

DISTRICT COURT OF MITROVICA
K no. 26/2010
19 May 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Nikolay Entchev as Presiding Judge, and EULEX Judges Christine Lindemann-Proetel and Hajnalka Veronika Karpati as panel members, with the participation of Jana Božović EULEX Legal Advisor as Recording Officer, in the criminal case against;

B.V., charged, according to the Indictment of the EULEX Public Prosecutor PP. Nr. 48/2010 dated 25 May 2010 and filed with the Registry of the District Court of Mitrovica on 27 May 2010, confirmed on June 29, 2010 with the following criminal offences;

- **Attempted Murder**, contrary to Article 146 as read with Article 20 of the Criminal Code of Kosovo (CCK);
- **Slight bodily injury**, contrary to Article 153, Paragraph (2) in conjunction with Paragraph (1), Item 1) of the CCK;

After having held the main trial hearing open to the public on 16, 17, 18 and 19 May 2011, all in the presence of the Accused **B.V.**, his Defence Counsel Dejan Vasić, EULEX Public Prosecutor Antonio Pastore, Injured Parties N.N. and S.R., after the trial panel's deliberation and voting held on 19 May 2011, on the same day pursuant to Article 392, Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, his Defence Counsel Dejan Vasić, EULEX Public Prosecutor Antonio Pastore, the Injured Parties N.N. and S.R., the following

JUDGMENT

B.V., with nickname **B.**, born on _____, _____, in _____, Republic of Serbia, father's name M. V., mother's name and maiden name V. Ž. _____, with permanent residence in _____ – str., ID No _____, S. _____, married, father of _____ child, highest education – electrical mechanic, trade, with average monthly income of 300 Euro, no known previous convictions, currently in detention;

is

FOUND GUILTY

Because:

I) On _____ at about _____ hrs, at _____ local road, at the exit of _____, Municipality, together with F.S., who is under separate investigation for the same offence, stopped the vehicle of N.N., model “ _____ ”, driven by the injured party N., they open the door of the vehicle and pulled out of the vehicle N.N. and started to assault him with hands and kicks and then took a wooden stick, approximately 70cm. long and hit N. in the vital parts of the body by causing him grievous bodily injuries, namely contusion of the brain, fracture of the skull base and rupture of the right ear’s drum. **B.V.** and F.S. attempted to put N. in the trunk of the vehicle „ _____ “. At that moment from _____ came the injured party S.R. who noticed and recognized the vehicle of the N.N. who is her relative. N.N. sustained life threatening injuries and a permanent weakening of the hearing in his right ear.

By doing so, **B.V.** committed and is criminally liable for the criminal act of Grievous Bodily Harm, contrary to Article 154, Paragraph (1), Items 1) and 2) of the Criminal Code of Kosovo (CCK).

II) On the same day, time and described location, **B.V.** and F.S., who is under separate investigation for the same offence, physically assaulted injured party S.R. by approaching her and punching her in different parts of her body and face by causing her head strain and under-skin bleeding around the left eye area and nose region, injuries of slight nature.

By doing so, **B.V.** committed and criminally liable for the criminal act of Slight Bodily Harm, contrary to Article 153, Paragraph (1), Item 1) of the CCK.

Therefore, B.V. is

SENTENCED

- to 4 (four) years of imprisonment for the criminal act of Grievous Bodily Harm,
- to 1 (one) year of imprisonment for the criminal act of Slight Bodily Harm.
The aggregate punishment is determined in 4 (four) years and 6 (six) months of imprisonment, pursuant to Article 71, Paragraph (1) and Paragraph (2), Item 2) of the CCK.

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

B.V. is hereby ordered to pay to the Injured Party N.N. an amount of 20.000 Euro for the compensation of non-material damage within 15 days after this verdict becomes final.

B.V. is hereby ordered to pay to the Injured party S.R. an amount of 4.000 Euro for the compensation of non-material damage within 15 days after this verdict becomes final.

The Injured Parties N.N. and S.R. are referred for civil litigation for the remaining parts of their claims for compensation pursuant to Article 112, Paragraph (1) of the CPCK.

The accused **B.V.** 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

Indictment PP nr. 48/2010 dated 25 May 2010 and filed with the District Court of Mitrovica by Public Prosecutor Shyqyri Sylla on 27 May 2010, confirmed on 29 June 2010, charged both **B.V.** and **F.S.** with Attempted Murder in violation of Article 146 as read with Article 20 of the CCK and Light Bodily Harm in violation of Article 153, Paragraph (2) in conjunction with Paragraph (1), Item 1) of the CCK.

The Indictment filed against **B.V.** was confirmed on 29 June 2010;

EULEX judges took over the case on 02 August 2010.

The Main Trial was held on 16, 17, 18 and 19 May 2011. The Accused F.S. did not appear despite having been duly summoned. In order to avoid further unnecessary delay, the Trial Panel issued a ruling for severing the criminal proceedings against each defendant and continued the main trial against B.V..
The closing statements were heard on 19 May 2011.

The verdict was orally rendered the same day.

B. Competence of the Court

Under Article 23, Item 1), i) and ii) of the Criminal Procedure Code of Kosovo ("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 and criminal offences for which the law has prescribed the jurisdiction of the District Court. Pursuant to Article 27, Paragraph (1) of the CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The Accused was charged with the criminal offence of Attempted Murder pursuant to Article 146 as read with Article 20 of the CCK, which allows for the imposition of a minimum sentence of five years of imprisonment. The Indictment in this case alleged that the Accused committed the criminal acts in _____ local road, _____ Municipality, which lies within Mitrovica District.

