

## DISTRICT COURT OF PRISHTINË/PRIŠTINA

P. no. 71/12

Date: 21 November 2012

### IN THE NAME OF THE PEOPLE

**DISTRICT COURT OF PRISHTINË/PRIŠTINA** in the trial panel composed of EULEX Judge Laura Liguori, as Presiding Judge, Kosovo Judge Fllanza Kadiu, and EULEX Judge Mariola Pasnik, as panel members, with the participation of Grzegorz Lewocki, EULEX Legal Officer assisted by Recording Officer Stephen Parkinson and Interpreter Leke Nimani in the criminal case against:

#### **N.C., A.D.1., A.D.2.**

All charged in the indictment indicted SPRK PPS. No. 36/2011 dated on the 13 September 2011 filed with the Court on 7 October 2011 and an enacting clause as amended on 1 March 2012 and filed with the Court on 5 March 2012 with the following criminal offences, prosecuted *ex officio* with:

Count 1: **Aggravated Murder** in violation of Article 147 paragraph 1, subparagraph 3, 9 and 11 in conjunction with Article 23 of the Criminal Code of Kosovo (CCK) and the offence of **Attempt of Aggravated Murder** in violation of Article 147 paragraph 1, subparagraph 3 and 11 in conjunction with Articles 20 and 23 of the CCK (for the defendants **A.D.2.** and **A.D.1.**),

Count 2: **Unauthorized Ownership, Control, Possession or Use of Weapons** in violation of Article 328 paragraph 2 of the CCK (for the defendants **N.C.** and **A.D.**).

After having held the main trial hearings open to the public on 28 February 2012, 19 March 2012, 20 April 2012, 1 June 2012, 4 June 2012, 13 July 2012, 11 October 2012, 22 October 2012, 8 November 2012, 12 November 2012, 16 November 2012 and 21 November 2012,

hearing of Closing Statements made by the Public Prosecutor Reshat Millaku and Defense Counsels Kosovare Kelmendi, Azem Villasi and Gani Hoxha.

After the trial panel's deliberation and voting held on the 21 November 2012, pursuant to Articles 388 paragraph 1, Article 390 paragraph 3 and Article 392 of the KCCP, pronounces in public and in the presence of the Accused, their Defence Counsels and SPRK Prosecutor issues the following:

## **JUDGMENT**

### **COUNT 1:**

- 1) The content of the count 1 is amended by deleting the words: "N.C." and replacing them with the words: "**unknown person**",
- 2) The Accused **A.D.1.** and **A.D.2.**, personal data as above, are

## **FOUND NOT GUILTY**

Because it was not proven beyond a reasonable doubts that accused **A.D.1.**, **A.D.2.** and "unknown person" with cooperation with defendants B.H. and S.Q. due a conflict between them and N.B. and because of heated exchange of words and quarrels of **A.D.2.** with N.B. were acting in revenge and on 28 September 2007, at around 00.10-00.20 hours **A.D.2.** has driven in an **xxxxxxx** with plate numbers **xxxxxxxxxx** to the gas station of X.Z., near "Silkapor" plant and has picked up the defendants **A.D.1.** and "unknown person", who were armed with an automatic weapons AK-47. Latter he was driving them to the bridge on Lepenc River near Sopotnica Village where defendants **A.D.1.** and "unknown person", had set an ambush and hides behind a fence whereas defendant **A.D.2.** had driven away. Based on agreement B.H. and S.Q. in the car **xxxxxxxx**, which was a property of defendant A.D. observed the moment when N.B. will get to his car on the way to home and then driving before his car honk 2-3 times at the bridge over the Lepenc River and by that mean informed **A.D.1.** and "unknown person" that car with N.B. is coming. When the N.B. in his **xxxxxxx** with the plates number **xxxxxxx** has driven near the bridge **A.D.1.** and "unknown person" opened fire from automatic weapons in the car directions and causing the death of N.B., S.B. and U.B., seriously wounded B.B. and not hurt S.B. who were also in the car.

**THEREFORE**, the accused's **A.D.1.** and **A.D.2.** are

## **ACQUITTED**

of committing the criminal offence of aggravated murder contrary to Article 147 paragraph 1, subparagraph 3, 9 and 11 in conjunction with Article 23 of the CCK and the criminal offence of attempt of aggravated murder in violation of Article 147 paragraph 1, subparagraph 3 and 11 in conjunction with Articles 20 and 23 of the CCK.

### **COUNT 2:**

The Accused **A.D.1.** and **N.C.**, personal data as above, are

## **FOUND NOT GUILTY**

Because it was not proven beyond a reasonable doubts that accused **A.D.1.** and **N.C.** on 27 and 28 September 2007 each of them possessed and carried automatic weapons AK -47 of 7.62 mm caliber, without weapons authorizations.

**THEREFORE**, the accused's **A.D.1.** and **N.C.** are

## **ACQUITTED**

of unauthorized ownership, control, possession or use of weapons in violation of Article 328 paragraph 2 of the CCK.

## **Reasoning**

### **Competence of the Court**

Following the indictment filed by the Prosecution, the President of EULEX Judges assigned the case to a EULEX Judge for the confirmation procedures and then to a mixed Panel of international and local judges to conduct the main trial.

