

DISTRICT COURT OF MITROVICA
P. nr. 24/09
10 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 Smith and Klaus Jung as panel members, with the participation of EULEX Legal Officer Noora Aarnio as Recording Officer in the criminal case against;

H.G., charged, according to the Indictment of the Prosecutor PP. nr. 104/08 dated and filed with the Registry of the District Court of Mitrovica on 10 March 2009, as confirmed by the Ruling on Confirmation of the Indictment dated 11 January 2010, and amended at the main trial hearing on 29 April, with the following criminal offences;

- **Murder**, contrary to Article 146 of the CCK,
- **Attempted Murder**, contrary to Article 146 as read with Article 20 of the CCK, and
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 1 of the CCK,

Sh.G., charged, according to the Indictment of the Prosecutor PP. nr. 104/08 dated and filed with the Registry of the District Court of Mitrovica on 10 March 2009, as confirmed by the Ruling on Confirmation of the Indictment dated 11 January 2010, and amended at the Hearing on 29 April, with the following criminal offences;

- **Incitement to commit Murder**, contrary to Article 146 as read with Article 24 of the CCK,
- **Incitement to commit Attempted Murder**, contrary to Articles 146 as read with Articles 20 and 24 of the CCK, and
- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 1 of the CCK,

K.G., charged, according to the Indictment of the Prosecutor PP. nr. 104/08 dated and filed with the Registry of the District Court of Mitrovica on 10 March 2009, with the following criminal offence;

- **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, paragraph 1 of the CCK, and

After having held the main trial hearing in public on 30, 31 March, 27, 29 April, 31 May and 10 June, all in the presence of the accused **H.G.**, **Sh.G.** and **K.G.**, their Defence Counsel Adem Vokshi, Zeqir Maxhuni and Arif Hasi, Injured Party J. G., Legal Representative of the Injured Party Fadil Hoxha and EULEX Public Prosecutor Neeta Amin, after the trial panel's deliberation and voting held on 10 June 2010, pursuant to Article 392 paragraph (1) of the Criminal Procedure Code of Kosovo (CPCCK) pronounced - on the same day - in public and in the presence of all the Accused, their Defence Counsel, the Injured Party, his Legal Representative and the EULEX Public Prosecutor the following

VERDICT

The accused **H.G.**, no nickname, son of Sh.G. and N. R., born on _____ in _____, municipality of _____, Kosovo, of A. ethnicity, resident of _____, municipality of _____, single, living with parents, highest education secondary school, unemployed, of poor economic status, no known previous conviction, in detention from _____

is

FOUND GUILTY

- **because** on _____ at around _____, in the neighbourhood " _____", _____, municipality of _____ with the automatic rifle _____ of calibre _____ mm with serial number _____ fired _____ shots in the direction of A.G. and K.G., hitting each with one bullet and thereby causing the immediate death of A.G. and causing serious bodily injury to K.G. on his right arm.

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

Unauthorized Ownership, Control, Possession and Use of Weapons, contrary to Article 328, Paragraph (2) of the Provisional Criminal Code of Kosovo (PCCK).

The accused **H.G.**

is

FOUND NOT GUILTY

- **because** it could not be excluded that he acted in necessary defence pursuant to Article 8 Paragraph (2) of the PCCK when on _____ at around _____, in the

neighbourhood “ ”, , municipality of with the automatic rifle of calibre mm with serial number fired shots in the direction of A.G. and K.G., hitting each with one bullet and thereby causing the immediate death of A.G. and causing serious bodily injury to K.G. on his right arm.

Therefore, pursuant to Article 390 Item 3) of the Criminal Procedure Code of Kosovo (CPCCK) the accused H.G. **is acquitted** of the charges of

Murder, contrary to Article 146 of the CCK, and **Attempted Murder**, contrary to Article 146 as read with Article 20 of the CCK.

The accused **Sh., G.**, nickname **Sh.**, son of H.G. and M. Sh., born on in , municipality of , Kosovo, of A. ethnicity, resident of , municipality of , married, father of children, highest education primary school, unemployed, of poor economic status, no known previous conviction, in detention from , thereafter under the security measures of reporting to the police and prohibition of approaching specific persons

is

FOUND NOT GUILTY

- **because** it was not proven that on at around , in the neighbourhood “ ”, , municipality of he incited his **H.G.** to shoot with the automatic rifle of calibre mm with serial number at A.G. and K.G.. It was also not proven that he had any knowledge about the weapon in possession of his son and that he himself used the weapon.

Therefore, pursuant to Article 390 Item 3) of the CPCCK, the accused **Sh.G.** is acquitted of the charges of

Incitement to commit Murder, contrary to Article 146 as read with Article 24 of the CCK, **Incitement to commit Attempted Murder**, contrary to Article 146 as read with Articles 20 and 24 of the CCK and **Unauthorized Ownership, Control, Possession and Use of Weapons**, contrary to Article 328, Paragraph (1) of the CCK.

The accused **K.G.**, no nickname, son of J. G. and H. J., born on in , municipality of , Kosovo, of A. ethnicity, resident of , municipality of , unmarried, highest education secondary school, income of 400 euros/month, no known previous conviction,

Is

FOUND GUILTY

- **because** on _____ at around _____, in the neighbourhood “ _____”, _____, municipality of _____ with the pistol _____ of calibre _____ mm with serial number _____ he fired _____ shots at the direction of the window of **Sh.G.**'s house.

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

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

The **Accused H.G.** is

SENTENCED

- to 4 /four/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons

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

The **Accused K.G.** is

SENTENCED

- to 3 /three/ years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons.

The automatic rifle _____ of calibre _____ mm with serial number _____, the automatic weapon _____, calibre _____ mm, with serial number _____ and the pistol _____ of calibre _____ mm with serial number _____ are hereby confiscated pursuant to Article 60 Paragraph (1) and Article 328 Paragraph (5) of the PCCK.

