

**[Supreme Court - ruling on Criminal Code juvenile panel - article 30 (1) CLK - attempted murder - article 19 (CLY) - Appeal to Amend the Sentence article 396 (7) PCPCK]**

*The defense counsel appealed the decision of the District Court in Mitrovica, arguing that the District Court had erroneously and incompletely determined the factual situation and had violated the criminal code and proposing to the court to acquit the defendant.*

*The District Prosecutor in Mitrovica appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The juvenile defendant was charged with attempted murder, and was found guilty, and was sentenced to pay a fine and protective measure.*

*The Supreme Court ruled that the District Court had given sufficient factual and legal reasons. The Supreme Court ruled that the first instance court made the assessment of evidence pursuant to the legal provisions, as required by Article 396 paragraph 7 of the PCPCK, presenting clearly which facts and for which reasons it considers as proved and which unproved.*

*The Supreme Court ruled that the sentence rendered against the defendant was neither in harmony with the level of social endangerment of the offence committed nor with the level of criminal liability of the juvenile as perpetrator. Accordingly, the Supreme Court ruled that the District Court Prosecutors' appeal was founded and the defense counsel appeals was unfounded.*

Ap.No.1/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a juvenile panel composed of the following judges: Riza Loci presiding judge, Fejzullah Hasani and Avdi Dinaj, members, recording clerk Mejreme Memaj, professional associate, in the criminal case of the juvenile (now adult) B.Xh., from Mitrovica, for the criminal offence of attempted murder foreseen with article 30. paragraph .1 of the CLK, in conjunction with the article 19 of the CLY, based on the appeal of the District Prosecutor of Mitrovica, and the appeal of the juvenile defense counsel lawyer Refik Sofoviq from Mitrovica, filed against the judgment of the District Court in Mitrovica, Pm.No.13/2004 dated 03.12.2004, at the panel session held pursuant to Article 410 of the PCPCK, on 15.11.2005, rendered the following:

J U D G M E N T

With the approval of the appeal of the District Prosecutor, Mitrovica, the verdict of the District Court, Mitrovica, P.No.13/2004 dated 03.12.2004, is amended regarding the sentencing judgment, so that the Supreme Court imposes a fine in the amount of 600 (six hundred) Euros, upon the juvenile B.Xh., for the criminal offence for which he was found guilty, which the juvenile is obliged to pay within 3 (three) months, from the moment when this verdict comes into effect.

Reasoning

The District Court, Mitrovica, with its decision, Pm.No.13/2004 dated 3.12.2004, found juvenile (now adult) B. X. guilty of the criminal offence of attempted murder foreseen with Article 30 paragraph 1 of the CLK, in conjunction with Article 19 of the CLY and the court imposed upon him a fine in the amount of 500€, which he was obliged to pay within 15 (fifteen) days, from the moment when the judgement came into effect: he was obliged to pay court expenses according to the court's final calculation and a lump sum fee of 50 (fifty) Euros; the Court imposed protective measures against the juvenile seizing the knife, with which the criminal offence was committed.

Against this judgment, within the period allowed for filing the appeal, appeals were filed from:

The District Prosecutor filled an appeal against the sentencing judgement, proposing that Court should amend the judgement and impose a more severe punishment against the defendant.

The Defense Counsel of the juvenile, lawyer Sofoviq Refik, due to substantial violation of the provisions of the criminal procedure, erroneous determination of factual situation, violation of the criminal law and the decision on punishment, proposed that the appealed judgment is annulled and the case is remanded to the first instance court for retrial, or to amend it, and acquit the juvenile of the criminal liability.

The Supreme Court of Kosovo, held a panel hearing, in which were present the juvenile (now adult) and his defense counsel, lawyer Ferki Xhaferi, (authorized in the appeal procedure from the juvenile) who after clarifying some of the claims stated in the appeal, in general adhered to the proposals made in the appeal of the juvenile (now adult).

The Public Prosecutor of Kosovo was not present in the panel hearing, although notified in the timely manner, but in the submission PPA.No.1/05 dated 15.02.2005 he proposed the approval of the District Prosecutor's appeal to punish the juvenile with a more severe sentence, whereas the appeal of the juvenile defense counsel to be rejected as unfounded.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after assessing the claims stated in the appeal, found that:

The District prosecutor's appeal is founded, whereas the appeal of the juvenile defense counsel is unfounded.

The juvenile defense counsel stresses in his appeal that the enacting clause of the judgment was not clear and in contradiction with the given reasons. According to the appeal in the enacting clause it was not recorded the subjective report of the perpetrator against the criminal offence, therefore as such the judgment is inappropriate to be assessed.

Based on its assessment, the Supreme Court found that the abovementioned appealed claims are unfounded.

The appealed judgment, with its enacting clause, is clear and concrete, it does not contain contradictions with itself nor with its reasoning. Sufficient factual and legal reasons were given in its reasoning, which this Court accepts as well. The first instance court made the assessment of evidence pursuant to the legal provisions, as provided for in Article 396 paragraph 7 of the PCPCK, presenting clearly which facts and for which reasons it considers as proved and which unproved. The court has made the assessment and the detailed analysis of all proceeded evidence during the main trial, and related to them, it has presented its conclusions, which are accepted as rightful by this Court.

The defense counsel, in his further claims stated in the appeal, considers that the factual situation is incomplete, because the first instance court erroneously reaffirmed that the juvenile has stabbed with the kitchen knife the injured party, because according to him he caused the injury with the French razor of "tattoo" kind and not with the kitchen knife. Also, according to him, the juvenile at the critical moment pulled out the razor himself and the injured party due to the fear fell on it, and injured himself.

The claims of the defense counsel regarding the factual situation are also unfounded, the claim that the injured party himself fell on razor which was in the hand of the juvenile is unfounded and illogical, since the testimony of the injured party that the juvenile has stabbed his body from behind is proved by the witnesses at the scene of this critical event, therefore this fact was proved by indisputable evidence. It is indisputable that the juvenile on the critical day stabbed the injured party and he caused bodily injuries and that in the vital part of the body, after which he underwent a surgery in the Moroccan hospital, in the respective situation it is irrelevant the fact whether the injured party was stabbed with kitchen knife as the first instance court found out, or with a French razor as he will defend himself and claim in the appeal, even though the conclusion of the first instance court that the injured party was stabbed by the juvenile with kitchen knife is rightful and based on the grounded evidence. From the claims stated in the appeal results that this knife was left near the spot by the juvenile, and was afterwards found by the police and was attached to the claims in the appeal as a material proof.

From the abovementioned facts results that the factual situation in this criminal case is assessed rightfully and completely, because the conclusion of the court that the juvenile has committed criminal offence with attempted murder was not put into question with any proof, and furthermore the appeal did not offer any proof or new fact which were not subject to a review or of a detailed and rightful analysis of the first instance court, therefore in this regard the appeal of the juvenile defense counsel results as unfounded.

Based on all circumstances and facts described in detail in the judgment of the court of first instance, it comes out as indisputable conclusion that in the actions of the juvenile include all essential elements of the criminal offence of attempted murder as provided for in

the Article 30 paragraph 1 of the CLK in conjunction with the Article 19 of the CLY, and this simultaneously confirms the rightful implementation of the criminal law.

The District Prosecutor in Mitrovica by appealing the judgment of the first instance against the sentencing judgment, stresses that the court while measuring the sentence, apart from the aggravating and mitigating circumstances should have taken into account also the decisiveness of the juvenile to commit the criminal offence, his attitude during the commitment of the criminal offence, the motive to commit the criminal offence and the fact that he caused serious injuries to the injured party and proposed to impose upon him a more severe sentence.

The Supreme Court assesses that District Prosecutor rightfully considers the punishment which was rendered by the first instance court as a light punishment, based on the circumstances in which the criminal offence was committed in presence of some children, then the intensity of the endangerment of the protected goods (the injuries which the injured party suffered were serious) as well as the level of the criminal liability of the juvenile as a perpetrator. In these circumstances the imposition of the fine is not adequate with the intensity of the social endangerment of the criminal offence nor with the level of criminal liability of the juvenile as perpetrator, therefore the Supreme Court amended the appealed judgment of the juvenile (now adult, because he became 21), pursuant to the Article 9, paragraph 1 in conjunction with the Article 6 paragraph 2 of the CLY, as assessed in the enactment clause, convinced that this sentence is necessary for the education of the juvenile and with that the purpose of the sentence foreseen with the provisions of the Article 7 of the CLY, will be completely achieved whereas on this legal ground it refused the appeal of the juvenile.

As stated above pursuant to Article 426 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Apm.No.1/2005, on 15.11.2005.

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Riza Loci

**[Supreme Court - ruling on Criminal Code- Article 317 Article 23 PCCK- attacking an official person in performing official duties - Article 328 PCCK- unauthorized ownership, control, possession or use of weapons Article 34 PCCK - Appeal to Amend the Sentence - purpose of punishment]**

*The District Prosecutor of Mitrovica appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment. The defendants were charged with attacking an official person in performing official duties unauthorized possession of weapons, and were found guilty, and were each sentenced to 4 months imprisonment.*

*The Supreme Court ruled that the district court correctly assessed all circumstances and considered that the imposed punishment corresponds to the weight of the criminal offence and the level of the criminal liability of the defendants, and that this sentence achieves the purpose of the punishment, as required by Article 34 of the PCCK. Accordingly, the Supreme Court ruled that the District Court Prosecutors' appeal was unfounded.*

Ap.No.14/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Fejzullah Hasani, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendants B.H. and F.H., for the criminal offence of attacking an official person in performing official duties, committed in complicity as provided for in Article 317 paragraph 1 in conjunction with Article 23 of the PCCK (Provisional Criminal Code of Kosovo), and against defendant B.H. for the criminal offence of unauthorized ownership, control, possession or use of weapons, as provided for in Article 328 paragraph 2 of the PCCK, based on the appeal of the District Prosecutor in Mitrovica against the judgment of District Court in Mitrovica P.No.165/2004, at the hearing of the panel on 21.09.2004, rendered the following:

JUDGMENT

The appeal of the District Prosecutor in Mitrovica is rejected, while the judgment of District Prosecutor in Mitrovica P.No.165/2004 dated 21.09.2004, in section II of the enacting clause of this judgment is affirmed.

However, section I of enacting clause of the judgement is not amended.

#### Reasoning

With the judgment of the District Court in Mitrovica P.No.165/2004 dated 21.09.2004, defendants B.H. and F.H., with the enacting clause in section II are found guilty for the criminal offence of attacking an official person in performing official duties, committed in complicity as provided for in Article 317 paragraph 1 in conjunction with Article 23 of the PCCK (Provisional Criminal Code of Kosovo) and for which the court imposed a sentence of imprisonment of four months each, including the time served in detention since 14.06.2004 until 21.09.2004. The court imposed against each of them a fine in amount of 100 Euros, as a lump sum, to be paid within 15 days after the judgment came into effect. With the same judgment, under section I of the enacting clause, the court acquitted the defendants of the criminal offence of unauthorized ownership, control, possession or use of weapons, as provided for in Article 328 paragraph 2 of the PCCK, and pursuant to Article 389 paragraph 1 of the PCPCK (Provisional Criminal Procedure Code of Kosovo).

The District Prosecutor in Mitrovica, within the period allowed for filing the appeal, filed an appeal against this judgment on the ground that the sentence was too lenient, with the proposal that upon the defendants, for the criminal offence committed, should be imposed a more severe sentence.

In the session of the Supreme Court, pursuant to article 410 of the PCPCK, although informed in a timely fashion, both defence counsels, Zenel Ademi and Rexhep Kaqaniku and both defendants, B.H. and F.H. were not present.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted

claim PPA.No.14/2005 dated 17.01.2005, he proposed the approval of the appeal of the District Prosecutor in Mitrovica as founded, by amending sentencing judgment in a manner that the court imposes a more severe sentence against the defendants.

The Supreme Court of Kosovo, upon the review of all the case files of this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after the assessments of the claims stated in the appeal, found that:

The appeal is unfounded.

Since the appealed judgment does not contain any substantial violation of the provisions of criminal procedure and of criminal law, for which the Supreme Court is ex officio obliged to observe pursuant to article 415 of the PCPCK.

This court concluded that the factual situation was determined correctly and completely and that the decision of the first instance court that has an impact on the length and the type of the punishment. The circumstances, stressed in the appeal such as the intensity of the value protected by law, or the intention and the motive of the criminal offence, constitute the substantial elements of the committed criminal offence, by not presenting any aggravating circumstance foreseen by law, which would have an impact on the sentence. This court is convinced that with imposed sentences, which are in compliance with level of criminal liability of the defendants and the level of social endangerment of the committed criminal offence, the purpose of the punishment foreseen in Article 34 of the PCCK will be achieved.

Since there was no appeal against the appealed judgment of the part under section I of the enacting clause, that part is not amended.

As stated above pursuant to Article 423 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.14/2005, on 23.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 159 Article 23 PCCK- kidnapping - Article 8 (2) (6) UNMIK Regulation No.2001/7 - unauthorized ownership, control, possession or use of weapons Appeal to Amend the Sentence]**

*The District Prosecutor of Mitrovica appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendants were charged with kidnapping, and were found guilty, and were each sentenced to 8 months of imprisonment.*

*The Supreme Court ruled that there was no special mitigating circumstance in favour of the defendants which would have softened the punishment, since the sentence for this criminal offence committed by the defendants is from 1 (one) year up to 10 (ten) years. Accordingly, the Supreme Court ruled that the District Court Prosecutors' appeal was founded.*

Ap.No.18/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Doc.dr.Hamdi Podvorica, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendants B.H., G.H., B.H., Rr.H. and D.H., all from the village of Strovçë, Vushtrri, for the criminal offence of kidnapping of a person, foreseen in Article 159 paragraph 2 in conjunction with paragraph 1 in conjunction with Article 23 of the PCCK and for the criminal offence of unauthorized ownership, control, possession or use of weapons, committed in complicity as provided for in Article 8 paragraph 2 in conjunction with paragraph 6 of UNMIK Regulation No.2001/7 on the Authorization of Possession of Weapons in Kosovo, in conjunction with Article 22 of the Criminal Law of Yugoslavia (CLY), applicable according to UNMIK Regulation on applicable law, based on the appeal the District Prosecutor in Mitrovica against the judgment of the District Court in Mitrovica P.No.280/2003 dated 10.06.2004, in the session held on 01.09.2005, rendered the following:

JUDGMENT

To approve the appeal of the District Prosecutor, Mitrovica, while the judgment of the District Court, Mitrovica, P.No.280/2003 dated 10.06.2004, under section II of the enacting clause is amended regarding sentencing judgement, in the manner that the Supreme Court found guilty defendants B.H., G.H., Rr.H. and D.H. and imposed a sentence with imprisonment of 1 (one) year, including the time served in detention: B.H. from 18.05.2004 until 10.06.2004, while defendants G.H., Rr.H. and D.H. from 16.10.2003 until 10.06.2004.

The judgment, as mentioned under section I of the enacting clause remains unchanged.

Reasoning

The District Court, Mitrovica, with its decision P.No.280/2003 dated 18.06.2004, found defendants B.H., G.H., Rr.H. and D.H. guilty on the charges of the criminal offence of kidnapping a person in complicity, as provided for in Article 159 paragraph 2 in conjunction with paragraph 1 in conjunction with Article 23 of the PCCK, and sentenced them with an imprisonment of 8 (eight) months, including the time served in detention, B.H. from 18.05.2004 until 10.06.2004, while defendants G.H., Rr.H. and D.H. from 16.10.2003 until 10.06.2004. The defendants are obliged to pay a lump sum fee of 50 €, as well as court expenses based on the final court's invoice, within 15 days after the judgment becomes final. The Court acquitted the defendants from the criminal offence of unauthorized ownership, control, possession or use of weapons in complicity as provided for in Article 8 paragraph 2 in conjunction with paragraph 6 of UNMIK Regulation No.2001/7 on the Authorization of Possession of Weapons in Kosovo, in conjunction with Article 22 of the CLY, while defendant B.H. was acquitted of the criminal offence of kidnapping a person, committed in complicity as provided for in Article 159 paragraph 2 in conjunction with paragraph 1 in conjunction with Article 23 of the PCCK, and pursuant to Article 349 paragraph item 3 of the LCP.

The District Prosecutor in Mitrovica, within the period allowed for filing the appeal, filed the appeal against the sentencing judgment, with the proposal that against the defendants should be imposed a more severe sentence.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.18/2005 dated 28.01.2005, he proposed that the appealed judgment is amended, and the defendants be charged with a more severe sentence.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 376 of the LCP, and after the assessment of the claims stated in the appeal, found that:

The appeal is founded.

The appealed judgment does not contain substantial violation of the criminal procedure provision and of criminal law, for which the Supreme Court is *ex officio* obliged to observe pursuant to article 376 of the LCP.

The Supreme Court, while evaluating the appealed judgment, found that the Court of the first instance has rightfully evaluated the circumstances, which were taken as a basis for the type and the length of punishment, but this Court could not find any special mitigating circumstance in favor of defendants B.H., G.H., Rr.H. and D.H., which would have mitigated the punishment, since the sentence for this criminal offence committed by the defendants is from 1 (one) year up to 10 (ten) years imprisonment. Therefore, it is rightfully stressed in the appeal that there are no special mitigating circumstances in favor of the defendants. With the approval of the appeal of the District Prosecutor in Mitrovica, the appealed judgment in its sentencing part under section II, of the enacting clause amended the sentencing judgment, so defendants B.H., G.H., Rr.H. and D.H., were found guilty for the criminal offence, and were sentenced with imprisonment of 1 (one) year, including the time served in detention, taking into account the level of criminal liability of the defendants and the intensity of the social endangerment of the committed criminal offence.

The appealed judgment under section I. of the enacting clause in its discharging part is not amended, since there was no appeal against it.

As stated above pursuant to Article 387 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.18/2005, on 01.09.2005

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Articles 8.2 and 8.6 - UNMIK Regulation 2001/7 - Unauthorized Ownership, Control, Possession and Use of weapons - Appeal to Amend the Sentence Mitigating Circumstances]**

*The District Prosecutor of Prishtina appealed the decision of the District Court in Prishtina, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged with unauthorized ownership, control, possession, or use of weapons and ammunition, and was found guilty, and was sentenced to 10 (ten) months of imprisonment, which will not be enforced if the defendant does not commit another criminal offence within a period of 3 years, from the day the judgment is rendered.*

*The Supreme Court found that the District Court has over-estimated the mitigating circumstances. Accordingly, the Supreme Court ruled that the District Court Prosecutors' appeal was founded.*

Ap.No.22/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Zait Xhemajli, presiding judge, Avdi Dinaj, and Miftar Jasiqi, members, with the legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant A.T., from Obiliq, charged with the criminal offence of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 8.2, punishable in accordance with article 8.6 of UNMIK Regulation No. 2001/7, on the Authorization of Possession of Weapons in Kosovo, based on the appeal of the District Prosecutor of Prishtina, against the judgment of District Court, Prishtina, P.No.220/2003 dated 25.11.2004, at the hearing of the panel on 27.09.2005, rendered the following:

JUDGMENT

With the approval of the appeal of the District Prosecutor of Prishtina, the judgment of the District Court, Prishtina, P.No.220/2003 dated 25.11.2004, is amended in regard to the sentence, meaning that

the Supreme Court imposes a fine in the amount of 800 (eight hundred) Euros, to defendant A.T., for the criminal offence for which he has been sentenced, which the defendant is obligated to pay within 15 (fifteen) days, from the moment when this verdict comes into effect. In the event of failure of payment, within the set time period, the punishment shall be enforced by imprisonment, calculating the fine at the rate of 15 Euros per one day of imprisonment.

Reasoning

The District Court, Prishtina, with its decision P.No.220/2003 dated 25.11.2004, found defendant A.T., guilty on the charges of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 8.2, punishable in accordance with article 8.6 of UNMIK Regulation No. 2001/7, on the Authorization of Possession of Weapons in Kosovo, for which the Court imposed a suspended sentence with an imprisonment of 10 (ten) months, which will not be executed if the perpetrator does not commit another criminal offence for the period of 3 (three) years, from the moment when this verdict comes into effect.

The defendant is obligated to pay the expenses of the Court in accordance with the calculations of the Court and a lump sum fee of 100 (one hundred) Euros.

The Court has also imposed protective measures against the defendant seizing an automatic rifle, manufactured in Yugoslavia, 7.62 mm caliber, serial number B-137 69 M-70-B1, 262 bullets, and one grenade adapter for automatic rifle.

The District Prosecutor, within the period allowed for filing the appeal, filled an appeal against this judgment on the basis that the sentence was too lenient, with the proposal that upon defendant A.T., for the criminal offence committed, should be imposed a more severe sentence.

The Public Prosecutor of Kosovo, although dully notified about the hearing was not present at the hearing, however in his submitted claim PPA.No.22/2005 dated 07.02.2005, he proposed the approval of

the appeal of the District Prosecutor, by amending the judgment in dispute, and imposing a more severe sentence against the defendant.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 376 of the PCPCK, and after the assessment of the claims stated in the appeal, found that:

The appeal is founded.

Since the appealed judgment does not contain any violation of the provisions of the criminal procedure, the Supreme Court, pursuant to article 376 of the PCPCK, observes that there has been no *ex officio* violation of the Criminal Code, bearing in mind that the factual situation was determined properly and completely and that the decision of the first instance authority is not questioned in that regard, this Court limits its evaluations to the claims contained in the appeal.

The District Prosecutor in its appeal states that the Court of the first instance has over-estimated the mitigating circumstances, which were taken as the only basis for determining the type and length of the punishment. The prosecutor, further claims that the imposed sentence does not match the level of criminal liability and the level of endangerment of the society, and that with the decision of the Court of the first instance, the purpose of the punishment can not be achieved, thus proposing the imposition of a more severe sentence.

The Supreme Court, while evaluating the claims contained in the appeal, finds that the Court of the first instance has over-estimated the mitigating circumstances, which were taken as basis for type and length of punishment, as the prosecutor in the appeal rightfully claims. Considering the fact that the defendant was found in possession of automatic rifle, manufactured in Yugoslavia, 7.62 mm caliber, serial number B-137 69 M-70-B1, 262 bullets, and one grenade adapter for automatic rifle, which are forbidden to be carried by inhabitants, also having in mind that the government authorities on several occasions have announced amnesty towards the people who turn in their weapons, and this was not respected by the defendant, therefore the offence does not match the level of social endangerment of the crime committed, thus this Court imposes a fine to the defendant, as described in the enacting clause of this judgment, which the defendant is obligated to

pay within 15 (fifteen) days, from the moment when this verdict came into effect. In the event of failure of payment within the set time period, the punishment shall be enforced by imprisonment, calculating the fine with imprisonment, at the rate of 15 Euros per day.

Furthermore, this Court deems that the rendered punishment, as stated in the enacting clause, matches the level crime of social endangerment and the level of criminal liability of the defendant and with such punishment the aim of the punishment, as foreseen with the law will be achieved.

As stated above pursuant to Article 387 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.No.22/2005, on 27.09.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Zait Xhemajli

**[Supreme Court - Ruling on Criminal Code - Article 297, Paragraph 5 Endangerment of Public Traffic - Appeal to Amend the Sentence - Violation of PCCK, - Wrongful Determination of the Factual Situation - Article 415 (1) ((1)) - Article 403 (1) ((9)) PCPCK, - Questioning - Presentation of Evidence - Plea of Guilt]**

*The District Prosecutor of Prizren appealed the decision of the District Court in Prizren, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defense counsels appealed the decision of the District Court in Prizren, arguing that the District Court in its judgment violated the provisions of the criminal procedure and the criminal code, and determined erroneously and incompletely the factual situation.*

*The defendants were charged with endangerment of public traffic, were found guilty, and were sentenced with 4 years and 3 years of imprisonment respectively.*

*The Supreme Court ruled that the decision of the District Court contains essential violations of the provisions of the criminal procedure from article 415 paragraph.1 point 1, and article 403 paragraph 1, point 9, of the PCCK. Accordingly, the Supreme Court ruled that defense counsel appeal was founded.*

Ap.No.25/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Riza Loci, presiding judge, Miftar Jasiqi, and Avdi Dinaj, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendants Xh.B. from Gramovik, Municipality of Rahovec and P.Ll., from the village Smaq, Municipality of Gjakova, charged with endangerment of public traffic, pursuant to article 297 paragraph 5 and paragraph 3 and 1 of the PCCK, deciding on the appeal of the District Prosecutor of Prizren and the appeals of the defense counsels against the District Court judgment P.No.143/2004 dated 18.10.2004, in the session pursuant to article 410 of the PCCK, held on 20.09.2005, rendered the following:

RULING

The appeals of the defense counsels of defendants Xh.B. and P.Ll., are deemed founded, therefore the judgment of the District Court, P.No.143/2004 dated 18.10.2004 is dismissed and the case is remanded for retrial.