### **Procedural History:**

#### ***The Confirmation Hearing:***

The Special Prosecutor of the Republic of Kosovo (SPRK) on 7 October 2011 filed an indictment against the three defendants, charged with the abovementioned offences. The EULEX pre-trial judge appointed to the confirmation hearing rejected the indictment for all

of them. He deemed that there was not sufficient evidence against the defendants, since the charges were based solely on the statements given by B.H. and S.Q., which have not been supported by other evidence or testimony whatsoever.

The Prosecution appealed the ruling issued by the pre-trial judge and the appeal panel partially granted it. The Panel confirmed the ruling acquitting N.C. on count one, since he had been acquitted of that same count by a three judge international panel during the main trial against him, B.H. and S.Q. and it was a case of “ne bis in idem” or a double jeopardy case. The appeal panel granted the appeal of the Prosecution against the confirmation ruling as to N.C. (count two), A.D.1. and A.D.2. and issued a ruling of confirmation of the abovementioned indictments.

### **Findings of the main trial:**

The main trial commenced on 28 February 2012 before the trial panel composed of the presiding international judge, an international judge and a local panel member and ended 21 November 2012. In the presence of the accused, their defense counsel and the injured parties, on 28 February 2012 the presiding judge confirmed that the trial panel had been constituted in accordance with the law. During the same session, the indictment was read by the public prosecutor; the defendants were asked to enter their pleas and they pleaded not guilty.

### **The following witnesses were examined during the main trial:**

S.B., B.B., Y.B., H.B, M.B., A.B. (20 April 2012), R.M., N.A., B.H., F. H., A.H (4 June 2012), M.D., A.K., S.D., N.K. (13 July 2012), A.A. (22 October 2012), B.H. (8 November 2012) F.H. and M.M. (12 November 2012).

### **These documents have been taken into account for the final verdict and are part of the case file:**

- the autopsy report of N.B.;
- the autopsy report of S.B.;
- the autopsy report of U.B.;
- the police report for the injured victim B.B. against the suspects: S.Q. and N.C.;
- the criminal examination report of 21 November 2007;
- the crime scene map;
- the medical examiner’s office report for N.B.;
- the medical examiner’s office report for S.B.;

- the medical examiner's office report of 29 September 2007;
- the photocopies of the photos of the cars;
- the photo line-up and photo descriptions.

**Documents submitted by the defence counsel of defendant N.C.**

1. INDICTMENT PPS nr 41/09, dated 14.09.2009, signed by Prosecutor Reshat Millaku, on the basis of which the aggravated murder case from Article 147 of CCK was adjudicated, finding that N.B., U.B. and S.B. were murdered; Attempted aggravated murder in the village of Soponice, on 27-28 September of 2007 and Illegal possession of firearms from Article 328 of CCK, is located in the case file P.no. 459/209, dated 07 February 2011;
2. JUDGEMENT of Prishtina District Court P. Nr. 459/2009, dated 07 Feb 2011, whereby B.H. and S.Q. were declared guilty for the criminal offence form Article 147 and the criminal offence from Article 328, sentenced to 33 years of imprisonment, whereas N.C. was acquitted of the charges.
3. APPEAL PPS.Nr 36/2011, dated 26.05.2011 signed by Prosecutor Reshat Millaku, against the Judgment of First Instance Court, in the file of the same case.
4. JUDGEMENT Ap-Kz. Nr. 264/2011, dated 12 October 2011, through which the Appeal was dismissed and the Judgment of First Instance court was confirmed in its entirety.
5. APPEAL PPS.Nr. 36.2011, dated 02.12.2011, signed by Prosecutor Reshat Millaku against the aforementioned Judgments of the first instance courts and second instance ones. Located in the case file Ap.-Kz.no. 2.12.
6. JUDGMENT Ap-Kz. Nr. 2/2012 of the appeal panel of third instance, of the Supreme Court of Kosova, was announced on 24 September 2012, but it has not been sent yet to the parties in writing. It is located at the courts registry office under the number provided. Through this Judgment, the appeals of defense counsels of B.H. and S.Q. were dismissed and the Judgments of first instance and second instance court were confirmed in their entirety. The Prosecutor's appeal against the acquittal decision for N.C. was dismissed as illicit.
7. JUDGEMENT of Prishtina District Court, dated 26 September 2009, the trial panel presided by EULEX Judge Francesco Florit, on explosion occurred in Bill Clinton Blvd, in Prishtina, on the night of September 23-24 of 2007, by which B.H. and S.Q. were

announced guilty and sentenced to 25 yrs. of imprisonment, whereas N.C. was acquitted of charges. This Judgment now is confirmed also in second instance. The acquittal decision on N.C. is omnipotent. This judgment is interesting in terms of disclosing the motives for the murder that took place three days later in Saponice village, which is being adjudicated now, and these motives are explained in the Indictment PPS.Nr. 41/09, dated 14 September 2009.

In their closing speeches the Prosecutor argued that the defendants be found guilty, the injured parties supported the request from Prosecutor; the Defence counsel argued that the indictments be dismissed.

### **The Facts:**

The victims were ambushed in the night between 27 and 28 September 2007 when they were in a xxxxxxxx of N.B.. They had just left the Mani Restaurant and were heading to their village of xxxxxxxx. Once they were close to the xxxxxxxxxxxxxx they took the junction to the left, leading to the village of xxxxxxxxxxxxxx. They were attacked while they were passing on a bridge over the Lepenic River, as the injured parties S.B. and B.B. have said before this Court<sup>1</sup>.

