

## **BASIC COURT OF PRISTINË/PRIŠTINA**

### **SERIOUS CRIMES DEPARTMENT**

**P.no.322/09 (P.no.45/13)**

**18 October 2013**

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

**BASIC COURT OF PRISHTINA/PRIŠTINA – Serious Crimes Department**, composed of EULEX Judge, Arkadiusz Sedek, as presiding, Nora Bllaca, judge and Willem Brower, EULEX judge, members of the trial panel assisted by Natasa Malesevic, court recorder, in the case against:

**H.K.**, accused of Aggravated Murder under Article 147(5) and (9) of Criminal Code of Kosovo (CCK),

After having held nine (9) public main trial hearings, in the presence of the state prosecutor Ilaz Beqiri from Prishtina Basic Prosecution Office, Serious Crimes Department, the defense council Mustafe Kastrati, the injured party Ragip Salihu, and

After the trial panel's deliberation and voting on 18 October 2013, pursuant to Article 392 of CCK (2004), renders the following:

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

**H.K.**, (hereinafter "the Defendant") is:

- **FOUND GUILTY** of Aggravated Murder in violation of Article 147(5) and (9) of CCK because on 17 February 2009, between 15:30 and 17:00 in the forest of Z., Municipality of Prishtina, acting in a ruthless and violent manner for low motives, repeatedly struck V.S., on her head and her body with a heavy object causing her grave bodily injury, other penetrating and lacerating injuries, hematomas in different parts of the body, fractures in the skull as well as severe injury to the brain thus depriving the victim of her life;
- **SENTENCED** to twenty two (22) years in prison. The period of time spent in detention on remand as of 19 February 2009 is credited to the sentence.

- **ORDERED to pay the cost of criminal proceedings in the amount of 100 Euro as a lump sum.**

**The injured party may initiate civil proceedings to seek compensation from the defendant.**

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## **I. Procedural and factual background**

1. On 18 February 2009, around 12:00 hrs, Kosovo Police received information from a citizen, **M.S.**, that the body of a dead female was found near the village of Zllatar, Municipality of Prishtina/Priština. The victim had obvious signs of violence. Kosovo Police officers and the prosecutor of the case went to the crime scene. The forensics team collected the evidence found at the crime scene, whereas the body of the victim was transported to the morgue and subsequently an autopsy was conducted.
2. On 19 February 2009, early in the morning, **R.S.**, and **Sh.S.**, the father, respectively the uncle of the victim, visited the morgue in Prishtina. They identified the victim as **V.S.**
3. On 19 February 2009 the Public Prosecutor in Prishtina/Priština, acting upon a request from Kosovo Police, issued an order to PTK-Vala to provide to the prosecutor the metering and SMS messages for the numbers **A** and **B**, both in the possession and ownership of the victim. The content of the SMS messages revealed a frequent communication between the victim and the mobile phone numbers belonging to the defendant.
4. On the same date (19 February 2009) Kosovo Police interviewed the owner of the house where the victim used to work as a cleaning lady. She informed the police that one of her employees saw the victim on the critical date having a conversation with a male person. The employee of the owner of the house, **H.T.**, told the Kosovo Police that he saw the victim at around 15:30 having a heated conversation with a male person near the house where she worked as a cleaning lady. This witness further declared that he saw the victim and the same male person again, a few moments later having coffee in café/restaurant Rona at St. **I.K.**, and then subsequently the witness saw them leaving the café/restaurant together.

5. On 19 February 2009, around 15:00 hrs, Kosovo Police arrested the defendant while he was driving his vehicle in the streets of Z. Village, Municipality of Vushtrri. After the arrest he confessed that he was the perpetrator of the criminal offence, namely murderer of the victim. The defendant informed the police that after he committed the murder he threw the jacket and the bag of the victim as well as the murder weapon near the place where the crime was committed. At the same day, after Kosovo Police obtained this information, an additional search on the crime scene was conducted. However, Kosovo Police found only the jacket of the victim that day. Kosovo Police had to stop the search operation at the crime scene since it was snowing too hard that day to proceed.
6. On 20 February 2009 the examination of the vehicle of the defendant was conducted. Three samples (E#9.1, E#9.2, and E #9.3) of suspected blood stains were collected from this vehicle and were sent for DNA analysis.
7. On 20 February 2009 a criminal report was filed by Kosovo Police to the District Public Prosecution of Prishtina/Priština. The criminal report was registered under the number PP.nr.130-2/2009. The criminal report charged the defendant of Aggravated Murder.
8. On 9 March 2009, after the snow had melted, Kosovo Police went to the crime scene for an additional investigation. They searched for the murder weapon and for the purse of the victim. They found a 50 cm metallic bar in the vicinity where the body was found.
9. On 16 June 2009 the Public District Prosecutor in Prishtina/ Priština filed the indictment PP.nr.130-2/2009, charging the defendant of aggravated murder under the Article 147, par.5 and 9 of the CCK.
10. On 9 September 2009 the hearing on the confirmation of the indictment was conducted. During this hearing it was not possible for the judge to establish the communication with the defendant. The latter acted strangely and was making weird gesticulations, suggesting that he was mentally incompetent. The prosecutor requested a psychiatric and psychological expertise to be conducted in order to determine whether the defendant would be able to stand trial. The confirmation judge ordered the University Clinic of Kosovo to conduct a psychiatric/psychological expertise.
11. On 16 December 2009 the University Clinic of Kosovo sent the expertise report (no. 469) to the court. The expertise concluded that the defendant had no mental impairment and is competent to stand the trial.
12. On 18 January 2010 the District Court in Prishtina/Priština issued its decision KA.nr.294/09 confirming the indictment in its entirety.
13. On 7 May 2010 the first hearing of the main trial was conducted. Subsequently, eight more main trial hearings were conducted, the last one being held on 27 February 2013.

