

SUPREME COURT OF KOSOVO

Ap-Kz no. 246/2010

25 May 2012

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in a panel composed of EULEX Judge Dr Horst Proetel as Presiding Judge, and Supreme Court Judge Marije Ademi, Supreme Court Judge Salih Toplica, EULEX Judge Tore Thomassen and EULEX Judge Dr Anne Kerber as panel members, assisted by Legal Advisor Adnan Isufi acting in the capacity of recording clerk,

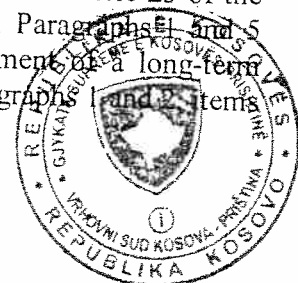
In the criminal case against the Defendants:

B [REDACTED] **H** [REDACTED]
[REDACTED]
[REDACTED] Kosovo citizenship, [REDACTED]
[REDACTED] in detention since 21 January 2008, and

S [REDACTED] **Q** [REDACTED]
[REDACTED]
[REDACTED] Kosovo citizenship, [REDACTED]
[REDACTED] in detention since 21 January 2008,

Both charged as per in the Indictment PPN - KTR no. 697-7/07 - PP - KT no. 61-6/08 filed on 12 August 2008 confirmed by Ruling KA no. 470/08 dated 2 February 2009, with the criminal offences of Aggravated Murder contrary to Article 147 Paragraphs 4, 9, and 11 read with Article 23 of the Provisional Criminal Code of Kosovo (PCCK), of Attempted Aggravated Murder contrary to Article 147 Paragraphs 4, 9, and 11 read with Articles 20 and 23 of the PCCK and of Causing General Danger contrary to Article 291 Paragraphs 1 and 5 read with Article 23 of the PCCK,

Both convicted by Judgment P no. 488/08 of the District Court of Prishtinë/Priština dated 22 September 2009 for the criminal offences of Aggravated murder contrary to Article 147 Paragraphs 4, 9, and 11 read with Article 23 of the Criminal Code of Kosovo (CCK), of Grievous bodily harm contrary to Article 154 Paragraph 1 item 1 read with Article 23 of the CCK, and of Causing general danger contrary to Article 291 Paragraphs 1 and 5 read with Article 23 of the CCK; and both sentenced to a long-term imprisonment of twenty-five (25) years pursuant to Article 37 and Article 147 Paragraph 1, items 4, 9 and 11 read with Article 23 of the CCK, an imprisonment of three (3) years pursuant to Article 154 Paragraph 1, item 1 read with Article 23 of the CCK, an imprisonment of three (3) years pursuant to Article 291 Paragraphs 1 and 5 read with Article 23 of the CCK, thus to an aggregate punishment of a long-term imprisonment of twenty-five (25) years pursuant to Article 71 Paragraphs 1 and 2 items 1 and 2 of the CCK,



Acting upon the Appeals filed by Defence Counsel D [REDACTED] J [REDACTED] on 27 April 2010 and filed by Defence Counsel M [REDACTED] H [REDACTED] on 28 April and on 21 May 2010 on behalf of Defendant B [REDACTED] H [REDACTED] and the Appeal filed by Defence Counsel A [REDACTED] I [REDACTED] on behalf of Defendant S [REDACTED] Q [REDACTED] on 26 April 2010 against the Judgment P no. 488/08 of the District Court of Prishtinë/Priština dated 22 September 2009, and considering the Reply of the Special Prosecution Office of Kosovo (SPRK) filed on 1 June 2010 and the Opinion of the Office of the State Prosecutor of Kosovo (OSPK) filed on 13 September 2011,

After having held a public session on 22 May 2012, in the presence of the parties to the proceedings and having deliberated and voted on 24 May 2012,

Pursuant to Articles 420 and following of the Kosovo Code of Criminal Procedure (KCCP), issues the following

JUDGMENT

The Appeals of the Defence Counsels on behalf of Defendants B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] against the Judgment P no. 488/08 of the District Court of Prishtinë/Priština dated 22 September 2009 are rejected as ungrounded with modification of Count 3 Causing General Danger, which is consumed by Count 1 Aggravated Murder.

The Judgment is affirmed in the remaining parts.

The time spent in detention on remand of the Defendants is to be credited pursuant to Article 73 Paragraph 1 of the CCK. The detention on remand against the Defendants B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] is hereby extended until the Judgment of the Supreme Court of Kosovo Ap-Kz 246/10 dated 25 May 2012 becomes final, but no longer that the expiry of the term of punishment imposed by the Judgment. A separate ruling for the detention on remand shall be rendered by the Court pursuant to Article 393 of the KCCP.

The costs of the criminal proceeding in second instance shall be paid jointly by the Defendants pursuant to Articles 99, 100 and 103 of the KCCP.

REASONING

I. Procedural background

On 24 September 2009, around 2.00 am a considerable explosion occurred on the ground floor of a building located in Bill Clinton Boulevard, Dardania area in Prishtinë/Priština. As a result of the explosion, two persons of Kosovo citizenship lost their lives and several persons were injured.



On 12 August 2008, the Indictment PPN - KTR 697-7/07 - PP - KT 61-6/08 against the Defendants was filed with the District Court of Prishtinë/Priština.¹

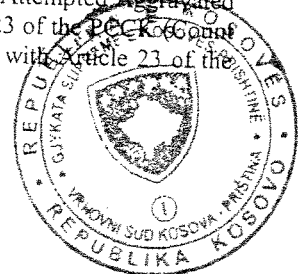
On 2 February 2009, the Indictment was confirmed for the counts 2, 3 and 4 by confirmation Ruling KA No. 470/08. The count of Criminal Association was dismissed and the criminal proceeding related to this count was terminated pursuant to Article 316 of the PCPCK.²

The trial commenced in May through September 2009. More than thirty witnesses were heard during the trial. On 22 September 2009, the First Instance Court found the Defendants B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] guilty of the criminal offences of:

- **Aggravated murder** contrary to Article 147 Paragraphs 4, 9, and 11 read in conjunction with Article 23 of the CCK (count 2 of the indictment). Because “[o]n 24th September 2007, B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] acting in co-perpetration with each other and with individuals whose identities are still unknown, deprived other persons of their lives because of unscrupulous revenge and other base motives, by placing and detonating an improvised explosive device on the ground floor of a building at Bill Clinton Avenue, Pristina, resulting in the death of N [REDACTED] M [REDACTED] and P [REDACTED] S [REDACTED], and in doing so they intentionally endangered the life of more persons.”
- **Grievous bodily harm** contrary to Article 154 Paragraph 1 item 1 read in conjunction with Article 23 of the CCK. Because “[o]n 24th September 2007 B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED], acting in co-perpetration with each other and with individuals whose identities are still unknown, caused grievous bodily harm to X [REDACTED] S [REDACTED], V [REDACTED] Z [REDACTED], L [REDACTED] N [REDACTED], G [REDACTED] S [REDACTED] E [REDACTED] H [REDACTED], N [REDACTED] H [REDACTED], F [REDACTED] B [REDACTED], L [REDACTED] K [REDACTED], and S [REDACTED] S [REDACTED] by placing and detonating an improvised explosive device on the ground floor of a building at Bill Clinton Avenue, Pristina.” and
- **Causing general danger** contrary to Article 291 Paragraphs 1 and 5 read in conjunction with Article 23 of the CCK (Count 4 of the Indictment). Because “[o]n 24th September 2007 B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] acting in co-perpetration with each other and with individuals whose identities are still unknown, by using explosives, namely an improvised explosive device placed and detonated on the ground floor of a building at Bill Clinton Avenue, Pristina, caused great danger to human life resulting in the deaths of two persons, namely N [REDACTED] M [REDACTED] and P [REDACTED] S [REDACTED], and grievous bodily harm to nine persons, namely X [REDACTED] S [REDACTED] V [REDACTED]