A shower of bullets of automatic rifle fire was shot towards the car and its occupants from the right side of the road. Two automatic weapons were shooting at the same time, according to the recollection of B.B. and to the ballistic expertise attached to the case file (one of the weapons was an AK 47 type). The shooting took place at around 00.10 of 28 September 2007<sup>2</sup>. As a consequence of the shooting N.B., S.B. and U.B. died, B.B., was seriously injured and S.B. remained unharmed.

N.B. was the first person who passed by the crime scene after the shooting. He was a relative of B.B.<sup>3</sup> and was traveling by chance on the bridge when the event had just happened. He saw the victims' car positioned on the bridge and did not stop since he did not know what was going on. B.B., despite his wounds, could see him and made a phone call in order to ask him to come back. The witness got back within a few minutes. One of the Police patrols

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<sup>1</sup> See statements given by S.B., B.B. during the session held on 20 April 2012.

<sup>2</sup> See statements given by S.B., B.B., Y.B., M.B., A.B. during the session held on 20 April 2012.

<sup>3</sup> See statements given by B.B. during the session held 20 April 2012.

alerted to give support on the crime scene was led by R.M.<sup>4</sup> who on his way came across a **xxxxxx** car at the junction with the Soponica Road. B.H. was in the car with another man<sup>5</sup>. The police officer stopped the car, saw his colleague B.H. and told him what had happened, then he let go of the car.

The first investigation conducted by the prosecution ended with an indictment filed by Prosecution against B.H., S.Q., N.C., charged with aggravated murders and attempted murders. B.H. and S.Q. were found guilty, whereas N.C. was acquitted in a judgment that has become final before the end of this main trial<sup>6</sup>.

After the verdict was issued by the first instance mixed panel in the case against B.H., S.Q. and N.C. (verdict issued on 7 February 2011), the Prosecution started a new investigation on the same criminal offences (see ROI) against N.C., A.D.1. and A.F.2., based on the statements given by S.Q. and B.H. and who, amongst their relatives, had spoken with them.

In the following part of the reasoning the evidence collected during the sessions and relevant to each of the defendants and their role in the murder will be examined.

### **The indictment and the role of N.C..**

Since the beginning of the main trial the panel has been dealing with the issue of the indictment filed by Prosecution and objected to by the Defence Counsel. Despite the ruling issued by the Confirmation Judge appointed to this case on 1 November 2011 and confirmed by the Appeal Panel on 20 January 2012, where it was stressed that N.C. could not be charged with count 1 because it was either a case of double jeopardy (“ne bis in idem”) or a double pending case (*listispendentia*), N.C. was charged with count 1 of the indictment submitted by Prosecution. Before the commencement of this main trial N.C. had been acquitted of murders and attempted murders by the Supreme Court which had issued its verdict on 12 October 2011. It is stressed in the ruling of the Appeal Panel that the indictment

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<sup>4</sup> “We overtook the vehicle between Flag Junction and Slatina Bridge and the car we overtook was a **xxxxx**, **xxxxx** in colour. Before we got the square of the Flag Junction for a brief moment we had the idea to stop the car because the road the car was coming from could lead to the crime scene location. This vehicle came also at the Flag Junction square just after us and some 50 metres before the square we stopped this vehicle and as the Police Officers exited the vehicle and we went towards this vehicle and when I got there I saw the driver of the vehicle was **xxxxxxx** B.H. together with another person, the passenger but I don't remember who that person was.”

<sup>5</sup> See N.A. statements, session held 4 July 2012.

<sup>6</sup> See verdict issued by Supreme Court on 24 September 2012, submitted by the Defence Counsel of N.C. and admitted as relevant document by the panel.

filed by Prosecution was an infringement “on the principle of double jeopardy (*ne bis in idem*) if the decision of the Supreme Court of 12 October 2011 is a final decision of the aggravated murder charge against N.C.. Alternatively, if the SC decision is considered a decision of a court of second instance pursuant to Chapter XXXVII of the KCCP, the present indictment is a matter of double pending case (*listispendentia*)<sup>7</sup>.” Taking into consideration this decision the panel issued a ruling by which it invited the Prosecutor to amend the indictment accordingly, but Prosecutor deleted only the name of defendant N.C. and did not change the content of the indictment, that was left as it was with specific reference to the role played by him in the criminal offences.

Any doubt on the verdict issued by the Supreme Court on 12 October 2011, if it was final or not, was definitely solved before the end of this trial, because on 24 September 2012 the Supreme Court, deciding upon the appeal filed by Defence Counsels and Prosecutor against it, dismissed the appeal filed by Prosecution as far as the acquittal of defendant N.C. was concerned. Although this final judgment was issued before the end of this main trial, the Prosecution stood by his position and made reference to the defendant as one of the “perpetrators” of the criminal offences, during his closing speech too. Not only did this choice make the injured parties confused and not clarify the matter at all, but it was disrespectful of the provisions of Article 4 of Kosovo Criminal Code of Procedure (KCCP), Article 34 of Kosovo Constitutional and Article 4 additional protocol number 7 to the European Convention of Human Rights and Fundamental Freedom (ECHR) of 22 November 1984. For these reasons the panel decided as in the enacting clause to amend count 1 of the indictment by deleting the words “N.C.” and replacing them with “unknown person”.

