

**BASIC COURT OF MITROVICË/MITROVICA**

**P.nr. 59/2014**

**20 April 2015**

**IN THE NAME OF THE PEOPLE**

**THE BASIC COURT OF MITROVICË/MITROVICA**, in the Trial Panel composed of EULEX Judge Paulo Teixeira as Presiding Judge and EULEX Judges Nuno Manuel Ferreira de Madureira and Franciska Fiser as Panel Members, with the participation of EULEX Legal Officer Vera Manuello as Recording Officer, in the criminal case P.nr. 59/2014:

*Against:*

**R.R.** \_\_\_\_\_ (**aka. K** \_\_\_\_\_), born on \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_, father's name Z. \_\_\_\_\_, occupation: \_\_\_\_\_, formerly residing in \_\_\_\_\_, \_\_\_\_\_, Kosovo, married, Passport or ID No. \_\_\_\_\_, Driving Licence No. \_\_\_\_\_; Currently in detention on remand;

and

**M. "D" V.** \_\_\_\_\_, born on \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_, father's name D. \_\_\_\_\_, occupation: \_\_\_\_\_, currently residing at \_\_\_\_\_, Kosovo, married, ID card no. \_\_\_\_\_; Currently released on bail;

*Accused* through the Indictment of the State Prosecutor in Mitrovica dated 07 May 2014 and filed with the Registry on 08 May 2014 with the criminal offences of:

1. **Aggravated Murder** in violation of Articles 146 and 147(4), (6), (8) and (10) of the Criminal Code of Kosovo, UNMIK/REG/2003/25 (CCK) as read in conjunction with Article 23 of the CCK *pari materia* of Articles 178 and 179(1.5), (1.7), (1.9) and (1.10) of the Criminal Code of the Republic of Kosovo, Code No. 04/L-082 (CCRK) as read in conjunction with Article 31 of the CCRK;
2. **Attempted Aggravated Murder** in violation of Articles 146 and 147(4), (6), (8) and (10) of the CCK as read in conjunction with Articles 20 and 23 of the CCK *pari materia* of Articles 178 and 179 (1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK;
3. **Unauthorized Ownership, control, possession or use of a weapon** in violation of Article 328(1) and (2) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* with Articles 374 of the CCRK as read in conjunction with Article 31 of the CCRK;

4. **Obstructing official persons in performing official duties** in violation of Article 316(1) and (3) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Articles 409(1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK;

5. **Endangering public traffic by dangerous act or means** in violation of Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 380(1) of the CCRK as read in conjunction with Article 31 of the CCRK;

6. **Causing general danger** in violation of Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK;

7. **Participating in a crowd committing a criminal offence** in violation of Article 320(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 412 of the CCRK as read in conjunction with Article 31 of the CCRK;

*After having held* the Main Trial hearings, all open to the public, on 19 (suspended), 20 and 29 January 2015, 27 February 2015, 09, 12, 17, 18, 20 and 23 March 2015, 01 and 16 April 2015, in the presence of the Prosecutor, the Accused **R.R.** \_\_\_\_\_, his Defence Counsels Zivojin Jokanovic and/or Nebojsa Vlajic, the Accused **M.V.** \_\_\_\_\_, his Defence Counsel Agim Lushta, the Victims representative Burhan Maxhuni and the Injured Parties D.Z. \_\_\_\_\_ and D.P. \_\_\_\_\_.

*After having held* the Main Trial hearings, closed to the public, on 29 January 2015 at 15:27hrs until 15:50hrs and on 30 January 2015, in the presence of the Prosecutor, the Accused **R.R.** \_\_\_\_\_, his Defence Counsels Zivojin Jokanovic and/or Nebojsa Vlajic, the Accused **M.V.** \_\_\_\_\_, his Defence Counsel Agim Lushta, the Victims representative Burhan Maxhuni and the Injured Parties D.Z. \_\_\_\_\_ and D.P. \_\_\_\_\_.

*Having heard* the parties' closing statements on 16 April 2015,

*Having into consideration* that the Court is not bound by the legal qualification of the criminal offence as set out in the Prosecution's Indictment according to Article 360 Paragraph (2) of the Criminal Procedure Code, Criminal No. 04/L-123 (CPC) and that the Court may *ex officio* re-classify the original criminal offence into a different one based on facts not entirely coincident with those described in the Indictment but which do not configure a substantial change in the circumstances,

*Following* the Trial Panel's deliberation and voting held on 19 and 20 April 2015,

*Within* the legal prescribed period of time as set in Article 366 Paragraph (1) and Article 446 Paragraph (4) of the CPC,

Pursuant to Article 366 Paragraph (1) of the CPC, on 20 April 2015, in a public hearing and in the presence of the Accused persons, their Defence Counsel, the State Prosecutor, the Injured parties and their representative,

***Renders the following:***

## **J U D G M E N T**

**I. The Accused M.V. \_\_\_\_\_, personal data as above, Under Count 1 is found NOT GUILTY**

Because it was proven beyond reasonable doubt that:

1. On the 26th of July 2011, at approximately 13:30 hrs, more than fifty (50) Kosovo \_\_\_\_\_, members of the \_\_\_\_\_ (\_\_\_\_\_), who were on standby at the Mitrovicë/a \_\_\_\_\_ base, located in \_\_\_\_\_, received the order to depart in the direction of Gate 31 in order to take control of the border point. The convoy of \_\_\_\_\_ vehicles therefore left the \_\_\_\_\_ base: the convoy consisted of two armoured vehicle (one of them was leading the convoy and the second one was at the end of the convoy) and approximately 10-12 \_\_\_\_\_ vehicles were between the armoured cars. While proceeding towards Gate 31 along the main asphalted road between Mitrovicë/a and Zubin Potok, in the vicinity of the village of Qaber, the \_\_\_\_\_ convoy encountered a first barricade made of stones and sand which prevented the convoy from further proceeding along the main road. Therefore, the \_\_\_\_\_ convoy used an alternative/secondary road in order to overcome the barricade and then went back on the main road in the direction of Gate 31.
2. Having proceeded for some 10 minutes, in the area located between the village of Varage and the village of Zupce the \_\_\_\_\_ convoy encountered a second obstacle: this time a barricade made up of three (3) vehicles placed in the middle of the road. The passengers and drivers of the three vehicles stepped out of their cars and started confronting the \_\_\_\_\_, by screaming and making gestures at them.
3. Around Eight (8) persons stepped out of the vehicles, and started to argue with the \_\_\_\_\_. A few moments later one more vehicle with two (2) persons approached and stopped at some distance from the barricade. Some \_\_\_\_\_ got out of their vehicles and ordered (in Serbian and Albanian language) to the persons who were blocking and obstructing the public highway to remove the obstructions and remove their cars. These persons did not obey that order and continued screaming and shouting at the \_\_\_\_\_, gesturing and raising their fingers at the \_\_\_\_\_. At that point the operation leader gave the order that the armoured vehicle should proceed and push away the vehicles of the barricade. As soon as the armoured vehicle approached the vehicles that were blocking the road, the around eight (8) persons who were standing behind the barricade left and entered the woods located on left side. As soon as the persons left the barricade a first single fire shot was heard and the \_\_\_\_\_ involved in the operation were immediately informed that one of them had been severely injured. Immediately following these rapid shooting ensued from the front-left side of the \_\_\_\_\_ convoy.

4. A bullet had hit the face of the victim and injured party, E.Z. \_\_\_\_\_, member of the \_\_\_\_\_ Unit, who was driving the second vehicle of the \_\_\_\_\_ convoy. At the moment he was hit, his vehicle was positioned parallel to the armoured vehicle leading the convoy.

5. After the first shot which had hit E.Z. \_\_\_\_\_, rapid shooting started against the vehicles from three different directions and it lasted for an undetermined period of time no longer than fifteen (15) minutes. The \_\_\_\_\_ fired back in order to defend themselves and to recover the body of the injured \_\_\_\_\_ that was moved to the armoured vehicle. The shooting against the \_\_\_\_\_ convoy lasted until the convoy pulled back moving in the direction of Mitrović/a.

6. The incident took place on a bright summer afternoon when the weather was fine with good visibility.

7. Mr. F.U. \_\_\_\_\_ was assigned to the armoured vehicle which was leading the \_\_\_\_\_ convoy heading towards Gate 31. The witness Mr. F.U. \_\_\_\_\_ was inside the leading armoured vehicle and the distance between him and the perpetrators was not clearly determined but was no more than 20 meters from the barricade.

8. On the 26th of July 2011 between the hours of 13:30 hours and 14:25 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, one undetermined group of people acted depriving the life of E.Z. \_\_\_\_\_ for racial and national motives due to his \_\_\_\_\_ and Kosovar nationality at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car.

9. M.V. was fully mentally competent.

**But also it was not proven beyond reasonable doubt that:**

1. On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, the Defendants R.R. \_\_\_\_\_ and M "D" V \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his unlawful conduct and actions being part of the named group of persons in the commission /depriving the life of E.Z. \_\_\_\_\_ for racial and national motives due to his \_\_\_\_\_ and Kosovar nationality, at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car.
2. That the number of vehicles at or near the barricade was more than four (4).
3. That the number of the persons at the barricade were more than around eight (8) .
4. That the Defendant and Co-defendant were blocking and obstructing the public highway.
5. That the shootings lasted at least 20 minutes.

Therefore is ACQUITTED of having committed the criminal offence of Aggravated Murder contrary to Articles 146 and 147 paragraphs 4, 6, 8 and 10 of the CCK as read in conjunction with Article 23 of CCK pari materia with Articles 178 & 179 1.5, 1.7, 1.9 and 1.10 of the CCKR as read in conjunction with Article 31 of the CCKR.

**2. The Accused M.V. \_\_\_\_\_, personal data as above, Under Count 2 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants R.R. \_\_\_\_\_ and M "D" V \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional and unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of "Attempted Aggravated Murder" to deprive the lives of other passengers ( \_\_\_\_\_ B.M. and D.P. \_\_\_\_\_), in the car with the deceased injured party E.Z. \_\_\_\_\_, for racial and national motives due to his \_\_\_\_\_ and Kosovar nationality, at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and, in doing so, also intentionally endangered the lives of \_\_\_\_\_ B.M. \_\_\_\_\_, D.P. \_\_\_\_\_ and other \_\_\_\_\_ in the convoy of vehicles at the locus in quo.

Therefore is ACQUITTED of having committed the criminal offence of "Attempted Aggravated Murder" in violation of Articles 146 and 147 paragraphs 4, 6, 8 and 10 of the CCK as read in conjunction with Articles 20 and 23 of the CCK pari materia with Articles 178 & 179 1.5, 1.7, 1.9 and 1.10 of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK.

**3. The Accused M. V. \_\_\_\_\_, personal data as above, Under Count 3 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants R.R. \_\_\_\_\_ and M "D" V \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of "Unauthorized ownership, control or possession of weapons", controlled and possessed a weapon used in the Aggravated Murder of E.Z. \_\_\_\_\_ in violation of the applicable law relating to such weapon.

Therefore is ACQUITTED of having committed the criminal offence of "Unauthorized Ownership, Control, Possession or Use of Weapons" in violation of Article 328 paragraphs 1 and 2 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 374 of the CCRK as read in conjunction with Article 31 of the CCRK.

**4. The Accused M. V. \_\_\_\_\_, personal data as above, Under Count 4 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional and unlawful conduct and actions being part of the named group of persons using force and serious threats to obstruct the \_\_\_\_\_ at the locus in quo in performing their lawful official duties.

Therefore is ACQUITTED of having committed the criminal offence of "Obstructing Official Persons in Performing Official Duties" in violation of Article 316 paragraphs 1 and 3 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 409 (1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK.

**5. The Accused M.V. \_\_\_\_\_, personal data as above, Under Count 5 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions, being part of the named group of persons, destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok municipality, giving erroneous signs, signals, placing obstacles and barricades on the said public road thereby endangering traffic, human life, the physical safety and properties on a large-scale.

Therefore is ACQUITTED of having committed the criminal offence of "Endangering Public Traffic by Dangerous Acts or Means" in violation of Article 299 paragraph 1 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 380 (1) of the CCRK as read in conjunction with Article 31 of the CCRK.

**6. The Accused M.V. \_\_\_\_\_, personal data as above, Under Count 6 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok municipality, by weapons, other obstacles and barriers which caused the death of E.Z. \_\_\_\_\_ and \_\_\_\_\_ substantial material damage to the public highway and vehicles of \_\_\_\_\_ and causing great danger to other \_\_\_\_\_ present in the vehicles convoy at the locus in quo.

Therefore is ACQUITTED of having committed the criminal offence of "Causing General Danger" in violation of Article 291 paragraphs 1, 3 and 5 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK.

**7. The Accused M. V. \_\_\_\_\_, personal data as above, Under Count 7 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions, being part of the named group of persons, destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok Municipality, by weapons, other obstacles and barriers, which caused the death of E.Z. \_\_\_\_\_ and substantial material damage to the public highway and vehicles of \_\_\_\_\_ and causing great danger to other \_\_\_\_\_ present in the vehicles convoy at the locus in quo.

Therefore is ACQUITTED of having committed the criminal offence of "Participating in a Crowd Committing a Criminal Offence" in violation of Article 320 paragraph 1 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 412 of the CCRK as read in conjunction with Article 31 of CCRK.

**II. The Accused R.R. \_\_\_\_\_, personal data as above, Under Count 1 is found NOT GUILTY**

Because it was proven beyond reasonable doubt that:

1. On the 26th of July 2011, at approximately 13:30 hrs, more than fifty (50) Kosovo \_\_\_\_\_, members of the \_\_\_\_\_ (\_\_\_\_\_), who were on standby at the Mitrovicë/a \_\_\_\_\_ base, located in \_\_\_\_\_, received the order to depart in the direction of Gate 31 in order to take control of the border point. The convoy of \_\_\_\_\_ vehicles therefore left the \_\_\_\_\_ base: the convoy consisted of two armoured vehicle (one of them was leading the convoy and the second one was at the end of the convoy) and approximately 10-12 \_\_\_\_\_ vehicles were between the armoured cars. While proceeding towards Gate 31 along the main asphalted road between Mitrovicë/a and Zubin Potok, in the vicinity of the village of Qaber, the \_\_\_\_\_ convoy encountered a first barricade made of stones and sand which prevented the convoy from further proceeding along the main road. Therefore, the convoy used an alternative/secondary road in order to overcome the barricade and then went back on the main road in the direction of Gate 31.

2. Having proceeded for some 10 minutes, in the area located between the village of Varage and the village of Zupce the \_\_\_\_\_ convoy encountered a second obstacle: this time a barricade made up of three (3) vehicles placed in the middle of the road. The passengers and drivers of the three vehicles stepped out of their cars and started confronting the \_\_\_\_\_, by screaming and making gestures at them.

3. Around Eight (8) persons stepped out of the vehicles, and started to argue with the \_\_\_\_\_. A few moments later one more vehicle with two (2) persons approached and stopped at some distance from the barricade. Some \_\_\_\_\_ got out of their vehicles and ordered (in Serbian and Albanian language) to the persons who were blocking and obstructing the public highway to remove the obstructions and remove their cars. These persons, did not obey that order and continued screaming and shouting at the \_\_\_\_\_, gesturing and raising their fingers at the \_\_\_\_\_. At that point the operation leader gave the order that the armoured vehicle should proceed and push away the vehicles of the barricade. As soon as the armoured vehicle approached the vehicles that were blocking the road, around eight (8) persons who were standing behind the barricade left and entered the woods located on the left side. As soon as the persons left the barricade a first single fire shot was heard and the \_\_\_\_\_involved in the operation were immediately informed that one of them had been severely injured. Immediately following these rapid shooting ensued from the front-left side of the \_\_\_\_\_ convoy.

4. A bullet had hit the face of the victim and injured party, E.Z. \_\_\_\_\_, member of the \_\_\_\_\_ Unit, who was driving the second vehicle of the \_\_\_\_\_ convoy. At the moment he was hit, his vehicle was positioned parallel to the armoured vehicle leading the convoy.

5. After the first shot which had hit E.Z. \_\_\_\_\_, rapid shooting started against the vehicles from three different directions and it lasted for an undetermined period of time no longer than fifteen (15) minutes. The \_\_\_\_\_ fired back in order to defend themselves and to recover the body of the injured \_\_\_\_\_ that was moved to the armoured vehicle. The shooting against the \_\_\_\_\_ convoy lasted until the convoy pulled back moving in the direction of Mitrovicë/a.

6. The incident took place on a bright summer afternoon when the weather was fine with good visibility.

7. Mr. F.U. \_\_\_\_\_ was assigned to the armoured vehicle which was leading the \_\_\_\_\_convoy heading towards Gate 31. The witness Mr. F.U. \_\_\_\_\_ was inside the leading armoured vehicle and the distance between him and the perpetrators was not clearly determined but was no more than 20 meters from the barricade.

8. On the 26th of July 2011 between the hours of 13:30 hours and 14:25 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, one undetermined group of people acted depriving the life of E.Z. \_\_\_\_\_ for racial and national motives due to his \_\_\_\_\_and Kosovar nationality at the time when E.Z. \_\_\_\_\_was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car.

10. R.R. \_\_\_\_\_was fully mentally competent.

**But it was also not proven beyond reasonable doubt that:**

1. On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, the Defendants R.R. \_\_\_\_\_ and M "D" V \_\_\_\_\_, in co-



perpetration with others acting jointly and participating together by substantially contributing through his unlawful conduct and actions being part of the named group of persons in the commission /depriving the life of E.Z. \_\_\_\_\_ for racial and national motives due to his \_\_\_\_\_ and Kosovar nationality, at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car.