¹ Counts: Criminal Association contrary to Article 26 Paragraph 1 of the PCCK to commit Aggravated Murder contrary to Article 176 Paragraphs 4, 9, and 11, Attempted Aggravated Murder contrary to Article 147 Paragraphs 4, 9, and 11, read with Article 20 of the PCCK, and Causing General Danger contrary to Article 291 Paragraphs 1 and 5 of the PCCK (Count 1); Aggravated Murder contrary to Article 147 Paragraphs 4, 9, and 11 read with Article 23 of the PCCK (Count 2); Attempted Aggravated Murder contrary to Article 147 Paragraphs 4, 9, and 11 read with Articles 20 and 23 of the PCCK (Count 3); and Causing General Danger contrary to Article 291 Paragraphs 1 and 5 read with Article 23 of the PCCK (Count 4).

² Black binder marked KA no. 470/08 – no. 469/08, P no. 488/08



Z [REDACTED], L [REDACTED], N [REDACTED], G [REDACTED], S [REDACTED], B [REDACTED], H [REDACTED], N [REDACTED], H [REDACTED], F [REDACTED], B [REDACTED], L [REDACTED], K [REDACTED], S [REDACTED], S [REDACTED], M [REDACTED], K [REDACTED], and T [REDACTED], K [REDACTED], and substantial material damage to property, namely the premises of C [REDACTED], B [REDACTED], U [REDACTED], S [REDACTED], O [REDACTED], P [REDACTED], N [REDACTED], K [REDACTED], F [REDACTED], C [REDACTED] and S [REDACTED]”.

B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] were sentenced to an aggregated punishment of twenty-five (25) imprisonment pursuant to Article 71 of the CCK.³ The third Defendant was acquitted pursuant to Article 390 item 3 of the KCCP.

The Appeal against the First Instance Judgment filed by Defence Counsel A [REDACTED] on behalf of Defendant S [REDACTED] Q [REDACTED] on 26 April 2010. Lawyer D [REDACTED] J [REDACTED] filed an appeal on behalf of B [REDACTED] H [REDACTED] was received on 27 April 2010. Defence counsel M [REDACTED] H [REDACTED] filed two appeals on behalf of B [REDACTED] H [REDACTED] on 28 April and on 21 May 2010. The SPRK filed a Reply to the Appeals on 1 June 2010 and the Office of the State Prosecutor of Kosovo submitted an Opinion to the Appeals on 13 September 2011.

II. Submissions of the parties

A. Appeal filed by Defence counsel M [REDACTED] H [REDACTED] on the behalf of Defendant B [REDACTED] H [REDACTED]

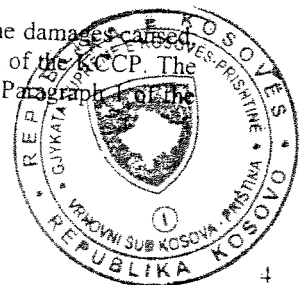
The Defence files an appeal on the grounds of:

- Substantial violations of the provisions of the criminal procedure under Article 403 of the KCCP;
- An erroneous and incomplete determination of the factual situation under Article 405 of the KCCP;
- A violation of the criminal law under Article 404 of the KCCP; and
- The decision on criminal sanctions under Article 406 of the KCCP.

The Defence counsel proposes to the Supreme Court of Kosovo to acquit the Defendant pursuant to Article 390 Paragraph 3 of the KCCP, or to annul the verdict and return the case to the First Instance for retrial. Finally, the Defence requests the immediate release of B [REDACTED] H [REDACTED].

The Defence refers to the insulting and biased attitude of the Presiding Judge of the Trial Panel towards the Defendant. He claims that the way of communicating between the Prosecutor and the Judge, and the whole criminal proceeding raises suspicion. He also avers that the stamps on the documents issued by the Prosecution and the Court are unclear. Moreover, the confirmation Judge did not act in accordance with Article 264 of the KCCP.

³ The District Court ordered the two Accused to compensate the injured parties for the damages caused and instructed the injured parties to file a civil suit pursuant to article 112 Paragraph 2 of the KCCP. The Defendants were ordered to pay the costs of the proceedings pursuant to Article 102 Paragraph 1 of the KCCP.



The Defence alleges substantial violations of the provisions of the criminal procedure:

- The Defence contends the change in the composition of the Trial Panel.
- The challenged Judgment is based on inadmissible evidence. The expertise of the explosive traces in the vehicle 093 KS073 was ordered in breach of Article 176 of the KCCP.
- The challenged Judgment exceeded the scope of the indictment, as the reasoning elaborates on the 'triple murder case'.
- The reasoning in the Judgment is contradictory. There is a considerable discrepancy as to the material facts between the statement of grounds relating to the content of records of testimonies given in the proceedings and these records themselves, in particular the witness statements on the explosion and its circumstances.

The Defence avers an erroneous or incomplete determination of the following factual circumstances:

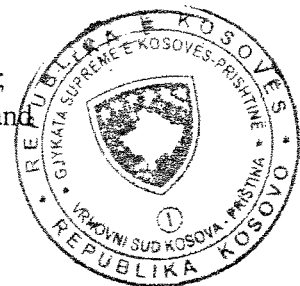
- Explosion and its circumstances: the First Instance Court wrongly concluded that the statements of witnesses V [REDACTED], Z [REDACTED], E [REDACTED], H [REDACTED], L [REDACTED], N [REDACTED], D [REDACTED], O [REDACTED] and Y [REDACTED] gave a homogeneous description of the events.
- Information given by witness M [REDACTED] I [REDACTED]: the First Instance Court erroneously assessed the statements of this witness, notably because the Court failed to confront them with the statements of other witnesses, e.g. A [REDACTED] and Z [REDACTED] I [REDACTED]. The Defence induces that F [REDACTED] S [REDACTED] attempted to direct the Prosecution in order to get rid of B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED].
- Information related to the triple murder: the statements of the witnesses A [REDACTED] B [REDACTED], O [REDACTED] and Z [REDACTED] made prior statements that are in contradiction with those given in court.
- Telephone interceptions and other technical evidence: the First Instance Court wrongly assessed the relationship between M [REDACTED] I [REDACTED] and her daughters, and the relationship between B [REDACTED] H [REDACTED] and A [REDACTED] I [REDACTED]. The fact that B [REDACTED] H [REDACTED] was on medical leave and that he did not use the incriminated vehicle is proven by the medical documentation and corroborated by the witness statements.
- Alibi of B [REDACTED] H [REDACTED]: the Defendant recalled the critical night in a sincere manner, and his alibi is corroborated by several witness statements.

Finally, the Defence does not deem necessary to further elaborate on the legal designation of the acts and the decision on the criminal sanctions, as they are a consequence of the abovementioned violations.