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

On 02 August 2010, the President of the Assembly of EULEX Judges issued a decision for EULEX judges to take over the case pursuant to Article 3.3 of the Law on Jurisdiction¹ and assigned it to EULEX judges in the Mitrovica District Court. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case.

C. Summary of Evidence Presented

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

1. N.N. (Injured Party), 16 May 2011
2. S.R. (Injured Party), 16 May 2011
3. R.R., 16 May 2011
4. D. N., 17 May 2011
5. S.M., 17 May 2011
6. Z.J., 17 May 2011
7. Lj.K., 17 May 2011
8. Expert Witness Dr. M.K., 18 May 2011
9. J.V., 18 May 2011
10. M.M., 18 May 2011.

On 17 May 2011, the following documents were submitted by the Public Prosecutor:

11. The pictures of the taxi vehicle, model “ _____ ”, contained in Photo Album of Forensic Unit Nr. 2010-BE-054 dated _____ .

On 18 May 2011, the following documents were read into the record:

12. Statement of D.K., _____ ;
13. Initial Incident Report including three Police reports dated _____ (page 10-page 21 of the case file);
14. Report on crime scene inspection (page 28 – page 34 of the case file);
15. Report on crime scene inspection (page 35 – page 38 of the case file);

¹ Law nr. 03/L-053, Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

16. Sketch of the crime scene (page 39 – page 43 of the case file);
17. Photo album (page 50 – page 76 of the case file);
18. Photo album concerning the vehicle , model „ “, submitted by the Public Prosecutor on 17 May 2011;
19. Medical documentation (page 84 – page 108 of the case file);
20. Medical documentation attached to the motion submitted by the Public Prosecutor on 12 May 2011;
21. Record of the interview of D.K. (page 135 – page 141 of the case file).

During the main trial session on 18 May 2011, the Accused **B.V.** gave a statement and answered questions.

D. Evaluation of Presented Evidence

1. Factual Findings

The Accused **B.V.** was found guilty to the criminal offences of Grievous Bodily Harm and Slight Bodily Harm.

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

On , at approximately hrs, **B.V.** together with **F.S.**, were at local road at the end of with two cars , one of which belonging to S.M. and used as a taxi. At that time the injured party N.N. was driving his own vehicle model “ ” at the same place. He recognized the car of S.M. and stopped because he thought somebody needed assistance. **F.S.** went out of the taxi and was followed by **B.V.**. They attacked N.N. who was outside his vehicle. They together hit him many times him with hands. Afterwards, **B.V.** took a wooden stick, approximately 70 cm long and hit N. in the vital parts of the body. On that occasion, N.N. sustained serious bodily injuries, namely contusion of the brain, fracture of the scull base and rupture of the right ear’s drum, which caused at that moment life threatening injuries and a permanent weakening of the hearing of his right ear.

During the beating **B.V.** and **F.S.** attempted to put N. in the trunk of the “ ” vehicle. At that moment from came the injured party S.R.. She noticed and recognized the vehicle of N.N. who is her relative. She stopped her car at a close distance from the car of N.. When seeing that, **F.S.** approached her car and after a very short conversation hit her in the left part of her face and dragged her out of her car. **B.V.** ran towards the two, joined S. and the two of them hit S.R. with hands and fists and kicked her. The injured party S.R. was hit several times and sustained several injuries all over the body. After **B.V.** and **F.S.** ceased the beating S.R. was able to start her car and drive to a petrol station in . She called her husband R.R. and after the latter arrived at the place she informed him about what had happened to her and to their cousin N.N.. R.R. went to the crime scene where he found N.N. seriously injured and barely conscious in his car. R.R. then

transported both N.N. and S.R. to the health centre in hospital.

and later on – to

2. Evidence Establishing the Factual Findings

1)The injured parties testimonies:

i)N.N.

In his testimony before the court, dated 16 May 2011, N. stated that he was driving from in his vehicle “ ” towards the of , when he spotted the taxi vehicle of S.M. parked on the road. Since he knew M. from before, he thought that the latter needed help with his vehicle. In order to assist him, N. got out of his car, and S. exited M.’s taxi vehicle and physically attacked him. V. also exited the taxi vehicle, and assaulted N. with hands and with a wooden stick. N. realized the two perpetrators were intoxicated because he could smell alcohol. During the beating S. and V. tried to put the injured party in the trunk of his own vehicle. The injured party was covered with blood as a result of beating and because of that there were blood stains in his vehicle. The two perpetrators didn’t succeed in putting him into the trunk as in that moment S.R. came along in her vehicle from the direction of . She stopped her vehicle and S. started pulling her out of her car and hitting her. V. joined him. N. further claimed he couldn’t remember when S.R. came and when the two attackers left since he was unconscious. He remembered them trying to make him enter his vehicle. He also remembered when S.’s husband, R.R. came and drove him to the Health Centre in . N. stated that the taxi vehicle owner S.M. was sitting inside the car while the accused V. and S. were beating the injured party, and that the other vehicle was also a belonging to Z.J., whom he didn’t see in the dark, but he recognized his vehicle. He also reiterated that there was no reason known to him why V. would assault him. He immediately recognized the two perpetrators as he knew them by sight for several years. He also knew that V. had a nickname B..