### **The testimony of B.H. and S.Q.**

The investigations conducted by SPRK on the criminal offences that occurred in the night between 27 and 28 September 2007 resulted in an indictment filed against B.H., S.Q. and N.C.. An international three judge panel appointed to the first instance trial found B.H. and S.Q. guilty, sentenced them to a long-term imprisonment of 33 years (aggregated punishment) and acquitted N.C. as it has been said before. After the announcement of the verdict B.H. and S.Q. decided to speak with the Prosecutor and tell him what had really happened during the “critical night” at Lepenic bridge. Their statements resulted in a new

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<sup>7</sup> See ruling of the Appeal Panel on 20 January 2012.



investigation by Prosecution and in the same charges filed against **A.D.1.** and **A.D.2.**, together with **N.C.**.

According to **B.H.** (examined during the session held on 8 November 2012) the late **N.B.** had failed to ensure that **N.K.** would give back to **A.K.** a sum of money. The car that **A.K.** had bought from **N.K.** had been given back to the seller because some papers were missing. **N.B.** had guaranteed that **N.K.** would give **A.K.** the money back, but, since **A.K.** had not received anything, **N.B.** was in serious trouble. Many people had been involved in this issue which had been the topic of several conversations amongst a group of men just before the events of the critical night<sup>8</sup>. To the knowledge of **B.H.**, **A.D.2.** and **A.D.1.** were present when the debt had been discussed and it was clear that the late **N.B.** was in serious trouble with someone who had taken over the credit of **A.K.**. The witness said that was the reason why **N.B.** was killed and that both the defendants took part in the murder of **N.B.** together with **U.B.** and **S.B.** who happened to be with him in the same car, in the attempted murder of **B.B.** and **S.B.**, who were in that car too<sup>9</sup>. He explained what he and **S.Q.** did that night and what followed

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<sup>8</sup> See page 3/5 minutes of the session held on 8th November 2012.

<sup>9</sup> **M.** and I went to **xxxxxxx**. I bought two pairs of shoes for **xxxxxxx** and we went back to restaurant **Evropa**. There **A.K.**, **A.D.2.** i, **Ali Aliu** and **A.D.1.** were sitting down inside the restaurant. **M.** and I went and joined them. In the meantime **N.C.** came there from a hotel room. He approached our table and he said hello to us and asked **A.D.2.**, "Have you prepared the things? And he also asked him: "Have you seen the shit-man?" with reference to **N.B.**. **A.D.2.** was eating a sandwich and he said, 'Easy there is still time.' He said 'you'd better leave because I will fuck your mother or A. mother or the other one.' **A.D.2.** left his food and stood up and left together with **A.D.1.**. **A.K.** with his phone in his hand he went a bit away smiling with irony. **M.** and I asked **N.C.**, "Why are you putting yourself into shit?" referring to **A.**. When I arrived at **Evropa** Restaurant the time was after 8pm. **N.C.** later continued and went back to the hotel room. I left them behind. **M.**, **A.** and I went to sheep farm to take some food for the dogs. The worker of the farm called **F.C.**, who took the food from me. I returned back to **Evropa** Restaurant and I did not meet any of the friends there. From there I went to **xxxxxxxxxxx**. **A.A.** and **M.D.** arrived and in the meantime **A.D.2.** and **A.D.1.** arrived soon. Later **A.K.** arrived as well as **N.C.**, entering from the supermarket. We all sat down at the same table and that is where they appointed the duties or the roles. Initially **N.C.** asked **A.D.2.**, "Have you seen the piece of shit?" He replied, "Yes, he is at Restaurant **Mani**." He told **M.** to go to restaurant **Mani**. **N.C.** stood up and told **A.D.2.** and **A.D.1.** to come to **xxxxxx** Petrol Station. They left together with **A.D.1.**. I know at that time **A.D.2.** was not very satisfied, **A.D.1.** said nothing, neither at **Evropa** Restaurant or there. They continued later on, **A.** and **N.C.** left and we the five of us remained sitting in the same table. It would have been after 10pm. Shortly after **A.D.2.** asked us if we could give him a lift to **Xhafa** Petrol Station in order to get back by his vehicle. **A.D.2.** was driving on the way to the petrol station, he drove us there. **A.D.2.** and **A.D.1.** left the vehicle and I moved to the passenger seat. I met **N.C.** at the Petrol Station. We were very close. He was with his **xxxx** vehicle. I saw him taking out from the car boot two **Kalashnikov** weapons wrapped up in darkish colour blazer. I asked **A.D.2.**, "Do not rush." He lifted his arms, then **A.** said – there is nothing I can do. Myself, **T.** and **A.** returned back. While we were at **Ida Pizzeria**, I don't know who asked **N.C.**, "Why with weapons?" **M.** and I both said to him-, "If you really think, we can go out and beat him in public. He replied, "I know he does not ever walk with a weapon on him and I will beat him up so he will need a wheelchair." When we returned from **Xhafa** Petrol Station towards Restaurant **Mani** I've asked **M.** to drop me at **Ida** Petrol because I had to meet a friend of mine. They dropped me off at the petrol station and they continued towards Restaurant **Mani**. In the meantime **S.Q.** called me or I phoned him, I don't remember, to come and meet me. **M.** and **A.** returned back to the petrol station. While I was sitting with **M.**; **A.** and another friend, **S.Q.** arrived. I left the table to go to sit at a different table with **S.Q.**. In the meantime **M.** and **A.** left the table too and **M.** came to my table and left the car keys of **xxxxxx** belonging to **A.D.2.** on the table and asked to take the same keys to **Evropa** Restaurant because **M.** vehicle was parked at the parking lot. Just after 11pm **N.C.** called me. I am not sure if I called him or he called me, and asked me where I was. I told him where I was and he asked me if **T.** was with me and I replied, no. I asked him if he was with **A.D.2.** and he replied, yes. I said, "Tell **A.D.2.** that car keys are at **Evropa** Restaurant." He asked if I have **A.D.2.** car and I said, yes. He replied, "Bring the car at **Xhafa** Petrol Station." I took **A.D.2.** Car and **S.** joined me and we went to **Xhafa** Petrol Station. When I arrived there I noticed **N.C.** car with headlights on. I stopped and left the vehicle. I went behind the building of the petrol station where some lorries were parked. There I saw all the four of them armed **A.K.**, **N.C.**, **A.D.2.** and **A.D.1.** They had gloves on and some kind of hat on which later appeared to be masks. I asked **N.C.**, "Is this where this issue came to?" He replied – I know my own business. I asked him not go in the lit area as I was with a friend. He asked me who with. I said with **S.Q.**. He said – why did you bring that piece of shit, a spy of **UNMIK** here. Is he here to carry out an investigation, take him out of here. **A.D.2.** said- yes, I saw him. At that moment they put the masks on. **N.C.** had a slightly distinctive mask on. It was a military mask, brownish colour. He went to the vehicle; I continued and went back inside the **xxxxxx**. They left in front of us and we followed them. I went underneath the bridge travelling towards Restaurant **Mani** and they went over the bridge towards **Martyrs Grave Yard**. Whilst we were at the petrol station, them being armed, **N.C.** asked me, "Go to Restaurant **Mani** and tell **M.** to give me the signal and my blood is boiling." I initially went to **Ida** Petrol to drop off **S.Q.** and I said to him- I need to go back to Restaurant **Mani** as I need to see someone. Together with **S.Q.** I went to Restaurant **Mani** and got inside. I met **A.** and **T.** and I sat next to **A.** I noticed **N.** at some other table and I said hello to him. I don't know if **S.Q.** sat down because he was not in good terms with **M.** As soon as **S.Q.** left I told **M.**, "**N.C.** asked me to tell you to go and give him a signal at the bridge."

