside pocket of his jacket. With his left hand covering his head for protection, he unzipped his jacket with his right hand and reached into the inside pocket, which was open, and grabbed the knife, which was blade down and inside a cover. He pulled out the knife, removed it from its cover and began swinging it. His intention was not to hurt anyone, but to defend himself, as he “tried to hurt somebody as little as I could, only in order to get out of there.”¹¹ During this swinging motion, the Accused felt the knife make contact with somebody who was standing near him, but he did not know who. The stabbed person immediately pulled back, and the Accused saw that he had dark hair, was wearing a black jacket, and was standing with his hands held on the left side of his hips, but he can not recall the injured person’s face. The Accused turned around to show that he had a knife to the people in the group who were attacking him from behind, and then turned back around. The whole group pulled back, making a larger circle around the Accused and U.. The Accused saw U. begin to run away in this respite. U. called to him “get away”, and the Accused began running as well.

Witness U. did not see the moment that the Accused pulled out the knife and made swinging motions, nor did he witness when the Accused stabbed a person in the group with the knife. However, he corroborates the Accused’s testimony in the following: Witness U. stated that when the fighting was stopping, he saw that the Accused had a knife in his hand. U. and the Accused were 2-3 meters apart at this moment, and the member of the group closest to the Accused was 20-30 cm away. Witness U. saw the person who was stabbed by the Accused and holding his hands at his hip, however he can not describe that person because he was focusing on how to escape. They were still surrounded, but the members of the group withdrew a small distance from U. and the Accused due to the knife, so they used this opportunity to escape and both began running back towards the

Testimonies of Injured Party N.B. and Witness B.M. also corroborate some aspects of the fight and stabbing, however their testimonies will be discussed in detail below.

The Accused also gave detailed testimony regarding how they fled from the scene. When he first began running very fast, he still had the knife in his right hand and the cover in his left hand. His right hand was holding the blade of the knife, which he had put handle-down inside the right side pocket of his sweatpants. He did not notice any blood on the knife, but felt that the blade was wet, possibly with body fat. He was running slightly behind Witness U.. He saw that there were people chasing them and throwing stones. When he approached and felt out of danger, he slowed down, put the knife in its cover and put it back in his pocket. They ran to two KP Officers stationed on the

Witness U. testified that he was running one or two meters ahead of the Accused. For this reason, he could not see the Accused’s exact movements regarding the knife and its cover. He did look back two or three times while running, and saw members of the group

¹¹ Minutes of the Main Trial Hearing, 14 January 2010, p. 22 (English).

chasing them and throwing stones. He did not notice any school children standing as passers-by and no one blocked his path while running to the bridge. Once over the , they surrendered to the KP officers stationed on the .

Police reports indicate that the Accused and U. ran from Street on the while being chased by 5-10 juveniles, crossed and surrendered to KP Officers on the at approximately .¹² The Accused was searched by KP officers and the knife was confiscated from him.¹³

This is also corroborated by the testimony of KP Officer S.B.. Officer B. was on the at the time that the Accused and U. arrived back on the , running towards after the fight. He testified that he was walking to the KP vehicle parked on the of the in order to retrieve his gloves from inside between when he noticed two young men running and stopping at the police officers stationed there. After he had retrieved his gloves, he saw these men speaking to the police, at a distance of approximately 5-10 meters from where he was standing. Later, he was instructed to bring the men to the Mitrovica police station.

At this time, Officer B. noticed that the men were both bruised in the face, both had swollen hands, and B.U. was bleeding from his left nostril. He saw that they were psychologically upset and were shaking. In the Interview Room of the police station, U. lost consciousness and had to be revived with water. The Public Prosecutor arrived at the station at and ordered that they both be taken to Health Center.¹⁴ As a result of the attack, the Accused suffered a contusion/sprain on his right hand, and contusions of the chest and abdominal areas.¹⁵ B.U. suffered from a brain concussion, a concussion of the cervical vertebra, and nausea.¹⁶

3. The Testimony of the Injured Party

At the time of the incident, Injured Party N.B. was 15 years old. He was 17 years old when he testified before the Court. He testified that on at around he was walking home from school with his friend B.M.. They were walking their normal route home on Street. When they neared , they passed 5-6 young men age 19-20 who were talking. Approximately 2-3 meters after passing them, B. heard “noise” behind him and realized a fight had broken out behind. M. turned around first to see what was happening, and as B. was turning to look as well, he felt pain as he was stabbed in the lower left back by a male wearing a multi-colored hat. He did not get a good look at the person who stabbed him and did not see the knife. He immediately fell

¹² Officer Report by M.J. dated , Prosecution bundle p. 246 (English); Officer Report by D.D. dated , Prosecution bundle p. 248 (English); Criminal Charges Report dated by E.A., Prosecution bundle p. 256 (English); Investigator’s Report by E.A. dated , Prosecution bundle p. 232 (English).