14. On 26 August 2013, the President of the Assembly of EULEX Judges, acting upon the motion of the defense counsel for the defendant, decided to assign the case to EULEX Judges of the Mobile Unit.
15. On 9 September 2013 the first main trial hearing in the composition of two EULEX judges and one Kosovo judge was conducted. No objection was submitted by any of the parties regarding the composition of the trial panel. The trial panel decided to restart the trial from the beginning and to examine all the evidence from the beginning as the composition of the trial panel was changed and the main trial was adjourned for a period longer than three months. Subsequently, main trial hearings were conducted on 17, 18, 19, 20, 30 September 2013 and 4, 17 and 18 October 2013.
16. On 18 October 2013 the verdict of the trial panel was announced and the defendant was found guilty as charged and sentenced as in the enacting clause.

## **II. Jurisdiction of the court**

17. On 26 August 2013 the President of EULEX Assembly of Judges issued a decision to assign this case to EULEX Mobile Judges Unit in Prishtina/Priština. This decision was issued pursuant to Article 3 of the Law 03/L-53 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. The Kosovo Judge was appointed as panel member by a decision of the President of Prishtina/Pristina Basic Court.
18. This court has territorial and subject matter jurisdiction pursuant to Articles 9, 11 and 15 of the Law No.03/L-199 on Courts.

## **III. The applicable procedural law**

19. The court decided to conduct the proceedings in accordance with the provision of the old Criminal Procedure Code of Kosovo (2004). The decision to proceed in accordance with the old CPCK was based on the Legal Opinion of the Supreme Court of Kosovo No.56/2013 dated 23 January 2013. Point 2 of this legal opinion states:

*“ In criminal proceedings initiated prior to entering into force (January 1, 2013) of the present Code, for which the main trial has already commenced, but has not been completed or completed but sent back for re-trial by means of ordinary or extraordinary legal remedy, provisions of the old Code shall apply mutatis mutandis until the decision becomes final. The court panel in these circumstance will be composed of professional judges as there is no longer a provision for lay judges in the law of Kosovo.”*

20. This court shares the same opinion with the Supreme Court of Kosovo. The main trial in this case commenced in 2009 thus the provisions of the old Criminal Procedure Code of Kosovo are applicable.

#### **IV. Admissibility of Evidence**

21. During the course of the main trial the issue of the admissibility of evidence was raised by the defense counsel of the defendant. Specifically, the defense counsel alleged that the statement of the defendant given before Kosovo Police on 19 February 2009 was inadmissible since this statement was given under the physical coercion.
22. In order to properly establish the facts of the case, the court, acting upon the motion of the defense counsel, summoned the ex defence counsel of the defendant, **Mrs.Z.M.Z.** Mrs. **M-Z** testified before the court on 19 September 2013. The witness stated that she was present at the time the disputed statement was given before the police from the beginning until the end of that interview. She stated that she warned the defendant of the consequences of his testimony. Further, she stated that she and the defendant read the disputed statement together and then subsequently they both signed it without any remarks. Mrs. **M-Z**., testified about the circumstances under which the defendant gave his statement. She was not questioned about any information she received from her client.
23. On 7 October 2013 the court saw the medical documents of the defendant, specifically the medical report that was prepared at the time the defendant was imprisoned for the first time in the Lipjan Detention Center. The document shows that the medical checkup was conducted on 21 February 2009 (one day after defendant was put in detention on remand). According to this document no signs of violence were noticed on the body of the defendant.
24. Bearing in mind that the defendant gave the statement on 19 February 2009 voluntarily, that he was given the opportunity to consult his defense counsel and that he was warned about the legal consequences of his statement, the court concludes that this statement was collected in conformity with the Articles 229 through 236 of CPCK. Therefore, pursuant to Article 156 of CPCK the statement of the defendant given Kosovo Police on 19 February 2009 is admissible evidence.
25. Further, the defense counsel demanded the court to declare the statements of witnesses **H.T.**, and **N.G.**, given before the police on 17 March 2009, respectively 19 March 2009 as inadmissible evidence. The defense argues that the identification procedure followed by Kosovo Police when questioning the witnesses **H.T.**, and **N.G.**, was in violations of Article 254 of CPCK. According to the defense, the law requires participation of the defense counsel of the defendant when any identification is made.

26. The court finds this allegation as ungrounded. The identification procedure of persons is governed by Article 255 of CPCK. The pertinent language of this article is the following:

**7. IDENTIFICATION OF PERSONS AND OBJECTS**

**Article 255**

*(1) Where there is a need to establish whether a witness can recognize a person or an object, such witness shall first be asked to provide a description of and indicate the distinctive features of such person or object.*

*(2) The witness shall then be shown the person with other persons unknown to the witness, or their photographs, or the object with other objects of the same kind, or their photographs.*

*(3) The witness shall be instructed that he or she is under no obligation to select any person or object or photograph, and that it is just as important to state that he or she does not recognize a person, object or photograph as to state that he or she does.*

The court notes that Kosovo Police acted in full compliance with the above-mentioned article. Initially, the witnesses gave the description of the person/the suspect as required by paragraph 1 of Article 255, Kosovo Police informed the witnesses that they were under no obligation to choose any of the persons in the photo lineup, but both witnesses, picked up one picture. Additionally, the minutes were duly signed by both the police officer and the witnesses. The allegation of the defense counsel that Article 244 is applicable in these circumstances is erroneous, because this article governs the procedure of site inspection and reconstruction. These two procedures are completely different from the procedure to identify objects and persons which is governed by Article 255 of CPCK.

27. Therefore, the court concludes that the statements of **H.T.**, and **N.G.**, given before the police on 17 March 2009, respectively on 19 March 2009, are both obtained in full compliance with the provisions of CPCK, thus are admissible evidence.
28. Further the defense counsel demanded the court to declare as inadmissible evidence, the crime scene minutes prepared by the police. The defense did not specify exactly which minutes to be declared as inadmissible but it is apparent that such a request is made for all the minutes prepared while collecting evidence at the crime scene.
29. The court concludes that all evidence collected at the crime scene by Kosovo Police are admissible. Article 201 of CPCK states:

**Article 201**

*(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 [...] to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, [...]*

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

...

