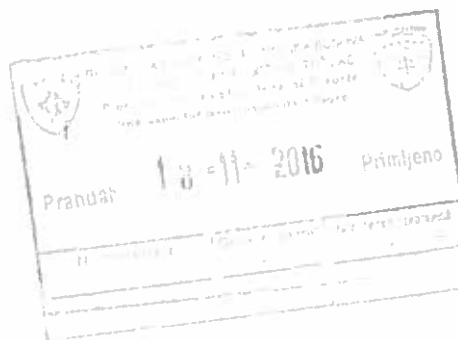


**Basic Court of Pristina**

**Case Number PKR no. 218/14**

**Date 17 May 2016**



***IN THE NAME OF THE PEOPLE***

The District Court of Pristina, in the trial panel composed of EULEX Judge Arkadiusz Sedek, as Presiding Judge and Judges Mariola Pasnik and Naser Foniqi as panel members and Nuhi Sahala as Court Recorder, in the criminal case against:

[son of \_\_\_\_\_, born on 18 November 1973 in Prishtina, in detention since his arrest on January 3, 2014]

Charged in the Indictment of the Special Prosecution Office PPS no. 467/2009 dated 24 April 2014, as amended on 27 April 2016, in the following Counts:

**COUNT 1**

The criminal offence of *Incitement to Commit Aggravated Murder* in violation of Article 24 and 147 (3) and (9) of the Criminal Code of Kosovo (hereinafter "the CCK").

**COUNT 2**

The criminal offence of *Extortion* in violation of Article 267 (1) and (2) the CCK

**COUNT 3**

The criminal offence of *Rape* in violation of Article 193 (1) and (2) the CCK,

after holding a public trial on April 30, 2014; October 31, 2014; November 5, 6 10, 14, 19, 20, 21, 2014; December 16, 2014; January 10, 13, 14, 22, 27, 28, 29, 2015; February 11 and 12,

2015; March 4 and 31, 2015; April 27 and 30, 2015; May 25, 28 and 29, 2015; June 1, 2, 3, 15, 26, 2015; July 20, 21, 22 and 23, 2015; August 17, 18, 19, 20 and 21, 2015; October 1, 2, 5, 6, 29 and 30, 2015; November 2, 3, 4, 5, 6, 17, 18 and 30, 2015; December 1, 2, 3 and 4, 2015; January 25, 2016; March 2, 3, 7, 8 and 9, 2016; April 12, 13, 14, 19 and 29, 2016; May 12, 2016.

with Andrew Carney representing Special Prosecution Office of Kosovo, with the presence of the injured parties, [redacted] and Bostjan Penko defense councils for [redacted] and finally defendant [redacted] present throughout,

after deliberation and voting held on May 17, 2016 announced in public the following:

### ***JUDGMENT***

[redacted], with personal detail above, in detention since January 3, 2014 is found as follows:

Pursuant to Article 365 (1) of the Code of Criminal Procedure (hereinafter "the CPC").

#### **COUNT 1**

**GUILTY** of *Incitement to Commit Aggravated Murder* under Article 24 and 147 (3) and (9) of the Criminal Code of Kosovo (hereinafter "the CCK").

#### **BECAUSE**

On 30 August 2007, in Prishtina on the territory of Kosovo, [redacted] incited [redacted] to deprive [redacted] of his life who did so in co-perpetration with [redacted] and [redacted] in a cruel and deceitful way and because of unscrupulous revenge or other base motive namely having a personal vendetta against the said [redacted]. a. a

serving police officer with the Kosovo Police Service. Prior to the murder the group, acting together, followed the movements of [redacted] in order to track him down.

On 30 August 2007, whilst [redacted] were at the 'Sekiraqa' Bar on Bill Clinton Boulevard, [redacted], via his mobile phone [redacted] at approximately 14:06:58hrs sent a message to [redacted] on his mobile phone [redacted] stating "*The neighbour has the car at Grand Parking lot.*" which was a reference to [redacted] a whose apartment was situated on the opposite side of the street to the Sekiraqa Bar and who, at this time, was inside the Grand Hotel, Prishtina. Immediately after receiving this message, [redacted] driving in [redacted] vehicle, a Passat went to Queen's Bar. There [redacted] entered the bar armed with a 'Glock' 9 x 19 mm calibre pistol serial number FDR795 whilst the other two entered another bar in order to await [redacted] who was a regular customer at the AM/PM Bar. At approximately 15:00, [redacted] entered the AM/PM bar. As [redacted] walked out of the AM/PM Bar, he was shot whilst he walked towards his vehicle in a car park at a place called Flamurtari in Dardania. [redacted], who ran at him from behind, fired some eleven bullets without any warning or provocation, three of which hit [redacted] mortally wounding him. The manner of the killing was in a cruel and deceitful way as it was pre-planned and executed by a group against a victim who was defenceless and shot from behind.

The murder was organised and coordinated by a number of individuals who were members of the so called ' [redacted] group,' the leader of this gang being [redacted] was killed because, in the years leading up to his murder, he had become a target for revenge. In 2004, the deceased befriended the witness [redacted].

Further, on 24.12.2005 at a nightclub called Swiss Casino in Prishtina, a violent altercation took place inside the premises between the [redacted] on the one hand and [redacted] gang during which shots were fired and various individuals injured. However, the defendant received injuries during this incident, receiving hospital treatment as a result of the violent incident with the deceased. This incident, amongst others, caused the defendant to actively seek his revenge against [redacted]

Further, on 22.05.2006, [redacted] was involved in a violent incident with members of the Kosovo Police in Ferizaj, an occurrence that the defendant blamed upon [redacted] a believing him to have actively encouraged his police colleagues to assault the defendant.

Seeking revenge and angered by the actions of [redacted] in the period leading up to his murder, the defendant and his gang frequently followed him in their cars in an attempt to intimidate or harm him. [redacted] orchestrated the killing, organizing his gang members to track down [redacted] and inciting [redacted], who was a trusted member of the group to fire the killing shots. [redacted] had never personally had any problems with [redacted], only with [redacted].

## COUNT 2

**GUILTY** of *Extortion* under Article 267 (1) the CCK

### **Because**

From the beginning of 2003 through to the end of 2004, the defendant extorted money in various sums and on numerous occasions from the injured party [redacted]. Whilst she was living in an apartment in the Dardania area of Prishtina, there were occasions when the defendant demanded and extorted money from her. On one particular occasion, he threatened her, using the words *"hey good girl, in the trunk we keep a wheelchair for bad girls, we take them and send them to Llukar and once I do it to them and afterwards my friends do it to them, so be a good girl."*

[redacted] was a famous singer and well known in Kosovo at the time for her live performances and appearances on local television and radio stations.

Due to such threats that the witness took seriously given the defendant's reputation as a violent and unscrupulous gang leader, she felt in fear for her safety and handed over to

various sums such as €200, €500, €1000, €2000, €3000, €4000 up to €9000. She was forced to leave the money outside her apartment door or under the car's windscreen wiper or under her mother's vehicle. During 2004, the witness spent time in Germany in her capacity as a singer giving concerts. On her return to Prishtina, the defendant demanded and she gave to him the sum of €9000. [redacted] handed over numerous sums personally to him or to his associates for example at 'Gjambazet,' at the hotel Madrid in Prishtina, in his house yard and under the Albi Commerce in Dardania. When she refused to pay him further, her car was vandalised and her apartment attacked. Since she also held concerts all over Kosovo and therefore was not in a position to hand over the money demanded from her, she received threats from him via the telephone whereby he told her that bombs had been planted in the concert halls where she was due to perform, resulting in the cancellation of one concert that was due to be held in Gračanica. She was forced to hire personal protection. Her mother [redacted] was also assaulted and verbally abused by the defendant in order to force [redacted] to pay him further sums of money. The situation continued until she befriended and came under the protection of police officer [redacted] when the defendant stopped calling her although she continued to suffer from the defendant's intimidating behaviour on occasions when she was accompanied by the said [redacted].

### COUNT 3

#### BECAUSE

The complainant [redacted] first met the defendant on 21.04.2004 when he called her by telephone whilst she was driving her car when he first entered into conversation with her. Later that day, after she had finished at her place of work in Ferizaj, the defendant along with one [redacted] insisted that they drive her to his house. Once there, he started to kiss her but she begged him to go no further as she was a virgin. He allowed her to leave his premises. Over the following days, he would contact her by phone.

Later on 19.10.2004, the defendant phoned her up and asked her to go to his house which she did. Once there, he grew angry because she would not tell him where she had been the previous evening and he slapped her. He then removed his clothes and ordered her to do the same. In fear of him because of his reputation and because he had just slapped her, she obeyed. Despite her again stating that she was a virgin, he forced her to have sexual intercourse with him without her consent. As a result of this, she became pregnant. On 07.12.2004, she visited a clinic where she had an abortion.

Based on Article 364 1.3 of the CPC **Not GUILTY** of *Rape* in violation of Article 193 (1) and (2) subsection(2) the CCK since it has not been proven that the accused has committed the act he was charged with.

#### **The defendant**

For the criminal offense described in count 1, based on Article 3 (2) of the Criminal Code of the Republic of Kosovo in conjunction with Article 24 and Article 147 (3) and (9) and 36 1) and 37 (2) of Criminal Code of Kosovo is sentenced to the punishment of long –term imprisonment of 37 ( thirty seven) years:

For the criminal offense described in count 2, based on Article 3(1) of the Criminal Code of the Republic of Kosovo in conjunction with Article 267(1) of the Criminal Code of Kosovo to imprisonment of 3 (three ) years:

Based on Article 71 (2) of the Criminal Code of Kosovo an aggregate punishment of long-term imprisonment of 37 (thirty seven) years is imposed on the defendant for the criminal offenses described in count 1 and 2 of the enacting clause.

Pursuant to Article 365 paragraph 1 sub-paragraph 5 of the CPC, the time defendant spent in detention on remand from 03.01 2014 till 17 May 2016- 2 (two)years, 4 (four) months and 14 (fourteen) days is to be credited against the punishment;

Based on Article 367 paragraph 2 of the CPC, the detention on remand against \_\_\_\_\_ is extended until the judgment becomes final:

In accordance with Article 453 paragraph 4 of the CPC defendant \_\_\_\_\_ shall be entirely relieved of the duty to reimburse the costs of the criminal proceedings.

Presiding EULEX judge Arkadiusz Sedek

Panel members

EULEX judge Mariola Pasnik

Local judge Naser Foniqi

## REASONING

### A. Procedural History

1. On 24 April 2014 the SPRK prosecutor filed the Indictment PPS no. 467/2009 dated the same date, wherein the defendant was charged in three counts as follows: *Incitement to Commit Aggravated Murder* under Article 24 and 147 (3) and (9) of the Criminal Code of Kosovo ("the CCK"). *Extortion* under Article 267 (1) and (2) the CCK, *Rape* under Article 193 (1) and (2) the CCK..

2. Initial hearing session was held on 30 April 2014.

3. Pursuant to a Ruling rendered by the Presiding Trial Judge and dated 12 June 2014 the application of the defense counsel for the defendant \_\_\_\_\_, to dismiss the Indictment and to declare evidence as inadmissible was rejected as ungrounded.

The Ruling rejecting the application was appealed by the defense counsel for the defendant \_\_\_\_\_. In a Ruling dated 7 August 2014, the Court of Appeals, affirmed the ruling of the Presiding Trial Judge to which reference is made above.

4. An Amended Indictment was filed on 27 April 2016 taking into account corrected SMS-timings.

5. Main trial sessions were held on 30 April 2014; 31 October 2014; 5, 6, 10, 14, 19, 20, 21 November 2014; 16 December 2014; 10, 13, 14, 22, 27, 28, 29 January 2015; 11 and 12 February 2015; 4 and 31 March 2015; 27 and 30 April 2015; 25, 28 and 29 May 2015; 1, 2, 3, 15, 26 June 2015; 20, 21, 22 and 23 July 2015; 17, 18, 19, 20 and 21 August 2015; 1, 2, 5, 6, 29 and 30 October 2015; 2, 3, 4, 5, 6, 17, 18 and 30 November 2015; 1, 2, 3 and 4 December 2015; 25 January 2016; 2, 3, 7, 8 and 9 March 2016; 12, 13, 14, 19 and 29 April 2016; 12 May 2016.

Following witnesses were heard during the above-mentioned sessions:

No.	Document title/Witness	Date	Binder	Tab
1.	Record of the initial Hearing	30/04/2014	Binder A	Tab A
2.	Opening Speeches	31/10/2014	Binder A	Tab B
3.	Witness :	05/11/2014	Binder A	Tab C
4.	Witness V	06/11/2014	Binder A	Tab D
5.	Witness	10/11/2014	Binder A	Tab E
6.	Witness	10/11/2014	Binder A	Tab E
7.	Witness	19/11/2014 20/11/2014	Binder A Binder A	Tab G Tab H
8.	Witness	20/11/2014	Binder A	Tab H
9.	Witness	21/11/2014	Binder A	Tab IJ
10.	Witness	16/12/2014	Binder A	Tab K
11.	Witness	10/01/2015	Binder B	Tab A
12.	Witness	13/01/2015	Binder B	Tab B
13.	Witness	13/01/2015	Binder B	Tab B



Pursuant to Article 541 of the CPC, which entered into force on 1 January 2013, the Trial was conducted according to the provisions of the new Criminal Procedure Code.

## **Evidence of [redacted]'s motives to kill**

### **a. Swiss Casino case**

It has to clearly and in decisive manner underlined that in this trial prosecution did not presented direct evidence proving that [redacted] in fact killed [redacted], but in fact provided ample and overwhelming circumstantial evidence that in fact [redacted] made his murder happen.

The legal term circumstantial evidence was understood by this panel in following way:

a. definition from law.com that states the following: circumstantial evidence in a trial which is not directly from an eyewitness or participant and requires some reasoning to prove a fact. The probable conclusion from the circumstances may be so strong that there can be little doubt as to a vital fact ("beyond a reasonable doubt" in a criminal case, and "a preponderance of the evidence" in a civil case). Particularly in criminal cases, "eyewitness" ("I saw Frankie shoot Johnny") type evidence is often lacking and may be unreliable, so circumstantial evidence becomes essential. Prior threats to the victim, fingerprints found at the scene of the crime, ownership of the murder weapon, and the accused being seen in the neighborhood, certainly point to the suspect as being the killer, but each bit of evidence is circumstantial.

b. another definition can be found on legal-dictionary.com that reads as follows: circumstantial evidence in the law of evidence, indirect evidence of a fact in issue. An inference of the fact in issue can be made from a consideration of a number of other facts. It is sometimes spoken of as a chain but better considered as a cable: the more strands, the stronger, and the absence of one of the strands does not break the connection. The lay person often considers it in some way inferior, but not the lawyer, who appreciates the difficulties inherent in direct eyewitness evidence. Nonetheless, it is only as good as the strands that comprise it. These may have to be evaluated in

their own right. otherwise a sound inference maybe based on a defective premise. as where Othello, asking for proof of Desdemona's infidelity, was answered by Iago: 'It is impossible you should see this, Were they as prime as goats, as hot as monkeys. As salt as wolves in pride, and fools as gross As ignorance made drunk: but yet I say, If imputation and strong circumstances, Which lead directly to the door of truth, Will give you satisfaction, you might have it.

There is comprehensive evidence that [redacted] held a long standing and deep hatred against [redacted]. This started in about 2000 to 2001, long before [redacted] was murdered. By 2007, the defendant had decided to finish off the job and kill the officer due to long time hatred. [redacted] risked that he would get away with killing the police officer in broad daylight as nothing had ever really happened to him before by way of criminal sanction; apart from the violence at Ferizaj, he had always managed to get away with it. After all, the Swiss Casino case had come to nothing and still has not legal consequences. [redacted] a young and unknown member of the group who was no doubt keen to prove himself to his chief as is typical in gang culture, would carry out the shooting and take the blame. [redacted] would then disappear for a while; eventually the matter would be resolved, various junior gang members would stand trial and later he would return to the city and carry on as before, his warped sense of honor now satisfied. In a nutshell, it is a very possible way [redacted] decided to kill his most hatred foe.

The intimidation of [redacted] started very early on with [redacted] being followed after an incident occurred when he was threatened with a grenade at a roundabout in Prishtina. Thereafter, he was frequently chased and followed by the defendant and his friends and associates such as [redacted]. [redacted] spoke about these threatening incidents to numerous individuals some of whom have given evidence. In addition, these acts of harassment were confirmed by the brother of deceased's brother, [redacted]. His evidence is extremely important and consists of direct evidence of the defendant's actions, not merely hearsay second hand repetition. [redacted] was not only told of the continuous threats by his brother but he was physically present during some of them of the chases. [redacted] stated that they were both followed continuously by the defendant's gang who used different vehicles to chase them. He recalled incidents such as when he and his brother [redacted] were followed in Vetemik on the Skopje highway. [redacted] said, "[redacted] he had an armoured vehicle, and usually he stayed at [redacted]

the end of the chasing crew.”<sup>1</sup> He described the defendant as often driving slowly in a green Grand Cherokee vehicle. He described seeing the defendant and his associates every day. This is direct evidence of the defendant’s personal involvement in the harassment and intimidation of

Importantly, and as corroborating evidence that the gang were following on the day of his assassination, was present with when they drove together to the car park of the Grand Hotel on the day of the murder in order for to deliver some cheese products. clearly saw standing outside of the hotel, looking straight at them whilst talking on his mobile phone, no doubt shadowing the two brothers in preparation for the pre-planned assassination that was to occur later that afternoon. The statement of witness was considered as fully reliable and comprehensible. Moreover, they corroborate with numerous complaints had been made to the police by and Ismajli concerning threats and criminal conducts committed by I and his group.

The following cases exist in the records of Kosovo Police <sup>2</sup>

a) Case Threat

On 01.03.2003 at around 21:25 in the street "Ilir Konusheveci", in Prishtina, whilst he was driving his vehicle, at the traffic lights near the District Court in Prishtina, was approached by a VG vehicle. Three persons stepped out of this vehicle, came to his car window and started threatening and verbally insulting him. As he stepped out of his vehicle he recognised the one of the three suspects as 1. the brother of , a person whom he had arrested some time before, at the premises of the discotheque "2000". The victim stated that the aggressors had said: "Do you know who we are?! We will f--k your family and we are going to kill you!" The suspects were identified as and li, known members of the Group. On that day, the suspects had followed him for about 1 km. The victim also stated that the conflict between him and began during March 2001 also while he was in performance of his official duties, when and threatened him with a hand grenade. As a consequence, he requested that investigations be carried out. The case was forwarded to the Court for Minor Offences in

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<sup>1</sup> Trial minutes dated 6.11.2015

<sup>2</sup> Pp. 1-134, tabs I.1-1.6, Binder VI



On 25.12.2005 on "Robert Doll" Road in Prishtina, at the premises of the Swiss Casino, an attempted murder incident was reported. The victims were two police officers and [redacted] off duty at the time. In this incident a brawl occurred and an exchange of fire causing bullet injuries to the police officer [redacted] one of the suspects and one security staff of the discothèque. According to the criminal report compiled in the case, the suspects were

[redacted] known members of the group  
e) [redacted] eat/Intimidation

On 04.05.2006 at around 16:30 hrs, on Tirana Street in Prishtina, [redacted] while he was driving his Landrover with registration number [redacted] was followed by two persons on motorcycles and a vehicle. Among the motorcycle riders, the victim identified [redacted] whereas in vehicle VW 3 with registration number 2 [redacted] identified [redacted] as the driver and [redacted] the passanger seat. Reportedly, the motorcycles went in front of the victim's vehicle, blocking it and forcing it to stop, whereas the VW Golf was aiming to hit the victim himself. In his complaint to the police, [redacted] stated that [redacted] intentionally wanted to hit his vehicle and harm him. A separate case was also opened by the police with nr. [redacted] relation to the incident, whereby [redacted] accused [redacted] and [redacted] of threatening him. Investigations were conducted in both cases against suspects [redacted]

[redacted] KP concluded that the incident had a causal nexus with the attempted murder case which occurred on 25.12.2005 at the Swiss Casino premises. The case was referred to Prishtina District Prosecution on 11.05.2006.

f) [redacted]  
On 06.07.2003 at about 3:35 hrs, [redacted] reported that opposite to the Students' Canteen in Prishtina, unknown perpetrators had punctured the tyres of his vehicle, a black BMW with registration number [redacted]. The case was closed due to lack of evidence as to the identity of the perpetrators.

g) Cas. [redacted]



the criminal offence of Attempted Aggravated Murder in co-perpetration pursuant to Article 147 paragraph 4 in conjunction with Article 20 and 25 CCK. The ruling was based upon a reasonable suspicion that on 25.12.2005 at about 00:35 hrs at the Discotheque "Swiss Bar" in Prishtina, defendants [redacted] attempted to murder [redacted] and [redacted] members of the Kosovo Police and also willingly endangered the life of [redacted] security manager of the Swiss Bar. These defendants were detained for periods ranging from one to three months starting on 25.12.2005.

It was established during the pre-trial that a violent fight took place during which bullets were fired by defendant [redacted] with a pistol make Walther serial number 185914 and, in self defence, by injured party [redacted] using his official police weapon. In the outrage [redacted], [redacted] and a third party [redacted] sustained serious injuries.

The defendants [redacted] and [redacted] allegedly assisted the defendants [redacted] and [redacted] to commit the stated criminal offences by bringing pistols from outside the club to the scene of the incident and giving them to the stated defendants.

On 16.05.2006, the public prosecutor filed an Indictment with the District Court of Prishtina against defendants [redacted] and [redacted]. Defendant [redacted] was accused of the criminal offence of Attempted Aggravated Murder pursuant to Article 147 paragraph 11 in conjunction with Article 20 CCK and Unauthorized ownership, possession, control or use of weapons, against Article 328, paragraph 2 CCK. The defendants [redacted] and [redacted] charged with the criminal offence of Participation in a Brawl, pursuant to Article 155 paragraph 1 of the CCK whereas defendants [redacted] and [redacted] charged with the criminal offence of Unauthorized ownership, possession, control or use of weapons, pursuant to Article 328, paragraph 2 CCK.

The Indictment stated that on 25.12.2005 at approximately 00:35 hrs, at the "Swiss Bar" located on street "Mbreti Zogu I" in Pristina, Kosovo, defendant [redacted] with the intention of depriving the injured persons [redacted] and [redacted] of their lives used a weapon

in his possession to fire several shots in their direction, hitting and injuring [redacted]. It stated that [redacted] and [redacted] entered the premises of the club and, as they reached the entrance corridor, they met [redacted] who were on their way out. [redacted] pushed [redacted] to the shoulder whereas [redacted] punched [redacted]. Then the defendants immediately surrounded [redacted] with two other unidentified persons and started to punch him and T [redacted]. Both men responded in self defence, punching back at the aggressors. After that, the defendant [redacted] pulled out a revolver made Walther caliber 7,65 x 17 mm with serial number [redacted] and shot twice in the direction of [redacted], hitting him with a bullet in his leg and causing him serious injuries. He then pointed the weapon towards [redacted] and shot twice. Acting in self defence, both [redacted] and A [redacted] pulled out their official police pistols and fired two shots in the direction of [redacted], hitting him on different parts of his body and causing him injuries. Subsequently, a large brawl started resulting in [redacted] suffering harm on his right hand, and [redacted] suffering injuries on the back of his head and right hand. Unknown persons fired several shots from the inside area of the club in the direction of the injured persons and as a result, [redacted] was shot in the toe and [redacted] was hit by five shots on his right leg, suffering light bodily injuries.

The witnesses

R [redacted] depositions about the incident indicating that [redacted] and his party had provoked the brawl as they met at the entrance hallway of the disco bar with that of [redacted] by initially hitting [redacted] and immediately after by beating up his colleague, [redacted]. The two police officers then responded in self defence in order to deter the physical assault. They were forced to use their fire arms because they were shot at by A [redacted]. The same account of events was provided by

[redacted] as interviewed on 26.12.2005 by the Kosovo Police and on 11.02.2006 and 03.05.2006 before the prosecutor. He provided an account of the events and of [redacted] and his party and he stated that those persons were well known suspects to the police, whom he had faced previously while performing his official duties. The suspects were allegedly well known for commission of serious offences such as murder, attempted murder, unauthorized



possession of weapons, extortion and blackmail. He further stressed that he had often been the target of reprisal actions because they were involved in the cases that he was handling. As a result, he had asked for increased security for himself and all the Kosovo Police officers that were dealing with them. He added that, in September 2005, his Jeep Land Rover registered number 102 KS 855 was burned out whilst parked in Dardania and he suspected that

...J his group were behind this act considering the rumours that they were trying to harm him.

Because of the injuries sustained during the incident, J underwent kidney removal surgery. He stated that he had lost consciousness immediately after noticing that J had hit J in the shoulder and gunshots followed.

In his statement, J indicated that, as opposed to what the injured parties had stated, he was the one provoked by J and other persons, who had attacked him as he was walking out of the club. He added that the police officers shot in his direction but missed him and that J hit him over the head with the butt of his pistol until he lost consciousness. He added that J had dragged him inside the club and raised him up against a pillar and started punching him, whereas other unknown people joined in and as that he was pinned against the pillar, hitting him with a wooden baton. He declared that, in his view, the motive behind J attack was the fact that E J used to date J, who later became J girlfriend and further, because J had provoked his brother N J matter relating to a vehicle.

During his testimony given to the Prosecutor on 28.03.2014, the defendant was asked about this incident and specifically, what was the involvement of J. The defendant indicated that he did not know that J was involved as he had fallen unconscious. He said that he felt no bitterness toward J as, to his knowledge, T J not an aggressor. He said that the fight had nothing to do with an argument over J. All of this is in complete contradiction to the statement that he gave during the Swiss Casino investigation. The Prosecutor's position is that the defendant was trying to erase the fact that he had a strong motive to harass and harm J as a result of his hospitalisation at the hands of

In addition, when the Café Bar Sekiraga was searched on 30.08.2007, along with other items, a CD was seized listed as Exhibit nr. 4 serial number: CDRUG80E031840101. Forensic analysis revealed it contained video recordings of [redacted] and another unidentified person at what appears to be the premises of the Swiss Casino Discotheque. The manner in which the recording was made, as well as the audio background suggests that the recording was made of the original security recording and played on a screen (a recording of a recording). It is noted that when [redacted] came into view on the camera persons in the background utter a comment that translates "going... Now!" in Albanian "Ec... Qitash!". The keeping of this material is clear evidence of the on-going and deep grudge that the defendant held against [redacted]. When asked during the same testimony on 28.03.2014 why he should keep such footage of the Swiss Casino at his premises, he claimed that it was 'planted' by the police, a frankly ludicrous suggestion to make further photographic and video evidence seized from the Café Bar Sekiraga showed footage of [redacted] being secretly recorded and photographed by the members of the [redacted] Group.

The defendant [redacted] also indicated that [redacted] had allegedly provoked [redacted] to the fight and that during the brawl he heard the name of [redacted] being mentioned. [redacted] stated that he heard [redacted] yelling that was his and soon after he had seen [redacted] and [redacted] pulling out their handguns and starting to shoot.

As it looks, [redacted] was a bone of contention between two rival men [redacted] the former boyfriend who apparently could not cope with [redacted] having had a new partner in her life.

This panel has to put stress on the impact the Swiss Casino case had on [redacted] since that made the hatred of the defendant for [redacted] even more powerful because [redacted] threw [redacted] me out of the incident badly, having received a beating, and a terrible humiliation that he as the leader of local neighbourhood he could not stand. So serious were the consequences of this violent confrontation that soon afterwards [redacted] the colleague and friend of [redacted] had to take the very drastic step of fleeing from Kosovo with his family in the aftermath. The important issue is the serious mental effect that it had upon E [redacted]. He gave a statement during the course of the investigation into that incident where he gave his

version of events. During the course of interview on 28 March 2014<sup>3</sup> he denied having any knowledge that [redacted] was one of those responsible in any way for beating the defendant during the Swiss Casino incident. In fact, he denied having any knowledge of [redacted] at all. During his evidence in this trial, he even stated that it was [redacted] who was solely to blame. Of [redacted] he stated: *"His hand slipped from my shoulder and struck me in the face, not heavily. I did not know him ever after Swiss Casino, it was not even him who instigated that."* He even claimed in evidence that if [redacted] had not been there to protect him, he would have suffered an even worse beating.