B. Appeal filed by Defence counsel D [REDACTED] J [REDACTED] on the behalf of Defendant B [REDACTED] H [REDACTED]

The Defence alleges:

- Substantial violations of the provisions of the criminal procedure;
- An erroneous and incomplete determination of the factual state; and
- The decision on criminal sanctions.



The Defence counsel proposes to the Supreme Court of Kosovo to acquit the Defendant and to release him immediately.

The Defence alleges substantial violations of the criminal procedure:

- The Defence was obstructed from participating to the investigative acts conducted by the Prosecutor, despite various written requests.
- The challenged Judgment is based on inadmissible evidence contrary to Article 386 Paragraph 1 of the KCCP (evidence in the 'triple murder').
- The enacting clause of the contested Judgment is in contradiction with the reasoning and a judgment cannot be based on assumptions.
- The Defence avers a violation of the provisions of the European Convention of the Human Rights.⁴

The Defence claims an erroneous and incomplete determination of the factual situation:

- The First Instance Court erroneously took a stand that circumstantial evidence is of probative value.
- The First Instance Court wrongly assessed the evidence administered, notably the statements of M. I., the evidence related to the triple murder case, the interceptions of telecommunications, and the alibi of B. H., and it failed to determine the existence of the objective and subjective elements of the criminal offences.
- The Prosecution did not proceed to a thorough examination of other leads in the case.
- B. H. as a police officer was threatened by E. S.'s group as stated by B. A.
- Doubts arising as to the existence of the criminal offence should have been interpreted in favour of the Defendant pursuant to Article 3 of the CCK.
- The challenged Judgment is based on inadmissible evidence because neither B. H. nor the Defence were present when the explosive samples were taken in the police vehicles.

C. Appeal filed by Defence Counsel A. I. on behalf of Defendant S. Q.

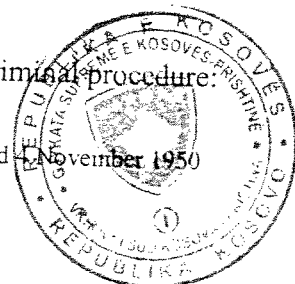
The Defence files an appeal on the grounds of:

- Substantial violations of the provisions of the criminal procedure;
- An erroneous determination of the factual situation; and
- A violation of the criminal law.

He proposes to the Supreme Court of Kosovo to approve the Appeal and amend the challenged verdict, as to acquit the Defendant, or to annul the verdict and to return the case to the First Instance for re-trial.

The Defence alleges substantial violations of the provisions of the criminal procedure.

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950



- The contested Judgment is based on inadmissible evidence in violation of Article 153 Paragraph 2, Articles 156 and 157 and Articles 175 and 176 of the KCCP.⁵
- The First Instance Court by assessing the evidence in the triple murder case has violated Article 386 Paragraph 1 of the KCCP because the challenged Judgment exceeds the scope of the indictment.
- The challenged Judgment is confusing and incomprehensible as to the decisive facts and other circumstances that refer to the criminal offences (e.g. motive).

The Defence claims an erroneous determination of the factual situation:

- The First Instance Court wrongly established the factual situation on the basis of circumstantial evidence.
- The First Instance Court based its findings on the statements of witness M■■■■ I■■■■ on the sms between her and F■■■■ S■■■■, on evidence related to the triple murder case and on the findings of the expertise carried out of the explosive traces in the vehicles 093-KS-073 and 093-KS-029.
- The witness statements related to the explosion, its circumstances and to the involvement of the Defendants are contradictory.
- The statements of S■■■■ Q■■■■ are convincing and corroborated by the statements of the co- Defendants and witnesses and by material evidence.

The Defence alleges a violation of the criminal law due to the erroneous determination of the factual situation. The acts that occurred in September 2007 may only receive the legal designation of Causing general danger.

D. Reply of the SPRK

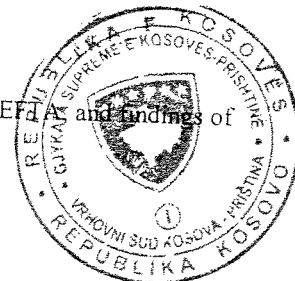
The SPRK proposes to the Supreme Court of Kosovo to reject the Appeals of the Defendants as ungrounded, and for this purpose, relies on the First Instance's Judgment.

Reply to the Appeal of Defence counsel M■■■■ H■■■■ on the behalf of Defendant B■■■■ H■■■■

- The SPRK puts forward that the Defence did not produce any evidence on the allegation of communications between the Prosecutor and the Judge.
- The Defence claims the lack of clarity of the Prosecution and Court stamps on several papers without precise reference to such documents.
- The SPRK considers that the confirmation procedure was in compliance with the legal provisions.
- The Special Prosecutor presents that the comments of the presiding judge were permissible as he was in charge of conducting the main trial.

In reply to the allegation of substantial violations of the provisions of criminal procedure, the SPRK points out:

⁵ Statements of witnesses M■■■■ I■■■■, A■■■■ B■■■■, witness OMEGA, witness TEF■ and findings of expertise



- The Defence stated that they had no objections to the new composition of the Trial Panel.
- In respect to the admissibility of the expertise of the explosive traces, the Prosecutor puts forward that Articles 236 and 237 govern the issuance of orders for expertise during the pre-trial proceedings. It follows that the expertise performed by Bundeskriminalamt (BKA) in Germany is lawful and admissible.
- To the submission that the samples were taken four months after the critical event, the Prosecutor notes that samples and fibres are two different materials. The forensics expertise shows explosive traces in the car, and the analysis of fibres was conducted to explain the loss of fibres that is not correlated to the explosives. In February 2008 new samples were taken as the original samples became unusable after the expertise completed in the Laboratory in Zagreb. The procedure followed by the forensic examiner on the vehicle 093-KS-073 in February 2008 excludes contamination.
- The First Instance Court did not establish the guilt or innocence of the Accused in the triple murder case, only used it as another piece of circumstantial evidence.
- The SPRK finds the allegation that the reasoning is insufficient and that there are contradictions between the statement of grounds relating to the content of witness statements given in the proceedings and these witness statements without merit.

In reply to the ground of erroneous or incomplete determination of the factual situation, the Prosecution submits:

- There are corroborative elements other than the sms from M [REDACTED] I [REDACTED] to F [REDACTED] S [REDACTED] i.e. explosive traces in the police vehicle, wrench cutters at his home, uniforms, phone message from S [REDACTED] K [REDACTED], presence of B [REDACTED] H [REDACTED] at the scene of N [REDACTED] B [REDACTED]'s murder.
- Circumstantial evidence can be the sole basis for a conviction.

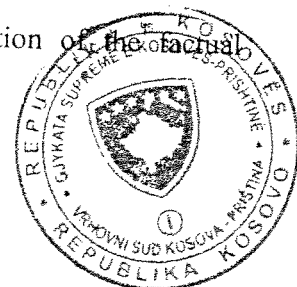
Reply to the Appeal of Defence counsel D [REDACTED] J [REDACTED] on the behalf of Defendant B [REDACTED] H [REDACTED]

In reply to the contention on substantial violations of the criminal procedure, the SPRK submits:

- The Prosecutor rightly excluded the Defence from the interviews of witnesses and co-Defendants, as it would have jeopardized the investigation and the safety of the witnesses.
- Witness A [REDACTED] A [REDACTED] is not credible as established by the Trial Panel.
- The evidence related to the triple murder case was lawfully admitted according to Article 383 of the KCCP.
- Finally, the investigation was properly conducted as many leads were followed.