2. That the number of vehicles at or near the barricade was more than four (4).
3. That the number of the persons at the barricade were more than around eight (8)
4. That the Defendant and Co-defendant were blocking and obstructing the public highway.
5. That the shootings lasted at least 20 minutes

Therefore is ACQUITTED of having committed the criminal offence of Aggravated Murder contrary to Articles 146 and 147 paragraphs 4, 6, 8 and 10 of the Criminal Code of Kosovo (CCK) as read in conjunction with Article 23 of the CCK pari materia with Articles 178 & 179 1.5, 1.7, 1.9 and 1.10 of the CCRK as read in conjunction with Article 31 of the CCRK.

**2. The Accused R.R. \_\_\_\_\_, personal data as above, Under Count 2 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R. \_\_\_\_\_** and **M "D" V \_\_\_\_\_**, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional and unlawful conduct and actions, being part of the named group of persons in the commission of the criminal offence of "Attempted Aggravated Murder" to deprive the lives of other passengers (\_\_\_\_\_ B.M. \_\_\_\_\_ and D.P. \_\_\_\_\_) in the car with the deceased injured party E.Z. \_\_\_\_\_ for racial and national motives due to his \_\_\_\_\_ and Kosovar nationality, at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and in doing so also intentionally endangered the lives of B.M. \_\_\_\_\_, D.P. \_\_\_\_\_ and other \_\_\_\_\_ in the convoy of vehicles at the locus in quo.

Therefore is ACQUITTED of having committed the criminal offence of "Attempted Aggravated Murder" in violation of Articles 146 and 147 paragraphs 4, 6, 8 and 10 of the CCK as read in conjunction with Articles 20 and 23 of the CCK pari materia with Articles 178 & 179 1.5, 1.7, 1.9 and 1.10 of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK.

**3. The Accused R.R. \_\_\_\_\_, personal data as above, Under Count 3 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his unlawful conduct and actions, being part of the named group of persons in the commission of the criminal offence of "Unauthorized ownership, control or possession of weapons", controlled and possessed a weapon used in the Aggravated Murder of E.Z. \_\_\_\_\_ in violation of the applicable law relating to such weapon.

Therefore is ACQUITTED of having committed the criminal offence of "Unauthorized Ownership, Control, Possession or Use of Weapons" in violation of Article 328 paragraphs 1 and 2 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 374 of the CCRK as read in conjunction with Article 31 of the CCRK.

**4. The Accused R.R. \_\_\_\_\_, personal data as above, Under Count 4 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional and unlawful conduct and actions, being part of the named group of persons using force and serious threats to obstruct the \_\_\_\_\_ at the locus in quo in performing their lawful official duties.

Therefore is ACQUITTED of having committed the criminal offence of "Obstructing Official Persons in Performing Official Duties" in violation of Article 316 paragraphs 1 and 3 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 409 (1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK.

**5. The R.R. \_\_\_\_\_, personal data as above, Under Count 5 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions, being part of the named group of persons destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok municipality, giving erroneous signs, signals, placing obstacles and barricades on the said public road therefore endangering traffic, human life, the physical safety and properties on a large-scale.

Therefore is ACQUITTED of having committed the criminal offence of "Endangering Public Traffic by Dangerous Acts or Means" in violation of Article 299 paragraph 1 of the

CCK as read in conjunction with Article 23 of the CCK pari materia with Article 380 (1) of CCRK as read in conjunction with Article 31 of the CCRK.

**6. The Accused R.R. \_\_\_\_\_, personal data as above, Under Count 6 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok municipality, by weapons, other obstacles and barriers which caused the death of E.Z. \_\_\_\_\_ and \_\_\_\_\_ substantial material damage to the public highway and vehicles of \_\_\_\_\_ and causing great danger to other \_\_\_\_\_ present in the vehicles convoy at the locus in quo.

Therefore is ACQUITTED of having committed the criminal offence of "Causing General Danger" in violation of Article 291 paragraphs 1, 3 and 5 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK.

**7. The Accused R.R. \_\_\_\_\_, personal data as above, Under Count 7 is found NOT GUILTY**

Because it was not proven beyond reasonable doubt that:

On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M "D" V** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions, being part of the named group of persons, destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway in the area located between the Villages of Varage and Zupce, Zubin Potok municipality, by weapons, other obstacles and barriers, which caused the death of E.Z. \_\_\_\_\_ and substantial material damage to the public highway and vehicles of \_\_\_\_\_ and causing great danger to other \_\_\_\_\_ present in the vehicles convoy at the locus in quo.

Therefore is ACQUITTED of having committed the criminal offence of "Participating in a Crowd Committing a Criminal Offence" in violation of Article 320 paragraph 1 of the CCK as read in conjunction with Article 23 of the CCK pari materia with Article 412 of the CCRK as read in conjunction with Article 31 of the CCRK.

## REASONING

## **I. PROCEDURE, COMPETENCE OF THE COURT, EVIDENCE**

### **1.1. Procedural background**

1. On 08 May 2014, the Prosecution of the EULEX Prosecution Office of Mitrovicë/a filed an Indictment PP.nr. 103/2011 dated 07 May 2014 against the Accused **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, thereby charging them both with the criminal offences of 'Aggravated Murder' in violation of Articles 146 and 147 Paragraphs (4), (6), (8) and (10) of the CCK as read in conjunction with Article 23 of the CCK, 'Attempted Aggravated Murder' in violation of Articles 146 and 147 Paragraphs (4), (6), (8) and (10) of the CCK as read in conjunction with Articles 20 and 23 of the CCK, 'Unauthorized Ownership, Control, Possession or Use of Weapons' in violation of Article 328 Paragraphs (1) and (2) of the CCK as read in conjunction with Article 23 of the CCK, 'Obstructing Official Persons in Performing Official Duties' in violation of Article 316(1) and (3) of the CCK as read in conjunction with Article 23 of the CCK, 'Endangering Public Traffic by Dangerous Acts or Means' in violation of Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK, 'Causing General Danger' in violation of Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK and 'Participating in a Crowd Committing a Criminal Offence' in violation of Article 320(1) of the CCK as read in conjunction with Article 23 of the CCK.

2. On 30 May 2014, the Initial Hearing on Indictment was held as per Article 245 of the CPC, at which the Accused **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_ pleaded not guilty to all charges.

3. Pursuant to Article 245(5) of the CPC, a further hearing, called Second Hearing, is envisioned but not obligatory and it can be replaced with the request to the parties to file only written submissions. Therefore, the Defendants were given fifteen (15) days to file any objections to evidence listed in the Indictment and file any requests to dismiss the Indictment as legally prohibited and any requests to dismiss the Indictment for failing to describe the criminal offence under the law.

4. On 09 June 2014, the Defence for **M.V.** \_\_\_\_\_ filed the Objection to Evidence in the Indictment dated 09 June 2014. On 12 June 2014, the Defence for **R.R.** \_\_\_\_\_ filed the Objection to Evidence dated 12 June 2014. On 27 June 2014, the Prosecution filed their Response to the Defence's objection dated 26 June 2014.

5. On 18 July 2014, the Court issued a Decision on Defence Objections to Evidence and Request to Dismiss the Indictment rejecting the Defence for **M.V.** \_\_\_\_\_'s objection to evidence and request to dismiss the Indictment as ungrounded. Pursuant to Article 249 Paragraph (3) of the CPC, the Court granted the objection on admissibility of evidence as raised in the motion filed by the Defence for **R.R.** \_\_\_\_\_ concerning the statement of **S.V.** \_\_\_\_\_ dated 07 June 2012. It was ordered that the minutes of the Prosecution interrogation of **S.V.** \_\_\_\_\_ dated 07 June 2012 be declared as inadmissible and be sealed and separated from the Case File. By the same Decision rejecting the Defence application to dismiss the Indictment, the Court sent the case for Main Trial.

6. On 02 July 2014, the Kosovo Judicial Council issued Decision No. 01/95 for the approval of the request from EULEX for the continuation of trials in relation to case P.nr. 59/2014 that have been allocated to EULEX Judges between 15 April and 30 May 2014 in the Basic Court of Mitrovicë/a. Taking into consideration the circumstances of the case and procedural actions taken before the entry into force of Law No 04/L-273 on Amending and Supplementing the Laws related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo, the Kosovo Judicial Council approved the request of EULEX and confirmed that the case P.nr. 59/2014 shall remain with EULEX Judges.

7. By a Scheduling Order dated 29 October 2014, the Trial Presiding Judge ordered that the Main Trial in this case be held on 09, 10, 15, 18, 22, 23 and 24 December 2014.

8. On 29 October 2014, the Trial Presiding Judge issued a Summons to correct or supplement a Submission in accordance with Article 442 Paragraph (4) of the CPC thereby summoning the Prosecution to supplement their Indictment within ten (10) days, namely on: 1. How many 'Attempted Aggravated Murder' were allegedly committed in this case; 2. The identities of the Injured Parties with regard to the criminal offence of 'Attempted Aggravated Murder' since the Indictment mentioned "*other \_\_\_\_\_ in the convoy*" who have not been identified; 3. The name or the protective name of the 'key witness' as described multiple times in the Indictment; 4. The identification of the weapon (type and calibre) that is the object of the criminal offence of 'Unauthorized Ownership, Control, Possession or Use of Weapons'. No correction was filed by the Prosecution.

9. On 20 November 2014, the Trial Presiding Judge issued a new Scheduling Order ordering that the Main Trial in this case be held on 15 December 2014 and 19, 20, 29 and 30 January 2015.

10. On 15 December 2014, the Main Trial was opened in case P.nr. 59/2014 but was then postponed until 19 January 2015 since, on 12 December 2014, the Prosecution filed an Indictment PP.nr. 103/2011 charging Defendants R.K. \_\_\_\_\_ and S.S. \_\_\_\_\_ with the criminal offences listed above as well as a Motion for Joinder of Proceedings requesting the proceedings brought against Defendants R.K. \_\_\_\_\_ and S.S. \_\_\_\_\_ indicted on 12 December 2014 to be joined with case P.nr. 59/2014.

11. On 19 January 2015, the Trial Panel opened the Main Trial in case P.nr. 59/2014 and on the same day issued an Oral Ruling rejecting the Prosecution's Motion for Joinder of Proceedings dated 12 December 2014 based on the Defendants' right to a fair and speedy trial as enshrined in Article 5 Paragraph (1) of the CPC and based on the fact that investigation in case Ppr. 103/2011 is still ongoing against other Defendants and possible future motions for joinder of proceedings may further delay the start of the Main Trial in case P.nr. 59/2014.

12. The Main Trial sessions were held in public on 19, 20 and 29 January 2015, 27 February 2015, 09, 12, 17, 18, 20, 23 March 2015 and 01, 16 and 17 April 2015.

13. The Main Trial sessions of 29 January 2015 from 15:27hrs until 15:50hrs and of 30 January 2015 were held in closed session.

14. During the Main Trial session of 19 January 2015, Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_ pleaded not guilty to all charges.
15. All Main Trial sessions were held in the presence of the Accused **R.R.** \_\_\_\_\_, represented by Defence Counsel Zivojin Jokanovic as main Counsel as well as Nebojsa Vlajic, the Accused **M.V.** \_\_\_\_\_ represented by Defence Counsel Agim Lushta, the Victims representative Burhan Maxhuni, the Injured parties D.Z. \_\_\_\_\_, \_\_\_\_\_ D.P. \_\_\_\_\_ and \_\_\_\_\_ B.M. \_\_\_\_\_ and the Prosecutor Neeta Amin, Prosecutor Pascal Persoons, Prosecutor Lili Oprea and Prosecutor Tomas Skala.
16. On 01 April 2015, a site visit was conducted on the scene where the criminal offences were allegedly committed and at the warehouse located in Zupce village, Zubin Potok.
17. On 16 April 2015, the Trial Panel heard the closing statements of the Prosecution, the Victims representative and the Defence.
18. The enacting clause of the Judgment was announced on 20 April 2015.
19. In accordance with Article 215 Sub-paragraph (1.1) of the CPC, interpreters provided simultaneous interpretation throughout all Court proceedings and all Court documents relevant to the Trial were translated in Serbian, Albanian and English.
20. Pursuant to Article 541 of the CPC which entered into force on 01 January 2013<sup>1</sup>, the Trial was carried out according to provisions of the new CPC.

## **1.2. Competence of the Court**

21. Pursuant to Article 472, Paragraph (1), of the new Criminal Procedure Code of Kosovo ("CPC"), the Panel deliberated as to whether the Court has competent jurisdiction and whether it is necessary to supplement the proceedings. The Panel members unanimously voted that this Court has competent jurisdiction and that no further proceedings are necessary.
22. On 04 August 2011, the President of the Assembly of EULEX Judges assigned a EULEX Pre-Trial judge of the Basic Court of Mitrovicë/a to the proceedings on the Police case no. 2011-BH-091 against unknown defendants under investigation for the criminal offences subject to this trial, in accordance with Article 3.4 of the Law on Jurisdiction, Case selection and Case allocation of EULEX Judges and Prosecutors in Kosovo (Law no. 03/L-053).
23. On 08 May 2014, the Prosecution filed the Indictment PP.nr. 103/2011 dated 07 May 2014, which charged the Defendants **R.R.**\_\_\_\_\_ and **M.V.** \_\_\_\_\_of the criminal offences subject to this trial.
24. On 02 July 2014, the Kosovo Judicial Council, based on Article 108 of the Constitution of the Republic of Kosovo, Article 4 paragraph 1, item 1.1 and 1.8 of the Law No. 03/L-223 on the Kosovo

---

<sup>1</sup> CRIMINAL No. 04/L-123 PROCEDURE CODE;

Judicial Council, and Articles 45, 46 of the Regulation on the Organization and Activities of the Kosovo Judicial Council in accordance with the Law No. 04/L-273 for Amending and Supplementing of Laws that are related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo, issued a Decision No. 01/95 in which the Kosovo Judicial Council approved that case Pnr. 59/2014 be tried by EULEX Judges.

25. Therefore, the Trial Panel composed of EULEX Judges has jurisdiction over the case.

26. In addition, the offences fall within the substantive and territorial jurisdiction of Basic Court of Mitrovicë/Mitrovica's (prior to 01 January 2013 the District Court of Mitrovicë/Mitrovica) as provided in Article 29 of the CPC.

27. The Indictment alleges that the offences were committed in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, North Kosovo. Therefore, they fall within the territorial jurisdiction of the Basic Court of Mitrovicë/Mitrovica under Article 29 Paragraphs (1) and (2) of the CPC and Article 9 Paragraph (2) subparagraph (2.7) of the Law on Courts (Law No. 03/L-199).

### 1.3. Evidence presented

28. During the course of the Main Trial, the following injured parties and witnesses were heard:

- |                  |                          |
|------------------|--------------------------|
| 1. F.U. _____;   | Session on 20 January    |
| 2. I.A. _____;   | Session on 29 January    |
| 3. Q.S. _____;   |                          |
| 4. V.K. _____;   |                          |
| 5. F.Z. _____;   | Session on 30 January    |
| 6. M.J. _____;   |                          |
| 7. A.R. _____;   |                          |
| 8. R.Z. _____;   |                          |
| 9. F.S. _____;   | Session on 27 February   |
| 10. Witness B;   | Session on 09 March 2015 |
| 11. F.F. _____;  |                          |
| 12. I.S. _____;  |                          |
| 13. I.L. _____;  |                          |
| 14. N.S. _____;  |                          |
| 15. S.S.2 _____; |                          |
| 16. B.M. _____;  | Session on 12 March      |

17. B.P. \_\_\_\_\_;
18. K.H. \_\_\_\_\_;
19. M.S. \_\_\_\_\_;
20. F.A. \_\_\_\_\_;
21. G.C. \_\_\_\_\_;
22. H.H. \_\_\_\_\_;
23. K.K. \_\_\_\_\_;

Session on 17 March

24. A.I. \_\_\_\_\_;
25. M.H. \_\_\_\_\_;
26. G.D. \_\_\_\_\_;
27. V.R. \_\_\_\_\_;
28. S.V.2 \_\_\_\_\_;
29. Z.J. \_\_\_\_\_;

Session on 18 March

30. Z.M. \_\_\_\_\_;
31. S.V.3 \_\_\_\_\_;
32. M.K. \_\_\_\_\_;
33. Z.D. \_\_\_\_\_;
34. D.D. \_\_\_\_\_;
35. E.D. \_\_\_\_\_.