In his first statement given to the police on N. testified that on the night of , he drove his “ ” , in colour, with no registration plates, down the road leading from to , when he noticed two “taxi” vehicles parked along the road next to the exit point to . According to his testimony, he pulled the car next to the right side of the road, in the motion direction and exited the vehicle in order to see if someone needed any assistance. At that moment, S. approached him and began hitting him, N. fell and V. joined S. in hitting him while on the ground. N. remembered they used a wooden stick, but could not specify which one was hitting him with it. While he was still lying on the ground, the two attempted to lift him and put him in the trunk of his vehicle. At the time, his cousin, S.R. came with her own vehicle and saw the scene. She recognized him and stopped the car, which caused S. to immediately approach her and hit her in the head. V. followed, and the two pulled the victim out of the car, beating her, after which she entered the car and drove off. They turned back to the injured party N.N. and continued beating him, after which they left him on the road and went away. He couldn’t specify which vehicle did they use to depart, but clearly remembered one of the “taxi” vehicles – blue in colour – and the person sitting inside, whom he identified as “

”. He had no recollection of what happened afterwards, except that his cousin’s husband, R.R. took him to the Health Centre in . However, he confirmed that he recognized V. and S. as the persons who had beaten him. He was not aware of any reason why the two would have attacked him, just emphasized they were intoxicated. He also told the police that he sustained several serious bodily injuries, including skull fracture, eardrum perforation, nose pain, ribs pain. Answering the question whether the suspects were attempting to put him into his car trunk and push the vehicle down to the river, he said he couldn’t know that since he couldn’t hear what they were talking about.

ii) S.R.

In her testimony before the court, dated 16 May 2011, S.R. stated she was driving home from a celebration for a colleague, and when she reached she wasn’t able to pass any further. She noticed her relative N.N.’s vehicle and recognized it. She stopped and saw two persons standing and only then did she see someone lying near the . She could not recognize the person lying on the ground but he had the shape of the injured party N.. She saw two men standing by him, and two other vehicles parked, out of which she recognized of a colour. By the time she wanted to exit her vehicle and approach the man lying on the ground, one of the two men ran towards her, opened the door of her car and asked her where she was going and if she had seen something. At that moment S.R. noticed the other one running towards the car. She then felt a strong punch in the left side of her head at the area of left eye and temple, and was pulled out of the car by her jacket. She emphasized that only after she heard who were involved in the incident and after being shown photographs did she recognize S. as her attacker. She claimed the other one approached the vehicle, but after receiving a punch in the left side of her head, she couldn’t remember anything, even when and how did she get out of the car, who was beating her and with what, how did she get back in the car and drove to the gas station, or how long did she stay there. She only remembered that her children called on her cell phone and that she told them to inform her husband that she was intercepted on the road and beaten. Her husband came for her, and she told him of the events and instructed him to try and find out what happened with her cousin, N.N.. Later, he picked her up and drove her together with the injured party N. to the Health Centre and later to the City Hospital. During they were transported to the Health Centre N. was asked by R.R. who were the two persons who had beaten him and the answer was “F.S. and B.”. When being asked to clarify whether the other person who was beating her was present in the courtroom, after looking in the direction of the accused B.V., R. said it was too dark to recognize the person who was running towards her, and that the other one had already hit her in the head, while immediately after that she felt another kick in the area of her kidneys. As a result of the beating she had a large hematoma on her face, many bruises on her legs and her back and a few scratches on her head. She also had to wear a collar around her neck for about a month and after that to undergo physiotherapy.

On , S.R. gave a statement to the police at the Police Station, describing the event from the moment she had arrived to the scene. She described the scene and the events that followed in the same order as in her statement to the court. After she was pulled out of the vehicle, she lost her consciousness for a short period of time. After she

recovered, she got into her car and drove off to the “ ” gas station, where she called her husband and told him of the incident. Her husband went to the place and returned after a while and took her and the injured N. to the Health Center. She explained she could remember the appearances of only a man who approached her and assaulted her, his robust physical constitution, lack of hair or a short hair cut, but couldn't remember what clothes was he wearing. She claimed she couldn't see the other man that well, since she was only paying attention to the one advancing towards her

2) Other witnesses

i) R.R.

R.R. testified he was called by his wife on the at around hrs and was informed that she was attacked at the road and that N.N. was also badly attacked. When the witness arrived at the place where S.R. was, he found her all black and blue and her head was swollen. She informed him where N.N. was and that she didn't know if he was alive. R.R. went to the spot and found N. sitting in the driver's seat of his car barely conscious – covered with blood and not able to talk. The witness took N. with his own car, took also S.R. and drove them to the Health Centre. On the way he asked N. who beat him and the latter said he was beaten by **B.** and F.S.. The witness was also told by both N. and S.R. that at the crime scene there were two other vehicles , one of which was a taxi. When he took N., the witness informed N.'s brother about the incident by phone.

ii) D. N.