In regard to the ground of erroneous or incomplete determination of the factual situation, the Prosecutor presents:

- There are many strands of strong circumstantial evidence.
- There is evidence of the threats and intimidation of the witnesses.



- The Laboratory in Zagreb did not have the necessary advanced equipment to carry out the forensic expertise like in the German laboratory.
- The evidence presented in support of the alibi was found to lack credibility.

Reply to the Appeal of Defence counsel A [REDACTED] I [REDACTED] on the behalf of Defendant S [REDACTED] Q [REDACTED]

In respect to the substantial violations of the criminal procedure, the Prosecutor submits:

- Circumstantial evidence should not have less weight than direct evidence as held in the jurisprudence.
- The circumstantial evidence put together created a strong conclusion of guilt against S [REDACTED] Q [REDACTED] statement of M [REDACTED] I [REDACTED] contact with B [REDACTED] H [REDACTED] on that night; weakness of his alibi; sms sent from Officer F [REDACTED] S [REDACTED] the following day; telephone calls of S [REDACTED] Q [REDACTED] with B [REDACTED] H [REDACTED]
- The evidence provided by witness M [REDACTED] I [REDACTED] is of probative value.
- Finally, S [REDACTED] Q [REDACTED] had a special uniform in his home and had a motive, the means and the opportunity to commit the criminal offences.

E. Opinion of the OSPK

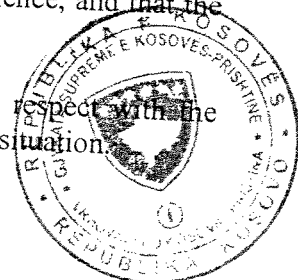
The State Prosecutor proposes to reject as unfounded the Appeals of the Defence Counsels of the Accused B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED], and to confirm the First Instance Judgment. The OSPK considers the reply by the SPRK Prosecutor as a full-fledged part of the motion of the OSPK.

Appeal of the Defence Counsel M [REDACTED] H [REDACTED] filed on behalf of the Defendant B [REDACTED] H [REDACTED]

With regard to the violations of provisions of the criminal procedure, the State Prosecutor submits:

- The OSPK considers the submission on the change in the constitution of the Panel without merit as the Defence agreed to the decision of the Panel.
- The allegation related to the comments of the Presiding Judge in respect of some witnesses during the main trial pertain to the issue of impartiality and should have been addressed according to Articles 40 and 42 of the KCCP. Moreover, the Defence Counsel does not substantiate it.
- The State Prosecutor refers to the arguments made by the SPRK Prosecutor as to the assertions that the evidence is inadmissible and that the contested Judgment exceeds the scope of the charge.
- The verdict complies with the statutory requirements of Article 396 of the KCCP, that it does not contain such discrepancies as stipulated by the Defence, and that the enacting clause of the verdict is clear and logic.

The State Prosecutor refers to the reply of the SPRK Prosecutor in respect with the allegation of an erroneous and incomplete determination of the factual situation.



As for the decision on criminal sanctions, the OSPK Prosecutor is of the opinion that the sentence is not to be objected as the First Instance Panel evaluated all circumstances required by Article 64 of the CCK.

Appeal of the Defence Counsel D [REDACTED] J [REDACTED] filed on behalf of the Defendant B [REDACTED] H [REDACTED]

As to the allegation of essential violations of the criminal procedure, the OSPK Prosecutor refers to the response to the Appeal of the Defence Counsel M [REDACTED] H [REDACTED] and the Reply of the SPRK Prosecutor.

Appeal of the Defence Counsel A [REDACTED] I [REDACTED] filed on behalf of the Defendant S [REDACTED] Q [REDACTED]

In respect to the submission on the essential violations of the provisions of the criminal procedure, the OSPK refers to the remarks made above and to the reply of the SPRK.

III. Findings of the Supreme Court Panel

A. Competence of the Supreme Court of Kosovo

The Supreme Court of Kosovo is competent to decide on the Appeals pursuant to Articles 26 Paragraph 1 and 398 and following of the KCCP.

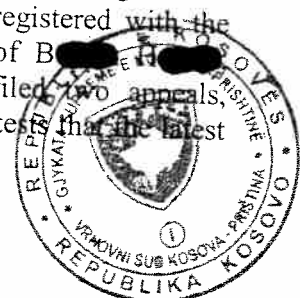
The Supreme Court Panel has been constituted in accordance with Article 3 Paragraph 7 of the Law No. 03/L-53 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. A public session was held on 22 May 2012. The parties were duly notified and attended the session.

B. Admissibility of the Appeals

The Supreme Court Panel finds that the Appeals are timely filed by an authorized person, and thus admissible pursuant to Article 398 Paragraph 1 of the KCCP.

The verdict P no. 488/08 was announced on 22 September 2009. Defendant S [REDACTED] Q [REDACTED] and his Defence Counsel A [REDACTED] I [REDACTED] received the Judgment on 12 April 2010. The Appeal filed on behalf of Defendant S [REDACTED] Q [REDACTED] was registered with the court on 26 April 2010.

The delivery slip addressed to Defendant B [REDACTED] H [REDACTED] bears the date of 7 April 2010, without signature. Another delivery slip attests that B [REDACTED] H [REDACTED] received the Judgment on 30 April 2010. Defence Counsel D [REDACTED] J [REDACTED] received the Judgment on 12 April 2010. The Appeal filed by Lawyer D [REDACTED] J [REDACTED] was registered with the District Court on 27 April 2010. The second Defence counsel of B [REDACTED] H [REDACTED], M [REDACTED] H [REDACTED], received the Judgment on 8 April 2010. He filed two appeals, respectively on 28 April and on 21 May 2010. The mail envelope attests that the latest appeal was sent to the Court on 19 May 2010.



The three appeals were transmitted to the SPRK on 21 May 2010. The SPRK filed a Reply to the Appeals filed on the behalf of Defendants B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] on 1 June 2010.

C. Merits of the Appeals

The Supreme Court of Kosovo rejects the three Appeals as ungrounded, considering that the First Instance Court has not committed any violations by finding the Defendants guilty and sentenced them for the criminal acts of Aggravated murder contrary to Article 147 Paragraphs 4, 9, and Grievous bodily harm contrary to Article 154 Paragraph 1 item 1 of the CCK, both committed in co-perpetration foreseen under Article 23 of the CCK.

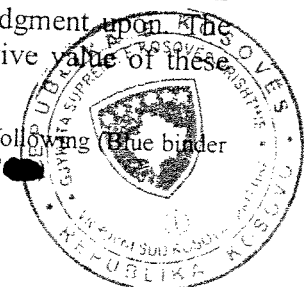
The Supreme Court, however, found that the criminal act of Causing general danger contrary to Article 291 Paragraphs 1 and 5 of the CCK is absorbed under Count 1 of Aggravated murder.

Motion filed by the OSPK

At the opening of the appeal session, the State Prosecutor filed a motion to conduct a hearing to take new evidence, e.g. statements given by Defendant S [REDACTED] Q [REDACTED] to the Special Prosecutor on 30 June 2011, on 23 April and 11 May 2012, pursuant to Articles 411 and 412 of the KCCP.⁶ The OSPK submitted the statements to the Supreme Court Panel and the parties present in the courtroom. Additionally, the OSPK presented arguments on the admissibility of such evidence, to the nature of these statements and on the opportunity to conduct a hearing. The Defence had an opportunity to comment on the Prosecutor's motion. In addition, Defendant S [REDACTED] Q [REDACTED] provided some clarifications on the content of his statements. Lawyer M [REDACTED] H [REDACTED] as well as S [REDACTED] Q [REDACTED] suggested sending back the case for re-trial. The Presiding Judge adjourned the session and the Supreme Court Panel deliberated on the motion.