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

The provisions of CPCK do not impose an obligation on the police to notify the defendant or its defense counsel when the police confiscate objects which may serve as evidence in criminal proceedings. Therefore, all evidence collected by Kosovo Police at the crime scene is admissible evidence.

30. Even though the issue of admissibility of evidence, specifically of the interception of SMS text messages obtained by the prosecutor during the investigative was not raised by the defense, the court *ex officio* assessed the admissibility of this evidence pursuant to Article 154(1) and (2) of CPCK. The court notes that the SMS text messages were obtained by an order of the Public Prosecution Office dated 19 February 2009. Article 258 of CPCK states:

**Article 258**

*(1) A public prosecutor may issue an order for each of the following measures:*

- 1) Covert photographic or video surveillance in public places;*
- 2) Covert monitoring of conversations in public places;*
- 3) An undercover investigation: or*
- 4) Metering of telephone calls.*

*(2) A pre-trial judge may issue an order for each of the following measures on the basis of an application by a public prosecutor:*

- 1) Covert photographic or video surveillance in private places;*
- 2) Covert monitoring of conversations in private places;*
- 3) Search of postal items;*
- 4) Interception of telecommunications;***
- 5) Interception of communications by a computer network;*
- 6) Controlled delivery of postal items; **[emphasis added]***

The above-mentioned provision is clear: the prosecutor was not entitled to authorize interception of telecommunications. Issuance of an order for interception of telecommunications is exclusive authority of the pre-trial judge during the investigation stage. The provisions of Article 258 were violated and the consequences of this violation are stipulated by Article 264 of CPCK which states:

**Article 264**

*(1) Evidence obtained by a measure under the present Chapter<sup>1</sup> shall be inadmissible, if the order for the measure and its implementation are unlawful.*

Therefore, the SMS text messages obtained by the order of the prosecutor dated 19 February 2009 are declared inadmissible evidence, thus sealed and separated from the case files.

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<sup>1</sup> Chapter XXIX: Covert and Technical Measures of Surveillance and Investigation of Criminal Procedure Code of Kosovo (2004)



31. However, it is worth mentioning that the SMS text messages were later obtained from PTK with the trial panel order dated 23 September 2013. The evidence (CD) obtained with the order of the court is admissible.

#### V. Administered Evidence during the Main Trial

32. During the evidentiary proceeding the court administered the following evidence, apart from the evidence declared inadmissible:

1	18-Feb-09	Kosovo Police Flash Report
2	18-Feb-09	Initial Report of the incident
3	18-Feb-09	Report of the police <b>F.A.</b> ,
4	18-Feb-09	Report of the medical doctor, Dr. <b>S.N.</b> ,
5	18-Feb-09	Report of Kosovo Police investigator, <b>A.S.</b> ,
6	18-Feb-09	Statement of <b>M.S.</b> , before the police
7	19-Feb-09	Metering of phone calls for telephone number 049581836
8	19-Feb-09	Report of Kosovo Police investigator <b>V.R.</b> ,
9	19-Feb-09	Kosovo Police Flash Report
10	19-Feb-09	Report of Kosovo Police investigators <b>M.M.</b> , and <b>V.SH.</b>
11	19-Feb-09	Report of Kosovo Police investigator <b>V.R.</b> ,
12	19-Feb-09	Statement of <b>R.S.</b> , before the police
13	19-Feb-09	Statement of <b>V.S.</b> , before the police
14	19-Feb-09	Statement of <b>S.Sh.</b> , before the police
15	19-Feb-09	Statement of the defendant before the police
16	20-Feb-09	OMPF Photos from Autopsy by <b>D.Sh.</b> ,
17	20-Feb-09	Report on Examination of the Vehicle (24 pages)
18	20-Feb-09	Report of the forensics from the Crime Scene (34 pages)
19	20-Feb-09	Autopsy Report
20	26-Feb-09	Report of Kosovo Police forensics team from the autopsy (47 pages)
21	10-Mar-09	Report of the forensics from the Crime Scene (9 pages)
22	17-Mar-09	Statement of <b>M.S.</b> , before the prosecution
23	17-Mar-09	Statement of <b>R.S.</b> , before the prosecutor
24	17-Mar-09	Statement of <b>V.S.</b> , before the prosecutor
25	17-Mar-09	Statement of <b>H.T.</b> , before the police
26	17-Mar-09	Statement of <b>S.S.</b> , before the prosecutor
27	17-Mar-09	Statement of the defendant before the prosecutor
28	19-Mar-09	Statement of <b>N.G.</b> , before the police
29	07-Apr-09	Statement of <b>N.G.</b> , before the prosecutor
30	07-Apr-09	Statement of <b>H.T.</b> , before the prosecutor
31	22-May-09	Report from Kosovo Police investigator Valbona Ramadani
32	22-May-09	Statement of <b>B.B.</b> , (aka <b>J.K.</b> )
33	04-Jun-09	Psychiatric Report from Dr. <b>N.P.</b> ,

34	04-Jun-09	Psychiatric Report for <b>H.K.</b> ,
35	09-Nov-09	Report on DNA Expertise
36	16-Dec-09	Psychiatric Expertise
37	21-Sep-11	Response from Lipjan Detention Center
38	21-Oct-11	Psychiatric Expertise Report
39	24-Jan-13	Response from Kosovo Police
40	17-May-13	Report on DNA Expertise
41	23-Sep-13	Information from Basic Court of Prishtina on criminal record of the defendant
42	23-Sep-13	Information from Basic Court of Prizren on criminal record of the defendant
43	25-Sep-13	Information from Basic Court of Gjilan on criminal record of the defendant
44	27-Sep-13	Report on DNA Expertise
45	30-Sep-13	Information from Municipality of Prishtina
46	01-Oct-13	Information from Lipjan Detention Center
47	02-Oct-13	Information from Dubrava Correction Center
48	03-Oct-13	Information from Basic Court of Gjakova on criminal record of the defendant
49	04-Oct-13	Information from Basic Court of Mitrovica on criminal record of the defendant
50	04-Oct-13	Information from Basic Court of Ferizaj on criminal record of the defendant
51	08-Oct-13	Information from Lipjan Detention Center
52	10-Oct-13	Information from Basic Court of Peja on criminal records of the defendant
53	16-Oct-13	Information from PTK (CD)