This witness testified that at the of was informed by R.R. that N.N. was beaten. D. N. went to hospital and there he saw S.R. beaten up on her face. She informed the witness that his brother N. is being X-rayed at the moment. The witness went to the X-ray room and found N.N. on the X-ray table beaten up, his face and head distorted and blooded. N. was whining with pain and had difficulties to understand. To the questions of the witness he was able to answer that he had been beaten by **B.** and S.. The witness had no doubts about who the perpetrators were as it was known that the nickname of **B.V.** is **B.**. N.N. was taken to the surgical ward of the intensive care of the Medical Centre and on the next day he was transferred to Hospital, to the emergency room and later on - to neurosurgical department, because of the serious injuries to the head.

Prior to the incident N. family had good relations with **B.V.** and his brothers and in particular N.N. had never had any disputes or problems with them. N.N. never knew the reason for the attack that occurred on .

The witness confirmed that as a result of the beating N.N. had injuries on the head and a fracture of the skull above the ear. The injury was swelling but it was medicated by medicines and was not necessary to perform an operation. After N.N. left the hospital, he had to go to regular medical check every month. The beating had consequences on N.N.'s health that are visible at the present – he sometimes has difficulties in using the precise

words or in following a conversation. He is disabled, which is certified with medical documents, he has problems with hearing and changes of weather cause headaches to him.

iii) witness S.M.

S.M. testified that he attended D.K.'s farewell party on . He arrived there at around hrs alone with his own car which he uses as taxi and left it in front of K.'s house with the key in it. He stayed at the party and drunk a lot until he was strongly influenced by alcohol and fall asleep. He slept there until the evening (after) when he was woken up by his friend D.K. who drove him home using M.'s vehicle. Until M. was sober during the party he didn't notice B.V. and F.S. attending the party. He does not remember which road they went home after the party. Due to the fact that M. was drunk at that day and that one year has elapsed, he can not remember if he told the police during his interview on that at a certain moment on he couldn't find his car at the place where he left it, neither that D.K. had told him he has found M.'s vehicle parked in front of the school in . Therefore M. is not able to confirm the statements he gave in front of the police. He only remembers that D.K. was telling him something about where he found M.'s vehicle, but can not remember what exactly. The witness is not able to explain how is it possible that his car was seen at the crime scene and later on found in since he affirms that nobody was driving it while he himself was on the party.

iv) expert witness M.K.

After examining the medical documents presented by N.N. the expert witness is of opinion that out of six injuries, mentioned in the documents, three are serious bodily injuries, namely: Contusion of the brain, Fracture of the base of the skull and actually the skull on the left temple side, bursting of the right eardrum, bleeding in the middle ear. After the incident the indications for urgent surgical operations interventions was not established and a therapy was received instead which led to the withdrawal of the liquid from the skull. If there had been no regression an operation would have been needed as the injury is life threatening. It can be concluded that the problem with the hearing N.N. has is a result of the injury he sustained. Rupture of the eardrum is chronic and can not improve while time passes. The health of the injured party was damaged and at the first moments the damage was life threatening, but not in the present. The damage to the health is affecting the physical capability of the injured party to work, while as for the mental capability it depends on the personality.

3) Initial Incident Report including three Police Reports dated (page 10 – 21 of the case file)

- a. Police Officers Report, made by the Police Officer J.S., dated :
 - i. The police team Charlie, consisted of S.P., R.M. and J.S. responded to a call from their colleagues at around and was on its way to . Upon arriving to the location at

approximately _____, the patrol found the following: the location was secured by another patrol; the blue “_____” vehicle without registration plates; blood on the vehicle back seat and on the left side of the vehicle; blood stains on the ground behind and beside the vehicle. Upon arrival of the Investigation Unit, which conducted a scene inspection, the team Charlie members found a wooden stick during the terrain search, which was 50 – 60 cm in length and 8 – 10 cm in diameter, with visible blood stains. Afterwards, the vehicle was taken over by the Investigation Unit and driven to the _____ Police Station.

- b. Police Officers Report, made by the Police Officer S.J., dated _____ :
- i. At around _____ hrs _____ Police Station was informed by the Health Centre employees that a person named N.N. from _____ was admitted and received emergency medical treatment after being assaulted and beaten by the suspects **B.V.** and **F.S.**. Subsequently, he was transported to the _____ City Hospital for further treatment. Upon receiving the information on the suspects’ identity, the _____ Police Station organized a search and around _____ hrs 20 police officers gathered and went into direction of _____, where they had located the suspects at the “_____” café bar in the downtown _____. The suspects were intoxicated, sleeping on the angular furniture pieces. The suspects were apprehended. Although S. resisted to the arrest, he was overpowered and placed under control.

4) Report on the crime scene inspection ²

- 2) Report on the crime scene inspection ³
- 3) Sketch of the crime scene ⁴
- 4) Photo album ⁵
- 5) Photo album concerning the vehicle _____ submitted by the Public Prosecutor on 17/05/2011
- 6) Medical documentation⁶
- 7) Medical documentation attached to the motion submitted by the Public Prosecutor on 12/05/2011

5) Record of the interview of D.K. (page 135 – 141 of the case file):

- a. the witness testified the following:
 - i. On _____, at around _____ hrs he went to the farewell lunch party of D.K. in _____, where he stayed till around _____ hrs,

² See page 28 – 34 of the case file

³ See page 35 – 38 of the case file

⁴ See page 39 – 43 of the case file

⁵ See page 50 – 76 of the case file

⁶ See page 84 – 108 of the case file

when he returned to _____ on foot after leaving his vehicle at car repairs shop in _____. In downtown _____ he spotted S.M.'s vehicle, _____, colour, without registration plates, parked in front of a local school. Claiming that he was in good friendly terms with S.M., he phoned him in order to ask him to take the car and use it to pick M. and **V.B.** up at _____, drive them back to through _____. M. did not respond to the call, but **V.B.** called at around _____ hrs and told him to pick them up. K. took S.M.'s vehicle and went to _____. When he was passing through _____ on the way to _____, K. claimed to have seen a black terrain vehicle parked along the road. The same vehicle was parked at the same spot on their way back from _____. K. claimed he did not notice anything of suspicion, but being asked whether he had slowed down in order to closely inspect the parked vehicle, he said he had driven even faster passing by it. He then drove M. to his house, left the car in front of the house with the keys inside the ignition, and together with **V.** went on foot to their respective houses.