The Supreme Court Panel rejected the motion to conduct a hearing. The common practice at the Supreme Court is that the Second Instance Court revises the findings of the First Instance Court in a public session, conducting its assessment of the grounds of appeal based on law and facts administered and established during the course of the main trial. This is done without performing any new hearing. The Code, in its Article 412 Paragraph 1, envisages the conduct of a hearing for the appeal court under restrictive conditions, "only when it is necessary to take new evidence or to repeat evidence already taken due to an erroneous or incomplete determination of the factual situation, and when there are valid grounds for not returning the case to the court of first Instance for retrial." After having perused the statements of S [REDACTED] Q [REDACTED], the Panel is of the opinion that they obviously do not contain any new aspects requiring the opening of a hearing to take evidence. As a matter of fact, the Defendant in his statements only confirmed the facts the First Instance based its Judgment upon. The Supreme Court deems therefore unnecessary to evaluate the probative value of these

⁶ Case Ap-Kz no. 246/2010, minutes of appeal session 22 May 2012, pages 3 and following (True binder Supreme court of Kosovo Ap-Kz 246/2010, B [REDACTED] H [REDACTED] S [REDACTED] Q [REDACTED] N [REDACTED] C [REDACTED])



statements and to hear the Defendant as these statements do not affect his criminal liability in the Instance.

C.I. Substantial violations of the provisions of the criminal procedure under Article 403 of the KCCP

The allegation that the stamps of the District Court and the Prosecutor's Office in the case file's documents are unclear

The Supreme Court finds the allegation of Defence Counsel M [REDACTED] H [REDACTED] regarding the lack of clarity of the Court and Prosecution's stamps unfounded. The Panel checked the case binders, in particular the ones mentioned by the Defence during the appeal session.⁷ This Panel notes that four stamps can be found on these documents as well as the heading of UNMIK. There are two stamps of the Court (District Court in a round form used on the signature of the Judge to certify the Court documents and District Court stamp for the registration of documents). Two other stamps were used by the Prosecution's office: a round shaped one apposed on the Prosecutor's signature and another Registry stamp bearing Criminal division Registry. The stamps are clearly distinct. Moreover at the time of the investigation, as well known by the Defence, the case was dealt with by a UNMIK Prosecutor and UNMIK Judges and it might appear confusing since the UNMIK heading is present on both Prosecution and Court documents.

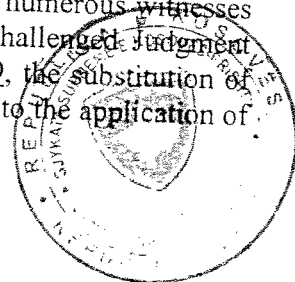
The allegation that the Court was not properly constituted

The Supreme Court Panel rejects the contention of the Defence concerning the change in the composition of the First Instance Panel. The first part of Article 345 paragraph 1 sets up the general rule that in case of change in the composition of the panel the proceeding shall start anew. Nevertheless, the second sentence of this paragraph entitles the continuation of the trial by the newly assigned panel, hence renouncing to repeat the examination of witnesses or others, rather than reading the statements of witnesses and records of site inspection. The re-start of the trial is consequently not of mandatory nature.

A reasonable interpretation of the norm, combining with the wording of the provision ("may"), leads to the conclusion that the panel need not to repeat procedural steps preceding the taking of evidence. The new panel member can therefore be aware of the trial proceeding prior to his/her assignment on a case. The restriction to the **principle of directness** of the proceedings is hence legitimate.

In the case at hand, the composition of the panel has changed after numerous witnesses were heard and evidence was presented before the Court. The challenged Judgment clearly refers to this change of composition: "On 19 August 2009, the substitution of the local judge was communicated to the parties who did not object to the application of

⁷ Binder 15 of the case file, pages 5189-5673; pages 5194 and 5355



the provision of article 345 KCCP. The minutes of the previous session were therefore read into the minutes. In the course of the same hearing, witness D [REDACTED] T [REDACTED] was called again to give some clarifications on the phone intercepts.”⁸ As rightly pointed out by the Prosecution, the Defence counsels did not object to this new composition, neither at the time of change of composition nor in the later course of the criminal proceeding.⁹ Moreover, the undersigned Panel considers that this ground of appeal contradicts the principle of good faith, *bonae fides*. During the appeal session mention was made of Articles 354 through 359 of the KCCP, by Lawyer M [REDACTED] H [REDACTED]. To start with, the undersigned Panel does not find these provisions relevant in respect to the change of the panel composition. Moreover, as attested by the trial records, the Presiding Judge proceeded in conformity with these articles at the commencement of the trial.¹⁰ The Panel also notes that the Defence’s rights have not been infringed by the continuation of the first Instance proceeding, as the Defendants and their Defence Counsels were present and got aware of all procedural steps.

The allegation that the Judgment was based on inadmissible evidence

The Supreme Court Panel finds that the allegations that the contested Judgment is based on inadmissible evidence, notably the reports of expertise ordered by the Prosecutor, are ungrounded.

The Supreme Court concurs with the Prosecution’s analysis arguments in this respect. It is true that Article 176 Paragraph 1 of the KCCP foresees that an expert analysis shall be ordered in writing by the Court. The Defence counsels, however, failed to consider Article 237 Paragraph 1 which states: “An expert analysis shall be ordered in writing by the court on the motion of the public prosecutor, the defence or *ex officio*. [...]”. This provision has to be interpreted in such manner that the Prosecutor in the pre-trial phase is competent to order an expert analysis, exception made for certain examinations that imply a physical incursion, mentioned in Article 237 Paragraph 2 of the CCK reserved to the pre-trial Judge. The Prosecutor is primarily responsible for the gathering of evidence at the pre-trial stage. The admissibility of such expertise ordered by the Prosecutor and its probative value is eventually assessed by the Court.

The Supreme Court Panel is aware of dissenting opinions of the judiciary on this issue.¹¹ The present interpretation is reasonable as it can strengthen the efficiency and swiftness of the investigation, considering the division of duties between Prosecutor and Judge. Lastly, it does not contravene to the rights of the Defendant at the early stage of the criminal proceeding.

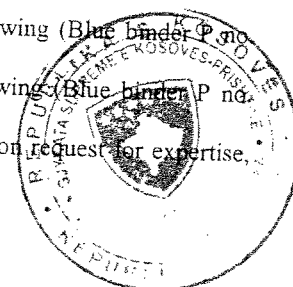
Again, the Supreme Court does not find any substantial violation of the provisions of the procedural law as to the expertise report based on samples taken months after the

⁸ Case P no. 488/08, First Instance Judgment, 22 September 2009, page 6

⁹ Case P no. 488/08, minutes of main trial 19 August 2009, pages 2 and following (Blue binder P no. 488/08 B [REDACTED] H [REDACTED] and alia, minutes)

¹⁰ Case P no. 488/08, minutes of main trial 25 May 2009, pages 3 and following (Blue binder P no. 488/08 B [REDACTED] H [REDACTED] and alia, minutes)

¹¹ For example, Case Prishtinë/Priština District court, GJJP no. 210/09, Ruling on request for expertise, 28 April 2009



event. The Defence may contest the probative value of the evidence based on the extracted samples, but not its admissibility.