Reasoning

The District Court of Prizren, with its decision P. No. 143/2004 dated 18.10.2004, found defendants Xh.B. and P.Ll., guilty of the offence of endangerment of public traffic, pursuant to article 297 paragraph 5 and paragraph 3 and 1 of the PCCK, and sentenced defendant Xh.B. of 4 (four) years of imprisonment, including the time served in pre-detention starting from 21.06.2004, and defendant P.Ll, with the sentence of imprisonment of 3 (three) years, including the time served in pre-detention starting from 21.06.2004. The injured parties F.K., N. K., S.K., L.Sh. and F.Sh., are instructed to pursue their property claims through a civil procedure. The defendants were ordered to pay Court's procedural expenses according to the Court's calculation and a lump sum, each in the amount of 200 €.

Against this judgment, appeals were filed by:

- The District Prosecutor of Prizren, proposing to the Supreme Court to amend the judgment and impose a more severe punishment of imprisonment against the defendants,

- The defense counsel, attorney at law, Meriman Vehapi, for defendant Xh.B., appealed on the ground of erroneous and incomplete determination of the factual situation, violation of criminal code and requested the Court to amend the sentencing part, proposing that the defendant be acquitted of all charges, or dismiss the decision and remand the case to the Court of first instance for retrial,

- The defense counsel, attorney at law, Qerim Metaj, for defendant Xh.B., based on the same claims as above, proposing to the Court to amend the sentencing part, that the defendant be acquitted of all charges, or dismiss the decision and remand the case to the Court of first

instance for retrial, through appointment of new expert, or change the sentencing decision and impose a more lenient sentence.

- The defense counsel Tomë Gashi, for defendant P.LI., appealed on the ground of erroneous and incomplete determination of the factual situation, violation of criminal code and the sentencing decision, proposing to the Court, that the defendant be acquitted of all charges, or dismiss the decision and remand the case to the Court of first instance for retrial, and issue a more lenient sentence.

At the Supreme Court session, pursuant to article 410 of the PCPCK, defense counsels Meriman Vehapi and Tomë Gashi, and both defendants were present, who entirely adhered to the claims made by their counsels, while the defense counsel Qerim Metaj, although dully notified, was not present at the session.

The Public Prosecutor of Kosovo in his claim PPA.No.25/2005 dated 8.02.2005 proposed the approval of the appeal of the District Prosecutor, while dismissing the appeals of the defense counsels as unfounded by reaffirming the judgment in question.

Although dully notified The Public Prosecutor of Kosovo was not present at the session of the Court.

Upon reviewing case files, examining the appealed judgment, pursuant to Article 415 of the PCPCK, and assessing the appeal claims, the Supreme Court held that:

The appeals of the defense counsels are founded, while the District Prosecutors appeal is irrelevant to the subject matter.

The appealed judgment contains substantial violation of provisions of the criminal procedure, as provided for by article 403 paragraph 3, point 9 of the PCPCK, on which the defense counsels have rightfully based their claims, and for which the Court of the first instance always decides *ex officio*, since the defendants were taken into questioning before the presentation of evidence - although when called on the plea of guilt, both of them pleaded not guilty on all counts of the offence. This action of the Court represents essential violations of the provisions of the criminal procedure, which makes the decision legally unfounded, based on which the Supreme Court has dismissed the

decision and remanded the case to the Court of first instance for retrial. Due to the reasons states above, the Supreme Court did not evaluate other claims in the appeal and did not issue an opinion on them.

In the retrial, the Court of the first instance must re-administer all previous evidence and consider new evidence, if any, listen to the testimonies of the defendants, in accordance to the respective legal provisions, and only after listening and evaluating each evidence separately or in connection with each other, render a just decision.

As stated above, pursuant to Article 424 of the PCPCK the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.No.25/2005, on 20.09.2005

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Riza Loci

**Supreme Court - ruling on Articles 8.3 and 8.5 - UNMIK Regulation 2001/7 On Authorized Possession Weapon in Kosovo - appeal to amend sentence - Mitigating Circumstances - Erroneous Determination of Factual Situation - Article 328 of the PCCK - The Most Favorable Law]**

*The defense counsel appealed the decision of the District Court in Prizren, arguing that the District Court had erroneously and incompletely determined the factual situation.*

*The District Prosecutor of Prizren, appealed the decision of the District Court in Prizren, arguing that the Court Decision was too lenient, proposing to impose a more severe punishment of imprisonment.*

*The defendant was charged with unauthorized ownership, control, possession, or use of weapons and ammunition, and was found guilty, and was sentenced to 1 year of imprisonment, which will not be served if the defendant does not commit another criminal offence within 2 year period.*

*The Supreme Court ruled that the District Court had determined the factual situation completely and correctly, however wrongly applied the law in the disadvantage of the defendant, since it has issued two suspended sentences; while in accordance to the PCCK article 328 paragraph 2, the defendant can not be charged with two sentences. The Supreme Court ruled that the District Court has over-evaluated the mitigating circumstances. Accordingly, the Supreme Court ruled that the District Prosecutors' appeal was founded.*

Ap.No.32/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Agim Krasniqi, presiding judge, Fejzullah Hasani, and Doc.dr.Hamdi Podvorica, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendant A.B., from village Hoqe e Qytetit, Municipality of Prizren, for the criminal offence foreseen in Article 8.3, punishable in accordance with article 8.5 of UNMIK Regulation No. 2001/7, on the Authorization of Possession of Weapons in Kosovo, based on the appeal of the District Prosecutor of Prizren, against the judgment of the District Court, Prizren P.No.74/2004 dated 8.11.2004, at the hearing of the panel on 2.8.2005, rendered the following:

JUDGMENT

With the approval of the appeal of the District Prosecutor of Prizren, the judgment of the District Court of Prizren P.No.74/04, dated 8.11.2004, in regards to the legal qualification and the decision on the sentencing of the defendant is amended. The Supreme Court found that the actions of the defendant contain all elements of the criminal offence, respectively ownership, control, possession, and unauthorized use of weapons, foreseen in article 328, paragraph 2 of the PCCK, and based on this criminal offence, this Court sentences him to 3 months imprisonment, including the time served in detention starting from 15.3.2004 until 7.4.2004.

The appeal of the defendant is unfounded, therefore it is dismissed.

Reasoning

With the judgment of the District Court of Prizren, P.No.74/2004, dated 8.11.2004, defendant A.B., was found guilty for the criminal offence foreseen in Article 8.3, punishable in accordance with article 8.5 of UNMIK Regulation No. 2001/7, and was sentenced to 1 (one) year of imprisonment, which will not be enforced if the defendant does not commit another criminal offence within 2 year period, from the day the judgment is rendered and was fined 330€ for the offence committed, in which sentence the time served in pre-detention from 15.3.2004 until 7.4.2004

The defendant is obligated to pay Court's expenses in accordance to the calculation of the Court invoice and a lump sum fee of 50 € (fifty) Euros; The Court has also imposed protective measures against the defendant, such as, seizure of the semi automatic rifle, with serial number: 10217287 and 9 (nine), 7,62 mm caliber bullets.

An appeal against the judgment, within the time period allowed for filing the appeal, was filled by:

The District Prosecutor of Prizren, proposing to the Supreme Court to amend the verdict and impose a more severe punishment of

imprisonment against the defendant; and

The defendant, appealed on the ground of erroneous and incomplete determination of the factual situation, requesting the Court to reject the decision in dispute, remand the case to the first instance Court for retrial, or remand the decision and acquit the defendant of the charges.

The Public Prosecutor of Kosovo, with its submission PPA.No.32/2005 dated 5.2.2005 proposed the approval of the appeal of the District Prosecutor, arguing that the defendant should be given a more severe sentence, while rejecting the appeal of the defendant, as unfounded.

The Supreme Court of Kosovo, upon the review of all files of this criminal case, analyzed the appealed judgment pursuant to article 376 of the PCPCK, and after the assessment of the claims stated in the appeal, found that:

The appeal of the District Prosecutor of Prizren is founded, while the appeal of the defense counsel is unfounded therefore dismissed.

The defendant in his claim argues that the factual situation was determined properly and completely in this criminal case, and while justifying these claims in his defense, repeats the genesis of the conflict with the injured party, stating that the Court has not verified this fact, which was the cause of the conflict.

The above mentioned claims are unfounded, since the defendant himself declared that at the critical day, when he noticed the injured parties in his yard marking the boundaries of the land, took the rifle, which he had from the war and threatened the injured parties, to leave the spot, otherwise he would kill them all. From the above, it is undisputed in the opinion of this Court, that the determination of the first instance Court is true, that the defendant at the critical day used the rifle to threaten the injured parties. By acting *ex officio*, this Court held that in the appealed verdict the factual situation was determined properly and completely, however the first instance Court has wrongly applied the law, in the disadvantage of the defendant, since it has issued two cumulative sentences; suspended sentence with imprisonment and

a fine, while in accordance to article 328 paragraph 2 of the PCCK, there can not be two sentences against the defendant, and for this reason, this Court has changed the legal qualification of the offence, from the criminal offence pursuant to article 8.5 of the UNMIK Regulation 2001/7, to the criminal offence pursuant to article 328.paragraph.1 of the PCCK, and removed the fine against the defendant, which was rendered from the first instance Court.

The Public Prosecutor in his claim argues that a suspended offence rendered from the first instance Court, does not fit the burden of the crime committed, and that the Court when deciding upon the burden of the offence, should have taken into consideration as a aggravating circumstance, that government authorities have announced on 3 occasions the amnesty towards the people who turn in their weapons, while this was not respected by the defendant, therefore asked the Court to consider the fact that this kind of criminal offences are on the rise in the territory of this Court.

The Supreme Court found the above claims of the District Prosecutor as founded.

The first instance Court when deciding on the sentencing took into consideration as mitigating circumstances the facts that the defendant showed good behavior in front of the Court, the fact that he was never summoned before, while finding no aggravating circumstances. Such evaluation of the mitigating circumstances is accepted by this Court, however this Court believes that there were aggravating circumstances, which were not taken into account, which are clearly emphasized on the appeal, such as the way the offence was committed, further considering the fact that such offences are not decreasing but the contrary they are in a constant rise which is of a particular concern to this Court, and the presence of weapons among inhabitants of Kosovo, is a permanent danger to the security of inhabitants and in such circumstances a suspended offence and a fine, are not proportionate with the degree of social endangerment caused by the offence committed by the defendant. Based on the above reasons the Supreme Court has amended the judgment on appeal, and charged the defendant with the offence, as described in the enacting clause of this decision, convinced that such a sentence is required, in order for it to be in proportion with the social endangerment of the committed offence and that with such sentence, achieve the purpose of punishment as

provided by law. Due to the above stated reasons the appeal of the defendant, in accordance to the decision on sentencing, is dismissed as unfounded.

As stated above pursuant to Article 387 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.32/2005, Dated 03.08.2005

Recording Clerk  
Mejreme Memaj

Presiding Judge  
Agim Krasniqi

**Supreme Court - ruling on Criminal Code - article 30 (1) CLK - murder - article 154 (4) (3) PCPCK - appeal to amend sentence - description of criminal offence]**

*The District Prosecutor of Peja appealed the decision of the District Court in Peja, arguing that the District Court had erroneously and incompletely determined the factual situation and had violated the criminal code proposing to impose a more severe punishment.*

*The defense counsel appealed the decision of the District Court in Peja, arguing that the District Court had erroneously and incompletely determined the factual situation and had violated the criminal code proposing to acquit the defendant.*

*The defendant was charged with murder, and was found guilty, and was sentenced to 6 years imprisonment.*

*The Supreme Court ruled that the District Court had correctly and completely determined the factual situation. The Supreme Court ruled that the description of the criminal offence was appropriate, since it contains all the facts and elements of the criminal offence, including the intent as a subjective element of the criminal offence, hence the decision was clear and in accordance with the evidence in the files and the reasoning provided. The Supreme Court ruled that the sentence rendered to the defendant was in harmony with the level of social endangerment of the offence committed. Accordingly, the Supreme Court ruled that the District Court Prosecutors' and defense counsel appeals were unfounded.*

Ap.No.42/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Miftar Jasiqi, presiding judge, Zait Xhemajli, Riza Loci, Avdi Dinaj, and Osman Tmava, members, and legal assistant Drita Rexhaj, acting in the capacity of the recording clerk, in the criminal case against defendant H.H., from the Village Rakosh, Istog, for the criminal offence of murder pursuant to article 30 paragraph 1 of the CLK, deciding on the appeals of the District Prosecutor of Peja and the defense counsel of the defendant, filed against the judgment of the District Court of Peja, P.No.4/2004 dated 5 May 2004, in the session held pursuant to article 371 of the LCP, dated 28.09.2005, rendered the following:

## JUDGMENT

The appeal of District Prosecutor of Peja and the appeal of the defense counsel of defendant H.H., are unfounded, while the judgment of the District Court of Peja P.No.4/2004 dated 5 May 2004, is reaffirmed.

## Reasoning

The District Court of Peja, with its judgment, P.No.4/2004 dated 5 May 2004, has found the defendant guilty for the criminal offence of severe bodily injury, pursuant to article 154 paragraph 4 and paragraph 3 of the Provisional Criminal Procedure Code of Kosovo (PCPCK) and has sentenced him of 6 (six) year of imprisonment, including the time served in pre-detention from 10 October 2003. The defendant is ordered to pay the Court procedural expenses according to the calculation of the Court invoice and a lump sum, each in the amount of 200 €, while the injured party is instructed to pursue their property claims through a civil dispute procedure.

Against this judgment, appeals were filed from:

- The District Prosecutor of Peja, by proposing that due to erroneous and incomplete determination of the factual situation, violation of criminal code the Court should amend the sentencing part, proposing that the defendant is found guilty of the offence of murder, pursuant to article 146 of the PCPCK; to dismiss the judgment, remand the case for retrial, or change the sentencing decision in accordance to the proposal for sentencing and the defendant be charged with a more sever sentence;

- The defense counsel, attorney at law, Zeqir Bërdyna, appealed on the ground of erroneous and incomplete determination of the factual situation, violation of criminal code and requested the Court to amend the sentencing part, proposing that the defendant be acquitted of all charges, or dismiss the decision and remand the case to the first instance Court for retrial. At the same time the defense counsel has requested a notification of when the session is to be held.

The Supreme Court based on the proposal of the Defense Counsel, pursuant to article 371 of the LCP, determined the date of the session, and although duly notified neither the defense counsel, neither the Public Prosecutor of Kosovo were present at the Court. However the Public Prosecutor of Kosovo, by the submission PPA.No.42/2005 dated 14.02.2005, 2005 proposed the approval of the appeal of the District Prosecutor, while dismissing the appeals of the defense counsels as unfounded.

Since the defendant is in pre-detention, the Court pursuant to article 371 of the LCP did not consider his presence of essential importance in this session.

The Supreme Court of Kosovo, upon the review of all case files, analyzed the appealed judgment pursuant to article 376 of the PCPCK, and after the assessments of the claims stated in the appeal, found that:

The appeals are unfounded.

The defense counsel claims that the judgment in appeal is in violation with the provisions of the criminal procedure code, since it is ambiguous, contradictory and not based on facts, while the reasoning given is also not based on the evidence administered. During the evaluation of the claims, the Supreme Court concluded that the claims are unfounded. The appealed judgment is not in violation with the provisions, as claimed in the appeal. The judgment is in accordance with article 346 of the LCP and it contains all the elements foreseen in article 351 of the LCP. In accordance to the facts, the first instance Court during the trial has provided sufficient and convincing evidence, which logical in the factual and legal point of view, reasons based on the administered evidence and in harmony with the case files and their content. As far as the description of the offence in the enacting clause of the judgment is concern, by which the defendant is found guilty, this Court evaluated that such a description is appropriate, since it contains all the facts and elements of the criminal offence, including the intent as a subjective element of the criminal offence, hence the decision is clear and in accordance with the evidence in the files and the reasoning provided.

During the evaluation of the appealed judgment in conjunction with the factual situation, the Supreme Court believes that the first

instance Court has rightfully and completely determined the factual situation. The case files show clearly the fact that the defendant and the other party, now deceased H.H. are related (the deceased was the uncle of the defendant) and that their relations have not been good between each other for years now. At the critical day, 10 of October 2003, the defendant H.H. had engaged his friend to plough the field and when the witness B.B with his tractor had finished the work, the injured party, now deceased came and started arguing with the defendant, while the witness with his tractor leaves the scene and goes home. Also, the fact is clear that, during the argument the defendant hits the deceased with a tree in the head once, causing him a light injury and twice in the shoulder area causing him severe bodily injury towards now the deceased, from which injuries the party dies in the University Clinic of Prishtina the next day. These facts are determined with the material evidence found in case files, such as photo documentation, the sketch of the scene of the offence, autopsy report and the opinion of forensic medicine experts' evidence which the first instance Court administered during the Court proceedings. The determinations and conclusions of the first instance Court, concerning the factual situation, are accepted by this Court, since they are a result of a just and objective evaluation of the evidence. Based on the above mentioned, the claims of the defendant, that the first instance Court has mistakenly administered the evidence presented, which resulted in an erroneous application of law which also had a consequence, the wrongful qualification of the offence, are unfounded. The claim of the District Prosecutor that the first instance Court has mistakenly evaluated the evidence is deemed to be unfounded as well. Based on the opinion of the expert - pathologist Dr. Marek Gasior, given on the autopsy report, it is stated that the deceased has suffered a concussion after the injured and that natural diseases have also influenced the death of the injured party. Furthermore, according to the forensics experts opinion Dr. Arsim Gërzhaliu provided during the Court analysis that the deceased already has had health problems that could not cope with the bodily injuries obtained during the hit with a sharp tool, resulted in the death of party on this day which otherwise would not have accrued, also this Court evaluates as a basis that the death of now the deceased H. resulted as a consequence of the actions of the defendant upon the their argument.

Having just and completely evaluated the factual situation, the first instance Court has rightfully applied the criminal law, when found that the actions of the defendant contains all the elements of the criminal

offence of severe bodily injury with death consequences, foreseen in article 154 paragraph 4 and paragraph 3 of the PCPCK. The Court deems as unfounded the claims of the defendant and his defense counsel, that the defendant was attacked and that his actions are as a result of self-defense, since such claim is not supported by the evidence provided. Also the claim of the District Prosecutor that in this particular case we have to do with the offence of murder pursuant to article 146 of the PCPCK, is deemed unfounded since it is indisputably determined that the injured party during the beating suffered severe injuries, as a result of which died the next day. Also, this Court agrees with the evaluation of the first instance Court that the element of the intent of the defendant to kill the other party did not exist, since if the intent had existed, the defendant would have continued to hit the, now deceased party and not allow him to die the next day, since during his action the defendant was not interrupted by anyone.

During the evaluation of the decision in appeal in conjunction with the verdict, the Supreme Court finds that the first instance Court justly and fully has evaluated all the circumstances that affect the type and the height of the offence. The reasoning given by the first instance Court in conjunction with the evaluation of the circumstances is just and right, and as such is approved by this Court. In lack of no mitigating or aggravating circumstance, the claims for a more lenient or severe punishment towards the defendant in this concrete case are deemed unfounded. Also, according to the opinion of the Supreme Court, the sentence rendered to the defendant is in harmony with the level of social endangerment of the offence committed, so it is expected that with the sentencing in relation with the defendant the overall aim of the punishment as provided by law is to be achieved.

As stated above pursuant to Article 387 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.No.42/2005, on 28.09.2005

Recording Clerk,  
Drita Rexhaj

Presiding Judge,  
Miftar Jasiqi

**[Supreme Court - ruling on Criminal Code- Article 340 (1) (3) PCCK- appropriation during the official duty - article 249 (1) PCCK- tax evasion guilty plea -appeal to amend sentence - factual situation - 402 (2) PCPCK - 358 PCPCK- article 71 PCPCK - article 34 PCPCK- purpose of punishment]**

*The Defense counsel appealed the decision of the District Court in Peja, arguing that the District Court had erroneously and incompletely determined the factual situation, proposing to impose a more lenient punishment.*

*The defendant was charged with appropriation during the official duty and with tax evasion, and was found guilty, and was sentenced to an aggregate imprisonment of 4 years and 6 months.*

*The Supreme Court ruled that when the defendant pleads guilty on all criminal charges, he does not have the right to file a claim due to erroneous and incomplete evaluation of factual situation, as required by article 402 paragraph 2 of the PCPCK and article 358 of the PCPCK.*

*The Supreme Court ruled that the first instance Court when imposing the length and the type of punishment, had rightfully evaluated all circumstances, as required by article 71 of the PCPCK, therefore the imposed sentence against the defendant matches the level of social endangerment of the committed criminal offences and the level of criminal liability of the defendant and the purpose of the punishment would be achieved, as required by articles 34 of the PCPCK. Accordingly, the Supreme Court ruled that the defense counsel appeal was unfounded.*

Ap.No.43/2005

#### IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Miftar Jasiqi, presiding judge, Zait Xhemajli and Avdi Dinaj, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendant I.S., from Peja, for the criminal offences: appropriation during the official duty as provided for in Article 340 paragraph 2 in conjunction with paragraph 1 of the PCCK, appropriation during the official duty, foreseen with Article 340 paragraph 3 in conjunction with paragraph 1 of the PCCK, and for the criminal offence of tax evasion, as provided for in Article 249 paragraph 1 of the PCCK, based on the appeal of the defense counsel of defendant I.S., the lawyer Naser Husaj, against the judgment of the District Court

of Peja, P.No.319/2004 dated 20.09.2004, in the hearing held pursuant to provisions of Article 410 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), on 14.09.2005, rendered the following:

#### JUDGMENT

The appeal of the defense counsel of defendant I.S is rejected as unfounded, while the judgment of the District Court in Peja P.No.319/2004 dated 20.09.2004 is affirmed.

#### Reasoning

With the judgment P.No.319/2004 dated 20.09.2004, the District Court of Peja, found the defendant I.S. guilty for the criminal offence of appropriation during the official duty as provided for in Article 340 paragraph 2 in conjunction with paragraph 1 of the PCCK, appropriation during the official duty, foreseen with Article 340 paragraph 3 in conjunction with paragraph 1 of the PCCK, and of the criminal offence of tax evasion, as provided for in Article 249 paragraph 1 of the PCCK, and imposed separate sentences for each criminal offence: for criminal offence under section I of the enacting clause with imprisonment of 2 (two) years, for the criminal offence under section II of the enacting clause with imprisonment of 3 (three) years and for the criminal offence under section III of the enacting clause with imprisonment of 1 (one) year, and imposed an aggregate imprisonment of 4 (four) years and 6 (six) months, including the time spent in detention from 29.06.2004, until 17.09.2004. The court ordered the defendant to pay all the costs of the criminal proceedings in the amount of 750 Euros and an amount of 200 € in the form of a lump sum. The defendant is obliged to pay to the damaged party Interpres R.Company "Kosova Sot" with HQ in Prishtina, an amount of 7.540.00 Euros, while beyond this amount, this company is instructed to pursue a property claim in a form of civil procedure.

The defense counsel of defendant I.S. filed an appeal against the sentencing judgment, on the ground of incorrect or incomplete assessment of the factual situation, with a proposal that the appealed

judgment is amended, in order to impose a more lenient sentence to the defendant or to remand the case to retrial.

In the hearing of the Supreme Court held pursuant to article 410 of the PCPCK, although informed in a timely fashion, the defendant, the defense counsel and the Public Prosecutor of Kosovo were not present, but in the submitted claim PPA.No.43/2005 dated 08.02.2005, the Public Prosecutor of Kosovo proposed that the appeal of the defense counsel of the defendant is rejected as unfounded.

The Supreme Court of Kosovo, upon the review of all files of this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after the assessments of the claims stated in the appeal, found that:

The appeal is unfounded.

Although the appealed judgment of the first instance court does not contain substantial violation of the provisions on criminal procedure, the Supreme Court, pursuant to article 415 of the PCPCK, notices there has been no *ex officio* violation that would cause its annulment, bearing in mind that the factual situation was assessed correctly and completely and that the decision of the first instance court is not disputable in that regard, this Court limited its evaluations to the claims contained in the appeal.

With the assessment of the judgment for erroneous and incomplete factual situation, this Court finds that according to the provisions of article 402 paragraph 2 of the PCPCK, no appeal can be filed against the judgment due to erroneous and incomplete evaluation of the factual situation, when the defendant pleaded guilty for all charges and the panel body agreed with it (article 358 of this Code). From the case files, concretely from the minutes of the main hearing dated 17.09.2004, it results that the defendant pleaded guilty on all charges and the panel body agreed with such statement.