- ii. Being asked whether he had seen the suspects **B.V.** and F.S. at the farewell lunch party of D.K. at _____, the witness confirmed that he had seen them; they had arrived somewhat later, but they were not there when he returned to pick M. and B. up from the party.

3. Evidence aiming to establish an alibi

a. B.V.'s Testimony

During the Main Trial on 18 May 2011 **B.V.** made a statement to the Court and answered questions giving his account of the facts.

More precisely, **V.** testified that:

- On _____ he was in „ _____ “ bar in _____ and after that, between _____ and _____ hrs he went to the „ _____ “ cafe bar. He is not certain if he went alone or was accompanied by F.S.. At the cafe bar he joined other friends and continued drinking until around _____ hrs when he went to the Health Centre in _____ to receive an injection, because he did not feel well. After receiving the treatment, he returned to the same café bar where S. waited for him and stayed there together till they were arrested there at _____ hrs. He further claimed that it was a friend by the name S. _____, no last name specified, from _____, who took him to the Health Centre in _____, at around _____ or _____ hrs, or even earlier, to get an injection, and returned to the cafe bar “ _____ ” in not more than 15 minutes.

- He wasn't able to specify which kind of an injection he had received, as well as who was the doctor who treated him that night.

- He said during that evening he was not accompanied by S.M. and Z.J.. He said that he remembered that he had seen them a day before at a farewell party of D.K. that took place in _____ at the _____. When asked is it possible that he did not notice Z.J.

being present in the bar for about two hours and speaking to V.'s brother, as J. himself reiterated before the Court, V. said there were many people coming in and going out of the bar and that he can not remember everybody.

- Being asked whether he was invited for the lunch party at D.K.'s house, he could not specify, claiming he was drinking all day long and that there was a possibility that he was as well as that he wasn't invited. Later, he claimed he was not present at the said party. He stated he had been drinking one or two days prior to the date of the incident on the occasion of D.'s farewell. It was not unusual for him to drink on two or more consecutive days when there was such kind of celebration although it didn't happen frequently.

- When confronted with the statements of D.K. that he saw both V. and S. at the lunch at D.K.'s the accused explained that most probably they met on the previous day and not on the day of the incident. He also said that on such celebrations there are between 400 and 500 persons and one can not memorise everybody he encounters.

- He confirmed he knew from before the injured party and members of his family, saying he had no reason to attack N.N..

b. B.V.'s Prior Statement

After his arrest on _____, the Accused **B.V.** refused to give the statement before the Police.

On 01 April 2010, the Accused **B.V.** in the presence of the defence counsel Mahmut Halimi was interviewed by Public Prosecutor⁷. He stated that before the night of _____, he was sitting with F.S. in the café bar "_____" in _____. After, they changed the place and went to the café bar "_____" around _____ hrs. Later on he was taken to a Health Centre in _____ by an unnamed friend to receive an injection, around _____ hrs because he did not feel well. After receiving the treatment, he returned to the same café bar where S. waited for him and stayed there together till they were arrested there at _____ hrs. V. stated that he knew N.N. only by face; that N. lived in _____ – _____ municipality; that N. drove a "_____" and that he did not know if N. owned a "_____" vehicle as well. He also stated he had never heard of a S.R. and never met her. Further, he stated that on the _____ at _____ hrs he was with S. sitting in the café bar "_____", together with S.M. and a person named Z., whose last name he didn't know. There were also the waiters J. and M., whose last names he also didn't know. He claimed they stayed there till _____ hrs when he went to get an injection, and S. stayed behind at the bar. In order to explain the contradictions in his statements as to whether he had seen M. and J. at the bar on _____, V. claimed that while being questioned previously he thought that the judge had asked him whether he knew the two in person and not whether he had seen them on the night of the incident.

c. Witness Z.J.

⁷ Minutes from the suspect hearing of B. V. dated 1 April 2010, pg. 154-155 Prosecution file

In his testimony before the Court Z.J. stated he was also in _____ at the farewell lunch party of D.K. but he did not see **B.V.** and F.S. there. He left at around _____ hrs and went to the “ _____ ” café bar where he was sitting with the bar owner S. V. and talking about getting a job at **V.**’s _____. When he arrived **B.V.** and F.S. were already there. He saw that the two left the bar at around _____ and that they had returned in 15-20 minutes and then he greeted them. For the period he himself was in the bar until _____ hrs, **V.** and S. were there and were playing music – the witness confirmed he was keeping an eye on them.