He was cross-examined on what he had told the police and the prosecutor during the Swiss Casino investigation; the case files indicate a very different situation as the defendant changed his testimony. In the defendant's own statement dated 16.01.2006, he stated *"[redacted] and some other people attacked me physically. I don't know the other except [redacted] a [redacted] of whom I also knew that they have been KPS members."*<sup>4</sup> Later, he stated *"I was attacked physically by [redacted] and he hit me with the pistol-butt..about 4-5 times."* On page 41, *"[redacted] dragged me inside the disc.."* He finally said of [redacted] *"I think that the motive they attacked and beat me that critical night is because I used to date [redacted] and she later dated [redacted]"* In addition, before this incident, [redacted] provoked my brother in relation to his car." The explanation of this change of statements is self-explanatory; the Swiss Casino incident was culminating point of drama/ serious fight related to animosity over [redacted] li. The question arises why [redacted] would attack the defendant when [redacted] as now dating [redacted] the answer is that it was the defendant who was filled with rage that his ex-girlfriend was now dating a police officer, a good indicator that [redacted] provoked this confrontation. When he explained why it was that he had blamed [redacted] in his original statements, he testified that there were a number of typographic errors and that he had never intended to mention him, only Ar [redacted]. This explanation, in the opinion is premature and could not be considered as reliable.

Regrettably, this panel was not in position to turn back the time, but mental distress was exposed to soon after Swiss Casino incident cannot be left unnoticed [redacted] being question during the trial after Swiss Casino incident, he was already expressing his concerns for

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<sup>3</sup> Binder XV, pp.19-97

<sup>4</sup> Binder X, p.40

his own safety due to the actions of [redacted] and his men. In a witness statement dated 26 December 2005<sup>5</sup>, Triumpf stated: "I suspect that I was assaulted by the aforementioned suspect [redacted] because they know me and because during my service in the police I have faced them while performing my duties. These suspects are well known to the police for committing all kinds of criminal offences...I want to emphasize that I have often been a target of (assault by) these persons (known criminals) while I was performing my official duties and they were the suspects in my cases. I ask for more security not only for me but for all KP members.." He added: "...I have met with them while performing my duties, I have had to arrest some of them several times." In response to the question as to whether he had been previously threatened by the suspects: "Yes, in September of this year, my car has been burned down and I suspect that the suspects of this case have been the perpetrators. I have heard rumours that they will try to hurt me somehow, I don't know how" He was right about that but the future proved that he was deadly right. Unfortunately, there was no one to help him to save his life. This statement clearly shows the victim's state of mind following Swiss Casino. This is clear evidence that the officer was very concerned about the violent behaviour of the defendant and his gang and that they would seek to harm him.

That was not only [redacted] who was deeply concerned about the consequences of Swiss Casino incident, there was yet another police officer, the friend and colleague of T [redacted] who fled Kosovo. Although no party has managed to bring A [redacted] to court to testify, the officer [redacted] stated that he had been contacted by [redacted] and that [redacted] had told him "...I left Kosovo as I have been threatened by them."<sup>6</sup>

#### **b. case of Ferizaj , May 2006.**

Yet another reason why [redacted] was brutally murdered, not to say publically executed, in daylight in public place was Ferizaj incident dated that took place in May 2006.

Official records of this case state the following.

In a decision [redacted] = [redacted], the District Court of Prishtina found guilty and sentenced to punishments ranging between one (1) and three (3) years' imprisonment the

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<sup>5</sup> Binder XIII, pp. 104-122

<sup>6</sup> Trial minutes dated 22.01.2015,p.11

accused [redacted] for the commission of the criminal offences of Threat, in violation of Art. 161, Paragraph 2 of the Provisional Criminal Code of Kosovo (PCC); Obstruction official persons in performing official duties, in violation of Art. 316, Paragraphs 1 and 3 PCC, Unauthorized ownership, control, possession or use of weapons, in violation of Art. 328, Paragraph 2 PCC. The decision of the District Court was upheld and became final by way of a decision of the Supreme Court of Kosovo nr. AP 127/2007 of 27.12.2007. In its Judgment, the District Court of Prishtina found that on 22.05.2006 at around 14:30, in the proximity of the restaurant "Dani" in Ferizaj, Kosovo, Kosovo Police officers [redacted] sustained bodily injuries whilst performing their official duties. Injured party [redacted] had reported to the police that the accused [redacted] had threatened her with death via telephone and demanded that she came to the stated location. When the above mentioned police officers attended the scene in order to capture the accused, they found a VW Golf 3 with the registration number [redacted] with three occupants and they ordered the driver, [redacted] ja to open the door of the vehicle, otherwise they would have to use force. After two or three minutes the accused E [redacted] ja opened the door of the vehicle and the moment that he climbed out, he kicked the police officer [redacted] on the right side of the body, between the ribs and in the stomach and punched him in the right arm, whereas the accused [redacted] caught the hands of the police officer [redacted] and bit him two or three times on the right arm and the accused i [redacted] kicked the police officer [redacted] on his right knee and with his hand caught his neck, thus causing him body injuries. The police officers managed to draw back from the attack, hit the accused in response, handcuffed them and escorted them to the police station in Ferizaj. Upon the search of the vehicle, a pistol and ammunition were found, which belonged to [redacted] without a legal permit. The police officers stated that the accused had resisted the arrest and acted violently.

On the contrary, [redacted] declared that he was the one victimized by the police officers and he entirely denied the allegations against him. He stated that he did not resist the arrest and when he opened the door of the vehicle he was thrown to the ground and, while being handcuffed, he was beaten by the police, kicking him, punching him and holding a foot on his head, thus causing him injuries to his face and right side. He was further beaten at the police station in Ferizaj by members of the special unit of the KPS, sustaining body injuries on his

back and shoulders, on the left leg, on the elbow of the left hand, and having both left and right eyes bruised, which required him to be hospitalized for two days.

The accused [redacted] declared that at the moment that the doors of the vehicle were opened, one of the police officers dragged him out and punched him in the jaw and while handcuffing him he stated "which one is [redacted] the mother f---". When [redacted] introduced himself, the police officers allegedly said to him "you had problems with Triumf, he is our friend, and you are a spy" and as they handcuffed him they continued to beat him, hitting him mainly on his head and injuring him on the right eye, on the forehead and ribs. The District Court of Prishtina found [redacted] guilty of the commission of the criminal offences of Threat and Obstruction of Official Persons Performing Official Duties. He was sentenced to an aggregate punishment of two (2) years' imprisonment, of which the time spent in detention on remand (22.05.2006 until 27.10.2006) was deducted. The injured police officers were members of the same police unit as that of [redacted].

This court had the chance to hear detailed evidence of the circumstances surrounding this incident of when the defendant was arrested from the witnesses [redacted] and [redacted].

[redacted] and other witnesses. The defendant was arrested after a violent scuffle had taken place. He claimed that he was beaten by the arresting officers and also that the officers, having gone too far, planted a pistol on him. [redacted] said that he had also heard this to be the case. In the opinion of this panel, there are no reasons not to believe [redacted] ii. In this case he dared to be honest as he knows that by this testimony he nothing gains and nothing loses. The honor of his deceased friend [redacted] is not at stake as [redacted] did not ask them to plant the pistol and did not orchestrate this police action against [redacted]. Due to the reasons only [redacted] and [redacted] be aware of and following their odd code of honor it was decided to frame [redacted] [redacted] was idea planned and executed. This unfortunate incident, as it seems planned to silence [redacted] in this way help Triumf [redacted] a, did not work out. Quite opposite, [redacted] became even more paranoid about [redacted] Whatever it was that happened to [redacted] [redacted] ring and after his arrest in Ferizaj, he blamed one person, [redacted] even though [redacted] was not even present in Ferizaj and had nothing to do with that case at all. [redacted] ter told [redacted] on two occasions when they met that the arrest was all [redacted] ing. The defendant told [redacted] is first at Ferizaj Police Station and later when the

defendant invited [redacted] over to his bar for a talk. The defendant told S [redacted] (p.14). "...for these other street dogs I will take care of them." This was in reference to [redacted] and other police officers. Therefore the criminal case against the defendant arising out of Ferizaj became yet another burning dislike that the defendant was to store up against [redacted] in addition to [redacted] and to Swiss Casino. In addition to what [redacted] testified regarding Ferizaj, he was also able to give direct evidence that both [redacted]

[redacted] had personally told him of the numerous on-going threats and problems received from [redacted] and his gang and of their other criminal activities. He also gave evidence that on the arrest of the defendant in Ferizaj, he had in his possession explicit photographs of [redacted] even though they were not dating by this stage. This was corroborated by an officer who gave a police report dated 23.06.2015 at the request of the court in which he said that when the defendant was being transferred between Gjilan and Prishtina prisons, personal photographs of a nude nature that had been seized from him on arrest were returned later to the defendant. S [redacted]

Also spoke of the huge public demonstrations that took place after the murder as ordinary citizens reacted against the activities of criminals who were now acting with impunity against ordinary law enforcement officers. He criticized [redacted] claim that [redacted] had "killed [redacted] because he slapped me in the face" and he described [redacted] as "just a common executioner."

The testimony of [redacted], was considered by this panel as reliable. He openly admitted the gun was planted in order to frame [redacted]. This witness has no personal reasons to testify in favour of defendant or against him despite ancient hatreds he had against [redacted] killing his colleague [redacted]. As far as those witnesses S [redacted] i and [redacted] ni are concerned, the court is aware that they were both convicted of the bombing of [redacted] t took place in September 2007 and for which they are both now serving lengthy terms of imprisonment. Their actions were abhorrent. However, they stated that their motive was not to kill innocent civilians but to send a message to [redacted] in the police and as revenge for the murder of their colleague. These two former officers knew full well that their colleague had been murdered and that it was the defendant who ordered the killing.

## The Money Allegation

1. During the main trial the Prosecution contended, based on submissions for new evidence that a financial compensation was paid by the accused [redacted] a to [redacted] for the murder of [redacted]

2. On 12 January 2015 the Prosecutor authorized<sup>7</sup> Kosovo police officers from the Serious Crimes Department to identify “ [redacted]” from Western Union Kosovo, to retrieve relevant documentation from Western Union and to collect information in relation to the general financial status of [redacted]

3. The police submitted their Report No. 06-01-35/15 dated 21 January 2015. They found that the [redacted] family comprised the father [redacted] employed with the Kosovo Electricity Company, mother [redacted] (unemployed) and children [redacted] (unemployed), [redacted] a (unemployed), [redacted] working in Germany), and [redacted] who was serving his sentence in the Gerdoc Prison. The family told the police that their house was built 6-7 years prior and was still unfinished.

4. During the investigation, an expert analysis was made of the mobile telephone Nokia E50, IMEI 351892/01/496234/9 submitted as Exhibit # 1, which was recovered during the search at the Café Bar Sekiraqa. The IT experts found<sup>8</sup> that on 30 August 2007, the day [redacted] was murdered, two messages were sent from the telephone number 044 413413 used by [redacted] to the telephone number 044 728485 of the accused [redacted] with the following content: “Until he fills up the papers” (*Dej pi mush kto fletat*) and “Riki from Western brought those” (*Riki i vesterit i pruni qato*).

5. On 12 January 2015 the police identified “Riki” as [redacted] born 14 June 1974.

6. On 26 January the Prosecutor filed an Application pursuant to Articles 329 (3), (4) and 299 (5) CPC requesting the Court to collect new evidence, namely, the testimony of [redacted] the relevant financial information from the company Unioni Financiar Pristina, successor of Western Union, as well as data regarding the real estate property of [redacted] and his close family.

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<sup>7</sup> Main Trial Binder 2, Tab 19;

<sup>8</sup> UNMIK Police IT expert examination Report dated 25 09 2007, Prosecution Binder IX, Tab 10, page 313 and EULEX IT Forensics Report ITF-2014-014 of 11.04.2014, Prosecution Binder VIII, Tab 1, Pages 1-3;




### The Western Union Transfers

7. On 18 February 2015 the Court ordered Unioni Financiar Pristina to disclose the financial information showing the cash transfers that took place between 28 and 30 August 2007.

8. According to the Western Union records, equal amounts of 3,000 Euro were transmitted by various senders in Spain on 28 August 2007 to

and on 30 August 2007 to

as presented in the graphic below:



1.

9. F gave evidence as the witness before the Court on 11 February 2015. He stated that in August 2007 he owned and managed the private company "IRS International". The agency provided Western Union money transfer services and was located in Pristina, Boulevard Bill Clinton. The incoming money transfers coming from Spain were limited by local financial regulations to a maximum of 3,000 Euro per transaction. When higher amounts of money were received for certain clients, he would personally deliver the money in the hands of his client, for more safety.

10. In relation to the transactions of 28 and 30 August 2007, [redacted] declared<sup>9</sup> that he was known under the nickname “ [redacted] ” and that he knew [redacted] from the town. In his testimony this witness related that [redacted] brother, came his agency and asked about the procedure to receive an amount of money beyond the 3,000 euro limit. Because one person was not allowed to withdraw more than 3,000 euro in one day [redacted] advised him that different names of persons could be used for larger transfers. From the [redacted] family he knew [redacted], so every time that something had to do with them, he identified [redacted] and so his perception was that the money would have been for [redacted] although it was for his brother. The large amount of money of between 40-100 thousand euro was received through several consecutive transactions of 3,000 euro each. The entire sum of money was delivered the same day by [redacted] personally to the Café Bar Sekiraqa. He handed over the money to either [redacted] at the bar, at around 10 or 11 hours in the morning of 30 August 2007. That was the first and last time that the witness serviced such transaction<sup>10</sup>. The witness was sure about the date because he connected it with the murder of [redacted]<sup>11</sup>. The transactions that amounted to the sum of money delivered to [redacted] were connected because they all came from Barcelona, Spain. For each transaction he received beforehand the ID information of various recipients.

11. During the same trial session, the accused [redacted] declared that the money brought by [redacted] belonged to his family and was received by his brother [redacted]. At the time he was at his house in Vranjevc for lunch<sup>12</sup>. The money remained at the Bar Sekiraqa until they were later in the day stolen by the police during their brutal intervention at the premises<sup>13</sup>. The money was more than 40,000 euro. The theft of this money was not reported to the police because the accused was not able to do so and his brother [redacted] was arrested for seven or eight months. The other members of his family could not do so because they were not at the premises and did not know about this money.

<sup>9</sup> Main Trial Minutes, 11 February 2015, Page 5 (English version);

<sup>10</sup> Main Trial Minutes, 11 February 2015, Page 9 (English version);

<sup>11</sup> Main Trial Minutes, 11 February 2015, Page 12 (English version);

<sup>12</sup> Main Trial Minutes, 11 February 2015, Page 19 (English version);

<sup>13</sup> Main Trial Minutes, 11 February 2015, Pages 19 and 24 (English version);

12. The money was intended to be used in his interest, to expand his business or undertake trading transactions with real estate properties or build another house for profit. Three or four years earlier his brother [redacted] had lent this money to a person who had a business importing ceramic from Spain. His nickname was [redacted] (he was a neighbor<sup>14</sup>). [redacted] probably had to find various friends to send the money in successive transactions on their names, as he was not allowed to send more than 3,000 euro at a time.

13. [redacted] also admitted that [redacted] received the money from [redacted] and thereafter sent him the SMS message confirming that<sup>15</sup>.

14. [redacted] declared that [redacted] came to the Bar Sekiraqa on the relevant date around 13:00 or 14:00 and brought him the money in question, in the sum of 42,000 euro<sup>16</sup>. He did send, on the same date, an SMS to his brother [redacted] informing him that Riki had filled up the papers and delivered the money. He did not mention this fact to the police in his previous testimonies because he had been traumatized by them<sup>17</sup>. The money was owed to him by [redacted] who was managing a business importing ceramic from Spain. He was a neighbor of [redacted] who his relative, i.e. his aunt's son. [redacted] borrowed the money at the end of 2006 when they met at the house of [redacted]. He needed the money because he was in financial constraints with his business.

15. From the total amount of 42,000 euro, [redacted] contributed 30,000 euro and [redacted] contributed the remaining 12,000 euro. The loan was not confirmed in writing. The money was to be returned within a month; however it was in fact returned after 10 months. After discussing with [redacted] by telephone about the manner of returning this debt, he wired the money from Spain through Western Union. [redacted] received the money from the hands of [redacted].

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<sup>14</sup> Main Trial Minutes, 11 February 2015, Page 21-22 (English version);

<sup>15</sup> Main Trial Minutes, 11 February 2015, Page 23 (English version): "There is no comment about that received the money, he sent me the message, saying [redacted] ought me the money, it would be better if I was there to receive the money and I would send that money to home."

<sup>16</sup> Main Trial Minutes, 23 July 2015, Pages 16, 18 (English version);

<sup>17</sup> Main Trial Minutes, 23 July 2015, Page 17 (English version);

.ki” because he personally knew him. In order to do so he gave Riki 14 ID cards of people to act as receivers<sup>18</sup>.

16. The money, as well as a quantity of coffee was stolen by the police during the search at Bar Sekiraqa<sup>19</sup>. He went to complain for the stolen money and for being beaten by the police but he was not given the opportunity to do so<sup>20</sup>.

17. In order to clarify the facts relayed by [redacted] li and N [redacted] the Defence called [redacted] he gave testimony on 18 and 19 August 2015. He stated that [redacted] as his neighbor. He imported ceramic tiles from Spain. His business ran into financial troubles and [redacted] agreed to help him by lending him between 60,000-70,000 euro. The money was paid in instalments. [redacted] s interested in the deal because he hoped to purchase [redacted] house located next to his, in the event that [redacted] 'd fail to return the loan. No written contract was made<sup>21</sup>. [redacted] offered to pay 107,000 Euro for Karca's house; however the latter changed his mind about selling it<sup>22</sup>.

18. In relation to the return of the money, [redacted] stated that the whole money, summing over 60,000 euro was returned via Western Union. From this amount, 42,000 euro was returned after less than a year to [redacted]. [redacted] received the money because he had personally contributed 12,000 euro to this sum. The witness did not receive his share of this money because, according to [redacted] the police had stolen the money from his bar<sup>24</sup>. Although 30,000 euro from the stolen money belonged to him, he did not make a complaint about this because he was not at the bar when it happened, because the money was taken from [redacted] from him and because and he learned about it from [redacted] about one year later when he was released from detention<sup>25</sup>.

19. When the money was received [redacted] i and [redacted] each produced some ID cards to be used as recipients at Western Union. The owners of those ID cards agreed their cards

<sup>18</sup> Main Trial Minutes, 23 July 2015, Pages 22-25 (English version);

<sup>19</sup> Main Trial Minutes, 23 July 2015, Pages 23-24 (English version);

<sup>20</sup> Main Trial Minutes, 23 July 2015, Pages 29, 30 (English version);

<sup>21</sup> Main Trial Minutes 18 August 2015, Pages 7-10 (English version);

<sup>22</sup> Main Trial Minutes 18 August 2015, Pages 26, 28 (English version);

<sup>23</sup> Main Trial Minutes 18 August 2015, Pages 10-11 (English version);

<sup>24</sup> Main Trial Minutes 18 August 2015, Page 12 (English version);

<sup>25</sup> Main Trial Minutes 18 August 2015, Pages 42, 43 (English version);

to be used. He communicated with the sender-1 over telephone. The witness did not remember the date the money was transferred. On that date, 1 told him that the money had been brought at the bar. 1 knew the person who worked at Western Union. He told 1 to keep the 42,000 euro, since he had to go himself to Western Union and collect some money because he had some ID cards and he would thereafter come to collect [his share of] the money<sup>26</sup>. He then personally collected from Western Union a [second] amount of less than 18,000 euro which was sent by Karca additionally to the initial 42,000 euro. He used his own ID card as well as those of his brother Agro and others. He communicated the information of these ID cards to Karca by sms<sup>27</sup>.

20. Karca knew that 1 had taken some of the money from 1 and thus agreed to return the money to 1. Na collected the money from Western Union the same day the police came to the bar, at around 16:00 hrs. 1 spoke to Riki from Western Union and told him that the money would be sent there<sup>28</sup>.

21. The witness refused to answer or evaded a number of questions related to his criminal conviction in the case of the murder of 1 and in relation to his financial income, in spite of being repeatedly warned by the Court<sup>29</sup>.

22. When 1 changed his mind about selling the house, the father of 1 decided to return him the house and accept that he restituted the money he had borrowed. Two or three months later he received the money in question. The decision to transmit the sum all in one day was taken by N 1. 1's real name was probably 1.

23. 1 was re-interviewed on 18 August 2015. He clarified that in the case of the money delivered to Sekiraqas, they knew and trusted him to collect and bring the whole amount to them. The name 1 did not ring a bell to him, as he was not a familiar person. He firmly denied that he talked to 1 at that time<sup>31</sup>. This state of facts was put to the

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<sup>26</sup> Main Trial Minutes 18 August 2015, Page 14 (English version);

<sup>27</sup> Main Trial Minutes 18 August 2015, Page 39 (English version);

<sup>28</sup> Main Trial Minutes 18 August 2015, Pages 16-17 (English version);

<sup>29</sup> Main Trial Minutes 18 August 2015, Page 21 (English version);

<sup>30</sup> Main Trial Minutes 18 August 2015, Page 32 (English version);

<sup>31</sup> Main Trial Minutes 18 August 2015, Pages 51-52 (English version);

witness [redacted] during the trial session of 19 August 2015. In the face of this, [redacted] maintained his version that he collected the money personally from [redacted] at Western Union on 30 August 2007 at 16:00 hrs<sup>32</sup>. Two days before that he went to Western Union together with [redacted]. [redacted] entered the Western Union Office while he remained in the car. They brought ID cards which were presented to [redacted] "Riki". Two days later he returned alone and [redacted] gave him the money, approximately 15,000 euro<sup>33</sup>. He admitted that he facilitated the surrender of [redacted]. The latter had come to him and asked for help. He was afraid that the police would kill him. This panel considered the testimony of [redacted] as fully reliable. He recounted the events related to the money transfers in details and vividly. He admitted he took extraordinary step and delivered the money to Sekiraqa's bar in person, the step that might be considered, and was considered during pre-trial stage, in terms of criminal responsibility as assistance in commission of a criminal offence. It has to be noted that [redacted] confirmed the money was delivered by [redacted] to his bar. This witness presented first-hand, accurate and comprehensive account of the course of events related to the money transfer.

24. At the beginning of the trial session of 20 August 2015 the accused [redacted] recognized in a number of photographs presented by the Court the house of his cousin Emini and that of [redacted] located in the vicinity. He stated that [redacted] purchased the house in question by paying 60,000 euro from the total price of 107,000 euro. However the seller changed his mind and returned Agron the money. In any case, the property rights over the house would have been difficult to transfer due to ongoing privatization issues with the initial owner, the socially owned enterprise "Vocar"<sup>34</sup>.

25. Having considered the statements of the witness [redacted] this panel came to the conclusion that they are not reliable. This witness was proposed by the defense in the allegation of the prosecutor that financial compensation was paid by the accused [redacted] for the murder of [redacted]. His testimonies seem to be fabricated with the clear purpose to protect En [redacted] and provide him an alibi. It is illogical that the witness lost substantial amount of money – 30,000 Euro and he did not claim any compensation. This witness

<sup>32</sup> Main Trial Minutes 19 August 2015, Page 4 (English version);

<sup>33</sup> Main Trial Minutes 19 August 2015, Pages 11, 12 (English version);

<sup>34</sup> Main Trial Minutes 20 August 2015, Page 4 (English version);

did he report this fact to the police or prosecution soon after this loss had taken place. This panel is of the opinion that 30.00 Euro is considerable amount of money and every responsible person would take immediate actions to recover it using all possible means. This witness in fact took no actions to recover his money and behaved as he did not care about 30.000 Euro at all. The testimony of this witness seems to be illogical and developed on the spur of the moment by a person who desperately wants to help by providing an alibi, but who doesn't care about presenting the course of events in a clear, logical and substantive way. Additionally it has to be underlined that A evidence before the Court was inconsistent and contradictory within itself and with the evidence provided by F 's kinship to the defendant, past employment at Café Bar Sekiraqa, his direct role in the surrendering of criminal conviction in the case of the murder of Triumf Riza laid a significant doubt on his credibility and reliability.

#### The family house

26. On careful consideration, this panel decided to collect ex officio additional evidence with the clear aim to scrutinize the allegation of prosecution and to verify defense line presented by the defense councils. The court issued an order addressed the Kosovo police investigators to collect information of the financial status of the family including the ownership of real estate properties.

27. According to the information collected from the Kosovo Cadastral Agency and its Pristina branch, the members of the family were registered with only land property located in Pristina with cadastral number 3281-0. The parcel belonged since before 1999 to D. According to the Directorate of Urbanism, filed a request on 19 February 2015 to register/legalize a house on the same address. This occurred after the on-site verifications carried out by the police.

28. According to the police<sup>35</sup> report, and C were the only members of their family who owned auto vehicles, respectively Golf (between 2002 and 2003) and an Audi (as from 2014). According to the Agency of Business Registration none of the members of the family owned participations in any business entities. The Kosovo Tax

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<sup>35</sup> Main Trial Binder 2, Tab 31;

Administration reported that, from the members of this family only [redacted] was registered with income from salary, resulting from his employment with the Kosovo Electric Company ("KEK"). The Kosovo Energy Company reported<sup>36</sup> that the employee A [redacted] received an annual net salary of 3,973.05 Euro in 2005; 4,067.02 Euro in 2006; 4,070.09 Euro in 2007; 4,674.49 Euro in 2008; 5,425.37 Euro in 2009; 5,630.36 Euro in 2010; 6,011.48 Euro in 2011 and 5,838.74 Euro in 2012.

29. In the ensuing situation this panel decided ex officio to admit testimony of [redacted]. This witness gave evidence on 29 May 2015. He declared that he constructed his family house in April 2011 however it was still unfinished. Up to the moment of his testimony, he had invested approximately 17,000 euro in the construction of the house. The money came mainly from the salary he received from "KEK". His yearly income was round 8,000 euro. His sons and daughter also contributed. [redacted] used to run a computer shop before he was arrested in 2007. His second son also worked as a car dealer. Further financial resources came from two loans he contracted with Raiffeisen Bank, of 5,000 euro each. The first loan was contracted in 2009 and was fully repaid. The second loan was still being paid from his salary. The latter loan was contracted in order to complete the interior of the building. Some of the construction works were done free of cost by his relatives, such as the electric installation done by his brother and the plumbing by his brother in law.

30. The previous house had to be demolished in 2011 to make room for the new construction which was laid on the same spot, this witness related. The previous house was built before 1962 when the Berisha family moved there. It had one floor and four rooms. Although minor maintenance work was done to it, a new house had to be constructed in order to accommodate the housing needs of the growing [redacted]. Although unsuitable, the house had to be reconstructed as late as 2011 because of different financial commitments the witness had within his family.

31. The witness could not specify the name of the company which carried out the demolition and the construction works, or the names of the workers. He stated that they were from the Drenica

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<sup>36</sup> Main Trial Binder 4, Tab P;



region and the person in charge was an individual named Dan. No contract was signed for the execution of the construction works or the demolition.

32. After careful consideration, panel decided on 17 September 2015 to appoint a team of experts comprising of: (financial expert) and Vai onstruction/architecture expert) to determine the financial value of the building owed by in Pristina on str. Adem Keqekolla No. 9

33. The experts submitted their findings in a written Report. They also gave evidence in Court on 04 and 05 November 2015. They concluded that the value of the construction was 34,591.36 euro. The calculation was done based on the average market prices at the level of 2011 without including the value of the land and of the interior furniture. No invoices or other documents were produced by owner of the house in relation to the expenses with the materials or construction works. The value of the work that was done was approximated at up to a third of the total value of the house. The house was constructed without a permit or authorization.