Out of the case file, it can be ascertained that the Prosecutor issued an order for expertise in October 2007. The expertise was conducted by the Crime Laboratory in Zagreb, Croatia, as to examine the evidence listed in two lists (explosive detection swaps of 8 vehicles from Gjilane and 7 from Ferizaj) and identify the type of explosive and verify a possible match.¹² The experts from the Forensic Centre Ivan Vucetic in Zagreb concluded that the exhibits did not present any explosive residue.¹³ In the light of these negative results, the Prosecutor proceeded to another extraction of samples on the suspect vehicles. On 18 March 2008, two orders for expert analysis were issued, tasking the German forensics institute at the Bundeskriminalamt (BKA) to examine and compare fiber traces and cotton samples.¹⁴ On 29 September 2008, the BKA experts found that there was a positive indication of presence of organic explosive compounds (from cotton wool swab extracted from vehicle 093-KS-073), and of presence of PETN (nitropenta pentarythritol tetranitrate) on the samples taken from the KP vehicles.¹⁵ The SPRK, in its Reply, mentioned that the procedure followed by the forensic examiner on the vehicle 093-KS-073 in February 2008 to extract the samples excludes contamination.

It is noted that this issue was raised by the Defence at the trial stage. The First Instance Court diligently considers a possible contamination based on the evidence of the case file and concluded that “[o]n the base of this information, the possibility of a contamination does not exist, rationally. And the only logical conclusion is that those traces were left by the amount of explosive used for the bombing, handled during the transportation to the place of its use. The circumstance that they were found some months after the assumed transportation to the crime scene as well as the fact that an initial examination did not bring any result, does not affect this conclusion.”¹⁶ The Supreme Court concurs with the First Instance’s findings that are convincing: there is no indication of contamination. Also, the expertise of samples taken four months after the critical event is not prohibited by the provisions of the Code. In the Supreme Court’s opinion, the taking of samples and the procedure of expertise were carried out in a thorough manner by the Police and Prosecutor. Furthermore, the Defence does not present any element lessening these findings.

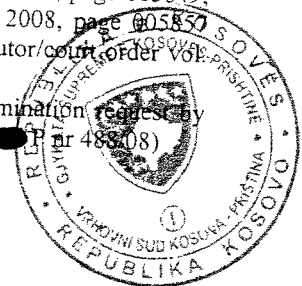
¹² Order of the Public Prosecutor for expert analysis PPN 697-7/07 dated 10 October 2007, page 005750 (Black binder UNMIK/DOJ office of Prishtinë/Priština district court request/prosecutor/court order vol. 16)

¹³ Expertise of the Forensic Centre I V, Zagreb, reference no. 511-01-43-IV/2-12782/07.MR dated 5 November 2007, page 003556, Grey binder UNMIK/DOJ office of Prishtinë/Priština District Court Public Prosecutor (Forensic file vol. 12)

¹⁴ Order of the Public Prosecutor for expert analysis PPN 697-7/07 dated 18 March 2008, page 005849; Order of the Public Prosecutor for expert analysis PPN 697-7/07 dated 18 March 2008, page 005850 (Black binder UNMIK/DOJ office of Prishtinë/Priština district court request/prosecutor/court order vol. 16)

¹⁵ Official expert opinion dated 29 September 2008, AZ KT 16-2008/1621/2, examination request by BKA section ZD 32 dated 26.03.2008, ref no. YU/070924A (Black binder B H, nr 488/08)

¹⁶ Case P no. 488/08, First Instance Judgment, 22 September 2009, page 41



The allegation that the Judgment exceeded the scope of the charge (Article 386 Paragraph 1 of the present Code)

The Supreme Court rejects as well the contention of the Defence the challenged Judgment is based on a factual state that exceeds that the one described in the indictment in breach of Article 386 Paragraph 1 of the KCCP.

The Indictment PPN - KTR no. 697-7/07 - PP - KT no. 61-6/08 clearly relates to the explosion that occurred on Bill Clinton boulevard in Prishtinë/Priština on 24 September 2009. The First Instance Court called witnesses, e.g. A [REDACTED] B [REDACTED], and assessed evidence submitted by the Prosecution, pertaining to the triple murder case. As correctly pointed out by the Prosecution, the First Instance Court only dealt with this case as it considered that the victims were murdered because of their knowledge of the bombing and the perpetrators of this criminal act. The District Court limited the scope of review of the evidence in the murder case to this assumption that, "N [REDACTED] B [REDACTED] was a young man who, in the allegation of the prosecutor, knew the members (at least some of them) of the group who placed the bomb at the restaurant Sekiraqa and was informed about the planning of the bombing since had been offered to be part of the plot. In the allegation of the Prosecutor, he was the target (the only target) of the attack which took place three days after the explosion; the motivation of the attack was that N [REDACTED] B [REDACTED] in the few days between the explosion and his death was imprudently speaking around about what he knew of the bombing."¹⁷ It is noted that the District Court Panel extensively elaborated on the 'triple murder case'¹⁸ in its Judgement as "another fundamental part of circumstantial evidence".¹⁹ As shown in the enacting clause and the reasoning of the Judgment, the District Court ruled on the existence of the criminal acts, e.g. the explosion, and on the responsibility of the Defendants, based on the facts described in the Indictment. The scope of the Judgment does not therefore exceed the scope of the indictment. The Supreme Court finds that, though the wording used in the challenged Judgment is a bit confusing, the First Instance's decision justified by the circumstances of the case and in compliance with the fundamental rules of fair trial.²⁰

Moreover, the District Court Panel evidently did not have competence to deal with the triple murder case. Following the completion of the investigation, the indictment PPS 41/09 in the case P Nr. 459/2009 was filed on 2 November 2009, thus after the announcement of the verdict in the case P no. 488/08. The case was adjudicated in February 2011, more than one year and a half after the issuance of the contested Judgment.²¹ The Supreme Court recalls that a judge sitting in a panel shall act in an

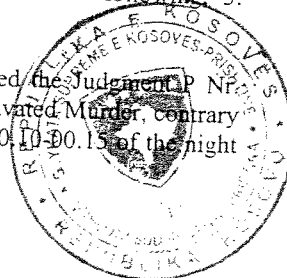
¹⁷ Case P no. 488/08, First Instance Judgment, 22 September 2009, page 21

¹⁸ Murder of N [REDACTED] U [REDACTED] and S [REDACTED] B [REDACTED] on the night of 27 September 2007 at the Lepenc Bridge located on the road that from the Prishtinë/Priština - Skopje Highway

¹⁹ Case P no. 488/08, First Instance Judgment, 22 September 2009, pages 21 and following 3. Information related to the death of N [REDACTED] B [REDACTED] and two others.