Based on this, the Court assesses that pursuant to the above-mentioned provision, when the defendant pleads guilty on all criminal charges, he does not have right to file a claim due to erroneous and incomplete evaluation of factual situation.

The defense counsel with his appeal states that the first instance

court when reached the verdict, has not evaluated in a sufficient way the mitigating circumstances the fact that the defendant has admitted that he committed criminal offences, claiming that due to this circumstance he would be rendered a more lenient punishment.

According to the assessment of the court, his claims are unfounded, since the first instance court when imposed the length and the type of punishment, has rightfully evaluated all circumstances, as provided for in provisions of article 71 of the PCPCK, therefore the imposed sentence against the defendant by the first instance court and according to the evaluation of this court, matches the level of social endangerment of the committed criminal offences and the level of criminal liability of the defendant and that with this punishment the purpose of the punishment as foreseen in provisions of articles 34 of the PCPCK, will be achieved and that this punishment should serve to the general preventive and especially to individual one-the strengthening of the morale of society, responsibility and discipline of citizens.

As stated above pursuant to article 423 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.No.43/2005, on 14.09.2005

Recording Clerk  
Mejreme Memj

Presiding Judge  
Miftar Jasiqi

**[Supreme Court - ruling on Articles 8.2 and 8.6 - UNMIK Regulation 2001/7 - Unauthorized Ownership, Control, Possession and Use of weapons and ammunition - Appeal to Amend the Sentence - Mitigating Circumstances]**

*The District Prosecutor of Mitrovica appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defense counsel appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too severe, proposing to impose a more lenient punishment.*

*The defendants were charged with unauthorized ownership, control, possession, or use of weapons and ammunition, and were found guilty, and both were sentenced to a fine.*

*The Supreme Court found that the District Court did not consider aggravating circumstances. Accordingly, the Supreme Court ruled that the District Prosecutor's appeal was founded.*

Ap.No.69/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Agim Krasniqi, presiding judge, Fejzullah Hasani, and Doc.dr.Hamdi Podvorica, members, and legal assistant Drita Rexhaj, acting in the capacity of the recording clerk, in the criminal case against defendants: Sh.H., B.H. and Nj.H., from Mitrovica, charged with the criminal offence of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 8.2, punishable in accordance with article 8.6 of UNMIK Regulation No. 2001/7, based on the appeal of the District Prosecutor of Mitrovica and the appeal of defense counsel of the defendants, attorney at law, Rexhep Kacaniku from Mitrovica, against the decision of the District Court of Mitrovica, P.No.87/2001 dated 15.12.2004, in the session held on 3.8.2005, rendered the following:

JUDGMENT

To partly accept the appeal of the District Prosecutor of Mitrovica and change the judgment of the District Court of Mitrovica P.No.83/2001, dated 15 December 2004, only in relation to defendant B.H., for the offence committed and for which he was found guilty, the Supreme Court sentences defendant B.H. with 4 months of imprisonment, while reaffirming the sentence of the first instance, in relation to the other defendants.

The appeal of the defense counsel of the defendants is dismissed.

Reasoning

With the judgment of the District Court of Mitrovica P.No.83/2001, dated 15 December 2004, defendants Sh.H., B.H. and Nj.H. from Mitrovica where found guilty for the criminal offence foreseen in article 8.2. punishable by article 8.6 of UNMIK Regulation No.2001/7 and were sentenced to pay a fine; defendants Sh.H. and Nj.H. To pay a fine in the amount of 500€, while defendant B.H. To pay a fine in the amount of 1200€; which the defendants were obligated to pay within 15 (fifteen) days, from the moment when this verdict came into effect. In the event of failure of payment within the abovementioned time-period, the punishment was to be enforced by imprisonment, calculated at the rate of 15 Euros per one day of imprisonment. Also the defendants were obligated to pay Court expenses in accordance to the calculation of the Court and a lump sum fee of 50 (fifty) Euros each; the Court has also imposed protective measures against the defendants, such as seizure of weapons, which were the objects of the offence.

Against the judgment, within the time period allowed for filing the appeal, appeals were filled by:

The District Prosecutor of Mitrovica, by proposing to the Supreme Court to amend the judgment and impose a more severe punishment of imprisonment against the defendants; and

The defense counsel, proposing to the Supreme Court to amend the appealed decision and impose a more lenient punishment;

The Public Prosecutor of Kosovo, with its submission PPA. No 69/2005 dated 18.2.2005 proposed the approval of the appeal of District Prosecutor, while rejecting the appeal of the defendants, as unfounded.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 376 of the LCP, and after the assessment of the claims stated in the appeal, found that:

The appeal of the District Prosecutor against defendant B.H. is deemed as founded, while the appeal of the defense counsel of the defendant is dismissed.

Since in this case there is no dispute on the determination of the factual situation, and which also according the Supreme Court is determined justly and completely, and also that the decision is not in violation of the criminal provisions, pursuant to article 376 paragraph 1 and 2 of the LCP, this Court, limits itself in evaluating the sentencing judgment.

The District Prosecutor of Mitrovica, arguing against the decision of the first instance Court, in his claim emphasizes that the Court during the measurement of the severity of the sentence, did not take into account the aggravating circumstances such as: the high intensity of social endangerment, the type of weapons possessed by the defendants, as well as the fact that illegal possession of weapons in this region is a often phenomenon, while the threat of the security of inhabitants remains immanent.

The defense counsel argues that the sentencing is severe enough, since none of the defendants is working and that with the payment of the fine imposed, their existence will be questioned.

The first instance Court has completely and fully evaluated all the circumstances that influence the term of the decision, as foreseen in provision of article 41 of the applicable law in relation to the first and the third defendant. These circumstances have been accepted by this Court as well, however in relation to the third defendant B.H., an aggravating circumstance was not taken into consideration, which is the amount of weapons and ammunition that the defendant was in possession, which is: one automatic rifle, two grenades, and 57 bullets.

Due to the above reasons, the Supreme Court, partly accepts the claim of the District Prosecutor, amending the appealed decision against the defendant B.H., and thus, sentenced him as in the enacting clause, while dismissing the appeal of the defense counsel, and reaffirming the judgment in relation to the first and the third defendant, convinced that the sentences rendered are in harmony with the social endangerment caused and the degree of the criminal liability that the defendants carry as executors of the offence. The claims of the defense counsel, that the defendants should be given more lenient punishments are unfounded, since the case files show that the defendants have an average economic situation.

Therefore, the Supreme Court, having in mind the circumstances, considers that the sentence in relation to the defendants Sh.H. and Nj.H. from the first instance Court and the sentence in relation to the defendant B.H. from this Court, will serve the purpose of the general prevention, especially toward individuals, and with such a sentence the aim of the punishment as foreseen with the respective legal provisions will be satisfied.

As stated above, pursuant to Article 387 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.No.69/2005, on 03.08.2005

Recording Clerk,  
Drita Rexhaj

Presiding Judge,  
Agim Krasniqi

**[Supreme Court - ruling on Criminal Code - 297 (5) PCCK-  
endangerment of public traffic safety - appeal to amend sentence  
description of criminal offence]**

*The District Prosecutor of Prizren appealed the decision of the District Court in Prizren, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged with endangerment of public traffic safety, and was found guilty, and was sentenced to 1 year of imprisonment which will not be enforced if the defendant does not commit another criminal offence within 3 years period.*

*The Supreme Court ruled that the District Court did not consider the aggravating circumstances. Accordingly, the Supreme Court ruled that the District Prosecutors' was founded.*

Ap.No.82/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Agim Krasniqi, presiding judge, Mr. Sc. Fejzullah Hasani, and Doc. Dr. Hamdi Podvorica, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant S.K. from the village Brezne, Municipality of Dragash charged with endangerment of public traffic safety, pursuant to article 297 paragraph 5 and paragraph 1 of the PCCK, deciding on the appeal of the District Prosecutor of Prizren, against the decision of the District Court of Prizren P.no.134/2004, dated 13.12.2004, in the hearing held, pursuant to article 410 of the PCPCK, on 27.10.2005, rendered the following::

JUDGMENT

With the approval of the appeal of the District Prosecutor of Prizren, the judgment of the District Court of Prizren, P.No.74/2004, dated 08.11.2004 is amended, therefore the Supreme Court sentences the defendant S.K., for the criminal offence for which the defendant was already found guilty, with 6 (six) months imprisonment.

Reasoning

With the judgment of the District Court of Prizren, P.No.134/2004 dated 13.12.2004, the defendant S.K. was found guilty for the criminal offence of endangerment of public traffic, foreseen in article 297 paragraph 5 in conjunction with paragraph 1 of the PCCK and was sentenced to 1 (one) year imprisonment, which will not be enforced if the defendant does not commit another criminal offence within 3 year period, from the day the judgment is rendered. The defendant was ordered to pay the procedural expenses of the Court in accordance to the final calculation, and a lump sum of 100 €. The injured party B.Th. is instructed to pursue his property claims through a civil procedure.

- Against this judgment, an appeal was filed by the District Prosecutor of Prizren, proposing that the Supreme Court should amend the verdict and impose a more severe punishment upon the defendant,

- Against the claim of the District Prosecutor, a response was filled by the defense counsel of the defendant S.K., attorney at law Ruzhdi Berisha, proposing that the appeal of the District Prosecutor should be refused.

The Supreme Court in its session, held pursuant to article 410 of the PCPCK, with the presence of both, the defense counsel and the defendant, where the counsel, after the clarifications made to the claim, the defendant adhered entirely to the claims made by his counsel.

The Public Prosecutor of Kosovo, although dully notified about the hearing, was not present, however in the submitted claim PPA.No.82/2005 dated 15.02.2005, he proposed the approval of the appeal of the District Prosecutor, and requested that the Court impose a more severe punishment against the defendant.

Upon reviewing case files, examining the appealed verdict pursuant to Article 415 of the PCPCK, and assessing the appeal claims, the Supreme Court held that:

The appeal is founded.

The judgment in appeal does contain violations of the essential provision of the PCPCK and violations of the Criminal Code, which this Court is obligated to observe *ex officio*.

The District Prosecutor in his claim argues that, a suspended sentence rendered from the first instance Court, does not fit the burden of the crime committed and that the Court when deciding upon the burden of the offence, should have taken into consideration as a aggravating circumstance that the defendant did not respect the laws governing public traffic, did not take into consideration the consequences of the criminal offence, and also in accordance to the appeal, the defendant also did not take into consideration the fact that the criminal offences of this nature in the territory of this Court, are increasing.

The Supreme Court finds that the Districts' Prosecutor appeal is founded.

The first instance Court when deciding on the sentencing, took as a mitigating circumstance that the defendant showed good behavior in front of the Court, the fact that he was never summoned before, the fact of expressing willingness to help the family of the deceased and that his action of taking the deceased into his truck was a human gesture, while as a aggravating circumstance was took the consequences caused by the criminal offence committed by the defendant. Such evaluation of mitigating circumstances is also accepted by this Court, however this Court believes that the death of the party can not be considered as a aggravating circumstance, as the first instance Court wrongly considered, and neither the claim of the District Prosecutor for disrespect of the laws governing public traffic, since these circumstances are a part of the criminal offence, and as such do not have the virtue of aggravating circumstances. The Supreme Court evaluates that the sentence in the concrete case, even though in absence of the above mentioned aggravating factor, is not in proportionality with the intensity of the social endangerment of the criminal offence caused by the defendant as the executor of the offence, based on the fact that the criminal offences of this nature in the territory of Kosovo are increasing, and that these criminal offences represent a permanent risk for the security of inhabitants and the participants in the traffic, and that only the threat for punishment by a suspended sentence, is not sufficient for achieving the aim of the sentencing as foreseen in law.

Due to the above reasons the Supreme Court changed the appealed judgment and rendered a sentence as in the enacting clause, convinced that such sentence is in accordance with the degree of social endangerment of the criminal offence committed and that in this manner the aim of the sentence, as foreseen in article 34 of the PCPCK, will be achieved.

Based on the reasoning stated above, the claims for verifying the appeal of the first instance Court are deemed unfounded.

As stated above pursuant to Article 420 paragraph 1 point 4 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.No. 82/2005, on 03.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge  
Agim Krasniqi

**Supreme Court - ruling on Criminal Code- Article 48 (2) CLK - social endangerment - Article 8.3 and 8.5 UNMIK regulation 2001/7 - Authorization of Possession of Weapons - Article 364, 357 LCP - appeal to amend the sentence - description of criminal offence]**

*The District Prosecutor of Peja appealed the decision of the District Court in Peja, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged with social endangerment and unauthorized possession of weapons, and was found guilty, and was sentenced to a fine.*

*The Supreme Court ruled that the decision of the District Court did not contain at all any reason regarding the decision on punishment, what led to it and what kind of circumstances were taken into account when the punishment was rendered, as required by article 364 of the LCP. Accordingly, the Supreme Court ruled that the District Prosecutors' appeal was founded.*

Ap.No.111/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Agim Krasniqi, presiding judge, Riza Loci and Gjuran Dema, members and legal assistant Drita Rexhaj, acting in the capacity of the recording clerk, in the criminal case against defendant P.K. from Peja, in relation with following acts: social endangerment, pursuant to Article 48, paragraph 2 of Criminal Code in Kosovo (CCK) and criminal offence pursuant to Article 8.3 in relation with section 8.5 of the Regulation No. 2001/7 on the Authorization of Possession of Weapons in Kosovo, deciding based on the appeal of the District Prosecutor of Peja, against the District Court in its judgement P.No.148/2003 dated 16 May 2006, in the session held on 6 September, rendered the following:

RULING

The appeal of the District Prosecutor in Peja is deemed founded, therefore the judgement of the District Court, P.No.148/2003

dated 16 May 2006 is annulled and the case is remanded for retrial.

Reasoning

The District Court in Peja, with its decision P.No.148/2003 dated 16 2003 released defendant P.K. from charges for criminal act of social endangerment pursuant to the provision of the Article 350 point 2 of Law on Criminal Procedure (LCP) Article 48 paragraph 2 of LCP provisions under I releasing part, whilst it found guilty for criminal act in Article 8.3 related to 8.5 of Regulation No.2001/7 on Authorization of Possession of Weapons in Kosovo for which the Court imposed a fine in the amount of 300 (three hundred) Euros. In the event of failure to pay, within the set time period, the punishment shall be enforced by imprisonment, calculating the fine with imprisonment at the rate of 15 Euros per one day of imprisonment. The defendant is free of expenses of criminal procedure due to difficult economic situation enactment under II punitive part.

The District Prosecutor of Peja filed an appeal against this judgement due to decision on punishment, with the proposal: “that the Supreme Court in Prishtina amends the judgement of District Court in Peja P.No.148/2003 dated 16.05.03 to set the defendant free of charge for criminal offence of social endangerment pursuant to Article 48 paragraph 2 of LCP and decision on punishment for unauthorized possession of weapons and ammunition pursuant to Article 8 paragraph 8.5 related to paragraph 8.3 of UNMIK Regulation No.2001/7 against defendant P.K. and to impose a severe punishment, which would be adequate and would achieve the purpose of the punishment”.

The Public Prosecutor of Kosovo has been informed about the hearing session of the Court panel, but he was not present, however with the pleading PPA.No.111/2005 dated March 4 2005 proposed as follows: “that the appeal of District Prosecutor is approved and the judgement is amended pursuant to Article 8.3 in relation with paragraph 5 of UNMIK Regulation in order to impose a more severe punishment to the defendant for criminal offence and be amended *ex-officio*, and to also impose protective measures against the defendant by seizing the revolver “Zastava” .7,65 mm calibre, serial number 50276 and to amend the judgement with regards to the calculation of the time spent in

detention for punishment, or for an ex officio annulment of the judgement related to the appeal”.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgement pursuant to article 376 of the LCP, and after the evaluation of the claims stated in the appeal, found that:

- The appealed judgement contains essential violation of the provisions on criminal procedure, for which it should be annulled, while the filed appeal is not substantial for the time of being.

Supreme Court upon the *ex officio* review of appealed judgement in compliance with the provisions of the Article 376 of LCP concluded that the same contains essential violations of provisions of criminal procedure foreseen by the Article 364 paragraph 1 point 11 of LCP for which it had to be annulled, because:

- the original appealed judgement was not compiled according to legal provisions, Article 357 of CPC, because pursuant to paragraph 6 of the abovementioned article the Court is obliged to present the reasons for every point of the judgement, while paragraph 8 of the same article foresees as follows: “When the defendant is judged with punishment, the reasoning part should include what circumstances were taken into account by the Court when rendering the punishment.”

In this concrete case, the appealed judgement does not contain any reason at all regarding the decision on punishment, what led to it and what kind of circumstances were taken into account when the punishment was rendered.

According to the Court's assessment, the abovementioned circumstances present essential violation of the criminal procedure provisions from Article 364, paragraph 1, point 11, of CPC, since legally is inconsistent, incomplete and as such it cannot be assessed, one of its part (the part on punishment) is inexistent. In this case concretely, how to assess an appeal, respectively the judgement, when the reasons were not given.

As a consequence, these circumstances have conditioned the annulment of the appealed judgement Article 385 of CPC with

recommendation that the Court of the first instance in retrial acts according to the abovementioned remarks.

As stated above, pursuant to the Article 385 of CPC it was decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA

Ap.No.111/2005, on 06.09.2005

Recording clerk,  
Drita Rexhaj

Presiding Judge,  
Agim Krasniqi

**[Supreme Court - ruling on Criminal Code- Article 328 PCCK- unauthorized ownership, control, possession or use of weapons article 359 (2) PCPCK guilty plea -Appeal to Amend the Sentence - description of criminal offence]**

*The Defense counsel appealed the decision of the District Court in Gjilan, arguing that the District Court sentence was too severe, proposing to impose a more lenient punishment.*

*The defendant was charged with unauthorized possession of weapons, and was found guilty, and was sentenced to 4 months imprisonment.*

*The Supreme Court ruled that the decision of the District Court did not consider the institution of guilt plea and therefore content substantial violation of criminal procedure law, as required by article 359 paragraph 2 of the PCPCK. Accordingly, the Supreme Court ruled that the defense counsel appeal was founded.*

Ap.No.116/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Riza Loci, presiding judge, Mr.Sc. Fejzullah Hasani and Avdi Dinaj, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant Z.H., from the village of Skifteraj, Vitia, for the criminal offence of unauthorized ownership, control, possession or use of weapons, foreseen in Article 328 paragraph 2 of Criminal Code in Kosovo (CCK), based on the appeal of defense counsel filed against the judgement of the District Court, Gjilan, P.No.176/2004 dated 26.1.2005, at the panel hearing on 30. 8.2005, rendered the following:

RULING

With the approval of the appeal of defence counsel of defendant Z.H. and based on ex-officio the judgement of the District Court, Gjilan P.No.176/2004 dated 26.1.2005 is annulled and the case is remanded to the same Court for retrial.

Reasoning

The District Court, Gjilan, with its decision, P.No.176/2004 dated 21.6.2005, found defendant Z.H. from the village Skifteraj, Vitia guilty for criminal offence foreseen in Article 328 paragraph 2 of CCK for which the Court imposed a sentence with imprisonment of 4 (four) months, the time spent in detention from 26.10.2004 up to 16.11.2004 was calculated in the punishment. The defendant is obliged to pay the Court's expenses, in accordance to the calculation of the Court and a lump sum fee of 100 (one hundred) Euros. The Court has also imposed protective measures against the defendant seizing an automatic rifle, manufactured in China, serial number 258066, with cartridge clip and 8 bullets.

The defense counsel, within the period allowed for filing the appeal, filed an appeal against this judgement with the proposal that the appealed judgement is amended and the defendant is sentenced to a fine or the suspended sentence should be imposed upon him.

Supreme Court of Kosovo in compliance with the provisions of the Article 410 of the Provisional Code of Criminal Procedure of Kosovo (PCCPK) notified the Public Prosecutor of Kosovo, the defendant and his defense counsel for the panel hearing, but only the defense counsel was present in the hearing, who proposed that his appeal is approved.

Public Prosecutor of Kosovo, with the appeal PPA.No.116/2005 dated 9.3.2005 has proposed that the appeal of the defense counsel is rejected as unfounded.

Upon the review of the case files and the appealed claims, the Supreme Court of Kosovo found that after the appeal of the defense counsel, the annulment of *ex-officio* appealed judgement, due to these reasons:

From the case files it results that the defendant in the session for confirmation of the charge, held on 20.12.2004, pleaded guilty. He repeated this in the Court review held on 26 January 2005. In these circumstances, in compliance with the Article 359 paragraph 5 of PCCPK, following the defendant's statement the Court review

continued with the final speech of the parties, therefore there is no examination of evidences, they are not subject of the evaluation of the Court of first or second instance.

The first instance Court in the concrete case did not act according to abovementioned legal procedures, but in the Court review it has administered all evidences and evaluated them in the appealed judgement, and hence it comes out that the Court of this case has totally ignored the institution of guilt plea.

Supreme Court has *ex-officio* evaluated the appealed judgement with regards to substantial violations of the provisions of the criminal procedure and found that based on the abovementioned presented evidences he is involved in essential violations of the criminal procedure provisions foreseen in the Article 403 paragraph 1 point 12 of PCPCK, since there are considerable contradictions between crucial evidences presented in the reasoning and case files and minutes. He is also involved in the essential violations of the criminal procedure violations foreseen by the Article 403, paragraph 2, point1, ofPCPCK.

As stated above, the objected judgement had to be annulled and the case be remanded to the Court of first instance for retrial pursuant to the Article 424 ofPCCPK.

The Court of first instance in the retrial should act according to the abovementioned remarks and reach a fair decision on this criminal case later on.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.116/2005, on 30.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Riza Loci

**[Supreme Court - ruling on Criminal Code- Article 328 PCCK- unauthorized ownership, control, possession or use of weapons - article 359 (2) PCPCK - article 64 PCCK -appeal to amend sentence- mitigation circumstances]**

*The District Prosecutor of Gjilan appealed the decision of the District Court in Gjilan, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendants were charged with unauthorized possession of weapons, and were found guilty, and were sentenced to a suspended sentence of 3 months of imprisonment.*

*The Supreme Court ruled that the District Court had rightfully and completely evaluated all circumstances that have an impact on the level of punishment, as required by the Article 64 of the PCCK. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was unfounded.*

Ap.No.120/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Riza Loci and Agim Krasniqi, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendants L.V., from the village Llabjan and V.A., from the village Vërbicë of Zhegov, for the criminal offence of unauthorized ownership, control, possession or use of weapons, foreseen in Article 328 paragraph 2 of the Provisional Criminal Code of Kosovo (PCCK) based on the appeal of the District Prosecutor, Gjilan, filed against the judgement of District Court, Gjilan P.No.77/2004 dated December 15 2004, in the panel hearing held in compliance with the Article 410 of the Provisional Code of Criminal Procedure of Kosovo (PCPCK) dated September 13 2005, rendered the following:

JUDGEMENT

The appeal of the District Prosecutor, Gjilan is rejected as unfounded, while the judgement of the District Court, Gjilan

P.No.77/2004 dated 15.12.2004, is reaffirmed.

### Reasoning

The District Court, Gjilan, with its judgement P.No.77/2004 dated 15.12.2004, found defendants L.V. and V.A. guilty of the offence of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 328 paragraph 2 of the PCKK for which the Court imposed a suspended sentence of imprisonment, and that: defendant L.V. of 6 (six) months, which will not be executed if the perpetrator does not commit another criminal offence for the period of 2 (two) years, while defendant V.A., of 3 (three) months, which will not be executed if the perpetrator does not commit another criminal offence for the period of 2 (two) years. The defendants are obliged to pay Court expenses in accordance with the calculations of the Court and a lump sum fee of €30 each. The Court has also imposed protective measures upon the defendants seizing an automatic rifle, AK -47, serial number 545497 and 40 bullets and the gun Colt, serial number 17317 with 7 bullets.

The District Prosecutor of Gjilan, within the period allowed for filing the appeal, filed an appeal against this judgement, with the proposal to impose a more severe sentence to defendant L.V. for the committed criminal offence.

Defendant L.V responded to the appeal with the proposal to reject the appeal on the grounds of being unfounded.

The Public Prosecutor of Kosovo, the defendants and their counsels were duly notified for the panel's session in accordance with Article 410 of the Provisional Code of Criminal Procedure of Kosovo (PCPK), but only the defendant L.V was present in the session, who adhered to his statement from his response to the filed appeal and the proposal contained therein. The Public Prosecutor of Kosovo with the submitted claim PPA.No.120/2005 dated March 10 2005 proposed that the filed appeal is approved.

The Supreme Court of Kosovo, upon reviewing all case files of this criminal case, analyzing the appealed judgement pursuant to article

415 of the PCPK, and after evaluating the claims stated in the appeal and responses submitted against it, found that:

- The appeal is unfounded.