the event<sup>10</sup>. Then B.H. explained to the Court what happened during his detention in Dubrava prison and the attempt to shed light upon the criminal offences he had been charged with and then convicted by District Court of Pristina. He has recalled the meeting with some of his relatives, with **A.D.2.** and what the defendant told him about what had happened in the night between 27 and 28 September 2007 when the victims were ambushed by **A.D.1.** and **A.D.2.**, with someone else, all of them armed with Kalashnikov<sup>11</sup>.

As for S.Q. he too told the Court why and to what extent he had been involved in the events of the critical night<sup>12</sup>. He happened to meet his colleague B.H. (they were both Police Officers) and was convinced that B.H. and some other guys were going to kill him, since he saw, amongst others, **A.D.1.** armed with a Kalashnikov. Then, at Mani Restaurant, he became aware that B.H. was checking the movements of N.B., driving a car in which other people were. It was on the way to Kaqanik and exactly on the bridge that B.H. blew the horn two or three times, making him wonder why. After that they heard some shots and were stopped by a Police Officer (R.M.) who was patrolling the area. It was only during his detention in Dubrava prison that he had the opportunity to speak with **A.D.2.**, who paid a visit to B.H.

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<sup>10</sup> The signals were shown to me, I will tell you, to blow the horn. I told M. and he stood up and said – please can you go instead of me because they have seen me here and they could be suspicious. I told him, “Let’s go together.” He said – no, no you go on your own, I could go with A. but they have seen us here. T. said to me, “When you reach the bridge blow the horn twice.” So I left and went inside the **xxxxxx** vehicle of **A.D.2.** and I said to S.Q., “I notice some trouble makers inside the restaurant so let’s wait for a while.” We went to this Car-wash and switched the vehicle. In the meantime 2-3 people belonging to M. neighbourhood arrived. The restaurant and Car-wash belongs to them too. They saw me and came to say, Hi. I went out of the vehicle and walked on the other side of the main road observing them until they came out of the restaurant. The minute they left the restaurant, I left towards Kacanik. I said to S.Q., “I will drive straight on as they might be suspicious since we are **xxxxxxxxxx**.” I was driving slowly. When I arrived near Restaurant Kosovo which is on the right-hand-side to the direction of Kacanik I have checked the vehicle behind us in the mirrors to make sure that they are in the main road. I continued straight on up until the Martyrs Graveyard. I noticed the vehicle was driving towards the same direction of Kacanik. I turned on the right hand side towards the graveyard and I was driving towards Lepence Bridge. I blew the horn twice. I blew the horn of the vehicle. Then I turned and continued towards T. and D. neighbourhood. When I reached T. neighbourhood I noticed a vehicle entering some rather large gates. After I passed T. Neighbourhood and just before reaching D. neighbourhood I heard the shots being fired, initially it was AK-47 and immediately another AK-47 firing burst-fire. I continued towards the main road Bukovik –Doganaj in order to turn towards Europa Restaurant. Just before reaching the main road which takes to Brezovica, 250m before that road, police stopped us. This was Police Officer R.M. and I know him **xxxxxxxxxxxxxxxxxx**. He told me – is this you B.H.? I asked him – what has happened? He replied – there was some shots being fired and he continued. Just before we reached **xxxxxxxxxx** there was a car accident, we stopped there and I thought initially that it was **N.C. xxxx**, we continued. I stopped off S. at Ida Petrol where his vehicle was parked. Then I left **A.D.2.** vehicle at Evropa Restaurant and I took my vehicle. S.Q. had a **xxxx** and he got the car. He continued towards his house. I went to Evropa Restaurant and left **A.D.2.** car and the keys also and I got my own car and went home. This is the event which took I met with **N.C., M., A.D.1., S.Q.** and A. I did not meet **A.D.2.** as he was at Police Station. He was taken into custody in the morning. I called S.Q., being requested by **N.C.** What we spoke was that I already knew that these 4: A., **A.D.1., A.D.2.** and **N.C.** were armed and that they got out. The following day we were asked by **N.C.** because of the alibi and because **A.D.2.** was at the police and he said – that friend of yours did this to us. He (**A.D.2.**) said, “B.H., you are aware that I was in the middle of eating a sandwich and you know as to how **N.C.** took me by force.” He showed and described the route as to how they went with an **xxxxxx** vehicle. He picked **A.D.1.** and **N.C.** with the same vehicle. The set off on the main road from the house or the Petrol Station towards the crime scene and he stated that he left these two there and took a left turn towards an unknown direction to me. Further he stated that was unable to reach them because they switched off their phones. It is only when he was notified by F.C. in order to go and pick them up.