34. On 03 November 2015 the Court ordered the collection of financial and banking information of from a number of banking intuitions. Raiffeisen Bank Kosovo reported that A as the titular of the bank account nr. 1501001004787430 opened 16 June 2005. He took three loans as follows: on 25 July 2007 in the amount of 2,830.00 Euro, on 23 April 2009 in the amount of 5,000.00 Euro and on 15 May 2012 in the amount of 5,100.00 Euro.

35. was recalled to give evidence on 02 December 2015. He stated that the amount of 17,000 euro he previously mentioned was only spent for the construction of the outer shell of the house. Further 7,000 euros were invested in the interior. Some of the domestic expenditures were covered by his children. This allowed him to gather savings for the construction of the house. Being asked about the 2,830 euro loan contracted in 2007, which he omitted in his previous testimony, the witness stated that he used the money in question for lawyer fees<sup>37</sup>. The 5,000 euro borrowed in 2009 was used to pay for the doors and windows of the house before the construction of the house had started. The second loan was contracted in May 2012. Half of this money minus 100 euro insurance was used to pay off outstanding debts from the first loan. The remaining 2,700 euros were spent on the roof, wooden beams, tiles and

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<sup>37</sup> Main Trial Minutes 02 December 2015, Page 4 (English version);

paper. Coming back to the 2,830 euro previously attributed to lawyer fees, the witness gave a different account, indicating that they were simply used for personal needs. Although repeatedly asked, he refused to specify what the exact aim of this money was. However, approximately 3,000 euros were paid starting from 2007 with legal fees for the trial of his son / . The lawyer was paid in installments.

36. Arben declared<sup>38</sup> that in 2007 his financial status was poor. He was dealing in cars and did not own any company. At an earlier time he used to work at a car wash and sell tobacco in the market. When his family started the construction of the house in 2011 he could not contribute because he was in prison.

37. In relation to the physical state of the house of the the Court heard witness KP officer in charge of the investigation of the murder of Trium . He declared that<sup>39</sup> at the time when the investigation commenced, the house of was very old. The construction that exists today was erected on the same spot in the yard.

dismissed the allegation that 40,000 euro was stolen by the police from the Café Bar . affirmed that no complaint was ever made in this sense. During the same trial session, the defendant declared that the police not only stole the mentioned money, but also a quantity of 600 kilograms of coffee.

38. The witness stated<sup>40</sup> that, as KP intelligence officer he was tasked to collect information about his financial status was towards deep poverty. He accepted money to murder Trium was very poor, "almost to the edge". determined this based on the verifications he undertook as police officer of the financial status of and his family members, as well as from direct on-site observations of the house where they were living.

39. stated<sup>41</sup> that he used to be a member of a police team who searched the house of based on his observations. the living conditions of his

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<sup>38</sup> Main Trial Minutes 29 October 2015, Page 11 (English version);

<sup>39</sup> Main Trial Minutes, 12 February 2015, Page 7;

<sup>40</sup> Main Trial Minutes, 15 June 2015, page 17-18, 36;

<sup>41</sup> Main Trial Minutes, 28 May 2015, Page 2;

family were catastrophic. He was very poor. He was pushed by [redacted] to carry out the murder in exchange of money.

40. Witness [redacted] declared<sup>42</sup> that [redacted] gave money and built houses to many people in Vranjevc. Whoever asked for financial support and was from Vranjevc, financial support was given.

41. Based on the evidence presented before the Court it is established that in August 2007 [redacted] contacted [redacted] aka "Riki", manager of IRS International – an operator of Western Union services in Pristina. [redacted] indicated that he wanted to receive a large amount of money of over 3,000 euro through Western Union. [redacted] informed him that the money would have to be divided and transferred in equal amounts of maximum 3,000 euro. Such limitation was dictated by official policies. [redacted] presented [redacted] with the ID information of 21 persons as recipients of the money.

42. On 30 August 2007, R [redacted] received through Western Union and delivered to N Selvi [redacted] the Bar Sekiraqa the amount of 63,000.00 euro. The money arrived from Spain in 21 transfer operations of equal amounts of 3,000 euro. The recipients were the 21 persons whose ID information was presented.

43. [redacted] knew [redacted] from the city. Because the amount of money was significant [redacted] personally delivered it to the Bar Sekiraqa on the morning of 30 August 2007 at round 10-11 hrs. This was the first and the last time he carried out a transaction for the Sekiraqas.

44. The same day, [redacted] from the telephone number 044 413413 sent two consecutive SMS messages to E [redacted] the telephone number 044 728485 informing him of the preparations for and of the receiving of the money from Riki: *Until/Uncle he fills up the papers ("Dej pi mush kto fletat")* and later: *Riki from Western brought those ("Riki i vesterit i pruni qato")*.

45. There are sufficient elements to consider the 21 money transfers as forming part of the same operation. Firstly, the transactions are consecutive and were registered by the Western Union

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<sup>42</sup> Main Trial Minutes, 19 November 2014, Pages 40-41;

system: six on 28 August and fifteen on 30 August 2007. The money was all sent from Spain to recipients who are members of the family Sekiraqa, including [redacted] and [redacted] Sekiraqa. The sender of each transaction remained unidentified and no connection was established between them and the recipients. [redacted] maintained in his evidence that he personally delivered the money, between 40 to 100 thousand euro, to the Bar Sekiraqa.

46. The Court does not find credible the explanations given in relation to this money by the accused and by the defence witnesses [redacted]. [redacted] alleged theft of the money by the police during the search was never reported to the authorities. The loan agreement with [redacted] remained unsubstantiated. No contract or other proof was presented of the loan, of the actual giving of the money, the purchasing of the house, of Karca's identity or of his ceramic business in Pristina. There is no evidence linking [redacted] the Western Union transfers. Such name does not appear among those listed as senders of the money. "Karca" effectively remained unidentified and the defence failed to produce him before the Court in order to confirm its version of the story. It is also established that the financial state of [redacted] at the time of the murder of [redacted] was very poor. He was unemployed and only received occasional income from dealing in cars. The house where he lived with his family, located in Pristina, Vranjevc Neighborhood, Str. Adem Keqekolla nr. 9, was in very poor conditions and insufficient to accommodate the family needs. In or about April 2011 the house used by the family of [redacted] was demolished and the construction of a new one commenced.

47. The value of the new construction was determined by the Court appointed experts at 34,591 euro. The sources of income presented by [redacted] are insufficient for the financing of the construction. [redacted] was the only member of the family who received a steady salary income. His total net income at KEK was approximately 5,000 euro per year<sup>43</sup>. The maximum sum allocated to the construction from the Raiffaisen loans might amount to only 7,700 Euro approximately. The contributions from other family members were minor.

48. The Court gave only partial credence to the testimony of [redacted]. The panel considered as reliable his testimony as to the construction of the house. Remaining part of his

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<sup>43</sup> Calculated based on the information received from the Kosovo Electricity Company for the period of time between 2005 – 2012;

testimony as to the origins of financial means used to construct a new house was considered as untrustworthy. Although he claimed to have been able, with only minor support from the family, to bear the cost of the construction, he failed to produce any justifying documents. The identification of the company and/or of the workers that carried out the demolition, construction and installation works remained unknown. No invoice or other documentation was presented to the Court or the experts in relation to the costs. His testimony in relation to the legal fees paid for the representation of his son A \_\_\_\_\_ was contradictory. His estimation of his own yearly salary is contradicted by the official information supplied by KEK. His account regarding the total value of his investment was inconsistent.

49. This panel admitted new pieces of evidence in order to dispel all doubts as to the source of finance obtained for construction of the new house. Collation of the income the \_\_\_\_\_ family was able to collect with the real costs of construction leads to explicit conclusion this family did not have own sufficient financial resources to construct a new home. The \_\_\_\_\_ ily had to use and in fact used additional money to finance house construction. The only possible conclusion is, that money originated from \_\_\_\_\_

50. Based on the analysis of the evidence in ensemble presented before the Court it is found beyond any reasonable doubt that the amount of 63,000 euro was received via Western Union by \_\_\_\_\_ a coordination with and at the disposal of the accused \_\_\_\_\_. The money was in part or in entirety given to \_\_\_\_\_ ; an incentive or as a reward for the murder of T\_\_\_\_\_ This money was used by the \_\_\_\_\_ ily, in addition to their own financial resources, to re-construct and refurbish the family house.

#### **Count 2 and 1 statements of \_\_\_\_\_**

51. At Count 2 of the Indictment the state prosecutor contended that from the beginning of 2003 through to the end of 2004, the defendant extorted money in various sums and on numerous occasions from the injured party \_\_\_\_\_ , who at the time was a famous singer, well known throughout Kosovo. It was alleged that the defendant, acting together with his group, using threats and relying on his reputation as a violent and unscrupulous gang leader, demanded and received from the injured party various sums such as 200, 500, 1000, 2000, 3000, 4000 up to

9000 Euro. The money was given by the injured party, personally at various locations such as Gjambazet, at the hotel Madrid in Prishtina, in his house yard and under the Albi Commerce in Dardania. Sometimes she left the money outside her apartment door or under the car's windscreen wiper or under her mother's vehicle. When money was not paid, the injured party allegedly suffered retaliation, such as the vandalising of her car, attacks at her apartment, fake bomb threats leading to the cancellation of her live performances, and physical and verbal assaults against her mother -

52. The Court faced particular difficulty in establishing the underlying facts related to Count 2. At the time the main trial took place, the injured party and key witness, had moved from Kosovo and was living in Switzerland. After summoning her in Kosovo with no result, the Court attempted to conduct her examination via video-link with a competent Swiss court. The formal request for international legal assistance was however rejected by the Swiss authorities, on procedural issues. A further summons was finally accepted by and she gave evidence before the Court in Pristina on 27 April 2015.

53. In her evidence, the witness broadly speaking departed from the facts that she initially stated in front of the police and prosecution during the pre-trial investigation phase.

54. During the main trial testimony, the witness stated that she did not have any problems or concerns about her security during the relevant time. She had hired personal security since 2000.

had come to her house to offer protection having in mind the general criminality levels in the neighbourhood. Her problems were in general from fans, or in relation to political problems or other. She never had any problems personally with <sup>44</sup>. Her vehicle was damaged and she reported it to the police but the investigations did not attribute the act to . A share from the money she obtained from her live music performances was indeed withheld by the organizers under pretence that it was paid to the Se . He assumed that the organizers "took advantage of the Se phenomenon" that was mediatized at the time, in order to purloin the money for themselves<sup>45</sup>. It is true that bomb threats were reported in

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<sup>44</sup> Main Trial Minutes, 27 April 2015, Page 6 (English version);

<sup>45</sup> Main Trial Minutes, 27 April 2015, Page 12 (English version);

relation to her performances in discotheques. Because of the legend that was created around Sekiraqa, she believed it. Ismajli considered this to be an “indirect extortion” allegedly exerted by her employers in Germany and Switzerland, who later refused to testify about it<sup>46</sup>.

55. The Court finds the new testimony of the witness very doubtful. The identity of the alleged organizers was withheld and their dishonesty was pre-announced. There would be no justification for the witness to have paid extortion money because of a misplaced or mislead fear that she never tested or investigated. She claimed that no direct pressure was exerted by the [redacted] however she complied with their demands and surrendered to a pretended extortion organized by her dishonest managers in Germany and Switzerland simply because of the bad reputation the [redacted] had in Dardania, Pristina. Ismajli rather appears to attempt to reconcile her pre-trial evidence with her new and radically altered account of facts. Her explanation is manifestly improbable and cannot be accepted.

56. The witness also blamed the differences between her pre-trial and trial evidence to the fact that she [as in fact her entire family] were under sedatives<sup>47</sup> soon after the murder of

“ [redacted] later on, she remained under influence of psychotherapy and very strong drugs for two years. This allegedly seriously hampered her capacity to remember facts. She doesn’t recall what she has said to the prosecutor Millaku about extortion in her statement of 25 October 2007. It is possible that the words written in this statement were her words. She doesn’t exclude it as a possibility given the fact that she was affected by this tragedy and wanted retaliation for

[redacted] killing. She was under the influence of a shock, stress, trauma and sedatives and had an extreme will/desire to retaliate. Therefore it is possible she has said those words under the influence of the above mentioned or she hasn’t said them at all. They are not all her words and she doesn’t remember she have said them the way the court recorder noted them down. She denies giving a false declaration in any way, despite her desire for retaliation. This explanation is also found incredible. Firstly, when the witness gave her testimony to the state prosecutor she did not indicate that she was on medicines and was treated by a psychotherapist. Secondly, the manner the witness initially narrated the facts during her pre-trial evidence, relaying facts in great detail and logical order; differentiate her from a typical person under heavy sedation.

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<sup>46</sup> Main Trial Minutes, 27 April 2015, Pages 18, 19 (English version);

<sup>47</sup> Main Trial Minutes, 27 April 2015, Pages 19, 20 (English version);

Lastly, the witness herself admitted that the prosecutor behaved with professionalism and dismissed the probability that her testimony would have been altered by him or by the prosecution staff. She recognised her signature on the document. She referred to her departures from the pre-trial testimony as “errors” or statements made “due to emotions”<sup>48</sup>. She concluded, contrary to what is generally accepted, that her memory was in fact more fresh at the time of her trial evidence i.e. eight years after the events took place, rather than it was in 2007, few weeks thereafter. Her denial of her previous testimony was laid on a “foggy memory because of sedatives”, or because she was affected by the tragedy<sup>49</sup> or because of a strong will to retaliate<sup>50</sup>. She also blamed the hatred she had towards Sekiraqa as well as media pressure and witch hunting<sup>51</sup>. The witness admitted to have known [redacted] Sekiraqa, but denied having had a relationship with him. She also stated that she knew of “Liza” and “Sexy”. The only damage that she suffered was emotional and professional<sup>52</sup>.

57. In regard to her statement made to the police (Witness binder no. 7, p. 307, 311, 312): on the 9 and 10 September 2007 she testified as follows: The statement was given ten days after the murder of T.R. She went from the hospital to the police. She was influenced by sedatives and she doesn't remember a lot. It is possible that she spoke in affect, but she doesn't know. It is highly possible that the statement was correctly recorded. Now when she looks back after 7 years, everything what was said back then, was said being in affect, without thinking. It was a statement of the moment. - They didn't have problems with the Sekiraqa group and she didn't file a complaint with the police only in relation to Sekiraqa group. She wanted E.S. to be put in prison. At the moment Triumph was murdered, everyone in hospital, where she happened to be at that time, said that [redacted] s behind this murder.

This statement in regards to the reasons of changing testimony is not found credible for the reasons mentioned in paragraph 56. Moreover, this witness did not raise the argument that her testimony was given under duress on the part of police officer who question her. By inference it can be concluded that police officer behaved in a professional manner, thus inadmissibility of this statement is out of question.

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<sup>48</sup> Main Trial Minutes, 27 April 2015, Page 21 (English version);

<sup>49</sup> Main Trial Minutes, 27 April 2015, Page 23 (English version);

<sup>50</sup> Main Trial Minutes, 27 April 2015, Pages 25, 27 (English version);

<sup>51</sup> Main Trial Minutes, 27 April 2015, Page 28 (English version);

<sup>52</sup> Main Trial Minutes, 27 April 2015, Pages 40, 41 (English version);



58. After being confronted with her other evidence and evidence she provided during pre-trial she examined:

p. 314: In relation to the first part of the report she stated as follows: not all is correct. They are true things, but there are many other things that she could not be able to say. It is true that Triumf told her that when he became a police officer he stopped E.S. and that they killed his dog. And also that he was followed and threatened. In one occasion she was with him when he was followed, but she didn't see them as he told her "don't turn back, don't provoke". She doesn't know all these guys by name. The incident on the way to Germia that is reported there on the 24 of August 2007 is true. – She has never in her life seen a red "Bruno Café" pick-up truck. She heard about it for the first time in the trial.

p. 316: she was not there to witness it, but taking into account the amount of things her mother told her, she doesn't exclude that. In relation to the last paragraph in her statement on p. 316 she did not say or write that. She was dissatisfied with the way the authorities dealt with the complaints about E.S. and his groups that she and Triumf made. She reiterated that openly in many interviews and programs. As she can see it, someone heard her public statement and then wrote the statement. For her this is all fabrication. It is ridiculous that her mother would be raped. She has never seen [redacted] in the company of E.S. she saw him for the first time in her life when he was brought handcuffed in the trial regarding T.R.

Witness binder no. 6, Tab 9, p. 156 A : She isn't sure if she made a complaint to the Kosovo Police, dated 2nd of February 2005. She doesn't recall making that complaint.

Witness binder no. 6, Tab 11, p. 221 A and 222 A: Confronted with a document dated 22 of June 2005 (an officer's report) she said that she made a complaint because of a verbal threat. It happened to her that she was threatened by three persons at the "Princi i Arberit". Personally she was dubious if it was Sekiraqa group or not, as they never dared to threaten her at all. However it was night time and that was how they introduced themselves.

59. This witness provided certain facts as to her relationship with [redacted]. She related that she first came to know [redacted] in 2006. He came to her house and introduced himself as a family friend. He asked if they had any problems like the others had in the neighbourhood. She had problems with her fans at that time. It happened that her fans threatened her and there were

also cases she was threatened due to her political preferences. She has reported them to the police whenever she had the possibility to do so. She personally didn't have any problems with Enver Sekiraga or anyone associated with him leading up to the time she met Trijaza. She never asked [redacted] for any kind of help, assistance or protection from E [redacted]. She had personal security arranged for her since 2000 in Kosovo.

They as a family had had problems constantly. Many of her concerts at that time were cancelled. It happened for different reasons. At that time she believed that the cancelling of her concerts had something to do with E [redacted] someone of his associates. She believed him to be responsible for some of the cancellations of her concerts due to the fact that Sekiraga legend was created at the time in the Dardania neighbourhood. The two key persons who hold the reins of Albanian business in Europe told her that they were afraid to work with her as she was being gossiped. They lived in Switzerland and Germany and heard rumours that there were problems down there in Kosovo. She reported to the police that her business was being destroyed and offered the names of the persons, who told her that, but these persons were never examined by the police nor the police ever told her about that. (The employers told her that they were giving money to the people of [redacted] and the police didn't dare to interview them. The police told her they didn't interview people from Switzerland and Germany as they were from other jurisdictions/as their jurisdiction couldn't cover them).The concert organizers told her they couldn't pay for the concerts as she was entitled to because they have been blackmailed. Speaking about Germany and Switzerland, for instance if her price for the concert was ten thousand euros she only received one thousand as they said the rest was taken by Sekiraga. Afterwards the concert organizers didn't want to testify about this. The money was given to have the concerts take place as otherwise there were bomb threats. She has never been directly blackmailed or extorted by E.S.

57. The analysis of the affidavit of [redacted] reveals not only significant withdrawals from her pre-trial evidence but also apparent and frequent inconsistencies and contradictions.

58. In relation to possible problems with E the witness firstly completely dismissed such a possibility: *“I had no chance to have problems with me because I had personal security”*. Later in evidence, however, she admits that in more than five occasions, while driving, she and Triumph were followed by *“men”*<sup>53</sup>. She initially appears unclear as to the identification of the perpetrators: *“in my case it is hard to determine whether it was a stalking crazy fan, an opponent or someone from [redacted] cup, being unable to recognize all of their physical [appearance] and knowing how many creatures participated in this group”*<sup>54</sup>. This is in stark contrast to the detailed facts she narrated during her pre-trial evidence, where vehicles and persons are mentioned in great detail. Later in her evidence, Ismajli admits that five to ten times *“he”* told her that the people who were following them were the *“C”* and he advised her *“don’t turn back, don’t provoke, we are being followed”*<sup>55</sup>. Admittedly, the incident dated 24 August 2007 where Is *“he”* followed by cars on the way to Germia Road was indeed reported to the police<sup>56</sup>. In her evidence before the court however, the witness purportedly gave the incident little importance: *“I personally did not feel any risk from being followed”*<sup>57</sup>.

The witness admitted to have complained to the police against the *“C”* only after she was presented with their content. She admitted her signature on these complaints but denied, still, the content of the statements she made in support thereof and deemed them *“surrealistic”*<sup>58</sup>.

59. The Court carefully examined the demeanour and attitude of the witness when weighing her evidence. *“he”* stated that the trial session was closed to the public and the she testified only in the absence of the defendant. In a written correspondence filed with the court prior to her appearance, *“she”* stated she would refuse to testify if defendant was present. The Court considered as imperative to collect evidence from this important witness in relation to the allegations at Counts 1 and 2 of the Indictment in an unrestricted and accommodating manner, whereas at the same time respecting the right of the defence to cross examine her after consulting

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<sup>53</sup> Main Trial Minutes, 27 April 2015, Page 51 (English version);

<sup>54</sup> Main Trial Minutes, 27 April 2015, Page 14 (English version);

<sup>55</sup> Main Trial Minutes, 27 April 2015, Page 16 (English version);

<sup>56</sup> Main Trial Minutes, 27 April 2015, Page 35 (English version);

<sup>57</sup> Main Trial Minutes, 27 April 2015, Page 39 (English version);

<sup>58</sup> Main Trial Minutes, 27 April 2015, Page 32 (English version);

with their client. The request of the witness was therefore granted<sup>59</sup> and the trial session was closed to the public and took place in the absence of the defendant.

60. Asked further about her request to exclude the public and the defendant from the session, the witness claimed that she had had a deep disgust and hatred for the defendant. Because of her negative feelings and emotional burden<sup>60</sup>, she stated that she preferred to refer to him or his associates as “creatures<sup>61</sup>” or “gremlins<sup>62</sup>”. She denied that she had any reason to fear or feel at risk because of

61. Given the circumstances of the case and the connotation of the emotional and personal role of [redacted] a criminal offences alleged at counts 1 and 2, the court considers as implausible the explanations given by the witness for her hatred towards the defendant. [redacted] stated that the reason of her personal hate was the harm the defendant had caused to her nation as a collaborator of the Serbian regime<sup>64</sup>.

62. The emotional distress of the witness during her testimony is apparent from her answers. In an attempt to deal with the facts she relayed during her pre-trial testimony, she took the questions in derision: e.g. when asked if she was ever extorted or blackmailed by [redacted] answered “*I am trying not to laugh*”<sup>63</sup>; She evaded the answers blaming her memory, the passage of time, or the overwhelming unfolding of the events: when asked whether she ever made a complaint for being extorted or blackmailed she answers: “*I don’t remember, maybe yes, maybe not, they were insane times*”<sup>66</sup>. She displayed ostensible bravado and sarcasm: “*those people cannot have problems with me*”<sup>67</sup>, “*no criminal, be it a prime-minister of a country, can take money from me*”<sup>68</sup>. Later in the evidence she underlined that she never felt in danger or at risk by [redacted]

[redacted] leaned the truth on mystery or uncertainty, even where facts should be very clear: it remained a mystery whether the problems between [redacted] were in any way

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<sup>59</sup> Main Trial Minutes, 27 April 2015, Page 3 (English version);

<sup>60</sup> Main Trial Minutes, 27 April 2015, Page 18 (English version);

<sup>61</sup> Main Trial Minutes, 27 April 2015, Page 12 (English version);

<sup>62</sup> Main Trial Minutes, 27 April 2015, Page 13 (English version);

<sup>63</sup> Main Trial Minutes, 27 April 2015, Page 44 (English version);

<sup>64</sup> Main Trial Minutes, 27 April 2015, Pages 52, 53 (English version);

<sup>65</sup> Main Trial Minutes, 27 April 2015, Page 13 (English version);

<sup>66</sup> Main Trial Minutes, 27 April 2015, Page 13 (English version);

<sup>67</sup> Main Trial Minutes, 27 April 2015, Page 17 (English version);

<sup>68</sup> Main Trial Minutes, 27 April 2015, Page 22 (English version);

connected with her; it was possible that she may have reported [redacted] to the police<sup>69</sup>. She admitted her physical exhaustion: "*I haven't slept the last 24 hours*"<sup>70</sup>.

63. She started going out with T.R. on 27 September 2005. T.R. told her that he had problems with E.S. and that he was a criminal. He told her also that his former girlfriend had problems with E.S. or with [redacted] group. T. R. was not a type of man that would discuss problems with her. He discussed with her his problems with Sekiraqa but it was discussions in vain, including swearing and so on. From today's perspective she can tell that [redacted] ly discussed with her very superficial issues. She had the feeling that she was being followed. In her case it was hard to determine whether it was a stalking crazy fan, an opponent or someone from Sekiraqa group. She reported all this stalking to the police to the extent possible. In one occasion it happened that she was followed when driving in the car with T.R. It happened when [redacted] was taking her to visit her grandmother's house. At one moment, Triumph told her, "don't turn back, don't provoke, we have them behind following us". He said that it was the Sekiraqa group who was following them. It happened more than in one occasion that [redacted] ner company complained that they were both being followed by E.S. It's extremely difficult to recall all of them. It happened once at Triumph's neighborhood called "Qafa". It was always the same, "don't turn back, don't provoke, we are being followed". It can be said that the incident occurred five to ten times. She personally, didn't feel any risk from being followed. Living in Kosovo she never felt her life under threat from any car following her. In those occasions when she was with Triumph in the car, she never saw E.S. with her own eyes in the car or car allegedly following her.

As far as she knows Triumph had problems with this group. She knows as much as Triumph told her about it. The only thing that Triumph related to her was the problems he had with E.S. way back from 1999. She was not the reason why the Sekiraqa group followed them. Any problems that T.R. might have had were between him and E.S. and it had nothing to do with her. She was in New York the night when "Swiss Casino" happened. When they talked on the phone, he briefly told her, "we had problems with those dogs". Triumph minimized the incident when talking to her over the phone. She believes he did it in order to avoid any worries as she was one continent away at that time it happened. She cannot refer to this incident as a scuffle after she got to know

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<sup>69</sup> Main Trial Minutes, 27 April 2015, Page 17 (English version);

<sup>70</sup> Main Trial Minutes, 27 April 2015, Page 11 (English version);

that there had been gunfire and firearm confrontation. She didn't allow [redacted] to expand on that incident, because she found out through the media that it was not a mere scuffle but there were firearm shootings there. After this incident [redacted] became overprotective; their entirely relation was "watch out, be careful, take this route".

As far as she remembers, her sister and her mother had a verbal argument with someone from the Sekiraqa group.

She knows some faces that were called Sekiraqa group, but not the names. Names in relation to Sekiraqa group were different names and usually they were bad words. She as a singer didn't know them. Asked if she can attribute names to these faces she replied: "[redacted] don't know his name, but in our company they used to call him [redacted]".

The topic of Sekiraqa group appeared after the publication of an interview in Gazeta Express newspaper. Apart from emotional damage, these people (belonging to this group) didn't cause any damage or harm to her.

Asked to evaluate [redacted] as a person she stated as follows: He was caring, temperament and just. He was helpful to her in every respect as much as he could. He was an honest and good man towards her.

64. Witness [redacted], the mother of [redacted], also significantly distanced herself from her initial, pre-trial evidence. She stated<sup>71</sup> that [redacted] and [redacted] offered protection from [redacted]. Also, she confirmed that [redacted] and [redacted] had been in a relationship. This statement is in evident contradiction to what her own daughter recounted on these matters, trying desperately to convince the court she was neither in relationship with [redacted] nor [redacted] and she was never endangered by the first one and in fact she did not need any sort of help or protection against [redacted]. Witness Mc Ismajli provided her evidence also during pre-trial. Her statement is dated 08.01.2008. She indicated that she was aware that her daughter had been in a relationship with [redacted] and that [redacted] was afraid of him. She recalled that in 2003 or 2004, after leaving a music

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<sup>71</sup> Main Trial Minutes, 28 January 2015:

studio, they found the tyres of another musician's car slashed. They had previously noticed the Sekiraqa group in their cars earlier. She also stated that she and another daughter were attacked outside the Post Office by [redacted]. She also had had mud sprayed over her [redacted] and was verbally abused by two individuals in 2004 who were driving a blacked out VW Golf III. Both of these incidents were reported to the police. Also during main trial testimony she confirmed these facts. According to this witness problems with the Sekiraqa group started when [redacted] introduced [redacted] in 2002. The witness said that in 2003 or 2004, [redacted] asked her for money on many occasions because she was obliged to give it to [redacted] she remembers [redacted] reporting many such occasions of harassment to the police.