¹³ Officer Report by D.D. dated , Prosecution bundle p. 248 (English); Officer Report by Sh. I. dated hrs, Prosecution bundle p. 250.

¹⁴ Corroborated by Investigator’s Report dated , Prosecution bundle p. 238 (English).

¹⁵ Medical Report dated , Prosecution bundle p. 212 (English).

¹⁶ Medical Report dated , Prosecution bundle p. 210 (English).

down, and as falling he saw the person who stabbed him running towards the .
He can not remember anything further.

As the Injured Party testified that he did not witness any of the attack or fight which occurred – he only heard noise and then was stabbed before he could turn around fully and look – he can not offer much assistance to the Court in determining the factual situation.

Furthermore, discrepancies between his testimony before the Court and his previous statements to the Kosovo Police on and to the Public Prosecutor on call his testimony into question. In her closing statement, the Prosecutor puts forth that the Injured Party was consistent in his accounts to the police, the prosecutor and the Court. However, the Court disagrees. In both his previous statements, the Injured Party stated that he witnessed the fight and when one person escaped the group, ran towards him and stabbed him. On , he specified that he turned around to look at the fight, that he saw one man attempting to run away from the group, and that he saw this man escape and run towards him.¹⁷ When confronted with these contradictions in Court, the Injured Party stated that was frightened when he was interviewed by the police, and that he did not see the fight, only heard noise and presumed there was a fight.

The Court accepts that some discrepancies between testimony and previous statements, or some inaccuracy of previous statements, can be attributed to the young age of the Injured Party and the frightening experience of having sustained a stab wound. However, if this explanation is accepted in full, the Court is left with only the Injured Party's testimony before the Court which, as stated above, offers little detail to clarify or establish the facts leading up to the stabbing.

However, the Court does not accept that the Injured Party did not witness any of the fight. It is not realistic that a teenage boy such as the Injured Party would hear the noise of a fight occurring in close proximity to him, a fight which lasted approximately 3-4 minutes, and not turn around to see what was going on. Further, considering the Court's finding that only one stabbing occurred during this incident (which is explained in detail below), it is more logical and in line with human nature that the Injured Party not only looked to see what was going on, but came close enough to the fight to be injured by the Accused when he pulled out a knife.

4. The Testimony of Witness B.M.

There were several serious discrepancies between Witness M.'s testimony before the Court on 13 January 2010 and his previous statements to the Kosovo Police and the Prosecutor.

Witness B.M. testified that while walking home from school with the Injured Party on on , they passed a group of around five young men by the road who were over

¹⁷ Record of the Injured Party Examination, , p. 3 (English).

20 years old and of medium build. They also walked passed two young men. When they passed _____, he heard “some noise” from behind and turned around to look. He saw “some commotion” and saw the two young men running out of the group towards them. He heard someone from the group yell out “They are Albanians!” and “Watch out they have a knife!” He did not see anyone from the group chasing the two who ran out. He saw one of the fleeing men pull out a knife and stab the Injured Party in his back. The Injured Party fell and Witness M. flagged down the first car and took him to the hospital.

In his statement to police on _____, M. stated that when he and Injured Party B. heard some noise upon passing _____, they turned around to see what was happening. He saw a fight among approximately five people which took a few minutes. Suddenly two of the boys broke out from the group and started to run. The other boys yelled “Watch yourself, they are Albanian!” and chased them. M. saw that one of the fleeing boys had a knife in his hand, and he and the Injured Party tried to escape behind a car, but the Injured Party was stabbed in the back.

Witness M.’s statement to the Public Prosecutor on _____ is fully consistent with his statement to the police, and adds the following important details regarding the fight and stabbing:

- While passing _____, he heard a noise and heard that two young men were stopped by some older boys about five meters away.
- He saw that there were two Albanians and some three Serbs.
- At first the Serbs and Albanians were talking amongst themselves, and then he saw one of the Serbs punch one of the Albanians with his fist. This occurred approximately 5-7 meters away from M..
- He heard shouting “These are Albanians, these are Albanians.”
- He saw a fight occur which lasted about two minutes.
- The two Albanians ran out of the fight, and the one which was first punched pulled out a knife.
- He saw the knife in the hand of the Albanian.
- He heard someone shout “Be careful, he has a knife!”
- He and the Injured Party tried to escape but could not squeeze between the cars. Then the Albanian with the knife stabbed the Injured Party.
- He did not see the Albanian with the knife stab anyone in the fighting group.