29. The following documents were accepted as evidence<sup>2</sup> and read into the minutes:

INDEX-1 (Police documents)

1. Police report-KP#2063, pages 10-11;
2. TF report-location of \_\_\_\_\_ in report, pages 12-32;
3. Initial /Incident report, pages 33-34;
4. Follow up flash report, pages 35-38;
5. Follow up flash report, pages 39-42;
6. Information report-Sgt. H. \_\_\_\_\_, pages 45-48;
7. Information on suspects, pages 49-54;
8. Operation and Communication Centre- "Bravo Control" 25-26.07.11;
9. Summary report on incidents, pages 108-113;

---

<sup>2</sup> The Court ruled on 23 March 2015 as following: "*The panel rendered the following ruling after deliberation. Regarding the statement of Mr. S.V. \_\_\_\_\_, the ruling of 18 July 2014, the panel decided that that statement was found inadmissible and it will be sealed and separated from the case file. Therefore part of material evidence presented, point 94, 97 and 104, is not admitted. According with the previous ruling, that is final because was not appealed. Regarding the question presented by Mr. Agim Lushta, the panel noticed that numeration of the Photographs. That is a question that should be assessed on the final reasoning and is related to the credibility or reliability of that material evidence, not with the admissibility of the same material evidence. So, that motion is dismissed. Third, regarding the presentation of additional evidence, the panel stressed that the reasoning presented by the prosecution is not enough to fulfil the provision of Article 288, paragraph 1, of the CPC but as was already decided regarding the witnesses of the defendant, under the general provisions of Article 329, paragraph 4, of CPCK, the panel stresses that that material evidence could be relevant and important to the complete and fair assessment of this trial. So, with a different provision, that material evidence is admitted*", see Minutes of Main Trial, 23 March 2015, page 5, Tab 3, Court Binder TRIAL, VOLUME V;



10. Summary report about the events, pages 114-122;
11. Investigators report-KP R.P. \_\_\_\_\_, pages 123-124;
12. Investigators report-KP R.G. \_\_\_\_\_, pages 125-126;
13. Information report, pages 129-136;
14. Operation Special Unit Mitrovica, pages 137-148;
15. Report on the examination of the crime scene, pages 149-164;
16. Crime scene report, pages 165-168;
17. Summary report about the event, pages 169-182;
18. Crime scene investigation report, pages 188-189.

#### INDEX-2 Prosecution Documents (binder 2)

1. KP memo-Report on operational investigative actions-Sgt. J.B. \_\_\_\_\_, pages 306-308;
2. Officer's report-\_\_\_\_\_ M.A. \_\_\_\_\_ # 5789, page 309;
3. Officer's report-\_\_\_\_\_ S.V.4 \_\_\_\_\_ # 7150, page 310;
4. Officer's report – \_\_\_\_\_ M.A. \_\_\_\_\_ # 5789, page 314.

#### INDEX-3/1 (Police documents)

1. TFM report – Concerning the processing of the crime scene, pages 331-338;
2. Report about incident details, pages 339-340;
3. TFM report-Witness interview F.U. \_\_\_\_\_, pages 341-344;
4. TFM report – TFM AS # 1 witness, pages 345-348;
5. Investigation report, pages 363-365;
6. Location of \_\_\_\_\_ in convoy, pages 366-367;
7. Crime scene photos from Kosovo Police Mitrovica, pages 390-391;
8. Official report –Investigator N.P. \_\_\_\_\_, page 392;
9. TFM report -Concerning the processing of the crime scene, pages 395-398;
10. TFM report-Concerning the witness F.U. \_\_\_\_\_ statement, pages 399 -418;
11. Interview of \_\_\_\_\_ I.A. \_\_\_\_\_, pages 419-430;
12. Re-interview of the witness F.U. \_\_\_\_\_, pages 431-436;
13. TFM report – 6 albums of the suspects, pages 437 -451;
14. Capture of Public Video Crime Scene, pages 452-506;
15. TFM report-Additional Photo Album, pages 511-515;
16. Photo album -15.08.2011, pages 516-521;
17. Follow up – report on report # 15 from 05.08.2011, pages 526-537;
18. TFM report concerning the interview of the witness E.D. \_\_\_\_\_, pages 538-549;
19. RIU examination of two cars involved in the road block, pages 550-555;
20. Photos of "Workshop /scrap yard", pages 556-559;
21. Seized evidences, pages 560-565;
22. Recovery of evidence, pages 566-577;
23. TFM Report on agreement with a cooperative witness M. \_\_\_\_\_ to handover two vehicles, pages 588-593;
24. Database check on weapons records authorization for possession of firearms of ROSU murder suspects, pages 588-593.

#### INDEX-3/2 (Police documents)

1. Summary of statement witness M.D. \_\_\_\_\_, pages 596-601;

2. TFM report-D. E. \_\_\_\_\_, pages 602-609;
3. TFM report- Search of VIN –Opel Corsa, pages 628-633;
4. Photos of the heavily damaged vehicle “Opel Corsa”, pages 643 -645;
5. Customs documents, pages 646-652;
6. Copy of the driving license M.N. \_\_\_\_\_, pages 653-654;
7. TFM Report-Seizure of vehicle D.J. \_\_\_\_\_, pages 661-666;
8. Exhibition from Operation ARES – 08.09.2011, pages 674-675;
9. Securing of evidence during the Operation Ares, pages 681-682;
10. Search Report- Operation ARES, pages 683-684;
11. TFM report crimes scene search, pages 687-688;
12. OCIU Report-House Search, pages 698-704;
13. Photos of the found items, pages 705-707;
14. Description of the evidence, pages 708-709;
15. OCIU report Search of the house of **M.V.** \_\_\_\_\_, pages 710-712;
16. OCIU report Search of the house of **R.R.** \_\_\_\_\_, pages 721-723;
17. Description of evidence, pages 724-725;
18. Picture map attached to the search report, page issued 31.08.2011, pages 726-733;
19. TFM report- recovery of evidence from the crime scene, pages 738-746;
20. Response to request issued by Telenor d.o.o Balgrade with attachments, pages 765-784;
21. TFM report – results of forensic examination fragments, page 786;
22. Annex to report Evidence lis, pages 787-795;
23. Expertise report of the evidences, pages 796-799;
24. \_\_\_\_\_ Report F.G. \_\_\_\_\_, pages 836-840.

#### INDEX-5 Forensic/Autopsy (Binder 5)

1. Expertise report from Unit of Firearm Expertise, pages 3413- 3432;
2. List of evidence –Chain custody on murder case, Forensic No. 11-092, pages 3448-3460;
3. Crime scene examination report, Forensic No. 11-092 \_\_\_\_\_ F.F. \_\_\_\_\_ # 5951, pages 3461- 3473;
4. Expertise report from Unit of Firearms Expertise, pages 3476-3494;
5. Forensic laboratory form A, D, C, B, TFM Crime Scene visit, pages 3495-3498;
6. Expertise report from Unit for traseology and dactiloscopy expertise, pages 3505-3507;
7. Forensic report on photo album of vehicles, page 3512;
8. Doctor’s report on E.Z. \_\_\_\_\_ from Mitrovica Hospital, pages 3516-3517;
9. Doctor’s report on E.Z. \_\_\_\_\_ from Prishtina Hospital, pages 3518- 3522;
10. Death Certificate with epicrisis, pages 3523-3525;
11. Report on autopsy from Institute of Forensic medicine, pages 3526-3527;
12. Attestation of death, pages 3528-3529;
13. Forensic report-Autopsy report, pages 3530-3535;
14. Photo Album Autopsy, pages 3536-3591;
15. Forensic list of evidence/Chain of custody. E.Z # 1A, E.z#1.1.A, pages 3592-3594;
16. Photo album official clothes of \_\_\_\_\_ E.Z. \_\_\_\_\_, pages 3595-3604.

#### INDEX Vehicle examination (Binder 6)

1. Photo album of the vehicle examination with plates \_\_\_\_\_, Forensic no. FRP-11 -140, pages 994-999;

2. Vehicle \_\_\_\_\_, Forensics no. FRP-11-140 Vehicle examination Report, Photo album of the vehicle examination Vehicle examination Report, pages 1000-1016;
3. Vehicle \_\_\_\_\_, Forensics no. FRP-11-139, Vehicle examination Report, Photo album of the vehicle examination, pages 1017- 1030;
4. Photo album of the vehicle examination with plates \_\_\_\_\_, Forensic no. FRP-11-140, pages 1031 -1035;
5. Vehicle \_\_\_\_\_, Forensics no. 11-092 Vehicle Examination Report List of evidence – Chain of custody Photo album of the vehicle examination, pages 1036- 1063;
6. Photo album of official clothes of the decease, photo of \_\_\_\_\_, pages1064-1070.  
Vehicle \_\_\_\_\_, Forensics no. 11-088Ex Vehicle Examination Report List of evidence – Chain of custody, pages 1071-1076;
7. Vehicle \_\_\_\_\_, Forensics no. 11-092 Vehicle Examination Report List of evidence – Chain of custody Photo album of the vehicle examination, pages 1077 – 1089;
8. Photo album of the vehicle examination, pages 1090-1113;
9. Vehicle \_\_\_\_\_ - Forensic 11-088 Ex, List of evidence – Chain of custody, vehicle examination report, photo album of vehicle examination, pages 1115—1139;
10. Information report re: towed vehicles, pages 1140-1141;
11. Vehicle examination report I.L.2 \_\_\_\_\_, page 1142;
12. Photo album of the vehicle examination I.L.3 \_\_\_\_\_, page 1143;
13. Officers report on vehicle \_\_\_\_\_, page 1144;
14. Officers report on 7 vehicles, page 1145;
15. Officers report on 2 vehicles, page 1146;
16. Officers report on ammunition \_\_\_\_\_ are equipped with, pages 1147-1148;
17. TFM report capture of public video crime scene, pages 1149 -1157;
18. Photo album with snapshots shared on public websites, pages 1158-1185;
19. Evidence examination report, IT forensic case no. ITF 2011 012, pages 1191 -1196;
20. TFM report results of analysis of computer of J. \_\_\_\_\_ and V. \_\_\_\_\_, pages 1197 – 1200;
21. Information report, page 1204.

#### INDEX Witness statements (Binders 9\_1/2/3)

1. Witness statement F.U. \_\_\_\_\_, pages 1762-1811;
2. Witness statement F.U. \_\_\_\_\_, pages 1819 -1818;
3. Witness statement F.U. \_\_\_\_\_, pages 1838-1861;
4. Witness statement F.U. \_\_\_\_\_ (PP P.K. \_\_\_\_\_), pages 1862-1874;
5. Witness statement F.U. \_\_\_\_\_ (PP N.A. \_\_\_\_\_), pages 1875-1884;
6. Witness statement S.S.2 \_\_\_\_\_, pages 1885-1897;
7. Witness statement N.S. \_\_\_\_\_, pages 1898- 1909;
8. Witness statement B.M. \_\_\_\_\_, page 1910;
9. Witness statement D.P. \_\_\_\_\_, pages 1929-1948;
10. Witness statement I.S. \_\_\_\_\_, pages 1949-1961;
11. Witness statement I.I. \_\_\_\_\_, pages 1962-1985;
12. Witness statement X.Z. \_\_\_\_\_, pages 1986-2004;
13. Witness statement B.M.2 \_\_\_\_\_, pages 2005-2019;
14. Witness statement P.M. \_\_\_\_\_ pages 2020- 2037;

15. Witness statement E.A. \_\_\_\_\_, pages 2038-2057;
16. Witness statement I.C. \_\_\_\_\_, pages 2058- 2076;
17. Witness statement F.G. \_\_\_\_\_, pages 2077- 2095;
18. Witness statement A.F. \_\_\_\_\_, pages 2096-2114;
19. Witness statement V.M. \_\_\_\_\_, pages 2115-2132;
20. Witness statement B.K. \_\_\_\_\_, pages 2133-2149;
21. Witness statement I.L. \_\_\_\_\_, pages 2150-2156;
22. Witness statement A.D. \_\_\_\_\_, pages 2157-2175;
23. Witness statement G.K. \_\_\_\_\_, pages 2176-2194;
24. Witness statement B.K. \_\_\_\_\_, pages 2195-2213;
25. Witness statement F.R. \_\_\_\_\_, pages 2214-2232;
26. Witness statement N.K. \_\_\_\_\_, pages 2233-2249;
27. Witness statement B.A. \_\_\_\_\_, pages 2250-2270;
28. Witness statement V.K. \_\_\_\_\_, pages 2271-2291;
29. Witness statement I.J. \_\_\_\_\_, pages 2292-2309;
30. Witness statement H.M. \_\_\_\_\_, pages 2310-2328;
31. Witness statement L.H. \_\_\_\_\_, pages 2329-2348;
32. Witness statement F.Z. \_\_\_\_\_, pages 2349-2368;
33. Witness statement A.R. \_\_\_\_\_, pages 2369-2390;
34. Witness statement M.J. \_\_\_\_\_, pages 2391-2410;
35. Witness statement A.S. \_\_\_\_\_, pages 2411-2430;
36. Witness statement N.S.2 \_\_\_\_\_, pages 2432-2451;
37. Witness statement I.H. \_\_\_\_\_, pages 2452-2471;
38. Witness statement L.Z. \_\_\_\_\_, pages 2472-2490;
39. Witness statement N.K.2 \_\_\_\_\_, pages 2491-2507;
40. Witness statement L.K. \_\_\_\_\_, pages 2508-2526;
41. Witness statement S.H. \_\_\_\_\_, pages 2527-2546;
42. Witness statement B.M.3 \_\_\_\_\_, pages 2547-2563;
43. Witness statement F.S. \_\_\_\_\_, pages 2564-2582;
44. Witness statement S.R. \_\_\_\_\_, pages 2583-2601;
45. Witness statement Q.S. \_\_\_\_\_, pages 2602-2621;
46. Witness statement R.Z. \_\_\_\_\_, pages 2622-2641;
47. Witness statement B.B. \_\_\_\_\_, pages 2642-2653;
48. Witness statement E.D. \_\_\_\_\_, pages 2654-2674, pages 2675-2698;
49. Witness statement B.M.4 \_\_\_\_\_, pages 2699-2705;
50. Witness statement A.K. \_\_\_\_\_, pages 2706-2721;
51. Witness statement I.N. \_\_\_\_\_, pages 2722-2741;
52. Witness statement H.K. \_\_\_\_\_, pages 2742-2758;
53. Witness statement E.S. \_\_\_\_\_, pages 2759-2764;
54. Witness statement F.M. \_\_\_\_\_, pages 2765-2772;
55. Witness statement I.A. \_\_\_\_\_, pages 2773-2780, pages 2781-2806;
56. Witness statement G.C. \_\_\_\_\_, pages 2807-2812;
57. Witness statement K.H. \_\_\_\_\_, pages 2813-2820;

58. Witness statement B.P. \_\_\_\_\_, pages 2821-2827;
59. Witness statement A.F.2 \_\_\_\_\_, pages 2828-2845;
60. Witness statement P.L. \_\_\_\_\_, pages 2846-2868;
61. Witness statement M.F. \_\_\_\_\_, pages 2869-2876;
62. Witness statement A.B. \_\_\_\_\_, pages 2877-2892;
63. Witness statement H.H. \_\_\_\_\_, pages 2893-2898;
64. Witness statement M.S. \_\_\_\_\_, pages 2899-2907;
65. Witness statement F.A. \_\_\_\_\_, pages 2908-2913;
66. Witness statement M.D.2 \_\_\_\_\_, pages 2914-2921;
67. Witness statement I.M. \_\_\_\_\_, pages 2922-2936;
68. Witness statement R.H. \_\_\_\_\_, pages 2937-2949;
69. Witness statement J.R. \_\_\_\_\_, pages 2950-2967;
70. Witness statement S.K. \_\_\_\_\_, pages 2968-2981;
71. Witness statement F.H. \_\_\_\_\_, pages 2982-2994;
72. Witness statement V.R. \_\_\_\_\_, pages 2995-3014;
73. Witness statement E.R. \_\_\_\_\_, pages 3015-3033;
74. Witness statement B.R. \_\_\_\_\_, pages 3034-3045;
75. Witness statement M.K.2 \_\_\_\_\_, pages 3046-3058;
76. Witness statement B.M.5 \_\_\_\_\_, pages 3059-3071;
77. Witness statement F.Q. \_\_\_\_\_, pages 3072-3084;
78. Witness statement N.R. \_\_\_\_\_, pages 3085-3096;
79. Witness statement F.B. \_\_\_\_\_, pages 3097-3109;
80. Witness statement A.A. \_\_\_\_\_, pages 3110-3122;
81. Witness statement B.M.6 \_\_\_\_\_, pages 3123-3140 ;
82. Witness statement G.R. \_\_\_\_\_, pages 3141-3159;
83. Witness statement A.I. \_\_\_\_\_, pages 3160-3167;
84. Witness statement K.K. \_\_\_\_\_, pages 3168-3174;
85. Witness statement M.I. \_\_\_\_\_, pages 3175-3187;
86. Witness statement R.L. \_\_\_\_\_, pages 3188-3200;
87. Witness statement S.G. \_\_\_\_\_, pages 3201-3215;
88. Witness statement G.D. \_\_\_\_\_, pages 3216-3220;
89. Witness statement A.H. \_\_\_\_\_, pages 3221-3233;
90. Witness statement D.M. \_\_\_\_\_, pages 3234-3246 and 3247-3252;
91. Witness statement M.H. \_\_\_\_\_, pages 3253-3258;
92. Suspect statement M.H. \_\_\_\_\_, pages 3259-3286;
93. Verification of witness statement, pages 3287-3313.

INDEX-10 (S.V. \_\_\_\_\_)

95. Record on witness interview - I.V. \_\_\_\_\_, pages 1561-1583;
96. Record on witness interview - I.V. \_\_\_\_\_, pages 1587-1603;
98. Report regarding seized dark blue VW GOLF and forensic examination, pages 1640-1641;
99. Forensic Report together with photographs, pages 1643-1653;
100. Photo album, pages 1654-1671;
101. Report on damaged vehicle (no plates), pages 1672-1675;

- 102. Evidence list, page 1676;
- 103. Crime Scene Investigation Report, page 1677;
- 105. Record on witness interview – D.K. \_\_\_\_\_, pages 1726-1728;
- 106. Investigators Informative report, page 1730;
- 107. Investigators Informative report, page 1739;
- 108. A map of \_\_\_\_\_ location, page 1758.