In essence, the statements of this witness were considered by court as reliable since they are comprehensive, consistent, explicit, first-hand. [redacted] is in the centre of events as the caring and loving mother of [redacted] was concerned about her daughter.

65. She is the sister of [redacted] daughter of [redacted] and that she was against her sister [redacted] reporting the defendant because of his criminal past and also because [redacted] Sekiraqa: [redacted] insulted her and her mother over the telephone. She gave evidence that [redacted] came to her hair salon before she had got to know [redacted] he had asked her if they "had problems with [redacted]". The relationship of [redacted] [redacted] posed a pressure to all the members of the [redacted] considering that this family was headed only by [redacted] accompanied by her husband. The witness confirmed that accounts of intimidation existed from the [redacted] group against her, her mother and sister, causing them emotional distress. Bomb threats were made in at least two occasions, causing the cancellation of the live shows of [redacted]. She also confirmed that her car tyres had been deflated in 2003 whilst she was on holiday in Ulqin and that she believed that it was the action of the defendant's friends. She also confirmed that [redacted] told her about an attempted ambush near Stagove village had had taken place and that [redacted] was very worried. Although the witness did not stand entirely by her pre-trial evidence, she did not infer that she was under pressure, or that alterations would have been made of her initial testimony by the state prosecutor or the police. She accepted when confronted with the previous [redacted] trial minutes that it was correct

that [redacted] told her that he was being followed by someone in cars from Sekiraqa Group (p. 52). She confirmed the part of her statement to the prosecutor where she had reported that she and her family were intimidated by Sekiraqa and his group including the defendant arriving outside their apartment at night with others in five or six vehicles and pressing their horns continuously to intimidate the family. She also confirmed that [redacted] told her about an attempted ambush near to Stagove and that [redacted] is very worried (p. 34). At no stage during her evidence this witness did not say that either the prosecutor or police had made her sign a prepared statement.

In her statement to the Special Prosecutor, she said that she had got to know [redacted] especially after one day he had visited her and said that he could help them in connection with the Sekiraqa group. Thereafter, [redacted] his friend [redacted] had to visit [redacted] in her apartment before after a few months, a serious relationship began between [redacted] and [redacted] she said that, not only was [redacted] harassed by [redacted] but so was her entire [redacted] family as well. She said that she personally was regularly phoned up by [redacted] or members of his group when they would verbally abuse her. Before the murder, she had been told by [redacted] that T [redacted] and [redacted] was being followed by [redacted] and his group all of the time. She had been told about the road block in the village of Stagove. She named a number of people whom she claimed were part of the [redacted] group but, when asked about [redacted] had never heard of him.

This panel considered the statements of this witness as plausible. She recounted vividly and in details of relationship her sister [redacted] had with [redacted] and subsequently with T [redacted]

These are eyewitness account provided by a person who was in the centre of events that lead to tragic death of [redacted]. The panel was of the impression, during main trial examination, that [redacted] self-confident person who dared not to show any weakness being harassed by [redacted] a group members. She expressed her point of view in a firm manner, as a sister, to [redacted] saying that she is against dating A [redacted] with [redacted] because of his criminal records and insults she and her mother suffer from Sekiraqa. Her uncompromising conduct implies that she did not hide any facts and tried to provide a testimony to the best of her recollection. [redacted] confirmed in a decisive manner that [redacted] has a relationship with [redacted] later on, posed dangerous threats to his ex-girlfriend [redacted]



and her family. As to these facts the statement of [redacted] is in contradiction with the testimony of her sister [redacted] during main trial. [redacted] has no personal reasons to testify against her sister with reference to these important elements of the course of events. It has to be underlined that despite close family relations with [redacted] decided to breach them to tell the truth and that makes her testimony substantive and unbiased.

66. She stated that she knew how her sister [redacted] to know [redacted] according to this witness, it happened when [redacted] and Arbe [redacted] offered to help their family knowing that they were being harassed by the Sekiraqa group. As further his witness related, she personally had not had any problems with the group but she knew that A [redacted] had reported various problems that they had reported to the police. During main trial examination, Zan [redacted] affirmed her police statement according to which Ismajli received various threats by [redacted] and his people. During her trial evidence she indicated that she had testified so after she had probably heard [redacted] mentioning it<sup>72</sup>. Additionally this witness confirmed that [redacted] and [redacted] were enemies. She confirmed when confronted with her statement of 08.02.2008 that A [redacted] had problems with the defendant. She also confirmed that she had used the term [redacted] group in her statement a number of times and that she was aware of the existence of this group (p. 18-19). She confirmed that she had probably said in her statement “[redacted] various threats by [redacted] and his people.” She confirmed the part of her statement where she had said “I did not know A [redacted] but [redacted] told me that A [redacted] is a member of ‘Sekiraqa Group’ and he socialized with [redacted] most.” In her evidence before the court, she was asked if Liza was a member of Sekiraqa group and she replied “most probably yes.”

67. Although the testimony of this witness was not as firm and bold as the evidence of [redacted] this panel considered it as plausible. [redacted] seems to be more reserved than her sister E [redacted] and did not dare to intervene in the personal life of Ad [redacted] going out with [redacted] but in fact she confirmed the testimony of [redacted] and [redacted] his

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<sup>72</sup> Trial Minutes, 10.01.2015, page 24, (English version);

evidence is corroborated by testimony and other objective evidence to name only police complaints.

68. An important evidence was provided by witness [redacted] former KP officer who was a friend of [redacted] and [redacted]. [redacted] knows many facts about dealings of [redacted] in [redacted] Iraq. [redacted] got to know it personally from [redacted] and [redacted]. This witness recounted vividly all problematic situations [redacted] had with [redacted]. This witness gave an important statement that assisted the court with establishment of facts that led to the tragic death of [redacted]. The panel decided to summarize his statements in a comprehensive manner that helps to understand tragic course of events.

Witness [redacted] joined the Kosovo Police in 2000. He worked in patrol unit, traffic unit and also in special units such as ROSU and FIT until 21 st of January 2008 when he got arrested. He knew [redacted] very well as a colleague and as a friend. They met during training in Vushtrri in 2000, there [redacted] worked as an instructor. They started as colleagues and then as friends.

Triumf was a very quiet man, very respectable towards his colleagues as well as citizens and in accompany where he was, he enjoyed outmost respect. He was a very honest police officer and very professional. He was very brave police officer and very just in obeying the rules. He was a trainer and instructor for the entire Kosovo police service. He never had a physical conflict or dispute with anyone. He was respected and he had the courage to put the stop to E

He didn't get to meet E.S. personally until an incident that occurred in Ferizaj on 22 May 2006. Up until that time he personally had no contact with [redacted]. On that day E.S. was arrested by ROSU unit in Ferizaj. The incident occurred outside the "Dani" restaurant in Ferizaj. The police station in Ferizaj was notified about a threat and ROSU unit had been engaged because it was about a person of a high criminal profile, [redacted] his specific case. (Based on the witnesses it was said that the threat happened at restaurant "Dani". They got the instructions and went there. He was personally involved in that arrest. At that time he was a member of ROSU.) They arrested [redacted] and two other persons there – one of them from Vitia and the other from Pristina. After the arrest in Ferizaj he had to attend court as a

witness. After the final decision was issued for [redacted] and while leaving the court room [redacted] threatened him and his colleagues who, like him, were part of security there. [redacted] said, "I will kill you one by one". Tri [redacted] wasn't involved in this arrest that occurred on 22 nd May 2006.

Following the Ferizaj incident Tri [redacted] told him that they were following him on regular basis. He told him that he had reported that regularly to the police station. He also told him that he had been ambushed in Stagove village. A few days before [redacted] was murdered, he was ambushed in Stagova village, because for safety reasons [redacted] s forced to leave Pristina and to go and live in Stagova. Tri [redacted] s pushed to change his residence time after time.- At the entrance of village Stagova, they put on the road in front of him pieces of wood and stones. Luckily for him, at that time, he was driving a sort of SUV and managed to pass this barrier they had placed there and he drove on speedily. He learnt all of this from [redacted] ersonally.

The reason [redacted] chose to move from Pristina to countryside was because of continuous threats and attempts of murder done by [redacted] and his group. [redacted] has never had any personal problems with anyone in his entire life, not even with [redacted] but E [redacted] had turned this in personal issue. He took this issue as a personal matter and he did it with every person. To him this was something regular.

[redacted] if used to say that [redacted] shi took note of all his movements and reported to [redacted]. He also mentioned the name [redacted] and [redacted] as those who were involved in this sort of activity. [redacted] en talked with him and colleagues in general because to him this became a sort of concern. He indicated to him that he was receiving harassment, unwanted attention from [redacted] and others. He took those incidents very seriously and he was concerned for his own safety. For this reason he changed his residence.

[redacted] icerns in relation to E.S. were numerous and often he talked to them as colleagues and as friends that he felt endangered by E.S. [redacted] eared that [redacted] would murder him. And he indeed murdered him because Tri [redacted] no problems or issues with anyone else. There were no problems at all between [redacted]. [redacted] was paid by [redacted] qa [redacted] i know [redacted]. They got to know who [redacted] was just after the murder of [redacted]. [redacted] had never personally heard of [redacted] and no

one ever mentioned his name. And he was not aware of his actions except the fact that he knew that Ermerika was a poor person because he saw this with his own eyes when he was taking part in the search of Ermerika's house. His living conditions were miserable. Ermerika is the perpetrator of this murder. Ermerika pulled the trigger but Enver was the brain, the organizer of that crime. Nobody would have expected that Ermerika would go out and kill Ermerika because he is not that kind of man. All of this had been prepared by Ermerika. Ermerika had never had any conflict or disagreement with anyone but Enver.

Ermerika had never any problems with anyone else but E.S. His problems with E.S. started when he pulled him over somewhere in Vranjevc. It happened 2000-2002 when Enver was a patrol police officer. Ermerika took that personally and in a very offensive way. Enver felt very threatened and due to these reasons he made reports, but problems got bigger and bigger because nothing was taken against E.S. by the police, prosecution or the judiciary. Enver is absolutely not satisfied with the way his concerns had been dealt with by the authorities. The police didn't take proper measures when it comes to Enver. He had made a number of complaints and reports about what was happening to him. He was disappointed because very little action was taken against Ermerika. Enver was completely disappointed with D. Ermerika and in some other superior police officers such as Enver and Enver.

After the incident of Enver kidnapping E.S. the situation between Enver and Enver got worse. Later on, Enver's car was burnt down by Enver. Enver had physical encounter with Enver in "Swiss Casino", where a fire exchange took place and unfortunately a police officer was wounded there and another person called Enver's group was wounded. He learned about the burning of the car from Enver as being followed all the time until the time he got murdered. In one occasion Enver and Enver were followed by Enver together with Enver through the neighborhood streets and Enver to take home as soon as possible.

He wasn't physically present at the "Swiss Casino" when the incident happened, but he knows about the course of events at the casino and how Enver managed to bring the weapons inside the casino. It was Enver who gave him the account of that incident. They were also informed through official reports because during the briefing all the incidents were mentioned. He knows that Enver pushed Enver's shoulder and that is how it started. Enver's

one of the reasons that came to be more resented by he was allegedly in relationship with whether by her own free will or because she was blackmailed. They found some photos of during the search in Ferizaj and in possession of who used such photos to blackmail her. And even told him that she had been blackmailed and threatened in all forms. In the moment entered the relationship with started to hate him the most, because then he was not able to blackmail anymore as she felt more secured when being with

He knew before, because his brothers work in a music business in Germany and he was the person who was in touch with singers to arrange concerts there. He doesn't know how serious the relationship between and . She told him personally that she always felt threatened and blackmailed when she was with he was even forced to give money. When he asked she reported these incidents she replied that it would be in vain, same as reporting it to and it would be her conviction. And in fact, it was quite credible, because opened a number of cases at the police station and nobody handled them.

He doesn't know how together, but good looking and she wanted a brave person to be around. She liked and ted her as well and she felt secure with him around. This is the information he received by talking to f.

was the reason that started to lose his power and influence. The group was a very dangerous group that dealt with racketeering and this kind of activities. This is also noted officially from the police documents. was the boss of the criminal gang. As a police officer he had knowledge of men. The girlfriend of was sent to the hospital on the day of the death of to confirm his death. He was the one who noticed her there. She came to the ward at the hospital though she was not a nurse there because they sent her to see whether s dead or still alive. They feared In't died. When is killed nobody was allowed to enter the ward but she managed to get there anyway.

He was very close with He told him that she had made statement to the police and prosecution. After the death of he met her many times. She was threatened and she

also had been blackmailed after the murder of [redacted] they continued with threats and blackmails because they thought it was not enough. They wanted to frighten her in order not to speak. They told her to mind her own business and this happened also through

[redacted] had pornographic photos of [redacted] showing the front part of him together with [redacted] told him after the death of [redacted] she had been threatened and blackmailed by these photos. [redacted] called him several times crying and these are official recordings and not private ones. He advised her to go to the prosecutor and he gave her moral support because they wanted to have her not testify by all means, through different blackmails he mentioned earlier.

He himself also received threats after the murder of [redacted] was called on the phone by the headquarters and that were [redacted] it. They called him on the phone urgently when he met them, they brought him a bulletproof vest and officially notified him that [redacted] made a deal with someone to kill him and that was [redacted] they provided him an armored vehicle and also wanted to provide him with close protection officers but he didn't accept it.

He was one of the officers who searched the house of [redacted] in Kodra e Trimave neighborhood. He was member of FIT unit at that time and they went there officially upon application of prosecution. [redacted] living conditions were very bad and very poor.

The "Swiss Casino" incident was between police officers and the criminal group of [redacted] Police officer [redacted] was wounded there and it was matter of luck that nobody got killed there. These events were staged by [redacted] provoked [redacted] touching his shoulder. "Swiss Casino" was an open bar and [redacted] knew they were police officers there. Everything was set up by [redacted] and the pistols were brought in there by [redacted] After the murder/death of [redacted] she told him herself that she brought a pistol inside the bar. While [redacted] was a fugitive she asked to come and meet him secretly so that Sekiraqa group would not find that out. She even brought a CD of video recording of [redacted] party. There were two occasions when they discussed the issue of pistol and "Swiss Casino" and in both occasions she was with her mother. It was a matter of business because her mother was interested in finding a work for [redacted] as trying to become a singer. He didn't make any report on that matter, but it is possible that another colleague did it.

Fierza depicted [redacted] as a dangerous person. [redacted] was not killed for the sole reason of "Swiss Casino" incident, but for failing [redacted] image of a tough man, and this was one of the motives. [redacted] wanted to give a positive image of herself and she wanted to justify why she hang around with a criminal group. She said that she had a daughter and that she was blackmailed, but he never trusted that. [redacted] was good looking from her appearance and she was always used for racketeering by bringing a business man for racketeering.

The relationship between [redacted] is different from the relationship she had with [redacted]. A [redacted] stated herself that she was blackmailed and pressurized by [redacted] whereas the relationship with [redacted] was normal and serious one. During the arrest of [redacted] in 2006 the police officers found some pictures of a very delicate nature in his vehicle. Based on the content of these pictures they were taken during the intercourse between [redacted] and [redacted] saw these pictures (2-3 photographs) and they were handed over to Ferizaj Police Station.

He hanged out with [redacted] many occasions. He has known [redacted] since she began to sing. He doesn't know why [redacted] stated something different during this main trial in front of the court here. For instance they were in Prizren together with [redacted] and [redacted] they bought two small puppies Sharni in Prizren. They were together at the park in Ferizaj, "Natyral", in the vicinity of Pristina, Stagove and at Triumph's house.

[redacted] had constant threats and he told her that she could call him any time and that she would have his support to enlighten this crime. This conversation took place after [redacted] was murdered. He told her to go to the prosecutor who was prosecuting the case if the police didn't take any measures. He wasn't authorized to receive any statements on [redacted] behalf.

His unit was assigned to deal with the incident in Ferizaj in 2006 by the decision of the chief of operations, [redacted] he went to this incident as a member of the unit called ROSU. The entire ROSU were engaged in this operation. The commander was [redacted] they were initially informed that two people were threatened. The names of the two females who went to police station in Ferizaj and reported the case of threat were [redacted] and [redacted]. He used to go out with the complainant [redacted] the Ferizaj case in 2006. The operation in

Ferizaj was not a set up for I [redacted] was not a member of the unit, he worked in another unit. He doesn't know anything what [redacted] aid in his statement about the Ferizaj case. He was questioned in relation to [redacted] by international investigators, but he denies having access to the statement given by [redacted]. The international investigators posed questions regarding [redacted] but he didn't see or read the statement of [redacted]. - There was no connection between [redacted] and the case in Ferizaj. He was not participating in this operation and he was not at the police station either. He heard that a gun and some pictures were found in the suspect's vehicle; however he himself wasn't involved in the search. The police found these photographs in the vehicle of E [redacted] during the search. He saw these photographs, but he doesn't remember which police officer showed them to him. He didn't pay close attention to the photographs; he only saw the face of [redacted]. The commander of serious crime department [redacted] had those photographs with him. He doesn't know how many photographs were there, neither is he sure if he saw two or three photographs of [redacted]. He didn't check the album entirely; he only saw some photographs. He didn't frame [redacted] up by putting the gun in his vehicle. He had no access to the vehicle apart from person who was involved in this case.

He fully stands by the interview he gave to the prosecutor on 30 October 2007. In his statement he mentioned that he talked to [redacted]. While he was talking to [redacted], this happened in the café bar, a big crowd was there. When he went outside to call the police [redacted] used another entrance and left. After that he phoned him on the phone and repeated the threats. Then he reported the case at the police station in Ferizaj. As far as he knows the police took some measures but he doesn't know exactly what kind of measures. [redacted] was known to the police.

He wasn't aware of the fact that [redacted] was suspended for a while from his duties because of alleged violation of police duties and excessive use of powers.

[redacted] was head of the group dealing with racketeering, money loan sharking and blackmails. He doesn't know how many members the group consisted of or the names of all its members. There were many members, they were throughout Kosovo. [redacted] and his brother I [redacted] the right hand of [redacted].



In cross examination it was put to the witness to explain an alleged telephone conversation he had had from prison with one [redacted], aunt of [redacted] in relation to the testimony of the latter before the court. The witness refused to comment<sup>73</sup>.

69. This panel took into consideration that this witness together with [redacted] as accused in a separate case so-called Bill Clinton bombing, of planting a bomb in Sekiraqa bar in an act of retaliation for Triumf Riza death, assessing his credibility. It has to be underlined that this criminal offence is a subject of another ongoing investigation and does not have a negative effect on [redacted] and [redacted] credibility as witnesses. Both witnesses testified about the facts they got to know from [redacted] and A [redacted], so they are hearsay witnesses. Their testimonies in this case have no impact on their procedural situation in Bill Clinton bomb case.

70. The witness stated that, according to [redacted], E [redacted] thought of himself as untouchable by the police. His hatred towards [redacted] w when [redacted] li became girlfriend and culminated in the Swiss Casino incident. In that instance [redacted] basically took revenge because of [redacted] because he had been stopped in traffic<sup>74</sup>.

Before the murder of [redacted] while socializing with him and [redacted] y made a deal for A [redacted] ng at a company named X [redacted] erizaj. A threat with a bomb was made the first night [redacted] l to perform there and she blamed Si [redacted] r it saying he was blackmailing her, asking money from her. She stated this in the manager's office crying, in the presence of [redacted] Desnik and the witness. She allegedly affirmed that [redacted] not even allowing her to sing anymore, by announcing false bomb

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<sup>73</sup> Trial Minutes 01 June 2015, pages 7, 8

<sup>74</sup> Trial Minutes 03 June 2015, page 7;

alarms which made the police to intervene, stop the music and vacate the premises. [redacted] indicated that they had reported the matter to the police but nothing was done<sup>75</sup>.

This panel took into consideration that this witness together with [redacted] was accused in a separate case so-called Bill Clinton bombing, of planting a bomb in [redacted] in an act of retaliation for [redacted], assessing his credibility.

71. [redacted] was an important witness who gave evidence on existence of [redacted] sup.<sup>76</sup> [redacted] was an insider as he used to hang out with Sekiraqa men. It has to be observed that during the testimony he was very nervous and it was very obvious that he was afraid of the defendant. This witness was confronted with his previous evidence that he had given on 28.11.2007<sup>77 78</sup> and which he confirmed to be correct. In this testimony he states that in 2003, he had been forced into a vehicle by [redacted] then driven to a house in Vranjevc and beaten with a baseball bat and told to "write whatever you know about [redacted]"; [redacted] as then arrested by KP officers and thereafter interviewed as a suspect before a judge who Shoshi knew to be associated with the Sekiraqas ("I was interviewed by a female judge who is a friend of [redacted] and her son is also a good friend to [redacted] and to all members of [redacted] Group...since that case, I lost my trust in the court and in the police"). He confirmed in evidence that this part of that statement was true. This evidence is very noteworthy as it shows how widespread the influence of [redacted] and his group was amongst the law enforcement agencies to ensure that he was never prosecuted and that he could act with impunity. It also demonstrates that [redacted] resorted to extreme violence and intimidation, commanding foot-soldiers like [redacted] to enforce his will. just like [redacted] was to do when it came to executing T [redacted]. Nothing happened without the defendant's express order; they feared him and they were totally reliant upon him for their status and wealth. During his evidence, [redacted] attempted to depict the defendant in a positive light, as the local hero of [redacted] [redacted] a number of very significant admissions that this panel considered

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<sup>75</sup> Trial Minutes 03 June 2015, page 8;

<sup>76</sup> Trial Minutes , 19-20.11 2015

<sup>77</sup> Binder VII pp171-172

as important. He stated that [redacted] "was all the time together hanging with [redacted]" He further said "[redacted] as not an important person in Vranjevc, I saw him sometimes in company with Liza [redacted] also sometimes also with [redacted] v him once with [redacted] I saw him in that bar he used to come and stay. He was known as Liza [redacted] an (p. 11)<sup>79</sup>," He was confronted with the statement that he made to the prosecutor on 30.10.2007<sup>80</sup> and he confirmed that it was correct and given freely (p. 15). In that statement, he stated "I know the defendant [redacted] saw him at the Sekiraqa Bar where I saw him in the company of [redacted] with whom he socialized non-stop...He [redacted] a] continuously was in the Sekiraqa bar but I don't know whether he worked there." Significantly, in evidence before this court when being asked about the problems that [redacted] with the defendant, he said that [redacted] addition to the defendant, "had also problems with [redacted] had also problems with [redacted] aqa. All Vranjevc came to the city and made problems therefore he was the police officer who was actually countering this group"<sup>81</sup> (pp. 17-18). When asked whether this group had a leader, he replied, "I cannot say that it had a leader *but an idol* [redacted] 18). Later, he said "I [redacted] to bring order in Vranjevc" (p. 22). Additionally, he stated "Vranjevc is complete, Vranjevc and [redacted] ; these: [redacted] q five or six people close to" (p. 24). Being asked to identify all group members he replied "Na [redacted] they were known in the town to be in Prishtina to be most loyal people to him, to [redacted] esponse to the Presiding Judge's question "...they were, these five or six people, the so-called Sekiraqa group?" [redacted] ed, "yes, the ones who were the most loyal to him." When asked whether [redacted] as also a member of the group as he had said in his statement dated 10.09.2007<sup>82</sup>, he stated in evidence " [redacted] always with Liza" (p. 24). He went further and when reminded that in this statement, he had said that [redacted] was identified as a member of [redacted], he replied "what I stated here is accurate." He further stated when confronted with this written statement that he had been told after the murder by [redacted] she had said to him "They killed my husband...She was referring allegedly to [redacted] (pp. 5-26)." When asked was there anybody above [redacted] replied "I don't believe so. There was none above [redacted] (pp. 27-28)."

<sup>79</sup> Trial minutes, p.131, 19.11.2015

<sup>80</sup> Binder VII, pp.152-156

<sup>81</sup> Trial minutes, 19.11.2015

<sup>82</sup> Binder VII, pp. 139-151

When asked if [redacted] had transported coffee for [redacted] using the Bruno Café red pickup, he stated "perhaps he drove the car, he could have drove the car but he was not his employee... very rarely, I have seen him once or twice [dealing with coffee]" (p. 32). He stated that the defendant had helped a number of people with the building of their houses including [redacted]. He was reminded that in the previous trial of [redacted] he had said "[redacted] was helping all of them and I guess that he was also helping [redacted]"<sup>83</sup>. He was further reminded of what he had said during that previous trial and he accepted that it was true that [redacted] had told him that when her tires were let down and car scratched that "she suspected that it was circle of [redacted]. He had also said in the previous trial under oath, "All the members of Sekiraqa group, the name who I mentioned earlier felt hatred towards [redacted]. All the persons that were sitting together with [redacted] re members of his group according to me this could also be [redacted]. In every occasion of entering in [redacted] restaurant the group always talked about the hatred towards [redacted]. his evidence, he stated "[redacted] had used to say that he [redacted] was murdered by Vranjevc guys and [redacted] murdered the one of hers."

The statements of this witnesses are of crucial importance as they helped this panel to established who made up Sekiraqa group, that [redacted] was part of the group, that all members of Sekiraqa Group hated [redacted], that [redacted] had had numerous conflicts with the group, and that [redacted] had complained to [redacted] about on-going and constant harassment from the group. [redacted] also said to that earlier trial panel that he was afraid to answer questions in court because of the group of [redacted]. The attitude of this witness is quite understandable, but it has to be underlined that [redacted] confirmed what he related previously in the invagination and other trials.

The defense line presented by defendant describing [redacted] as someone that was distant from him cannot be considered as trustworthy. Among the material evidence, there is the photographic exhibit (ex # 6, image 0121), where one can see two of them together. It did not escape the attention of this panel that in fact [redacted] had tried to help defendant by warning him to change his phone number when [redacted] was on the run. The only logical

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<sup>83</sup> Binder XIV, p.74

conclusion to be drawn from all of this is that [redacted] knew the defendant well and his description of the group is reliable.

35. Despite the fact that a number of witnesses only partly testified in accordance with their detailed and consistent earlier statements, from the other evidence presented it is overwhelmingly the case that [redacted] was the leader of a violent and lawless group of individuals who had singled out both [redacted] a vicious and sustained campaign of harassment and intimidation. However, the court not only has the evidence of the above cited witnesses but, in addition, a large body of other evidence, much of it technical, that clearly demonstrates without any doubt that the defendant orchestrated this hate campaign and that he finally ordered and incited the killing of [redacted] one of his trusted boys, [redacted], a man hardly known to the police or to Ti

#### Police complaints

During the main trial the state prosecutor presented a number of criminal cases opened with the Kosovo police before the murder of [redacted] these official complaints are striking evidence that initial testimony Od [redacted] during pre-trial face was nothing else but the truth.

There was a complaint was made on 21.02.2005 by [redacted] learner of [redacted] 10 reported that she was approached by one [redacted] who threatened her saying "Do you know who am I, I'm [redacted] and I beat you, do you know whats my relation to [redacted]." [redacted] herself made a signed complaint stating that she was being stalked by this same individual (who had stated that he was related to the defendant) who she reported waited outside her apartment, then made a phone call and then minutes later, [redacted] would find herself being followed by a vehicle and that this had been happening for 8-9 months<sup>85</sup>.