Since the judgement of the first instance court is not appealed due to violation of legal provisions of criminal procedure and any violation of criminal law to the detriment of the defendants, the Supreme Court, pursuant to provision of the article 415 of the PCPK, asserted *ex-officio* that there has been no violation of the criminal procedure and criminal code to the detriment of the defendant that would condition its annulment.

The first instance judgement not only was appealed due to appealing basis of the wrongful and incomplete evaluation of factual situation, but the appeal is not permitted according to article 402 paragraph 3 PCPK, since the defendants pleaded guilty on all charges and the panel agreed on this. Accordingly, the factual situation was not a subject of assessment.

The Supreme Court, while evaluating the claims contained in the appeal, finds that they do not stand. The first instance Court has over-estimated the mitigating circumstances, while it has not fully estimated aggravating circumstances, and that of social endangerment of "the increase of these criminal offences". The fact that the defendant kept his automatic rifle in a public place, in the gas station where he was working, has not been taken into account as an aggravating circumstance.

According to the Supreme Court evaluation, the social endangerment of the criminal offence cannot be treated as an aggravating circumstance, although the intensity of social endangerment of the committed criminal offence has impact on the type and length of punishment. On the other hand, other aggravating circumstances stated in the appeal do not stand and they do not have any influence on the more severe sentences imposed against the defendants.

Therefore, the first instance Court has rightfully and completely found and evaluated all circumstances that impact the level of punishment, as foreseen by the Article 64 of the PCKK. Furthermore, this Court deems that the punishment rendered by the first instance

court matches with the crime of social endangerment of the crime and the level of criminal liability of the defendant and bearing in mind all circumstances of the concrete case, under which the criminal offence was committed, with the punishment as such will achieve its purpose, as foreseen in Article 34 of the PCCK.

As stated above pursuant to Article 423 of the PCPCK, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.120/2005, on 13.09.2005

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 257 (3) PCCK- misappropriation factual situation - violation of criminal procedure law - article 403 (1) ((9)) PCPCK]**

*The Defense counsel appealed the decision of the District Court in Peja, arguing that the District Court had erroneously and incompletely determined the factual situation, had violated the substantive law.*

*The defendant was charged with misappropriation, and was found guilty, and was sentenced to 1 year and 6 months imprisonment.*

*The Supreme Court ruled that the decision of the District Court contain substantial violation of the article 403, paragraph 1, point 9 of the PCPCK since in the main hearing the defendant was questioned before the presentation of evidences. Accordingly, the Supreme Court ruled that the defense counsel appeal was founded.*

Ap.No.123/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Doc.dr.Hamdi Podvorica, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendant A.Sh., from Peja, due to criminal offence of misappropriation as provided for in Article 257 paragraph 3 of the PCCK (Provisional Criminal Code of Kosovo), based on the appeal of the defence counsel of the defendant, the lawyer Ferid Gjikolli, from Peja, against the judgment of the District Court, Peja P.No.171/2004 dated 28.07.2004, at the hearing of the panel pursuant to provision of the Article 410 of the PCPCK (Provisional Code of Criminal Procedure of Kosovo), dated 01.09.2005, rendered the following:

RULING

The appeal of the defence counsel of the defendant A.Sh is approved as founded, whilst the judgment of the District Court in Peja P.No.171/2004 dated 28.07.2004, is annulled and the case is remanded

to the court for retrial.

### Reasoning

The District Court in Peja with its decision P.No.171/2004 dated 28.07.2004, found defendant A.Sh. guilty on the charges of misappropriation as provided for in Article 257 paragraph 3 of the PCCK, for which the court imposed a sentence with imprisonment of 1 (one) year and 6 (six) months, including the time served in detention from 02.03.2004 until 28.07.2004. The defendant is obliged to pay court expenses of €117,68 for expertise and the court lump sum fee of €100 as well as for the damage caused to pay to the Insurance Association of Kosovo the amount of €17.030, all these within 15 (fifteen) days, from the moment when this verdict came into effect.

The defense counsel of the defendant, within the period allowed for filing the appeal, filed an appeal on the ground of substantial violation of the criminal procedure provisions, erroneous and incomplete assessment of the factual situation, violation of the criminal law, sentencing judgment, decision on property claim and on the expenses of the criminal procedure, with the proposal that the appealed judgment is annulled, and the case is remanded to the court, or be amended on the basis that the sentencing judgment is too severe.

The Supreme Court scheduled the panel hearing pursuant to the provision of Article 410 of the PCPCK, where the defendant and his defense counsel were notified in the timely fashion, but they were not present.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.123/2005 dated 11.03.2005, he proposed that the appeal of the defendant defence counsel is rejected as unfounded, whilst the appealed judgment is affirmed.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after the assessments of the claims stated in the appeal, found that:

The appeal is founded.

Since the appealed judgment contains substantial violation of the criminal procedure provisions provided for in Article 415 paragraph 1 in conjunction with the Article 403 paragraph .1 item 9 of the PCPCK, because even though the defendant A.Sh. did not admit the guilt, he was invited to give his statement, respectively he was interrogated before the evidences were introduced, which rightfully is stated also in the appeal of the defendant defence counsel. Hence this is an action, which contains substantial violation of the criminal procedure provisions.

Therefore, the court during the retrial, following the administration of all evidences and hearing the defendant, and after comprehensive assessment of them, separately and in conjunction with each other, should make the right decision according to the law.

As stated above pursuant to Article 424 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA  
Ap.No.123/2005, on 01.09.2005

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 339 (3) PCCK-Abuse Official Position - violation of criminal procedure law - factual situation]**

*The District Prosecutor of Gjilan and the defense counsel appealed the decision of the District Court in Gjilan, arguing that the District Court had violated criminal procedure law and had erroneously and incompletely determined the factual situation.*

*The defendant was charged with abuse of the official position section II of the enacting clause, and was found guilty, and was sentenced to suspended sentence of 6 months imprisonment.*

*The Supreme Court ruled that the district court in the section II of the enacting clause had wrongfully determined the factual situation, which implicated also violation of the criminal law when the defendant was found guilty for the criminal offence of misuse of the official duty. Accordingly, the Supreme Court ruled that the defense counsel's appeal was founded.*

Ap.No.138/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Fejzullah Hasani, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant J.B., from Gjilan, for two criminal offences- Abuse Official Position provided for in Article 339 paragraph 3 in conjunction with paragraph .1 of PCCK (Provisional Criminal Code of Kosovo), based on the appeals of the District Prosecutor in Gjilan and defendant's defense counsel, lawyer Shemsedin Piraj, from Gjilani, against the judgment of the District Court in Gjilan, P.No.2/2004 dated 20.12.2004, at the hearing of the panel pursuant to the provision of the Article 376 of the CPL, dated 25.08.2005, rendered the following:

JUDGMENT

The appeal of the District Prosecutor in Gjilan is rejected as unfounded, whilst the judgment of the District Court in Gjilan

P.No.2/2004 dated 20.12.2004, under the section I of the enactment, is affirmed.

The appeal of the defense counsel of defendant J.B. is affirmed as founded, whereas the judgment under the section II of the enacting clause, is annulled and the case on this part is remanded to the same court for retrial.

The appeal of the District Prosecutor in Gjilan regarding the section II of the enacting clause, for the time being remains unsubstantial

Reasoning

The District Court, Gjilan with its decision P.No.2/2004 dated 20.12.2004, acquitted defendant J.B. of the charges for the criminal offence of Abuse Official Position provided for in Article 339 paragraph 3 in conjunction with paragraph .1 of the PCCK, under section I of the enacting clause, pursuant to Article 350 paragraph I item 3 of the CPL, whereas the defendant was found guilty on the charges of criminal offence, Abuse Official Position provided for in Article 339 paragraph.3 in conjunction with paragraph of the PCCK, under section II of the enacting clause, for which the court imposed a suspended sentence with imprisonment of 6 (six) months, which will not be executed if the perpetrator does not commit another criminal offence for the period of 5 (five) years. The defendant is obliged to pay court expenses according to final court's invoice and a lump sum fee of 200 (two hundred) Euros, within 15 days, from the moment when this verdict came into effect.

This judgment was appealed by:

-The District Prosecutor in Gjilan, due to substantial violation of criminal procedure provisions, erroneous and incomplete assessment of the factual situation, violation of the criminal law related to section under I of the enactment-its mitigating part, whereas due to sentencing judgment, regarding item under section II of enactment-its sentencing part, proposing that the appealed judgment in the mitigating part is annulled and the case on this part is remanded to the court of the first instance for retrial, whereas in its sentencing part, the abovementioned judgment is amended regarding sentencing judgment.

-The Defence Counsel of the defendant, on the ground of substantial violation of the criminal procedure provisions, violation of the criminal law and erroneous and incomplete assessment of the factual situation, in its sentencing part, with the proposal that the judgment in this part is annulled and the case is remanded to the court of the first instance for retrial.

The defense counsel responded to the appeal of the District Prosecutor in Gjilan, with the proposal that the abovementioned claim is rejected as unfounded.

The Supreme Court held the panel hearing pursuant to provision of the Article 371 of the CPL, based on the proposal of the defense counsel and the defendants to be notified for the panel hearing, who were present, where the defense counsel gave some explanations on some of the claims stated in the appeal and responded to the appeal of the Public District Prosecutor, and supported completely the claims in it, with which agreed the defendants as well.

The District Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.138/2005 dated 22.03.2005, stated that he would present his proposal in the panel hearing.

The Supreme Court reviewed claims stated in the appeal, analyzed the appealed judgment in compliance with the provision of Article 376 of the CPL and following the appealed claims of the defendant, found that:

The appeal of the District Prosecutor in Gjilan, regarding the item under I of the enactment is unfounded, whereas regarding the item under II of the enactment for the time being is unsubstantial, whereas the appeal of the defense counsel is founded.

The appealed judgment in item under I of the enactment in mitigating part, does not contain substantial violation of the criminal procedure provisions, because clear reasons are given over the crucial facts for the criminal offence for which the defendant is acquitted of the charge, giving clear and convincing reasons on which evidences were considered as affirmed and which were not, pursuant to the provision of

the Article 357 paragraph 7 of the CPL, by giving accurate assessment according to all administered proofs pursuant to the provision of the Article 347 of the LCP. Therefore, the judgment in this part does not contain substantial violation of the criminal procedure provisions, as provided for in Article 364 paragraph item II of the CPL, and on this part the appeal is unfounded.

The factual situation in the item under I of the enactment in mitigating part, is assessed rightfully and completely based on the right assessment of the defence of the defendant and on all administered proofs, rightfully is concluded that the purchased shops by the children of the defendant, by the witness G.B. and his sister L.B. in 1998, which is proved that according to the sale-purchase agreements No.01-350/123 and No.01-350/122 dated 28.03.1998, that these shops were not property of enterprise "Kosovatrans" in Gjilan, and at that time the defendant was not even employed in the enterprise "Kosovatrans" in Gjilan, who was dismissed from this enterprise in 1990 and was returned to work in this enterprise in 1999, after the war. Therefore, the first instance court has rightfully found that defendant J.B. regarding the criminal offence in the item under I of the enactment that there are no proofs that his actions constitute criminal offence elements of Abuse of Official Position provided for in Article 339 paragraph .3 related to paragraph 1 of PCCK, on which occasion the criminal law was implemented rightfully.

Whereas, the appealed judgment in the item under II of the enactment, in the sentencing part, constitutes substantial violation of the criminal procedure provisions, as provided for in Article 364 paragraph .1 item II of LCP, since there is a contradiction between enactment and reasoning, respectively in the reasoning are not presented reasons over the crucial facts, and those that were presented are unclear, especially when we have to do with material evidences, financial expertise and the testimony of the witness N.H., commercialist-supplier in the enterprise "Kosovatrans" in Gjilan, which will be mentioned in detail below. Due to these reasons the appeal is unfounded.

The factual situation in the item under II of the enactment in sentencing part of the verdict is not assessed rightfully and completely, because in the enactment of the appealed judgment which part has to do with invoices No.10 dated 18.08.2001, No.009317 dated 08.10.2001 and No.23/2001 dated 19.11.2001, and with his actions the defendant

has damaged the company “Kosovatrans” in Gjilan at the amount of 86.420 DM or in Euro €43.210. Whereas, from the statement of the witness N.H., commercialist-supplier and with fuel in the company “Kosovatrans” in Gjilan, the procedure of oil supply was explained in detail in the mentioned enterprise and why does the difference in price of 0.94 DM to that 1.30 DM exists, taking into account the compensations of the liaison companies for oil supply. Whereas, in the financial expertise of the financial expert Riza Blakaj, economist, dated 20.10.2003 is not at all mentioned, the invoice No.009317 dated 08.10.2001, which is included in the enactment of the judgment, and in the conclusion of this expertise on this issue is not mentioned at all, that the company “Kosovatrans” in Gjilan was damaged and how was damaged, especially when it is taken into account the conclusion in the last item of the expertise conclusion, in which is stated that: “the receipt of the documents as such- emphasized as above and its legalization by the person in charge of the company “Kosovatrans” defendants, could leave the impression of the non-professional and irresponsible behavior in relation to social assets”. This conclusion and other conclusions in expertise, and especially the conclusion regarding the expertise does not reflect clearly whether the defendant has damaged the company “Kosovatrans” in Gjilan, or not and the defendant as a Manager of the company is held responsible for not keeping properly the books of the accounting, as it is required by the law. Therefore, the appeal is founded.

With such erroneous and incomplete assessment of factual situation, in sentencing part, the criminal law was violated as well, when the defendant was found guilty for the criminal offence of misuse of the official duty provided for in Article 339 paragraph 3 in conjunction with the paragraph .1 of PCCK, which conclusion currently is not approved. Therefore, the appeal is founded.

In the retrial, the first instance court after the hearing of the defendant, administration of all evidences and accomplishment of expertise by the financial expert Riza Blakaj regarding the abovementioned circumstances, bearing in mind also the appealed claims of the defense counsel, should make the right decision according to law.

The appealed claim of the defense counsel against the appeal of the District Prosecutor in Gjilan did not have impact on the decision-making.

As stated above pursuant to provisions of the Articles 384 and 385 of LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.138/2005, on 25.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 327 - Unauthorised supply, Transport, Production, Exchange or Sale of Weapons - Article 328 (2) PCCK - Unauthorized Ownership, Control, Possession or Use of Weapons -Appeal to Amend the Sentence - qualification of the criminal offence]**

*The District Prosecutor of Mitrovica appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged with supply, Transport, Production, Exchange or Sale of Weapons, and was found guilty, and was sentenced to a suspended sentence of 8 months imprisonment.*

*The Supreme Court ruled that the criminal offence was qualified erroneously in the circumstances of the concrete case, since the factual description of the criminal offence results in the criminal offence foreseen in article 328 paragraph 2 of the PCCK and not in the criminal offence from article 327 of the PCCK.*

*The Supreme Court ruled that the district court should have taken into account as aggravating circumstance the fact that such criminal offences present high level of social endangerment and that presence of these weapons threatens security of Kosovo citizens, therefore only a threat with sentence is not sufficient to achieve the purpose of the punishment. Accordingly, the Supreme Court ruled that the District Court Prosecutors' appeal was founded.*

Ap.No.143/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges Gjuran Dema presiding judge, Fejzullah Hasani and Agim Krasniqi, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant R.Zh., from village of Zupç, Mitrovica, for the criminal offence of Unauthorised supply, Transport, Production, Exchange or Sale of Weapons as provided for in article 327 of PCCK, based on the appeal of District Public Prosecution of Mitrovica, against the judgment of District Prosecution of Mitrovica P.No.35/2001 dated 24.11.2004, in the court hearing held on 3.8.2005, rendered the following:

JUDGMENT

With the approval of the appeal of the District Public Prosecution of Mitrovica, acting ex-officio the judgment of District Prosecution of Mitrovica P.No.35/2001, dated 24.11.2004, regarding the legal qualification and the decision on punishment, the Supreme Court finds that the actions of the defendant constitute the elements of the criminal offence of Unauthorised Ownership, Control, Possession or Use of Weapons as foreseen in article 328 paragraph 2 of PCCK and imposed a sentence against defendant R.ZH. with imprisonment of 3 (three) months.

Reasoning

With the decision of the District Court of Mitrovica, P.No.35/2001 dated 24.11.2004, defendant R.Zh. was found guilty for the criminal offence of supply, transport, production or unauthorized sale of weapons as provided for in article 327 of PCCK. The court imposed a sentence with imprisonment of 8 (eight) months, which will not be executed if the defendant does not commit any criminal offence in the period of 2 (two) years, after the verdict came into effect; he is obliged to pay the court expenses based on final invoice of the court, and 50 € in the form of lump sum; the Court has also imposed protective measures against the defendant- seizing an automatic rifle AK-47 with serial number 67921 with two magazines and 69 bullets of 7,62 mm caliber.

The District Prosecutor in Mitrovica, within the period allowed for filing the appeal, filed an appeal against this judgment with the proposal that the defendant be charged with a more severe sentence.

The Public Prosecutor of Kosovo, with the submitted claim PPA.No.143/05 dated 21.3.05 proposed that the appeal of District Prosecutor is approved and the defendant be charged with a more severe sentence.

The Court, upon the review of all the case files of this criminal case, analyzed the appealed judgment pursuant to article 376 of the CLK, and after the assessments of the claims stated in the appeal, found

that:

The appeal is founded.

The factual situation in this criminal offence is not questioned, which according to the evaluation of the Supreme Court was rightfully and completely determined, the judgment does not contain substantial ex-officio violation of provisions of criminal procedures, pursuant to article 376 paragraph 1 and 2 of LCP, but according to the evaluation of this court the criminal offence was qualified erroneously in the circumstances of the concrete case, since the factual description of the criminal offence results in the criminal offence foreseen in article 328 paragraph 2 of PCKK and not in the criminal offence from article 327 of PCKK, as the first instance court has erroneously found, since the automatic rifle was in ownership of the defendant, due to which amended the legal re-qualification of the criminal offence as in the enacting clause.

The District Prosecutor in Mitrovica against the appealed judgment of the first instance court, stresses that the court, while imposing a sentence, has not evaluated the aggravating circumstances present on the side of the defendant: that such criminal offences are continuously increasing, the circumstances under which the criminal offence was committed and the fact that such criminal offences present high level of social endangerment.

While imposing a sentence, the first instance court considered as mitigating circumstances the fact that he was never sentenced before, that he is poor, while it did not find any aggravating circumstances. Such evaluation of the mitigating circumstances are accepted by this court too, but estimates that the first instance court should have taken into account as aggravating circumstance the fact that such criminal offences present high level of social endangerment and that presence of these weapons threatens security of Kosovo citizens, therefore only a threat with sentence is not sufficient to achieve the purpose of the punishment as foreseen by law, on which rightfully warns the appeal. Due to these reasons, the Supreme Court accepted the appeal of the District Prosecutor, amended the appealed judgment and sentenced the defendant as in the enacting clause, convinced that the rendered punishment matches the level of social endangerment of the committed criminal offence and criminal liability of the defendant as a perpetrator.

Therefore, taking into account all above-mentioned circumstances, the Supreme Court considers that the judgment imposed on defendant by this court is in function of general preventive, especially of individual one and with this the purpose of the punishment, as foreseen in legal provisions will be achieved

As stated above pursuant to Article 387 of the PPL, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.143/2005, on 23.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code - 297 (5) PCCK-  
endangerment of public traffic safety - appeal to amend the  
sentence -article 42 PCCK-purpose of punishment]**

*The District Prosecutor of Prizren appealed the decision of the District Court in Prizren, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged with endangerment of public traffic safety, and was found guilty, and was sentenced to 1 year of imprisonment which will not be enforced if the defendant does not commit another criminal offence within a period of 2 years.*

*The Supreme Court ruled that the decision on punishment of the District Court would achieve the purpose of the punishment, as required by 42 of the PCCK. Accordingly, the Supreme Court ruled that the District Court Prosecutors' was unfounded.*

Ap.No.147/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Fejzullah Hasani, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against M.K., from the village of Carallukë, Malisheva, for the criminal offence of public traffic safety foreseen in Article 297 paragraph 5 in conjunction with paragraph 3 of the PCCK (Provisional Criminal Code of Kosovo), based on the appeal of the District Prosecutor of Prizren, against the judgement of District Court, Prizren P.No.189/2004 dated 01.02.2005, at the hearing of the panel on 27.09.2005, held in compliance with the provision of the Article 410 of the PCPCK (Provisional Code of Criminal Procedure of Kosovo) dated 25.08.2005, rendered the following:

JUDGEMENT

The appeal of the District Prosecutor of Prizren is deemed unfounded, while the judgement of the District Court of Prizren P.No.189/2004 dated 01.02.2005, is reaffirmed.

Reasoning

The District Court, Prizren, with its decision P.No.189/2004 dated 01.02.2005, found defendant M.K. guilty on the charges of public traffic safety foreseen in Article 297 paragraph 5, in conjunction with paragraph 3 of the PCCK, for which the Court imposed a suspended sentence of 1 (one) year imprisonment, which will not be executed if the perpetrator does not commit another criminal offence for the period of 2 (two) years, from the moment when this verdict came into effect. The Court has also imposed protective measures against the defendant forbidding driving of vehicle for the period of 5 (five) years from the moment when this judgement came into effect. The defendant is obliged to pay Court's expenses in accordance to the calculation of the Court and a lump sum fee of €200, which the defendant is obliged to pay within 15 (fifteen) days, from the moment when this judgement enters into force, under the threat of force execution.

The District Prosecutor, within the period allowed for filing the appeal, filed an appeal against this judgement with the proposal that the appealed judgement is amended and the defendant for the criminal offence committed, be imposed a more severe sentence of imprisonment that will match the level of endangerment of the committed criminal offence.

The Supreme Court scheduled the panel hearing in compliance with the Article 410 of the PCPCK, where the defendant was present, who proposed to reject the appeal of the District Prosecutor of Prizren as unfounded, whereas his counsel Haki Kryeziu, who was notified in a timely fashion, was not present.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.147/2005 dated 22.03.2005, he proposed the approval of the appeal as founded, by amending the appealed judgement and the defendant is rendered with effective imprisonment.

Upon reviewing case files, examining the appealed verdict pursuant to Article 415 of the PCPCK, and assessing the claims stated in the appeal, the Supreme Court held that:

The appeal is unfounded.

The appealed judgement does not contain substantial violation of provisions of criminal procedure and of criminal law as provided for in article 415 of the PCPCK.

By assessing the appealed verdict regarding the decision on punishment, this Court totally accepts the mitigating circumstances and rightfully assessed the special mitigating circumstance. While the claims that the defendant disrespected the law on public traffic safety by not being careful about other participants in the traffic, pedestrian in a concrete case, and as the consequence that in concrete case P.H. Died, these constitute the essential elements of the criminal offence, for which the defendant was found guilty. Taking into account the level of criminal responsibility of the defendant, this Court is convinced that with the rendered punishment, the purpose of the punishment as foreseen with the Article 42 of the PCCK will be achieved.

As stated above, pursuant to Article 423 of the PCPCK the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.147/2005, on 25.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 328 (2) PCCK- unauthorized ownership, control, possession or use of weapons - article 42 PCCK -Appeal to Amend the Sentence - mitigating circumstances]**

*The District Prosecutor of Prizren filed an appeal against the decision of the District Court in Prizren, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The Defense counsel appealed the decision of the District Court in Prizren, arguing that the District Court sentence was too severe, proposing to impose a more lenient punishment.*

*The defendant was charged unauthorized possession of weapons, and was found guilty, and was sentenced to a fine as well as protective measures.*

*The Supreme Court ruled that the District Court did not completely evaluated all circumstances and with a more lenient sentence the purpose of the punishment would be achieved, as required by the Article 42 of the PCCK. Accordingly, the Supreme Court ruled that the defense counsels appeal was founded.*

Ap.No.150/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Riza Loci, presiding judge, Agim Krasniqi and Hamdi Podvorica, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk in the criminal case against defendant E.K., from the village Ngucat, Municipality of Malisheva, for the criminal offence of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 328 paragraph 2 of PCCK (Provisional Criminal Code of Kosovo), based on the appeal of the District Prosecutor of Prizren and the defence counsel Besim Koçinaj, from Prizren, filed against the judgement of the District Court in Prizren P.No.37/2004 dated 20.10.2004, in the hearing held in compliance with the Article 410 of PCPCK (Provisional Code of Criminal Procedure of Kosovo), dated 30.08.2005, rendered the following:

JUDGEMENT

The appeal of the defense counsel of the defendant E.K is deemed founded, while the judgement of the District Court of Prizren, P.No.37/2004 dated 2.10.2004, is amended with regards to decision of judgement, thus the Court imposed a suspended sentence with imprisonment of 1 (one) year, which will not be executed if the perpetrator does not commit another criminal offence for the period of 3 (three) years, from the moment when the judgement enters into effect.