33. Additionally, the court heard *viva voce* testimony of the following witnesses: **N.G., V.S., S.S, R.S, Z.G, Xh.R., B.M., B.R., D.K., I.Sh., M.R., R.H., S.V., Sh.B., E.G., Z. M-Z..**
34. The parties agreed to consider as read the previous statements of **H.T.**, who was working in Albania at the time when the main trial was being conducted and the statement of **M.S.**, who passed away on 14 September 2009. The parties, in accordance with Article 368(1)(3) of old Criminal Procedure Code of Kosovo, agreed that the direct examination of the abovementioned witnesses who failed to appear after the summonses were sent be replaced by reading the records of their previous examinations. Therefore, the statements of these two witnesses were considered as read and part of the case file.
35. The following expert witnesses were heard: Bashkim Mustafa, Biologist-DNA Expert, Dr. **A.G.**, pathologist who conducted the autopsy of the victim. Dr. **N.I.**, Psychiatrist, **Sh.U.**, Clinic Psychologist and Dr.**Sh.M.**, Psychiatrist testified about the mental and psychological condition of the defendant. The three experts worked in a team and the expertise was presented by Dr.**N.I-M.**, and **Sh.U.**

## VI. Assessment of evidence

### *The statement of the defendant before the police, prosecutor and the court*

36. The defendant was interviewed by Kosovo Police on 19 February 2009. He stated the following:

On 17 February 2009 he woke up at around 9:00 hrs. He communicated with the victim by mobile phone with number **D** and agreed to meet her later that day in Prishtina, at the place where the victim was working as a cleaning lady. The reason to meet there was to discuss the issue of the debt the victim had towards the defendant to the amount of 2000 euros. The defendant stated that he arrived in Prishtina at around 13:30 – 14:00 hrs. The victim and the defendant met before a shop. Afterwards they went together to a nearby restaurant. While they were staying at the restaurant they talked about the debt the victim owed to him. In the meantime the victim went to the bathroom and had a phone conversation. The victim told the defendant that she was not going to return the money to him, whereas the defendant tried to convince her to give him back the money. Since she was not willing to give back the money the defendant decided to kill her, therefore he convinced her to go with him. His intention was to find a suitable place to kill her therefore he decided to go to **Z.**, Village. They reached **Z.**, Village at around 16:30 the same day. When he reached the end of the unpaved road he turned the truck in reverse and drove backwards in the mountain around 100 meters deep then he stopped and started to discuss with the victim about their relationship. The defendant had a love relationship with the victim from the time she got engaged to the son of his brother, this meaning approximately for 3 years. The defendant promised the victim that he would marry her and buy an apartment in Prishtina in order to live together. They both agreed to this in the beginning, but the victim lately started to become distant to the defendant and he thought she had started another love relationship. While the defendant and the victim were discussing about their relationship in the van, the defendant proposed that they continue their love relationship, whereas the victim was firmly against. As the defendant loved the victim very much he was not able to see their relationship ending and see the victim starting a relationship with another man. He asked the victim ‘*shall we continue as before or not*’. The victim replied that everything was over. The victim and the defendant got out of the van and they started to push each other with their hands. The defendant tried to bring the victim back to his van but she refused to do so. The defendant went to the cabin of the van and took a crowbar 50 cm long and started to hit her on the head. He initially hit her in the head, then in the forehead. After she fell down on the ground he hit her two additional times in the back part of the head. He took from her the purse and the jacket and threw them in the woods. The defendant he threw the crowbar in the woods as well. He got back on the van and went home. The time when he

committed the murder was around 17:00 hrs, whereas the time he got home was approximately 20:00 hrs.

Further according to the defendant, he became close to the victim after she was engaged to the son his brother. The defendant and the victim went out to Prishtina buy a few things after she got engaged to B.K. The defendant told the victim ‘*you are a very beautiful girl I like you*’. The victim replied by saying if you like me let’s go for a coffee. They went to a cafeteria at the roundabout across from Hotel Baci in Prishtina. There they kissed each other for the first time. The victim promised the defendant that later on they would have sexual intercourse. They continued their love relationship for approximately three years.

The relationship between the defendant and **V.S.**, started to deteriorate two weeks before the murder. The defendant thought that the reason for this cold relationship was because the victim was having an (other) affair. In the defendant’s view the victim did not keep her promise and created a new relationship. According to the defendant he was in love with **V.S.**, and when he realized that the victim started to be distant from him, he could not agree to that fact and the only solution, according to him, was to kill the victim. He could not imagine **V.S.**, marrying someone else and that is the reason why he decided to kill her.

37. On 17 March 2009 the defendant was interviewed by the prosecutor. During this interview he gave completely different account of the events. The defendant stated as follows:

He stated that on 17 and 18 February 2009 was at home in the village of **Zh.**, doing some house works. He stated that he received two phone calls, one from IPKO and another one from VALA, but he did not recognize these numbers. He stated that he did not go anywhere with his vehicle on the day of the murder. He denied that the victim owned money to him. He admitted the he accompanied **V.S.**, to the language course which was approximately 25 minutes from his house. According to him **V.S.**, received 2,000 € from his brother **B.**, from Germany for the language course expenses, which money were received by **V.S.**, in the presence of **R.**, but, according to him, that was not a fact that she owed him any money. The defendant denied that he was in love with the victim. He further stated that he has never been to village-mountain **Z.** He stated that he did not have any conversation with the victim on 17 February 2009. The number is not his. He denied to have had a love affair or sexual relationship with the victim. He never promised the victim to marry her and divorce his wife. He denied to have killed **V.S.** Further he stated that it was not true that a person saw him at the shop located in **I.K** street, neither that someone saw him at the restaurant. He stated that there was no blood in his vehicle and no matter what DNA analysis show he didn’t murder the victim. He stated that his uncle’s sons **Sh.K** and **E.K.**, saw him on 17 February 2009 in the morning working in his garden with a shovel.