INDEX-12 Defendant’s statement

- 109. Defendant’s pretrial interview **M.V.** \_\_\_\_\_, pages 3314-3337;
- 110. Defendant’s pretrial interview **M.V.** \_\_\_\_\_, pages 3339-3350;
- 111. Witness pretrial interview **M.K.3** \_\_\_\_\_, pages 3351-3358;
- 112. Witness pretrial interview **J.B.** \_\_\_\_\_, pages 3359-3374;
- 113. Witness pretrial interview **D.L.** \_\_\_\_\_, pages 3375-3379;
- 114. Witness pretrial interview **S.R.2** \_\_\_\_\_, pages 3380-3383;
- 115 Defendant’s pretrial interview **R.R.** \_\_\_\_\_ (CD of video and audio recording of defendant’s **R.R.** \_\_\_\_\_ interview of 11 April 2014), pages 3384-3412.

INDEX Additional Documents – Police Reports

- 116. Telenor – Response to a request, pages 14-17;
- 117. TFM Report – Amendment to: Summary of analysis report, pages 18-33;
- 123. KP Official memo – Response to EULEX Prosecutor request – CD attached, pages 34-35;
- 118. Officer’s report – \_\_\_\_\_ S.V.4 \_\_\_\_\_ # 7150, pages 36-39;
- 119. TFM Report –Summary of analysis report, pages 40-46;
- 120. TFM Report –Summary of analysis report, pages 47-54;
- 121. CD – telephone metering Serbian Telenor.

**II. FACTUAL FINDINGS**

**2.1. Summary of the proven facts<sup>3</sup>**

30. The Court had to establish what the proven facts are on the basis of the administered evidence submitted against the Accused persons.

31. Upon the admissible evidence presented and administered during the course of the Main Trial, the Court considered the following relevant facts as proven beyond reasonable doubt:

1. On the 26th of July 2011, at approximately 13:30 hrs, more than fifty (50) \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_, members of the \_\_\_\_\_ (\_\_\_\_\_), who were on standby at the Mitrovicë/a \_\_\_\_\_ base, located in \_\_\_\_\_, received the order to depart in the direction of Gate 31 in order to take control of the border point. The convoy of \_\_\_\_\_ vehicles therefore left the \_\_\_\_\_ base: the convoy consisted of two armoured vehicle (one of them was leading the convoy and the second one was at the end of the convoy) and approximately 10-12 \_\_\_\_\_ vehicles were between the armoured cars.

<sup>3</sup> The statements of witnesses are not facts but means of evidence. Therefore the panel did not include those parts of statements and conclusions on the facts proven or not proven.

While proceeding towards Gate 31 along the main asphalted road between Mitrovicë/a and Zubin Potok, in the vicinity of the village of Qaber, the \_\_\_\_\_ convoy encountered a first barricade made of stones and sand which prevented the convoy from further proceeding along the main road. Therefore, the \_\_\_\_\_ convoy used an alternative/secondary road in order to overcome the barricade and then went back on the main road in the direction of Gate 31.

2. Having proceeded for some 10 minutes, in the area located between the village of Varage and the village of Zupce the \_\_\_\_\_ convoy encountered a second obstacle: this time a barricade made up of three (3) vehicles placed in the middle of the road. The passengers and drivers of the three vehicles stepped out of their cars and started confronting the \_\_\_\_\_, by screaming and making gestures at them.

3. Around Eight (8) persons stepped out of the vehicles, and started to argue with the \_\_\_\_\_. A few moments later one more vehicle with two (2) persons approached and stopped at some distance from the barricade. Some \_\_\_\_\_ got out of their vehicles and ordered (in Serbian and Albanian language) to the persons who were blocking and obstructing the public highway to remove the obstructions and remove their cars. These persons did not obey that order and continued screaming and shouting at the \_\_\_\_\_, gesturing and raising their fingers at the \_\_\_\_\_. At that point the \_\_\_\_\_ operation leader gave the order that the armoured vehicle should proceed and push away the vehicles of the barricade. As soon as the armoured vehicle approached the vehicles that were blocking the road, the around eight (8) persons who were standing behind the barricade left and entered the woods located on left side. As soon as the persons left the barricade a first single fire shot was heard and the \_\_\_\_\_ involved in the operation were immediately informed that one of them had been severely injured. Immediately following these rapid shooting ensued from the front-left side of the \_\_\_\_\_ convoy.

4. A bullet had hit the face of the victim and injured party, E.Z. \_\_\_\_\_, member of the \_\_\_\_\_ Unit, who was driving the second vehicle of the \_\_\_\_\_ convoy. At the moment he was hit, his vehicle was positioned parallel to the armoured vehicle leading the convoy.

5. After the first shot which had hit E.Z. \_\_\_\_\_, rapid shooting started against the \_\_\_\_\_ vehicles from three different directions and it lasted for an undetermined period of time no longer than fifteen (15) minutes. The \_\_\_\_\_ fired back in order to defend themselves and to recover the body of the injured \_\_\_\_\_ that was moved to the armoured vehicle. The shooting against the \_\_\_\_\_ convoy lasted until the convoy pulled back moving in the direction of Mitrovicë/a.

6. The incident took place on a bright summer afternoon when the weather was fine with good visibility.

7. Mr. F.U. \_\_\_\_\_ was assigned to the armoured vehicle which was leading the \_\_\_\_\_ convoy heading towards Gate 31. The witness Mr. F.U. \_\_\_\_\_ was inside the leading armoured vehicle and the distance between him and the perpetrators was not clearly determined but was no more than 20 meters from the barricade.

8. On the 26th of July 2011 between the hours of 13:30 hours and 14:25 hours in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, one undetermined group of people acted depriving the life of E.Z. \_\_\_\_\_ for racial and

national motives due to his \_\_\_\_\_ and Kosovar nationality at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car.

9. **M.V.** \_\_\_\_\_ was fully mentally competent.

10. **R.R.** \_\_\_\_\_ was fully mentally competent.

## **2.2. Summary of the unproven facts**

1. On the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his unlawful conduct and actions being part of the named group of persons in the commission /depriving the life of E.Z. \_\_\_\_\_ for racial and national motives due to his \_\_\_\_\_ and Kosovar nationality, at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car.

2. That the number of vehicles at or near the barricade was more than four (4).

3. That the number of the persons at the barricade were more than around eight (8).

4. That the Defendant and Co-defendant were blocking and obstructing the public highway.

5. That the shootings lasted at least 20 minutes.

6. That on the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional and unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of "Attempted Aggravated Murder" to deprive the lives of other passengers (\_\_\_\_\_ B.M. \_\_\_\_\_ and D.P. \_\_\_\_\_), in the car with the deceased injured party E.Z. \_\_\_\_\_, for racial and national motives due to his \_\_\_\_\_ and Kosovar nationality, at the time when E.Z. \_\_\_\_\_ was executing his lawful duties of protecting legal order, safeguarding persons or property, and keeping public order and peace and, in doing so, also intentionally endangered the lives of \_\_\_\_\_ B.M. \_\_\_\_\_ D.P. \_\_\_\_\_ and other \_\_\_\_\_ in the convoy of vehicles at the locus in quo.

7. That on the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of "Unauthorised ownership, control or possession of weapons", controlled and possessed a weapon used in the Aggravated Murder of E.Z. \_\_\_\_\_ in violation of the applicable law relating to such weapon.



8. That on the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional and unlawful conduct and actions being part of the named group of persons using force and serious threats to obstruct the \_\_\_\_\_ at the locus in quo in performing their lawful official duties.

9. That on the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions, being part of the named group of persons, destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok municipality, giving erroneous signs, signals, placing obstacles and barricades on the said public road thereby endangering traffic, human life, the physical safety and properties on a large-scale.

10. That on the 26th of July 2011, between the hours of 13:30 hours and 14:15 hours, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok municipality, by weapons, other obstacles and barriers which caused the death of E.Z. \_\_\_\_\_ and substantial material damage to the public highway and vehicles of \_\_\_\_\_ and causing great danger to other \_\_\_\_\_ present in the vehicles convoy at the locus in quo.

11. That on the 26th of July 2011, between the hours of 13:30hrs and 14:15hrs, in the area located between the village of Varage and the village of Zupce, in the Municipality of Zubin Potok, the Defendants **R.R.** \_\_\_\_\_ and **M.V.** \_\_\_\_\_, in co-perpetration with others acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions, being part of the named group of persons, destroyed, removed and seriously damaged the Mitrovicë/a to Zubin Potok public highway, in the area located between the Villages of Varage and Zupce, Zubin Potok Municipality, by weapons, other obstacles and barriers, which caused the death of E.Z. \_\_\_\_\_ and substantial material damage to the public highway and vehicles of \_\_\_\_\_ and causing great danger to other \_\_\_\_\_ present in the vehicles convoy at the locus in quo.

### **2.3. Discussion and Analysis of the Evidence**

32. The above listed evidence forms the basis for the Trial Panel's decision in this case.

33. The Trial Panel has considered the testimony of all the witnesses as well as Police reports and other material evidence admitted as evidence, and the site inspection, to determine the facts proven and the facts not proven.

## A. General Considerations

34. Article 361 paragraph (2) of the CPC states that the Court shall base its judgement solely on the facts and evidence considered at the Main Trial.

35. Therefore the reference made by the Prosecution during their closing statements to anonymous phone calls that incriminate the Defendants is not legal evidence because it was not presented in due form and it is intrinsically unreliable.

36. Article 361 paragraph (2) of the CPC also states that “[t]he Court shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established”.

37. In this process, the Court is bound to achieve a positive conclusion only if the beyond reasonable doubt standard is satisfied. The meaning of that legal provision is easy to state but in certain cases more difficult to apply.

38. Article 19 subparagraphs (1.8) to (1.10) of the CPC gives us some important remarks. We can notice that there is a difference in the requirements for reasonable suspicion and grounded cause. The first only demands the likelihood that the person may have committed the offence; the other “*that the person concerned is substantially likely to have committed the offence*”. The meaning of reasonable doubt is even more demanding. The Court has to be sure (not just find a likelihood) of the facts that could incriminate the Defendants, with a degree of certainty that is under (above) any type of reasonable question that could be put by any objective observer. The Court has to take notice that grounded suspicion is used for the findings required for detention on remand (Article 187 of the CPC), and reasonable doubt for the final judgment.

39. Therefore we have a different ‘*degree of certainty*’, according to the different stages of the proceedings. That is why the same elements of evidence could be enough to confirm the Indictment or to order detention of remand against a Defendant but could not be enough to achieve the degree of certainty necessary to find the Defendant guilty.

40. Last but not least, that degree of certainty should be enough not just to satisfy the Court itself with sound reasoning, but using that same reasoning to convince a normal and objective observer.

41. These general principles are applicable in any criminal case and could not change just because the Defendant is \_\_\_\_\_ or the victim is a \_\_\_\_\_, or the punishment is just one or two years instead of 20 years of imprisonment.

42. In this case, the Court heard all the witnesses presented by the Prosecution. Moreover, the Court itself summoned eight additional witnesses, went to the place of the events and analysed all the material evidence presented. Therefore, this Court used all of its evidentiary powers in order to reach a complete and fair assessment of the case.

43. After hearing the statements of 34 witnesses and one forensic expert, the Court has to note that only three of them were quoted in the Prosecution's closing statements. From the 50 \_\_\_\_\_ present in the convoy, only three identified individuals present at the barricade, and finally only one of those \_\_\_\_\_ (2% of the total number) could identify the Defendants.

#### **B. Regarding the Time, Place and Form of the Events**

44. According to the radio communications, the attack took place at 14:15hrs and the shooting lasted for at least 10 minutes<sup>4</sup>.

45. The statement of the \_\_\_\_\_ of the \_\_\_\_\_ convoy on that day, Witness I.A. \_\_\_\_\_, was direct, coherent and therefore reliable. He stated that:

*"They indicated us another alternative route which would again lead us to the asphalted road. We drove for around 1 km and a half on non-asphalted road in order to reach the asphalted road and then we headed towards Gate 31. The armoured vehicle was leading the convoy. Then I was with my vehicle after the armoured vehicle. During the journey towards Gate 31, on the right side, there were certain persons following the convoy and they were talking on the phone and following the convoy on certain positions. I received an order from the commanding chamber that I should speed up because of the security reasons. I remember that in a certain area there were no settlements and there was a mountainy landscape. Close to the village of Zupce, I came to understand this later on, it was this settlement, it was a road which was straight, then it came a curve on the right. I noted that three vehicles appeared at the same time and blocked the road. I informed through the radio that there was a road block so that the \_\_\_\_\_ would be on standby; those who were participating in that convoy. Then we stopped at a distance 10 metres to the barricade. I informed via the radio the commanding chamber that we were blocked. I went out of my vehicle and meanwhile the other \_\_\_\_\_ went out as well and I went in front of the armoured vehicle and I addressed to the persons who blocked the road, in Serbian language, asking them to clear the road. The answer was negative. I heard them saying that "you can't go through here because here is Serbia." I addressed them informing them that it is \_\_\_\_\_ and asked them "please remove the barricade because we have an order to go towards Gate 31." Again, the response was negative. Then, I ordered the \_\_\_\_\_ that was in the armoured vehicle to open the barricade and return to the prior position. During that period, behind the barricade, in a longer distance, I noticed 5-6 persons whom I could see only their heads who were in the position in front of us, who were of course observing the situation"<sup>5</sup>.*

46. This statement is confirmed in general terms by the other \_\_\_\_\_ who were in the \_\_\_\_\_ convoy, namely Witness F.U. \_\_\_\_\_, Witness E.D. \_\_\_\_\_, Witness Q.S. \_\_\_\_\_, Witness A.I. \_\_\_\_\_ and Witness I.S. \_\_\_\_\_<sup>6</sup>.

47. The site inspection report made by F.F. \_\_\_\_\_, also a Witness at Main Trial, was also important to determinate the number and nature of the shootings (see evidence of cartridges of AK-47)<sup>7</sup>.

<sup>4</sup> Summary Report about the Events of 25/26/27-07-2011, page 171, Prosecution Binder I;

<sup>5</sup> Minutes of Main Trial, 29 January 2015, page 8, see Tab 1, Court Binder TRIAL, VOLUME III;

<sup>6</sup> See Minutes of Main Trial, 20 January 2015, pages 4-11, 19-22, Tab 23, Court Binder TRIAL, VOLUME II; Minutes of Main Trial, 18 March 2015, pages 59-63, Tab 4, Court Binder TRIAL, VOLUME IV; Minutes of Main Trial, 29 January 2015, pages 25-27, Tab 1, Court Binder TRIAL, VOLUME III; Minutes of Main Trial, 17 March 2015, pages 4-5, Tab 2, Court Binder TRIAL, VOLUME IV; See also Minutes of Main Trial, 09 March 2015, pages 10-13, 32, Tab 12, Court Binder TRIAL, VOLUME III; Minutes of Main Trial, 12 March 2015, page 8, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>7</sup> See Report of Examination of the Crime Scene, page 153, Prosecution Binder I;

48. In addition, the statement of Witness B was fundamental with regard to the actions undertaken before the ambush. As stated by Witness B, the sirens in Zubin Potok went on, the people gathered together and went to the warehouse, they organized a first barricade, and a second one made of persons and cars<sup>8</sup>. All this is corroborated by the testimonies of the Court Witnesses that the Defence for R.R. \_\_\_\_\_ had requested to come to testify<sup>9</sup>.

49. Furthermore, Witness B clearly described that, after the sirens went off, he/she saw at the vicinity of the warehouse around 10 persons and saw armed civilians with firearms. Witness B also stated that he saw the distribution of the weapons at Zubin Potok after the sirens went off (type AK 47). Witness B testified that persons with firearms were near the warehouse<sup>10</sup>.

50. Finally, the site inspection was also important to determinate the layout of the place.

51. With all that evidence, the Court can assess that the incident was very well organized at a professional level. This was not a spontaneous action. There was a clear plan to obstruct the \_\_\_\_\_ from reaching Gate 31 with the use of the first barricade, then the second barricade and then the shootings that took place. They resisted the \_\_\_\_\_ and were very successful. There is evidence that all this was very well organized and that each person had a role to play in this incident.

52. Therefore, the Court could establish with a great degree of certainty the route of the \_\_\_\_\_ convoy, the existence of the barricades, the shootings, the death of \_\_\_\_\_ E.Z. \_\_\_\_\_ caused by one of those shots<sup>11</sup> and the calibre of the bullets fired.

53. However, the evidence is not unanimous regarding some of the details of the incident.

### **B.1. The Number of Persons at the Barricade**

54. The Panel received several descriptions of the second barricade, namely that between one (1) and 15 persons were present at that barricade:

- i. Witness Q.S. \_\_\_\_\_: *"I have noted though I don't know the exact number; if there were 5-6 or 7 people"*<sup>12</sup>.
- ii. Witness F.Z. \_\_\_\_\_: *"There were 5, 6 people maximum 10, though I don't believe that many"*<sup>13</sup>.
- iii. Witness F.S. \_\_\_\_\_: *"As far as I could notice, there were three persons"*<sup>14</sup>.