The accused **H.G.** and the accused **K.G.** shall reimburse their parts 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. 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.

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

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

On 10 March 2009, the District Public Prosecutor for Mitrovica filed indictment PP. no. 104/08 dated 10.03.2009 with the Registry of Mitrovica District Court. The indictment alleged that the defendant **H.G.** had committed the criminal acts of

- **Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 of the CCK
- **Attempted Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 in conjunction with Article 20 of the CCK

The indictment alleged that the defendant **Sh.G.** had committed the criminal acts of

- **Incitement to Commit Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 in conjunction with Article 24 of the CCK
- **Incitement to Commit Attempted Aggravated Murder**, contrary to Article 147 Paragraph (1) subparagraph 3 in conjunction with Articles 20 and 24 of the CCK

The indictment alleged that the defendant **K.G.** had committed the criminal act of

- **Unauthorized Ownership, Control, Possession or Use of Weapons**, contrary to Article 328, Paragraph (1) of the CCK.

The Indictment was confirmed by the Ruling of the EULEX Confirmation Judge on 11 January 2010 with modifications. The confirmed charges for the Accused **H.G.** were

- **Murder**, contrary to Article 146 of the CCK,
- **Attempted Murder**, contrary to Article 146 as read with Article 20 of the CCK.

The confirmed charges for the Accused **Sh.G.** were

- **Incitement to commit Murder**, contrary to Article 146 as read with Article 24 of the CCK,

- **Incitement to commit Attempted Murder**, contrary to Articles 146 as read with Articles 20 and 24 of the CCK, and

In case of the Accused **K.G.** the indictment was confirmed with the original charge.

During the main trial session on 27 April 2010, the EULEX Public Prosecutor orally amended the indictment adding the charge of the criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons, contrary to Article 328, Paragraph (1) of the CCK for **Sh.G.**, confirming the same on the session on 29 April 2010 and adding the same charge for **H.G.** in this second oral amendment.

In her closing speech, without amending the indictment, the Prosecutor suggested that the evidence presented during the main trial points in the direction of the existence of required elements of aggravated murder and attempted aggravated murder.

Main Trial hearings were held on 30 and 31 March, 27 and 29 April, 31 May and 10 June 2010. Closing arguments were heard from EULEX Prosecutor Neeta Amin, Injured Party J. G., Legal Representative of the Injured Party Fadil Hoxha, and Defence Counsel Adem Vokshi, Zeqir Maxhuni and Arif Hasi on 10 June 2010. The Verdict was orally rendered the same day.

B. COMPETENCE OF THE COURT

Under Article 23 Item 1) i) of the CPCCK, 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 CPCCK, 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 Murder pursuant to Article 146, allows for the imposition of a sentence of imprisonment of at least five years. Furthermore, the indictment in this case alleges that the accused committed the acts in , .

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

On 18 November 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 3.3 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.

C. Summary of Evidence Presented

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

- (1) J. G.– Injured Party, 30 March 2010
- (2) R. G. – Witness, 31 March 2010
- (3) M. G. – Witness, 31 March 2010
- (4) J. G. – Witness, 31 March 2010
- (5) L. G. – Witness, 27 April 2010
- (6) M. G. – Witness, 27 April 2010
- (7) A. G. – Expert Witness, 27 April 2010

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

- (8) KP Officer's Investigation Report dated
- (9) Continuation sheet no 1 of the Police Report dated
- (10) Report of the police officer dated
- (11) Report on Crime Scene Examination compiled
- (12) Request for assistance dated
- (13) Examination Report of the Firearm Section of Traseology Department of Forensic Science Center "Ivan Vucetic" in Zagreb, dated 13 January 2009
- (14) The sketch of the crime scene,
- (15) List of photographs from the crime scene by Mitrovica Regional Crime Squad, Regional Forensic Unit together with the Identifying Forensic Report
- (16) List of Measures and Legend by Mitrovica Regional Crime Squad,
- (17) Autopsy Report dated
- (18) Medical Documentation concerning **K.G.**'s injuries and treatment submitted by Defence Counsel Arif Hasi on 12.04.2010.
- (19) Pictures 123 A-C submitted by the Prosecutor on 29 April 2010
- (20) 3 Aerial Pictures of the neighbourhood submitted by the legal Representative of the Injured Party, Fadil Hoxha on 29 April 2010
- (21) Investigator's Report by Kosovo Police, Investigation Unit, Police Station dated 20.9.2008
- (22) The Identifying Forensic Report by Regional Crime Squad, Regional Forensic dated
- (23) Report of Crime Examination by KP Central Crime Laboratory Fire weapon and tool traces department, examination dated 11.12.2008

During the main trial session on 29 April 2010 the Accused **H.G.** gave a statement and answered questions. During the main trial session on 31 May **Sh.G.** gave a statement and answered questions. **K.G.** exercised his right not to give a statement.

The injured party J. G. stated that his **K.G.** had met with **Sh.G.** earlier on and **K.G.** had prevented **Sh.G.** from going through their land.

A couple of minutes before clock, his **A.G.** and **K.G.** were collecting the walnuts in the orchards and he was in his yard. He heard or short and rapid bursts of an automatic weapon. The sound came from the house of his neighbour **Sh.G.**. **J. G.** began to leave his yard to go and see what was happening. His **K.G.** came to the yard with his arm broken and bleeding.

K.G. told **J. G.** that **Sh.G.** had raided them on the only road back to the house from the walnut orchards. **J. G.** didn't hear this himself but according to **K.G.** **Sh.G.** had told **A.G.** to remove the electric wire. According to **K.G.** when **A.G.** had been answering to the demands **Sh.G.** had told his **H.G.**: "Shoot! What are you waiting for?" It had been his intention to kill both **A.** and **K.G.** there. **H.G.** had shot at them from the first floor balcony.