There was also the detailed complaint that [redacted] made on 02.05.2005 naming [redacted] the aggressor<sup>86</sup>. She reported that as she was returning to her apartment after midnight and was reversing in order to park, a Jeep no. 322-KS-588 came at her [note: this was the same green Cherokee Jeep vehicle found outside Bar Sekiraqa after the murder and which is

<sup>84</sup> Binder VII, pp.143A-143

<sup>85</sup> Binder VII, pp. 144a-153

<sup>86</sup> Binder VII, pp. 154-157

shown on some of the photos recovered from the Samsung camera exhibit 6)]. The Jeep drove towards her and she was forced to reverse away before it hit the front of her vehicle; she kept driving away. She reported that she recognised [redacted] be the driver and that he made a dangerous gesture with his hand indicating that he was going to cut off her head. She made her escape. These complaints are strong evidence that the defendant was personally directing a vicious hate campaign against [redacted]

There was the further incident at 15:30 on 12.05.2005 when [redacted] jli were in Dardania where they were threatened and insulted by [redacted] In addition, on 22.06.2005, [redacted] made a complaint to the police that she had been threatened by three people whilst in the street at Princi I Arberit. She had reported that 'they are in the group of [redacted] <sup>88</sup> .

The panel sees no other reason for these complaints to be brought; [redacted] s simply scared of Sekiraqa and his group.

The cases mentioned above neither are nor isolated. The following cases were found in the records of Kosovo Police, regarding complaints formulated by [redacted] .

a) [redacted] rson

On 21.06.2005 at 01:00 hrs, along [redacted] lani Road in Prishtina, a VW 3 with registration number 454 KS 829, the property of [redacted] j, uncle of A [redacted] was burnt out by unidentified assailants. An investigation was opened by the KP Regional Unit in Prishtina on 22.06.2005 and a criminal report was filed against unknown persons and referred to the Municipal Prosecutor in Prishtina on 07.10.2005. It was suspected that the attack was perpetrated by members of the Sekiraqa Group in order to intimidate [redacted] :cause of her relationship with [redacted]

b) [redacted] - Threat

On 22.06.2005, at 02:00 hrs, on Asllan Pireva Road in the vicinity of the Hotel Princi i Arbrit in Prishtina, [redacted] ported that she had been threatened by three unknown perpetrators suspected to have been associated with the Sekiraqa Group. In consultation with the Municipal [redacted]

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<sup>87</sup> Binder VII, pp. 159a-159

<sup>88</sup> Binder VII pp. 221A-221

Prosecutor in Prishtina, the case was closed due to a lack of evidence. It was suspected that the act came from members of the Sekiraqa Group seeking revenge against [redacted], because of her relationship with [redacted].

c) Case [redacted] Disobeying police orders, Assault against official persons

On 12.05.2005, at 15:30 hrs on the "28 November" Road in Prishtina, whilst police officers were at a check point, a Peugeot vehicle, with registration plates 438 KS 739, failed to stop at the police check point. The police went in pursuit of the vehicle and managed to stop it. They identified [redacted]; the driver, who was accompanied by [redacted]. They threatened the police officers who had stopped them. [redacted] contacted by telephone other suspects and after a short time [redacted] the scene and threatened and obstructed the police officers. All suspects, [redacted] [redacted] [redacted] [redacted] Sekiraqa and [redacted] were detained for obstruction of police officers while performing official duty and threat. The case was referred to the Municipal Prosecution on 13.05.2005 and joined to other separate cases that related to threats against the Ismaili family.

d) [redacted] Threat

On 21.02.2005, at around 15:30 hrs in the Dardania area, an incident was reported whereby the victim [redacted] hired for domestic work at the apartment of [redacted] i. received threats from a suspect named [redacted] on 05.05.1886, who allegedly said "why are you staring, don't you know that I'm also one of Sekiraqa's, I will beat you, you know that [redacted] relative". The complainant [redacted] that the suspect [redacted] been following her, observing when she entered or went out of the apartment and her every move. The same reported on all of her movements to an unstated person via telephone. The KP suspected that the suspect had been ordered to follow [redacted] because of her recent relationship with [redacted].

e) [redacted] Threat

On 02.05.2005, at about 00:15 hrs. in the Dardania area close to "Fellini" in Prishtina, [redacted] was threatened while she was returning to her apartment. Upon entering the parking area,

she saw a Jeep vehicle with registration number 322 KS 588, which blocked the entrance to the parking area. When the light was switched on in the suspect vehicle, the victim recognised

As she started reversing her vehicle, the Jeep moved faster towards her and frontally struck the victim's vehicle. The Jeep eventually came parallel to her vehicle and, while passing, she saw [redacted], making a gesture towards her with his hand which generally means: "I will cut your throat".

[redacted] recorded as suspects in this case, together with [redacted]

The case was referred to the Municipal Prosecution on 13.05.2005, together with two other cases of Assault against a Police Officer and Threat against the sister of [redacted] their mother [redacted]. The Kosovo Police ascertained that the main suspect [redacted] is motivated by revenge and resentment and towards [redacted]. [redacted] wanted to intimidate her because she had started a relationship with the police officer [redacted]. Brief summary and analysis of the criminal cases recorded by the Kosovo Police as mentioned above was provided in a KP Report 2007-AD-02397 dated 09.01.2008 and further in a Report 06/I-01-SA-023/2014<sup>89</sup> dated 25.03.2014. The KP investigators also interviewed Lt. [redacted] who was in charge of the KP unit that [redacted] assigned to. [redacted] had requested the Deputy Police Commissioner for increased personal protection, namely an M5 weapon and an armoured vehicle, as he feared for his life because of [redacted]. [redacted] was offered close protection instead which he refused stating that he was a member of the very team that dealt with such tasks.

Despite the fact that a number of witnesses only partly testified in accordance with their detailed and consistent earlier statements, from the other evidence presented it is overwhelmingly the case that [redacted] was the leader of a violent and lawless group of individuals who had singled out both [redacted] of a vicious and sustained campaign of

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<sup>89</sup> PP,1-222, tab 1.1-1.11, binder VI



harassment and intimidation. However, the court not only has the evidence of the above cited witnesses but, in addition, a large body of other evidence, much of it technical, that clearly demonstrates without any doubt that the defendant orchestrated this hate campaign and that he finally ordered and incited the killing of T [redacted], one of his trusted boys, [redacted], a man hardly known to the police or to T [redacted].

### **Material evidence seized at Bar Sekiraqa**

#### **Admissibility of evidence.**

Immediately after the murder of [redacted] the Kosovo Police carried out a series of searches at premises suspected to be linked with the perpetrators.

At 19:15 hrs on 30.08.2007, the Kosovo Police entered and searched the premises known as Café Bar 'Sekiraqa' located on Bill Clinton Avenue, Pristina<sup>90</sup>. Among the objects seized were thirty-seven compact disks, two video camera cassettes, a digital camera, fifty-five photographs, two bullet proof vests, one PC computer, one camera and six mobile telephones made NOKIA. On the occasion, the KP arrested at the premises [redacted] (brother of the defendant), [redacted] and the now convicted [redacted]. A record of the search was also compiled by KP investigator [redacted]. Amongst the items found were a number of CDs that are of important evidential significance in the case as they show both that [redacted] was a subordinate of the defendant and secondly that the defendant had a keen interest in following the movements of [redacted].

The defence put up an argument that all evidence collected during the search at the premises of Sekiraqa Bar ought to be ruled out and evidence considered as inadmissible since the search was conducted without a verbal order of pre-trial case judge.

### **Relevant Provisions of the Kosovo Constitution and the Kosovo Code of Criminal Procedure (KCCP)**

The pertinent provision of the Kosovo Constitution reads as follows:

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<sup>90</sup> Pages 112-124, tab 8 binder 1, pp. 182-184, binder I

<sup>91</sup> Pp. 5-13, tab 4 binder II

## Article 36, Right to Privacy

1. [...]
2. *Searches of any private dwelling or establishment that are deemed necessary for the investigation of a crime may be conducted only to the extent necessary and only after approval by a court after a showing of the reasons why such a search is necessary. Derogation from this rule is permitted if it is necessary for a lawful arrest, to collect evidence which might be in danger of loss or to avoid direct and serious risk to humans and property as defined by law. A court must retroactively approve such actions.*

The implementing provisions of the KCCP governing search and seizure are set out in Chapter XXVIII: INVESTIGATION ACTIONS, Section 5. Search and Temporary Confiscation, articles 240-253.

### Analysis

Taking into consideration legal basis for the search the KCCP provided two legal grounds:

#### a) Article 201

The provisions of article 201 (1) and (2) of the Kosovo Code of Criminal Procedure, which state in pertinent part, as follows:

*(1) If there is a reasonable suspicion that a criminal offence prosecuted ex officio has been committed, the police have a duty, either ex officio or on the request of the public prosecutor, to take all steps necessary to locate the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings.*

*(2) In order to perform the tasks under paragraph 1 of the present article the police shall have the power: ...*

*6) To search specific buildings and premises of public entities in the presence of a responsible person and to examine specific documents belonging to them;*

*7) To confiscate objects which must be confiscated under the Provisional Criminal Code or which may serve as evidence in criminal proceedings*

It has to be said that article 201 is free-standing, and is not modified or restricted by the provision of article 240 and following. In other words, the police have the authority to search premises and seize objects irrespective of the specific provisions governing search and seizure. but under certain circumstances. It must be noted that paragraph 6 refers to buildings and premises of public entities. The \_\_\_\_\_ was a private commercial premise, and not a public entity, so by its very terms paragraph 6 does not apply. The fact that the bar offered public service serving coffee and other beverages to clients doesn't mean that everyone was entitled to get free and unlimited asses; not did not change its legal entity from private to public institution.

b) Article 245.

One can presents an argument based on article 245, which sets out exceptions to the requirement for a search order:

*(1) Police may, if necessary, and to the extent necessary, enter the house or other premises of a person and conduct a search without an order of the pre-trial judge if:*

*1) The person concerned knowingly and voluntarily consents to the search;*

*2) A person is calling for help*

*3) A perpetrator caught in the act of committing a criminal offense is to be arrested after a pursuit;*

*4) Reasons of safety of people or property so require; or*

*5) A person against whom an order for arrest has been issued by the court is to be found in the house or other premises.*

The only provisions of Article 245 (1) which might justify a search without a search order in this case are subparagraphs 1 (consent), 3 (perpetrator caught in the act), and 4 (safety of people).

However, there is no viable claim that this was a consent search. There is evidence that members of Sekiraqa group were present in the bar, but circumstances negate any claim of consent.

Nor is there a viable claim that there was a perpetrator caught in the act that was to be arrested after a pursuit. While the police might have suspected or hoped they could catch someone in the bar, this was not the case, and in any event there was no pursuit. There is a claim that \_\_\_\_\_ may have escaped from the bar at some point and does not await police to arrive and arrest him on the spot.

The most reasonable claim is that the search was conducted out of concern for the safety of persons. The relevant facts show that the perpetrators of this crime were armed and causing threat to the safety of clients of Sekiraqa bar who may have been and have not been aware that police are looking for the murderers of \_\_\_\_\_. This was significant possibility that armed murderers might be in Sekiraqa bar that warranted immediate police action.

As noted above, article 245, paragraph (1), subparagraph 4, allows the police to enter the premises without a judicial order of any sort "*if necessary and to the extent necessary*" if "*reasons of safety of people...so require.*"

However, paragraph 3 of the same article 245 deals with a similar situation:

*Exceptionally, in exigent circumstances, if a written order for a search cannot be obtained in time and there is a substantial risk of delay which could result in the loss of evidence or of danger to the lives or health of people, the judicial police may begin the search pursuant to the verbal permission of a pre-trial judge.*

Article 245 (1), paragraph 4, and Article 245 (3) deal with virtually the same concern: safety of people, and danger to the lives or health of people. One allows entry without an order; the other requires a verbal order. It is therefore necessary to try to reconcile these provisions.

Paragraph 1 of article 245 must be interpreted to deal with unique situations that are occurring in the moment -in addition to safety concerns; it also includes calls for help, hot pursuit, and the need to enter to make an arrest. In other words, situations that require instantaneous action. These situations must be contrasted with potential safety situations that do not require

instantaneous intervention. In other words, there could be varying degrees of exigency implicating the different provisions of 245. It all depends of the facts of a particular case.

The situation falls within the second category--Article 245 (3). The police themselves did not see the need to enter the Sekiraqa bar immediately, and took many steps before the actual intervention. In fact police suspected that F may be a possible murderer as he was in conflict with Tri. The fact that police were aware of. The police action was organized and prosecutor is present who leading investigation was on this case.

Given this sequence of events, it was obvious that these were not circumstances that would obviate the requirement of obtaining verbal permission from a pre-trial judge. The panel observes that the situation unfolded over several hours during the business day so there should have been no concern about being able to locate a judge. Indeed, the prosecutors were in the same building, and additionally they were aware of the judges' on-call mobile numbers. Thus, it is the panel's conclusion that there is no legitimate reason for failing to obtain at least a verbal search order from a judge. This panel decided ex officio to question additional witnesses in order to establish if on-call system was effective on 30 August 2007.

Witness F stated on 18 and 19.08.2015 (binder E tab D and E) the then court administrator confirmed on-call system was in force in August 2007 and in details he described how it was organized. This witness confirmed that Judge was on call on that critical day. Testimony of witness i court administrator was considered as fully reliable as he related the facts in details and as a public employee holding important position for many years he enjoys good reputation as devoted and professional servant of justice system.

His testimony is corroborated by the statement of former judge testimony dated 17.08 2015 binder E, tab C). L confirmed that she was a pre-trial judge on 30 August 2007. As far as, the exact recollection of facts, are concerned, this witness explained being asked about a verbal permission: "No, I don't remember. I cannot say something that I don't remember. Seven years have elapsed since." When this witness was confronted with the rulings on detention on remand in this case, the only thing she could confirm was her signature.

In the opinion of the panel, this normal that human memory is fleeting and we tend to remember more, soon after the event than after certain period of time. The panel was not surprised with

such statement but it does not mean that [redacted] did not give verbal permission to search the premises in question. Issuance of verbal orders was not freshly introduced legal concept in the legal framework and both judge, prosecutors and police officers were aware of such possibility. In the ensuing situation, there are no reasons to exclude that pre-trial judge of that time in fact issued such verbal order allowing police to proceed in a pursuit of evidence. It has to be underlined that [redacted] never in her testimony denied that such verbal order was issued over the phone. On top of that, witness [redacted] police officer questioned on 20 July 2015 (Binder D, tag G) said: "we persistently tried to contact pre-trial judge to take verbal order, to undertake further actions... and I called lieutenant Fadil Gashi, who is my supervisor in order to contact pre-trial judge and receive verbal order. ... I received notification from the lieutenant that verbal order namely notification of pre-trial judge named [redacted] was received". Questioned in the capacity of witness [redacted] director for investigation of serious crimes testified (on 20 July 2015, Binder D, tag G): in this case I contacted the judge ... I requested from her a verbal order to conduct searches, she approved it ". The statements of these witnesses [redacted] this panel considered as fully reliable as their statements are comprehensive, detailed and accurate. These police officers were well aware that a verbal order is needed to conduct legal search. The fact that witness [redacted] did not remember giving such order doesn't make their statements inconsistent and thus unreliable.

The panel is also of the opinion that the situation in the bar falls directly under the scope of Article 243 (2), which states:

*During the search of a person, a house or other premises, two adult persons shall be required to be present as witnesses. Before the search begins the witnesses shall be warned to observe closely how the search is conducted, and shall be informed of their right to make objections, if any, to the contents of the record of the search before it is signed.*

As noted above, it is clear that two persons were present as witnesses to the search namely :

[redacted] Both of them were questioned [redacted] on 20.07.2015 Binder D , tag H and [redacted] on 21.07.2015 , binder D, tab G. The statements of these two witnesses did not bring any breakthrough to support the theory of the Defence suggesting material evidence seized in the bar was planted by the police.

The evidence seized during the search would be declared inadmissible under article 246, KCCP, which states:

*Evidence obtained by a search shall be inadmissible if*

*1) The search was executed without an order from the pre-trial judge in breach of the provisions of the present Code;*

*5) Persons whose presence is obligatory were not present during the search (article 243 paragraphs 1 and 2 of the present Code).*

There is also a requirement under article 245, paragraph 6, for the filing of a search report if the search is conducted without a written order:

*If the police have conducted a search without a written judicial order they shall send a report to that effect to the public prosecutor and the pre-trial judge, if any pre-trial judge is assigned to the case, no later than twelve hours after the search.*

It appears that no report was sent the public prosecutor nor to pre-trial judge that meets the requirements of 243 (7). **However, the absence of a search report is not a basis for inadmissibility under article 246 of CPCK.**

This panel took also into consideration objection raised by the defence regarding the time the search started 19:15 and finished 19:45 according to the team of police officers ( Binder 1 , pp 112-123) whereas timing indicated by the forensic team sets 18:50 as a starting point of their activities. This difference can be explained in a simple manner, namely the team of forensic came earlier at 18:50 and simply waited until the search is over. The panel is of a firm opinion that time difference cannot result in inadmissibility of evidence.

#### **Exhibits Seized from Bar Sekiraqa**

Many pieces of evidence lawfully recovered from the bar of Sekiraqa are of extreme evidential significance. These pieces of evidence, undermined defence line of this defendant that is based on denial of responsibility for the murder. Defence tried desperately to prove that

have not known or employed Ar [redacted] who decided to murder [redacted] or the reasons only known to him and E. [redacted] as at all, aware of Berisha's plans.

Certain exhibits collected during the search uncover the defendant in particularly when it comes to his contact with [redacted] a relationship that the defendant has always described as was non-existent. The evidence reveals that defence line was not reliable.

Exhibit # 1 consisted of a number of CDs, some of which were found to be relevant. Ex# 1.1 is a CD that is divided into seventeen clips. They show that the defendant had obtained the security video footage from Swiss Casino. The defence of course tried to argue that this was yet another police fit-up indicating that the footage had been seized by the police and therefore it was they who had it and that they had then planted it in the bar. Some of the CCTV footage from Ex# 1.1 is direct coverage of Swiss Casino, but other parts consist of recordings most likely taken by mobile phone of the security CCTV recordings and are time and date stamped well after the incident. On one clip ('Lila'), [redacted] is seen entering Swiss Casino; on the mobile phone recording, a hand appears over the screen and it points him out. He was clearly being stalked and targeted. On another clip ('Police'), [redacted] is again recorded. There is even a clip called 'Triumf' that records him walking up the stairs in Swiss Casino. The defendant's claim that he never had any interest in [redacted] undermined by this footage, its title and the fact that it was recovered from his own bar. It is additional evidence of the bitter grudge that the defendant held towards [redacted] following the Swiss Casino violence, the fact that he had got hold of copies of the footage and that fact that the CD focuses in on [redacted].

Ex # 1.7 is a CD that contains numerous photographs showing the defendant and his other associates. Especially, photograph 0152 is very significant as it shows [redacted] at Bar Sekiraqa in the very relaxed company of [redacted] (umqi) and [redacted], [redacted] and also [redacted]. The photograph was taken during warm weather given the light clothing that they are all wearing. The calendar on the wall behind them shows that the year is 2007. It is very obvious that this photograph was taken within weeks of the murder taking place. Photograph 0162 shows the red Bruno Café pickup van. The rest of the photographs on that disk relate to [redacted]. It could never have been planted by the police because many of the shots are posed shots. It seems impossible for the police to take such photographs since they were taken by persons who were present on these occasions.



Ex # 6 is the contents of a Samsung digital camera from which were recovered 213 photographs. They mainly show the defendant and other family members and friends as well as personal shots of the defendant such as him being shaved in the garden next to the swimming pool and him having drinks with various different people. He is clearly the main subject in the collection of images. Image 0010 shows the garden of his house with a swimming pool in which can be seen the green Jeep Cherokee in the background. This is the same vehicle that is mentioned often as being one of the vehicles that would frequently take part in the chase of [redacted] inf. It is also the same vehicle and same registration that [redacted] mentioned in the police report of 02.05.2005. The most important images are 0163 and 0164. In 0163, [redacted] can be seen having a few beers with [redacted] and others in Bar Sekiraqa. The next photograph 0164 is very important. The photograph depicts [redacted] part of the same group relaxing at his bar in the company of [redacted]. The image shows them all to be close and friendly. From all of these photographs that show Arben at Bar Sekiraqa, [redacted] is clearly very much at home. These are not the photos of persons who got to meet by coincidence.

During his testimony, the defendant was adamant that he did not associate with younger males such as [redacted]. When his testimony is confronted with the other photos contained within that exhibit, it did not escape attention of the panel that he was closely associated with them, what is especially depicted on photos (0025, 0026, 0027, 0044, 0098, 0189, 0190, 1212 and 0213). These pieces of evidence undermine defence line [redacted] adopted to protect him from criminal responsibility.

The striking evidence that show how closely it was that the defendant associated with and controlled [redacted] s Ex # 3 sets out the situation very accurately. On the camera real life situation was captured. The contents from a Sony video tape is divided into six parts and shows a party taking place in the defendant's garden. Again, the defendant is the centre point of attention and sits surrounded by mostly male guests with musicians. [redacted] is also there. He comes into camera view on a number of occasions. The most important parts are Part 2 at 22 seconds when [redacted] is seen sat on the steps, and 01:01 seconds when [redacted] is shown approaching the defendant. In Part 4 at 07:00 seconds, Arben is seen walking by and at 32:49 seconds the defendant waves to him beckoning him over and then issues instructions to

him. [redacted] says nothing but withdraws after being instructed by [redacted] or S [redacted]. At Part 6 at 2:18 seconds, [redacted] I [redacted] risha and I [redacted] are sat in the stairwell. A [redacted] gave evidence about this when confronted with the video footage in which he said that he was a wedding guest but that he hardly knew the defendant. He said that he sat at a table with

(you will recall that he was a witness proposed by the defence but then he declined to attend court for 'personal reasons') enjoying the 'wedding.' His table cannot be seen, no wedding guests can be seen, and no one is dressed for a wedding. [redacted] was desperate to hide what the real purpose of his being present there at this gathering was. It is very obvious that he was not a guest. He was a servant or employee of [redacted] there is no other logical explanation. In parts 2 and 4, he approaches the defendant in a deferential manner after being summoned over by him. He receives verbal instructions. He then goes back to his work station which can be seen in part 6, where he is sat in the stairwell overlooking the entrance and the parked cars of the guests.

This video describes the relationship between the defendant and [redacted] tly. I comes when he is summoned and he obeys the defendant's orders. The same pattern repeats when [redacted] rmec [redacted] with a Glock and when he incited him to shoot [redacted]. [redacted] did not react to A [redacted] because he did not know him. He was a soldier of the [redacted] and not known to [redacted]

When the defendant was cross examined about this footage, he gave a rambling explanation as to who was holding the party and the reason for it happening. Unlike I [redacted] he stated that it was not a wedding. That testimony seems to be reliable as there are no elements typical for traditional wedding reception captured on the recording. When asked about why it was that [redacted] was there and what his role was, again the defendant struggled to explain. He even suggested that he could be seen instructing [redacted] ja to fetch the guests drinks, which may well be right but this merely proves even more that [redacted] and I [redacted] were there, not as casual guests, but as servants to [redacted]. This evidence again links [redacted] - [redacted] as persona who remained in relationship employee/ commander - [redacted] and employee/ subordinate

Another important evidence is labelled Ex # 4 are the two rolls of film negatives that were put onto a CD. Out of the sixty-seven photographs, a number are important. 10006 is a 'selfie' taken

by the defendant showing that he most likely had possession of the film and therefore that it could never have been planted. 10014 and 10015 depict [redacted] whilst 10037 and 10038 show [redacted] Finally items 10047 and 10048 show explicit photos of a woman. The prosecution state that this is one of the injured parties. Images of this nature were later referred to in SMS-es and were to be used to blackmail her in the event that she was to cooperate with the prosecution. The following SMS-es show that there was an attempt made by the defendant after the murder took place to gather up incriminating photographs of [redacted] d to use them to blackmail her in the event that she co-operated with the police. The following SMS-es explain partly why this is so.

11.10.2007

17:30

3  
i  
Hey go to [redacted]  
and find some  
photos of that bitch  
so we sent them to  
Kila and he will  
upload them on the  
internet, if I and  
Rum have good  
photographs, you  
may send some too.  
Ok

11.10.2007

17:34

zi  
Send to Kila all  
photographs with  
Aden 3-4 and also  
any good ones of  
yours if you have

During the main trial, the defense abstained from commenting on the identity of the persons depicted, however maintained that the female in one the photographs was approximately 45 years old and blonde therefore could not have been [redacted] e defendant admitted the

photographs in question depict him engaging in sexual intercourse with two females on two distinct occasions, one blonde and one brunet. They consented to the taking of the photographs. The defendant did not want to disclose the identity of the two females which he considered intimate information; however he pointed out that none of them was [redacted] added that the negatives of the photographs were seized by the police from the shelves without his consent. He never intended to misuse them or blackmail the two females who have families.

The prosecution further averred that the messages in question show the actions made by the defendant after the murder took place in order to gather up incriminating photographs of [redacted] and to use them to blackmail her in the event that she co-operated with the police. Indeed, after initially co-operating with the investigation, she withdrew her support and turned a hostile witness to for the prosecution case.

From the evaluation of the trial evidence of [redacted] the trial panel notes that the witness intentionally tried to modify the content of her previous evidence in a manner that favoured the defendant by either denying his previously alleged criminal conduct or by mitigating or minimalizing his responsibility. When confronted with striking differences between her trial evidence and her pre-trial testimony this witness blamed the differences on sedatives, psychological therapy, stress, media pressure, and hatred towards the defendant, loss of memory, emotions and other.

The facts however emerge from other corroborating evidence, including testimonial and material evidence, amounting to a suspicion beyond reasonable doubt that the defendant indeed committed the criminal offences he was charged with at Count 2 of the Indictment.

In spite of the apparent contradictory and unreliable trial evidence of [redacted] the Court could not remain indifferent to the entire body of evidence, as it was presented, which leads without any doubt to the stated conclusion.

The criminal offence of extortion requires the use of force or serious threat to compel another to do an act to the detriment of her property with the intent to obtain an unlawful material benefit. The complaints made with the police before the murder of [redacted] against [redacted]

and other members of the group confirm that considerable pressure was exerted by the defendant and/or his associates against the injured party and her boyfriend. Such pressure materialized in serious threats and violent acts in the form of following by vehicles, insults made by telephone such as those against the [redacted] family, the throwing of dirt at [redacted] make threats with bombs at the live shows where A [redacted] performed and other acts. These acts were committed by the defendant either in order to extort [redacted] money obtained from her artist career, or after she had paid such money, in order to compel her to continue to do so, especially after she had started dating [redacted]. Although the injured party was inconsistent about the manner it was created, she did confirm that she suffered a significant material (financial) loss.

The defence adopted by [redacted] is not exonerate him. The fact that the defendant was indeed in a relationship with the injured party [redacted] or that indeed he gave her expensive gifts does not constitute a cause to wave his liability. Whatever the defendant gave [redacted] as a present it was the act of his own free will, contrary to the position of his former girlfriend who was forced to give him the money.

The fact that the defendant kept compromising photographs of [redacted] attempted to use them against her only exacerbates and confirms his malicious intentions. Needless to say, that [redacted] was reluctant to provide her testimony in court despite many attempts to summon her. Finally, she decided to show up and offered the testimony that was in contradiction with her pre-trial evidence. The panel had no doubts that her conduct had shown witness [redacted] for what she was in fact afraid of, to such extent that she changed her testimony in court. It was in evidence to the trial panel that the compromising photographs were a major cause of her demeanour. [redacted] was simply frightened that the photographs may be gone public and she may lose credibility as a public figure. This panel came to the conclusion that her fear was justified since the defendant confirmed that, certain compromising photographs depicting intercourses and certain unidentified ladies, were in fact taken by him. [redacted] as a former girlfriend was surely aware of this sort of bearing and having been forced to show up in the court, she decided to find an easy way out of the problem namely she changed her trial testimony. Considering the statements of witness A [redacted] in all its bearings, this panel

came to the conclusion that only her statements offered during the pre-trial phase should be considered as reliable.