The defendant stated that he gave his statement to the police under pressure. He further stated that during the interrogation his lawyer came later. The defendant stated that he was beaten by the police and he didn't know whether the injuries on his body were photographed after being beaten by police. He did not remember when he was photographed by police holding a paper in front of him, either.

38. On 18 October 2013 the defendant testified before the trial panel. The defendant testified as follows:

The defendant testified before the court stating that the statement given to the police was provided due to the beatings he received by the police. He stated that his head was put in a bucket of water and he was close to dying therefore he gave this statement under pressure and incriminated himself. The defendant stated that his Defence Counsel arrived after the police completed the procedure. According to him the police asked him no questions in front of his defence counsel. The defendant denied that he signed the statement given before the police. The defendant stated before the court that on the critical day he stayed at home and ploughed the garden. Additionally, he stated that he did not give a statement before the prosecutor and the minutes of the interview before the prosecutor were not signed by him. He stated that he remained silent before the prosecutor. He denied that SMS text messages were sent from his phone number. Further, he stated that he did not communicate via phone with the victim on the day of the murder.

39. The court concludes that the statement of the defendant given before Kosovo Police on 19 February 2009 is generally credible. In this statement the defendant states that on 17 February 2009 in the morning he had a phone communication with the victim and agreed with the victim to meet later in Prishtina. This statement is supported by the fact that the metering of number **A**, which was in possession of the defendant, shows that a conversation took place between this number and number **B**, which was a number in possession and ownership of **V.S**. This conversation started at 07:53 and ended at 08:10. The defendant stated that he received a telephone call in the phone number **C**, however this may have been a mistake by the defendant, or a conversation may have taken place additionally in this number. However, PTK did not provide any information for this number for the year 2009. According to the information obtained from PTK this number was sold in 2012. Having in mind that when numbers are not active for a long time are usually re-sold to third parties, then it is highly possible that this number was sold to a third party due to inactivity for a long period of time since the defendant was in detention as of 19 February 2009.
40. Further the defendant states that he met the victim in Prishtina near the house she was working as a cleaning lady and then together went for coffee in the restaurant "**R**" which is in the vicinity of the house in which the victim was working as a cleaning lady. This statement is corroborated by the statements of the witnesses **H.T.**, and **N.G. H.T.**, stated before the police and the prosecutor that he saw the victim and a male around 38-40 years

old, of dark complexion, 180 cm tall having a conversation on 17 February 2009 near the house the victim was working. The male person was talking loudly to the victim. The witness identified the male person as the person in photo no.5 in the photo lineup prepared by Kosovo Police. The court notes that the person in photo no.5 is the defendant. **H.T.**, further stated that he saw the victim and the defendant a few minutes later having coffee in the restaurant ‘**R**’ and then subsequently leaving together in the direction of the cemetery in the vicinity. In addition witness **N.G.**, who was working as barmen and waiter in the restaurant ‘**R**’ stated before the prosecutor, before the police as well as before the court that he saw a male and female person having coffee in his restaurant. He said to the police that the person in photo no.5 in the photo lineup resembled the person having coffee at around 15:00 on 17 February 2009. Therefore, the statement of the defendant, the statement of **H.T.**, and the statement of **N.G.**, corroborate each other perfectly in this point.

41. Moreover, the defendant stated to the police that after the murder took place he took the jacket and the purse of the victim and through them away a few meters from the body. The jacket of the victim was found at the crime scene by Kosovo Police after they got this information from the defendant. The jacket was marked as exhibit VN#8 and it was found 9.3 meters away from the place where the body of the victim was found. The statement of the defendant corroborates to the findings of the Kosovo Police at the crime scene.
42. The statement of the defendant that he had a love affair with the victim is supported by the SMS text messages received by PTK on 16 October 2013. From the content of SMS text messages it is clear that the defendant was having an affair with the victim. The defendant admitted in the statement given before Kosovo Police that he was using phone number **D**, whereas the family members of the victim testified that the victim was using phone number **B**.
43. Therefore, the court concludes that the statement of the defendant given before the police is generally reliable. This evidence corroborates with other evidence collected during the investigation stage and during the main trial phase.
44. The statement of the defendant given before the prosecutor on 27 April 2009 gives a different account of events that took place during 17 February 2009. The defendant denied that he committed the murder. He denied that he met the victim on the critical day. He denied that he had a phone conversation with the victim. He denied that he had a love affair with the victim. He stated that he was beaten by the police and that was the reason that he confessed that he committed the murder. For the first time he presented an alibi stating that he stayed at home during the whole day on 17 February 2009.
45. This statement is refuted by other evidence administered during the main trial: the previous statement given to Kosovo Police, the statement of **H.T.**, and the statement of **N.G.** Therefore, the court concludes that the statement of the defendant given before the prosecutor is not reliable evidence.

46. The defendant denied having committed the criminal offence during the main trial. He stated that he did not undersign the statement given before Kosovo Police and he alleged that he did not undersign the statement given before the prosecutor either.
47. This statement is directly refuted by the evidence given by witness **Z.M-Z**, who acted as his defense counsel on 19 February 2009. The witness stated that no violence was used against the defendant and it was the defendant who signed the statement before the police. Thus, the statement given before the trial panel is not credible and reliable. Furthermore, the defendant even denied to have signed the statement before the prosecutor. The court concludes that this is only an unsuccessful attempt by the defendant to avoid criminal responsibility. In other words it is the refuge of the desperate.