The appeal of District Prosecutor in Prizren is rejected as unfounded.

#### Reasoning

The District Court of Prizren, with its decision P.No.37/2004 dated 20.10.2004, found defendant E.K., guilty on the charges of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 328 paragraph 2 of PCCK and was sentenced to pay a fine in the amount of €800, which defendant is obliged to pay within 15 days from date of entry into force of the judgement. In the event of failure of payment, within the set time period, the punishment shall be enforced by imprisonment, calculating the fine with imprisonment, at the rate of 15 Euros per one day of imprisonment. The Court has also imposed protective measures against the defendant seizing an automatic rifle "AK-47", serial number 4225560, caliber 7.62 mm caliber, manufactured in China with 14 bullets of caliber 7.62 mm. The defendant is obliged to pay Court expenses in accordance to the calculation of the Court and a lump sum fee of €200, 15 days from the moment when this judgement enters into force, under the threat of execution by force.

Against this judgement, appeals were filed from:

- the District Prosecutor of Prizren, against the decision on punishment, by proposing that the Supreme Court should amend the judgement and impose a punishment of effective imprisonment against the defendant, which would match the level of endangerment committed by the defendant, and

- the defense counsel, by proposing that the appealed judgement is amended and to impose the suspended fine or to amend the

judgement and issue a more lenient sentence, who also responded to the appeal of the District Prosecutor of Prizren, where he proposed that the mentioned appeal is rejected as unfounded.

Supreme Court of Kosovo in compliance with the provisions of the Article 410 of the Provisional Code of Criminal Procedure of Kosovo (PCPCK) notified the defendant and defence counsel for the panel hearing, who was not present.

The Public Prosecutor of Kosovo, who was notified in a timely manner, was not present but in his submission PPA.No.150/2005 dated 22.03.2005, has proposed to accept the appeal of the District Prosecutor of Prizren and to sentence the defendant with effective imprisonment, and to reject the appeal filed by the defence counsel.

Upon reviewing case files, examining the appealed judgement pursuant to Article 415 of the PCPCK, and assessing the appeal claims and the response of the defendant to the appeal of the District Prosecutor of Prizren, the Supreme Court found that:

The appeal of the defence counsel is founded, while that of the District Prosecutor of Prizren is deemed unfounded.

The appealed judgement does not contain substantial violation of provisions of criminal procedure and criminal law as provided for by article 415 of the PCPCK, which the Supreme Court is *ex-officio* obliged to observe.

By assessing the appealed judgement with regards to the decision on punishment, this Court totally accepts all circumstances found by appealed judgement, but the same were not dully assessed like family and economic circumstances of the defendant that he is married and his is father of 8 children, of ill-conditioned situation, with eyes problems which influences on his difficult economic conditions, and especially the aggravating circumstance that the defendant has pleaded guilty for criminal offence. Therefore, he was rendered with punishment, for which the Court imposed a suspended sentence with imprisonment of 1 (one) year, which will not be executed if the perpetrator does not commit another criminal offence for the period of 3 (three) years, from the moment when this judgement came into effect, taking into account the level of criminal responsibility of the defendant,

this Court is convinced that with the rendered sentence, the purpose of the punishment as foreseen with the Article 42 of PCCK will be achieved.

As stated above, pursuant to Article 426 of the PCCK the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.150/2005, on 30.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Riza Loci

**[Supreme Court - ruling on Articles 8.2; 8.6 - UNMIK Regulation 2001/7 - Unauthorized Ownership, Control, Possession and Use of weapons and ammunition - Appeal to Amend the Sentence - criminal liability article 34 PCCK - article 64 PCCK - Mitigating Circumstances]**

*The District Prosecutor of Prizren appealed the decision of the District Court in Prizren, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendants was charged with unauthorized ownership, control, possession, or use of weapons and ammunition, and was found guilty, and was sentenced to a fine as well as protective measures.*

*The Supreme Court ruled that the district court correctly assessed all circumstances and considered that the imposed fine corresponds to the weight of the criminal offence and the level of the criminal liability of the defendant, and that purpose of the punishment would be achieved, as required by Article 34 of the PCCK.*

*Accordingly, the Supreme Court ruled that the District Court Prosecutors' appeal was unfounded.*

Ap.No.152/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Riza Loci, presiding judge, Fejzullah Hasani and doc.dr.Hamdi Podvorica, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant S.H. from the village of Banja, Malisheva, for the criminal offence foreseen in Article 8.2, punishable according to Article 8.6 of UNMIK Regulation 2001/7 on Authorization of Possession of Weapons in Kosovo, based on the appeal of the District Prosecutor of Prizren, against the judgement of District Court, Prizren, P.No.180/2004 dated 23.12.2004, in the session held on 31.8.2005, rendered the following:

JUDGEMENT

The appeal of the District Prosecutor of Prizren is deemed

unfounded, while the judgement of the District Court of Prizren, P.No.180/2004 dated 23.12.2004, is reaffirmed.

### Reasoning

The District Court, Prizren, with its decision P.No.180/2004 dated 23.12.2004, found defendant S.H. from the village of Banja, Malisheva, guilty on the charges of criminal offence foreseen in Article 8.2, punishable according to Article 8.6 of UNMIK Regulation No.2001/7, for which the Court imposed a fine in the amount of 1500 €; the time served in detention from 24.9.2004 until 8.10.2004 is included in the sentence; the defendant is obliged to pay Court expenses in accordance to the calculation of the Court and a lump sum fee of 100 (one hundred) Euros, which the defendant is obliged to pay within 15 (fifteen) days, from the day of entry into force of the judgement. The Court has also imposed protective measures against the defendant seizing an automatic rifle, "Scorpion" serial number 53475, and one silencer, with serial number 17295 and 53 bullets, of 9 mm caliber.

The District Prosecutor of Prizren, within the period allowed for filing the appeal, filed an appeal against this judgement, with the proposal to amend the judgement and to impose a more severe sentence upon the defendant.

The Supreme Court of Kosovo in compliance with the provisions of the Article 410 of the Provisional Code of Criminal Procedure of Kosovo (PCPCK) notified the Public Prosecutor of Kosovo, the defendant and defense counsel for the panel hearing, but they were not present. However, the Public Prosecutor of Kosovo in the submission PPA.No.152/2004 dated 22.03.2005, proposed the approval of the appeal of District Prosecutor and to impose a more severe sentence against the defendant.

The Supreme Court of Kosovo, upon reviewing all case files of this criminal case, analysing the appealed judgement within the meaning of article 415 of the PCPCK, and after the assessment of the claims stated in the appeal, found that:

The appeal is unfounded.

The appealed judgement does not contain any substantial violation of the provisions on criminal procedure and the criminal law on the detriment to the defendant, which the Supreme Court is ex-officio obliged to observe.

By appealing the judgement, District Prosecutor of Prizren stressed in the appeal that imposition of fine against the defendant does not correspond to the level of the committed criminal offence by the defendant and with the level of his criminal liability. It considers that the Court of the first instance did not dully assessed all circumstances that have impact on the determination of the type and the length of the punishment, especially the fact that in the territory of this Court, these criminal offences are continually increasing, the fact that the weapon amnesty was twice announced by the competent bodies and this was not done and meant to be done by the defendant, the fact that he possessed weapon, for which No permission was issued as well as the fact that he possessed a silencer and ammunition. According to District Prosecutor, with the imposition of fine, the purpose of the punishment as foreseen by article 34 of PCCK will not be achieved and neither will have a positive impact on the defendant and on the others to not commit offence.

Supreme Court found the abovementioned appealed claims as unfounded for these reasons:

The Court of the first instance, in the event of determining the type and the length of the punishment, pursuant to Article 64 of PCPCK, as mitigating circumstances for the defendant was the fact that he was married and male head of household of a spouse and 3 (three) minor children, that so far he was not sentenced before and had good behaviour in front of the Court. The Supreme Court approves as rightful the assessment of these circumstances and qualifies that the imposed fine corresponds to the weight of the criminal offence and the level of the criminal liability of the defendant and is also in function of prevention measures in general, especially of special one, and that with this sentence the purpose of the punishment foreseen by Article 34 of PCCK will be totally achieved. The legal terms for a more severe punishment, requested by District Prosecutor were not fulfilled, since the circumstances referred to, do not have such a weight that would justify a more severe punishment against the defendant. Due to this, the appeal was rejected as unfounded.

As stated above pursuant to Article 423 of the PCPCK, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.152/2005, on 31.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Riza Loci

**[Supreme Court - ruling on Criminal Code- Article 328 (3) (2) PCCK- unauthorized ownership, control, possession or use of weapons - article 34 PCCK -Appeal to Amend the Sentence - mitigating circumstances]**

*The Defense counsel appealed the decision of the District Court in Prizren, arguing that the District Court sentence was too severe, proposing to impose a more lenient punishment.*

*The defendant was charged unauthorized possession of weapons, and was found guilty, and was sentenced to a suspended sentence with imprisonment of 6 (six) months.*

*The Supreme Court ruled that the district court correctly assessed all circumstances and considered that the imposed fine corresponds to the weight of the criminal offence and the level of the criminal liability of the defendant, and that purpose of the punishment would be achieved, as required by Article 34 of the PCCK.*

*Accordingly, the Supreme Court ruled that the defense counsels appeal was unfounded.*

Ap.No.155/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Riza Loci and Meleqe Behxheti, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendant I.H., from the village Neprebisht, Municipality of Suhareka, for the criminal offence of unauthorized ownership, control, possession or use of weapons, foreseen in Article 328 , paragraph 3, in conjunction with paragraph 2 of Provisional Criminal Code of Kosovo (PCCK) against the judgement of District Court of Prizren, P.No.205/2004 dated 28 December 2004 filed by the defense counsel, in the panel hearing held on September 13 2005 rendered the following:

JUDGEMENT

The appeal of the defense counsel of defendant I.H. is deemed

unfounded, while the judgement of the District Court of Prizren P.No.205/2004 dated 28.12.2004, is reaffirmed.

### Reasoning

The District Court, Prizren, with its decision P.No.205/2004 dated 28.12.2004, found defendant I.H., guilty on the charges of unauthorized ownership, control, possession or use of weapons, foreseen in Article 328, par.3 in conjunction with paragraph 2 of PCCK, for which the Court imposed a suspended sentence with imprisonment of 6 (six) months, in which sentence was calculated the time he served in detention from 30.11.2004 until 28.12.2004 (in the judgement erroneously was written the date 28.12.2004). The Court has also imposed protective measures against the defendant, the confiscation of things: light machine-gun manufactured in China caliber.12,7 mm with serial number.920200; semi-automatic rifle manufactured in China caliber mm; three hand grenades, manufactured in Yugoslavia; 100 bullets of different calibers. The defendant is obliged to pay Court expenses in accordance to the calculation of the Court and a lump sum fee of €200.

The defense counsel, the attorney at law Besim Morina, Prizren filed an appeal, due to substantial violation of criminal procedure and proposed that the Supreme Court amends the appealed judgement with regards to the decision on punishment in order to impose a "more lenient punishment" or to annul it and remand the case for retrial.

The Public Prosecutor of Kosovo, the defendant and his defense counsel although notified in a timely fashion about the hearing were not present, however in the submission PPA.No.155/2005 dated 22.03.2005, proposed to reject the filed appeal as unfounded.

The Supreme Court of Kosovo, upon reviewing all case files of this criminal case, analyzing the appealed judgement pursuant to article 415 of the PCCK, and after the assessments of the claims stated in the appeal, found that:

-the appeal is unfounded.

In the appeal was not stressed which legal provision was violated, which is the essential violation of the criminal procedure, but it is stressed that the appealed judgement was reached based on the plea of guilt, although this was done by the defendant not in compliance with Article 315 of PCCK, that "he was not able to understand the nature of his guilt".

The Supreme Court assessed that the above mentioned claim does not stand, because in the charge confirmation session held on 20 December 2004, besides other things, the defence counsel was present, and after the defendant was notified about his rights and after he pleaded guilty on all charges, neither the defence counsel nor other parties presented any remarks. In the minutes of the Court review was found:

"The defendant ...after consultations with his attorney at law Besim Morina, declares voluntarily: I totally admit the guilt that ..."

From these circumstances it can be clearly noticed that the above-mentioned appealed claim is not supported by the files, but is arbitrary. The appealed judgement does not contain other ex-officio essential violations of the criminal procedure and of criminal law to the detriment of the defendant, which would cause its annulment.

The appealed claims regarding the decision on punishment are unfounded. The Court of the first instance, while imposing the type and the length of the punishment against the defendant found only mitigating circumstance and not aggravating circumstances. Some mitigating circumstances were mentioned in the appeal, which were not taken into account by the Court of the first instance.

The Supreme Court finds that the Court of first instance found the mitigating circumstances mentioned in the appeal as rightfully assessed.

Therefore, this Court assessed that the rendered punishment against the defendant by the Court of the first instance corresponds to the intensity of social endangerment of the committed criminal offence and the level of the criminal liability of the defendant as a perpetrator, by taking into account all circumstances of the concrete case, especially the number and the type of weapons and the circumstances under which the criminal offence was committed and that with this punishment the

purpose of the punishment foreseen by Article 34 of PCCK will be achieved.

As stated above pursuant to Article 323 of the PCPCK, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.155/2005, on 13.09.2005

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code - Article 254(2) PCCK robbery - theft - Article 252 (1) violation of criminal procedure - factual situation - appeal to amend the sentence - qualification of the criminal offence]**

*The District Prosecutor of Prishtina appealed the decision of the District Court in Prishtina, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defense counsel appealed the decision of the District Court in Prishtina, arguing that the District Court had violated criminal procedure law and had erroneously and incompletely determined the factual situation, proposing to change the legal qualification of the criminal offense and acquit the defendants.*

*The defendants were charged with robbery, and were found guilty, and were sentenced to 3 years of imprisonment.*

*The defendants were charged with theft, and were acquitted.*

*The Supreme Court ruled that considering the level of social endangerment of the committed criminal offence a more lenient punishment should be imposed to achieve the purpose of the punishment, as required by article 34 of the PCPCK. The Supreme Court ruled that the first instance court did not investigate in a proper way the circumstance thus did not make a proper decision of assessments of evidences. Accordingly, the Supreme Court ruled that the District Court Prosecutors' appeal was partly founded.*

Ap.No.161/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Riza Loci and Meleqe Behxheti, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendants: A.S. and A.O., both from Prishtina, for the criminal offences: robbery, as provided for in article 254 paragraph 2 in conjunction with article 23 of the PCCK and two criminal offences: theft as provided in article 252 paragraph 1 in conjunction with article 23 of the PCCK, based on the appeal of the District Prosecutor of Prishtina, against the judgment of the District Court, Prishtina, P.No.324/2004 dated 18 November 2004, in the session held, pursuant to the provisions of article 410 of the Provisional Criminal Procedure

Code of Kosovo, held on 13 September 2005, rendered the following:

## J U D G M E N T

I. With partial approval of the appeals of the defense counsels of the defendants, the judgment of the District Court in Prishtina P.No.324/2004 dated 18 November 2004, is amended only regarding the sentencing judgment, in a manner that the Supreme Court sentences defendants A.S. and A.O., for the criminal offence for which they were found guilty with imprisonment of 2 (two) years, including the time served in pre-detention from 14 May until 18 November 2004.

II. With partial approval of the appeal of the District Prosecutor of Prishtina, the judgment of the District Court of Prishtina, in its, mitigating part, the enacting clause under section 1 is annulled and the case in this part is remanded to the Municipal Court in Ferizaj for retrial.

III. The appeal of the District Prosecutor of Prishtina regarding the mitigating part of the abovementioned judgment, the enacting clause under section 2 is rejected as unfounded and in this part the judgment is affirmed.

IV. The appeal of the District Prosecutor of Prishtina is rejected as unfounded for other parts of the judgment.

### Reasoning

The District Court, Prishtina, with its decision P.No.324/2004 dated 18 November 2004, found defendants A.S. and A.O. guilty for the criminal offence of robbery, committed in complicity, provided for in article 254 paragraph 2 in conjunction with article 23 of the PCCK and the court imposed a sentence of 3 (three) years of imprisonment including the time served in detention from 14 May until 18 November 2004. The court ordered the defendants to pay the court expenses according to the court final invoice and each of them to pay 200 € in the form of a lump sum. The court also obliged to pay to the damaged party B.S. in the name of a property claim an amount of 300 € within 15 days

after the judgment becomes final.

With the same judgment, pursuant to provision of article 390 item 3 of the PCPCK, defendants A.S. and A.O. were acquitted of the charge for two criminal offences of theft, as foreseen in article 252 paragraph 1 in conjunction with article 23 of the PCCK. It has decided that the court expenses are borne by the court, while it instructs the damaged parties I.S. and M.D to pursue the property claim through a civil action.

Against this judgment, appeals were filed from:

- The District Prosecutor of Prishtina, regarding the sentencing part, while for the mitigating part on the ground of erroneous and incomplete determination of the factual situation, by proposing that the Supreme Court should amend the appealed judgment in sentencing part and impose a more severe punishment towards the defendants, for the criminal offences they were found guilty, while in mitigating part annul and remand the case to the first instance court for retrial.

- The Defense counsel of the defendant A.S., the lawyer Avni Ibrahim, appealed on the ground of erroneous and incomplete determination of the factual situation, violation of the criminal code and thus proposing that this court amends the appealed judgment in its sentencing part and acquit the defendant of the charges, or to amend it on the basis of legal qualification in order that the criminal offence is qualified as criminal offence of theft, as foreseen in article 252 paragraph 1 of the PCCK or to annul the decision and remand the case for retrial.

- The Defense Counsel of the defendant, A.O., Ramiz Krasniqi, the lawyer in Prishtina appealed on the ground of erroneous and incomplete determination of the factual situation, violation of criminal code and the sentencing decision, proposing to the Court, to annul the appealed judgment and remand the case for retrial and that the defendant be acquitted of all charges.

The Supreme Court in its session, pursuant to article 410 of the PCPCK, notified the Public Prosecutor of Kosovo, the defendants and their defense counsels, but only the defendant A.O. and his defense counsel where present, who after explaining some of the claims that come out of the appeal, adhered entirely to the proposals made in the

appeal, while the defendant supported his defense counsel.

The Public Prosecutor of Kosovo, in the submitted claim PPA.No.161/2005 dated 6 April 2005 he proposed the approval of the appeal of the District Prosecutor, and to reject the appeals of the defense counsels of defendants as unfounded.

The Supreme Court of Kosovo, upon reviewing all files from this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after the assessments of the claims stated in the appeals, found that:

- The appeals are partly founded.

**I.** In the appeal of the defense counsel of defendant A.O., is claimed that the appealed judgment contains substantial violation of the provisions of criminal procedure as foreseen in article 403 paragraph 1 item 12 of the PCPCK, since the enacting clause is in contradiction with the reasoning.

The Supreme Court notices that the above-mentioned claims are unfounded and neither the appealed judgment contains other violations of the provisions of criminal procedure, and notices that there has been no *ex officio* violation of the Criminal Code, which would condition its annulment. So, there is no contradiction between the enacting clause and the reasoning. The appealed judgment is clear and concrete, with no contradictions, and contains sufficient reasons on decisive facts of this issue.

The defense counsels of the defendants claim in their filed appeals that the factual situation in this criminal offence was not rightfully determined and in complete way, and that the conclusions of the first instance court are erroneous. It is claimed that the appealed judgment is based on the hypothesis and assumptions, and not on evidences, since the defendants did not even know each other before the critical event, while the testimonies of witnesses V.R. and E.S., which support the appealed judgment, cannot be considered as valid proofs for a punitive judgment due to contradictions.

The above-mentioned claims are not founded. The decisive

facts, affirmed by the first instance court are not put into question with anything. In this way, eye-witness V.R., is not only an eye-witness, uninterested and unbiased, but he is a person that alarmed about the theft immediately, has contributed to catch and identify the perpetrators. The testimony of this witness matches with the testimonies of the damaged party and of the witness E.S. So, bearing in mind these circumstances and the circumstances, stressed in a more detailed way in the appealed judgment, the first instance court on the guilt of defendants is fair and lawful. Due to these reasons the appeal claims that the first instance court has erroneously and in incomplete way determined the factual situation were not approved. At the same time, due to above-mentioned reasons the appeal claims that there was a violation of the criminal law to the detriment of the defendants are unfounded.

In the appeals of defense counsels on the sentencing decision were not given right and necessary reasons, but only is stressed that the sentences are severe. In the appeal of the Public Prosecutor also it is not stressed any aggravating circumstance that would have an impact on imposing a more severe punishment, but only is stressed that the imposed sentences do not achieve even the individual and general preventive measures. The Supreme Court finds that the first instance court has rightfully evaluated the circumstances of the concrete case, in which the criminal offence was committed and the circumstances that have to do with personality of the defendants. Bearing in mind, especially the level of social endangerment of the committed criminal offence, the Supreme Court after the evaluation of the above-mentioned circumstances-imposed to defendants the sentences as under section I of the enacting clause, convinced that the purpose of the punishment as foreseen with article 34 of the PCCK will be achieved.

As stated above pursuant to article 426 of the PCPCK, the Court decided as under section I of the enacting clause of this judgment.

## **II.**

Regarding the criminal offence as described under section I of the enacting clause of the appealed judgment, its mitigating part, the appeal claims of the District Prosecutor are founded. The judgment of the first instance court, when it acquitted the defendants of all charges, pursuant to provisions of article 390 item 3 of the PCPCK, since the damaged party I.S. stated that he does not know the defendants, that he

did not see them on the critical day, cannot be approved as right and lawful, since it is much dubious, suspicious. It is not disputable that on critical day, besides the other things, 50 Canadian Dollars were stolen from the pocket of the damaged party. It is not also disputable that a banknote of 50 Canadian Dollars was found with defendant when he was searched, but the stance of the first instance court regarding this circumstance was that, "it cannot be said that this money belonged to the damaged party I.S., because its serial number was unknown and that other citizens as well can have such a banknote of Canadian dollars," is very hypothetical, since besides a possibility that citizens may possess such a banknote, no reasons were given how this money was found with the defendant. Therefore, for the time being, such a conclusion is unsustainable, so in this part the first instance judgment should have been annulled and the case to be remanded to the Municipal Court in Ferizaj, as competent and substantial local court for retrial-pursuant to article 424 and 552 paragraph 2 of the PCPCK.

The first instance court in retrial should act in compliance with the above-mentioned objections, to investigate in a proper way the circumstance how was a banknote of 50 Canadian Dollars found with the defendant, and depending on the results of assessments of evidences to make a proper decision, by bearing in mind other appeal claims.

### III.

The appeal claims of the District Prosecutor of Prishtina regarding the reliving part of the appealed judgment, the criminal offence as described in item 2 are unfounded. This court also supports the opinion of the first instance court that the hesitation regarding a very important fact, should be interpreted in favor of the defendant. In the concrete case, the opinion of the first instance court is not put into question with the appeal too, there is no evidence, no fact that would lead to a conclusion that the defendants are the perpetrators of the criminal offence, with which they are charged, is not offered. The fact that a wallet with €64 was taken from the party M.D. is only a solely indication-an isolated one, that the defendant can be the perpetrator of the criminal offence, but there is no concrete evidence. Due to this reasons, the appeal claims of the District Public Court in Prishtina were not approved, while the appealed judgment was affirmed in this part article 423 of the PCPCK.

As stated above, pursuant to provisions of article 426, 423, 424 and 552 of the PCPCK the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.161/2005, on 13.09.2005

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Articles 8.2 and 8.6 - UNMIK Regulation 2001/7 - Unauthorized Ownership, Control, Possession and Use of weapons and ammunition - bodily injures - article 154 (1) (3) (5) PCCK - Appeal to Amend the Sentence - violation of the criminal law - article 2(2) PCCK) - more favorable law - Mitigating Circumstances]**

*The District Prosecutor of Prishtina appealed the decision of the District Court in Prishtina, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The Defense counsel appealed the decision of the District Court in Prishtina, arguing that the court had violated the criminal law by applying the provisions of the PCCK, which was not in force at the time when criminal offence was committed.*

*The defendants was charged with unauthorized ownership, control, possession, or use of weapons and ammunition and serious bodily injuries , and was found guilty, and was sentenced to a fine as well as a suspended sentence of 8 months imprisonment.*

*The Supreme Court ruled that the District Court correctly applied the law which is more favorable for the defendant as required by article 2 paragraph 2 of the PCCK.*

*The Supreme Court Ruled that the District Court had correctly assessed all mitigating circumstances and considered that the imposed punishment corresponds to the level of the criminal liability of the defendant. Accordingly, the Supreme Court ruled that the District Court Prosecutors' and the defense counsel appeal were unfounded.*

Ap.No.171/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Mr.sc. Fejzullah Hasani and Agim Krasniqi, members and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant B.Rr., from the village of Hërtica, Podujevo, for the criminal offence foreseen in Article 8.2, punishable in accordance with article 8.6 of UNMIK Regulation 2001/7, on the "Authorization of Possession of Weapons in Kosovo," and the criminal offence of the serious bodily injuries foreseen in Article 154 par.1, 3 and 5 of PCCK, based on the appeal of the District Prosecutor of Prishtina, and the appeal of the defendant filed against the

judgement of District Court, Prishtina, P.No.130/04 dated 24.2.2004, at the hearing of the panel on 23.8.2005, rendered the following:

JUDGEMENT

The appeal of the District Prosecutor of Prishtina and of the defense counsel of defendant B. Rr. is rejected as unfounded, while the judgement of the District Court of Prishtina P.No.130/04 dated 24.02.2004, is reaffirmed.