The court therefore finds that the elements constituting the material act (*actus reus*), as well as the intentional factor (*mens rea*), required for the criminal offence of extortion are present and supported by admissible evidence.

In his defence, [redacted] stated that his relationship with [redacted] was a normal and pleasant lasting almost two years. He presented a number of photographs depicting him together with the injured party in familiar poses. He admitted that he used to call [redacted] the nickname "Ade". He completely denied any involvement in the vehicular incident or the other incidents reported by [redacted] or her family to the police. [redacted] admitted that he took the photographs of the two women in compromising poses, however denied of having any intention to use them with in order to cause any harm and also stated that none of them depict A [redacted]. Considering the matter personal, he refused to disclose the identity of the two females. He also denied being part of the SMS communication regarding the use of the photographs for blackmail.

#### **Witness D-2**

One of the most crucial witnesses in this case was anonymous witness called D-2. This special status was granted to him due to security reasons after a session hold at a closed session. During the session, this witness revealed his concerns about his personal security in case he would have to give his testimony in a public session. His fears and concerns were considered to be of serious nature and his submission was granted. His evidence has been declared admissible and is in full compliance with the KCCP .

He gave direct evidence that the defendant ordered the murder of [redacted] overhearing him on the day of the murder talking to other members of the gang. He knew the various members of [redacted] group. Most importantly, he was present in the bar on the day of the murder and was therefore able to give direct evidence of the gathering of the gang, of parts of the conversation

that they had between them when they were preparing to carry out the execution, of their departure armed with long barrelled weapons, of their return also carrying weapons, and their "victorious gloating of revenge taken". There is no reason why this witness would have lied or put himself at such a grave risk when he agreed to testify. He had been spoken to by the police soon after the murder and had then given a written statement on 19.09.2007<sup>92</sup>. As far as the assassination day is concerned, he stated in evidence that he saw [redacted] first at about 08:00 am (p. 4). In his written statement, he said that it was around 7.00 am. This was disputed by the defence on the basis that he could never have seen the defendant there that early because the bar was never opened up until later in the morning and the defendant himself stated "my bar never opened at 7 or 8 in the morning" (p. 43). The defendant was speaking about his routine days, but this was an exceptional day. The witness's recollection of the defendant being at the bar early that morning is wholly corroborated by the triangulation data that shows the defendant was using his phone (no. [redacted]) from 06:36:55 am in the area of the bar. This is a very compelling evidence that makes statement of witness D-2 more reliable.

D2 recalled initially seeing the defendant and later whilst D2 was present in the bar.

[redacted] and [redacted] were there. Again, this is corroborated by the evidence of both [redacted] and [redacted] themselves both of whom accepted that they were in the bar that day. Whilst he was there, D2 said that he saw them all enter [redacted] bar and he "saw that something was cooking" (p. 6) by which he was referring to the murder. He left because he said to himself that "something messy was going on" (p. 9). They were armed. Very importantly and providing direct evidence of the defendant being in command of the plan to commit the murder. D2 heard the words used by the defendant "this thing has to be done today" (p. 37). He said that when they all left the bar, they had long barrelled weapons with them in bags. He saw this from outside when he was sat in his vehicle. He said "I was in the vehicle in the parking lot and I saw them going out to go for the action" (p.10). When they went towards the car, he believed that the time was about 15:00 hours. He clarified that when they left the bar, they were armed. [redacted] qi. Again, the fact that these particular individuals left together is corroborated by the evidence of [redacted] who finally admitted in his own evidence before this court that he had left the bar during the afternoon in the company of these

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<sup>92</sup> Binder XXII, pp.107-110

same two. How could D2 have known this detail unless he was actually present near the bar to witness it. The weapons that they were carrying towards the vehicle before driving away were sticking out of bags and they drove away in "their jeep, green in colour" (p. 11).

was with them. D2 then recalled [redacted] arming and that they were shouting something about vengeance or revenge. Significantly, D2 did not recall [redacted] being with them when they arrived back. Of course, [redacted] did not have been there on their return as he was by now on the run and keeping out of sight having just assassinated [redacted]. D2 recalled that having returned, "they went upstairs, they did not stay too long and again came back down got into vehicles and dispersed" (p. 13).

The defence presented an argument that D2 is an unreliable witness as they could not identify who he was and therefore challenge him and secondly, because some of the timings that he gave differed from those given in his statement. This panel doesn't share this point of view. The defence had the two chances to question this witness by means of video-conference from a secured location. The basic rights for examination and cross-examination were given. Presiding judge intervened only on a limited occasions when answering the question would directly lead to disclosure of witness identity.

As far as inconsistencies regarding the time are concerned, this can be explained by the passage of time. Presiding judge examined this witness in detail in order to check his reliability and also whether D2 had any possible motives against the defendant or any incentive to fabricate evidence or to lie. The presiding judge came to the conclusion that statement of witness D2 is wholly reliable, not personally motivated and the witness agreed to testify at great risk to himself with there being no other alter motive other than to do the right thing. Proof of his reliability is the fact that most of what he stated can be cross referenced with other evidence in corroboration. As far as [redacted] was concerned, D2 told the court that [redacted] was present at the bar every single day. This is corroborated by other witnesses and also by exhibits Ex # 1.7 and Ex # 6, the photographs showing the easy and relaxed relationship that [redacted] had with the defendant, Rrumqi, Liza and others at the bar. When asked about the relationship between [redacted] and [redacted], he stated "I have noticed that [redacted] did give him an order and he [Arben] would obey, [redacted] did tell him to do this or that and he would do that" (p. 14). He stated "He was commanding in such a manner that all the jobs he wanted to carry out he would



order others to do it to have them carried out" (p. 18). Again, this master/employer and servant/employee relationship is wholly corroborated by the footage taken of the garden party (Ex # 3) where the defendant is seen to give instructions to a subservient further stated that the defendant would deal in extortion and usury (p. 15). This is corroborated by the evidence relating to the extortion of . . . Even more significant in terms of corroboration is the fact that D2 knew that the defendant was acquainted with people from abroad "meaning Barcelona" (p. 15). All of the money transfers made via Western Union to the . . . before the murder came from Spain. Similarly, the metering data shows that . . . regularly contacted numbers that contained the Spanish country code in the days leading up to the murder and even on the day of the murder. D2 was even present at the bar when other associates brought to . . . a bag of money" (p. 16) as part of this enterprise. The court has heard other significant evidence of money being delivered into the defendant and/or his brother . . . hands on the day of the assassination. D2 gave direct evidence of seeing and hearing the defendant frequently being in his bar, looking out of the window in the direction of . . . apartment and saying on numerous occasions referring to . . . "now this dog is leaving his flat" and "here is this idiot, this dog coming out now" (p. 40).

The trial panel gave the defence a further opportunity to cross-examine D2 in order to ensure that the defence had had sufficient opportunity to exhaust all issues. During this session, D2 maintained his account and gave even more details that serve to prove how credible he is. For example, he said that . . . left his bar, passed buy two betting shops on the street (Toto Sport and Luka) and that the defendant then stopped by the MCM office. He also said that . . . delivered coffee on behalf of the defendant to Toto as well as other premises. He was very definite: "I was in the bar and I left and I stopped the vehicle in the parking and I got out the parking lot to the vehicle and then I saw. I stayed in the vehicle and I watched what they were carrying. And I saw long barrelled weapons being carried, I saw the barrels sticking out" (p. 8)... "It was about 10 to 15 minutes [that he was in his vehicle before he saw persons carrying long barrelled weapons]. I just saw that there was something going on, a big mess... . . . it was the three of them...I have not seen . . . rying the weapon but he was together with them" (p. 10). This evidence completely undermines the lies told by . . . when he told you that he accidentally bumped into . . . the car park in Flamutaria.

The panel is of the opinion that this statement fully reliable as it is comprehensive, factual and eyewitness. After careful consideration in all its bearing the panel came to the conclusion that D-2 is real character, a person who recounted what he saw and experienced, he is not a hoax witness staged by the police to frame [redacted]. If he were a hoax witness, in the absence of direct evidence against Enver Selimović would point out [redacted] between Liza, F. [redacted] carrying weapons and heading to the crime scene providing a direct eyewitness statement against E. [redacted] a.

Evidentiary value of witness D-2 statements is invaluable as he, together with other witnesses presented clear evidence of the background to the group. D2 also described what took place at Bar Sekiraqa on 30.08.2007 before and after the assassination. It has to be underlined firmly that this witness is a key witness that assisted this panel to reconstruct the events of this critical day, but as far as involvement of E. [redacted] in commission of this criminal offence is concerned the panel considered all relevant interception and metering data provides very important evidence of the control that the defendant exerted over [redacted] and shows the connections between them.

This panel had to analyse an ample of data collected during metering, interception and triangulation. Analysis produced the final outcome.

#### Analysis of Mobile Telephones and SIM Cards

Mobile telephones and SIM cards seized by the Kosovo Police during searches conducted on 30.08.2007 as below:

Exhibit nr.	Item	Location
1	One (1) telephone NOKIA E50 IMEI: [redacted]	Café Bar "Sekiraqa".
1.1	One (1) SIM Card VALA 900 S/N: 89377	
2	One (1) telephone NOKIA 1600	

These text messages were sent by [redacted] a witness that was close to En [redacted] and his group who hanged out with them and knew a lot about who were the members of group and knew about their activities. These SMSes were sent next day after the murder in a very spontaneous manner, apparently Fa [redacted] was still emotional and wanted to share this information in a frank manner with [redacted] anyway. [redacted] admitted he killed [redacted] but the bottom line of this communication is what [redacted] said about [redacted]. He described him as: "*The one who used to stay with Lisa all the time and used to drive the pickup of Bruno Café*". The fact that [redacted] used to drive pickup of Bruno Café was an important fact in establishing factual situation and responsibility of defendant, since [redacted] working for Sekiraqas he was considered as one of their loyal man who as the future proved killed [redacted] for no personal reasons but executing the wish of [redacted].

One of the most crucial evidence collected in this trial was triangulation (mobile phone tracking) that assisted this court with a precise reconstruction of the chain of events of this critical day. It was also a crucial evidence to scrutinize statements of the defendant and verify if his defence line would be considered as reliable or an attempt to avoid criminal responsibility.

Panel decided ex officio to admit a new evidence of triangulation (mobile phone tracking) in line with Article 329.4 of the CPC that reads as follows: "In addition to the evidence proposed by the parties or the injured party, the trial panel shall have an authority to collect evidence that it considers necessary for the fair and complete determination of the case".

It has to be firmly underlined that panel is fully aware of time restrictions regulated by Law No. 04/L-109 on electronic communications but nonetheless time restrictions do not apply in this case.

The problem with the lack of having a proper definition of lawful interception of telecommunications in Kosovo is that it creates difficulties in applying law in a proper manner. The definition of term of interception of telecommunication is described in Article 87.5 of the CPC in the following way: "*the term interception of telecommunications means the interception of voice communications, text communications or other communications through the fixed or mobile telephone network. This shall include any similar device or system that carries*

*information that is normally intended to be private*". This panel was of the opinion that only the content of interception of telecommunication as described above is protected by time restrictions.

This definition doesn't include Meta-Data in the meaning of all data related to communications that are subject to lawful interception order, including, *inter alia*, time, duration, source, destination, location and type of equipment or acceptance involved in communications, but excluding the content of a communication, as per Article 3 of law No.05/L-030 on interception of electronic communications. This Meta-Data is not protected by time restrictions of law on electronic communications.

The triangulation was of huge importance to this panel to verify the defence line presented by [redacted] as it remains in contradiction with his testimony regarding the critical day.

[redacted] provided detailed information when he appeared in the bar, what were his activities on that day.

This panel decided to use his all testimonies provided by the defendant, based on provision of Article 123 paragraph 5 of the Criminal Procedure Code that reads the following: "*Statements provided by a defendant in any context, if given voluntary and without coercion, are admissible during the main trial against the defendant, but not co-defendants. Such statements may not serve as the sole or as a decisive evidence for a conviction.*"

During investigation when questioned about his movements on the day of the murder, he said "**It has been 7/8 years ago. I don't remember.**" He then went on to say that he spent the morning in his bar before returning home in Vranjevc where his father and sister-in-law were. When he heard that the police had raided the house of [redacted] : left his property and walked along the Pristina-Podujeve road, near to Albi Commerce. He claimed that the police had beaten up his father and threatened his mother. He later went to his sister, [redacted] house in Hanie Dilit where he stayed for a few days. He denied that he had had any contact on the morning of 30.07.2007 with [redacted]

His pre-trial testimony remains in contradiction with his testimony on the day of murder he gave during the main trial. He testified the following:

On the critical day he went to the café bar as every day or most of the days. He hasn't seen anything dubious when he went to the bar, and he stayed there until midday until 13:00 hours approximately. He stayed there with the guy Ymri with whom he was sitting at the same table. They discussed about a plot that he intended to sell to him. Then he left the bar and took the vehicle Golf III and started heading towards his home in Vranjevc: along with [redacted] who left the bar together with him. He parted ways with Ymri at the corner of business premises at the traffic lights. Afterwards, all by himself, he continued further to his house in Vranjevc. There, at the house, he was able to find only his brother's spouse. He sat down, stayed at the house while she was preparing lunch. His father came home approximately 10 minutes past 16:00 hrs: that is how he usually came back from work. And if there would have been a more congested traffic, then he could have arrived some 20 minutes past four. His brother's spouse served lunch, they ate lunch, they drank tea, and they sat there and as usually they made talk for some time. A bit later, his mother came back from his maternal uncle's, her brothers; and after some time his mother said that the police had entered there. And they offended them and they misbehaved seriously and they broke windows and doors. After some time, he went out in the street where he met Naim Sekiraqa, his paternal uncle's son. He did not say anything odd or strange, he was clueless. And most certainly he had departed the café bar earlier than police arrived there at around 17:30 hrs. He remembers that Naim was supposed to go to Germany to his sister, and if he is not mistaken he travelled to Skopje that night. And he knows for certain that he stayed there for one month, or one month and half and came back.

Shortly after he parted ways with [redacted] ne police vehicles came there, they surrounded the neighbourhood. He did not know where they went in, because from the street view one couldn't see the entrance to his house. He stayed on the opposite side of his house, across the road on the upper side until the police went away, and then he returned to the house. There, he found out that they had been at his home, and that they beat up his father, and have threatened his mother, telling her that they were going to kill her son

This panel has to underline that surprisingly [redacted] a sudden flashback during the main trial in 2016 and recalled all important facts contrary to the lack of basic recollections as to his itinerary in the pre-trial. The panel is of the opinion that this defendant adopted his defence line to the course of the main trial and the evidence administered, in the vain attempt to establish

his alibi. The objective evidence, namely triangulation data totally undermines fabricated defence line of this defendant.

The mobile number that was used by the defendant was 044728485. At 00:19:41 just after midnight on the day of the murder, was used in cell k\_trimave2\_1. From then on throughout the early hours of the morning until 05:48:58, that number was registering with cells k\_trimave2\_1 and shkolla\_1. These cells are situated in the north of the city in the area of Vranjevc. The last time that this number was used in the area of Vranjevc was at 05:48:58 in the early morning at cell k\_trimave2\_1. Starting from 06:36:55, it was using cell m-dardania2 and from then on, it was in frequent use in the city centre mostly using m-dardania and lakrishtja\_1. Both of these BTS antennae cover the area close to Bar Sekiraqa. From the data, there is therefore no doubt that the defendant left his home in Vranjevc early that morning and was at or near his bar from 06:36:55 in the morning onwards. This piece of evidence corroborates with the statement of witness D2 when he stated that he saw [redacted] at about 08:00 at the bar.

It can be seen from the triangulation data for mobile number 044728485 used by [redacted] that this number was continually in use throughout the day from 06:36:55 onwards in the area of both the lakrishtja and the dardania base station antennae (at or near Bar Sekiraqa), until the last activity was recorded by the cell m\_dardania2 at 14:16:26, and at cell lakrishtja\_3 at 15:28:03. No activity from this number was recorded at any of the antennae covering the Vranjevc area after 05:48:58 in the morning or all of the rest of the day showing that the defendant did not return home for lunch and remain at home. At about the same time as the murder took place, this number can be tracked initially moving south out of the city via Grandstore/Fushe Kosova.

[redacted] did not return home at all that day after he came to the bar first thing in the morning. That was a story that he gave so as to cover up what he was really doing. The reason for that is that [redacted] its desperately avoid criminal responsibility for the criminal offence he is charged with. It can be seen that at 15:36:25, his mobile number was registered as being used at cell euromedi\_2 in Fushe Kosove and three minutes later at 15:39:25, he was using his phone within the area of cell grandstore\_3. At virtually the same time that the murder was happening or had just happened, he was running from the city ([redacted] made his last call at 15:28:04 using mobile number [redacted] which was registered at cell ulpiana2\_2 meaning that he was still alive at that time). If not involved, the defendant could never have known about the

murder that early. There is only one reason that can explain why he was already running as the assassination was being carried out. Only because E [redacted] new all about the murder and was acting according to his plan he escaped from the city. From Fushe Kosove, his mobile number was thereafter picked up by antennae around Shkabaj, Kastriot and Bardhoshi. Although, the signal of his mobile was bouncing across larger areas of open country between various BTS antennae, the data reliably shows that he was now out of the city. He was clearly travelling by vehicle south and then out to the west of the city. He was not seen again until his surrender in 2012.

Triangulation is also key evidence that proves [redacted] and his group planned and executed [redacted]

[redacted] both stated that Ar [redacted] elit Bar Sekiraqa together in the early afternoon. [redacted] evidence that he and his brother [redacted] it to Grand Hotel in order to make a delivery of cheese. [redacted] described how, as they were leaving the car park at Grand Hotel, he saw Rrah [redacted] od nearby outside on the street looking at them and speaking into his mobile. The [redacted] others were, as it was proven, clearly being followed. In addition to [redacted] her gang member [redacted] and eyes on the vehicle that [redacted] were travelling in. [redacted] contacted Ilir [redacted] 14:06:58 sending that very important SMS that was to staring moment in a pursue of [redacted] finally ended up in his murder.

30.08.2007 14:06:58	[redacted]	rilindjal_1 (Ilir) lakrishtja_1	The neighbor's vehicle is at Grand's parking lot
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According to triangulation data, when [redacted] sent this message, the SMS was registered with the cell rilindjal\_1. This antenna was sited at the location of the government office building, close to Grand Hotel. The triangulation data for [redacted] mobile number [redacted] shows that at the same time, [redacted] in the area of Grand Hotel because his mobile registered with cell art\_foto\_3 at 14:06:08. This panel understood this SMS that the neighbor was [redacted], because he lived across the other side of Bill Clinton Boulevard from Bar Sekiraqa. When [redacted] received the SMS, he was registered with cell lakrishtja\_1

which is the area of Bar Sekiraqa. So [redacted] were at or near to Grand Hotel. The effect of this SMS was immediate. It produced sudden movement from other gang members who rapidly left the vicinity of Bar Sekiraqa and moved towards the area of the antennas at rilindja and art foto. [redacted] had been in the area of Bar Sekiraqa at 14:17:14 was soon after registered at rilindjal\_2 at 14:24:17.

The triangulation data for [redacted] phone number [redacted] shows that on receiving that vital message from [redacted] 06, he also moved from being registered by cell lakrishtja\_1 at 14:07:50 (Bar Sekiraqa area) to the area where [redacted] been. It is more than likely that [redacted] with [redacted] also said that [redacted] together. [redacted] short calls when he was at rilindjal\_2 (14:15:27 for 26 seconds) calling [redacted] he was at rilindjal\_1 (14:20:28 for 30 seconds) calling R [redacted] when he was at art\_foto\_3 (the area of Grand Hotel at 14:25:33 for 9 seconds) calling [redacted]

At 14:26:31, [redacted] also moved to the exact area of Grand Hotel being in the range of art\_foto\_3 as he called [redacted] seconds who was now in the area of radio\_3. The collation of these pieces of information leads to one logical conclusion and shows that after receiving Fitim's message at 14:06:58, [redacted] were in contact with each other straight away and that [redacted] moved straight to the area of Grand Hotel. By 14:25 to 14:26, both [redacted] now using their mobiles within the small area of art\_foto\_3 at Grand Hotel where [redacted] sighted [redacted] vehicle at 14:06:58 and from where [redacted] mobile was registered as having been used at 14:06:08. This evidence clearly demonstrates that these individuals were closely observing [redacted] changed information on his whereabouts and moved to the location [redacted] stayed to execute their deadly plan to murder him.

At 14:28:31, [redacted] is in the area of radio\_2. [redacted] is also in exactly the same cell area at exactly the same time, his mobile being registered there at 14:28:27 making it very likely that the defendant [redacted] were together or very close to each other on the main road between Grand Hotel and the Cathedral. The whereabouts of [redacted] not be determined by triangulation data because this material is now no longer



available. However, the metering clearly shows that [redacted] frequent contact with [redacted] in contact with [redacted]

The triangulation data proved comprehensively that at 14:54:52, [redacted] was now registered as being in the area of the menza\_3 cell. Within five minutes [redacted] s mobile was registered as being used at 15:00:03 in exactly the same cell area of menza\_3 when the defendant received a 28 seconds call from 0411000000. This is yet evidence that [redacted] was not at home in Vranjevc having a rest time at family home. A reference has to expert witness opinion of the technician [redacted] who explained on how the various BTS antennae and their cells functioned<sup>169</sup> and he stated that the range of a cell was from the centre some 100-150 metre radius or beam with a coverage of between 65 and 90 degrees, most of them having coverage of 65 degrees (p. 33). When asked specifically about the usage at 15:00:03, he stated that the phone was most likely being operated from within the same cell area. Considering [redacted] testimony it is impossible that [redacted] was at 15:00:03 at home.

At 15:09:57 [redacted] received a 35 second call from landline 038246918, his call being registered at the cell ulpiana2\_2. [redacted] as without doubt by now at the AM/PM Café as various witnesses have confirmed. At 15:10:00 [redacted] a (using [redacted]) made a short call of only 8 seconds [redacted] when he received that call was now situated in exactly the same cell area: [redacted] ulpiana2\_2 [redacted] was waiting and watching whilst sat overlooking the carpark. At 15:13:12, Ilir's mobile number registered with cell cannon\_2. The cannon BTS antenna was situated on the other side of Bill Clinton Boulevard in the area of the cathedral and a very short distance from the murder scene. At 15:20:53, Ilir used his mobile in a call that lasted 1 minute and 15 seconds and that registered with cell ptk2\_2, an area also very close to the murder scene. At 15:37:20, [redacted] for only 4 seconds, his number being registered with cell cannon\_2.

At 15:28:00, [redacted] used his number for the last time for 56 seconds shortly before being assassinated. That last call was also registered at ulpiana2\_2. At 15:39:00, [redacted] was by now already running away from the general area of the assassination, his signal being picked up by cell Victoria\_1 (the area of the road junction at the Victoria Hotel) when he was in contact

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<sup>169</sup> Trial Minutes, 03.12.2015

w number. The triangulation data showed that he moved south and then to the east and then to the north of the city centre.

This panel took into consideration one hour time difference in registering SMS as explained by GSM operator. Only now, by correcting the SMS server timings, the SMSes are properly put into sequence with the other evidence and the movements of the perpetrators and the victim. The following sequence of communications after the assassination then occurred between

30.08.2007			00:00:18 (sec)	emshiri_3	
16:04:53		nu			
30.08.2007			1	lakrishnja_3	<i>Stay where you are, get inside, I will call you later</i>
16:05:00					

The last contact that had w before the murder was at 15:11:31. From then, no activity was recorded f: mobile until 16:04:53. At 16:04:53, alle and they spoke for only 18 se was in the cell area of emshir\_3. Emshiri is the district near to the bus station. This contact is highly significant for assessment of 1's statements. If it were true had suddenly got into a fight with and killed him in a moment of insanity without the involvement of any other person, a rational person would surely have expec to have been the one who had made the call to either Ilir or ery soon after the murder asking for assistance in escaping. But that did not happen. The murder happened shortly before 15: i was not in contact with anyone for approximately 25 minutes which is very surprising if we took his version of events seriously.

It was [redacted] who called [redacted] at 16:04 not the other way around and they only spoke for 18 seconds. There is only one obvious inference to draw from this. [redacted] did not need to contact anyone straight after assassinating [redacted] as everything was already planned, what he would do and where he would hit [redacted] in that short call was checking up on him. There then followed the SMS of 16:05:00 from [redacted] when he told him to stay put and to get inside [redacted] was now in the area of cell lakrishja\_3 which is part of the antenna near to Bar Sekiraqa and the bus station. All of this time, he was most likely in the area between the bar and the bus station. This exchange of information between [redacted] and [redacted] put in the sequence of other communications leads only to one logical conclusion that [redacted] was following a pre-agreed plan of escape. He was receiving instructions for escape and evasion from co-perpetrator [redacted] u.

The next mobile contact that [redacted] had with [redacted] was not until 22:18:55 that evening when [redacted] called [redacted] n was still in the area of lakrishtja\_3. The call lasted only 50 seconds. [redacted] en soon after was called by [redacted] i (girlfriend [redacted] n) twice at 22:36:55 (41 seconds) and at 22:46:54 (28 seconds). When all of these calls were received [redacted] he was still in the area of lakrishtja\_3.

Further circumstantial evidence of [redacted] s involvement in the planned assassination comes from the following messages that he exchanged with his then girlfriend Kaltrina Berisha soon after the murder that same late afternoon.

30.08.2007	17:49:35	Love, who killed Triumf
30.08.2007	17:56	That is not your concern, mind your own business, ok
30.08.2007		Yes, it is, it is, you may be connected to

17:57:39			<i>them and get jailed, what shall I do without you</i>
30.08.2007 18:00:58		a	<i>Honey I told you I was sleeping and leave me alone do you hear me</i>
30.08.2007 18:02:21			<i>Sorry love, it is just because I am afraid</i>

Logical assessment of this exchange of SMS-es, considered together with other evidence as to [redacted] leads to conclusion that [redacted] was involved in the murder of [redacted]

This panel found it necessary to present a summary [redacted] s statements both from pre-trial stage and main trial in order to show how his defence line evolved and adopted to evidence he was confronted with. This summary is important to confront his testimony with evidence collected, understand his difficult relation with [redacted] further conflicts he had with [redacted] that lead to tragic death of the latter one.

During pre-trial stage he testified:

**Statement from the Examination conducted by the Special Prosecution Office of the Republic of Kosovo on 28 September 2012**

He has been ready to surrender himself for a year but he was seeking for reassurance that EULEX would deal with his case. He has nothing to do with the murder of [redacted]

[redacted] did not give him any money, because she did not have any money for herself. On the contrary, he used to give her money from time to time and he also gave her a necklace worth 5 000 Euros.

He has been mostly out of Kosovo since the issuance of the warrant against him dated 14 February 200. He has a Serbian and Czech passport on his name and always travels with these documents and under his real name.

He is fully aware that he has been sentenced to two years imprisonment by the judgment of the Pristina District Court dated 27 October 2006. However he was convinced that the execution of this judgment had been suspended because his friend *[redacted]*, who also was convicted and sentenced to three years imprisonment, has not gone to prison.

He is afraid for his life because he received a lot of threats and several attempts were made to kill him.

**Pre-trial Testimony of [redacted] conducted on 28 March 2014**

He owned and ran the Bar Sekiraqa together with his brother *[redacted]* in August 2007. It was a joint business with his brother *[redacted]*. His brother was the one who looked after the premises and paid the workers. He himself never paid the works or received any of the money or salary from the bar. He never supplied the bar either *[redacted]*. The bar was opened on 18 November 2005 on his birthday. The daily turnover of his business was 200-250 EUR a day. But this was not a salary. There were times he would make 400 EUR a day.