²⁰ Case P no. 488/08, First Instance Judgment, 22 September 2009, pages 22-23

²¹ On 7 February 2011, the Trial Panel of Prishtinë/Priština District Court issued the Judgment P Nr. 459/2009 by which B [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] were found guilty of Aggravated Murder, contrary to Articles 23, 147 Paragraph 1, items 3 and 11 of the CCK "Because between 00:10-00:15 of the night



independent and impartial manner, regardless of any circumstances external to the case. A trial panel is not bound by the assessment of the evidence made by another panel, and assuredly not by the preliminary conclusions in an investigation.²²

None of the provisions of the KCCP prevents a panel from using pieces of evidence that may be collected in another case. The procedural law provides for general rules on the administration of oral and written evidence and guidance for its evaluation.²³ The restrictions concerning the admissibility and use of evidence are clearly prescribed in the Code, i.e. Article 152 Paragraph 3 of the KCCP. The Supreme Court notes that this contested evidence was regularly filed by the Prosecutor. The First Instance Court freely assessed the pieces of evidence relating to the triple murder case among other evidence presented before the court. It also concurs with the District Court's findings relating the active role of the trial panel in the gathering of evidence and the assessment of the probative value of the evidence in order to establish the truth. The District Court provides factual and legal grounds to use such evidence *ex officio* (except for the witness mentioned in the indictment).²⁴

Finally, the Defence has ample opportunity, first to object to the decision of the Trial Panel to hear the evidence related to the other case, and second, to cross-examine these witnesses and challenge the said evidence.

The allegation that the enacting clause of the Judgment was incomprehensible or internally inconsistent or inconsistent with the grounds for the Judgment; the statement of grounds was wholly unclear or inconsistent in a large part; or in regard to material facts there was a considerable discrepancy between the statement of grounds relating to the content of documents or records of testimony given in the proceedings on the one hand and these documents or records themselves on the other hand

In the Supreme Court's opinion, the allegations on the contradictory character of the reasoning of the Judgment, the confusion as to the decisive facts, and the contradiction between the enacting clause and the reasoning do not stand, and hence rejected as ungrounded.

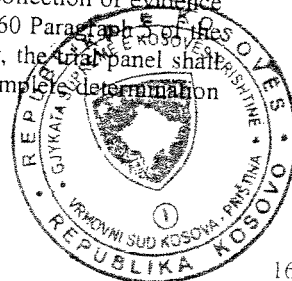
The challenged Judgment contains all the mandatory elements and was drawn up in accordance with Articles 391 and 396 of the Code. In particular, the description of the

between 27 and 28 September 2007 they murdered N [REDACTED], U [REDACTED] and S [REDACTED] B [REDACTED] in a deceitful manner at the Lepenc Bridge (located on the road that from the Pristina-Skopje Highway leads to the village of Soponica). [...]"

²² Exception made of Article 459 Paragraph 2 of the KCCP: (2) The court shall be bound to undertake all procedural actions and determine all issues to which it has been alerted by the Supreme Court of Kosovo.

²³ See *inter alia* Part II, Chapter XIX general provisions relating to evidence; Articles 360 and following of the KCCP; Article 387 of the KCCP

²⁴ The provisions of the Code entitle the judge at the trial stage to proceed to the collection of evidence that may deem necessary for the outcome of the proceeding; see *inter alia* Article 360 Paragraph 1 of the KCCP: (5) In addition to the evidence proposed by the parties or the injured party, the trial panel shall have the authority to collect evidence that it considers necessary for the fair and complete determination of the case.



factual state and circumstances of the commission of the crimes, and the legal qualification of the criminal conducts are detailed and clear in respect to each Defendant for each offence. The enacting clause also states the decision on the punishment.

The Supreme Court finds neither an inconsistency between the enacting clause and the reasoning of the Judgment, nor a considerable discrepancy as to the material facts between the statement of grounds relating to the content of records of testimonies given in the proceedings and these records. The District Court has clearly established the facts based on the statements of witnesses, records on intercepted phone calls, the reports of expertise and other pieces of evidence. The contested Judgment elaborates on the factual determination and the constitutive elements of the criminal offences. It provides a reasoning on the existence of the criminal offenses and the responsibility of the Defendants. Although the introductory phrase of the assessment might be seen a bit too wholesale,²⁵ further elaboration explains the main contents of the statements. The First Instance Court assessed the witness statements and lengthy provides explanations as to the credibility of these witnesses and the value of their testimony, as attested by the trial records. It is the role of the First Instance Court to make a comprehensive assessment of the facts and evidence, including the assessment of the statements, for which it has discretion. For reasons of readability of a judgment, it is plausible to mention predominately the witnesses the Court deems to be decisive and credible. This does not raise doubts that other statements have not been considered or intentionally been omitted. This applies mainly when the outcome of a statement does not really contribute to the establishment of facts.

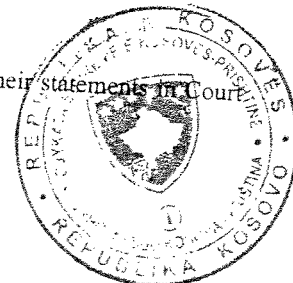
The contention of the Defence related to the confusion as to the decisive facts, notably the motive does not stand. The Supreme Court notes that the First Instance Court referred to the "unscrupulous revenge and other base motives" under Counts 2 and 4 of the enacting clause. It is true that in the reasoning the Judgment reads as follows: "The action for its characteristics, is not an act of revenge (or not only revenge), is an act of intimidation."²⁶ A correct analysis shows that the enacting clause does not only refer to revenge as the sole motive but also mentions "other base motives", predominately assessed as "intimidation".

The allegation that there is also a substantial violation of the provisions of criminal procedure if in the course of the criminal proceedings, including the pre-trial proceedings, the Court, the Public Prosecutor or the Police violated the rights of the Defence

The Supreme Court Panel rejects the allegation that the exclusion of the Defence by the Prosecution from the interviews of witnesses and co-defendants in the investigation phase constitutes an essential violation of the criminal procedure.

²⁵ Case P no. 488/08, First Instance Judgment, 22 September 2009, page 11: "Their statements in Court give a homogeneous description of the events with very limited divergences."

²⁶ Case P no. 488/08, First Instance Judgment, 22 September 2009, page 13



The Supreme Court is well aware of the utmost importance of rights of defence guaranteed in Article 6 of the European Convention of Human Rights. The KCCP, in its Article 77 Paragraph 3, prescribes that a defence counsel has the right to be notified in advance of the venue and time for undertaking any investigative actions and to participate in them.

Nevertheless, even without a formal restriction each right has immanent limitations. This applies when the exercise of the Defence's rights would endanger the significant rights of individuals, e.g. victims, witnesses. It would justify restrictions in the exercise of the rights of the Defence. The Prosecution has well explained the reasons to exclude the Defence Counsel from attending interviews of co-defendants and key witnesses, by the threats made by the Defendants and the killing of witnesses. The Supreme Court considers that following a fair balancing of the rights at stake, this exclusion did not obstruct the Defence's rights. Moreover, the Defence has had the opportunity to challenge this very evidence at a later stage of the proceeding.

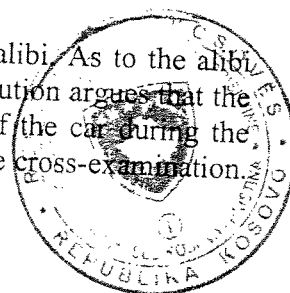
C.2. Violation of the criminal law under Article 404 of the KCCP and erroneous and incomplete determination of the state of factual situation under Article 405 of the KCCP

The Supreme Court is of the opinion that the First instance Court correctly established the factual situation in this case, and consequently rejects as unfounded the arguments of the Defence in this respect.