<sup>11</sup> **A.D.2.** had explained..... He took them (meaning **N.C.** and **A.D.1.**) with **N.C. xxxxxx**. He also said how he took them and how he left them to the farm and at the bridge of Lepenc and how he took them to the farm. It is interesting that on the critical night at 11pm **N.C., A.D.1., A.K.** and **A.D.**, at the moment when they set from X. Petrol Station He said to me, “they were armed” and that they had masks and that he left them at the bridge armed”

<sup>12</sup> See minutes of 8 November 2012 session.

together with some of this witness' relatives, and to be told who was responsible for the murders and the attempted murders<sup>13</sup>.

### **Statements of other witnesses:**

N.K. and A.K. were examined about the issue of the car which was sold to A.K. and given back to N.K. because some of the registration documents were missing. K. recalled several meeting with, amongst others, N.C., N.B. and B.H. aimed at making him give back the money to A.K. Neither the Prosecutor nor the witness clarified to what extent this item is to be referred to the indictment as it is in this proceeding, since N.C. is charged only with count two. A.K. gave only his own opinion but no evidence on the involvement of A.D.1. and A.D.2. (charged with count one) on the issue of the car. It must be added that the Panel does not deem the witness reliable as a result of his negative attitude towards the Court and the parties. He justified his unwillingness to answer some questions with alleged threats received by N.C., but he failed to report them to the Police and the Prosecution, hence doubts raised on the truthfulness of his statements and the relationship with the defendants too.

B.B. was examined during the session held on 20<sup>th</sup> April 2012 when he said that he had been told about the involvement of the defendants by some friends who paid him a visit when he was hospitalized and during his convalescence<sup>14</sup>. The witness/injured party referred only to rumours the same as Y.B. (father of N.B.), A.B. (brother of S.B.) and M.B. (father of U.B.). Y.B. told the Court that one of his sons (it is not clear whether it was the victim, N., or B.B. or both), had had some 'disagreements' with A.D.2., but he could not give any detail about them<sup>15</sup>. Both B.B. and M.B. raised their suspicions on A.D.1. and A.D.2., since the defendants "avoided" them after the critical night and did not express any condolences. A.B. too told the court of his suspicions, made reference to R.T. as a witness during the previous

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<sup>13</sup> B.H., A.D.2., B.H., B.H. brother, and also A.H., relative of B.H. were there whilst I was in a separate room with my brother, M.Q. and me and my brother spent some time, some minutes together and then we entered the visit between B.H. and others was held. During the conversation which took part there, A.D.2. in 2-3 occasions mentioned to B.H. – We have screwed you. He said, "I don't know how we will sort out this issue but I'm in the position but this time it is my paternal uncle's son who is involved and the one who shot at for which he had put all of us in burden and we should get some sort of solution. I don't know whether we should go to Public Prosecutor because I am getting in danger too." He started giving explanation regarding the case and he said to B.H. – you know very well how things were, I was eating a sandwich when they got me. B.H. said – be careful as you are aware I sent you a message through a close relative that they are about to kill you. I know this because in several occasions N.C. has told B.H. to find a solution for this, we have to kill A.D.2. and the reason is because he is hanging out with A.B. who is a close relative of the victims and he is the only one who can corner us. B.H. said, "I told you that you are in danger and now you decide for yourself." For something that we were not aware A.D.2. explained them during that visit. For example, the phone-call which was placed from F.C. phone, calling Evropa Restaurant. He also told us that once they committed the offence they have gone to the xxxxxx Farm. A.D.2. came to visit and he revealed to us things which we were not aware previously things that N.C. did not tell us and the things which we have learned from A.D.2. are; the telephone call placed from the farm to the Hotel Evropa with F. phone where A.D.2. was saying "come and pick up A.D.1. and N.C." Secondly, how A.D.2. went and picked up N.C. and A.D.1. alone with A.K. because both of them went to get them. Also, before they have committed the offence he described the house where they were filling the magazines with bullets. He said – we filled up the magazines with bullet at N.C. house. I would no longer protect anyone and I will go directly to the Public Prosecutor and reveal this.