Following persons worked in Bar Sekiraqa *[redacted]* (worker), *[redacted]* (worker), *[redacted]* who is his sister's son, *[redacted]* who also is his sister's son and *[redacted]* who is his uncle's son *[redacted]* never worked for him. He may have been given a lift to *[redacted]* didn't have a list of people to whom he could give a lift or could *[redacted]* on Berisha never had any meeting with him and he never sat at the same table with him or had coffee with him. He has never been to any social events with him either. He doesn't know how many times *[redacted]* came to his bar because he was in prison a lot and then in house arrest at that time.

He was concerned with his own protection. He had armored vehicles since 2003. Maybe he had a friend or cousin when he was out of his vehicle but he never had a bodyguard. He was little on the streets.

He didn't work with [redacted] because he preferred to work with more mature people. He was involved in more expensive cars and trading in apartments. [redacted] never worked at Bar Sekiraqa. Apart from the people mentioned earlier no one else ever worked for him and his brother. The same people worked from the first day until the last and not a single other person worked there. [redacted] are close relatives of him.

Apart from being the owner of the bar he was also involved in the buying and selling of vehicles. He also gave loans but only to friend whom he had mutual business with.

The Bruno Café was a joint business with his brother [redacted]. It was located in premises separated from the Bar Sekiraqa, where the warehouse was, but joined to the bar. This property belongs to him and his brother. They both ran Sekiraqa Bar and Bruno Café. They were representatives of Bruno Coffee and Bruno Café was a warehouse from which they supplied other cafés with coffee. He and his brother worked in that business during that time. A partner of them called Sami did the driving. He used a red pickup Opel for the transport of the coffee. The car had Bruno Coffee signs. He also had two pickups Renault later.

He had an armored black Golf and a dark green Cherokee Jeep, which was mostly driven by his brother. He never had a red VW Passat. He paid 19 000 EUR for the Cherokee. It was advertised in the Koha Ditore and he bought it at the auction.

He had no relations with [redacted] whatsoever. [redacted] was a participant when he was attacked in Swiss Casino in 2005. It was the first contact he had with [redacted].

[redacted] was the investigator of the incident in Swiss Casino. Before Swiss Casino in 2005 he didn't have any contact with [redacted]; neither as a Police Officer or in private. There were several girls and boys that night at Swiss Casino: Sami the co-owner of Bruno, [redacted], [redacted] were there also. He was massacred in the incident and he was left unconscious. [redacted] started the incident when they were leaving. He came face to face with [redacted] at the exit. He struck first and beat him. [redacted] left the security guards locked the door and produced the weapons. They started to beat them up. About 5 – 6 weapons were [redacted] was there participating. The court recorders indicated he was present. He cannot confirm that [redacted].

beat him up. He didn't see him hitting him. From what he was told by the people present then also the security guards beat him.

He is convinced the road traffic incident in Ferizaj had nothing to do with [redacted]. He was told by [redacted] (a police Officer from Ferizaj who took part in all that had taken place in Ferizaj in 2006) that everything came from [redacted]. Therefore he cannot connect this incident with [redacted].

He first met [redacted] in the beginning of 2003. He had a relationship with her. It was interrupted many times when he was taken to prison. The relationship ended middle of 2004. He denies that during the time [redacted] is with him in 2003 and 2004 he extorted money from her in various sums from 100 to 9 000 EUR. In 2004/2005 he was not aware of the fact that [redacted] started a relationship with [redacted] that time. He was not interested in who she was with either. [redacted] asked him a month or two after the breakup to reconcile and to get back together but he refused and it ended there. He was not in the position to follow anyone. For him to walk in the streets of Pristina was a high risk. They have been orchestrated things without him doing anything. They came to question him with regard to bombs thrown around and he was at that time in hospital.

He cannot tell with exactness what his movements were on 30 August 2007. He can guarantee one thing that he didn't drink alcohol on that day. He went to the premises at the Sekiraqa Bar. He went there in the morning. Probably he got there with the armored vehicle Golf 3. He stayed at the premises. He sat near the bar as usual. There was this guy Ymri from Mazgit. He wanted to buy a parcel of land. This parcel of land was at the cattle market in the outskirts of Pristina beyond Vranjevc and they talked about this land. Around midday he went home but first he dropped off this guy Ymri near the traffic lights. At home he had lunch and rested for a while. His brother's wife Astri was there too. She prepared lunch and then his father came back from work. Until the evening he stayed at home. His mother was not there when he got home and later he found out that she had been at [redacted] house/maternal uncles. When it became dark his mother returned home. She came and told them that they had been visited by the police and there were some 20 or 30 police officers at his maternal uncles. They were masked and they broke into the house while the women were drinking tea. The police came and harassed and swore at them.

After he left the police arrived at his home. He went to meet [redacted] didn't know anything at all. He stayed with him a little while and they discussed [redacted] plan to go to Germany. Then he saw police officers when he entered the gipsy yards. It was on the main road near Albi Commerce. There were many police vehicles on that road so the entire neighborhood was surrounded. When the police left, he returned home. It was at around 22:00 or 22:30. He still had no idea of what had happened during this day. He heard later that a Police Officer was wounded. It was on the news on TV21. His family watched the news and they told him that a Police Officer had been injured. When the police went to my house they beat his father and threatened his mother turning the house upside down. The police said to his mother that they had arrested [redacted] and that [redacted] would die. They told his mother to tell him that they were [redacted] ni and [redacted]. He doesn't know exactly how long did he stay in the house for. He didn't sleep in the house. At around 23:30 he went to his sister's house on the way to Podujeve. The distance between his house and her house is half a kilometer and the railway is beyond her house. He didn't go along the railway. He got there by walking. There is a shortcut which is not paved and there are no lights there either. He stayed at his sister's house for a few days. He didn't leave the house during those few days at all. After a few days he went to his house and to the premises to see how things were at home. Subsequently he spent some time at one of his paternal uncle's son's house. This lasted for three months and after Naser was released he went abroad.

On the morning of 30 August 2007 he sat with [redacted] at the table at the Sekiraqa Bar. There was no other person sitting with him. He usually had his coffee far from the entrance door to avoid anything from happening. Therefore it was impossible for him to see people coming in and out of the premises.

[redacted] used to go out with his uncle [redacted]. The alleged incident in October 2004 never took place. It was impossible, as he was in the detention center in October 2004. He was wounded and was in the hospital for 1 month with 24 hour a day police guard and then transferred to a detention center for 5 months.

During main trial [redacted] testified as follows:

Record of the main trial testimony given by [redacted]

on 3 March 2016.



He has neither talked with [redacted] on the critical date on 30 August 2007 nor did he previously ever associate with him. Nothing whatsoever in life tied him with [redacted]. Neither did he fall on his generation as he was not much younger than he is, nor there were any family ties, neither business nor any affairs.

He does not know anything about the events on the critical day of 30 August 2007 as described in the indictment. With respect to the allegations against him he never had this or any other type of conversation neither with [redacted] nor with [redacted]. When it comes to [redacted] they had family ties, he was his maternal uncle's son. [redacted] was his cousin and it could have been a family conversation but nothing more than that and those conversations could have been very rare as they were much younger than him in terms of generation they pertained. They dealt with some cheap cars, with 2000 and 3000 Euros and that was uninteresting to him.

He has, never ever in his life, neither orchestrated nor organized nor did it interest him to track down [redacted]. If he would have wanted to track him down would it make sense to follow him with a vehicle that was entirely covered with advertisements of Bruno Café, a vehicle that was known to the entire city because he was its owner? A vehicle that [redacted] on daily basis or every single or third day because he used to reside 200 to 300 meters far from the café bar. It wouldn't make sense to have [redacted] followed by [redacted] who already had seen a dozen times at his house.

The witness D2 is not credible and he did not say the truth. On the critical day he was not at the bar at 6 a.m. as D2 described it. He had never gone out to hang around there in the parking lot because ten meters away from the Café Bar Sekiraqa back in 2002 there was a car bomb parked there from which he was seriously wounded. Even if he wanted to hang around there he did not have the minimum security to do so. The parking lot in question did not have any security of camera or any other items. Anybody at any time could have parked any type of vehicles there.

He had no dealing with the money affair. [redacted] did not say anything to him when he was at the café bar on that day. Neither did he see [redacted] that day, nor did he see him years and months before that, but he did know him by appearance. He also did know his father. He doesn't remember getting any message from [redacted] about the money.

The number [redacted] belonged to [redacted] stayed at the bar every day, but when he was there he used it occasionally, but most of the time that phone number was in the bar, even if [redacted] was not there.

The other number: [redacted] 5, he gave it to an [redacted] from Ferizaj. He doesn't know his last name, but he worked with him for a long period of time. They had cooperation for windows and doors. This person was not known to any of his family members, apart from [redacted] and [redacted] who met him through him and bought a lot of window and doors from him.

[redacted] asked him to sell his phone to him, and he told him he would just give it to him, as a gift. He also wanted to remove that number, because it was similar to the post central office and he received many calls.

He never received a call, nor did he ever make a call to [redacted] who killed [redacted]. He never received a text message, neither sent it to him, neither had he known his number.

[redacted] never worked with him or with [redacted] or with anyone that was close to him. Nobody had exchanged phone calls with [redacted] a, neither me, neither [redacted] nor nobody from my close family members. He could not have been working at Bruno Cafe as well since he did not even have a driver licence, as he said. Apart from drivers license to work at Bruno cafe, you had to have a knowledge of fixing the machines for espresso cafe, to settle the mills that made the coffee, the pumps of the machines, to know a lot about water and electricity, to settle and mantle and dismantle the machines in various cafe bars; the things that he doesn't know at all, neither I [redacted] these affairs were conducted by [redacted] their partner, and another guy that came with him, whose name was [redacted] who worked with [redacted] a long time, at the time when they were not working with him. They entered into that company as partners two or three months before the case. In the indictment it was described that they were followed months and years with the vehicles of Bruno Cafe. [redacted] and [redacted] that vehicle, that car, did not have anything to do with him or his family. His family members never drove that car, even when they worked, recently. [redacted] responsible for the car, him and [redacted] y could have gone anywhere and give it whoever they wanted, that was not his property.

He assures that [redacted] not socialize with him or [redacted] and that he did not work with him or [redacted] Bruno Cafe before. He also guarantees that [redacted] [redacted] wasn't his bodyguard

and that he did not work at the "Sekiraqa" bar, not even for one hour, let alone for one day. Neither was he the bodyguard of [redacted]. He heard that they did socialize but [redacted] didn't have that sort of budget to pay bodyguard and he was not endangered by anyone.

On the critical day he went to the café bar as every day or most of the days. He hasn't seen anything dubious when he went to the bar, and he stayed there until midday until 13:00 hours approximately. He stayed there with the guy [redacted] with whom he was sitting at the same table. They discussed about a plot that he intended to sell to him. Then he left the bar and took the vehicle Golf III and started heading towards his home in Vranjevc; along with [redacted] who left the bar together with him. He parted ways with [redacted] the corner of business premises at the traffic lights. Afterwards, all by himself, he continued further to his house in Vranjevc. There, at the house, he was able to find only his brother's spouse. He sat down, stayed at the house while she was preparing lunch. His father came home approximately 10 minutes past 16:00 hrs; that is how he usually came back from work. And if there would have been a more congested traffic, then he could have arrived some 20 minutes past four. His brother's spouse served lunch, they ate lunch, they drank tea, and they sat there and as usually they made talk for some time. A bit later, his mother came back from his maternal uncle's, her brothers; and after some time his mother said that the police had entered there. And they offended them and they misbehaved seriously and they broke windows and doors. After some time, he went out in the street where he met [redacted], his paternal uncle's son. He did not say anything odd or strange, he was clueless. And most certainly he had departed the cafe bar earlier than police arrived there at around 17:30 hrs. He remembers that [redacted] was supposed to go to Germany to his sister, and if he is not mistaken he travelled to Skopje that night. And he knows for certain that he stayed there for one month, or one month and half and came back.

Shortly after he parted ways with [redacted] some police vehicles came there, they surrounded the neighbourhood. He did not know where they went in, because from the street view one couldn't see the entrance to his house. He stayed on the opposite side of his house, across the road on the upper side until the police went away. and then he returned to the house. There, he found out that they had been at his home, and that they beat up his father, and have threatened his mother, telling her that they were going to kill her son [redacted].

Having [redacted] in front of 20 police officers to his mother that he was going to kill her son and after the occurrence in Ferizaj he was certain that they would not hesitate to murder him. For all these reasons he left his house.

He stayed two to three nights at his sister's place and then he returned home. He stayed for several days at his paternal uncle's son, one of them and after few months Naser was released from prison and got back home. Then he went to Czech Republic as he already had regular Czech Republic papers.

His sister [redacted], got in touch with KFOR members of Swedish nationality and asked from them for a guarantee on his life, but they couldn't guarantee for his life and all this lasted for several months. For that reason he had to leave to ensure his own life.

He happened to have met [redacted] several times in the city but he has never ever had even the smallest of incidents.

**Record of the main trial testimony given by**

**March 2016.**

He never had a direct incident with [redacted] regarding the case of "Swiss Casino" [redacted] was also a participant, whereas that incident was initiated by [redacted].

Before the "Swiss Casino" he did not have any personal contact with [redacted]. It means he never encountered him and he never spoke to him; neither as police officer had he ever stopped him. - There was an occasion when [redacted] provoked his brother [redacted] at the traffic lights in the neighbour called Vranjevc, and after that incident his brother reported [redacted] the Police Station number 3. But, that was nothing serious, his brother was in his vehicle and he just looked at [redacted] from other vehicle and asked him: "Why are you staring at me?" He himself was not there when it happened but according to [redacted] that time [redacted] was with his own private vehicle and he was in civilian clothes, and he was alone in the car.

[redacted] never stopped him, and they never had any incident amongst them. not 2000-2001 nor after that. By the end of year 2000 he got arrested and he got released sometime in 2001, so

he couldn't possibly be involved in an incident, which allegedly happened in 2000-2001 at the roundabout near hospital in Prishtina, when he was inside.

He doesn't know anything about the alleged ambush for [redacted] in Stagova and he doesn't know where Stagova is located. First time he heard about this was during this main trial when witnesses appeared here on the stand and they spoke about this event.

He never heard that T [redacted] car was set on fire or someone spoke about that event. He never had any gang whatsoever, and [redacted] was never ever followed by any member of his family. They had no reason whatsoever to follow him talking about the time before the case of Swiss Casino: he did not even know [redacted] back then. And he did not know him even after the incident in Swiss Casino since it was not him who initiated that incident. He accused them in front of police/prosecution so it was for the justice to deal with them.

There is a case when he reported a person named [redacted] and also reported [redacted] and this took place sometime in 2006. There was this case when [redacted] attempted to hit him with the car but he missed him and instead he struck the car of T [redacted]. And from that case they went straight away to the police and reported the case. Police kept them a little bit longer about half an hour when they realized what it was all about and about whom. Then he asked from the police to go on the scene and see the shattered glass and also the damages of the car, but they did not agree to that.

On the day of Swiss Casino incident he was at the Café Bar "Sekiraqa", it was the Christmas holiday, some of female friends came to the bar to have drinks and they told him that there was a celebration taking place at Swiss Casino and so they went there. Later on upon the time when it was to close the business at the café bar they went to Swiss Casino. For 10 minutes they stayed at the "Queen's" café bar and then they entered in Swiss Casino. There was a large crowd of people for the holiday. That was the first time he was inside that bar. In front of the entrance there were some security guards who have checked them with their hands. So, they continued downstairs to the basement and they got some drinks. Together with him was [redacted] at the entrance they met [redacted] and [redacted], who at that time was running a restaurant near "Sekiraqa" bar and also the representative of "Bruno Cafe", but at that time they had no corporation whatsoever. They stayed there for approximately 15 minutes, during this time those

girls came and greeted them, namely [redacted] and her friends. So, they have tried to leave the premises of the bar. At this time [redacted] and [redacted] have already got out of the bar. When they exited through the doors the security guys looked the doors. This happened at the entrance by the stairs. Then suddenly he found himself face to face with [redacted], who was the first one and then was the rest lined up behind him. There was a large crowd, and amongst them he recognized also [redacted]. From that large crowd he recognized [redacted] he knew only [redacted] and apart from him he recognized also [redacted]. As for the rest three or four he did not recognize them then and he doesn't know them even today. At this time [redacted] knocked him with his shoulder, with high force. He pushed him back and then they pushed him back to the bar where he was earlier. In the beginning it was very crowded and they could not see what was going on, in the back at the entrance they started having fight with [redacted] r [redacted], they were beaten up. [redacted] remained next to him at the bar; then the weapons started shooting. At this moment [redacted] got him by the shoulder and tried to push him towards the place where this turmoil was on going. Then [redacted] hand slipped from his shoulder and struck him in the face, not so heavily it was in sense from his shoulder. Then [redacted] came and knocked him behind the head with a pistol, and in following some shots were fired also, and he doesn't know what happened later because he was unconscious. He found himself waking up at the hospital. – Himself, at all times, even with the police he held accountable [redacted] because he was the one who started everything.

In relation to the Ferizaj case on the critical day he went to Ferizaj to check some inventory for the balcony of "Sekiraqa" bar. Upon his return from Vitija, he talked to his former girlfriend [redacted] and then they set up a meeting to see each other briefly for 5 minutes. During the time when he waited to meet her, the police came with 3, 4 or 5 vehicle. [redacted] was there with a private vehicle and in civilian clothes, the vehicle was Mercedes, grey color. He approached his vehicle and hit the window with a pistol. When he saw him with a pistol he thought he was some gang member and wanted to shoot him. And he didn't open the door of vehicle until uniformed police officers came. There were more than 20 police officers there, the minute he open the door they grabbed him by the shoulder and put him on the ground and they did the same to the people that were with him in the vehicle, Xt [redacted] and a person called Pipi from Vitija. He took him with him because he knew that area of city and knew where

the workshops with inventory were. Pipi was friend with \_\_\_\_\_ was not his friend, and the police officers started beating them there by kicking and punching them. They kept them laid on the ground for 20-30 minutes, and then they put them on the trunks of vehicle and sent them to police station. He was in the trunk of the vehicle and he couldn't see the others, then they brought his vehicle Golf to police station. When he saw their behavior he requested the keys of his vehicle to ensure that his vehicle was locked. They replied to him that keys of vehicle were lost; hereafter he understood that they wanted to plant something in his vehicle. After some time they brought some things that were in his vehicle, but not the keys, then the lawyer came, and after some time when they approached the vehicle he noticed that the trunk of vehicle was not closed properly. Then he understood that the trunk of his vehicle was opened. He addressed to his lawyer and said that they probably put mines, bomb or some drugs or other things in his trunk and lawyer said he didn't think so. When police opened the trunk and they pretended to control it in front of him, however, they did checked it earlier and brought some items to him at the police station, and then they directed to the trunk of the vehicle and they got the pistol that they put there. It was a very old pistol, very bad one. They took them to hospital, where he there for 3-4 days, and afterwards they took him to detention center.

These charges in the count 2 of the indictment are not true. He had never in his entire life had any conversation with \_\_\_\_\_ regarding money, or how much she earned in concerts or who got that money, no conversations whatsoever. The only thing that was related with the money was a gift that he gave her. It was a chain, which costed more than 4000 Euros. It was a set of chain bracelet and neckless, and there was something like a lion or a cat attached into the neckless. In one occasion he also sent her a phone card. At that time they were very expensive more than 100 Euros.

He has been in relationship with \_\_\_\_\_ for two years. It started as of beginning of 2003 and it ended by the end of 2004. On 18<sup>th</sup> of November 2004, \_\_\_\_\_ paid a visit to him at the hospital, and she brought him a gift, a picture portrait with her signature and her handwriting. The inscription reads "Happy birthday to you, my Ena. I wish you many greetings for many years to come. Respectfully yours AI." – He has never been at her house, whereas she came to him frequently. Of course she did come of her own free will.

He had never had any problem with any of the women in his life. He never noticed even the slightest concern with [redacted]. In one occasion, he told her that he would like to go on summer holidays at the sea side, but she tried not to allow him to go to the seaside for holiday because she wanted him to stay with her at all the time.

He never in his life demanded any money from [redacted] because that would be a very inhuman and very low action. This was never a part of his nature, or in nature of his family to intimate and blackmail a woman. Apart from that, he stood very well in economic sense, and that can be corroborated also with what he have said earlier that he gave her gifts worth of thousand Euros.

When their relationship got terminated by the end of 2004 some months later she met this person [redacted], whom she appointed to tell him that she would like again to see him. He did not witness this conversation between them, but this is how the message was conveyed to him by [redacted]. He came and told him this at the café bar. He did not have any interest whatsoever in meeting her again, because he heard from the media that after she broke up with him, she started dating a person called [redacted]. He was more interested in running his business and dealing with his financial affairs instead of meeting her. The day he broke up with [redacted] he was not interested in finding out about her whereabouts, or who was she dating and what she was doing. And this was not specific case only with [redacted]; this was also with all other girls that he dated.

He learned about the relationship between [redacted] later on, because in the beginning he knew that she was dating only this [redacted], but he got to know about this relation after the incident at Swiss Casino while he was at the hospital there receiving treatment. Someone came for a visit, someone who knew him. And this person told him that on the critical day there was possibility that [redacted] drove him up to the Swiss Casino and that they were in relationship.

After he terminated his relationship with [redacted] did not contact her, either by the phone either physically. He did not see her either.

In relation to the alleged rape, neither the rape nor any kind of sexual intercourse between him and [redacted] ever happened. He had never had any relations, or had any sexual relations with [redacted] at that time. She was a girlfriend of my uncle's son [redacted]. That this case never



took place, meaning between me and her, was confirmed by the doctor who testified in this courtroom, and was also corroborated by the testimony of the director of the hospital. The best evidence that corroborates this are those confidential documents which I delivered to the trial panel, a document which was introduced also to the Prosecutor before the commencement of this main trial.

He had no relation with [redacted] he doesn't know when she became pregnant or if she became pregnant, he didn't socialize with her. As additional evidence confirming this and related to alleged pregnancy a document exists which is already in the case file about very specific surgery that he went through in the clinic "Medicus".

#### **tatement given on 8 th March 2016**

He had a very normal relationship with [redacted] If they were not happy with each other then they would not be together for almost two years. He is not that kind of type that argues. Until the time a relationship functions, it is ok, if not they separate.

He did not do any act to discomfort her. They stopped dating at the end of 2004. He has been out of normal civilian life for about 5 months then, either in hospital or in prison. From the hospital he went to prison and this is the reason why they split up. When they split up everybody went their own ways with no problems. They both moved on, they went their separate ways. He never had/kept possession of any nude/explicit photograph [redacted] for whatever reason.

[redacted] had no obligations towards him. She probably calculated that he might be in prison for months. Few weeks later he was told that [redacted] had been seen [redacted] on a motorcycle.

He never hung out with [redacted] sisters and mother. He only met [redacted] once and he never met with [redacted] He never insulted any of them and he never called them on their landline phone.

He never had any connection or relation with [redacted] since the time they split, not even a single message was sent.

statement from the 9 th of March 2016

He doesn't know how it came that Tr [redacted] was murdered. He believes that there is a conspiracy against him aimed to convict him. He personally never had an argument or problem with [redacted]

He has been working for more than 25 years with trade of vehicles. In last two or three years he has sold more than 50 vehicles. His financial status was average during 1990, in 2000 and in 2007 as well. They worked as a family and all the property that they had was inheritance of his father who worked more than 40 years.

He associated with [redacted] He also associated with [redacted] and others. He mostly hung out with people older than him. He never hung out with [redacted] and his nephew. The same goes for [redacted] who is his maternal uncle's son and [redacted] who is his uncle. [redacted] was his relative but he didn't hang out with him. With [redacted] he lived in the same house where [redacted] they had the houses in the same yard.

He hung out more with [redacted] since they were same generation. He never hung out with [redacted] Neither had he socialized with [redacted], who is the son of his aunt. [redacted] rother and his paternal uncle's son, but he didn't socialize with him. He never had a bodyguard.

With regard to the recording showing the garden gathering at his house he stated as follows. He was the only owner of the house, which is why he gave the people gathered there drinks and escorted them out. [redacted] were not their friends and they were not invited but only passed by chance there.

In the opinion of this panel, the statement [redacted] could not be considered as reliable ones, starting with the relationship he had with [redacted] along with the dealings he had with [redacted] and to finish up with the motives he had to orchestrate the murder [redacted] and his alibi for the day of murder.

It is beyond any doubt that En. Sekiraga has tempestuous relationship with [redacted] and when they split up and Ad [redacted] started to hang out with first Robe [redacted] and later wit [redacted] could not stand it and started to follow his former girlfr: [redacted] felt personally offended by the fact that he was the one who [redacted] left and hated [redacted] more and more. This strong emotion grew and grew to the bitter end was heated by Swiss Casino and Ferizaj incidents when Sekiraga was in his opinion heavily humiliated. In this respect, the evidence is clear and leaves no doubt that no one else could have had such strong feelings of hatred again [redacted] to kill him.

The defense tried ineffectively to present a witness namely the main perpetrator of the murder [redacted] as the one who killed [redacted] exclusively being motivated by his own reasons of revenge and not being led to this act [redacted]. In the opinion of this panel, this attempt failed totally leaving the defense line totally unreliable.

[redacted] is now a convicted person serving a sentence for the murder of [redacted] was questioned in the capacity of the witness after he was warned about the duties and privileges of the witness in line with the legal provisions of the Code of Criminal Procedure. This panel was of the opinion that [redacted] is finally sentenced for the murder, as the witness in these proceedings is obliged to testify truth and the only limitation is that he is not obliged to incriminate himself.

The testimony [redacted] proved the opposite. Until the last breath [redacted] proved to be a loyal soldier of [redacted] and not only he did not tell the truth but he incriminated solely himself for the murder, supporting in this way the defense line of his leader. ...

[redacted] testified the following. In 2007 he worked as a tradesman of vehicles. Back then he used to be friends [redacted] He also had some other friends in the neighborhood where he lived at that time. He got to know [redacted] as he was a tradesman of vehicles like himself. He went out for coffee wit [redacted] time to time. His other friend [redacted] who used to be his neighbor. They used to call him "Arapi".

As for [redacted] he knew him by appearance as he had seen him in the company with [redacted]

He sometimes visited Bar Sekiraqa, but not very often. They didn't have any specific café bar to go; mostly they went to the places where youth people used to stay. He had coffee with

at Bar Sekiraqa once, only once. Back then he didn't know who the owner of this bar was. He only went there to have coffee as a random citizen. He only knew Fatmir by appearance, by sight. He didn't have any relationships with him and he had just seen him at the café bar when he went there to have coffee together with his friends of the neighborhood where he lived. He was once in the café bar with his friends. A friend of him, ... invited over to their table. ... reached the table and exchanged pleasantries with them. And then ... released his own chair. Once ... at that chair Fatmir asked him if it was possible to take a picture of them together and ... said: "yes, you can do it". Apart from this case he never stayed with ... ny other place. As for ... he knew him only by sight. He didn't have any chatter or whatsoever with him ... was his friend. They got to know each other because he was a tradesman of vehicles as well and out of that they had some time of friendship. They went out to the café bars where usually youth tends to stay in order to have coffee.

It happened only once that he had been in the house of ... family. He went there accidentally and he didn't have any company with him. It was in 2006 and on a Sunday. He went there to call ... and ask him to go to the car market. ... said that he couldn't join him because a cousin of him was getting married. ... offered him to go in and have a drink at this wedding even though he wasn't on speaking terms with those persons. Then he and ... went in the yard and took a seat at a table there and listened to the songs performed by the singers. That was just by chance he happened to be there as it was Sunday and he didn't know that a wedding was going on there.

His financial status back in 2007 was poor. He was dealing with cars meaning he bought them cheaper and sold them at a higher price. He never worked for ... He never saw, drove or was given lift in a red pickup with inscription "Bruno Café" on it.