The contention related to the use and the value given to the statement of Witness M [REDACTED] I [REDACTED] given to the Prosecutor is not justified. The District Court Panel has carefully assessed all the witness statements, comparing them to the other witness statements and explained the reasons of its findings. This is the prerogative of the First instance Court to decide on the credibility of witnesses and the whole evaluation of the evidence. Moreover, the First Instance Court proceeded as such in a thorough manner, exempted from any violation. The conclusions drawn on the outcome of interrogations of witnesses and Defendants are comprehensible and accurate.

In the Supreme Court's opinion, the Defence did not demonstrate to which extent the Court of First Instance failed in assessing the witness statements in favour of the Defendants, e.g. Witnesses "Zeta", J [REDACTED], A [REDACTED] J [REDACTED]. It is noted that the statements have been thoroughly assessed. For instance, those of A [REDACTED] J [REDACTED] and I [REDACTED] G [REDACTED] expressively have been used and evaluated. The District Court also based its findings on the traces found in the police car 093 KS 073 mentioned in the statement of A [REDACTED] J [REDACTED]. The Trial Panel, however, did not follow the testimony of I [REDACTED] G [REDACTED] due to his close connection to B [REDACTED] H [REDACTED]. The Court also evaluated the statements of other witnesses and Defendants, but considered them as non-reliable.

This applies as well to B [REDACTED] H [REDACTED]'s statements regarding his alibi. As to the alibi that the car could not have been used by the Defendants, the Prosecution argues that the witnesses testifying that the trip ticket proves another borrower of the car during the critical weekend in question retracted their first statement during the cross-examination.



They changed their statements asserting that there has been an error in the first documentation. Another witness, I G admitted that the hand-over proceedings are not always consistent with the trip tickets, and the vehicles might in reality have been used by others than the ones listed in the trip-ticket. The same applies to the statement of the witness A A. She is obviously not a credible witness when stating that she spent the critical night with B H though there are records on phone calls between both being in contact at the same time. The First Instance Court also convincingly reasoned that both daughters of witness M I and M I herself stood under threats of the Defendants, and therefore their credibility was doubtful.

Considering the above, the allegations of the Defence on the alleged erroneous or incomplete determination of factual situation are not justified.

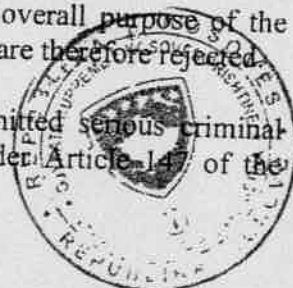
The First Instance Court convicted both Defendants for Causing General Danger, contrary to Article 291 Paragraphs 1 and 5 read with Article 23 of the CCK, as "On 24th September 2007 B H and S Q acting in co-perpetration with each other and with individuals whose identities are still unknown, by using explosives, namely an improvised explosive device placed and detonated on the ground floor of a building at Bill Clinton Avenue, Pristina, caused great danger to human life resulting in the deaths of two persons, namely N M and P S, and grievous bodily harm to nine persons, namely X S, V Z, L N, G S, E H, N H, F B, L K, S S, M K, and T K, and substantial material damage to property, namely the premises of C B, U S, O P, N K, F C and S." Article 291 Paragraph 1 reads as follows: "Whoever, by using fire, flood, weapons, explosives, poison or poisonous gas, ionizing radiation, mechanical power, electrical power or any other kind of energy causes great danger to human life or to property of substantial value, shall be punished by imprisonment of three months to three years."

The Supreme Court is of the opinion that the act of Causing General Danger is absorbed by the criminal conduct of Aggravated Murder as the criminal act is embraced by the act of Aggravated Murder under Paragraph 4 of Article 147. Therefore, the Supreme Court acts *ex officio* pursuant to Article 389 Paragraph 3 and Article 415 Paragraph 1 item 1 of the CCK.

C.3. Decision on criminal sanctions under Article 406 of the KCCP

The Supreme Court finds that the punishment of twenty-five (25) years imposed onto the Defendants is justified and that the First instance Court correctly assessed all the aggravating and mitigating circumstances of the case and the overall purpose of the punishment to this aim. The Defence's contention in this respect are therefore rejected.

In the Supreme Court's opinion, both Defendants have committed serious criminal offences requiring a long-term imprisonment as envisaged under Article 147 of the



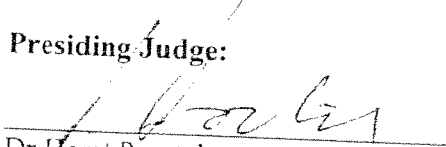
CCK. The First Instance Court imposed a term of imprisonment at the bottom of the scale provided by law under Article 37 Paragraph 2 of the Code, i.e. from twenty-one (21) to forty (40) years. A twenty-five (25) year imprisonment is needed to fulfil the purposes of punishment set by Article 34. The aggregate punishment imposed to both Defendants complies with the requirements of Article 71 Paragraph 2, item 1 of the CCK.

Defendant S [REDACTED] Q [REDACTED] gave a statement confirming his liability for the crimes committed by both Defendants. During the appeal session, the State Prosecutor filed a motion to reduce the punishment imposed on S [REDACTED] Q [REDACTED] "giving his remorse at the time and his willingness to support the prosecution".²⁷ The Supreme Court did not introduce the statement into the appeal proceeding because Defendant Q [REDACTED] confirmed that he will not plead guilty due to the alleged erroneous determination of the factual situation in the challenged Judgment. Moreover, the outcome of the first instance proceeding is not based on his statements that were given at a later stage. His statements presented by the State Prosecutor may be of relevance in other proceedings against him. The Motion is thus rejected.

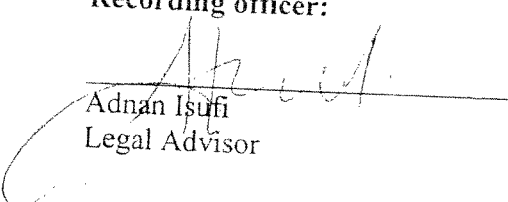
D. Costs of the appellate proceedings

The costs of this appeal proceeding shall be borne jointly on both Defendants according to Articles 99, 100 and 103 of the KCCP read in conjunction with Article 414 of the KCCP.

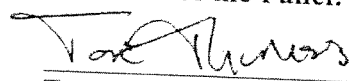
Presiding Judge:

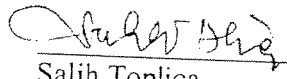

Dr Horst Proetel
EULEX Judge


Recording officer:

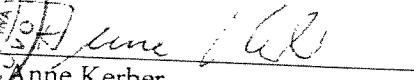

Adnan Isufi
Legal Advisor

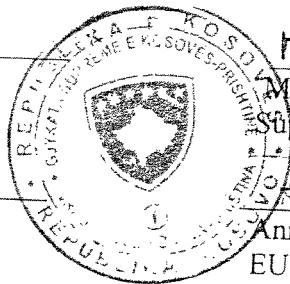
Members of the Panel:


Tore Thomassen
EULEX Judge


Salih Toplica
Supreme Court Judge


Marije Ademi
Supreme Court Judge


Anne Kerber
EULEX Judge



SUPREME COURT OF KOSOVO
AP-KZ 246/2010
25 May 2012
Prishtinë/Priština

²⁷ Case P no. 488/08, minutes of appeal session 22 May 2012, pages 21-22 (Blue binder Supreme court of Kosovo Ap-Kz 246/2010, B [REDACTED] H [REDACTED] S [REDACTED] Q [REDACTED] N [REDACTED] C [REDACTED])