Reasoning

The District Court, Prishtina, with its decision P.No.130/04, dated 24.2.2004, found defendant B.Rr, guilty on the charges of the criminal offence foreseen in Article 8.2 punishable according to Article 8.6 of UNMIK Regulation No.2001/7 on "Authorization of Possession of Weapons in Kosovo," and the criminal offence of serious bodily injuries foreseen in the Article 154 paragraph 1, 3 and 5 of PCCK, for the criminal offence of the possession of unauthorized weapons for which the Court imposed fine of 600 €, while for the criminal offence of serious bodily injuries the Court imposed a suspended sentence with imprisonment of 8 (eight) months, which will not be executed if the perpetrator does not commit another criminal offence for the period of 2 (two) years, from the moment when this judgement enters into effect, the Court imposed the fine 500 € and imposed sentence with imprisonment of 8 (eight) months which will not be executed if the perpetrator does not commit another criminal offence for the period of 2 (two) years, from the moment when this judgement enters into effect. The defendant is obliged to pay Court expenses in accordance to the calculation of the Court and a lump sum fee of 50 €. The Court has also imposed protective measures against the defendant seizing an automatic rifle, AK-47, serial number 164878.

Against this judgement, appeals were filed from:

- The District Prosecutor of Prishtina proposing that the

Supreme Court amends the judgement with regards to the decision on punishment and to sentence the defendant with effective imprisonment, and

The defendant, due to violation of the criminal law and due the decision on punishment, has proposed the annulment of the appealed judgement and to remand the case for retrial to the Court of first instance or to amend the judgement and to acquit the defendant.

The Public Prosecutor of Kosovo, in the submitted claim PPA.No.171/05 dated 18.04.2005, proposed the approval of the appeal by District Prosecutor, by amending the judgement in dispute in a manner that the Court announces a more severe sentence against the defendant and the appeal of defendant to be rejected as unfounded.

The Supreme Court of Kosovo, upon the reviewing all case files of this criminal case, analyzing the appealed judgement pursuant to article 376 of the LCP, and after the assessments of the claims stated in the appeal, found that:

The appeal of District Prosecutor is unfounded.

The factual situation in this criminal case was not contested and according to the assessment of the Supreme Court, it was rightfully and completely assessed, the judgement does not contain any violation of the provisions on criminal procedure, according to Article 376 paragraph 1 and 2 of LCP, which the Supreme Court is ex-officio obliged to observe.

The defendant by appealing the judgement due to violation of the criminal law stresses that the Court has applied the provisions of the law of PCCK, which was not in force at the time when criminal offence was committed.

The abovementioned appellant claims are unfounded, since the Court in compliance with Article 2 paragraph 2 of PCCK, in the concrete case has applied the law which is more favourable for the defendant, since according to Article 154, paragraph 5, of PCCK for the criminal offences committed pursuant to par.1 the perpetrator is sentenced to imprisonment of six (6) months up to two (2) years, whilst pursuant to paragraph 4 of the Article 38 of LCP, (for what the defendant was charged according to the charge of DPP) for the committed

criminal offences due to negligence can be sentenced to three (3) years of imprisonment.

By assessing the judgement of the Court of first instance against the judgement, the Supreme Court finds that the appeal of DPP that a more severe punishment is rendered to the defendant and the appeal of the defense counsel to render more lenient punishment is unfounded.

The Court of first instance, in the event of assessing the punishment against the defendant, assessed all mitigating circumstances in his favor and after rendered the sentence in accordance with these circumstances. It considers the assessment of mitigating circumstances as rightful and the rendered sentence corresponds to the level of criminal responsibility of the defendant as a perpetrator and in such circumstances there is No reason for a more severe punishment as pretended by the District Prosecutor, or a more lenient punishment as pretended by the defense counsel, for more in the appeals are not stressed such circumstances that would justify a more severe, respectively a more lenient punishment. Due to this the appeals regarding the decision on punishment had to be rejected as unfounded.

As stated above pursuant to Article 384 of the LCP, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.171/2005, on 23.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Gjuran Dema

**[Supreme Court – ruling on Criminal Code- Article 255 (1) PCCK robbery theft - Article 252 (1) Article 20 PCCK - violation of criminal procedure - factual situation - Appeal to Amend the Sentence]**

*The defense counsel appealed the decision of the District Court in Prishtina, arguing that the District Court had violated criminal procedure law and had erroneously and incompletely determined the factual situation, proposing to acquit the defendant or impose a more lenient punishment.*

*The defendant was charged with theft, and was found guilty, and was sentenced to a 1 years imprisonment.*

*The defendant was charged with robbery, and was acquitted.*

*The Supreme Court ruled that the district court had wrongfully determined the factual situation and the conclusion of the district court was wrong and in contradiction with administered proofs. Accordingly, the Supreme Court ruled that the defense counsel appeal was founded.*

Ap.No.179/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Avdi Dinaj, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendant Sh.P., from Prishtina, for the criminal offence of attempted robbery as provided for in Article 255 paragraph 1 in conjunction with article 20 of PCCK and of theft as provided for in article 252 paragraph 1 of CPPK, based on the appeal of the defense counsel of the defendant, lawyer Vahid Halili, from Prishtina, against the judgment of the District Court in Prishtina P.No.201/2004 dated 02.03.2005, in the hearing of the panel held pursuant provisions of article 410 of PCPCK, on 15.09.2005, rendered the following:

JUDGMENT

The appeal of the defense counsel of defendant Sh.P is approved as founded, while the judgment of the District Court of Prishtina P.No.201/2004 dated 02.03.2005, under section of the

enacting clause sentencing part, to be amended, in order that Supreme Court, defendant Sh.P for the criminal offence of theft as provided for in article 252 paragraph 1 of PCPCK, acquits of the charge, as provided for in article 390 paragraph 1 item 3 of PCPCK.

Whereas, the above-mentioned under section II. of the enacting clause-the mitigating part is not amended.

Reasoning

The District Court, Prishtina, with its decision P.No.201/2004 dated 02.03.2005 defendant Sh.P. was found guilty for the criminal offence of theft, as provided for in article 252 paragraph 1 of PCPCK and imposed the sentence with imprisonment of 1 (one) year, including time served in detention from 11.03.2004 until 02.03.2005. The defendant is obliged to pay all the court expenses according to final court's invoice and an amount of 50 €, in the form of lump sum within 15 days after the judgment came into effect.

With the same judgment, the defendant was acquitted of the charge pursuant to Article 390 paragraph .1 item 3 of PCPCK, due to criminal offence of attempted robbery provided for in Article 255 paragraph .1 in conjunction with Article 20 of PCCK.

Defense counsel of the defendant filed an appeal within the period allowed for filing the appeal, on the ground of a criminal sanction, substantial violation of the criminal procedure provisions, erroneous and incomplete assessment of factual situation, violation of criminal law and sentencing judgment, by proposing that the appealed judgment is amended and the defendant is acquitted of the charge for the criminal offence he was found guilty, or to impose more lenient sentence or to annul and remand the case to the first instance court for retrial. In the appeal he requested that he and his client are informed about the hearing of the panel.

The Supreme Court in the hearing of the panel, pursuant to Article 410 of PCPCK, notified in the timely fashion the defendant, his defense counsel and Public Prosecutor of Kosovo, who were not present.

The Public Prosecutor of Kosovo in the submitted claim PPA.No.179/2005 dated 27.04.2005, proposed the rejection of the appeal as unfounded, and affirm the appealed judgment.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after the assessments of the claims stated in the appeal, found that:

The appeal is founded.

The appealed judgment does not contain substantial violation of the provisions under item 8 paragraph 1 of article 403 of PCPCK, which is stressed in the appeal, since the identification of defendant Sh.P. by damaged party A.L. and by witness V.G. was made in allowed way according to the photos and the presentation of three persons, amongst whom was defendant Sh.P., and who was identified, which is confirmed by witness H.Sh., KPS policeman. This Court also did not find that the appealed judgment contains other violations of the provisions of criminal procedure, pursuant to provisions of article 415 of PCPCK.

With the appealed judgment, the factual situation was not evaluated in a rightful and complete way. From the statements of the injured party A.L. and of the witness V.G., who stated that they saw a person who looked in their direction in "Belluno" cafeteria in Prishtina, who was near the other table, who later on identified the defendant, but they also stated that they have not seen that the defendant put his hands in the pocket of the coat of the damaged party A.L. The mobile phone of the damaged party A.L. was not found with the defendant. From the introduced evidences in the main hearing, the Supreme Court finds that it was not confirmed that the defendant has committed the criminal offence, for which he was found guilty. The conclusion of the first instance Court, that with introduced evidences was proved the guilt of the defendant is a consequence of the erroneous evaluation.

But the first instance Court has erroneously assessed all these facts, when it concluded that the thieves have put their hands secretly, in order not to be discovered. This conclusion is wrong and in contradiction with administered proofs, respectively with the determined factual situation in rightful and complete way. Therefore, it

was not proved with any evidence that defendant Sh.P. was the one who committed the criminal offence with which he is charged.

Due to these reasons, this Court finds that the appealed judgment contains violation of criminal law on detriment of the defendant, since the same one was found guilty, for the criminal offence, for which it was not proven that he committed it.

As stated above pursuant to Article 426 paragraph 1 in conjunction with article 424 of PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTINA  
Ap.No.179/2005, on 15.09.2005

Recording Clerk,  
Mejreme Memaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 328 (3) (2) PCCK- unauthorized ownership, control, possession or use of weapons appeal to Amend the Sentence criminal liability purpose of punishment]**

*The district Prosecutor of Gjilan appealed the decision of the District Court in Gjilan, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged unauthorized possession of weapons, and was found guilty, and was sentenced to a suspended sentence with imprisonment of 3 months.*

*The Supreme Court ruled that that the way the criminal offence was committed, the place and the circumstance under which the criminal offence was committed, are of such nature that present endangerment with high intensity and high level of criminal liability of the defendant that with suspended sentence, the purpose of the punishment would not be achieved. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was founded.*

Ap.No.187/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Avdi Dinaj, presiding judge, Miftar Jasiqi and mr.sc.Fejzullah Hasani, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against the defendant S.A. from Mogilla, municipality of Vitia, for the criminal offence of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 328 paragraph 2 of the PCCK, based on the appeal of the District Prosecutor of Gjilan, against the judgement of the District Court, Gjilan, P.No.11/2005 P.No.220/2003 dated 29 mars 2005, at the hearing of the panel on 31.08.2005, rendered the following:

JUDGEMENT

With the approval of the appeal of the District Prosecutor of Gjilan, the verdict of the District Court of Gjilan, P.No.11/2005 dated 29.03.2005, is amended in accordance to the sentence, meaning that the

Supreme Court imposes a fine in the amount of 700 (seven hundred) Euro to the defendant S.A., for the criminal act for which he has been found guilty, which the defendant is obliged to pay within 15 (fifteen) days, from the moment when this judgment came into effect. In the event of failure of payment, within the set time period, the punishment shall be calculated, at the rate of 15 Euro per one day of imprisonment.

Reasoning

The District Court of Gjilan, with its decision P.No.11/2005 dated 29.03. 2005, found the defendant S.A. guilty on the charges of unauthorized ownership, control, possession or use of weapons and ammunition, foreseen in Article 328 pa.2 of the PCCK, for which the Court imposed a suspended sentence with imprisonment of 3 (three) months, which will not be executed if the perpetrator does not commit another criminal offence for the period of 1 (one) year, from the moment when this verdict came into effect. The defendant is obliged to pay Court expenses in accordance to the calculation of the Court and a lump sum fee of 50€. It has seized an automatic rifle, manufactured in China, 7.2 mm calibre, serial number 2046789.

The District Prosecutor, within the period allowed for filing the appeal, filed an appeal against this judgement, with the proposal that the defendant S.A. for the criminal offence committed, be charged with a more severe sentence, in compliance with Criminal Code.

The Supreme Court in its session, pursuant to article 410 of the PCCK, although the defendant and his defence counsel were duly notified they were not present. The Public Prosecutor of Kosovo, in the submitted claim PPA.No.187/2005 dated 12.05.2005, and he proposed the annulment of the ex-officio appealed judgement and to remand the case to the Court of first instance for retrial or to approve the appeal and amend the judgement of the first instance in compliance with the proposal filed in the appeal, by amending the judgement in dispute in a manner that the Court announces a more severe sentence towards the defendant.

The Supreme Court of Kosovo, upon the review of all the case files of this criminal case, analyzed the appealed judgement pursuant to

article 415 of the PCPCK, and after the assessments of the claims stated in the appeal, found that:

The appeal is founded.

Since the appealed judgement does not contain any essential violation of the provisions on criminal procedure and neither of the criminal law, the Supreme Court, in compliance with competencies of the Court of second instance, while in the appeal the judgement is not objected for other violations and neither with the factual situation, therefore this Court was limited only to the assessment of the appealed claims regarding the punishment.

The Court of the first instance has rightfully acted when it found that in the action of the defendant are constituted all objective and subjective elements of the criminal offence of unauthorized ownership, control, possession or use of weapons, foreseen in the article 328 par.2 of the PCCK and found the defendant guilty for that criminal offence.

The Public Prosecutor in its appeal states that the rendered suspended sentence by the Court of the first instance is too lenient and does not correspond to the level of the committed criminal offence. In the appeal is stated that the Court of the first instance has under-evaluated all circumstances that have impact on the type and length of the punishment, which are the social endangerment of the criminal offence and the increasing level of this type of criminal offence in the territory that this Court covers. It has over-evaluated the mitigating circumstances, and imposed inadequate sentence to the defendant, with which the purpose foreseen with law would not be achieved. Analysing the case regarding the judgement in compliance with appealed claim of Public Prosecutor, the Supreme Court finds that the appealed claims for more severe sentence filed in the appeal of District Prosecutor are founded, because the defendant was not tried before, he is married and the father of four children, he had correct behaviour during the trial. The Supreme Court assesses that the way the criminal offence was committed, the place and the circumstance under which the criminal offence was committed, are of such nature that present endangerment with high intensity and high level of criminal liability of the defendant that with a more lenient and suspended sentence, the purpose of the punishment would not be achieved. Therefore the Supreme Court amended it and it decided as in the enacting clause of this judgement,

convinced that such a judgement is adequate with the level of the criminal liability of the defendant, as a perpetrator and of social endangerment and preventive of the criminal offence towards the others.

As stated above, pursuant to Article 426 of the PCPCK, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.187/2005, on 31.08.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Avdi Dinaj

**[Supreme Court - ruling on Criminal Code- Article 255 (3) PCCK - robbery - theft - Article 252 (1) Article 23 PCCK Article 328 (2) - unauthorized ownership, control, possession or use of weapons juvenile-violation of criminal procedure factual situation]**

*The defense counsel appealed the decision of the District Court in Peja, arguing that the District Court had violated criminal procedure law and had erroneously and incompletely determined the factual situation.*

*The defendants were charged with robbery and with unauthorized ownership, control, possession or use of weapons, and were found guilty, and were sentenced to an aggregate imprisonment of 7 years and six months. One of the defendants was charged with robbery, and was acquitted.*

*The Supreme Court ruled that the decision of the district court did not contain substantial violation of the criminal procedure provisions because the enactment of it was understandable, was clear and have been given clear and convincing reasons over the crucial facts for all criminal offences on the basis of which the defendants were found guilty. Accordingly, the Supreme Court ruled that the defense counsel appeal was unfounded.*

Ap.No.188/2005

#### IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through the juvenile panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi, Miftar Jasiqi, Avdi Dinaj and Doc.dr.Hamdi Podvorica, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendants: A.A., S.H. and juvenile S.H., all of them from the village Lubovë-Municipality of Istog, the criminal offences of robbery in complicity as provided for in article 255 paragraph 3 in conjunction with paragraph 1 in conjunction with article 23 of PCCK, of robbery in complicity as provided for in article 252 paragraph 1 in conjunction with article 23 of PCCK and the criminal offence of unauthorized ownership, control, possession or use of weapons as provided for in article 328 paragraph 2 of PCCK, with the decision according to the appeal of the defence counsel of defendant A.A., lawyer Zeqir Bërdyna, from Peja, against the judgment of the District Court in Peja P.No.162/2004 dated 29.11.2004, at the hearing of the panel in compliance with the provision of the article 410 of PCPCK, dated 15.09.2005, rendered the following

#### JUDGMENT

The appeal of the defense counsel of defendant A.A., is rejected as unfounded, whereas the judgment of the District Court in Peja P.No.162/2004 dated 29.11.2004, in the sentencing part regarding the defendant A.A., is affirmed.

Whereas, the same verdict in the sentencing part for the juvenile S.H. and defendant S.H., as well as as in refusing and in its mitigating part is not amended.

#### Reasoning

The District Court, Peja, with its decision P.No.162/2004 dated 29.11.2004, found defendants A.A., S.H. and the juvenile S.H., guilty on the charges: A.A. and the juvenile S.H. for the two criminal offences of the robbery in complicity as provided for in article 255 paragraph 3 in conjunction with paragraph 1 in conjunction with article 23 of PCCK; and defendant A.A. for criminal offence of unauthorized ownership, control, possession or use of weapons foreseen with article 328 paragraph 2 of PCCK, and defendant S.H. for the criminal offence of unauthorized ownership, control, possession or use of weapons as provided for in article 328 paragraph 2 of PCCK, the court for the above mentioned criminal offences imposed these sentences: upon defendant A.A., for the criminal offence in the item under I/1. of the enactment the sentence with imprisonment of 2 (two) years, for the criminal offence in the item under I/2. of the enactment the sentence with imprisonment of 1 (one) year and 6 (six) months, for the criminal offence in the item under I/3. of the enactment the sentence with imprisonment of 3 (three) months, for the criminal offence in the item under I/4. the sentence with imprisonment of 1 (one) year and 6 (six) months and for the criminal offence as provided for in article 328 paragraph 2 of PCPCK the sentence with imprisonment of 7 (seven) months, upon defendant S.H., for criminal offence in the item under I/3. of enactment the sentence with imprisonment of 3 (three) months, for the criminal offence under item I/4. of the enactment the sentence with imprisonment of 1 (one) year and for the criminal offence provided for in article 328 paragraph 2 of PCPCK the sentence with imprisonment of

5 (five) months, by imposing unified sentences: upon defendant A.A. sentence with imprisonment of 4 (four) years, including the time served in detention from 24.01.2004 to 29.11.2004, S.H. sentence with imprisonment of 1 (one) year and 6 (six) months, including the time served in detention from 24.01.2004 to 29.11.2004, and the juvenile S.H. was sentenced with imprisonment for juvenile of 2 (two) years, including the time served in detention from 25.01.2004 to 29.11.2004.

The Court has also imposed protective measures against defendants A.A. and S.H. seizing of weapons: 1 an automatic rifle "AK-47" 7.62 mm caliber serial number 11125181, 1 magazine, 1 rifle "Browning" manufactured in Belgium, 7.65 mm caliber, serial number 7405, 1 semi-automatic rifle with -20, 7.62 mm caliber, serial number. 32892.

The defendants A.A. and S.H., and the juvenile S.H. are obliged to pay court expenses for protection according to official duty: A.A. the amount of 155,99 €, S.H. the amount of 356,33 €, and the juvenile S. H. the amount of 305,09 €, as well as in accordance to the calculation of the court and a lump sum fee each of them pay 100 (one hundred) Euros within 15 (fifteen) days, from the moment when this verdict came into effect.

The damaged parties S.M., H.M., both of them from the village Orobërd-Municipality of Istog, N.H. from the village Cërc-Municipality of Istog, Sh.F. and S.F., both of them from the village Mojstir-Municipality Tutin, were instructed for civil contest over the legal property claims.

With the same decision, in the second part - refusing part, acquitted defendant A.A. of the charges for four criminal offences of the robbery in complicity as provided for in article 137 of LCP in conjunction with article 22 of CLY, because the District Prosecutor in Peja has withdrawn the charge.

Against the juvenile S.H., in its mitigating part - item under III. of the enactment, has seized the procedure, due to four criminal offences for robbery in complicity as provided for in article 137 of LCP in conjunction with article 22 of CLY and the criminal offence of unauthorized ownership of weapons and ammunition as provided for in article 8 paragraph 5 in conjunction with paragraph 3 of UNMIK

Regulation No.2001/7 on the Authorization of Possession of Weapons in Kosovo.

The damaged parties S.M., S.M., both of them from the village Vrellë-Municipality of Istog, R.D., I.G. and Xh. B., three of them from the village Prigodë-Municipality of Istog have been instructed to pursue property claims through civil contest.

The defence counsel of defendant A.A. has filed an appeal against this judgment, within the period allowed for filing the appeal, on the basis of: substantial violation of the criminal procedure provisions, violation of the criminal law, erroneous and incomplete assessment of the factual situation and decision on punishment, by proposing that the appealed judgment is annulled and the case is remanded to the first instance court for retrial. Pursuant to provision of article 410 of PCPCK, it was proposed that he and the defendant were notified in the timely fashion for the hearing of the panel.

The Supreme Court held the hearing of the panel in compliance with the provision of the article 410 of PCPCK, in which the defense counsel of defendant A.A. gave some explanations from the claims stated in the submitted appeal and fully adhered to the claims in it, whereas defendant A.A. fully supported the claims of his defense counsel.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.188/2005 dated 16.05.2005, proposed that the appeal of the defense counsel of the defendant is rejected as unfounded, while the appealed judgment is affirmed.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after the assessments of the claims stated in the appeal, found that:

The appeal is unfounded.

The appealed judgment does contain substantial provisions of the criminal procedure provisions claimed in the appeal, because the enactment of it is understandable, is clear and in which have been given

clear and convincing reasons over the crucial facts for all criminal offences on the basis of which the defendant was found guilty. The analysis of every evidence, defense of defendants A.A. and S.H and that of juvenile S.H., where correct conclusions were given and pursuant to article 396 of PCPCK. This court also did not find that the appealed judgment contains substantial violation of the criminal procedure provisions which this court is *ex officio* obliged to observe. Therefore the appeal was found unfounded.

The factual situation with the appealed judgment was assessed rightfully and completely, and that with the statements of the damaged party S.M., H.M., N.H., Sh. and S.F., as well as the defense of the juvenile S.H. given in the previous procedure at the presence of his defense counsel, by the assessments of such evidences the defense of the juvenile S.H., was concluded rightfully and undoubtedly that defendant A.A. has committed the criminal offence for which he was found guilty, at the time, place and the way how it was committed as it was described in the appealed judgment. Therefore the appeal is unfounded.

With such a rightfully and completely factual situation assessment also the criminal law was rightfully implemented, when it was concluded that in the actions of the defendant are constituted all elements of the criminal offence: of robbery to detriment of S.M., H.M., Sh. and S.F., foreseen by article 255 paragraph 3 in conjunction with paragraph 1 in conjunction with article 23 of PCCK, of the criminal offence of robbery as provided for in article 252 paragraph 1 in conjunction with article 23 of PCCK executed in the damage of N.H., and the criminal offence unauthorized ownership, control, possession or use of weapons, foreseen in Article 328 paragraph 2 of PCCK.

By assessing the appealed judgment regarding the sentencing judgment for defendant A.A., this court approves all circumstances concluded rightfully and assessed by the first instance court, by not finding any other mitigating circumstance, which would impact on the rendered sentences. While, bearing in mind the intensity of the social endangerment of the committed criminal offences and the level of the criminal liability of the defendant, it can be expected that with the rendered sentence the purpose of the punishment is achieved foreseen with article 34 of PCCK. Therefore the appeal is unfounded.

Whilst, the sentencing, refusing and mitigating part of the appealed judgement for defendant S.H. and the juvenile S.H., is not amended, since there was no appeal on this.

As stated above pursuant to Article 423 of the PCPCK, the Court decided as in the enacting clause of this judgment.

