

DISTRICT COURT OF MITROVICA
P. Nr. 70/07
08 June 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judges Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Charles L. Smith, III and Nikolay Entchev as panel members, with the participation of Noora Aarnio EULEX Legal Officer as Recording Officer, in the criminal case against;

A. D., originally charged with Aggravated Murder contrary to Article 147 Paragraph (1) Item 3 of the Provisional Criminal Code of Kosovo (PCCK) in conjunction with Article 23 of the PCCK, Attempted Murder contrary to Article 146 of the PCCK in conjunction to Article 20 Paragraph (1) and Article 23 of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK, according to the Indictment of the District Public Prosecutor PP Nr. 208/06, dated 05 March 2007,

After having held the public hearing concerning the acceptance of the plea agreement dated 25 May 2010, on 03 June 2010, in the presence of the accused **A. D.**, his Defence Counsel Zeqir Maxhuni, EULEX Public Prosecutor Neeta Amin and Injured Parties S. H. and Rr. H., after having accepted the plea agreement on the same day and after it has been registered with the Court on 7 June 2010 and after having held the public hearing concerning sentencing on 08 June 2010, in the presence of the Accused, his Defence Counsel, the EULEX Public Prosecutor and Injured Party Rr. H., after the trial panel's deliberation and voting held on 08 June 2010, pursuant to Article 308A Item 15 of the Criminal Procedure Code of Kosovo (CPCK) pronounced in public and in the presence of the Accused, his Defence Counsel, the EULEX Public Prosecutor and Injured Party Rr. H. the following

JUDGMENT

The accused **A. D.**, son of Sh. D. and M. D., born on _____, in _____, Kosovar A., residing in _____, not married, with no child, highest education secondary school, labourer by profession, of average economic status, no known previous conviction, in detention since _____,

Having pleaded guilty to the criminal offences of Murder in violation of Article 146 of the Provisional Criminal Code of Kosovo (PCCK) and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK pursuant to the Plea Agreement dated 25 May 2010 and the Court having accepted the Plea Agreement dated 25 May 2010, on 03 June 2010, as registered with the Court on 07 June 2010

is

SENTENCED

- to 9 /nine/ years of imprisonment for the criminal act of Murder
- to 2 /two/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The aggregate punishment is determined in **10 /ten/ years of imprisonment**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCCK.

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

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

REASONING

A. PROCEDURAL BACKGROUND

The District Public Prosecutor for Mitrovica in the indictment PP. no. 208/06 dated 05 March 2007 charged Agron Dervishi with Aggravated Murder contrary to Article 147 Paragraph (1) Item 3 of the Provisional Criminal Code of Kosovo (PCCK) in conjunction with Article 23 of the PCCK, Attempted Murder contrary to Article 146 of the PCCK in conjunction to Article 20 Paragraph (1) and Article 23 of the PCCK and Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the PCCK,

The main trial was scheduled to commence on 02 June and continue on 03 and 08 June 2010 but the start was adjourned due to ongoing plea negotiations between the parties. On 27 May 2010 the EULEX Prosecutor informed the Court that a guilty plea agreement had been reached and signed on 25 May 2010. The accused had signed the guilty plea agreement before it was presented to the Court on 03 June 2010.

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.

As set forth above, the charge of Aggravated Murder pursuant to Article 147 of the CCK allows for the imposition of a minimum sentence of 10 years of imprisonment. In addition, the indictment in this case alleges that the accused committed the acts in , Municipality..

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

On 15 February 2010 the President of the Assembly of EULEX Judges assigned the case to EULEX judges based on Article 3.3 on the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors.

Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Criminal Judge Hajnalka Veronika Karpati as Presiding Judge and EULEX Judges Charles L. Smith, III and Nikolay Entchev as panel members. All three judges are assigned to the District Court of Mitrovica.

None of the parties objected to the panel composition.

C. THE PLEA AGREEMENT

A plea agreement was presented to the Court in a public hearing pursuant to Article 308A Item 9 of the CPCK on 03 June 2010.

The Accused **A. D.** pleaded guilty to Murder in violation of Article 146 of the Provisional Criminal Code of Kosovo (PCCK) and Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 328 Paragraph (2) of the PCCK.

The Plea Agreement contained the following factual findings:

On _____ at about _____ hours on the road close to **A. D.**'s and L. H.'s houses in _____, _____ municipality, **A. D.** shot with an assault rifle '_____' at L. H. who was driving in his car with plate number _____. The defendant shot with an intention to kill. H. was seriously wounded by the gun shots, and he died later the same day at Pristina Emergency Center.