J. G. and **K.G.** went to the street with the intention to get to **A.G.**. When they tried to get closer **Sh.G.** was shooting at them with the automatic weapon from the first floor balcony saying: "Come and get him." and also "Come, come and I will also throw bombs at you and I will kill you even if it's the last thing I do." **H.G.** was also at the balcony. Bullets flew all around them and they didn't dare to go closer. After having shot with interrupted bursts of fire or times which lasted for a very short time, **Sh.G.** went inside the house and they went to **A.**. When they, together with **R. G.**, were trying to put **A.G.** in a vehicle 2 police officers, who had heard the shots, came to the scene.

The Accused H.G. stated that on in the early morning he took the cattle to the field. While still at the field at around or he saw his , **Sh.G.**, arrive in a tractor with his and in the tractor. His and were crying and they told him that on the way there they had met **A.G.** and **K.G.** who were holding weapons in their hands. According to the and **K.G.** had threatened to kill his father and come to his house and kill them all. He asked his about this but he had said "Leave it alone, nothing happened". On the way home they took a longer route so as not to have any trouble with **A.G.** and **K.G.**.

After returning home and unloading the hay **H.G.** went back to field. Before he left his father warned him "If you see them don't make any trouble" referring to **A.G.** and **K.G.**.

After returning home the second time he went into the 1st floor bathroom of the house to wash his hands and to change his clothes. While washing his hands he heard that his **Sh.G.** on one side and **A.G.** and **K.G.** on the other were having a conversation but he couldn't distinguish what the conversation was about. Their voices came from below, about 10 meters away, through the open balcony door.

He went to the room which has a window towards the street and he saw **A.G.** and **K.G.** standing on the road facing where his father may have been, on the balcony on the

ground floor. He did not see his . A.G. was closer, about 4 metres from the ground floor balcony corner, and **K.G.** behind him, maybe 10 - 12 metres from the ground floor balcony corner. Neither **K.G.** nor A.G. had anything in their hands but he saw a handle of a white hand gun in **K.G.**'s waist on the left side. The conversation had stopped. **K.G.** pulled out the hand gun and pointed it with his right hand at **H.G.**'s .

At this point he withdrew from the window. Because of the threats earlier that day he was afraid. He went to another room, got on top of the chairs, removed some wood from the ceiling and got out his automatic rifle. He had found the rifle two or three years earlier. He had found it already loaded. He had hid it and he did not tell anyone about it because he thought if he told his he would take it away and hand it over.

He went back to the hallway and placed the weapon on the ground. By this time he had not heard any shots so he thought the situation had calmed down. He then went to the balcony to see what was going on, and from a corner leaned over to look. He could not see his who was underneath him. **K.G.** was at the same location where **H.G.** had seen him previously and A.G. was in front of **K.G.**. As soon as **K.G.** saw him **K.G.** addressed him by cursing 'where are you going, motherfucker', pointed the gun in his direction, and started shooting and going around A.G.. **K.G.** shot twice and then four or five times with gaps in between. **H.G.** withdrew to the corner in order not to be killed. He then heard a female voice from the ground floor yelling "They killed him, they killed him". He thought that his had been killed. Later he saw the windows that were broken/pierced.

He went to the hallway to take the gun and then he went out on the balcony. He extended both of his arms out from the balcony to shoot. He shot in the direction of **K.G.** and A.G. who were approximately 10 meters away but he could not aim at anyone as **K.G.** also had a weapon. **H.G.** did not verbally warn **K.G.** before he shot. While shooting he did not hear any other firearms being used.

His intention was not to kill anyone but by shooting and scaring **K.G.** and A.G., and causing them to flee from the house, save his family and himself. He has grown up in the same place together with A.G. although most of the time A.G. was abroad, and he had liked A.G..

The whole incident took 30, 40 or 50 seconds, not even a full minute. After the shooting he backed inside the house and entered the hallway to go to the ground floor. In the stairs he saw his **Sh.G.** who then took the weapon from him as he was too afraid to let go of it. **H.G.** continued to the sitting room on the ground floor where his mother, his younger sisters, brother and the sister who fainted were all crying.

When in the sitting room he saw through the window R. G. and **K.G.** on the street near the house, about 70 to 80 metres away, walking towards the house. He did not see any injuries on **K.G.**. **K.G.** had an automatic rifle in his right hand, but he used both hands to point it towards the house. R. G. had something in his hand but **H.G.** could not tell what it was. R. G. was yelling in a loud voice saying "Let's go inside and throw the bomb at

them”. At this point **H.G.** did not see A.G.. Then two police officers, J. G. and M. G., came running to the scene.

He did not see A.G.’s body but he saw that they took someone and placed them in the vehicle. His phoned the police from the sitting room after the body was taken away. During this whole incident he never saw his with a weapon.

The Accused Sh.G. stated that until 3 years before the war his family and the family of J. G. had good relations. Two months prior to the day in question J. G. and **K.G.** came in front of his house and threatened him. **K.** had a weapon on his waist, uncovered. J. G. was always interested in creating problems with them.

On he saw **K.G.** and A.G. running from their house down through the arable land towards him. **K.G.** was holding a rifle on his right hand side. A.G. had a hand gun on his waist on his right hand side that he was holding for it not to fall and with his left hand he was waving to **Sh.G.** to stop. He stopped. A.G. came close to the tractor and **K.G.** stayed 2 meters behind him. A.G. told him three times “**Sh.**, I will kill you.” **Sh.G.** asked A.G. to let him go through. **K.G.** said to A.G. “Let’s go, we will see about him later.” **K.G.** went close to **Sh.G.**’s children and said something to them. Because of the noise of the tractor and since the children were sitting on the furthest end of the trailer, some 4-5 meters from **Sh.G.**, he could not hear what **K.G.** said to them. **Sh.G.** told **K.G.** and A.G. that if they mind him going through their land he will never do it again and that that there was no need for them to come armed to meet him. He turned back and did not go through their land but through someone else’s property. After the children got off the tractor he asked them what **K.G.** has said to them and his daughter told him that he had told her that “I will come to your house and I will fuck your mother and kill every one of you.”