<sup>8</sup> Minutes of Main Trial, 27 February 2015, pages 11-12, Tab 9, Court Binder TRIAL, VOLUME III; See also Record of the Witness Pretrial Interview Session, Witness B, 24 June 2014, pages 2-3, SEALED ENVELOPE; Record of the Witness Pretrial Interview Session, Witness B, 27 November 2014, pages 3-4, 8-10, SEALED ENVELOPE;

<sup>9</sup> Minutes of Main Trial, 17 March 2015, pages 33-34, 39, 40-41, 45, 46-47, 49, 51, Tab 2, Court Binder TRIAL, VOLUME IV; Minutes of Main Trial, 18 March 2015, pages 4-5, 15, 19, 31-32, 38-41, 44, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>10</sup> Minutes of Main Trial, 27 February 2015, pages 9-10, 12, Tab 9, Court Binder TRIAL, VOLUME III; See also Record of the Witness Pretrial Interview Session, Witness B, 24 June 2014, page 3, SEALED ENVELOPE; Record of the Witness Pretrial Interview Session, Witness B, 27 November 2014, pages 4-8, SEALED ENVELOPE;

<sup>11</sup> Autopsy Report, page 3530, Prosecution Binder III;

<sup>12</sup> Minutes of Main Trial, 29 January 2015, page 25, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>13</sup> Minutes of Main Trial, 29 January 2015, page 38, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>14</sup> Minutes of Main Trial, 30 January 2015, page 14, Tab 2, Court Binder TRIAL, VOLUME III;

- iv. Witness I.S. \_\_\_\_\_: *"There were approximately 7 to 8 persons"*<sup>15</sup>.
- v. Witness I.L. \_\_\_\_\_: *"the people who stood there, four or five of them"*<sup>16</sup>.
- vi. Witness N.S. \_\_\_\_\_ (who was in the first car of the convoy): *"There were around 7 to 8 people and considering that I was at the end of the armoured vehicle the visibility for me was quite low. In view of that, I don't remember"*<sup>17</sup>.
- vii. Witness S.S.2 \_\_\_\_\_ (who was in the first car of the convoy): *"There were around 5, 6 or up to 10 persons"*<sup>18</sup>.
- viii. Witness B.M. \_\_\_\_\_: *"Yes, there were 3 or 4 persons standing behind their vehicles"*<sup>19</sup>.
- ix. Witness M.S. \_\_\_\_\_: *"No. Only these four people"*<sup>20</sup>.
- x. Witness A.I. \_\_\_\_\_: *"Behind the vehicles that were blocking the road there were 4 to 6 people standing there"*<sup>21</sup>.
- xi. Witness H.H. \_\_\_\_\_: *"I observed 4 persons who got out of three cars and used their cars to block the road"*<sup>22</sup>.
- xii. Witness K.H. \_\_\_\_\_: *"There were four persons. I was on the fourth or fifth vehicle"*<sup>23</sup>.
- xiii. Witness E.D. \_\_\_\_\_: *"Presiding Judge: So you just saw one person in that barricade? E.D. \_\_\_\_\_: That is the approximate recollection"*<sup>24</sup>.
- xiv. Witness G.D. \_\_\_\_\_: *"we saw 4-5 persons and 3-4 vehicles"*<sup>25</sup>.
- xv. Witness V.R. \_\_\_\_\_: *"As our vehicle was a little bit far from that barricade, it seemed that there were 2-3 vehicles that blocked the road there. There were 3-4 persons as well"*<sup>26</sup>.
- xvi. Witness F.U. \_\_\_\_\_: *"Ten to fifteen persons, five drivers plus other people"*<sup>27</sup>.
- xvii. Witness I.A. \_\_\_\_\_: *"Presiding Judge: Are you sure that the people who were on the barricade before the shooting were only 8 persons, according to you? I.A. \_\_\_\_\_: No. I can't say that they were 8 people exactly because it was a mountainous terrain and there were movements of people"*<sup>28</sup>.

## **B.2. The Number of Cars Present at the Barricade**

55. The Panel received several descriptions of the second barricade, namely that between two (2) and five (5) cars were present at the barricade:

- i. Witness F.A. \_\_\_\_\_: *"As far as I could observe, I could see three vehicles. Maybe there were four but I could see only three because the armoured vehicle was in front of me"*<sup>29</sup>.
- ii. Witness M.S. \_\_\_\_\_: *"There appeared three vehicles"*<sup>30</sup>.

<sup>15</sup> Minutes of Main Trial, 09 March 2015, page 13, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>16</sup> Minutes of Main Trial, 09 March 2015, page 23, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>17</sup> Minutes of Main Trial, 09 March 2015, page 31, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>18</sup> Minutes of Main Trial, 09 March 2015, page 39, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>19</sup> Minutes of Main Trial, 09 March 2015, page 45, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>20</sup> Minutes of Main Trial, 12 March 2015, page 18, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>21</sup> Minutes of Main Trial, 17 March 2015, page 4, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>22</sup> Minutes of Main Trial, 12 March 2015, page 33, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>23</sup> Minutes of Main Trial, 12 March 2015, page 8, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>24</sup> Minutes of Main Trial, 18 March 2015, pages 60-61, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>25</sup> Minutes of Main Trial, 17 March 2015, page 18, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>26</sup> Minutes of Main Trial, 17 March 2015, page 21, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>27</sup> Minutes of Main Trial, 20 January 2015, page 19, Tab 23, Court Binder TRIAL, VOLUME II;

<sup>28</sup> Minutes of Main Trial, 29 January 2015, page 21, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>29</sup> Minutes of Main Trial, 12 March 2015, page 24, Tab 1, Court Binder TRIAL, VOLUME IV;

- iii. Witness A.R. \_\_\_\_\_: *"Approximately 3-4 if I remember rightly"*<sup>31</sup>.
- iv. Witness V.K. \_\_\_\_\_: *"I had noted that there were 2-3 vehicles on the road"*<sup>32</sup>.
- v. Witness F.Z. \_\_\_\_\_: *"I saw 2, 3 or 4 vehicles at most because a different situation happened there and one could not be concentrated"*<sup>33</sup>.
- vi. Witness F.S. \_\_\_\_\_: *"As far as I remember, and as far as I could see, there were 4-5 vehicles"*<sup>34</sup>.
- vii. Witness S.S.2 \_\_\_\_\_: *"There were 3 or 4 vehicles composing second barricade"*<sup>35</sup>.
- viii. Witness H.H. \_\_\_\_\_: *"I observed 4 persons who got out of three cars and used their cars to block the road"*<sup>36</sup>.
- ix. Witness I.L. \_\_\_\_\_: *"I think there was an Opel, Renault, Golf 3, VW"*<sup>37</sup>.
- x. Witness K.K. \_\_\_\_\_: *"Then we encountered a barricade of three to four vehicles"*<sup>38</sup>.
- xi. Witness E.D. \_\_\_\_\_: *"I don't remember how many cars exactly came but there were three or four"*<sup>39</sup>.
- xii. Witness A.I. \_\_\_\_\_: *"As far as I remember, there were four civilian vehicles"*<sup>40</sup>.
- xiii. Witness G.D. \_\_\_\_\_: *"In the vehicle where I was, we could see less because for the mere fact that I was in the last vehicle and it was an armoured one [...] we saw [...] 3-4 vehicles"*<sup>41</sup>.
- xiv. Witness V.R. \_\_\_\_\_: *"As our vehicle was a little bit far from that barricade, it seemed that there were 2-3 vehicles that blocked the road there"*<sup>42</sup>.
- xv. Witness F.U. \_\_\_\_\_: *"EULEX Prosecutor: Your evidence went on, you said you saw yellow Open Corsa and four other cars came and blocked the road. F.U. \_\_\_\_\_: Yes [...] EULEX Prosecutor: Are these five cars that you have drawn there, A, B, C, D, E, are they the cars you have just given evidence about? F.U. \_\_\_\_\_: Yes"*<sup>43</sup>.

**B.3. Regarding the Distance between the Vehicles of the \_\_\_\_\_ Convoy and the Barricade**

56. The Panel received several descriptions of the second barricade with regard to the distance between the vehicles forming the \_\_\_\_\_ convoy and the barricade, namely that the distance was between seven (7) and 70 meters:

- i. Witness F.Z. \_\_\_\_\_: *"I may say that the distance was approximately 50 meters"*<sup>44</sup>.
- ii. Witness V.K. \_\_\_\_\_: *"It could have been 25-30 metres. I am not sure 100% because I did not go at no point to the barricade in order to know what the distance was"*<sup>45</sup>.

---

<sup>30</sup> Minutes of Main Trial, 12 March 2015, page 18, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>31</sup> Minutes of Main Trial, 30 January 2015, page 8, Tab 2, Court Binder TRIAL, VOLUME III;

<sup>32</sup> Minutes of Main Trial, 29 January 2015, page 30, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>33</sup> Minutes of Main Trial, 29 January 2015, page 38, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>34</sup> Minutes of Main Trial, 30 January 2015, page 14, Tab 2, Court Binder TRIAL, VOLUME III;

<sup>35</sup> Minutes of Main Trial, 09 March 2015, page 38, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>36</sup> Minutes of Main Trial, 12 March 2015, page 33, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>37</sup> Minutes of Main Trial, 09 March 2015, page 24, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>38</sup> Minutes of Main Trial, 12 March 2015, page 38, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>39</sup> Minutes of Main Trial, 18 March 2015, page 60, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>40</sup> Minutes of Main Trial, 17 March 2015, page 5, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>41</sup> Minutes of Main Trial, 17 March 2015, page 18, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>42</sup> Minutes of Main Trial, 17 March 2015, page 21, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>43</sup> Minutes of Main Trial, 20 January 2015, pages 6-7, Tab 23, Court Binder TRIAL, VOLUME II;

<sup>44</sup> Minutes of Main Trial, 29 January 2015, page 38, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>45</sup> Minutes of Main Trial, 29 January 2015, page 31, Tab 1, Court Binder TRIAL, VOLUME III;

- iii. Witness A.R. \_\_\_\_\_: *"It is possible that the distance could have been 50-70 metres although I can't tell you exactly"*<sup>46</sup>.
- iv. Witness F.S. \_\_\_\_\_: *"It was more or less 100 metres distance because it was a long convoy of \_\_\_\_\_ vehicles and we were by the end of the convoy"*<sup>47</sup>.
- v. Witness F.F. \_\_\_\_\_: *"we are talking about a scene 215 meters long"*<sup>48</sup>.
- vi. Witness N.S. \_\_\_\_\_: *"Around 20, 30 to 40 meters but I don't know exactly"*<sup>49</sup>.
- vii. Witness M.S. \_\_\_\_\_: *"Approximately 7 or 8 meters"*<sup>50</sup>.
- viii. Witness A.I. \_\_\_\_\_: *"When I went out of the vehicle to go to the armoured vehicle in order to inform my colleagues to listen to the radio, the distance was 20 to 30 meters"*<sup>51</sup>.
- ix. Witness H.H. \_\_\_\_\_: *"15 to 20 meters"*<sup>52</sup>.
- x. Witness S.S.2 \_\_\_\_\_: *"The distance was quite big but I could not see any persons carrying weapons"*<sup>53</sup>.
- xi. Witness K.K. \_\_\_\_\_: *"I can't state that with accuracy"*<sup>54</sup>.
- xii. Witness E.D. \_\_\_\_\_: *"It depends on the speed that the car could develop to reach those vehicles, but it could not be more than twenty to thirty meters"*<sup>55</sup>.

#### **B.4. Regarding the Condition of Visibility of the vehicle of Witness F.U. \_\_\_\_\_**

57. The Panel received several descriptions of the second barricade regarding the condition of visibility of the vehicle of \_\_\_\_\_ F.U. \_\_\_\_\_:

- i. Witness E.D. \_\_\_\_\_: *"In thirty meters distance, in that much thickness of glass you cannot see that"*<sup>56</sup>.
- ii. Witness I.S. \_\_\_\_\_: *"The windshield is quite big so one can have enough visibility to see people"*<sup>57</sup>.
- iii. Witness E.D. \_\_\_\_\_: *"It depends who was driving that armoured vehicle, it entirely was dependent of the height of the person, if the person was rather tall, like me, you could have good visibility, but if one was short it would be diminished visibility. Otherwise, the windshield is visible; and if the driver would have been a short person it would have the farther view and not the close below view. Presiding Judge: But the passengers that are on the back side, have the better view than the driver? E.D. \_\_\_\_\_: It can be so, because they stand higher than the driver, as the driver is positioned lower"*<sup>58</sup>.

#### **B.5. Regarding the Time of the Shootings**

<sup>46</sup> Minutes of Main Trial, 30 January 2015, page 7, Tab 2, Court Binder TRIAL, VOLUME III;

<sup>47</sup> Minutes of Main Trial, 30 January 2015, page 14, Tab 2, Court Binder TRIAL, VOLUME III;

<sup>48</sup> Minutes of Main Trial, 09 March 2015, page 6, Tab 12, Court Binder TRIAL, VOLUME III; See also Report of Examination of the Crime Scene, page 153, Prosecution Binder I;

<sup>49</sup> Minutes of Main Trial, 09 March 2015, page 33, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>50</sup> Minutes of Main Trial, 12 March 2015, page 18, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>51</sup> Minutes of Main Trial, 17 March 2015, page 5, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>52</sup> Minutes of Main Trial, 12 March 2015, page 34, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>53</sup> Minutes of Main Trial, 09 March 2015, page 39, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>54</sup> Minutes of Main Trial, 12 March 2015, page 38, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>55</sup> Minutes of Main Trial, 18 March 2015, page 63, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>56</sup> Minutes of Main Trial, 18 March 2015, page 63, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>57</sup> Minutes of Main Trial, 09 March 2015, page 17, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>58</sup> Minutes of Main Trial, 18 March 2015, page 59, Tab 4, Court Binder TRIAL, VOLUME IV;

58. The Panel received several descriptions of the second barricade, specifically how long the shootings lasted for:

- i. Witness I.S. \_\_\_\_\_: *"It was very brief. I can not specify in time how long it was but it was quite brief and a very rapid event and I am not able to describe the time"*<sup>59</sup>.
- ii. Witness B.M. \_\_\_\_\_: *"I think about 20 minutes"*<sup>60</sup>.
- iii. Witness S.S.2 \_\_\_\_\_: *"Approximately, as far as I remember, about 10 minutes"*<sup>61</sup>.
- iv. Witness I.L. \_\_\_\_\_: *"15 to 20 minutes at most"*<sup>62</sup>.
- v. Witness G.D. \_\_\_\_\_: *"Approximately 15 minutes"*<sup>63</sup>.

59. Between all these different versions, the Court believed the version as stated by the \_\_\_\_\_ of the convoy, Witness I.A. \_\_\_\_\_<sup>64</sup>. Firstly, at some given time, he was standing outside of his vehicle, with good visibility without any limitation from shields, windows or positions from the other vehicles forming the \_\_\_\_\_ convoy. Secondly, he gave a direct and honest statement always referring to the fact that this was his perception (by comparison, the Panel noticed the difficulty Witness F.U. \_\_\_\_\_ had in stating an approximate distance). Thirdly, I.A. \_\_\_\_\_ drafted the most precise sketch of the incident and especially of the position of the cars forming the barricade immediately after the event<sup>65</sup>. Fourthly, I.A. \_\_\_\_\_ was the \_\_\_\_\_ on that day, therefore with more responsibility to see the events and to take a concrete position through some order of action. Finally, his version of the events is confirmed by the material evidence collected (e.g. photos of the cars that show that only three cars were at the barricade<sup>66</sup>, and the radio-communications that revealed that the shooting lasted at least nine minutes from the first communication until the communication reporting the injury of E.Z. \_\_\_\_\_<sup>67</sup>).

#### **B.6. Regarding the Connection between the Persons who fired the Shots and the Persons present at the Barricade**

60. With regard to the link between the organization of the barricades and the shootings, and based on the evidence, the Court concluded that the only available evidence regarding this is the gesture (raised his hand) that was made by a person present at the barricade, who was holding a phone, in which it was unanimously established by the Witnesses who saw him that that particular person was not one of the Defendants<sup>68</sup>.

---

<sup>59</sup> Minutes of Main Trial, 09 March 2015, page 14, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>60</sup> Minutes of Main Trial, 09 March 2015, page 46, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>61</sup> Minutes of Main Trial, 09 March 2015, page 40, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>62</sup> Minutes of Main Trial, 09 March 2015, page 26, Tab 12, Court Binder TRIAL, VOLUME III;

<sup>63</sup> Minutes of Main Trial, 17 March 2015, page 19, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>64</sup> Minutes of Main Trial, 29 January 2015, pages 4-22, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>65</sup> See Witness Statement of I.A. \_\_\_\_\_, 02 August 2011, page 2780, Prosecution Binder VII;

<sup>66</sup> See Photo Album with snapshots from videos shared on public websites, pages 1158 to 1185, Prosecution Binder IV;

<sup>67</sup> See Summary Report about the Events of 25/26/27-07-2011, page 171, Prosecution Binder I;

<sup>68</sup> Minutes of Main Trial, 29 January 2015, pages 21, 26, 38, 40, Tab 1, Court Binder TRIAL, VOLUME III; Minutes of Main Trial, 09 March 2015, pages 12, 25, 28, Tab 12, Court Binder TRIAL, VOLUME III; Minutes of Main Trial, 12 March 2015, pages 8-9, 12-13, 15, 19, 20, 21, 34, 39, Tab 1, Court Binder TRIAL, VOLUME IV; Minutes of Main Trial, 18 March 2015, pages 63, 66, Tab 4, Court Binder TRIAL, VOLUME IV;



61. Therefore, it cannot be said that the persons who were at the barricade knew of the plan to shoot at the \_\_\_\_\_ convoy. The only thing that could lead the Panel to decide that there is a link is the fact that the persons who were at the barricade moved out from the barricade just before the shootings started.