When questioned by the police, however, J. stated that on the _____ he was at the farewell lunch party and that he had seen there the accused **B.V.** and F.S.. Both, according to his testimony, came later that day and stayed after he left at around _____ hrs. He went then to “ _____ ” bar, where he again saw **B.V.** and F.S. entering the bar at around _____ hrs. Being asked whether **V.** and S. were drunk and had blood on them, J. stated the two were intoxicated and he did not see any blood stains on them or on their hands, and did not see them wash their hands at the bar sync.

After being confronted with the police statement he had signed, he confirmed it was his signature on the paper, but he did not know what was written in it, since no questions were addressed to him on the occasion. Answering to the question whether he had a habit of signing documents he did not read, J. said the police told him to sign since it was late and he should go to sleep, indicating that the police had made a false report.

Further on J. stated he was a friend with **V.** brothers, although not very close one. He admitted being working for S. V. for 2 or 3 months after the incident.

When again asked whether **V.** and S. were at D.K.’s party, J. reiterated they weren’t, but confirmed the presence of S.M. and D.K..

d. Witness J.V.

J.V. stated that on _____ he arrived at the cafe bar at _____ hrs to take over his shift and he stayed and worked there until midnight when the police entered. The witness was working as a waiter meaning that he was going behind the bar, taking drinks and serving them. He worked alone that evening and was busy because all the tables at the bar (around 15) were occupied and there were a lot of people. When he arrived at the bar **B.V.** and F.S. were already there and stayed there throughout the whole evening. He didn’t notice anything unusual about **B.V.** and does not remember if the latter was especially drunk. The table they were sitting was located right next to the bar. **V.** only left the bar around _____ and returned immediately, within 1-2 minutes. Before that **B.V.** stayed at his table for about 7 hours while his company was changing. At around _____ hrs Z.J. arrived at the bar, had a drink and a short conversation with the witness and then sat on a table together with the owner of the bar to discuss some business.

When the police arrived **B.V.** was sitting at his table and talking. The witness couldn’t see what exactly happened because he himself was separated by the police. After being confronted with the police report about where and how was **B.V.** found and apprehended,

the witness stated that it was possible that **B.V.** was leaning to the back and the witness does not know if the accused was sleeping.

The witness J.V. works for the brother of **B.V.** for more than two years and is a friend of the family. **B.V.** used to sometimes go to the bar, have coffee or drink and hang there with friends. According to the witness he would stay 1 or 2 hours, or more. There were occasions when **B.V.** stayed more than 7 hours in the bar. The witness remembers well the day because of the police entering the bar around midnight. During his work he did not pay special attention to **B.V.** but he is sure he would have noticed if the latter had left the bar. The witness, on the other hand, is not certain if, when the day is busy, i.e. if there are around 20 or more guests, he is able to keep an eye on all the guests and notice if someone leaves.

4. Other evidence

a. Witness Lj.K.

In her statement before the Court Lj.K. said she did not see **B.V.** and F.S. at the farewell lunch party. She explained that on there was a farewell party for all the friends that was held in and on the next day they just invited relatives to their house for lunch. On the following day there were neighbours visiting them on the same occasion. She also confirmed that S.M. at the celebration in her house, that he drank and was intoxicated, so she put him in a bed where he stayed sleeping till some time around when D. arrived in the car to take him home.

Lj.K. gave a statement to the police, however, that on the , she saw B.V. and F.S., who came to her house for her son D. 's farewell lunch party at around and left not later than after having a lunch with other guests there, adding that her husband and herself went out to say good bye to them. She could not specify which vehicle or who came to pick them up.

Being asked to explain the significant difference between her testimony at the main trial and her statement to the police, she claimed that when giving those statements she meant **B.V.** and F.S. attended the farewell party for the friends that took place a day earlier, on at the in . She also told the court that the police had interviewed her in her house while still receiving guests, and not at the Police Station, and that due to the stress of her son's recent passing, she did not remember what she had told them on the occasion.

She also stated that Z.J. was present at the party at her house and left early, around or hrs when it was not dark yet.

b. Witness M.M.

M.M. stated that on he was working in “ ” bar during first shift, i.e. between and hrs. When he finished his work he went home and later in the evening he went out with two female friends and around visited the same bar. They stayed there until closing time hrs when police entered the bar. M.M.

testified that about an hour before the end of his shift **B.V.** entered the bar. Upon his return at the bar around hrs the witness saw him again with F.S. drinking, sitting at the same place and in the same company. At one moment around hrs **B.V.** left the bar alone and returned alone quickly after that –some 10 to 15 minutes. When leaving the bar he greeted the witness. During his stay at the bar the witness was not paying attention to **B.V.**, neither to anybody else in the bar since he was sitting with his back towards the bar. On that night there was only one waiter working at the bar. When the witness arrived at the bar S.M. and Z.J. were not there. The witness affirms that if those two persons had been there, they would have greeted him for sure. The witness stated that the medical centre in is some 15 minutes away from “ ” bar.

5. Assessment of the evidence

In the case at hand the main issue is who the perpetrator was. The controversy about the identity of the perpetrator was due to the fact that the Accused denied any involvement in the incident and aimed at providing alibi and, even to a greater extent, to the lack of any obvious motive for such a brutal and violent attack against N.N., given that it was confirmed by all parties and witnesses the latter had good relations with the accused.

After assessing all the evidence the panel found the statements of the injured party N.N. credible and reliable. His statements are corroborated by other evidence collected during the trial while the evidence aimed to provide alibi for the accused are inconsistent and controversial.