When **H.G.** came to help him to unload the straw **H.G.** asked him what had happened so the children must have told him about the earlier incident. He did not want his to know what had happened because he was afraid of problems and he was scared that **H.G.**, being a young man, might do something. After they had unloaded the tractor **H.G.** went to take the cattle back and he told **H.G.** that if **H.G.** meets A.G. and **K.G.** he should go away from them.

Later he went out to help **H.G.** to take the cows in. After having helped his , as he was on his way in the house, he saw R. G. passing on the road next to the house with a tractor. He stopped at the ground floor balcony of his house to take his shoes off. He was on the left hand side of the balcony when he saw **K.G.** and A.G. on the road approximately 4 or 5 meters from the corner of the house and about 10 to 12 meters from him. They were facing him. A.G. was closer and **K.G.** was about half a meter behind him. A.G. was standing still and **Sh.G.** told him to remove the cable and water pipe passing through **Sh.G.**’s field. **K.G.** pulled a white pistol from his belt on the left side. He loaded it, cocked it and pointed it at the direction of **Sh.G.** and his house. **K.G.** started moving toward **Sh.G.** and his house. **K.G.** said something in the genre of “Shall I fire towards

him and fuck his mother?" to A.G.. When **Sh.G.** saw the pistol he got scared and started to move inside the house. While entering the house he heard two shots: "Bang, bang!" and he saw his _____, who was in the hallway, faint. During the whole of this incident he did not see his _____.

When he entered the house he heard shooting in at least one burst, maybe more, from an automatic rifle. The shooting came from his house. Then there was a mixture of shots. He briefly looked after his daughter who had fainted. Then he went up to the top of the staircase near the balcony door and saw his son **H.G.** pacing around looking frightened and quite lost. **H.G.** was holding an automatic weapon type _____. He had never seen that weapon before. He asked his _____ to give him the weapon. He heard continuous shooting from outside. **H.G.** gave him the weapon and he held it in his left hand until the police came but did not use it. He went to the balcony in order to see what had happened. From the balcony he was able to see the lower part of the legs of someone lying on the ground. He also saw **K.G.** standing at the gate of his house and being given a _____ automatic weapon. He also saw R. G. with a weapon and something else in his other hand. When **H.G.** saw **K.G.** and R. G. armed he got scared that they would enter the house. He said to **Sh.G.** "_____, give me the weapon because they will enter our place." He told **H.G.** that he would never allow them to enter. **K.G.** and R. G. started coming towards his house and at about 35 or 40 meters from him R. G. was threatening him by saying: "I will throw hand grenades and exterminate each and every one of you." **K.G.** said similar threats. He did not see any injuries on **K.G.**. He told them to "Come and take him!" referring to the person he had seen lying on the ground. He warned **K.G.** and R. G. loudly and clearly by saying "If you enter the court yard of my house I will shoot you." and they went away. One of the first to come close to A.G. was J. G.. He did not see J. G. coming to collect A.G.'s body.

He went in the house and down the stairs and called the police commander. Then he tried to calm his family. About 10 to 15 minutes later the police arrived.

Witness L. G., _____ of **Sh.G.** stated that on _____ at _____ she was in the 1st floor sitting room at home. Her younger sister A. and younger brother A. came in. They were crying and told her that while they were on their way to collect wheat with their they had met A.G., who had a hand gun, and **K.G.**, who had a long rifle. They also told that A.G. and **K.G.** had shouted at their _____. A.G. had not allowed them to pass through the road and had turned them back to another road. While they had been sitting at the back of the tractor **K.G.** had told them "I will kill all of you."

As soon as the younger siblings had told this to her she went outside to the balcony to ask her _____, **Sh.G.**, what had happened. They didn't, however, have time to talk because she saw A.G. and **K.G.** by the corner of the house about 4 meters away on the right hand side. She also saw R. G. on the road coming from his house to their court yard. Then she saw **K.G.** pulling out a white hand gun, load it and direct it towards her _____ with his right hand. She did not hear her _____ say anything. **K.G.** swore "I will fuck your mother. This is the end of you." She got scared and ran inside. When she reached the hall she

heard shots –“Bang, bang”. She was scared that the shots have killed her and she fainted. She did not hear any other shots.

After she recovered having fainted she saw her as he was slapping her face and she also saw her **H.G.**. Neither of them was holding a weapon. She heard her calling the police. She heard her saying “Come and take him.” three times.

After the police had arrived she saw, through the window, **K.G.** holding a long gun with both hands and R. G. with a black weapon. They were running towards their court yard. She also saw J. G. coming to their court yard and M. G. on the narrow alley.

She did not know of any dispute between her family and **K.G.’s** family relating to access to land. Nor had her father told her about what had happened between him and A.G. relating to an electric wire.

Witness R. G., son of the injured party J. G. stated that on the from until he was at his R. G.’s house with his J. G.. His A.G. and **K.G.** were on the way to the walnut orchards to collect the walnuts. After returning home and having changed his clothes, at around , he went to the orchards with a tractor to help his . He used the road next to **Sh.G.’s** house to drive to the walnut orchards. This road goes through M.’s field so he did not cross J. G.’s field. When he arrived at his they had already harvested all the walnuts. Neither A.G. nor **K.G.** told him of anything that had happened to them when they were going to the field. He did not see or otherwise know if A.G. or **K.G.** had a weapon with him. They loaded the sacks of walnuts in the tractor and then he returned home taking the same route back. He drove alone because there was no room for his in the tractor. His followed him on foot about 100 meters behind him. After he entered the neighbourhood he could not see his anymore.