Until _____ **A. D.** kept in his possession at his house in _____, _____ municipality an assault rifle _____ with the serial number _____. He did not have a permission for the gun.

Injured Parties S. H., father of the victim and Rr. H. uncle of the victim were present at the public hearing on 03 June 2010. As the father of the victim was abroad, Rr. H. was informed by the prosecutor about the plea agreement. S. H., father of the victim, at the hearing on 03 June 2010 declared that the family does not want to submit a property claim. He was informed about the Plea Agreement through his brother, Rr. H.. Pursuant to Article 308A Item 5 of the CPCK the injured party must be given an opportunity to present a statement to the court regarding the property claim. In the present case the Injured Party S. H. - after he was given the relevant instruction and after it was explained to him what the property claim means -, explicitly stated in front of the Court that they do not wish to submit such a claim. They were given the opportunity to present their comments on the plea agreement whereby they expressed their dissatisfaction with the proposed sentence.

The Plea Agreement was accepted by the Court on the day of the hearing pursuant to Article 308/A Item 10 and Item 15 of the CPCK, as after questioning the Accused, their Defence Counsel and the Public Prosecutor, the Court determined that the plea agreement met the conditions under Article 308A Item 12; the Accused understood the nature and the consequences of the guilty plea, he voluntarily made the guilty plea after sufficient consultation with his defence counsel, he was not coerced in any way and was not forced to plead guilty. Furthermore the guilty plea is supported by the facts and evidence of the case, testimonies of the witnesses, statements of the Accused and documentary evidence of the case file. Therefore, pursuant to 308A Item 15 of the CPCK the Court ordered that the Plea Agreement be filed with the Court and scheduled the sentencing hearing for 08 June 2010.

The Plea Agreement was filed with the Court on 07 June 2010.

D. THE SENTENCING

On 08 June 2010 the trial panel heard arguments from all parties regarding sentencing. The parties presented all the mitigating and aggravating circumstances. The Injured Party Rr. H. adhered to the statements made by his brother, S. H. on 03 June 2010. After

deliberation the Panel imposed the punishment pursuant to Article 308A Item (15) of the CPCK.

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

In the case of **A. D.** the Court took as aggravating factors the young age of the victim who was not even 20 years old when killed and the way the Accused committed the criminal offence.

The Court took as mitigating circumstances that the accused has no previous criminal record, he admitted the criminal offence of murder, he showed sincere remorse and took responsibility for what he had committed. A further mitigating circumstance is that he has been in pre-trial detention for an exceptionally long period of time.

For the criminal act of Murder pursuant to Article 146 of the CCK, the law foresees a punishment of at least 5 years. Considering all the mitigating and aggravating factors, the panel imposed 9 years of imprisonment for this criminal act.

For the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons pursuant to Article 328 Paragraph (2) of the CCK the law foresees a punishment of a fine or an imprisonment of 1 to 8 years. The panel imposed 2 years of imprisonment.

The Accused committed two criminal acts. Pursuant to the rules of calculation of compounded sentence, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments. The panel imposed an aggregate punishment of 10 years of imprisonment pursuant to Article 71 paragraphs (1) and (2) Item 2) of the CCK.

The accused **A. D.** has been in detention on remand since . This period of time is to be credited in the imposed punishment of imprisonment pursuant to Article 73 paragraph (1) of the CCK.

E. THE APPLICABLE LAW

The criminal acts were committed on . At that time the Provisional Criminal Code of Kosovo (PCCK), that entered into force on 06 April 2004, was the applicable law. Pursuant to Article 2 paragraphs (1) and (2) of the PCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator unless a new law is

more favourable for the accused. The accused pleaded guilty to the criminal offences pursuant to the PCCK.

However, some changes, including the institution of “Plea Agreement” were introduced in the Criminal Procedure Code of Kosovo by the Law No. 03/L-003 that entered into force on 06 January 2009 and also the Provisional Criminal Code of Kosovo was amended by the Law No. 03/L-002 that entered into force on 06 January 2009.

Obviously, the provisions concerning a plea agreement can be applied only by reference to the “new” laws, the Criminal Code of Kosovo (CCK) and the Criminal Procedure Code of Kosovo (CPCCK). Therefore, the Criminal Code of Kosovo is more favourable for the accused and the Court made reference to this law in the Judgment concerning sentencing.

F. COSTS

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

Recording Officer
Noora Aarnio

Presiding Judge
Hajnalka Veronika Karpati

Panel members: Charles L. Smith, III

Nikolay Entchev

Legal remedy:

This judgment concerning sentencing became final on the day of its announcement as it does not fall under Article 308A Item 8.1 of the CPCCK.