The panel notes the fact that N.N. named the two perpetrator immediately after he was taken away from the crime scene and confirmed the names of the two that same night although he was seriously and violently beaten, he was in half-consciousness when he was found by R.R., he was experiencing severe pains, he sustained injuries that endangered his life and he could hardly speak. The panel is of opinion that no one would lie under such circumstances and hence, N.N. was telling the truth. The fact that he named the perpetrators two times using the same words also supports the conclusion that he was giving correct information. The statements of N. are to be credited also because it was established that he had no other reasons to put the blame on the accused.

As to the allegations that the injured party N.N. might have made a mistake about the persons who had beaten him the panel notes that the attack was carried in a way that requires a very close contact between the victim and the perpetrators. That’s especially true for the moments when the victim was dragged into the trunk of his own car. Even though it was dark when this incident happened, such a close contact would allow anybody to recognise and memorise the perpetrators. Given the fact that N.N. knew the defendant before that incident, the panel finds that an *error in personae* is excluded.

As for the evidence aimed to provide alibi the Court notes that there are substantial contradictions between statements of the witnesses called to establish the alibi and/or substantial contradictions between statements of the witnesses given to police and their testimonies in the Courtroom. Some of those contradictions are mentioned above while some other related to the whereabouts and the actions of the Accused on are to be elaborated further on. There are also contradictions between the statement of the Accused and the witnesses as to where he had been during the afternoon and evening

hours of _____, how long he had stayed at a certain place and what he was doing there.

According to the statement of the Accused he went to “_____” bar between _____ and _____ hrs. This statement is obviously not in line with the other evidence as the witness M. alleges seeing him there already well before _____ and J.V. saw him there at around _____ hrs. There are also discrepancies as to the time and the manner V. left the bar for going allegedly to receive an injection. While he himself claims he was driven there by a certain friend named S., two witnesses ascertain he was alone and the witness J. states the Accused was together with F.S.. The period that the Accused was absent vary between 1-2 minutes and 10-15 minutes according to the different versions. According to the testimony of M.M., however, it takes 15 minutes only to go to _____ health centre which means that if B.V. was really receiving an injection there his absence from the bar must have been substantially longer than indicated by the witnesses and by him.

A special attention must be given to the statements of the witnesses J. and V. as both of them claim they have seen the accused at the time when the crimes were committed. J. claims he was present at the bar until _____ hrs and was keeping an eye on the accused. However, the witness M. arrived at the bar around _____ hrs and did not see J. and he is certain that in case J. was there they would have greeted for sure. The accused V. himself also denies seeing J. although the latter claims they greeted each other.

Witness V. affirms that the accused was constantly present in the bar from _____ until about _____ hrs and that he would have noticed if V. left the bar. However, he also states that it was a busy evening at the bar and he was alone and under such circumstances he can not be certain he is able to keep an eye on all the guests and notice if someone leaves. In his statement V. was not able to give a precise and clear account as to what was the Accused doing when the police arrested him

The panel finds those two witnesses not credible for the following reasons: It was proven that they are dependant on V. family. Their testimonies are not realistic and are not supported by other evidence. The panel finds it is improbable that a person would stay at the same table in a bar for more that 7 hours and that it is as well improbable that the witness V. was able to strictly monitor the Accused throughout that period of time, given that V. was the only waiter working there that evening and the bar was full with visitors. As to J. it is not confirmed that he was present in the bar for the period that he himself claims being there and, therefore, his statements can not be trusted. Thus, the panel is of opinion that no alibi is established for the accused.

While it is true that the failure of the Accused to establish a sound alibi in itself must not in any way be interpreted against him but he must rather be given the benefits of the doubt, in the present case the panel finds that it is proven beyond reasonable doubt that it was precisely B.V. who, together with F.S., committed the two criminal offences against N.N. and S.R.. As it was elaborated above, the injured party N.N. recognised B.V. as one of the perpetrators and named him immediately after the commission of the crimes and consistently confirmed the identity of that perpetrator without any hesitation or

uncertainty. Therefore, the panel found **B.V.** liable and guilty for the commission of Grievous Bodily Harm against N.N. and of Light Bodily Harm against S.R..

E. Legal Qualification

a. Applicable Law

The substantive law applicable to the case is the one in force at the time, when the criminal offence was committed. On _____, when the alleged criminal offence was committed, in force was the Criminal Code of Kosovo (CCK).

b. With Regard to the Charge of Attempted Murder

The Indictment charges the Accused with Attempted Murder contrary to Article 146 as read with Article 20 of the CCK with regard to the attempt to deprive of life N.N..

After assessing all the facts as established above the Court found that the legal qualification of Attempted Murder is not proportionate to the facts. In order for an act to be regarded as an attempt to a crime there must be an intentional (with direct or eventual intent) and immediate action toward the commission of a criminal offence, pursuant to Article 20, Paragraph (1) of the CCK. In the present case it was not established that the perpetrators had any intent to deprive of life injured party N.N.. It was also not established that the actions of the perpetrators, even though causing life threatening injuries, were immediately aimed toward murdering the injured party. Therefore, legal qualification of Attempted Murder can not be supported.

The circumstances of the case as described above fall under the legal qualification of Grievous Bodily Harm contrary to Article 154, Paragraph (1), Items 1) and 2) of the CCK with regard to the injured party N.N..