## SUPREME COURT OF KOSOVO, PRISHTINA

Ap.No.188/2005, on 15.09.2005

Recording Clerk,  
Mejreme MemajPresiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 219 (2) CLK - misuse 257 (1) PCCP - legal qualification-violation of criminal procedure - factual situation]**

*The defense counsel appealed the decision of the District Court in Prizren, arguing that the District Court had violated criminal law and had erroneously and incompletely determined the factual situation.*

*The defendant was charged with misuse, and was found guilty, and was sentenced to 1-year imprisonment.*

*The Supreme Court ruled that the district court completely assessed the factual situation and rightfully implemented the criminal law but the Court by applying the provision of the article 2 item 2 of the PCCK, as a more favorable law for the defendant qualified it as the criminal offence of Misappropriation, as required for in article 257 item 1 of the PCCK. Accordingly, the Supreme Court ruled that the defense counsel appeal was partly founded.*

Ap.No.195/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT KOSOVO, through a panel composed of the following judges: Zait Xhemajli, presiding judge, Miftar Jasiqi and Avdi Dinaj, members, and legal assistant Mejreme Memaj, acting in the capacity of the recording clerk, in the criminal case against defendant S.K., from Prizreni, charged the defendant for the criminal offence of misuse as provided for in article 219 item 2 in conjunction with item 1 of the LCP, with the decision regarding the appeal of the defense counsel of the defendant, lawyer Durak Jashari, against the verdict of the District Court in Prizren P.No.69/2002 dated 15.02.2005, in the hearing according to article 371 of the LCP, on 31.08.2005, rendered the following

JUDGMENT

To partially approve the appeal of the defense counsel of the defendant and mainly amend the decision of the District Court in Prizren P.No.69/2002 dated 15.2.2005, regarding the legal qualification of the criminal offence and the decision on punishment, so the Supreme

Court finds defendant S.K. guilty of the criminal offence of misuse as provided for in article 257 paragraph 1 of the PCCK and on these charges the court sentences him with 10 (ten) months of imprisonment.

Reasoning

The District Court in Prizren with the decision P.No.69/2002 dated 15.2.2005 found the defendant guilty of the criminal offence misuse as provided for in article 219 item 2 in conjunction with item 1 of the LCP and sentenced him of 1 (one) year of imprisonment. It obliged to compensate to the oil enterprise “Kosova-petroll” in Prishtina the fine of the amount of 11.000 €. The defendant is obliged to pay court expenses according to the court's final invoice and a lump sum fee of 200 (two hundred) Euros.

The defense counsel of the defendant has filed an appeal against this judgment, within the period allowed for filing the appeal, due to erroneous assessment of factual situation, violation of the criminal law and decision on punishment, with the proposal that the Supreme Court annuls it and remand the case to the first instance court for retrial or amend it and acquit the defendant from the charge.

According to the proposal of the defense counsel submitted in the appeal the Supreme Court held the hearing of the panel as provided for in article 371 of the LCP, in which the defense counsel and the defendant explained some of the claims stated in the appeal and adhered to the proposals submitted in it. The Public Prosecutor of Kosovo in his submitted claim PPA.No.195/2005 dated 12.5.2005 proposed that the Supreme Court ex-officio, amends the appealed judgment regarding the legal qualification by qualifying the actions of the defendant as criminal offence of misuse as provided for in article 257 item 1 of the PCCK.

The Supreme Court of Kosovo, upon the review of all files of this criminal case, analyzed the appealed judgment pursuant to article 376 of the LCP, and after the assessments of the claims stated in the appeal, found that:

The appeal is partially founded by reviewing the judgment *ex-officio* decided as in the enacting clause of this judgment.

The defense counsel in the submitted appeal claims stated that the first instance court has assessed erroneously the crucial facts in this criminal offence, since the content of the report of the oil enterprise “Kosova-petroll” in Prishtina due to the absence of the defendant from work is different from the financial expert report and in this way the reliability of the assessment of the crucial facts and the factual situation which was assessed by the first instance court are put into question. Apart from this in the appeal it is claimed that the first instance court did not assess completely the crucial facts in this criminal case, since the court and neither the financial expert took into consideration all bills and the dismissal of the defendant from the job, which resulted with the drawing of wrong conclusions.

The Supreme Court assesses that the emphasized claims are not founded. In the written expertise the financial expert Bashkim Ibrahim has made in a professional way the respective checking of the admission dismissal of the defendant in his job position in the enterprise in question starting from 03.1.2001 to 13.10.2001 a time that the enterprise considers that the defendant caused losses, in which case the court concluded that the enterprise in question has fined the defendant without any ground for his absence at the amount of 364,25 DM for the period from 03.01. to 20.03.2001 during which time the supervisor was G.P. and not the defendant. While during the business period from 19.03.2001 to 13.10.2001 the defendant S.K. as supervisor has caused losses at the amount of 21.945,50 DM. During the expertise the expert has avoided some mistakes, which occurred in the transactions of deficit and surplus during the registration in the enterprise “Kosova-petroll” and this attitude was confirmed by the expert during the hearing, where he stated that during the expertise he requested from the enterprise and the defendant to present all respective documents of the admission-dismissal by recommending to defendant that he will be ready at any time for any other valid document only to conclude more correctly the factual situation. Nevertheless, except those documents presented on time and which were checked, compared and assessed correctly on time, and based on which the initial situation was drawn, the other documents were not presented to him. Therefore, the Supreme Court concludes that the first instance court rightfully and completely concluded and assessed all relevant evidences in this criminal case and by supporting those rightfully and completely it assessed the factual situation for this criminal case and with this simultaneously is assessed the rightful implementation of the criminal law, but this Court by

applying the provision of the article 2 item 2 of the PCCK, as a more favorable law for the defendant and the actions of the defendant, qualifies it as the criminal offence of misappropriation as provided for in article 257 item 1 of the PCCK.

Bearing in mind the length of punishment foreseen for the re-qualified criminal offence with fine or with imprisonment up to one year as well as mitigating circumstances, which the first instance court concluded and assessed in favor of the defendant, that he has a family father of four children, he had correct behavior in the court, until now he was never sentenced, the Supreme Court amended the judgment of the first instance court as in the enacting clause of this judgment convinced that this sentence matches with the social endangerment of the criminal offence and with the level of the criminal liability of the defendant and that with the same will be achieved the general purpose foreseen by law.

As stated above pursuant to Article 387 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.195/2005, on 31.08.2005

Recording Clerk  
Mejreme Memaj

Presiding Judge,  
Zait Xhemajli

**[Supreme Court - ruling on Criminal Code- Article 2 (1) UNMIK regulation No.2001/4 - Prohibition of Trafficking in Persons in Kosovo - violation of criminal procedure factual situation]**

*The District Prosecutor of Prishtina appealed the decision of the District Court in Prishtina, arguing that the District Court had violated criminal procedure law and had erroneously and incompletely determined the factual situation.*

*The defendant was charged with trafficking in persons, and was acquitted.*

*The Supreme Court ruled that the district court correctly and completely assessed the factual situation and rightfully implemented the criminal law when it was concluded that it was not proven that the defendant A.S. has committed the criminal offence with which he was charged. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was unfounded.*

Ap.No.211/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Riza Loci, members, and legal assistant Drita Rexhaj, acting in the capacity of the recording clerk, in the criminal case against defendant A.S., from Ferizaj, for the criminal offence of trafficking in persons as provided for in article 2 paragraph 1 in conjunction with article 1 paragraph 1 of UNMIK Regulation No.2001/4 on Prohibition of Trafficking in Persons in Kosovo, applicable according to UNMIK Regulation on Applicable Law, based on the appeal of the District Prosecutor of Prishtina, against the judgment of District Court, Prishtina, P.No.24/2005 dated 21.03.2005, at the hearing of the panel on 06.09.2005, rendered the following:

JUDGMENT

The appeal of the District Prosecutor of Prishtina is rejected as unfounded, while the judgment of the District Court, Prishtina, P.No.24/2005 dated 21.03.2005, is affirmed.

Reasoning

With the decision of the District Court in Prishtina, P.No.24/2005 dated 21.03.2005, defendant A.S. was acquitted of the charge of criminal offence of trafficking in persons as provided for in article 2 paragraph 1 in conjunction with paragraph 1 of UNMIK Regulation 2001/4 on Prohibition of Trafficking in Persons in Kosovo, pursuant to article 390 paragraph 1 item 3 of PCPCK. The criminal proceedings should be borne by Court.

The District Prosecutor of Prishtina, within the period allowed for filing the appeal, filed an appeal against this judgment on the basis of substantial violation of criminal procedure provisions, erroneous and incomplete evaluation of the factual situation and violation of criminal law, by proposing that the appealed judgment is annulled and the case be remanded to the first instance court for retrial.

The defense counsel, the lawyer Ymer Osaj, from Prishtina, responded to the appeal of the District Prosecutor of Prishtina, by proposing that the filed appeal is rejected as unfounded, while the appealed judgment is affirmed. At the same time, he requested that he and his client are informed about the hearing of the panel pursuant to provisions of article 410 paragraph 1 of PCPCK.

The Supreme Court scheduled the hearing of the panel, pursuant to provision of article 410 of PCPCK, where the defendant and his defense counsel were not present although they were informed in a timely fashion.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.211/2005 dated 23.05.2005, he proposed the approval of the appeal of the District Prosecutor of Prishtina, filed against the above-mentioned judgment.

The Supreme Court of Kosovo, upon the review of all the case files of this criminal case, analyzed the appealed judgment pursuant to article 415 of the PCPCK, and after the assessments of the claims stated in the appeal of the District Prosecutor of Prishtina, found that:

The appeal is unfounded.

The appealed judgment does not contain any substantial violation of the provisions on criminal procedure, since the enacting clause of the appealed judgment matches with the reasons given in it, where convincing reasons on decisive facts were presented and which will be discussed below. Hence, based on this ground, the appeal is unfounded.

The factual situation in this criminal offence was assessed in a correct and complete way, during the facing of defendant A.S. with the judged A.N. who stated that: "he knows the defendant A.S. as a figure, but here the defendant is not the person called A.R. who he knows". In the same way, defendant A.S. stated in the main session as in the previous procedure that he does not know at all the judged A.N.. the injured party J.V. mentions the name A., but without surname, same as the witness M.M. who stated that the defendant is not the person, who was presented as A.R.. Therefore, with the appealed judgment, the defense of defendant A.S. was rightfully determined, in connection with administered evidences, when it was proved that defendant A.S. is not the person who was mentioned in the criminal offence of defendant A.N., as A.R., from the village Doganaj, Kaçanik, according to the case of District Court in Prishtina P.No.282/2003 dated 18.07.2003. Based on this ground, the appeal is unfounded.

With the correct and complete evaluation of the factual situation, the criminal law was rightfully implemented, when it was concluded that it was not proven that defendant A.S. has committed the criminal offence with which he was charged.

As stated above pursuant to Article 387 of the PCPCK, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.211/2005, on 06.09.2005

Recording Clerk  
Drita Rexhaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 244 (1) ((3)) PCCK - producing counterfeit money -article 385 LCP- article 364 LCP- legal qualification - judgment legally unsustainable]**

*The District Prosecutor of Prishtina appealed the decision of the District Court in Prishtina, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged with producing counterfeit money, and was found guilty and was sentenced to a suspended sentence of 6-months imprisonment.*

*The Supreme Court ruled that the decision of the district court was senseless and in contradiction with itself, with the reasons it was based on. The Ambiguities and contradictions in the enacting clause of the decision had to do with legal qualification of the criminal offence. The Supreme Court ruled that the deficiencies and contradictions implied substantial violation of the provisions of criminal procedure as required by article 364 paragraph 1 item 11 of the LCP, and made the appealed decision legally unsustainable. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was not relevant to the subject matter.*

Ap.No.214/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema presiding judge, Riza Loci and Agim Krasniqi, members, and legal assistant Drita Rexhaj, acting in the capacity of the recording clerk, in the criminal case against defendant H.H., the criminal offence of producing counterfeit money, as provided for in article 244 paragraph 1 in conjunction with paragraph 3 of PCCK, based on the appeal of the District Prosecutor of Prishtina, against the judgment of District Court, Prishtina, P.No.208/2002 dated 21.02.2005, at the hearing of the panel on 20.09.2005, rendered the following:

RULING

Acting *ex-officio*, based on the appeal of the District Prosecutor of Prishtina, the judgement of District Court, Prishtina, P.No.208/2002

dated 21.02.2005 is annulled and the case is remanded to the same court for retrial.

### Reasoning

The District Court, Prishtina, P.No.208/2002 dated 21.02.2005, found defendant H.H., guilty for the criminal offence of producing counterfeit money, as provided for in article 244 paragraph 1 of PCCK, and imposed the sentence with imprisonment of 6 (six) months, which will not be executed if the defendant does not commit a new criminal offence within a period of 1(one) year.

The Court has also imposed protective measures against the defendant seizing counterfeit money. The defendant is obliged to pay court expenses according to court's final invoice and a lump sum fee of 50 (fifty) Euros.

The District Prosecutor in Prishtina, within the period allowed for filing the appeal, filled an appeal against the sentencing judgment, with a proposal that the Supreme Court amend the appealed judgment and the defendant found guilty for the criminal offence to charge with a more severe sentence.

The defence counsel of the defendant, the lawyer Aziz Rexha, responded to the appeal with a proposal that the Supreme Court of Kosovo rejects the appeal of District Prosecutor of Prishtina as unfounded and affirms the appealed judgment.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.214/2005, dated 13.05.2005, he proposed the approval of the appeal of the District Prosecutor of Prishtina, while the judgment of the first instance court is amended, in order that the defendant is charged with a more severe sentence for the criminal offence he was found guilty.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgment pursuant to article 376 of the LCP, and after the assessments of the claims stated in the appeal, found that:

The appeal of the District Prosecutor is not relevant to the subject matter.

Acting ex-officio, the Supreme Court assessed the appealed judgment, pursuant to dispositions of article 376 of LCP, finds that this judgment contains substantial violation of provisions of criminal procedure article 364 paragraph 1 item 11 of LCP.

The enacting clause of the appealed judgment appears to be senseless and in contradiction with itself, with the reasons it is based on. Ambiguities and contradictions in the enacting clause of the appealed judgment have to do with legal qualification of the criminal offence. The first instance Court finds that KFOR soldiers found in the vehicle of the defendant 4 counterfeit banknotes of 500 DM, for which the defendant knew, but failed to inform the competent body, where three banknotes of 500 DM was of the same serial number AA2452528S9, while the fourth banknote of the same value with serial number AA070554Y6. The Court finds that these actions of the defendant constitute the elements of the criminal offence of producing counterfeit money as provided for in article 244 of PCCK. Therefore, it comes out from the description given in the enacting clause that we have to do with a criminal offence as provided for in article 244 paragraph 3 of PCCK, while as it was stressed the defendant was found guilty for the criminal offence as provided for in article 244 paragraph 1 of PCCK.

The enacting clause of the appealed judgment is in the contradiction with the reasoning too. In the enacting clause is stated that defendant H.H. was found guilty for the criminal offence of producing counterfeit money as provided for in article 244 paragraph 1 of PCCK, while in the reasoning of the judgment the Court finds that in the actions of the defendant are constituted all elements of the criminal offence of producing counterfeit, as provided for in article 244 paragraph 3 of PCCK, with a justification that the defendant was aware about the counterfeit money and yet he failed to inform the competent body.

The above-mentioned deficiencies and contradictions present substantial violation of the provisions of criminal procedure as provided for in article 364 paragraph 1 item 11 of LCP, and make the appealed judgment legally unsustainable.

Therefore, due to above-mentioned reasons, the conclusion of

the first instance court cannot be approved as rightful and lawful, so the annulment of the appealed judgment was necessary and the case to return to the first instance court for retrial-article 385 of LCP.

In retrial, the first instance Court should act according to the above-mentioned remarks and after administering all evidences, to assess them pursuant to the article 347 of LCP and depending on the result of the verification of evidences, it should make right, lawful conclusions, based on the administered evidences and then make the right decision.

From the above-mentioned reasons, it comes out that the appeal of the of the District Prosecutor is unsubstantial

As stated above pursuant to Article 385 of LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTNA  
Ap.No.214/2005, on 20.09.2005

Recording Clerk,  
Drita Rexhaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 328 (2) PCCK- unauthorized ownership, control, possession or use of weapons - Appeal to Amend the Sentence- criminal liability - purpose of punishment]**

*The District Prosecutor of Mitrovica appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged unauthorized possession of weapons, and was found guilty, and was sentenced to a suspended sentence with imprisonment of 1 year.*

*The Supreme Court ruled that the social endangerment of the committed offence can not be considered as aggravating circumstance, although the intensity of the committed criminal offence, in every concrete case, has impact on the type and the length of the punishment.. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was founded.*

Ap.No.228/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Riza Loci and Agim Krasniqi, members, and legal assistant Drita Rexhaj, acting in the capacity of the recording clerk, in the criminal case against defendant E.M., so-called "Enko" from Mitrovica, the criminal offence of unauthorized ownership, control, possession or use of weapons, foreseen by Article 328 par.2 of Provisional Criminal Code of Kosovo (PCCK), based on the appeal of the District Prosecutor of Mitrovica, against the judgement of District Court, Mitrovica, P.No.36/2002 dated 10 March 2005, in the session held on 20 September 2005, rendered the following:

JUDGEMENT

With the approval of the appeal of the District Prosecutor, Mitrovica, the verdict of the District Court, Mitrovica, P.No.36/2002 dated 10 March 2005, is amended with regards to the decision on

punishment, meaning that the Supreme Court imposes a fine in the amount of 1,000 (one thousand) Euros, to defendant E.M., for the criminal act for which he has been found guilty, and for which the defendant is obliged to pay within 15 (fifteen) days, from the moment when this judgement enters into force. In the event of failure of payment, within the set time period, the punishment shall be enforced by imprisonment, calculating the fine with imprisonment, at the rate of 15 Euros per one day of imprisonment.

### Reasoning

The District Court, Mitrovica, with its decision P.No.36/2002 dated 10 March 2005, found defendant E.M. so-called "Enko", guilty on the charges of unauthorized ownership, control, possession or use of weapons, foreseen in Article 328 paragraph 2 of PCCK, for which the Court imposed a suspended sentence with imprisonment of 1 (one) year, which will not be executed if the perpetrator does not commit another criminal offence for the period of 2 (two) years, from the moment when this verdict came into effect. The Court has also imposed protective measures against the defendant seizing things: and one grenade of cluster type, functional with one bullet, 150 bullets 7.62 mm caliber for AK 47, 2 bullets 7.62 mm caliber for automatic gun, one primer of model AK-47, 5 bullets for automatic rifle "Kalashnikov", 1 trumolet and one rifle AK-47.

The defendant was set free of charges of the Court expenses.

The District Prosecutor of Mitrovica, within the period allowed for filing the appeal, filed an appeal against this judgement, with the proposal to amend the judgement in order that the defendant, who was found guilty for the criminal offence committed, be charged with an imprisonment.

The defense counsel, the attorney at law of the defendant Adem Vokshi in Mitrovica has proposed that the filed appeal is rejected as unfounded, while the appealed judgement is certified.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted

claim PPA.No.228/2005 dated 20 May 2005, e proposed the approval of the appeal, by supporting the appealed proposal made in it.

The Supreme Court of Kosovo, upon the review of all case files of this criminal case, analyzed the appealed judgement pursuant to article 376 of the Law on Criminal Procedure (LCP), and after the assessments of the claims stated in the appeal and of those responding to the appeal, found that:

The appeal is founded.

Since the judgement of the first instance Court is not appealed due to violation of the provisions on criminal procedure and of the criminal law to detriment of the defendant, the Supreme Court assessed the same pursuant to article 376 of LCP, *ex officio* and concluded that it does not contain substantial violation of the provisions of criminal procedure and of the criminal law to the determinant of the defendant, that would condition its annulment. Erroneous and incomplete certification of the factual situation was not appealed, so in this direction, the appealed judgement was not a subject of evaluation of this Court.

The Supreme Court, while evaluating the claims contained in the appeal, finds that they stand. According to the evaluation of this Court, the social endangerment of the committed offence can not be considered as aggravating circumstance, although the intensity of the committed criminal offence, in every concrete case, has impact on the type and the length of the punishment. Taking into account the fact that the defendant had in possession a great amount of ammunition, this presents high level of social endangerment, therefore the first instance Court concluded and assessed other circumstances which impact on type and length of the sentence, as foreseen by Article 41 of LPJ, then based on the assessment of this Court, the rendered sentence as in enacting clause of this judgement correspond to the intensity of social endangerment of the committed criminal offence and the level of criminal liability of the defendant as the perpetrator, by taking into consideration all circumstances of the concrete case, the circumstances under which the criminal offence was committed and with this such punishment the purpose of the punishment as foreseen with the law will be achieved.

As stated above pursuant to Article 387 of the LCP, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.228/2005, on 20.09.2005

Recording Clerk,  
Drita Rexhaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Procedure code- Article 328 (2) PCCK- unauthorized ownership, control, possession or use of weapons - Appeal to Amend the Sentence - article 403 (1) ((9)) PCPCK article 415 PCPCK - UNMIK Regulation No. 2001/7 Authorization of Possession of Weapons in Kosovo]**

*The District Prosecutor of Gjilan appealed the decision of the District Court in Gjilan, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged unauthorized possession of weapons, and was found guilty, and was sentenced to a suspended sentence with imprisonment of 3 months.*

*The Supreme Court ruled that the decision of the District Court contain substantial violation of the article 403, paragraph 1, point 9 of the PCPCK since in the main hearing the defendant was questioned before the presentation of evidences. Additionally the shotgun found in the defendant's house should be considered as criminal offence as required by article UNMIK Regulation No. 2001/7 on "Authorization of Possession of Weapons in Kosovo".*

*Accordingly, the Supreme Court ruled that the district prosecutor's appeal was not related to the subject matter.*

Ap.No.236/2005

#### IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Riza Loci, members, and legal assistant Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant H.H., from Gjilan, for the criminal offence of unauthorized ownership, control, possession or use of weapons, foreseen in Article 328 paragraph 2 of PCCK based on the appeal of the District Prosecutor of Gjilan, against the judgement of District Court, Gjilan, P.No. 170/2004 dated 18.04.2005, in the session held on 20.089.2005 in compliance with Article 410 of PCPCK, rendered the following:

#### JUDGEMENT

With the appeal of the District Prosecutor of Gjilan *ex-officio*, the verdict of the District Court of Gjilan, P.No.170/2004 dated 18.04.2005, is dismissed and the case is remanded to the same Court for retrial.

The appeal of the District Prosecutor of Gjilan is not related to the subject matter.

#### Reasoning

The District Court of Gjilan, found defendant H.H. guilty on the charges of unauthorized ownership, control, possession or use of weapons according to Article 328 par.2 of PCCK, for which the Court imposed a suspended sentence with imprisonment of 3 (three) months, which will not be executed if the perpetrator does not commit another criminal offence for the period of 1 (one) year, from the moment when this judgement enters into force. The defendant is obliged to pay expenses in accordance to the calculation of the Court and a lump sum fee of 50€. The Court has also imposed protective measures against the defendant seizing a shotgun, manufactured in Turkey, serial number 129026, 12 mm caliber and 12 bullets of the same gun.

The District Prosecutor, Gjilan within the period allowed for filing the appeal, filed an appeal against this judgement, with the proposal that the appealed judgement is amended and defendant be charged with effective imprisonment.

The Supreme Court, in compliance with the provision of the Article 410 of PCPCK, scheduled the hearing, and in a timely fashion notified the defendant and his defense counsel, who were not present.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.236/2005 dated 25.05.2005, proposed the approval of the appeal of the District Prosecutor of Gjilan as founded.

The Supreme Court of Kosovo, upon the review of all the case files of this criminal case, analysed the appealed judgement pursuant to article 415 of the PCPCK, and after the assessment of the claims stated in the appeal, found that:

Based on the appeal of the District Prosecutor of Gjilan, the appealed judgement is annulled.

The Supreme Court, acting *ex-officio*, in accordance with Article 415 par. 1, point 1 of PCPCK, found that there has been substantial violation of the provision in Article 403, paragraph 1, point 9 of PCPCK, since in contradiction with this provision, in the main hearing on 18.04.2005, although the defendant did not plead guilty on the charge, he was questioned before the presentation of evidences, which presents a substantial violation of the provisions of criminal procedure, which the Supreme Court is *ex-officio* obliged to observe.