***The Statement of witness H.T., before the police and prosecution***

48. **H.T.**, was interviewed by Kosovo Police on 17 March 2009. He stated that he was working for the company '**A.T.**,' as manager for three years. The witness stated that on 17 February 2009 (Independence Day) he started working at 7:30 hrs and worked until 14:00 hrs. At around 15:30 hrs he went to check the market's back door, which is located behind the building and where it is also the entrance door of the house of **S.H.** He saw **V.S.**, having a heated conversation with a male person. The witness described the male person as being about 180 cm tall, 38-40 years old. Further the witness identified the person having a conversation with **V.S.**, as the man on the picture number 5 in the photo lineup<sup>2</sup> composed of five pictures of different persons. The witness knew **V.S.**, before, because they were both working for the same family. According to the witness, the victim and the defendant conversed there for approximately 5 minutes and then they walked away. A few minutes later the witness went to restaurant '**R.**' to have a tea as it was cold outside. He saw the defendant and the victim having coffee together. The witness stayed there for 10 to 15 minutes in the restaurant and then he left to go in front of the market where he worked. Around 15 minutes after he left the restaurant '**R.**' the victim and the defendant came out and walked towards the monument (martyrs' cemetery).
49. The witness was interviewed by the prosecutor on 7 April 2009. His statement given before the prosecutor is in line with the statement given before the police. The court did not notice any discrepancies between these two statements.
50. The witness did not testify before the court because the parties agreed to consider as read the statements of the witness before Kosovo Police and the prosecution. The court tried to summon the witness but the delivery slips came back stating that the defendant did not live in the address provided to Kosovo Police and the Prosecution. The court phoned the

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<sup>2</sup> The defendant **H.K.**, was depicted on photo number 5

witness and invited him to appear before the court but the latter responded that he is working in Albania and it was not possible to appear before the court because this would cost him losing his job. Bearing in mind that the parties agreed to consider his statements as read the court did not make any further attempt to compel the witness appear before the court.

51. Regarding the credibility of this statement the court concludes that the testimony of the witness corroborates completely to the statement of witness **N.G.** In addition his first statement is consistent with the statement before the prosecutor. The witness had no motive or reason to lie to the prosecution or the police. Therefore, the court concludes that the statements of **H.T.**, are credible and reliable.

***The statement of witness N.G., before the police, prosecutor and the court***

52. **N.G.**, gave his statement before Kosovo Police on 19 March 2009. He told the police that he was working as waiter in the restaurant ‘**R.**’. On 17 February 2009 he started working at the restaurant from 08:00 hrs. At around 15:00 hrs a female person, around 25 years old, not too tall, normal weight, black hair, black pants together with a male person, slim, brown, about 175-180 cm tall, around 35-40 years, had a coffee at the restaurant where he was working. The witness identified the male person as resembling to the person in photo number 5 of the photo lineup. According to the witness the couple stayed there for about one hour and then left towards an unknown direction to him.
53. The same witness gave a statement before the prosecutor on 7 April 2009. The statement given before the prosecutor is consistent with the one given before the police.
54. On 20 September 2013 the witness **N.G.**, testified before the court. He testified that on 17 February 2009 he was working as a waiter/barman in the restaurant ‘**R.**’. The witness was confused before the court and did not remember the events properly. Eventually, when confronted with his previous statements given before the police and before the prosecutor, the witness remained stuck to what he stated before in the investigative stage.
55. The court concludes that the statements of the witness given before the police and the prosecutor are more credible. He gave those statements shortly after the event took place, whereas the testimony of the witness before the court was given almost five years after the event. Further, the statements of this witness given before the police and the prosecution corroborate to the other evidence in the case file, especially the statement of **H.T.**

***The statement of the witness Z.M-Z., before the court***

56. The witness served as the lawyer of the defendant at the time he was questioned by the police on 19 February 2009. She stated that the defendant was questioned in conformity



with the procedural provisions and no violence was used against him in her presence. She further testified that it was the defendant who signed the statement in each page. She further confirmed that she signed the same statement too. Further, she stated that the statement accurately reflected what the defendant said during this interview.

57. This statement directly refutes the allegations of the defendant that he was beaten during the interview. Further the defendant denied to have signed the statement whereas his lawyer testified the contrary.

58. Thus, the court concludes that the testimony of this witness is credible and reliable because it corroborates with other evidence of the case, namely the statement of the investigator **Z.G.**, and the minutes of the statement of the defendant before the police.

***The statements of the witness R.S., before the police, prosecutor and the court***

59. **R.S.**, is the father of the victim. The statements of this witness are consistent with each other. The court finds this witness as a reliable witness. The court notes that his testimony generally relates to the facts which are not disputed by the parties in this case.

***The statements of witness Sh.S., before the police, prosecutor and the court***

60. **Sh.S.**, is the uncle of the victim. The statements of this witness are consistent with each other. The court finds this witness as a reliable witness. The court notes that his testimony generally relates to the facts which are not disputed by the parties in this case.

***The statements of witness V.S., before the police, prosecutor and the court***

61. **V.S.**, is the sister of the victim. The statements of this witness are consistent with each other. The court finds this witness as a reliable witness. The court notes that her testimony generally relates to the facts which are not disputed by the parties in this case.

***Statements of police officers and other officials***

62. The following police officers were summoned and testified before the court: **Z.G., Xh. R., B.M., B.Rr., D.K., I.Sh., M.R., R.H., S.V., Sh.B., and E.G.** Each of them explained his involvement in the case. Their statements are credible and only explain the written reports in the case file.

*The statement of witness U.K., before the court*

63. The witness is the 78 years old father of the defendant. He was proposed to be heard as witness by the defense in order to present an alibi for the defendant. He testified before the court on 19 September 2013. He stated as follows:
64. On the day when the victim was murdered the defendant was working at home in his garden with a shovel. On the critical day the defendant woke up, as the first one of the family, at around 8:00 hrs, had something to eat (soup and dip) together with his family, had some tea and then started working in the garden. The defendant worked there the whole day long. The witness and the defendant with other members of the family had lunch together. The weather on that day was good and it was not snowing and the soil was not frozen.
65. The court finds that the testimony of this witness lacks credibility. The court takes into account that though the witness states that he remembers some interesting details about 17 February 2009, he however does not remember the date, including the year at the time he gave testimony in front of the panel. Further, the court takes into account that the witness, being the father of the defendant, may have a strong motive to give the testimony like he did in order to protect his son. And then, his statement given before the trial panel is not supported by any other evidence apart from the testimonies of other close relatives (the mother and wife) of the defendant, and remains in contradiction with other evidence in the case file ie: the statement of **H.T.**, and **N.G.**, as well as by the statement of the defendant given before Kosovo Police on 19 February 2009.