Witness M. was questioned in detail about the contradictions between his statements and his testimony. His general explanation for the discrepancies was that he based his previous statements on what he “presumed” and “believed” rather than on what he personally witnessed. When questioned again before the Court on whether he witnessed any fight, M. answered “Nothing specifically, but I presumed that was what was going on.”¹⁸ When questioned again whether he saw one of the Serbs in the group punch one of

¹⁸ Minutes of the Main Trial Hearing, 13 January 2010, p. 18 (English).

the Albanians, he answered “No, I saw commotion but nothing specific.”¹⁹ However, he confirmed that he did see the Accused pull out a knife and stab the Injured Party.

The Court finds the witness’ explanation for the inconsistencies in his statements unsatisfactory. If during his statements to the police and Public Prosecutor he was merely *presuming* that a fight had occurred and not recalling what he actually saw, it is neither logical nor believable that he would provide an account in such precise details - for example, that the fight started with a punch to one of the Albanians and lasted for several minutes before the Albanians broke away. Particularly damaging to the credibility of Witness M.’s testimony is the question of whether he saw the first punch of the Accused which started the fight. His previous statement to the Public Prosecutor is precise – he saw the punch. The Prosecutor then asked follow-up questions which confirm that he then saw the same Albanian who was punched pull out a knife.²⁰ There is no confusion or lack of clarity in his answers. There is also no reasonable alternate interpretation of the witness’ answers. Yet when before the court, M. attempted to reword his previous statement, claiming that he never saw one of the Albanians punched and the “punch” he referred to in the statement was when the Injured Party was stabbed.²¹ This new explanation of the punch is both confused and unbelievable.

It is the Court’s opinion that M. witnessed the fight in its entirety and gave accurate statements to the Kosovo Police and Public Prosecutor, but later tried to diminish the extent of what he witnessed during his testimony. Furthermore, Witness M.’s previous statements fully corroborate the testimonies of the Accused and Witness U., with the one exception of at what point the actual stabbing of the Injured Party occurred. (This issue is discussed in detail below.) For these reasons, the Court finds that the testimony of Witness M. during the Main Trial is not credible.

5. Singular Stabbing Incident

The Court heard two different versions of the stabbing event – one from the Accused and Witness U. and another from the Injured Party and Witness M.. In the first version, the Accused pulled out the knife during the fight in order to escape from the group. At that moment he swung the knife back and forth and felt that he had stabbed someone. It was this action which caused the attack to halt and the group of attackers to pull back, thus providing the opportunity to the Accused and Witness U. to run away. In the second version of the event, the Accused first pulled out the knife to free himself from the group. Then, as he fled from the group and was running on his way to safety, he pulled out the knife a second time and while passing two bystanders on his way towards the , stabbed Injured Party B..

The Court finds that during the altercation on , there was only one stabbing incident perpetrated by the Accused.

¹⁹ Minutes of the Main Trial Hearing, 13 January 2010, p. 18 (English).

²⁰ Record of the Witness Examination, , p. 4 (English).

²¹ Minutes of the Main Trial Hearing, 13 January 2010, p. 20 (English).

Firstly, for the reasons already discussed, the testimonies of the Accused and Witness U. are credible, whereas the testimony of the Injured Party provides little information and the testimony of Witness M. is not credible. The Accused admitted that he injured one person with the knife when waving it around in order to halt the attack and escape. He testified that he did not pull the knife out at any other time until he reached the .

Secondly, the version presented by the Injured Party and Witness M. not only contains contradictions, but at the same time is very unrealistic. It is undisputed that the Accused and his friend, Witness U., were attacked by a group of Serbian young men (in a number of around 10 persons), in on that day. The attack occurred clearly because they were Albanians; They did not understand when they were addressed in the Serbian language, they were specifically asked from where they came, and they could not respond in Serbian language. Then during the attack, someone shouted “They are Albanians!” In such a situation, it is absolutely unrealistic and illogical that when the two Albanians could finally free themselves from several minutes of an ongoing attack by one of them brandishing a knife, and are running back towards the while being chased by some members of the attacking group, the Accused would waste time to pull the knife out again and stab an innocent passerby standing outside the group.

Thus, as stated in the enacting clause above, the Court finds that in order to avoid more serious injuries and free himself from the attack, the Accused pulled out a knife from the inside pocket of his jacket and made swinging moves with it while still trapped within the group. It was at this time that he caused an injury of slight nature to the left side of the hip of N.B., who stood in the group of attackers.