The Supreme Court in its session, pursuant to article 415, paragraph 1, point 1, of PCPCK found that there was a substantial violation of the provision of Article 403, paragraph 1, point 9 of PCPCK, since in contradiction with this provision, in the main hearing on 18.04.2005, although the defendant did not plead guilty on the charge before the presentation of evidences, which presents a substantial violation of the provisions of criminal procedure. In the same way, this Court found that the appealed judgement contains substantial violation of the provisions of criminal procedure in Article 415, paragraph 1, point 4 of PCPCK, since we have to do with a shotgun which was found in the house of the defendant, and in accordance with Annex A of UNMIK Regulation No. 2001/7 on "Authorization of Possession of Weapons in Kosovo," it should be assessed that keeping the shotgun in the house presents a criminal offence.

The appeal of the District Prosecutor of Gjilan is unfounded for the time being.

As stated above pursuant to Article 424 of the PCPCK, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.236/2005, on 20.09.2005

Recording Clerk,  
Minire Xhambazi

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Articles 8.2 and 8.6 - UNMIK Regulation 2001/7 - Unauthorized Ownership, Control, Possession and Use of weapons and ammunition - appeal to amend the sentence - factual situation - Mitigating Circumstances]**

*The Defense counsel appealed the decision of the District Court in Prishtina, arguing that the court had erroneously and incompletely determined the factual situation.*

*The defendant was charged with unauthorized ownership, control, possession, or use of weapons and ammunition, and was found guilty, and was sentenced to a fine as well as protective measures.*

*The Supreme Court ruled that the decision of the District Court could not be disputed for erroneous and incomplete determination of factual situation since the entire appeal was oriented towards the sentenced judgement, therefore it is stressed that the rendered punishment is high.*

*The Supreme Court ruled that the District Court had correctly assessed all mitigating circumstances when decided about the type and the length of the punishment and considered that the imposed punishment corresponds to the level of the criminal liability of the defendant. Accordingly, the Supreme Court ruled that the defense counsel appeal was unfounded.*

Ap.No.240/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, kryetar, Riza Loci and Agim Krasniqi, members, and legal assistant Drita Rexhaj, acting in the capacity of the recording clerk, in the criminal case against defendant E.K., from the village Ladovc, Podujevo Municipality, for the criminal offence pursuant to Article 8.2, punishable according to 8.6 of Regulation 2001/17 on Authorization of Possession of Weapons in Kosovo, based on the appeal against the judgement of the District Court in Prishtina P.No.103/2004 dated 24 March 2005, in its session held on 20 September 2005, rendered the following

JUDGEMENT

The appeal of the defense counsel of defendant E. K. is rejected as unfounded, while the judgement of the District Court of Prishtina, P.No.103/2004 dated 24 March 2005, is reaffirmed.

Reasoning

The District Court, Prishtina, with its decision P.No.103/2004 dated 24 March 2005 found defendant E.K. guilty of the criminal offence pursuant to Article 8.2, punishable according to Article 8.6 of the Regulation 2001/7 on Authorization of Possession of Weapons in Kosovo, for which the Court imposed a sentence of a fine in the amount of 300 (three hundred) Euros, which the defendant is obliged to pay within 15 (fifteen) days, from the moment when this verdict came into effect. In the event of failure of payment, within the abovementioned time-period, the punishment shall be enforced by imprisonment, calculating the fine with imprisonment, at the rate of 15 Euros per one day of imprisonment. The defendant is obliged to pay Court's expenses in accordance to the calculation of the Court and a lump sum fee of 30 Euros. The Court has also imposed protective measures against the defendant seizing the weapon and ammunition.

Against this judgement the appeal was filed by the defendant due to erroneous and incomplete assessment of factual situation and decision on punishment, with the proposal that the appealed judgement is annulled and the case is remanded to the first instance Court for retrial.

The Public Prosecutor of Kosovo, although notified in a timely fashion about the hearing was not present, however in the submitted claim PPA.No.240/2005 dated 14.06.2005, he proposed to reject the appeal as unfounded, by amending the judgement regarding the legal qualification in order that the Supreme Court finds the elements of criminal offence in the actions of the defendant, such as unauthorized ownership, control, possession or use of weapons, pursuant to Article 328 par.2 of the Provisional Criminal Code of Kosovo (PCCK).

The Supreme Court of Kosovo, upon the review of all the files of this criminal case, analyzed the appealed judgement pursuant to article 376 of the Law on Criminal Procedure (LCP) and after the

assessments of the claims stated in the appeal, found that:

-the appeal is unfounded.

Since the judgement of the first instance Court is not appealed, because it contains substantial violation of the provisions of criminal procedure, the Supreme Court, pursuant to article 376 of the LCP, notices there has been no *ex officio* violation of the provisions of the Criminal Procedure, which would cause its annulment.

Although it was emphasized in the appeal that the judgement of the first instance Court is appealed due to erroneous and incomplete assessment of the factual situation, in fact the factual situation certified by the first instance Court cannot be disputed. Practically the entire appeal is oriented towards the appeal ground against the judgement, therefore it is stressed that the rendered punishment is high, because of difficult economic situation, which would bring the family in a very difficult situation.

The Supreme Court, while evaluating the claims contained in the appeal, finds that the first instance court has rightfully and completely evaluated all circumstances pursuant to Article 41 of the LPJ, when decided about the type and the length of the punishment. Therefore, bearing in mind all circumstances of the concrete case, the rendered punishment against the defendant completely matches the level of criminal liability of the defendant as a perpetrator as well as with the intensity of endangerment or the punishment of the protected value and with this the purpose of the punishment foreseen with Article 33 of the LPJ would be best achieved.

As stated above pursuant to Article 385 of the LCP, the Court decided as in the enacting clause of this judgement

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.240/2005, on 20.09.2005

Recording Clerk,  
Drita Rexhaj

Presiding Judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 328 (2) PCCK- unauthorized ownership, control, possession or use of weapons - Appeal to Amend the Sentence - article 64 PCPK - mitigating circumstances- criminal liability]**

*The District Prosecutor of Mitrovica appealed the decision of the District Court in Mitrovica, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged unauthorized possession of weapons, and was found guilty, and was sentenced to a 4 months imprisonment which will not be enforced if the defendant does not commit any criminal offence within 1 (one) year.*

*The Supreme Court ruled that the presence of mitigating circumstances of the defendant on one hand and the lack of aggravating circumstance on the other hand do not justify the suspended sentence, based on the high level of social risk of this offence. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was founded.*

Ap.No.278/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Ziti Xhemajli, presiding judge, Avdi Dina and Miftar Jasiqi, members, and Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant Sh.U, from Mitrovica, charged with unauthorised ownership, control, possession or use of weapons, pursuant to article 3, paragraph 2 of PCPK, deciding based on the appeal of the Public District Prosecutor of Mitrovica, against the District Court of Mitrovica in its judgement P.No. 223/2004 dated 19.05.2005, in the session held on 27.09.2005, rendered the following:

JUDGEMENT

With the approval of the appeal submitted by the District Prosecutor in Mitrovica, the judgement of District Court of Mitrovica, P.No.223/2004 dated 19.05.2005, is amended in relation with the

decision on punishment, therefore the Supreme Court sentences the defendant with 500 (five hundred) Euros fine for the criminal offence that for which it was found guilty. The defendant should pay the fine within 15 (fifteen) days after the entry into force of the judgement, with a threat that if the fine is not paid within this period, the sentence shall be enforced with imprisonment, calculating 15 (fifteen) Euros per one day of imprisonment. Reasoning

The District Court of Mitrovica, with its decision P.No.223/2004 dated 19.05.2004, found defendant Sh.U guilty on the charge for non-authorized ownership, control, possession and use of weapons, pursuant to article 328, paragraph 2, of PCCK and sentenced the defendant with imprisonment of 4 (five) months, which will not be enforced provided that the defendant does not commit any criminal offence within 1 (one) year.

The Defendant is obliged to pay procedural expenses determined by the Court, as well as the lump sum of 100 Euros within 15 days after the entry into force of the judgement. A security measure was imposed to the defendant seizing the revolver CZ-TT and five bullets, which is the object used to commit the criminal offence.

The Public District Prosecutor of Mitrovica has appealed against this judgement with regards to the decision on punishment, proposing to amend the appealed judgement and to impose a sentence of effective imprisonment to the defendant.

The Public Prosecutor Office in Kosova, in submission PPA.No.278/2005 dated 13.07.2005, proposed to approve the appeal of Public District Prosecutor of Prishtina.

The Supreme Court of Kosovo, upon reviewing all case files of this criminal case, analyzing the appealed judgement and after the evaluation of claims stated in the appeal, found that:

The Appeal is founded.

Since the appealed judgement does not contain any substantial violation of provisions of criminal procedures nor any violation of criminal code, for which the Supreme Court is *ex officio* obliged to observe pursuant to the provisions of Article 415, paragraph 1 of

PCPCK, and also provided that the factual situation was determined fairly and completely, the Court restrained itself only in evaluation of the claims stated in appeal in relation with the decision on punishment.

District Prosecutor in its appeal emphasized that the punishment pronounced by the Court of first instance is too lenient and is not in conformity with the level of criminal responsibility because the Court of first instance has overvalued the mitigating circumstances when determining the type and the height of sentence in compliance with article 64 of CCY. The Court has considered as mitigating circumstances his financial situation and whether he was sentenced before, whilst it did not find any aggravating circumstances for the same.

Upon the evaluation of claims stated in the appeal and pleadings, the Supreme Court finds that when imposing the sentence against defendant Sh.U, the Court of first instance by not finding specific mitigating circumstances has conditioned the sentence described in the enacting clause of the first instance judgement. This Court recognizes the mitigating circumstances of the defendant recognized in the appealed judgement. However, the presence of these mitigating circumstances of the defendant on one hand and the lack of aggravating circumstance on the other hand do not justify the suspended sentence, based on the high level of social risk of this offence and taking into account that such offences have been increasing in Kosovo after the war. Therefore, the Supreme Court based on this amended the appealed judgement in relation with the decision on the punishment and sentenced the defendant with 500 (five hundred) euros fine, reassured that such punishment is in proportion with the high risk of the offence to the society and criminal level of responsibility of the defendant, and that in general would achieve the objective of the punishment.

As stated above, pursuant to Article 426 of PCPCK, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.278/2005, on 27.09.2005

Recording clerk  
Minire Xhambazi

Presiding judge,  
Zait Xhemajli

**Supreme Court - ruling on Articles 8.5 UNMIK Regulation 2001/7 - Authorisation of Possession of Weapons in Kosovo - Appeal to Amend the Sentence - factual situation - violation of criminal procedure-364, (1), ((11)) CPL article 32 PCPCK- timing of criminal act]**

*The Defense counsel appealed the decision of the District Court in Peja, arguing that the court had erroneously and incompletely determined the factual situation and had violated the provisions of the criminal procedure law. The defendant was charged with unauthorized ownership, control, possession, or use of weapons and ammunition, and was found guilty, and was sentenced to 3 months imprisonment.*

*The Supreme Court ruled that the decision of the district Court contain essential violations of the provisions on the criminal procedure because the enacting clause of the appealed judgement becomes incomprehensible because does not contain the exact date of criminal offence committed by the defendant, as required by article 364, paragraph 1, point 11 of the CPL.*

*The Supreme Court ruled that the timing of criminal act is a substantial element when qualifying criminal offences and the criminal responsibility of the defendant, as required by article 32 of the PCPCK. Accordingly, the Supreme Court ruled that the defense counsel appeal was founded.*

Ap.No.310/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Hasmdi Podvorica dr. sc. and Riza Loci, members, and Mejreme Mema, acting in the capacity of the recording clerk, in criminal act against defendant Q.Gj for the criminal offence as provided for in article 8.5 in relation with UNMIK Regulation No. 2001/7 on Authorisation of Possession of Weapons in Kosovo, deciding based on the appeal of defendant Q.Gj and his counsel, Teki Bokshi, against the judgement of the District Court in Peja P.No.2001/03 dated 27 April 2005, in the session held in terms of provisions of article 371 of the CPL, on 13 September 2007, rendered the following:

JUDGEMENT

The appeals of defendant Q.Gj and his counsel are deemed founded, therefore the judgement of the District Court in Peja P.No.143/2004 and the case is remanded for retrial.

Reasoning

The District Court in Peja, with its decision P.No.143/2004, found defendant Q.Gj guilty on the offence as provided for in article 8.5 in relation with article 8.3 of UNMIK Regulation No. 2001/7 on Authorisation of Possession of Weapons in Kosovo and sentenced the defendant with imprisonment of 3 (three) months. The revolver "Mod", 7.65 mm caliber, serial No. 22336 and 4 bullets were seized from the defendant. He is obliged to pay a lump sum of 20 € and 50 € for criminal Court expenses.

Against this judgement, appeals were filed from:

- the defendant Q.Gj appealed on the ground of substantial violations of provisions of criminal procedures; erroneous and incomplete determination of factual situation; due to the decision on criminal sanction; Court decision on Court expenses and lump sum payment, however from the content of the appeal derives that the abovementioned judgement is appealed only for criminal sanctions' appeal grounds, with a proposal to amend the sentencing and to pronounce a sentence significantly lighter, a suspended sentence or a fine. The defendant in his appeal demanded from the Court to notify him and his counsel on the panel session.

- The defense counsel of Q.GJ, attorney at law, Teki Boksi on the grounds of the decision on criminal sentence, proposed to amend the appealed judgement in relation with the same so that a significantly lighter sentence is pronounced to the defendant - a suspended sentence or fine.

Public Prosecutor of Kosova in its submission PPA.No.310/2005 dated 27 August 2005 proposed that the appeal of defendant Q.GJ and his attorney at law Teki Bokshi, are rejected as unfounded.

The Lawyer Teki Bokshi based on article 371 of the CPL was present in the session of the Kosovo Supreme Court panel and after explaining the content of the appeal, adhered entirely to the claims of the appeal. The defendant and the Public Prosecutor of Kosovo were not present at the session even though a notice was sent to them appropriately.

The Supreme Court of Kosovo reviewed the case files together with the appealed judgement within the meaning of article 376 of the CPL and after evaluation of claims stated in the appeal, found that:

The Defendant's appeal is founded.

The appealed judgement contains essential violations of the provisions on the criminal procedure foreseen in article 364, paragraph 1, point 11 of the CPL. Enacting clause of the appealed judgement becomes incomprehensible because does not contain the exact date of criminal offence committed by defendant. The timing of criminal act is a substantial element when qualifying criminal offences. The determination of the law applicable in the concrete case or the law that was applicable when the criminal offence was committed is based on the time when the offence was committed. Pursuant to provisions of the article 32 of the PCKK, it is asserted that "Criminal offence is committed at the time the perpetrator acted or ought to act, irrespective of when the consequence occurred." Criminal responsibility of the defendant is determined also with the time of commission of criminal offence. Pursuant to the provisions of Article 91 of PCKK, "the statutory limitation on criminal prosecution commences on the day when the criminal offence was committed. Therefore, non-determination of the time of commission of criminal offence in the enacting clause makes the judgement unfounded.

Moreover, the enacting clause of the appealed judgement is contradictory to itself and to the reasoning of the judgement. This contradiction is made clear by the fact that the enacting clause does not contain the name of injured party. The identity of the injured party is shown only in the reasoning part (paragraph 1 in the third page) which is the spouse of defendant, F.GJ. Crucial facts such as the defendant brandished the revolver in threatening, intimidating or in other manner were not presented. It is worth to mention that the use or brandishing a weapon in threatening and intimidating manner is an element of

criminal offence described in article 8.3 in relation with article 8.5 of the UNMIK Regulation 2001/7 on Authorisation of Possession of Weapons in Kosovo. For the time being, this results that the application of the criminal code could not be fair, for which reason the appealed judgement had to be annulled and the case had to be remanded to the Court of the first instance for retrial.

Upon the re-administering of evidence, evaluating each point, elimination of abovementioned procedural violations, as well as upon evaluation of other appeals stated in claim, the Court of the first instance in the retrial rendered a fair decision on this criminal case.

The appeal of defendant Q.Gj, represented by attorney at law, Teki Bokshi, for the time being is non-substantial.

As stated above, pursuant to Article 385 of CPL, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.310/2005, on 20.09.2005

Recording clerk  
Mejreme Mema

Presiding judge,  
Gjuran Dema

**[Supreme Court - ruling on Criminal Code- Article 328 (1) PCCK- unauthorized ownership, control, possession or use of weapons - Appeal to Amend the Sentence - mitigating circumstances- criminal liability]**

*The District Prosecutor of Prizren appealed the decision of the District Court in Prizren, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged offence of unauthorised ownership, control, possession and use of weapons, and was found guilty, and was sentenced to a suspended sentence.*

*The Supreme Court ruled that the District Court had correctly assessed all mitigating circumstances when decided about the type and length of the punishment and considered that the imposed punishment corresponds to the level of the criminal liability of the defendant. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was unfounded.*

Ap.No.315.2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Gjuran Dema, presiding judge, Agim Krasniqi and Riza Loci, members, and Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant F.K, from Astrazub village, Municipality of Malishevo, for the criminal offence of unauthorised ownership, control, possession or use of weapons as provided for in Section 328, paragraph 1 of the PCCK (Provisional Criminal Code of Kosovo), deciding based on the appeal of the Public District Prosecutor of Prizren, against the District Court in its judgement P.No. 19/2004 dated 06.06.2005, in the session held on 27.09.2005, rendered the following:

RULING

The appeal of the Public District Prosecutor of Prizren is rejected, whereas the judgement of the District Court in Prizren, P.No.19/2004 dated 06.06.2005, is affirmed.

Reasoning

The District Court of Prizren, with its decision P.No.19/2004 dated 06.06.2006, found defendant F.K. guilty on the offence of unauthorized ownership, control, possession and use of weapons as provided for in article 328, paragraph 1, of the Provisional Criminal Code of Kosovo and imposed a suspended sentence upon the defendant, in which case he was sentenced with 1 (one) year of imprisonment which will not be executed within a period of 2 (years) if the defendant does not commit any criminal offence during this period. A security measure was pronounced for confiscation of the object, rifle "AK-47", 7.62 mm caliber, and five bullets of the same caliber. The defendant is obliged to pay the Court lump sum amount of 100€, within 15 days after the entry into force of this judgement, with threats of force execution of the same.

The Public District Prosecutor of Prizren has appealed within legal time limit due to the punishment measure, with a proposal to amend the appealed judgement and to impose a severe punishment against the defendant.

The Public Prosecutor of Kosovo was not present in the session despite the fact that he was notified for the same, but in its pleading PPA.No.315/2005 proposed to annul the decision and to remand the case to the Court of the first instance for retrial.

The Supreme Court upon reviewing the case files, analyzing the appealed judgement also in compliance with the provisions of article 376 of the CPL and upon evaluation of claims stated in the appeal, found that:

The Appeal is unfounded.

The appealed judgement does not contain any essential violations of criminal procedure provisions and violation of the criminal code, for which this Court has to take care, in compliance with provisions of article 376 of the CPL.

This Court upon evaluation of the appealed judgement with regards to the decision on punishment accepts the mitigating

circumstances asserted and evaluated in the appealed judgement, in particular by taking into account the mitigating circumstance the defendant deeply regrets for the committed offence and that he will not commit any other criminal offence, where it could not find any aggravating circumstance which would have influence in deciding the punishment measure, whilst the circumstance stated in the appeal where people are not allowed to have a weapon/rifle under on ownership and on possession neither, cannot be considered as aggravating circumstance, since the same is an element of the criminal offence, therefore the Court pronounced suspended offence against the defendant, according to which he was sentenced with 1 (one) year imprisonment, which will not be executed if the defendant does not commit any other criminal offence within that period, and that the goal foreseen in provisions of Article 51 of the CLY, applicable pursuant to UNMIK Regulation on Applicable Law would be achieved through this suspended sentence. Therefore, the appeal is unfounded in this direction.

As stated above, pursuant to article 384 of the CLK, the Court decided as in the enacting clause of the judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.315/2005, on 27.09.2005

Recording clerk  
Minire Xhambazi

Presiding judge,  
Gjuran Dema

**[Supreme Court - ruling on Articles 8.3 and 8.5 - UNMIK Regulation 2001/7 - Unauthorized Ownership, Control, Possession and Use of weapons and ammunition - Appeal to Amend the Sentence - Mitigating Circumstances]**

*The District Prosecutor of Prishtina appealed the decision of the District Court in Prishtina, arguing that the District Court sentence was too lenient, proposing to impose a more severe punishment.*

*The defendant was charged with unauthorized ownership, control, possession, or use of weapons and ammunition, and was found guilty, and was sentenced to a suspended sentence of 5 months of imprisonment.*

*The Supreme Court ruled that the presence of mitigating circumstances of the defendant on one hand and the lack of aggravating circumstance on the other hand do not justify the suspended sentence, based on the high level of social risk of this offence. Accordingly, the Supreme Court ruled that the district prosecutor's appeal was founded.*

Ap.No.323/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Zait Xhemajli, presiding judge, Avdi Dina and Miftar Jasiqi, members, and Minire Xhambazi, acting in the capacity of the recording clerk, in the criminal case against defendant T.K, from Kolovice e Vjeter village, Municipality of Prishtina, for the criminal offence as provided for in article 8.3 in relation with 8.5 of the UNMIK Regulation 2001/7 on Authorization of Possession of Weapons in Kosovo, deciding on the appeal of the Public District Prosecutor of Prishtina, against the District Court of Prishtina in its judgement P.No. 579/2003 dated 05.05.2005, in the session held on 27.09.2005, rendered the following:

RULING

With the approval of the appeal submitted by the District Prosecutor of Prishtina, the judgement of the District Court of Prishtina, P.No.579/2003 dated 05.05.2005, is amended only in relation to the

decision on punishment, therefore the Supreme Court finds the defendant guilty for the criminal offence and sentences him with 5 (five) months of imprisonment.

#### Reasoning

The District Court of Prishtina, with its decision P.No.579/2003 dated 05.05.2004, found defendant T.K guilty of the offence as provided for in article 8.3 in relation with 8.5 of the UNMIK Regulation 2001/7 on Authorization of Possession of Weapons in Kosovo, and sentenced the defendant of 5 (five) months of imprisonment, which will be executed within 2 (two) years from the day of entry into force of this decision, if the defendant does not commit any other criminal offence during this period. The Defendant is obliged to pay procedural expenses determined by the Courts, as well as the lump sum of 50 Euros within 15 days after the entry into force of the judgement. A security measure was imposed to the defendant by seizing the revolver "Zastava" which as an object used to commit the criminal offence.

The Public District Prosecutor of Prishtina has appealed against this judgement due to the punishment measure, with a proposal to amend the appealed judgement and to impose a sentence of effective imprisonment to the defendant.

The Public Prosecutor Office in Kosovo, in submission PPA.No. 323/2005 dated 11.08.2005, he proposed to approve the appeal of the Public District Prosecutor of Prishtina.

The Supreme Court of Kosovo, upon review of all files of this criminal case, analyzed the appealed judgement and after the evaluation of the claims stated in the appeal, found that:

The Appeal is founded.

Since the appealed judgement does not contain any substantial violation of provisions of criminal procedures and neither any violation of criminal code, for which the Supreme Court takes care pursuant to the provisions of Article 376, paragraph 1 of the PCPCK, and also provided that the factual situation was determined fairly and completely, the

Court restrained itself only in evaluation of the claims stated in the appeal in relation with the decision on punishment.

The District Prosecutor in its appeal emphasized that the sentence pronounced by the first instance court is too lenient and is not in conformity with the level of the criminal liability because the first instance court has overvalued the mitigating circumstances when determining the type and the height of the sentence in compliance with article 41 of the CLY. The mitigating circumstance considered by the Court was the fact that the defendant is a father to three children, and that he was never sentenced before, and furthermore a long period of time has passed from the time of commission of the criminal offence, whilst the Court could not find any particular aggravating circumstances for the defendant.

Upon the evaluation of claims stated in the appeal, the Supreme Court finds that when imposing the sentences against defendant T.K, the first instance court did not address specific mitigating circumstances, which have conditioned the sentence provided in the enacting clause of the first instance judgement. This Court recognizes the mitigating circumstances of the defendant, recognized in the appealed judgement. However, the presence of these mitigating circumstances on one hand, and the lack of aggravating circumstance on the other hand, do not justify the suspended sentence, based on the high level of social risk caused by this offence and taking into account that such offences have been increasing in Kosovo after the war. Based on this, the Supreme Court amended the appealed judgement in relation with the decision on the punishment and sentenced the defendant with 5 (five) months of imprisonment, reassured that such punishment is in proportion with the high risk of the offence to the society and criminal level of liability of the defendant, and that in general would achieve the objective of the punishment.

As stated above, pursuant to Article 378 of the CPL, the Court decided as in the enacting clause of this judgement.

SUPREME COURT OF KOSOVO, PRISHTINA  
Ap.No.323/2005, on 27.09.2005

Recording clerk  
Minire Xhambazi

Presiding judge,  
Zait Xhemajli