He ... face. He got to know him six months before the critical event when he was getting out of the shop "Ma ... opped him and asked for the papers. He was in plain clothes not wearing the uniform of a police officer, this is why he addressed him, saying: - "who

are you to ask me to show the documents” [redacted] replayed, saying – “just give me the documents, otherwise I will take you to the police and I will beat you up”. And he said it without showing any documents proving that he was a police officer. He then gave him his documents and [redacted] said - “you look like a negative face (...) keep in mind, whenever we will meet we will have it like this and do not appear in this side again”.

He doesn't know the reason why he was stopped by [redacted]. [redacted] behaved like that. He went to this shop to buy something and when he got out he was asked for the documents. Because [redacted] was in plain clothes he asked him who he was.

Another encounter with [redacted] happened approximately three months before the critical day. He was walking in the area called “Small cafés” in Fehmi Agani Street in Pristina. He met [redacted] by chance. [redacted] was driving a white SUV and when he saw him, he stopped the car and said to him – “what did I tell you”. The [redacted] slapped him twice on his face. He asked [redacted] the reason for stopping him and he said – “get away from here, whenever I will meet you, you will have the same treatment”.

The next time he encountered him on the critical day, the day when the murder happened.

On the date 30.08.2007 at 11.00 a clock he got out of his house from *Kodra e Trimave* neighbourhood in Prishtina and he was walking through *Hani I Dilit, Bahollit, Qafa* neighbourhood. He went to the *Quince Bar*, and stayed on his own there. He had a coffee there alone, stayed there about two and half hours. Then from this bar he went to the bar close to the parking lot. He went inside and sat on a chair, which was close to the terrace. He stayed in this bar for about one hour. Then he left this bar and went towards the bar “Intermex”. On his way walking in the direction of this bar he was called and was whistled by [redacted] from behind. [redacted] proached him and grabbed him on his shirt, and he said - “where are you, I will fuck your mother, you thief; I don't want to see your face around; you are disgusting; either you will leave Kosovo or you will be thrown away from this place”. Then he said also – “why are you hanging around this place and my car”. He address [redacted] asking him - “why I am subject to this mistreatment whenever I meet you” and then he shoved him and said – “get up and get lost or I will fuck your mother and I will kill you as a dog”. After [redacted] started walking towards the SUV and when he approached it from behind, he stopped and looked at him

saying - "get lost otherwise I will fuck your mother and kill you". Then [redacted] raised his right hand to the left side of his waist. He thought [redacted] wanted to get out a pistol from the bag attached on the waist, and then at that time because of fear he took out his pistol, loaded it and he shot twice in his direction, and 11 bullets were shot from his pistol, whereof three bullets reached [redacted]

It was not his intention to kill [redacted] as he only tried to intimidate him because he felt himself endangered and therefor acted in self-defence. The distance between him and [redacted] was 7 to 8 meters, as soon as he shot he left from the crime scene. The gun with which he shot [redacted] was the pistol Glock that he purchased four months prior to the murder. The purpose of purchasing this pistol was to earn out of it, to sell it at a higher price. On that critical day, he took the pistol with him in order to sell it to anyone. [redacted] had nothing to do with purchasing of this pistol. He took the money out of the business to buy the pistol as he was the tradesman of vehicle. [redacted] offered him to buy the pistol and he bought it, but no one knew about it. Nobody incited him to kill [redacted] or requested that on behalf of [redacted]

It is [redacted] who started to have problems with him and that is why this murder happened. He doesn't know what the relationship between [redacted] and [redacted] was. He never heard of any problem or issue between the two of them.

On the critical day before the murder happened he was at the Sekiraqa Bar and he stayed there with Rra. [redacted]. He didn't tell about it before because [redacted] is an innocent boy and there was no need for him to mix him into that.

He would never go as far as to risk 35 years of imprisonment for killing someone on someone's behalf. Not even for a house or for any other kind of reward.

This panel came to the conclusion that the statement [redacted] is not reliable at all. The reason is that this witness wants to [redacted] from criminal responsibility by taking all responsibility for the murder. His testimony is not even coherent and he falls into contradictions with his own evidence. He emphatically denied in response to counsel's question that he had ever been in Bar Sekiraqa that day (p. 15). However, still whilst still giving direct evidence and in answer to the second defense lawyer, he totally changed his account in a fundamental way and told the court, without even being put under any pressure by the questions, that he had in fact been at Bar Sekiraqa after all and that he stayed there with [redacted] p.

18). His excuse for lying was not credible, that he was trying to protect [redacted]. It is a clear cut proof that this witness has any problem with lying despite testifying under oath.

Another example of how this witness suppressed the truth was a video (Ex#3) depicting garden party. Having watched the video, it was tremendously clear that he was at that party when [redacted] was working for [redacted] as a runner and person who watched the cars at the front gate. This witness explained that he had had a number of conversations with [redacted] during that event about the wedding and the music as he claimed his event was in fact a wedding reception, he was accidentally invited [redacted]. This panel realized that [redacted] was not even speaking with [redacted] but in fact was taking orders from him. He is then seen returning to his post, sat in the stair-well above the entrance. The panel found it impossible to believe that this event was a wedding reception as there was no bride or groom nor did we get to know their names, very few guests and no one dressed up smartly as one normally sees at Albanian weddings. Even the defendant when he testified denied that it was a wedding. It was all desperate, illogical, incoherent act of denial [redacted] were faced with undeniable evidence of employer/employee relationship that existed between [redacted] and his trusted soldier. Much the evidence [redacted] given on 29.10.2015 was devoted to his nonsensical excuses.

Explanatic [redacted] provided on the reasons he decided to murder [redacted] was also found unreliable. An alleged violent history between him and [redacted] so as to [redacted] to so drastically and viciously blast a [redacted] eleven times from behind is not supported by any evidence. He recounted two alleged incidents that he says occurred three and six months prior to the assassination were not confirmed by for example a criminal report or any official complaint to [redacted] supervisors. There are no reliable witnesses to these alleged endeavors, as the wholly unreliable testimony [redacted] was in the opinion of this panel orchestrated. This panel came to the conclusion that [redacted] had did not have any personal motives to murder [redacted]; assumed violent story is nothing more than a lie aimed to [redacted]

[redacted] story about the weapon was considered by this panel as totally fabricate [redacted] was a poor young man, making money on selling low value cars for a living but denied working for the [redacted]. Yet, despite being on a low income from which he had to contribute financially to his family of six people, he said he was able to purchase a modified pistol normally

only legally available to specialist military and police units for the sum of 450 euros three months prior to the murder. He related: *"took the money out of the business"* (p. 17). It is highly unlikely he was able to have such amount of money. 450 euros at that time would have been far more than the average monthly salary in Kosovo. The reason why he allegedly purchased that piece of weapon is also not plausible. To sell it for a profit he said. In the opinion of this panel this story was made up for the purpose of this proceeding to deny allegation that he incited to commit an aggravated murder and to make it look the murder was spontaneously committed by Ar' [redacted]. This panel does not believe that a modified pistol normally used by specialist law enforcement agencies was bought to make a profit. Trading weapons is a risky illegal business and you don't find a potential buyer in public places [redacted] claimed, he did not even check the weapon to see if it functional. He stated that after three months, he had still not managed to sell it. Finally, he testified that he hardly ever took it out of storage so as to find a purchaser. This is not a way a reasonable tradesman behave [redacted] did not check if the pistol is functional, he left it in storage and failed to sell it. By an unbelievable coincidence, that very day, the day of the murder, he just happened to put the weapon into his waist band. Yet, another remarkable coincidence in the chain of unlikely events that he should meet [redacted] in that carpark. He did not buy the weapon in order to sell it. It was given to him for a very particular purpose by those who had the financial means and the contacts to obtain such a lethal and specialist weapon namely [redacted] and his gang. The firearms expert stated that this was a modified specialist Glock pistol that requires a special permit for use as it is not permitted for civilian use<sup>170</sup>. Only specialist police and military units acquire the licence legally to use such a modified specialist weapon. By being converted to fire on fully automatic, it very much increases the pistol's firepower and rapidity of rate of fire. For some random person to have randomly acquired it and randomly sold it on the street [redacted] for 450 euros is simply not credible. Still, he said that he took the pistol out with him that day *"in order to sell it by chance"* (p. 26).

It was proven during this trial the Sekiraqa group had access to firearms and that they were quite prepared to use them even in public. A reference is made to [redacted] firing a pistol at the door to Swiss Casino where members of the public also were present. And despite his protect

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<sup>170</sup> Trial Minutes, 04.11.2015



that he only had a phone in his hand, the same video shows [redacted] holding a pistol. Other members of the group also used firearms inside where [redacted] fired at and injured [redacted].

[redacted] referred to a TT in an SMS at 22:40 on 25.08.2007 and [redacted] referred to a 15 being bought for 500 euros in an SMS of 20:53 on 27.08.2007. A TT is a different weapon than the one used to murder [redacted], but the SMS shows evidence of their easy access to weapons: [redacted] made sure his executor is well-equipped for the execution of his hated foe [redacted].

The plan to murder [redacted] was developed and roles were casted with A [redacted] playing the key role of executioner [redacted] had been followed by the gang members who knew that AM/PM café was the place where [redacted] regularly spent his time. This fact was confirmed by the barman of AM/PM café [redacted]<sup>71</sup> who stated: [redacted] would visit AM/PM every day. Once his car had been spotted at Grand Hotel, it was simply a matter of [redacted].

[redacted] being transported up to the area of AM/PM next to the carpark, taking a seat overlooking the general area and the carpark which he admitted that he did, and waiting [redacted] to appear. He stated *"I moved to another bar [from Quinns] which is adjacent to the parking lot..I don't remember the name of the bar but I sat at a table which was near the terrace..it is adjacent to Flamurtari car park..I could see part of the carpark in front of me"* (pp. 10-11)<sup>172</sup>.

[redacted] appeared. He left AM/PM café and walked onto the car park towards his parked vehicle. [redacted] decided at that very moment to get up and leave as well and to walk onto the open air car park. It is not a coincidence that [redacted] was execution of the deadly plan. Meanwhile [redacted] was waiting around close to the car park in the area of antenna ptk2\_2 (at 15:20).

The testimony of [redacted] that he acted in self – defence and merely wanted to scare [redacted] off is totally unreliable.

Firstly, [redacted]'s argument that there was a verbal argument is wholly contradicted by the witness [redacted] i. an ordinary person who was working nearby the crime scene, who gave evidence saying that he "heard three automatic shootings" (p. 4). In response to the question whether before or at the time when he heard the gunshots, he had heard any talking or shouting [redacted].

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<sup>171</sup> Trial Minutes, 06.11.2014

<sup>172</sup> Trial Minutes, 30.10.2015

or anything of that nature, he replied "No, only children were playing" (p. 5). This reliable evidence therefore shows that there was no loud verbal argument before the killing as alleged by

Secondly, statement of [redacted] that he committed the crime in necessary defence is contradiction to the ballistic and medical evidence. In order to have fired that pistol, it was not simply a matter of pulling it out of his waistband and pulling the trigger. He had to have pulled it out of his trousers; then he would have had to have loaded it by pulling the mechanism back in order that a bullet was pushed out of the top of the magazine and into the chamber; then he would have had to have manually manipulated the selector by pushing it forward to change the function from firing single shot (semi-automatic) to burst or fully automatic. All of these movements [redacted] would have had to have done very quickly. It has to be underlined what this witness said about his previous lack of experience with weapons. He would have never have fired the weapon before and therefore it would not have been automatic reaction to him to use the weapon quickly. The course of events is clear to the panel actually he had already made ready the weapon and selected 'automatic' before he approached [redacted] from behind.

[redacted] executed from behind and into the middle of his back. There was no way that this was excessive self-defence because [redacted] is shot twice into the middle of his back and also into his buttock, a minimum of three bullets entering him. [redacted] stated that he was stood 8-9 metres away when he fired. None of the bullets that hit Triumph remained inside his body. All exited and you have already seen the photographs of the exit wounds; the fatal bullets went straight through his body. In his statement given on 25.09.2007 to the prosecutor, he said that the distance was 2 to 3 steps away.

[redacted] claimed that [redacted] was not shot from behind. This panel does not consider this statement as reliable as it is totally undermined by the official autopsy report on [redacted] which is objective evidence. In that, the report concludes: "The deceased had received minimum of three fire arm shots all from back (behind). The two shots (5/1 & 7/6) in the chest were fatal and the shot (5/1) that has gone through the aorta, vena cava, heart and a lung was necessarily fatal and could have caused immediate death. Both shots in the chest were directed upwards and the necessarily fatal shot (5/1) in the chest is more or less straight whereas the other shot (7/6) is obliquely to the left. All the bullets have made their exits from the body." [redacted] as shot

from behind, two of the bullets passing through him. All of the evidence indicates that this was not an argument gone wrong. It was pre-planned execution, pure and simple. Any other explanation makes no sense and is not in accordance with any other item of evidence and crucially the scientific evidence. The autopsy report is the primary evidence that you can fully rely upon and it shows with doubt that [redacted] executed [redacted] from behind whilst [redacted] was turned away from him. Other evidence that [redacted] planned the murder was the fact that he was wearing a hat during the assassination. As soon as he had executed [redacted] [redacted], he testified: "I took it off when I left a bit further from the scene...I just removed it and I was holding it in my hand. I kept the hat just because I wanted to and I used to wear a hat even before" (p. 16). He deliberately took it off his head as he left the crime scene and that is because he wore the hat before the assassination in order that he would not be recognised by [redacted]. He took it off in order to escape from the crime scene.

Thirdly, the allegation raised by the defence claiming that Triun [redacted] was intoxicated on the critical day was discredited by the opinion of Forensic Institute from Zagreb. This reliable opinion leaves no shadow of doubt that the victim on the day of death was sober. Defence tried to prove that [redacted] provoked a verbal conflict with [redacted] the attempt to make an impression that it was solely conflict between [redacted] and [redacted] a without any involvement of their client. The opinion of forensic institute was considered as fully reliable since it was drafted in a professional manner, in detailed way in line with scientific discoveries. The opinion of [redacted] was not considered as reliable as it was based on incorrect calculations.

Lastly, A [redacted] was finally convicted and found guilty of aggravated murder by the Supreme Court in the Judgement AP.Nr 336/2010 to 35 years of imprisonment. The new circumstances he raised may be used as the argument to initiate legal remedies in his own case.

Finally, having examined all relevant evidence the panel concludes that [redacted] murdered [redacted] being incited by [redacted].

### Count 3

Count 3 of the indictment is based on the statement of injured party Witness A who testified the following. The account given to the Prosecutor Reshat Millaku on October 2007, and contained

in the statement on 8 September 2007, is completely untrue. Sha had nothing to do with that statement as it was compiled by others.

She was in relation with I [redacted] in 2003 and they loved each other and preserved their relationship. (As per her virginity she lost it when she was 18 years old).

She doesn't know and had no contact with [redacted]. She only knew and heard about that [redacted] iqa was the son of I. [redacted] aunt. En' [redacted] er raped her. She had no contacts with E [redacted], s she was [redacted] and. Neither then nor now is she afraid of him.

In 2007 the police started threatening her. From 2007 until 2013 she was followed by the police all the time, but no police officer has approached her to threaten or intimidate her. She was terrified the whole time, had visions and woke up screaming. All because of the mistreatment she endured at the police station in 2007. She has been mistreated psychologically up to the point she felt into a deep depression and had to seek psychiatrist's assistance. The threats lasted up to year 2013. She informed the court about the ongoing threats on two different occasions in 2009 and 2010. When the police started threatening her in 2007 she felt under pressure and hit the bottom. She started taking sedatives, but after a while she understood she couldn't handle the situation by herself and went to see a psychiatrist. The doctor prescribed her some medicines. She took all the medicine the doctor prescribed because she was in a critical condition. The last time she met the psychiatrist was in 2013. She can recall two or three visits. It is not true that she tried to commit suicide. Winter 2013 she was in the hospital because she was intoxicated. All this happened due to the threats of the police officers [redacted] m. Accidentally she took a higher dose of the medicine than she was supposed to, but she didn't attempt to commit suicide.

She has never been forced to have sexual intercourse. If that would happen to her she would report this to the authorities. She was never pregnant, nor had an abortion.

She is not good at remembering numbers and that is why she has a phone number which is very easy to remember. All of the phone numbers of her close relatives and friends are stored in her mobile phone. The same goes for the vehicle registration plates.

This witness during testimony in the court has fallen into serious contradictions and basically changed her pre-trial testimony. She described also psychiatric disorders she faced enforcing on the panel obligation to exercise due diligence.

Witness A stated during pre-trial that as the result of rape she got pregnant and decided to abort the fetus but the records of medical procedure went missing.

The panel decided to question ex officio witness I [redacted] who the Owner of The Private Medical Clinic GYNEKOS/The Head of Gynecology Ward since Witness A in 2004 when the alleged rape took place sought for her advice. The witness stated

In the end of 2004 there were two doctors and one nurse working at the clinic. It was essentially women's clinic. The clinic was opened for four hours a day and it only provided examinations. She worked four hours in the afternoon, from four to eight pm. approximately 800-900 examinations per year were performed, which means that she would see between 50 and 80 patients in each month. The clinic is very small and there is no surgery room. No terminations of pregnancies or artificial abortions were performed in the clinic. At that time in 2004 there were no paper records on patients. They kept the records in computer, but now they keep them in the books. This because the clinic was broken into several times and the computer having those details had been stolen. There were three burglaries into the clinic and the cases were reported to the police.

Even though at that time in 2004 there were no paper records on patients each time a patient was examined notes were being written down. There were obliged to give these written reports to the patient in order for him or her to go to the pharmacy and purchase the medication. They commenced with keeping protocol books in 2007 or 2008. In 2007 or 2008 they started to keep the records in protocol books. She was giving advice to the patients in the clinic as to the consequences of the termination. No abortions were performed at the clinic. She has performed abortions at the hospital, because that is her profession.

She didn't work with Witness A, but she knows that the witness is a nurse in surgery ward at the hospital. The witness came to the public clinic/general hospital to be examined. That was the first time she met her. She doesn't know the exact date. The witness was brought there by a senior nurse who said: "This is a young colleague and she wants to have an examination". She

doesn't remember the name of the older nurse. She only remembers that she examined the witness and she took the swab sample in order to establish if there was any infection. She believes the reason why she came to see her was that she couldn't get pregnant. The witness took the swab sample to the laboratory by herself. The test analyses came back with positive results for an infection. There was no discussion about termination as they don't take any swabs until the 12th week of pregnancy. It was the only visit apart from that time when the witness brought the results of the tests. She has never performed abortion or terminated pregnancy of this witness at any time.

The visit should have been kept in the record because the analyses were performed at the state laboratory at the University Clinic of Pristina. However the possibility is that the witness could have sent those swab samples to a private clinic, but there was no need for that as the tests could be done at the microbiology institute for free.

Witness M confirmed that she provided medical examination to witness A, but the reason of her visit was to establish why she couldn't get pregnant. Termination of pregnancy was not conducted in a private clinic but in a public hospital where the medical records are kept. Testimony of reliable witness M fits even more doubts as to credibility of Witness A since she did not ask for medical advice on termination of pregnancy. When you add also psychiatric treatments she undertook, this panel had more and more doubts if this witness can be considered as credible one. It did not escape the attention of this panel that Witness A was in relationship with I from 2003 till 2007 and they loved each other and preserved their relationship. In case she was raped by I in 2004 the unanswered question is why she did not complain to her boyfriend. The Witness A worked as a nurse at the University Hospital in Pristina where wounded I was transported, she went to the ward where Riza was placed and a scuffle broke up. Witness A might have been afraid that she would have been associated with the murder of I so she made up the story and presented herself as another victim of I.

Having considered the statement of Witness A that is inconstant, doesn't corroborate fully with objective evidence namely the statement of I about psychiatric treatments she underwent, this panel came to the only possible conclusion that Witness cannot be considered as reliable witness.

So, it has not been proven beyond any reasonable doubt that [redacted] was committed the criminal charge as per count 3. Doubts regarding the existence of fact relevant to the count 3 occurred, so the panel was obliged by the provision of Article 3 point 2 of the Criminal Procedure Code to interpret them in favor of the defendant.

### **Punishment**

Having reviewed all relevant evidence in this case, this panel came to conclusion that Enver Sekiraga committed two criminal offences as charged in

Count 1 incitement to commit aggravated murder, in violation of Article 24 and Article 147(3) and (9) of the CCK

Count 2 extortion, in violation of article 267 paragraphs (1) and (2) of the CCK.

Criminal offence in count 1 was committed on 30 August 2007, and criminal offence described in count 2 was committed from the beginning of 2003 through to the end of 2004.

This panel considered the provisions of Article 3 of the Criminal Code of the Republic of Kosovo that reads the following:

1. The law in effect at the time a criminal offence was committed shall be applied to the perpetrator. 2. In the event of a change in the law applicable to a given case prior to a final decision, the law most favourable to the perpetrator shall apply.

The now criminal code entered in force on 1 January 2013, so this panel was obliged to compare punishments provided for the same offences in the old and a new criminal code. CCK provided for an aggravated murder a punishment of imprisonment of at least ten years or a long-term imprisonment. As per Article 38 (1) of the CCK the punishment of imprisonment may not be longer than twenty years. Article 37 (2) of the same code reads the punishment of long-term imprisonment is imprisonment for a term of twenty –one to 40 years.

The new criminal code in Article 179 provides for the aggravated murder imprisonment of not than 10 years or a lifelong imprisonment. Article 45 reads the following: “the punishment of imprisonment may not be shorter than 30 days or more than 25 years.

Comparison of these two criminal codes leads to the conclusion that the old code is lenient to this defendant.

After considering all relevant evidence panel was of the opinion that punishment of imprisonment starting from 10 to 20 years does not reflect the degree of criminal responsibility and the motives for committing that act. In the said circumstances only long-term imprisonment will consider the purpose of punishment.

When imposing a sentence for the crime described on count 1, this panel considered Article 37 (1) of the CCK that reads: "The law may provide for the punishment of long-term imprisonment for the most serious criminal committed intentionally either under particularly aggravating circumstances or causing especially grave consequences."

This murder was unprecedented, a young, rising police officer was brutally murdered in the capital city, in public place, in bright light, in the presence of passers-by. That was not a death caused by tragic accident; he was brutally executed by a burst of automatic firearms in a treacherous manner, shot from behind. The murdered did not even have enough courage to look into the eyes of his victim and used deadly weapon usually in service of special military/police units. The victim received minimum 3 fire arm shots; the two shots in the chest were fatal.

indeed used the deadly weapon neither to scare not to would . The aim was obvious, to deprive his life. This panel established beyond any doubt, that

pulled the trigger but he did not because of personal reasons but he was incited by his boss/ leader qa who not only planned, organized but also instigated and was close to place of murder most probably observing from a distance how his revenge plan is executed. The panel came to the conclusion had a few motives to eliminate first and the foremost this reason was a former girlfriend of qa who dared to abandon him and establish new personal relationship with . Needless to say, that A was a matter of contention and conflict that reached higher and higher level of hatred and reveng decided to take on his most hated enemy; qa did not murder personally because as a leader of his group being respected by its members had the privilege and material resources to order this execution is carried out by one of his obedient soldier/employee qa who in fact proved that he is loyal as he killed



in cold blood and later tried to protect [redacted] Iraqa telling the court bogus stories about the conflict he had with T[redacted]

By this murder committed in the circumstances described above [redacted] proved he is unscrupulous, criminal who organized a "public execution" of the police officer showing that he does not respect public order undermining rule of law order that keeps citizens of Kosovo safe and secured from criminals. This panel is aware that this brutal murder triggered off to public protests and marches of protest.

Pursuant to Article 64 (1) of the CCK the court when rendering a judgment has to take into the consideration the purpose of punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment-- in particular, the degree of criminal liability, the motives of committing the act, the intensity of danger to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the personal circumstances and his behaviour after committing the criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender.

[redacted] is a dangerous criminal that should be eliminated from the society for as long as possible that is why even the imprisonment of 20 years would not have been proportionate to all aggravating circumstances.

The Defendant has a criminal record for offences of violence and intimidation which are relevant as they indicate that he has a propensity to commit violent offences and therefore show that it is more likely that he committed the offences listed within this Indictment. The criminal record information below also shows that [redacted] was reportedly involved in numerous serious offences along with other members of his gang.

In the previous conduct of this defendant this panel did not find any mitigating circumstances. It has to be underlined that the punishment of 35 years that was imposed [redacted] had no impact on punishment of 37 years imposed [redacted]. The panel was of the opinion that certain proportionality has to be maintained [redacted] as the one who planned, organized and incited the murder plan cannot be treated more leniently than the main perpetrator.

The court decided in case of count 2 to limit criminal responsibility of [redacted] Article 267 (1) of the CPC that provides punishment of imprisonment of three months to five years. The new criminal code in Article 340 provides exactly the same punishment. Under these circumstances panel used the law that was in force at the time criminal offence was committed. The reason why this pane decided to exclude a qualified form of criminal offence of extortion as defined in paragraph (2) of the CCP is that it was proven th [redacted] committed this criminal offence using a dangerous instrument: [redacted] never mentioned she was threatened with a dangerous instrument; she was a subject of serious theatres but with without a dangerous instruments. Additionally there is no evidence that extortion resulted in great material benefit, as a legal definition of great material damage is not provided in the CCP contrary to the new criminal code that in paragraph 2 reads about the sum that exceeds 10.000 EUR, but this provision as less favourable to the defendant cannot be used.

Panel imposed based on the provision of Article 71 (2) the long- term punishment as the aggregated punishment he will serve.

The KPIS database of Kosovo Police supplied the following criminal record information in relation to the defendant:

- a. [redacted] opened 27.01.2001 where [redacted] suspected of Harassment/Intimidation. A victim complained that while playing games of chance, the suspect slipped a sleeping pill in his drink without him knowing which caused him to lose consciousness. When he woke up, he was told by the suspect that he had lost a lot of money and if he didn't pay he would be killed. Further, the suspect reportedly struck him with a bottle over the head. Status: Cleared of charges.
- b. [redacted] 54 opened 25.11.2001 wher [redacted] was suspected of committing the criminal offence of Attempted Murder. In this incident, a shootout was reported involving Er [redacted] following a dispute. Status: reported for prosecution;
- c. [redacted] opened 11.01.2003 wh [redacted] as suspected of the commission of the criminal offence of Assault. In this incident, it was reported th: [redacted] along with some 10-13 other co-perpetrators assaulted the victi [redacted] at the

q. [redacted] opened 22.05.2006 wh... [redacted] was suspected of the commission of the criminal offences of Obstructing Justice, Harassment and Illegal Possession of Weapons. KPS ROSU reported that several officers sustained injuries after being assaulted by [redacted] and two other suspects during an operation for their arrest. The investigations in this case are detailed above, in the "Ferizaj" case. Status: Convicted;

r. Case [redacted] opened 27.10.2006 [redacted] suspected for the commission of the criminal offences of Harassment/Intimidation. In thi [redacted] was arrested after assaulting several KP officers during their performance of court duties. Status: Arrested 27.10.2006;

s. [redacted] opened 16.08.2006 [redacted] was suspected of committing the offence of Disturbing Public Order. The victi [redacted] complained that [redacted] created a scandal claiming that his son owed him money. Status: reported for prosecution;

Persuant to Article 365 paragraph 1.5 of the CPC, the time defend [redacted] spent in detention on remand from 03.01.1014 till 17 May 2016 was credited against the punishment.

#### BASIC COURT OF PRISTINA

Case No.: PKR.Nr.218/14

Presiding Trial Judge

Arkadiusz Sedek



Court recorder

Legal Remedy: Pursuant to Article 380 of the CPC, an appeal against this judgment may be filed within 15 days from the day the copy of the Judgment has been served to the parties. The appeal should be addressed to the Court of Appeals through the Basic Court of Pristina.