<sup>14</sup> See statements given by B.B. 20 April 2012, page 11.

<sup>15</sup> See page 15, session 20 April 2012 statements given by Y.B.

trial, who had been threatened: “*R.T. knows about the case. He is being threatened directly by the family of N.C.*”<sup>16</sup>.

It is worth mentioning that R.T. was an eye witness and that the District Court of Pristina largely based its verdict on what he had said both to the Prosecution and to the Court during the trial. Taking into consideration what is written in the judgment issued by the Court, it has to be stressed that he did not mention anybody else but two people on the crime scene, identified as B.H. and S.Q. Neither did the two Police Officers patrolling the crime scene that night, N.A. and R.M., see **A.D.1.** and **A.D.2.** on the way to Lepenic bridge.

S.D.: was on duty on the critical night with **A.D.1.** at S.F.. He said that he couldn't find the defendant at 23.30hrs and that he waited for him to come for about 15 minutes. These statements can only raise a suspicion about the role played by **A.D.1.** during the critical night, but they cannot be considered sufficient evidence to find the defendant guilty of the criminal offences he has been charged with. As it has been said in the beginning, the indictment filed by the Prosecution is based on the statements of B.H., S.Q and who had the opportunity to speak with them after the first instance verdict issued by Prishtina District Court. All of them have been summoned and examined as witnesses.

B.H., F.H. (brothers of B.H.), F.H. and A.H. (cousins of B.H.)<sup>17</sup> said to have spoken with their relative, who had told them that it was not him who had committed the murders, but the defendants **A.D.1.** and **A.D.2.**, forced by **N.C.**. According to them **A.D.2.** admitted being one of the participants, explained the role of **A.D.1.** and the motive that **N.C.** had to kill **N.B.**. Despite his willingness to shed light, showed in the beginning, **A.D.2.** refused to speak with the Prosecution, because he was afraid of **N.C.**.

The same recollection of the developments that followed the verdict issued by Prishtina District Court was given by the brother of S.Q., M.Q., who spoke with him too during his detention in Dubrava prison<sup>18</sup>.

The content of the statements given by the relatives of B.H. and S.Q. allows the panel to find it proven that: after the verdict issued on 7 February 2011 by the District Court of Pristina,

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<sup>16</sup> See minutes of the session held on 20 April.

<sup>17</sup> See minutes of the session held on 4 June 2012 and 12 November 2012.

<sup>18</sup> See minutes of the session held on 12 November 2012.

where they had been found guilty and sentenced to long-term imprisonment, B.H. and S.Q. decided to shed light on the criminal offences they had been charged with and told some of their relative what had really happened during the “critical night”. It is undisputed that they had several meetings with their family members during the detention in Dubrava prison (as it has been said by M.Q., F.H., A.H., B.H. and F.H.) and that as a result all these people tried to support B.H. and S.Q., uncover the truth and make who was actually involved in the criminal offences, from their perspective, admit their responsibilities.

Apart from some none relevant discrepancies, all the relatives of the two main witnesses recalled the meetings, the content of the conversations and who was present in the same way and they can be considered as established. What is ascertained is that **A.D.2.** spoke with B.H. and his relatives and that there was a meeting at Tahir Recaj’s office (Defence Counsel of B.H.) with B.H.1, A.H., M.Q. and **A.D.2.**<sup>19</sup>.

What cannot be reckoned as proven is the factual content of all the referred conversations and the alleged admissions of responsibility from the defendants **A.D.2.** and **A.D.1.**, whereas it is not contested that at least **A.D.2.** had meetings with B.H., S.Q, B.H.1., A.H. and M.Q. aimed at convincing him to admit his responsibility.

Neither did any significant evidence come from the statements of witnesses who met the defendants at the restaurants Europa and Mani just before the murders and attempted murders.

M.D.<sup>20</sup> recalled where he went during the night of 27 September 2007 and who he met, but he did not say (neither had he said during the investigations) the only thing that could have been of some importance from Prosecutor’s perspective, since he denied having given **B.H.** the keys of the **xxxxxxx** owned by **A.D.2.**, as it was said by **A.A.**

**A.A.**<sup>21</sup> met **A.D.2.** and **A.D.1.** during the night between 27 and 28 October (after being confronted by Prosecutor with the statements given during the investigations). Shortly afterwards he had a conversation with B.H. and was told what had happened on Lepenic bridge, what Hasani did and who shot at the victims. He also had the chance to speak with **A.D.2.** who denied any responsibility for the criminal offences and told him that he just drove **A.D.1.** to “the location where the murder occurred”.