He was back in front of the gate of J. G.’s house before o’clock, parked the tractor slightly away from the gate, switched the engine off and began offloading the sacks of walnuts. At this point he heard someone saying “You are done today.” but he could not see **Sh.G.** or **H.G.** nor the balcony of **Sh.G.’s** house. The distance between him and the voice was 30-35 meters. The words were spoken loudly enough for the entire neighbourhood to hear them so he could hear them clearly. R. G. recognised **Sh.G.** voice. He did not hear anyone else speaking.

After the words “You are done today.” **Sh.G.** ordered his **H.G.** to shoot by saying “Shoot! What are you waiting for?” and repeating the same words again. This is when R. G. heard the first shots. They came from **Sh.G.’s** house and they were shots fired with interruptions. Then **Sh.G.** ordered his son to throw bombs to kill both A.G. and **K.G.**.

When he heard the shots his parents came at the gate of J. G.’s house. After hearing the shots, some 10 minutes after he arrived with tractor, he saw also his **K.G.** came to J. G.’s house. **K.G.** told him that **H.G.** was shooting from the balcony and that A.G. was killed and remained on the spot. Together with his parents he moved to about 7-8 meters

from the gate trying to go to A.G. and from this point R. G. could see **Sh.G.** standing alone on the first floor balcony of his house. **Sh.G.** was holding an automatic weapon in his hand in a position to shoot and was shouting "I will fuck your mother. I will exterminate you all." Then **Sh.G.** shot with rapid shooting with interruptions, with , so they could not get nearer to A.G..

R. G. did not hear shots fired by another weapon apart from the automatic weapon. R. G. did not go and get a weapon himself because it was more important for him to collect his brother A.G. and get help rather than getting a weapon. He and his parents did not manage to get the body of A.G. from the road before the police officers arrived. A.G. remained laying on the ground for 10-15 minutes before the police arrived and lost his life.

Two police officers, who are also witnesses in this case, arrived and met **K.G.** who was wounded. They asked **K.G.** what happened. He told them that he was shot by **Sh.G.** from the balcony. The police officer drove with the vehicle of R. G.'s brother to the hospital in . It took them approximately 25 minutes to drive there because the village roads are dirt roads.

Witness M. G. stated that he is a of **Sh.G.**.

On at around o'clock he was going to work. He travelled there by car together with J. G.. J. G. was waiting for him in the car at the crossroads between his house and J. G.'s house.

As he was on his way to meet J. G. his son kept insisting that he buy his son something from the shop before going to work. So he tried to go to the shop with his son but it was closed. As he was knocking at the shop door he heard gun shots. He did not hear any screaming or yelling. He saw the daughter of the owner and asked her if she could open the shop. He also asked if someone has gotten engaged.

He could see J. G.'s house from the shop only if he went a little bit downwards, which he did. He saw the road and the entire house and a lot of people. He recognised J. G., **K.G.** and their family members the names of which he does not know. While he was standing by the shop a lot of kids went to J. G. and said to him that something had happened to **K.G.** and **Sh.G.**. Then J. came to him and they went to the many people to see what was happening. He only saw **K.G.** when they went to the front gates of J. G.'s house, and also J. G. was there. **K.G.** had blood all over his arm going downwards. He asked **K.G.** what happened. He said "**Sh.** killed us."

He told them to help **K.G.** but either J. G. or his left **K.G.** and went to see how A.G. was. They told him to get A.G., who was on the street, if possible. He and J. were the first ones to go to see A.G., and many relatives living in the neighbourhood came by. It must have been some 3 - 4 minutes between when he heard the gun shots to when he went to see A.G.. While he was approaching A.G. he did not hear any threats made by **Sh.G.** or

H.G. or anyone else nor was anyone trying to stop him. In fact he did not see **Sh.G.** or **H.G.** at all that day.

He saw A. lying on the ground. He did not see a weapon next to A., or with anyone else that day. He saw a few stains of blood in the body of A.G. and he ran to him to help him. Together with J. he requested the sons of R. to get them a car. A minute or two later the car arrived and they put A. at the back seat and **K.G.** as well. He was driving them to the ambulance at . It did not take them very long to get there.

Witness J. G. stated that he is a of **Sh.G.**.

On at about o'clock he was in his going to work. He was going to meet with M. G. in the close to this field where they meet every day. This was about 100 meters away from J. G.'s house.

He waited for about ten minutes for M. G. to get to his vehicle. He did not hear anything because the radio was on and he was not paying attention. Before M. G. arrived a group of kids of relatives came by and told him that an incident had occurred between **Sh.G.** and J. G.'s . From his vehicle he could not see to the location where A.G.'s body was. He exited his car and met M. G.. Together they headed towards these relatives.

Once he got near J. G.'s house he met **K.G.** who was wounded on his arm. They did not have time to speak much but he asked **K.G.** who he had trouble with or who did he cause trouble to. **K.G.** said that they had some problems with **Sh.G.** and that he thought A. was killed and stuck there on the road close to **Sh.G.**'s house. **K.G.** also asked if he can collect A.G. from where he was. He promised to do so.

A.G. was lying on the ground approximately 10 meters from the house of **Sh.G.**. He did not see any weapons lying on the ground. He was the first to approach A.G. but later M. G. came with other relatives, family members of A.G. and distant relatives. Nobody tried to stop him when he was approaching A.G.. Contrary to this statement the Defense Council Arif Hasi explained to the Court that the Albanian expression 'me nxjerre' used by J. G. is to extract someone, also implying that there was an obstacle to do so. They did not speak to A.G. because they just tried to help him as soon as possible. He could not tell if A.G. was still alive.