The Court refers to the Injured Party as standing “in the group of attackers” not to say that the Injured Party was one of the attackers himself. Whether the Injured Party was among the attackers could neither be established beyond a reasonable doubt, nor could it be excluded. His precise role could not be established. The Court holds only that at the moment when the Injured Party was stabbed, he was standing *in the immediate vicinity of the scene of the incident, within arm’s reach* of the Accused – close enough to be injured when the Accused tried to free himself from the group – and thus can be said to be among the overall group of persons at the scene of the attack.

E. Legal Qualification

1. Law Applied

The act in question under the criminal charge was committed on . At that time, the Provisional Criminal Code of Kosovo, which entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 Paragraph (1) of the Provisional Criminal Code, the law in effect at the time of commission of the act shall be applied to

the perpetrator. There was no change in the law prior to this verdict which would be more favorable to the Accused, pursuant to Article 2 Paragraph (2) of the PCCK.

Although in the Indictment the Accused was charged according to the Criminal Code of Kosovo that entered into force on 06 January 2009, the relevant Articles are identical in both Codes. Therefore, the Court made reference to the provisions of the PCCK as the applicable law at the time of commission of the act.

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

2. *Necessary Defence*

It is clear and undisputed that the Accused caused slight bodily injury to the Injured Party by stabbing. However the Court finds that this act was a direct and proportionate response to an unlawful, real and ongoing attack against himself and his friend from which he was attempting to escape.

Under Article 8 of the PCCK, an act committed in necessary defence is not a criminal offence. An act is committed in necessary defence “when a person commits the act to avert an unlawful, real and imminent attack from himself, herself or another person and the nature of the act is proportionate to the degree of danger posed by the attack.” Thus, in the case at hand there are two issues to consider; First, whether the Accused acted *to avert an unlawful, real and imminent attack* upon himself and his friend B.U., and second whether his response was *proportionate* to the attack.

The facts surrounding the commencement of the attack by the group of unknown Serbian males upon the Accused and U. are not disputed. It was an unlawful attack, instigated on the basis of their Albanian ethnicity and the fact that they had walked into . From the testimonies and medical reports, it is clear that this attack was real and significant. The two were outnumbered and sustained continuous hits and kicks, resulting in visible injuries which were seen by Police Office B.. U. lost consciousness at the Mitrovica Police Station, and the medical examination confirmed that he had suffered a brain concussion as a result of the strong blows to his head. The attack was ongoing for several minutes while the Accused and U. were unable to escape. At that point, while crouched down and holding up his hands to protect his head, the Accused pulled out a knife in order to defend himself.

As the Accused used a knife against fists and kicks, the Court had to examine whether he acted proportionately to the degree of danger posed by the attack.

The Court finds that taking into consideration the character of the attack faced as well as the nature in which the Accused used the knife, the Accused acted proportionately to the degree of danger confronted. The Accused and U. were attacked not by one, two or even

three persons, but by a group of approximately ten young males. The attack consisted of punches and kicks which were of such strength to cause injuries and a brain concussion. The attack was ongoing for several minutes at close range. Faced with such a situation, the only way for the Accused to halt the ongoing attack was to present the knife. In doing so, he testified that his aim was to cause as little injury as possible – only enough for him to be able to escape the attack. As a consequence, N.B., whose precise role in the situation could not be established, suffered a slight cut injury. The Accused did not attempt to cause any further injury or to use the knife in retaliation, but immediately ran away from the attackers.

According to the law, an act committed in necessary defence is not a criminal offence. Therefore the Accused must be acquitted.

F. Confiscated Items

As a consequence of the acquittal, the items confiscated from the Accused **L.R.** and from Witness B.U. shall be returned to them pursuant to Article 117 Paragraph (3) of the PCPCK.

G. Costs

The Accused was acquitted, therefore he is not obliged to reimburse the costs of criminal proceedings 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 and the remuneration and necessary expenditures of defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

H. Compensation Claim

During the main trial on 13 January 2010, Injured Party N.B. filed a property claim with the District Court, pursuant to Article 109 of the PCPCK. Because the Accused is acquitted, the property claim of the injured party must be referred for civil proceedings, pursuant to Article 112 Paragraph (3) of the PCPCK.

Municipal Court of Mitrovica
P. nr. 61/2009

Prepared in English, an authorized language.

Recording Officer

Presiding Judge

Tara Khan

Hajnalka Veronika Karpati

Legal remedy:

Authorized persons may file an appeal in written form against this verdict through the Municipal Court of Mitrovica to the three-judge panel of the District Court of Mitrovica within eight days from the date the copy of the judgment has been served, pursuant to Article 473 Paragraph (3) of the PCPCK.