*The statement of witness F.K., before the court*

66. **F.K.**, is the 82 years old mother of the defendant. She was proposed to be heard as witness by the defense in order to present an alibi for the defendant. She testified before the court on 19 September 2013 and stated as follows:
67. She doesn't know when the victim was murdered, but she knows that the defendant was at home all day long. She remembers that it was Thursday. She didn't know what was the date, month or year at the time she gave her testimony.
68. The court finds that the testimony of this witness lacks credibility. The court takes into account that her ability to remember events that took place almost five years ago is questionable. Further, the court takes into account that the witness being the mother of the defendant has a strong motive to give the testimony like she did in order to protect her son. And then, her statement given before the trial panel is not supported by any other reliable evidence apart from the testimonies of other close relatives of the defendant (the father and wife), and remains in contradiction with other plausible evidence in the case

file ie: the statement of **H.T.**, and **N.G.**, as well as by the statement of the defendant given before Kosovo Police on 19 February 2009.

***The statement of witness B.K., before the court***

69. The witness is the wife of the defendant. She was proposed to be heard as witness by the defense in order to present the alibi for the defendant. She testified before the court on 19 September 2013 and stated as follows:
70. The witness remembers that the defendant was at home on the day the victim was murdered. She stated that the defendant was doing works around the house. The defendant did not leave the house at all that day. She stated that the victim lived in their house approximately for two months. The victim was going to language school together with the defendant three times a week. She remembers that at the day **V.S.**, was murdered it was sunny.
71. The court finds that the testimony of this witness lacks credibility. The court takes into account that the witness being the wife of the defendant and the mother of his children has strong motive to give the testimony like she did in order to protect her husband. And then, her statement given before the trial panel is not supported by any other evidence apart from the testimonies of other close relatives of the defendant (the father and mother), and contradicts with other reliable evidence in the case file ie: the statement of **H.T.**, and **N.G.**, as well as by the statement of the defendant given before Kosovo Police on 19 February 2009.

***SMS Text messages***

72. The SMS exchanges between phone number **E**, in the possession of **H.K.**, and phone number **F** used by the victim show clearly that a love affair existed between the defendant and the victim.
73. Further, the content of the SMS text messages reveals that during the month of February 2009 the victim received several SMS text messages with threatening content. On 12 February 2009 the defendant wrote to the victim as follows ‘*you forgot all the good things I have done to you, that’s ok. You forgot the person who loved you with all his heart, but you’ll see what will happen without me. You have to know that I can return this to you whenever I want*’. Also on 13 February 2009, 10:43 the defendant writes to the victim ‘*you have to know that you are doing to yourselves this, you will see later who I am*’.
74. This evidence helped the court to reveal the motive of the defendant to murder the victim. The latter apparently wanted this relationship to stop, whereas the defendant could not imagine the victim marry someone else.

75. Moreover, this evidence shows that on 14 February 2009 the defendant wrote:

*‘My heart is dying and my soul is burning. There’s no one to look after me except the hoe. The spring shall come and on the grave flowers will hatch and the cuckoo will sing over the grave of H.,’*

This text shows how desperate the defendant was about the fact that the victim was planning to leave him. In addition it directly refutes the claim of the defendant that he lost his phone much earlier and never tried to regenerate the number from the mobile service provider.

### ***Metering of phone calls***

76. This evidence shows that on 19 February 2009 phone number **A** communicated with phone number **G**. The first number was in possession of the victim whereas the second number in the possession of the defendant. This evidence corroborates to the statement given by the defendant testifying that in the morning of 17 February 2009 he communicated with the victim and agreed to later meet in Prishtina.

### ***DNA Expertise reports***

77. Three expertise of DNA were conducted in this case: first one on 9 November 2009, second one on 17 May 2013 and the third one on 27 September 2013.

78. The first expertise was made for three blood stains E#9.1, E#9.2, and E #9.3 that were found inside the vehicle in the ownership of the defendant. The expertise concluded that the blood stains 9.1 and 9.2 belonged to the victim, whereas the blood stain 9.3 was a mixture of the DNA of the victim and an anonymous male.

79. The second DNA expertise concluded that the anonymous contributor of DNA was not the defendant. It is worth mentioning that the blood stain 9.3 was collected from the floor of the vehicle. Having in mind that this blood stain was collected from the floor it is possible that at the time the blood clotted on the floor, the floor was already contaminated with saliva, blood or other body fluids that were already in the vehicle. Saliva, blood or other body fluids could have been dropped on the floor of the vehicle by certain male individual. It has to be underlined that the defendant used that track to transport coal and it is likely that he transported many customers. Therefore, the DNA expertise showing that the blood stain 9.3 is composed of two DNA profiles does not exclude the criminal responsibility of the defendant. This evidence does not contradict with other evidence in the case file. Moreover, it only shows that the blood of the victim appeared in the truck of the defendant. It is highly possible that this blood of the victim appeared during the crime took place. Following only testimony of the defendant it is clear that the car was parked close to the place where the body was found later; the defendant tried to drag the victim

into the car overcoming her resistance. Only then he took the crowbar from the car and started hitting the victim in the head.

80. The third DNA analysis was conducted based upon the request of this trial panel. The court ordered the extraction, if any, of DNA profiles from evidence VN#3, VN#4, VN#5 and VN#9. However, the expert was not able to extract any DNA profiles from any of the abovementioned evidence.

#### ***Autopsy expertise report***

81. The autopsy report proves that the victim was murdered in a brutal and violent manner. The perpetrator acted in a ruthless and violent manner because the victim was struck several times in the head causing the victim grave bodily injury which caused her death. The body of the victim was disfigured so it was difficult to be identified even by the members of the family.