He asked the of R. for a car so that he could drive him. They first put A.G. in the back seat of the car and then **K.G.** to the front seat. It took no more than 15-20 minutes to get A. and **K.** to the health centre in .

He did not see or hear **Sh.G.** nor see **H.G.** that day.

Witness M. G. exercised his right not to give testimony.

Expert-witness, forensic dr A. G. stated that on _____ the late A.G. was hit by a single bullet that injured the middle of his lungs and the trachea. In his opinion the cause of death is correctly reported in the Autopsy report dated _____. The life of A.G. could not have been saved even if he had received medical assistance within 1 minute.

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 morning of _____ when **Sh.G.** was on his way to a field he met **K.G.** and A.G.. They prevented **Sh.G.** from going through their land.

Later on the same day **K.G.** and A.G. travelled the road by the house of **Sh.G.**. While travelling the road **K.G.** and A.G. met **Sh.G.**. A.G. and **Sh.G.** discussed the issue of the removal of the electric cable.

These facts are supported by the statements of **Sh.G.** and J. G..

The accused **H.G.** had possession of an automatic rifle _____ of calibre _____ mm with serial number _____ and that he used this rifle to shoot in the direction of A.G. and **K.G.** from the first floor balcony of the house of **Sh.G.** killing A.G. and causing serious injuries to **K.G.**.

This fact is supported by **H.G.**'s statement in which he admitted having found and then hidden the rifle in the house. He also admitted having used it to shoot in the direction of A.G. and **K.G.** in order to protect his family from a perceived attack by A.G. and **K.G.**. The rifle was found at the scene of the crime by the police. **Sh.G.** denied having knowledge of the gun or having ever used it.

The accused **K.G.** had a pistol _____ of calibre _____ mm with serial number _____ with him and at some point he shot in the direction of the upstairs room in the house of **Sh.G.**.

This fact is supported by **K.G.**'s guilty plea to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons. His guilty plea in turn was supported by statements of **H.G.** and **Sh.G.** who in their testimony stated that they saw **K.G.** with a gun. It is also supported by the Investigation Report that states that a pistol _____ ,

serial number seized from J. G.'s house, the sketch of the crime scene which shows where the cartridge shells were found, and Ballistic Report that states that 5 of the shells match the pistol seized from J. G.'s house. It is further supported by the fact that on the first floor window of **Sh.G.**'s house there were three bullet holes as stated in the Report of Crime Scene Examination.

As a consequence of **H.G.**'s use of weapon **A.G.** suffered gunshot injuries to the chest whereby the lungs and the thoracic vertebra have been damaged. This injury caused extensive bleeding, hypovolemic shock and death. His life could not have been saved even by immediate medical assistance.

This fact is supported by the Autopsy Report and Expert-witness Dr. A. G.'s testimony.

As a consequence of **H.G.**'s use of weapon **K.G.** suffered a bullet wound that caused fracture of the highest degree in his right arm. The arm has been shortened by 3cm after a necessary surgical intervention (osteosynthesis) on . At the same time the radial nerve has been reconstructed through a suralis transplant, however, it is questionable if the radial nerve will recuperate.

This fact is supported by the medical documentation of the Pristina University Clinic and the Clinic of Wels-Grieskirchen.

2. Evidence concerning the murder and attempted murder by H.G.

As stated above, **H.G.** has admitted to shooting towards **A.G.** and **K.** and thereby killing **A.G.** and causing serious injuries to **K.G.**. **H.G.** has, however, claimed that he committed the act to protect himself and his family from an attack by **K.G.** who was shooting at them, and had earlier threatened to kill his father and come to his house and kill them all.

The main issue of this trial, in consideration of the murder and attempted murder by **H.G.**, was therefore whether the accused **H.G.** did indeed act in necessary defence or he intended to deprive **A.G.** and **K.G.** of their lives as alleged in the indictment.

2.1 H.G.'s version

H.G.'s statement corresponds to a certain degree with the statement of **Sh.G.**. They both describe how **A.G.** and **K.G.** on one hand and **Sh.** on the other are discussing and how **K.G.** pulls out the weapon and shoots times. They both also tell that **H.G.** gave the weapon to **Sh.G.** on the steps near the first floor balcony door after the shooting and after that point none of them used the weapon. **Sh.G.** called the police from the sitting room on the ground floor.

Witness **L. G.** stated that she was at the balcony together with **Sh.G.** when **K.G.** drew his weapon and pointed it at **Sh.G.**. **Sh.G.** does not mention her being at the balcony with

him. Instead **Sh.G.** explicitly states that he only saw his when he entered the house. Therefore the Court deems L. G.'s statement in regards to the events before her fainting implausible, influenced by the family relationship.

Witness M. G. stated that when he saw **K.G.** the latter had told him that "**Sh.** killed us." This statement is repeated by R. G. and J. G..

The Court finds that there are two parts of **H.G.**'s statement that seem to lack logic. The first of these being **H.G.**'s explanation as to why he, after getting out his automatic rifle, placed the weapon on the ground of the hallway to go and take another look out of the window even though he knew that **K.G.** had earlier that day threatened the life of his father and indeed the life of his whole family, and even though he had seen **K.G.** pointing a gun at a close distance to the direction he believed his father to be at. The second of these being the claim that, albeit not verbally warning the attackers before shooting at them or shoot in the air, his purpose of him shooting was merely to scare A.G. and **K.G.** away.

H.G.'s statement is not corroborated by the Report of Crime Scene Examination that states that on the first floor window of **Sh.G.**'s house there were three holes. The Court can think of no logical explanation as to why **K.G.** would have shot in that direction if he had just seen **H.G.** at the first floor balcony. This is corroborated by the sketch of the crime scene which indicates that there are two bullets found close to one another on the road with view to the ground floor balcony and another group of three bullets further down the road closer to the window. This suggests that **K.G.** shot, moved and then shot again.