6. With regard to the charge of Light Bodily Harm

The Indictment charges the Accused with Light Bodily Harm contrary to Article 153, Paragraph (2) in conjunction with Paragraph (1), Item 1) of the CCK, with regard to the inflicted light bodily harm to the S.R..

It is not disputed that by attacking, hitting and kicking the injured party S.R. the perpetrators inflicted her bodily harm by temporarily damaging and weakening parts of her body. That action entirely falls under the provision of Article 153, Paragraph (1), Item 1) of the CCK. As far as it was not alleged in the factual description of the crime in the indictment, nor was it proven during the main trial that the perpetrators used any object, instrument or weapon when inflicting bodily harm to S.R., there are no grounds for qualifying that crime under Article 153, Paragraph (2) in conjunction with Paragraph (1), Item 1) of the CCK.

F. Sentencing

In determining the duration of punishment the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64, Paragraph (1) of the CPCK.

As aggravating circumstances the panel took into account that the injured party N.N. was attacked by two persons in the dark while he was alone and didn't have reasons to expect such an attack, on the contrary, he exited his vehicle with an intention to help if needed. The panel deems as an aggravating circumstance that the two perpetrators were drunk while committing the offence. As such circumstance must be considered also the fact that the attack against N.N. was extremely violent and as a result of it he was severely bleeding, he sustained three serious injuries, at least one of them life threatening. Last, but not least, the court took note of the persistency in the beating that was not only limited to hits with hands but also included the using of a wooden pole and even trying to put the injured party in the trunk of his own car.

The panel could not find any mitigating circumstances.

For the criminal offence of Grievous Bodily Harm in violation of Article 154, Paragraph (1), Items 1) and 2) of the CCK, the law foresees a punishment by imprisonment of six months to five years.

Having in mind the aggravated circumstances found the Court imposed a sentence of four years of imprisonment for this criminal act.

For the criminal offence of Light Bodily Harm in violation of Article 153, Paragraph (1), Item 1) of the CCK, the law foresees a punishment by a fine or by imprisonment of up to one year.

The Court took as an aggravating circumstance that **B.V.** in co-perpetration with F.S. attacked S.R., a single woman in the dark and at the place where she couldn't get any help. Also as aggravating circumstance the court took that that crime was committed immediately after the commission of another crime - Grievous Bodily Harm against N.N. and with the aim to prevent S.R. from learning what they had done to N.N..

The court couldn't find any mitigating circumstance in that case.

The Court imposed a sentence of one year of imprisonment for this criminal act.

Therefore, the Court imposed an aggregate punishment of and 4 (four) years and 6 (six) months of imprisonment, pursuant to Article 71, Paragraph (1) and paragraph (2), Items 2) and 4) of the CCK.

Pursuant to Article 73, Paragraph (1) of the CCK, time served in detention on remand and on house detention is to be credited to the imposed punishment of imprisonment.

G. Costs

As **B.V.** was found guilty of Grievous Bodily Harm and Light Bodily Harm he must reimburse the part of the costs of the criminal proceedings related to this charge pursuant

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

H. Compensation Claim

During the main trial hearing on 18 May 2011, Injured Party N.N. submitted a compensation claim in the amount of 52,800 Euro for damages caused from Grievous Bodily Injuries. Since the Court found the Accused criminally liable and guilty for his act, it ordered the Accused to compensate the Injured Party for the non-material damage inflicted by the crime, in the amount of 20.000 Euro, pursuant to Article 112, Paragraph (2) of the CPCK. The panel is of opinion that this sum is a just compensation for the non-material damages listed below to the extent proven during the main trial. It is not disputed and is proven beyond any doubt that the injured party sustained serious injuries and he was having severe pain. It is established that the injuries inflicted required long period of recovery and resulted in diminished capacity to work. It is also proven that he was horrified during the attack and was under enormous stress thereafter due to the circumstances under which the attack was carried out. Due to the lack of any evidence to support the claims for compensation for material damages, N.N. is referred for civil litigation for the remaining parts of the claims.

During the main trial hearing on 18 May 2011, Injured Party S.R. submitted a compensation claim in the amount of 8,500 Euro for damages caused from Light Bodily Injuries. Since the Court found the Accused criminally liable and guilty for his act, it ordered the Accused to compensate the Injured Party for the non-material damage inflicted by the crime, in the amount of 4.000 Euro, pursuant to Article 112, Paragraph (2) of the CPCK. The panel is of opinion that this sum is a just compensation for the non-material damages listed below to the extent proven during the main trial. It is not disputed and is established by the evidence presented that the injured party sustained bodily injuries and she was experiencing pain. It is also established that the injuries inflicted required a period of recovery of more that one month and during that period she had to suffer because of some inconveniences in her everyday life. It is also proven that she was horrified during the attack and was under stress thereafter due to the circumstances under which the attack was carried out. Due to the lack of any evidence to support the claims for compensation for material damages, S.R. is referred for civil litigation for the remaining parts of the claims.

**District Court of Mitrovica
K. nr. 26/2010**

Prepared in English, an authorized language.

Jana Božović
Recording Officer

Nikolay Entchev
Presiding Judge

Christine Lindemann-Proetel
Panel Member

Hajnalka Veronika Karpati
Panel Member

Legal remedy:

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398, Paragraph (1) of the CPCK.