62. During the Main Trial, the Presiding Judge asked Witness I.A. \_\_\_\_\_:  
“Presiding Judge: Can you please explain to us between the moment the people withdrew from the barricade and the first shot that was fired, did you see any gesture or hear any shouting from the people who were at the barricade to the shooters?  
I.A. \_\_\_\_\_: While the persons behind the barricade were withdrawing and while they were entering into the forest nearby, in the second position where I described those persons whose faces I could see only, I saw a hand raised up.  
Presiding Judge: Are you sure?  
I.A. \_\_\_\_\_: Yes”<sup>69</sup>.

63. This statement is credible because it was made by the Witness who had the best visibility in the \_\_\_\_\_ convoy and his statement is corroborated by other Witnesses’ statements<sup>70</sup>.

64. However, there is no evidence that could establish that the persons present at the barricade knew of the plan to fire towards the \_\_\_\_\_. The person who made that gesture for the people to move out from the barricade should know for sure about the plan to shoot at them. It is also probable that the persons had to move because the shootings would happen. But it is not completely sure that all the persons at the barricade knew that some persons would fire. Another reasonable explanation is that the persons at the barricade could have been there only to form the barricade on the road and to protest against the passage of the \_\_\_\_\_. In order to establish that link between the persons at the barricade and the shootings, the Court would need evidence of, for instance, telephone records and intercepts or evidence establishing the existence of some meetings previously held before the setting up of the barricade that could demonstrate such link. All this evidence Witness B could not provide to the Court<sup>71</sup>.

**C. Regarding the Factual Charges concerning Defendant M.V. \_\_\_\_\_**

65. The material evidence presented is mostly not related to Defendant M.V. \_\_\_\_\_. The only material evidence presented regards the objects seized (Serbian propaganda documents and some reports) that could not demonstrate that the Defendant was at the barricade or even in North Mitrovicë/a at the time of the events.

66. Regarding the identification of Defendant M.V. \_\_\_\_\_, only one Witness, namely F.U. \_\_\_\_\_, could identify him at the second barricade.

67. Witness I.A. \_\_\_\_\_ stated: “The person on the road had a black short sleeve T shirt. Someone from the group that was farther was wearing something white”<sup>72</sup>. In addition, Witness E.D.

<sup>69</sup> Minutes of Main Trial, 29 January 2015, page 21, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>70</sup> Minutes of Main Trial, 29 January 2015, pages 21, 26, 38, 40, Tab 1, Court Binder TRIAL, VOLUME III; Minutes of Main Trial, 09 March 2015, pages 12, 25, 28, Tab 12, Court Binder TRIAL, VOLUME III; Minutes of Main Trial, 12 March 2015, pages 8-9, 12-13, 15, 19, 20, 21, 34, 39, Tab 1, Court Binder TRIAL, VOLUME IV; Minutes of Main Trial, 18 March 2015, pages 63, 66, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>71</sup> Minutes of Main Trial, 27 February 2015, page 11, Tab 9, Court Binder TRIAL, VOLUME III;

<sup>72</sup> Record of the Witness Interview, I.A. \_\_\_\_\_, 05 August 2011, page 2785, Prosecution Binder VII;

\_\_\_\_\_ stated: *"I can recall only the features of one person at the barricade. He was wearing a black T shirt with short black hair [...] I would like to stress that I was able to focus on only one person because I was distracted by all of the orders by the commander"*<sup>73</sup>.

68. When asked to identify that person when shown Photo albums during their interviews<sup>74</sup>, Witness I.A. \_\_\_\_\_ recognised the person with the no. 2 in the Photo album no. 1<sup>75</sup>. Witness E.D. \_\_\_\_\_ recognised the person with the no, 6 in the Photo album no. 2<sup>76</sup>. Both Witnesses did not recognize Defendant **M.V.** \_\_\_\_\_ whose photograph was also in the Photo albums. Instead, they recognised another person.

69. Therefore, the Court has to conclude that all the other Witnesses who testified at the Main Trial did not identify the Accused **M.V.** \_\_\_\_\_ as being present at the barricade. In addition, Witness B did not see the Accused **M.V.** \_\_\_\_\_ in the vicinity of the area of the incident on 26 July 2011 and, furthermore, Witness B did not recognize him in relation to any further acts that occurred in that area.

70. As a result, only one witness identified the Accused **M.V.** \_\_\_\_\_ as being present at the barricade.

71. During his pre-trial witness statement, Witness F.U. \_\_\_\_\_ stated that he was sure that the man represented in the photograph no.1 of the Photo album no. 4 is one of the persons that he remembers at the barricade because *"he was particularly active in shouting and making gestures against us"*<sup>77</sup>. He further stated, in relation to two individuals he recognised in the Photo albums, including the Accused **M.V.** \_\_\_\_\_, that *"since I had not seen or met them before, I focused on them in order to be able to recognize them in the future"*<sup>78</sup>.

72. However, the Court noted that, during his first statement dated 26 July 2011, Witness F.U. \_\_\_\_\_ stated that he identified four (4) persons<sup>79</sup> but he did not identify the person in photograph no. 1, which was Defendant **M.V.** \_\_\_\_\_. Therefore, Witness F.U. \_\_\_\_\_ did not identify the Accused **M.V.** \_\_\_\_\_ as being present at the barricade even though he was in the photo albums.

73. Again, during his second pre-trial interview dated 29 July 2011, Witness F.U. \_\_\_\_\_ did not identify the person in photograph no. 1, which was Defendant **M.V.** \_\_\_\_\_.

<sup>73</sup> Record of the Witness Interview, E.D. \_\_\_\_\_, 17 August 2011, page 2677, Prosecution Binder VI;

<sup>74</sup> See Photo album, pages 2794-2799, Prosecution Binder VII; See Photo album, pages 2680-2687, Prosecution Binder VI;

<sup>75</sup> Record of the Witness Interview, I.A. \_\_\_\_\_, 05 August 2011, page 2785, Prosecution Binder VII;

<sup>76</sup> Record of the Witness Interview, E.D. \_\_\_\_\_, 17 August 2011, page 2678, Prosecution Binder VI;

<sup>77</sup> Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1841, Prosecution Binder V;

<sup>78</sup> Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1842, Prosecution Binder V;

<sup>79</sup> Witness Statement, F.U. \_\_\_\_\_, 26 July 2011, page 1813, Prosecution Binder V;

74. Furthermore, during another witness interview dated 05 July 2012, Witness F.U. \_\_\_\_\_ stated something different as before, namely that he *"was more focused on people that I knew before"*<sup>80</sup>.

75. Thus, it seems that there is reasonable doubt as to why this key Witness only mentions Defendant **M.V.** \_\_\_\_\_ during his third interview when he explained that was focused on him, among others, precisely *"in order to be able to recognize them in the future"*<sup>81</sup>.

76. Of course, during the Main Trial, Witness F.U. \_\_\_\_\_ identified the Accused **M.V.** \_\_\_\_\_ as a person who was present at the barricade at the time of the ambush<sup>82</sup>. However, that recognition was previously conditioned by the place where the Defendant was sitting in the courtroom, by the publicity regarding the trial and by the previous recognition made by the Witness.

77. Furthermore, the Panel also found discrepancies as to how Witness F.U. \_\_\_\_\_ managed to recognize this particular person in photograph no. 1, namely the Accused **M.V.** \_\_\_\_\_. In one statement, the Witness said that he recognized him because he was active and that the Witness was focused on him because he did not know him. But in another statement, Witness F.U. \_\_\_\_\_ stated that *"there was a person maybe I'm wrong, in my statements I mentioned, I was more focused on people that I knew before"*<sup>83</sup>.

78. In addition, the Court also noted a number of other problems and discrepancies that raise doubts about the identification of the Accused **M.V.** \_\_\_\_\_ made by Witness F.U. \_\_\_\_\_, namely:

i. There are discrepancies between the testimony of Witness F.U. \_\_\_\_\_ and the testimonies of other \_\_\_\_\_ as to the distance between the \_\_\_\_\_ convoy and the barricade. Witness F.U. \_\_\_\_\_ said it was 10 meters<sup>84</sup>. The \_\_\_\_\_ I.A. \_\_\_\_\_ said the distance was between 15 and 40 meters<sup>85</sup>. In addition, the driver of the first car of the \_\_\_\_\_ convoy stated it was 20 meters<sup>86</sup>. These are not relevant to the Court. The Court is aware that it is always difficult to give an exact and right distance, especially under stressful and dangerous situations when persons are moving. In addition, the cars at the barricade were eventually moved and pushed away by the \_\_\_\_\_ convoy.

79. However, the Court noted other discrepancies that exist:

---

<sup>80</sup> Record of the Witness Hearing in an Investigation, F.U. \_\_\_\_\_, 05 July 2012, page 1880, Prosecution Binder V;

<sup>81</sup> Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1842, Prosecution Binder V;

<sup>82</sup> Minutes of Main Trial, 20 January 2015, pages 15-17, 22, Tab 23, Court Binder TRIAL, VOLUME II;

<sup>83</sup> Record of the Witness Hearing in an Investigation, F.U. \_\_\_\_\_, 05 July 2012, page 1880, Prosecution Binder V;

<sup>84</sup> Minutes of Main Trial, 20 January 2015, page 13, Tab 23, Court Binder TRIAL, VOLUME II;

<sup>85</sup> Minutes of Main Trial, 29 January 2015, pages 8, 12, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>86</sup> Minutes of Main Trial, 18 March 2015, page 63, Tab 4, Court Binder TRIAL, VOLUME IV;

- i. There are discrepancies between the testimonies of Witness F.U. \_\_\_\_\_ and other \_\_\_\_\_ who testified in this case with regard to the number of persons present at the barricade, as the Court stressed above<sup>87</sup>.
- ii. There are discrepancies between the testimonies of Witness F.U. \_\_\_\_\_ and other \_\_\_\_\_ who testified in this case with regard to the number of vehicles present at the barricade, as the Court stressed above<sup>88</sup>.
- iii. There are discrepancies between the testimonies of Witness F.U. \_\_\_\_\_ and other \_\_\_\_\_ who testified in this case as to how the cars forming the barricades were placed (as the Court can see from the sketches drawn by Witness I.A. \_\_\_\_\_ and by Witness F.U. \_\_\_\_\_)<sup>89</sup>.
- iv. There are discrepancies between the testimonies of Witness F.U. \_\_\_\_\_ and other \_\_\_\_\_ as to the glass of the \_\_\_\_\_ armoured vehicle and hence the visibility. The driver of the armoured vehicle, Witness E.D. \_\_\_\_\_, which was the first vehicle in the \_\_\_\_\_ convoy, said that the window of the car was made of thick glass. He stated that you cannot see properly when the window is made of thick glass<sup>90</sup>. In addition, Witness F.U. \_\_\_\_\_ said that the vehicle he was in had only one window<sup>91</sup>. The driver of the first vehicle, Witness E.D. \_\_\_\_\_, stated that there were two windows (the middle was separated by metal in the middle)<sup>92</sup>. Therefore, if this is the case, you see less if there is a bar in the middle of the window of the car.

**80. As a result, with regard to the identification of the Accused M.V. \_\_\_\_\_, the Court only has one witness identifying him, namely F.U. \_\_\_\_\_. However, that Witness did not say anything regarding such identification during his first statement, while during a statement given on 05 August 2011, the Witness stressed that he was focused on those two persons precisely in order to be able to recognize them in the future<sup>93</sup>.**

81. On the contrary, the \_\_\_\_\_ of the \_\_\_\_\_ convoy, Witness I.A. \_\_\_\_\_, who went outside of his \_\_\_\_\_ vehicle on the day of the incident and therefore had complete visibility, who was in the same car as Witness F.U. \_\_\_\_\_, was not able to recognize the Defendant **M.V. \_\_\_\_\_**, but just said that the persons he could recognize also had black T shirts and were very active<sup>94</sup>.

<sup>87</sup> See section B.1.;

<sup>88</sup> See section B.2.;

<sup>89</sup> See Sketch drawn by F.U. \_\_\_\_\_, page 1825, Prosecution Binder V; See Sketch drawn by I.A. \_\_\_\_\_, page 2780, Prosecution Binder VII;

<sup>90</sup> Minutes of Main Trial, 18 March 2015, pages 59, 63, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>91</sup> Minutes of Main Trial, 20 January 2015, page 16, Tab 23, Court Binder TRIAL, VOLUME II;

<sup>92</sup> Minutes of Main Trial, 18 March 2015, pages 59-60, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>93</sup> See Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1842, Prosecution Binder V; Furthermore Mr. F.U. \_\_\_\_\_ stated during the Main Trial that "*I identified him before he became as suspect. I didn't identify him by name but also based on the media because they were media as well. But I identified him without the name but based on the Photograph*", see Minutes of Main Trial, 20 January 2015, page 22, Tab 23, Court Binder TRIAL, VOLUME II;

<sup>94</sup> Minutes of Main Trial, 29 January 2015, pages 8, 13-14, Tab 1, Court Binder TRIAL, VOLUME III;

82. For all those reasons, it seems obvious and clear to the Court that any objective observer could have objective doubts as to whether the Defendant **M.V.** \_\_\_\_\_ was at the second barricade on the day of the incident.

**D. Regarding the Factual Charges concerning Defendant R.R.** \_\_\_\_\_

**D.1. The alibi version**

83. The Court is sure that Defendant **R.R.** \_\_\_\_\_ was near the warehouse, located closed to the second barricade, after or during the last part of the shootings because of the statement given by Witness B<sup>95</sup>. The Court found Witness B's statement reliable and coherent. Witness B has no connection with the Defendants and the act of the Witness to take a stand shows great courage. Thus the Court found that Witness B is entirely reliable in the opinion of this Panel.

84. However that fact itself is not decisive. From the site inspection, the Court knows with certainty that the distance from point A (namely, the second barricade) to point B (the warehouse) is 674 meters<sup>96</sup>. Using common knowledge, the Court also knows that the normal walking speed is 5 kilometres per hour. So the Court can conclude that it would have taken **8 minutes** for the Defendant, walking at a normal speed, to walk from point A to point B (5.000km/hour = 83,33 meters per minute, and 674 meters divided by 83,33 = 8 minutes).

85. Furthermore, the Court also has to stress that the Defendant is a sportsman. This was confirmed by Witness S.V.2 \_\_\_\_\_<sup>97</sup>. The Defendant appears to be in good health condition. So, if necessary, the Defendant could have walked faster or even run that distance<sup>98</sup>.

86. But what is more important is that, according to Witness B, after the sirens went off, the Witness saw near the warehouse a group of persons (around 10 persons) and saw armed civilians with firearms<sup>99</sup>. Witness B also stated that he/she saw the distribution of the weapons and ammunitions at Zubin Potok (type AK-47)<sup>100</sup>. Witness B testified that persons with firearms were near the warehouse<sup>101</sup>. And finally Witness B said that he/she saw only around 10 persons at that place and time<sup>102</sup>.

87. Therefore, the motive of the Defendant to go to that place was part of a very well organized prior plan that all the Witnesses who testified and confirmed the Defendant's alibi hide and lie

---

<sup>95</sup> Minutes of Main Trial, 27 February 2015, pages 5-6, 10-11, Tab 9, Court Binder TRIAL, VOLUME III; See also Record of the Witness pre-trial Interview Session, Witness B, 24 June 2014, p. 3, SEALED ENVELOPE; Record of the Witness pre-trial Interview Session, Witness B, 27 November 2014, p. 5, SEALED ENVELOPE;

<sup>96</sup> Minutes of Main Trial, 01 April 2015, page 5, Tab 5, Court Binder TRIAL, VOLUME V; See also Map with Points A and B attached to Minutes of Main Trial, 18 March 2015, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>97</sup> Minutes of Main Trial, 17 March 2015, page 35, Tab 2, Court Binder TRIAL, VOLUME IV;

<sup>98</sup> Running at a speed of 10km/h, it would take the Defendant 4 minutes and 15 seconds to arrive to point B, (the warehouse);

<sup>99</sup> Minutes of Main Trial, 27 February 2015, pages 9-12, Tab 9, Court Binder TRIAL, VOLUME III;

<sup>100</sup> See Record of the Witness Pretrial Interview Session, Witness B, 24 June 2014, page 3, SEALED ENVELOPE; Record of the Witness Pretrial Interview Session, Witness B, 27 November 2014, pages 4-5, 8, SEALED ENVELOPE;

<sup>101</sup> Minutes of Main Trial, 27 February 2015, page 9, Tab 9, Court Binder TRIAL, VOLUME III; See Record of the Witness Pretrial Interview Session, Witness B, 27 November 2014, pages 5, SEALED ENVELOPE;

<sup>102</sup> Minutes of Main Trial, 27 February 2015, pages 9-10, Tab 9, Court Binder TRIAL, VOLUME III;

about, namely Witness S.V.2 \_\_\_\_\_, Witness Z.J. \_\_\_\_\_, Witness Z.M. \_\_\_\_\_, Witness S.V.3 \_\_\_\_\_, Witness M.K. \_\_\_\_\_, Witness Z.D. \_\_\_\_\_ and Witness D.D. \_\_\_\_\_<sup>103</sup>. That proves that these Witnesses are not independent, want to help the Defendant and therefore do not have credibility regarding the exact time of arrival of the Defendant at the warehouse.

88. Secondly, there are discrepancies as to the number of persons who were present at the vicinity of the warehouse on the day of the incident. Witness B testified that there were only 10 persons<sup>104</sup> whereas all the Witnesses who testified in favour of the Defendant's alibi stated that there were up to one hundred persons near the warehouse<sup>105</sup>. None of those Witnesses mentioned that there were civilians carrying firearms, as stated by Witness B.