There is, furthermore, inconsistency in the statement of **H.G.** concerning the timing of the incident. **H.G.** stated that the whole incident took 30, 40 or 50 seconds, not even a full minute and that after he backed inside the house and saw his **Sh.G.** in the stairs. The Court comes to the conclusion that it would take more than a minute for **K.G.** to shoot, for **H.** to go back inside and go to the hallway to pick up the gun, for him to get back to the balcony and to shoot in the direction of A.G. and **K.G.**. Then he backed inside the house and saw his . The timing of the statement contradicts the statement of **Sh.G.** who stated that when he entered the house he heard the shooting from an automatic rifle from his house. He first briefly looked after his who had fainted and then he went up to the top of the staircase near the balcony door to find his son pacing around. All this would most likely have taken longer than a minute.

H.G. also stated that when in the ground floor sitting room, after having shot towards the direction of A.G. and **K.G.**, he saw no injuries on **K.G.** but instead **K.G.** was holding an automatic weapon with both hands. He does not, however, dispute that **K.G.** got injured from his shots. The Court is of the opinion that **K.G.**'s injuries were so severe that he could not have held a weapon with his injured hand.

As well as inconsistencies there are also unresolved contradictions between **H.G.**'s statement and **Sh.G.**'s statement. **H.G.** recalled that **K.G.** said "Where are you going,

motherfucker.” to him after seeing him looking through the first floor window but **Sh.G.** does not mention such words being spoken at all in his statement. Furthermore, **H.G.** states that he heard a female voice yelling “They killed him.” but **Sh.G.** does not mention this in his statement although he was at this point within the house, in the ground floor near the sitting room. Finally, **H.G.** recalled hearing R. G. yell in a loud voice “Let’s go inside and throw the bomb at them.” but again **Sh.G.** does not mention this at all in his statement. The Court deems it not plausible that such omissions in **Sh.G.’s** statement would be result of a failure in his memory.

Furthermore, **H.G.** stated that he heard two shots, then four or five shots. He states that while he was shooting he did not hear any other firearms being used nor does he speak of any other shots he might have heard. **Sh.G.** states that after hearing the shooting from an automatic rifle he heard a mixture of shots.

Finally, in his statement **H.G.** does not mention asking his father to give him back the weapon. **Sh.G.** states that after seeing R. G. armed **H.G.** got scared and said “ , give me the weapon because they will enter our place.”

2.2 J. G.’s version

J. G. stated that just before one o’clock he was in his yard and he heard 4 or 5 shots and rapid bursts of an automatic weapon. He did not state having heard any discussion or shouting himself before the shooting. At this point he did not see who was shooting. When asked if there was a difference between the shots J. G. heard while still in his yard and the ones he saw **Sh.G.** firing later, he stated that he could not distinguish a difference. Later in his testimony he stated that in general he could tell the distinction between an automatic weapon and a rifle.

J. G. stated that **K.G.** had told him that **Sh.G.** had told **H.G.** to “Shoot! What are you waiting for?” and that **H.G.** therefore shot at **K.G.** and A.G.. The Court states that it is contrary to common sense that J. G. himself, who was out in his garden, did not hear the order if indeed it was spoken outside, at the house next door to J. G.’s.

Both **H.G.** and **Sh.G.** deny that this order was given.

There is an unresolved contradiction between J. G.’s statement and R. G.’s statement. R. G. does not mention hearing any discussion between **Sh.G.** and A.G. or **K.G.** before the shooting although he was near where the discussion took place.

J. G. and R. G. statement in their testimonies that they did not hear shots fired by another weapon apart from the automatic weapon is contradictory to the proven fact that there were shots fired from two different types of gun, pistol and automatic rifle.

Witness M. G. recalls hearing shots but could not tell more about them. Witness J. G. did not hear the shots at all.

Therefore, as in the statements of all the people heard in the court there were inconsistencies and there were further contradictions between the different statements, the Court finds it impossible to establish that any of the people heard spoke the absolute truth.

3. Evidence concerning the incitement to murder and incitement to attempted murder by Sh.G.

Sh.G. and **H.G.** do not in their respective statements mention talking to each other before seeing each other in the first floor corridor and **Sh.G.** asking **H.G.** to surrender the weapon.

Had the intention of **Sh.G.** been to kill both A.G. and **K.G.** it seems reckless thing to do to put himself in danger to be shot with the weapons he had seen them carrying earlier that day by standing out in the balcony rather than staying inside just waiting for them to pass by and using the fire arm himself. The Court finds that the alleged ambush and intention to kill A.G. and **K.G.** by **Sh.G.** seems to lack logic.

R. G. states that he heard the first shots after **Sh.G.** said “You are done today.” so loudly that the whole neighbourhood could hear this and ordered his **H.G.** repeatedly to shoot by saying “Shoot! What are you waiting for?” Allegedly **Sh.G.** also ordered **H.G.** to throw bombs and kill both A.G. and J. G.. J. G., who was in the yard of the house next door, does not in his statement mention hearing **Sh.G.** speaking any of those phrases. Witness M. G., when asked if he had heard anything else apart from the gun shot, like yelling for example, also confirmed without any hesitation that he did not.

Therefore the Court could not establish beyond reasonable doubt that **Sh.G.** in any way incited his son to kill A.G. and to try to kill **K.G.**.

4. Evidence concerning the Unauthorized Ownership, Control, Possession or Use of Weapons by Sh.G.

Sh.G. denies ever seeing the weapon before his son **H.G.** handed it over to him in the corridor. He denies ever firing it.

H.G. stated that he found the weapon two or three years earlier and hid it in the house without telling his father about it. When asked how it is possible that a son would not tell such an important issue to his father **H.G.** explained that he was afraid that his father would take the weapon from him.