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<sup>19</sup> See statements given by these witnesses.

<sup>20</sup> Examined during the session held on 13 July 2012.

<sup>21</sup> See minutes of the session held on 22 October 2012.

### **Statements of the defendants.**

Both **A.D.1.** and **A.D.2.** denied having taken part in the criminal offences, but admitted that they were around together during the evening of 27 September 2007, on **A.D.2.** car, a **xxxxxxx**. **A.D.1.** said that he could not remember if he was on shift duty that night, but that it was not unusual to swap shift with his colleagues.

**A.D.2.** confirmed that he had paid a visit to B.H. when he was detained at Dubrava prison, with B.H., A.H. and M.Q. and that there they had tried to convince him to take the responsibility of the murders and the attempted murders. Afterwards he was made to go to the office of the defence counsel Tahir Racaj where he had the opportunity to hear a phone conversation between the lawyer and the Prosecutor appointed to the case that, at that time, involving B.H. and S.Q. During the following days he was questioned by the Public Prosecutor and gave statements that have not been admitted by this Panel, because the defendant had been examined before the ruling of initiation of investigation (ROI). The Prosecution was following the lead given by B.H., S.Q. and their relatives, but that lead has not been proven beyond any reasonable doubt and the reason why Prosecution took for granted their words despite the lack of supporting evidence has not been clarified during the trial.

### **Conclusions for count 1:**

It is opinion of the panel that the charges filed against **A.D.2.** and **A.D.1.** are not grounded since the Prosecution failed to submit sufficient evidence to establish their guilt. The indictment is based only on the content of the statements given by two persons, convicted in a final judgment for the same criminal offences (S.Q. and B.H.) and by S.D., who did not see **A.D.1.** at his security post on the critical night. Then A.A. said in front of the court that M.D. delivered the keys of **A.D.2.** car to B.H., but M.D. denied doing it. The statements given by all the other witnesses examined during the main trial (B.H., M.Q., A.H., F.H., A.A. and F.H.) are nothing more than indirect statements. These witnesses were not at the crime scene and they recalled just what they had been told by B.H. and S.Q.. Neither did A.K. and N.K. directly see anything, since they spoke only about the issue of the car, allegedly the motive of the criminal offences from prosecution perspective, but insufficient to ground the charges

filed in this case. Both these two witnesses were unable to say if and to what extent **A.D.2.** and **A.D.1.** had been interested and involved in the sum of money that N.K. and the late N.B. (who had taken over the debt) were to give back to A.K.

It has to be noted that the investigation against these two defendants was opened not only on the basis of B.H. and S.Q. statements, given to the Prosecutor after the abovementioned main trial, but that any other evidence have ever been gathered against **A.D.2.** and **A.D.1.** before B.H. and S.Q. decided to speak with the Prosecutor. Moreover the question why these two witnesses did not say anything during the investigation and why they changed their minds only after receiving long-term imprisonment, whilst the first instance verdict still had not been final remains unanswered.

In order to deliberate on the charges filed against the defendants, the Panel has also taken into consideration the evidence collected during the main trial against B.H. and S.Q. and the final verdict issued by the Supreme Court on 24 September 2012. Before the first instance Panel an eye witness said that he had seen only two people on the crime scene and, based on his statements and other evidence, that Panel deemed it proved that these two people were S.Q. and B.H.. During this main trial the witnesses have spoken about the role played by defendants **A.D.1.** and **A.D.2.** but still their words have raised doubts and cannot be assessed as sufficient evidence to find the defendants guilty.

Pursuant to Article 3 paragraph 2 of the KCCP any doubts regarding “the existence of facts relevant to the case or doubts regarding the implementation of certain criminal law provision shall be interpreted in favour of the defendant and his or her rights under the present Code” and pursuant to Article 390 paragraph 3 of the KCCP the court shall render a judgment acquitting the accused if, “it has not been proved that the accused has committed the act with which he or she has been charged”.

### **Conclusions for count 2:**

With reference to count 2 the considerations are the same as for count 1. It is worth mentioning that B.H. and S.Q. said before this court to have seen the defendants armed, but nobody else supported their statements nor did the Prosecution prove that they had not seen fake firearms. What the witness A.A. said during his testimony is not sufficient to find the defendants guilty, because he reported a conversation with B.H. and he himself did not see

**N.C.** and **A.D.1.** armed. Evidence other than the statements of B.H. and S.Q. was necessary to persuade the court that defendants were really armed, since these two witnesses have been found guilty in a final judgment for the same criminal offences and this is a reason for their credibility remaining open to question.

As it has been stressed before, the trial panel finds that this allegation too is not supported by evidence in the file and that in this criminal case the Prosecution failed to enable the Panel to reach conclusions beyond reasonable doubt as to the guilt of the accused for each and every count.

As the accused are not found guilty, the costs of criminal proceedings under Article 99 of the KCCP shall be paid from budgetary resources as per applicable rates.

No property claim has been filed; hence no decision is to be rendered.

For all these reasons it has been decided as in the enacting clause above.

**Presiding Judge**

**Laura Liquori**

**Panel member**

**Fllanza Kadiu**

**Panel member**

**Mariola Pasnik**