89. These discrepancies between Witness B's and the "Alibi Witnesses"'s statements are serious. They cannot be solved with other means of evidence and destroy in a direct and grounded manner the credibility of those Witnesses.

90. Thus, even one small detail, namely the time of arrival of Defendant R.R. \_\_\_\_\_ at the warehouse, cannot be proved with those statements.

91. However, the Court cannot use this forged alibi to conclude that the Defendant was at the barricade. The burden of proof with regard to that fact remains on the Prosecution even if the Defendant lied regarding this issue.

## **D.2. The Material Evidence presented regarding Defendant R.R. \_\_\_\_\_**

92. The Court found it evident that this material evidence is also inconclusive.

---

<sup>103</sup> Minutes of Main Trial, 17 March 2015, pages 25-42, 43-51, Tab 2, Court Binder TRIAL, VOLUME IV; Minutes of Main Trial, 18 March 2015, pages 3-15, 16-29, 30-36, 36-46. 47-57, Tab 4, Court Binder TRIAL, VOLUME IV;

<sup>104</sup> Minutes of Main Trial, 27 February 2015, pages 9-10, Tab 9, Court Binder TRIAL, VOLUME III;

<sup>105</sup> Witness S.V.2 \_\_\_\_\_ stated: "*Many people. I didn't count them but approximately 100 people*", see Minutes of Main Trial, 17 March 2015, page 27, Tab 2, Court Binder TRIAL, VOLUME IV; Witness Z.J. \_\_\_\_\_ stated: "*I don't know exactly how many people were there but in my free assessment it was around 50-100, the crowd was numerous*", see Minutes of Main Trial, 17 March 2015, page 47, Tab 2, Court Binder TRIAL, VOLUME IV; Witness Z.M. \_\_\_\_\_ stated: "*In my assessment, there were less than 100 people, approximately some 80 people. I forgot to mention that some individuals were running from the direction of the warehouse to the direction of Zubin Potok*", see Minutes of Main Trial, 18 March 2015, page 5, Tab 4, Court Binder TRIAL, VOLUME IV; Witness S.V.3 \_\_\_\_\_ stated: "*S.V.3 \_\_\_\_\_: I don't know exactly but they were a lot. Burhan Maxhuni: Approximately? S.V.3 \_\_\_\_\_: Thirty, forty, fifty people I did not count*", see Minutes of Main Trial, 18 March 2015, page 21, Tab 4, Court Binder TRIAL, VOLUME IV; Witness M.K. \_\_\_\_\_ stated: "*There were 200 or 300 people, there were many people and there were maybe 50 to 100 vehicles and the entire road was blocked*", see Minutes of Main Trial, 18 March 2015, page 32, Tab 4, Court Binder TRIAL, VOLUME IV; Witness Z.D. \_\_\_\_\_ stated: "*I really don't remember who was within this crowd or whom I asked. It was developing really fast*", see Minutes of Main Trial, 18 March 2015, page 41, Tab 4, Court Binder TRIAL, VOLUME IV; Witness D.D. \_\_\_\_\_ stated: "*I don't know the exact number as this was a large group number of people*", see Minutes of Main Trial, 18 March 2015, page 50, Tab 4, Court Binder TRIAL, VOLUME IV;

93. From the number of telephone calls made by the Defendant **R.R.** \_\_\_\_\_ before, during and after the incident<sup>106</sup>, the Court can suspect that the Defendant was mostly active during that day but, without the contents of those conversations or messages sent, that suspicion could not be proved. The case file does not contain any messages or conversations that could put the Defendant at the barricade or show that he participated in the organization of such barricade. The Panel could have suspicion due to the vast number of telephone calls and messages made and sent by the Defendant on that day (69 in total<sup>107</sup>) as well as the time such telephone calls were made and messages were sent<sup>108</sup>. However, without some evidence of their contents, this fact, alone or in conjunction with others, cannot reveal any criminal action from the Defendant.

94. Furthermore, the metering of the position of the telephone of Defendant **R.R.** \_\_\_\_\_ on that day could be decisive and relevant evidence.

95. According to the radio communications, the attack took place at 14:15hrs and the shooting took place for at least 15 minutes<sup>109</sup>.

96. According to the telephone cell identification (material evidence presented during the Main Trial session of 20 March 2015), on 26 July 2011, between 14:13hrs and 14:17hrs, the telephone of Defendant **R.R.** \_\_\_\_\_ was under the Zupce antenna (no. 11574)<sup>110</sup>. However, at 14:18hrs, the telephone of the Defendant used the Zubin Potok antenna (no. 11503)<sup>111</sup>. At 14:23hrs, his telephone used the Zupce antenna again<sup>112</sup>.

97. As a result, from this material evidence, the Court cannot conclude that Defendant **R.R.** \_\_\_\_\_ was at the place of the ambush at the time of the attack against the \_\_\_\_\_ convoy.

98. Also, this element cannot be completely reliable because the Police report presented by the Prosecution states that without the intensity of the signal of the antennas, the position of the phone is not accurate<sup>113</sup>.

99. In addition, the Court has to stress that, according to the map presented by the Serbian telephone company, the place where the warehouse is located is more or less in between the two relevant antennas, namely antenna no. 11574 and antenna no. 11503<sup>114</sup>.

---

<sup>106</sup> See EULEX Police report, 16 June 2014, pages 18-22, Prosecution Additional documents/Police reports/ CD metering Binder;

<sup>107</sup> See EULEX Police report, 16 June 2014, pages 19-22, Prosecution Additional documents/Police reports/ CD metering Binder;

<sup>108</sup> See EULEX Police report, 16 June 2014, pages 19-22, Prosecution Additional documents/Police reports/ CD metering Binder;

<sup>109</sup> Summary Report about the Events of 25/26/27-07-2011, Page 171, Prosecution Binder I;

<sup>110</sup> See EULEX Police report, 16 June 2014, page 21, Prosecution Additional documents/Police reports/ CD metering Binder; See also Map of antennas, page 51, Prosecution Additional documents/Police reports/ CD metering Binder;

<sup>111</sup> See EULEX Police report, 16 June 2014, page 21, Prosecution Additional documents/Police reports/ CD metering Binder;

<sup>112</sup> See EULEX Police report, 16 June 2014, page 21, Prosecution Additional documents/Police reports/ CD metering Binder;

<sup>113</sup> EULEX Police report, 16 May 2014, pages 41-43, Prosecution Additional documents/Police reports/ CD metering Binder;

100. Therefore, the Court concluded that it cannot be sure about the exact location of the telephone of Defendant **R.R.** \_\_\_\_\_ on 26 July 2011 without other additional technical data. The Court particularly stresses that the data presented in the EULEX Police report shows one strange movement that is not compatible with the rest of the facts proven (that the Defendant was at the barricade until 14:17hrs, then moved to the warehouse, and then, before the shootings ended, went again to the barricade).

### **D.3. The Rest of the Evidence**

101. During their closing statements, the Prosecution presented two more arguments with regard to Defendant **R.R.** \_\_\_\_\_ 's behaviour after the attack against the \_\_\_\_\_ \_\_\_\_\_ convoy was launched and ended.

102. First of all, the Court has to stress that evidence is a means of demonstration of an unknown fact by a known situation or reality. However, deduction has to be made under certain rules or procedures. The known fact has to be certain. Secondly, that fact then has to be in direct relation with the unknown fact. Thirdly, the reliability of this evidentiary procedure depends on a number of facts, number of logical inferences and their degree of certainty.

103. Therefore, the Court cannot infer from the fact that the Defendant stated that he went fishing after the attack against the \_\_\_\_\_ \_\_\_\_\_ convoy that he actually was at the crime scene. First of all, the Court has to stress that, according to a Police report in the case file, the Police was informed of the death of \_\_\_\_\_ \_\_\_\_\_ E.Z. \_\_\_\_\_ at 22:20hrs on 26 July 2011<sup>115</sup>. From this evidence, the Court concluded that, during that afternoon, nobody could have known that the actions undertaken by the persons at the barricade and the persons who shot caused his death.

104. Additionally, the Court cannot conclude from the fact that, after the event, Defendant **R.R.** \_\_\_\_\_ pointed to Police officers the place where the barricade was located, that he was at the barricade himself at the time of the attack.

105. Almost all of the population of Zubin Potok knew the place where the barricade was situated for sure. This is not evidence of the commission of any criminal offence. On the contrary, this could have been relevant evidence if the place of the commission of the criminal offences was secret or undisclosed. However, this is not the case here where cartridges and cars were standing on a public highway at a site where everybody could have walked through.

106. Furthermore, the fact that Defendant **R.R.** \_\_\_\_\_ went to Montenegro just after this event cannot lead the Court to conclude that he was at the barricade. This can raise suspicions; but that fact alone is not in direct relation to the concrete criminal charges.

---

<sup>114</sup> See Map of antennas, page 51, Prosecution Additional documents/Police reports/ CD metering Binder;

<sup>115</sup> Summary Report about the Events of 25/26/27-07-2011, Page 171, Prosecution Binder I;



107. Finally, the fact that the Defendant is also a suspect in other criminal proceedings cannot be used until a final judgment in those proceedings establishes that he was at the barricade. Doing so would be a breach of Article 3 of the CPC.

#### D.4. The Evidence brought by Witnesses

108. After almost four years since the events took place, the only real evidence brought against Defendant R.R. \_\_\_\_\_ is the statement of Witness F.U. \_\_\_\_\_ and the statement of Witness B.

109. Can the Court assess the guilt of Defendant R.R. \_\_\_\_\_ with the statement of only one witness? In order to do so, that Witness has to be completely reliable to achieve a degree of certainty without any reasonable doubt.

110. First of all, the Panel has to stress that the statement of Witness F.U. \_\_\_\_\_ was direct and credible. Some details he provided the Court with match, such as the fact that Witness F.U. \_\_\_\_\_ stopped the Defendant R.R. \_\_\_\_\_ while he was driving a red Skoda weeks before the incident took place<sup>116</sup> and the fact that the “alibi” Witnesses<sup>117</sup> told the Court that R.R. \_\_\_\_\_ ‘s car was a red Skoda which was parked next to the warehouse on the day of the events<sup>117</sup>.

111. On the one hand, the Court considers important that the recognition of Defendant R.R. \_\_\_\_\_ by Witness F.U. \_\_\_\_\_ was made based on the fact that he was previously known by the Witness. Indeed, Witness F.U. \_\_\_\_\_ identified Defendant R.R. \_\_\_\_\_ at the second barricade based on the fact that he allegedly stopped him while driving his red Skoda one month before the events took place. Therefore, the Court considers that this is more reliable than a simple identification.

112. The Court stresses that no one stated how many persons F.U. \_\_\_\_\_ stops each month in his capacity as \_\_\_\_\_. However it is common knowledge to the Court that those operations are usually numerous, last briefly, and the driver usually does not leave his/her car.

---

<sup>116</sup> Minutes of Main Trial, 20 January 2015, pages 12, 23-24, Tab 23, Court Binder TRIAL, VOLUME II; F.U. \_\_\_\_\_ also stated: “Also there was another one, last name R. \_\_\_\_\_ or R. \_\_\_\_\_, fathers name is T. \_\_\_\_\_. I have seen this guy, he used to drive a red Skoda with Serbian Kraljevo number plate, I have stopped him once before. It was a long Skoda. I did not write anything about this guy, it was just a random traffic stop”, see Record of the Witness Interview, F.U. \_\_\_\_\_, 29 July 2011, page 1822, Prosecution Binder V; “Yes the man represented in photograph no. 1 of the photo album is the one I indicated in my previous interviews as R. \_\_\_\_\_ or R. \_\_\_\_\_, this is his surname but I cannot recall his first name. He usually drives a red Skoda with Serbian KV number plate from Kraljevo. I knew him before the incident. In particular, as I already said in my previous interviews, in July 2011, cannot remember exactly the date, while I was on duty on the highway between Pristina and Mitrovica, close to the Serbian cemetery, I stopped him for a normal \_\_\_\_\_, on that occasion I was on duty with the deceased officer, E.Z. \_\_\_\_\_”, see Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1842, Prosecution Binder V;

<sup>117</sup> Minutes of Main Trial, 17 March 2015, pages 40, 45, Tab 2, Court Binder TRIAL, VOLUME IV; Minutes of Main Trial, 18 March 2015, pages 20, 49-50, Tab 4, Court Binder TRIAL, VOLUME IV;

113. On the other hand, while identifying Defendant **R.R.** \_\_\_\_\_ as a person who was at the barricade, Witness F.U. \_\_\_\_\_ made numerous mistakes with regard to the name of the Defendant, the name of the Defendant's father<sup>118</sup> and the colour of his hair (when F.U. \_\_\_\_\_ stated that the person he saw at the barricade was blond or half blond whereas the Defendant has brown hair)<sup>119</sup>.

114. In addition, Witness F.U. \_\_\_\_\_ admitted in his initial statements that he was focused on the persons at the barricade whom he did not know before in order to be able to identify them in the future<sup>120</sup>.

115. Also, the Court takes notice that the events that took place on that day lasted for a short period of time and that the \_\_\_\_\_ were under a very stressful situation.

116. For all those reasons, the Court considers that the recognition of **R.R.** \_\_\_\_\_ made by Witness F.U. \_\_\_\_\_ has to be qualified as weak evidence because important mistakes were made during such identification regarding key elements pertaining to the identity of the Defendant, namely his name, his father's name and the colour of his hair.

117. Furthermore, the Court takes notice that this identification and description made by Witness F.U. \_\_\_\_\_ during the investigative stage was important and relevant because it was fitting with the names and description of two individuals, namely V.R. \_\_\_\_\_ and **R.R.** \_\_\_\_\_<sup>121</sup>. Thus, it was the identification made with the use of photo albums which was decisive for the identification of the Defendant in this case<sup>122</sup>.

---

<sup>118</sup> F.U. \_\_\_\_\_ stated: "a guy with the last name R. \_\_\_\_\_ or R. \_\_\_\_\_ from \_\_\_\_\_ village, son of T. \_\_\_\_\_ (T. \_\_\_\_\_), spends his time at "TIM-PETROL" gas-station, owns a red SKODA vehicle", see Witness Statement, F.U. \_\_\_\_\_, 26 July 2011, page 1813, Prosecution binder V; F.U. \_\_\_\_\_ further stated: "Also there was another one, last name R. \_\_\_\_\_ or R. \_\_\_\_\_, fathers name is T. \_\_\_\_\_. I have seen this guy, he used to drive a red Skoda with Serbian Kraljevo number plate, I have stopped him once before", see Record of the Witness Interview, F.U. \_\_\_\_\_, 29 July 2011, page 1822, Prosecution Binder V; "I also recognized a man whose surname is R. \_\_\_\_\_ or R. \_\_\_\_\_ and he is related to a man named T. \_\_\_\_\_ from village \_\_\_\_\_", see Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1840, Prosecution Binder V; "Yes, the man represented in photograph no. 1 of photo album is the one I indicated in my previous interviews as R. \_\_\_\_\_ or R. \_\_\_\_\_, this is his surname but I cannot recall his first name", see Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1842, Prosecution Binder V;

<sup>119</sup> Minutes of Main Trial, 20 January 2015, pages 15, 24, Tab 23, Court Binder TRIAL, VOLUME II; F.U. \_\_\_\_\_ also stated: "He has blond hair, not totally but blond", see Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1840, Prosecution Binder V;

<sup>120</sup> F.U. \_\_\_\_\_ stated: "since I had not seen or met them before, I focused on them in order to be able to recognize them in the future", see Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1842, Prosecution Binder V;

<sup>121</sup> See EULEX Police Report, 05 August 2011, pages 400-401, Prosecution Binder II;

<sup>122</sup> See Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1842, Prosecution Binder V;

118. Besides, the Court notes that Witness F.U. \_\_\_\_\_ 's capability to recognize the Defendant is remarkable. The \_\_\_\_\_ I.A. \_\_\_\_\_,<sup>123</sup> who stepped out of the vehicle on the day of the events and, therefore, had good visibility, only recognized one person with 70% of certainty<sup>124</sup>. Similarly, the driver of the same car<sup>125</sup> focused only on one person<sup>126</sup>. However, Witness F.U. \_\_\_\_\_ was able to recognize four persons in total, whom he knew from before, and managed to focus on two more persons whom he did not know from before.

119. F.U. \_\_\_\_\_ 's description of the Defendant is that R.R. \_\_\_\_\_ was blond, not totally, but blond<sup>127</sup>. In Albanian language, blond could mean white but it never means brown. In addition, it is clear from the photograph of the Defendant which was part of the Photo albums used by the Prosecution during the investigation stage while questioning the Witnesses that Defendant R.R. \_\_\_\_\_ had brown hair<sup>128</sup>.

120. Thirdly, F.U. \_\_\_\_\_ said that there were five cars at the barricade<sup>129</sup>. According to Witness I.A. \_\_\_\_\_, there were only three in total<sup>130</sup>. This is not a minor detail because in this case the suspects arrived by cars, left the cars on the road and then were screaming and shouting near and in the rear of these cars. As a result of this, these cars forming the barricade should always be within the visual field of the Witnesses.

121. Regarding the age of the persons present at the barricade, the testimony of Witness F.U. \_\_\_\_\_ is different from the testimony of Witness I.A. \_\_\_\_\_. F.U. \_\_\_\_\_ said that some persons were between 30 and 40 years old<sup>131</sup>; the latter that "[t]hey were not old, they were young. [...]They could be 20-25; above 20"<sup>132</sup>.