The Court finds that J. G.’s statement is indirectly contradicted by the Identifying Forensic Report that states that they found cartridge shells in the first floor balcony. In addition they found one cartridge shell in the hallway near the balcony door and

cartridge shell on the ground near the balcony. Furthermore, the Ballistic Report states that the weapon seized from **Sh.G.**'s house had a magazine with the capacity of bullets and bullets. The Court deems it therefore unlikely, that both **H.G.** and **Sh.G.** had shot bursts with the weapon.

M. G. and J. G. in their respective statements deny anyone trying to stop them from approaching A.G.'s body.

Therefore there was no evidence to establish beyond reasonable doubt that **Sh.G.** used the weapon himself or had any knowledge of it.

5. Rejected Motions

Defence Council Arif Hasi requested the defendant **K.G.** to be heard in the capacity of a witness in this case as he is also an injured party.

The Presiding Judge rejected this motion as according to the law it is not possible to hear a defendant in the capacity of a witness. Witnesses are obliged to answer questions and tell the truth while that obligation does not apply in case of the accused. It would be a serious violation of the accused rights to examine him as a witness and compel him to answer questions and tell the truth.

E. LEGAL QUALIFICATION

1. Law applied

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 paragraph (1) of the PCCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator. There was no change in the law that would be more favourable for the accused. Although they were charged according to the Criminal Code of Kosovo that entered into force on 06 January 2009, the Court made reference to the provisions of the PCCK as the applicable law at the time of commission of the criminal offence. However, when acquitting, they had to be acquitted from the original charges.

2. Necessary defence

As stated above, it is clear and undisputed that the accused **H.G.** caused the death of A.G. and caused serious injuries to **K.G.**.

According to Article 8 paragraph 1 of the PCCK, however, an act committed in necessary defense is not a criminal offence. Therefore in such a case the accused must be acquitted.

According to Article 8 paragraph 2 of the PCCK an act is committed in necessary defense when a person commits the act to avert an unlawful, real and imminent attack from himself or another person and the nature of the act is proportionate to the degree of danger posed by the attack.

In this case, the Court could neither establish that **H.G.** indeed acted in necessary defence, nor could it be excluded due to the numerous contradictions and inconsistencies in the statements on both sides as discussed under D/2. Therefore, H.G. was acquitted of the charges of Murder contrary to Article 146 of the CCK and Attempted Murder contrary to Articles 146 and 20 of the CCK, pursuant to Article 390 Item 3 of the CPCK and **not** under Article 390 Item 1 of the CPCK as read with Article 8 Paragraph (1) of PCCK.

Sh.G. was charged with Incitement to Commit Murder contrary to Articles 146 and 24 of the CCK and Incitement to Commit Attempted Murder contrary to Articles 146, 20 and 24 of the CCK. As discussed under D/3, the evidence presented during the course of the main trial was not sufficient to prove beyond reasonable doubt that he had incited his son to kill A.G. and try to kill **K.G.**. Therefore he was acquitted pursuant to Article 390 Item 3 of the CPCK.

3. Unauthorized Ownership, Control, Possession or Use of Weapons

The Public Prosecutor charged the accused **H.G.** and **K.G.** with the Unauthorized Ownership, Control, Possession or Use of Weapons making reference to Article 328 Paragraph (1). However, as the panel could not exclude on either side that the weapon was used in necessary defence, the panel established the guilt of both accused in the privileged form of the same criminal offence, pursuant to Article 328 paragraph (2) of the PCCK.

Sh.G. was also charged with Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 Paragraph (1). However, as discussed under D/4, there was no evidence that he had any knowledge about the automatic rifle used by his on the critical day or that he himself had used it. Therefore, he was acquitted of this charge pursuant to Article 390 Item 3 of the CPCK.

F. DETERMINATION OF PUNISHMENT

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 PCCK.

By determining the sentence, in case of both accused the Panel took as an aggravating factor the grave consequences of the use of weapons in this specific case.

The Panel took as a mitigating factor the fact that neither of the accused had previous criminal record.

For the criminal act of Ownership, Control, Possession or Use of Weapons, pursuant to Article 328 paragraph (2) of the PCCK, the law foresees a punishment of up to 8 years of imprisonment.

Considering the mitigating and aggravating factors, the panel imposed 4 years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in case of **H.G.**.

The panel imposed 3 years of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in case of **K.G.**, taking into consideration that he himself was injured in the course of these tragic events.

The accused **H.G.** has been in detention on remand from . That period is to be credited in the imposed punishment of imprisonment pursuant to Article 73 paragraph (1) of the PCCK.

The panel confiscated the two weapons that have been used on the day of the event and the other that was found in J. G.'s home. The fourth weapon, a shotgun that was found and seized in the same house, will be returned by a separate order as soon as J. G. or his legal representative presents the valid authorization card for that weapon.

G. COSTS

The accused **H.G.** and **K.G.** were found guilty, therefore, they must reimburse the costs of criminal proceedings pursuant to Article 102 paragraph (1) of the CPCK, 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 CPCK.

As the accused **Sh.G.** was acquitted of all the charges, he does not have to reimburse the costs of criminal proceedings. It will be paid from budgetary resources pursuant to Article 103 Paragraph (1) of the CPCK.

H. COMPENSATION CLAIM

At the beginning of the main trial, the Injured Party was reminded that he may file a motion to realize property claim within the criminal proceedings, pursuant to Article 355 paragraph (2) of the CPCK.

Injured Party J. G. did not file a motion to realize property claim.

**District Court of Mitrovica
P. nr. 24/09**

Prepared in English, an authorized language.

Presiding Judge
Hajnalka Veronika Karpati

Panel Member
Charles Smith

Panel Member
Klaus Jung

Recording Officer

Noora Aarnio

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.