---

<sup>123</sup> Witness I.A. \_\_\_\_\_ stated: "I had a very good visibility once they put the vehicles there and came out of the vehicles. When I approached further, I saw them even better. They were standing outside the cars", see Minutes of Main Trial, 29 January 2015, page 14, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>124</sup> Witness I.A. \_\_\_\_\_ stated: "Yes. (The witness was presented 6 photo galleries that were prepared by Investigator). I think that photo album 2 from album number 1 was the person that got out of one of the vehicles that blocked the road. I can say with about 70% that this was the person I saw because of the face and hair, that has remained in my memory", see Record of the Witness Interview, I.A. \_\_\_\_\_, 05 August 2011, page 2785, Prosecution Binder VII;

<sup>125</sup> Minutes of Main Trial, 29 January 2015, page 7, Tab 1, Court Binder TRIAL, VOLUME III;

<sup>126</sup> Minutes of Main Trial, 12 March 2015, pages 24, Tab 1, Court Binder TRIAL, VOLUME IV;

<sup>127</sup> Minutes of Main Trial, 20 January 2015, pages 15, 24, Tab 23, Court Binder TRIAL, VOLUME II; F.U. \_\_\_\_\_ also stated: "He has blond hair, not totally but blond", see Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1840, Prosecution Binder V;

<sup>128</sup> See Photo Album no. 6, Photo no. 1, page 1849, Prosecution Binder V; The Court also has to stress that the second person that could correspond to the elements told by Mr. F.U. \_\_\_\_\_ also has brown hair, and is included in the photo album no 2, photo no 2, see Photo Album 2, page 1845, Prosecution Binder V. Therefore, the problem of the colour of the hair cannot be explained with the light of the sun or with the fact that the hair was short, because this happened twice on two different occasions;

<sup>129</sup> Minutes of Main Trial, 20 January 2015, pages 6-7, Tab 23, Court Binder TRIAL, VOLUME II;

<sup>130</sup> Minutes of Main Trial, 29 January 2015, page 8, Tab 1, Court Binder TRIAL, VOLUME III; See also Sketch drawn by I.A. \_\_\_\_\_, page 2780, Prosecution Binder VII;

<sup>131</sup> See Record of the Witness Interview, F.U. \_\_\_\_\_, 05 August 2011, page 1840, Prosecution Binder V;

<sup>132</sup> Minutes of Main Trial, 29 January 2015, page 13, Tab 1, Court Binder TRIAL, VOLUME III;

122. Finally, there is the problem that Witness F.U. \_\_\_\_\_ did not physically describe the Defendant who was, according to him, present at the barricade before the Witness was shown the photo albums with the photographs of the suspects, including R.R. \_\_\_\_\_.

123. Thus the Court can conclude that the statement of Witness F.U. \_\_\_\_\_ is relevant and honest but, alone, it is not sufficient to prove beyond any reasonable doubts that Defendant R.R. \_\_\_\_\_ was at the barricade on the day of the attack.

124. The doubts raised regarding the number of cars at the barricade, the colour of the hair of the Defendant, the age of the persons at the barricade, and the mistake concerning the name of the Defendant and his father, are relevant and cannot be resolved using any other evidence.

125. Furthermore, the fact that Witness F.U. \_\_\_\_\_ stopped the Defendant a few weeks before the events in a \_\_\_\_\_ routine is important and strengthens the value of his statements. However the Court found that it is not enough to erase those doubts. This was an isolated encounter that lasted for a few moments. The Court stresses again that the description Witness F.U. \_\_\_\_\_ gave could match two different individuals<sup>133</sup>. The Court notes that the other individual, namely V.R. \_\_\_\_\_, also has brown hair<sup>134</sup> and that no blond person was included in the photo albums shown to the Witness<sup>135</sup>.

126. Finally, the Court has to stress that the identification made is not entirely reliable. If we look at the photographs of the suspects in the Photo album in which the photograph of the Defendant R.R. \_\_\_\_\_ is present, out of the six individuals present in the album, we can see that one person is wearing dark glasses<sup>136</sup>, another person is wearing a hat<sup>137</sup>, and the other three persons left have beards<sup>138</sup>. Moreover, if the same album was prepared with the intention to have the Witness identify a blond person, the Court finds it at least a bit strange that no blond person is represented there when this was a key element in the previous description given by F.U. \_\_\_\_\_.

127. Last but not least, reliable eyewitness evidence is critical to a criminal investigation and prosecution, and it plays a powerful role within the criminal justice system. The repeated discovery of misidentifications contributing to wrongful convictions has prompted inquiries into the nature of eyewitness evidence. Over 230 people<sup>139</sup>, serving an average of 12 years in prison, have been exonerated through DNA testing in the United States, and 75% of those wrongful convictions (179 individual cases as of this writing) involved eyewitness misidentification. In 50% of the misidentification cases, eyewitness testimony was the central evidence used against the defendant (without other corroborating evidence like confessions, forensic science or informant testimony). Studies have shown that the presence of a weapon increases stress levels and

---

<sup>133</sup> See EULEX Police Report, 05 August 2011, pages 400-401, Prosecution Binder II;

<sup>134</sup> See EULEX Police Report, 05 August 2011, pages 402-403, Prosecution Binder II;

<sup>135</sup> See Photo albums, pages 1844-1849, Prosecution Binder V;

<sup>136</sup> See Photo no. 5, Photo album no.6, page 1849, Prosecution Binder V;

<sup>137</sup> Photo no. 4, Photo album no. 6, page 1849, Prosecution Binder V;

<sup>138</sup> Photos no. 2, 3 and 6, Photo album no. 6, page 1849, Prosecution Binder V;

<sup>139</sup> See B. N. Cardozo, "Reevaluating Lineups: Why Witnesses make Mistakes and How to Reduce the Chance of a Misidentification", at [http://www.innocenceproject.org/files/imported/eyewitness\\_id\\_report-5.pdf](http://www.innocenceproject.org/files/imported/eyewitness_id_report-5.pdf);

decreases the likelihood of a reliable identification<sup>140</sup>. And it is common knowledge that that trauma affects the reliability of recognition or identification.

128. In this case, the Court takes notice that the attack that took place on 26 July 2011 was a very stressful situation with traumatic consequences for the \_\_\_\_\_ present during the ambush. The Court noticed that some of the Witnesses who came to testify during the Main Trial were very emotional while testifying about those events that lasted only 15 minutes.

129. All these factors lead the Court to be careful and cautious regarding the recognition of any Defendant made by one Witness only.

130. Witness I.A. \_\_\_\_\_ stated in his pre-trial interview that he could recognize a person wearing a black T-shirt when presented with photographs of suspects and he said that that person was in photo no. 2. He stated: "*This was the person I saw because of the face and hair, that has remained in my memory*" but that we could only say so with 70% of certainty<sup>141</sup>.

131. That person in question was not any of the Defendants in this case. Certainly, the \_\_\_\_\_ of the \_\_\_\_\_ convoy, as a \_\_\_\_\_, had the same training in memorizing faces as Witness F.U. \_\_\_\_\_, but he was only 70% sure about the identification. Therefore, it is obvious that the Court cannot find beyond reasonable doubts that Defendant R.R. \_\_\_\_\_ was at the barricade only on the basis of the statement of Witness F.U. \_\_\_\_\_.

### III. LEGAL FINDINGS

132. The basic principle of criminal law is that any criminal liability is dependent on an action or omission done by the Defendant (Article 1 of the CCK and CCRK). This "act requirement"<sup>142</sup> does not exist in this case. It was not proven beyond reasonable doubt that any of the Defendants had made any movement, gesture or form of human communication that led to the murder of E.Z. \_\_\_\_\_ or any other criminal charges.

133. Therefore the Defendants have to be acquitted, under Article 364 paragraph. (1) subparagraph (1.3) of the CPC of having committed the criminal offences of:

1. Aggravated murder in violation of Articles 146 and 147(4), (6), (8) and (10) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Articles 178 and 179(1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Article 31 of the CCRK;
2. Attempted aggravated murder in violation of Articles 146 and 147(4), (6), (8) and (10) of the CCK as read in conjunction with Articles 20 and 23 of the CCK *pari materia* of Articles 178 and 179

---

<sup>140</sup> C.J. Stanny and T.C. Johnson, "Effects of Stress Induced by a Simulated Shooting on Recall by Police and Citizen Witnesses", *American Journal of Psychology* 113, 359-386;

<sup>141</sup> See Record of the Witness Interview, I.A. \_\_\_\_\_, 05 August 2011, page 2785, Prosecution Binder VII;

<sup>142</sup> See F. Muñoz-Conde and L. Ernesto Chiesa, *The Act Requirement as a Basic Concept of Criminal Law*, *Cardozo Law Review*, 28 CDZLR 2461, May, 2007;

(1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK;

3. Unauthorized ownership, control, possession or use of a weapon in violation of Article 328(1) and (2) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* with Articles 374 of the CCRK as read in conjunction with Article 31 of the CCRK;

4. Obstructing official persons in performing official duties in violation of Article 316(1) and (3) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Articles 409(1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK;

5. Endangering public traffic by dangerous act or means in violation of Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 380(1) of the CCRK as read in conjunction with Article 31 of the CCRK;

6. Causing general danger in violation of Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK;

7. Participating in a crowd committing a criminal offence in violation of Article 320(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 412 of the CCRK as read in conjunction with Article 31 of the CCRK;

### **3.1. Regarding the Charges of “Endangering Public Traffic by Dangerous Act or Means” and “Causing General Danger”**

134. The following analysis concerns the charges of “Endangering public traffic by dangerous act or means” in violation of Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 380(1) of the CCRK as read in conjunction with Article 31 of the CCRK and “Causing general danger” in violation of Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK.

135. The Panel stresses that even if the factual findings could place the Defendants at the barricade, the same conclusion would be reached.

136. First of all, there is a relation of concurrence between these two legal provisions.

137. Real concurrence of offences arises when the Accused commits more than one crime, either by violating the same provision a number of times, or by violating a number of different provisions by separate acts.

138. Apparent real concurrence may arise when a series of separate, but closely related, acts fulfil all the elements of a certain criminal offence, but are considered as a single, albeit continuing, crime. Ideal concurrence refers to the situation whereby a single act or factual situation constitutes more than one crime.

139. Moreover, apparent ideal concurrence of offences arises when a relationship of concurrence is resolved by the application of further analytical methods. The starting point of this analysis is a comparison of the different elements of the crimes in order to determine reciprocal specialty. The principle of subsidiarity is applied as an additional method to determine the propriety of

cumulative convictions for ideal concurrence. Subsidiarity refers to relationships between offences of the same kind, that are designed to protect the same or closely related social interests, but which differ in relation to particular elements. In such circumstances, the special crime consumes the general crime.

140. In the Indictment, however, the Prosecutor has used the principle of apparent real concurrence for no obvious purpose. For one act, the Defendants were charged with two crimes even if the general clause of "Causing general danger" is already covered by and enshrined in the elements of Article 299 of the CCK. So the same result (putting in danger) is used in two different provisions.

141. The Court has to stress that the criminal act envisaged in Article 291 of the CCK represents a general criminal act in relation to other criminal acts from this Chapter, which is manifested in separate forms, i.e. specific aspects of this general criminal act. Namely, the criminal act of "Causing general danger" also contains the significant characteristics of Article 299 of the CCK. Both crimes punish the violations of the same criminal value (endangering the life or body of persons or for sizeable property, not only by the activities or means explicitly stated in the law), but with different forms of action (one "by another" generally dangerous activity or generally dangerous means, another with a full description of specific form of actions).

142. The subsidiary character of this crime (Article 291 of the CCK) also ensues from its general character, because it exists only if legal characteristics of another criminal act from both Chapters have not been met in a concrete case.

143. Therefore the Court can conclude that we have an apparent concurrence based on the subsidiarity of these two criminal provisions.

144. Moreover, regarding this charge ("Endangering public traffic by dangerous act or means"), the Panel has to stress that no fact was proven that could demonstrate that the Defendants, even if they were at the barricade, committed any criminal action.

145. This is so because Article 299 of the CCK (Endangering Public Traffic by Dangerous Acts or Means Article) states:

*"(1) Whoever destroys, removes or seriously damages installations, equipment, signs or signals designed for traffic safety, or gives erroneous signs or signals, places obstacles on public roads or in any other manner endangers traffic and **thereby endangers human life or physical safety or property on a large-scale shall be punished by imprisonment of up to three years**".*

146. The objective element of this criminal provision is one action that could cause concrete (real and immediate) general danger for the life or body of persons or for sizeable property. In this case, the only action committed by the persons who were at the barricade was to create a concrete obstacle to the \_\_\_\_\_ convoy. That barricade itself did not cause any concrete danger to the \_\_\_\_\_. It was the firearm shootings and the creation of an ambush that killed E.Z. \_\_\_\_\_ and put in danger the persons who were in the \_\_\_\_\_ convoy. Therefore, without a solid link between the shootings and the barricade, the Defendants could not be perpetrators of these two criminal charges.

147. Therefore, the Defendants have to be acquitted, under Article 364 paragraph (1) subparagraph (1.3) of the CPC of having committed the crimes of: “Endangering public traffic by dangerous.s act or means” in violation of Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 380(1) of the CCRK as read in conjunction with Article 31 of the CCRK and “Causing general danger” in violation of Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK.

### **3.2. Regarding the Charge of “Participating in a Crowd committing a Criminal Offence”**

148. Article 320 of the CCK (Participating in a crowd committing a criminal offence) provides:

*“(1) Whoever participates in an assembled crowd which by collective action deprives another person of his or her life, inflicts a grievous bodily harm on another person, causes a general danger, damages a property on a large scale or commits other offences of grave violence, or attempts to commit such offences, shall be punished by imprisonment of three months to five years”.*

149. Article 412 of the CCRK (Participating in a crowd committing a criminal offence and hooliganism) states:

*“1. Whoever participates in an assembled crowd of more than eight persons which by collective action deprives another person of his or her life, inflicts a grievous bodily injury on another person, causes a general danger, causes damages of twenty thousand (20,000) EUR or more to property or commits other offences of grave violence, punishable by imprisonment of at least five (5) years or attempts to commit such offenses, shall be punished by imprisonment of six (6) months to five (5) years”.*

150. Under the old provision, it was the general opinion that the crowd should be bigger than seven (7) or at least ten (10) persons.

151. However, it is also stated that:

*“taking into account, on the other hand, that the creation of a gathering is often a spontaneous act and consequently it is not tied up with a constant number of participants [the number fluctuates, goes up and down, depending on the unfolding of the events], it is not thus advisable to set upfront a particular number [of people] as a threshold, instead it should be assessed independently in each case, taking many circumstances into account”<sup>143</sup>.*

152. The scope of this provision is to punish the organization of gathering, not for the creation of a group that committed an ambush.

153. Usually, the gathering is dangerous precisely because it has its own reactions that are independent from the reaction of its members.

154. In this form, a gathering is different from a group, which is generally speaking limited as regards to the number of participants, has a consciousness and is organized. One real gathering is the unorganized [chaotic] crowd, although the term gathering/crowd may apply even when there is a certain [smaller or bigger] amount of order and organization.

---

<sup>143</sup> See Z. Stojanovic and O. Peric, “Article 215”, *Commentary of the Criminal Code of Serbia and the Criminal Code of Montenegro*, Official Gazette of FRY Belgrade (1996), page 290;



155. Thus, the creation of the barricade itself, in this case, is closer to a group than to a real gathering or crowd due to the number of people and the organized form under which the event took place.

156. Therefore, under the old Code, this Court cannot establish that the persons present at the barricade were at least 10. In fact, the most reliable Witness on this issue stated that there were eight persons at the barricade and that another two persons were there to watch at some distance<sup>144</sup>.

157. Under the new Code, this objective element of the criminal charge was reduced and established as **more than eight (8) persons**.

158. Once again, in this case, the Court could not establish that the persons at the barricade were more than eight (8). It was proven that the persons at the barricade were around eight.

159. Therefore, one objective element of the criminal provision was not proven and thus the Defendants have to be acquitted under Article 364 paragraph (1) subparagraph (1.3) of the CPC of having committed the crime of "Participating in a crowd committing a criminal offence" in violation of Article 320(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 412 of the CCRK as read in conjunction with Article 31 of the CCRK.

#### **IV. COSTS, COMPENSATION CLAIM AND CONFISCATION**

##### **4.1. Property claim**

160. The Injured Parties were instructed as to their right to file a property claim pursuant to Articles 458, 459 and 460 of the CPC. Such a claim was presented on the last day of the Main Trial<sup>145</sup>. According with Article 463 paragraph (2) of the CPC and considering the nature of the judgment of acquittal, the Court instructs the injuries parties that they may pursue the property claim in civil litigation.

##### **4.2. Criminal Costs**

161. The costs of the criminal proceedings under Article 450 paragraph (2), subparagraph (2.1.) to (2.5.) of the CPC, the necessary expenses of the Defendants and the remuneration and expenses of the Defence counsel shall be paid from budgetary resources under Article 454, paragraph (1) of the CPC.

---

<sup>144</sup> Minutes of Main Trial, 29 January 2015, pages 21-22, see Tab 1, Court Binder TRIAL, VOLUME III;

<sup>145</sup> See Tab 11, Court Binder TRIAL, VOLUME V;

\*

Basic Court of Mitrovicë/Mitrovica  
P. No. 59/2014

EULEX Presiding Judge

Paulo Teixeira \_\_\_\_\_

EULEX Legal Officer/recorder

Vera Manuello \_\_\_\_\_

---

Legal Remedy: A Defendant, their legal counsel, the Prosecutor or an Injured Party have 15 days from service of this judgment to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.