82. The opinion of the forensic expert was considered as highly professional, comprehensive and plausible. The expert explained the mechanism how the injuries were sustained and the murder weapon, excluding firmly the metallic bar that was found nearby and pointing up inter alia the stone and did not exclude metallic crowbar as a weapon that caused injuries.

#### ***Expertise reports on mental health of the defendant***

83. Two expertise reports were conducted regarding the mental health condition of the defendant. First one was conducted on 16 December 2009 and the second one on 21 October 2011.

84. The expertise report dated 16 December 2009 concluded:

1. *Based on the records available, we may conclude that the patients indicates psychopathic traits of personality that do not comply with the diagnostic criteria for a particular subtype of personality disorder as a specific category. Further, from his medical records there is no evidence he has suffered of any disease or mental disorder of the psychotic type and did not have any retardation in his mental development or any records that he was addicted to psychoactive substances respectively alcohol.*
2. *Considering the diagnostic assessment and other circumstances the criminal offence was committed we consider that the patient did not have diminished mental capacity in understanding and controlling his actions.*
3. *The psychotic display manifested by the patient in the current observation is a reaction under criminal circumstances towards the situation he faced and according to our assessment is predominantly determined by the conscious tendencies and do not have a genuine psychosis.*
4. *Hence the mental capacity of the patient has been maintained.*

85. The expertise report dated 21 October 2011 concluded:

- a. *We think that H.K., will be able to follow the judicial process, he will have many problems, somatoform complaints such as: bodily pain, complaints because of various stresses and traumas, complaints due to "loss of consciousness".*
- b. *The aforementioned complaints are present at all times in his statements and this will not disable him to take part in the judicial process.*

86. Both expertise reports reached the same conclusion that: the defendant is ready to stand the trial and that the defendant was mentally competent and does not have a reduced mental capacity.

87. The first expertise report concluded that the defendant had some elements of psychopathy but it does not completely fall into the category of psychopath. However, it is worth mentioning that psychopathy is not a mental disorder, but rather a personality disorder.

***The medical documentation prepared in Correctional Center in Dubrava at the time the defendant was detained***

88. The defense claimed that the accused was severely beaten by the Police so he admits the criminal offense that he had a lot of hematomas in different parts of the body. This claim is refuted by the evidence obtained from Correctional Center in Dubrava. A medical doctor made an overall checkup of the defendant on 21 February 2009. According to this medical documentation the defendant was in good health condition. No signs of violence were noticed by the doctor who performed the medical checkup.

***Response from Kosovo Police dated 24 January 2013***

89. The court, through the earlier presiding judge, wrote to the Kosovo Police station seeking information whether a phone was reported as lost by H.K., The police replied that there were no records with Kosovo Police that show that the defendant reported any phone as lost.

90. This evidence refutes the allegations of the defendant that the telephone was not being used by him.

## VII. Established facts

91. According to the evidence administered during the course of the main trial the court after careful assessment of the admissibly evidence, established the following facts:
92. **V.S.**, a young girl from the village of **S.**, Municipality of Lipjan., was introduced to **B.K.**, from **Zh.**, Village, Municipality of **V.**, (residing in Germany), through the intermediation of her uncle **Sh.S.**, and one of the members of the family of **B.K.** Initially, **V.S.**, and **B.K.**, got engaged in 2007 and subsequently they got married in 2008. **V.S.**, and **B.K.**, planned to live in Germany together, thus **B.K.**, started the preparations to arrange the documentation so that **V.K.**, could live together with him. **V.K.**, started attending a German language course in order to meet the requirements for visa. **B.K.**, asked from his uncle **H. K.**, to accompany **V.S.**, to language courses. **B.K.**, was paying for the costs of the transport incurred by the defendant while providing transport for **V.S.** The defendant was also accompanying **V.S.**, to the German embassy and other places when she needed to go. During this time **H.K.**, and **V.S.**, started a love affair. **H.K.**, promised **V.S.**, to divorce his wife and marry her, buy an apartment in Prishtina and then live together. This love affair lasted for some years.
93. After the marriage of **B.K.**, and **V.S.**, the latter moved to live in the house of the **K.family** in the village of **Zh.**, in **V. V.S.**, was living with the grandparents of **B.K.**, and with **H.K.**, **H.K.**'s wife and children. She spent some months living in this house without her husband.
94. **R.S.**, the father of **V.S.**, requested from **B.K.**, and his family to take **V.S.**, to Germany to live together as soon as possible, or that **B.K.**, would return to Kosovo so the pair would be able to live together. **R.S.**, stated that if this is not done till 31 December 2008, then **V.S.**, shall divorce **B.K.** The latter was not able to fulfill this condition and **V.S.**, informally divorced **B.K.**, and returned to her home in village of **S.**, in Lipjan. However, **V.S.**, continued to maintain contacts with **H.K.**, even after she returned to live at her home in village of **S.**, in Lipjan.
95. In the beginning of 2009 the victim started to work as a cleaning lady in a private house in Prishtina, str. **I.K.**, She was working from 08:00 in the morning until 16:00 in the afternoon. Sometimes she would leave earlier from her job because she had to travel back home.
96. During the month of February, 2009, the relationship between the victim and the defendant deteriorated. The victim started receiving threatening text messages (SMS). On 12 February 2009 the defendant wrote to the victim as follows '*you forgot all the good things I have done to you, that's ok. You forgot the person who loved you with all his heart, but you'll see what will happen without me. You have to know that I can return this to you whenever I want*'. Also on 13 February 2009, 10:43 the defendant writes to

the victim ‘‘you have to know that you are doing to yourselves this, you will see later who I am’’.

97. On 17 February 2009, the victim with her phone number **A** communicated with the defendant who was using number **G**. They agreed to meet in Prishtina in the afternoon. Somewhere between 14:00 and 15:00 the victim and the defendant met before the entrance of the house she was working. They had a heated conversation with each other. Some minutes later they went to restaurant ‘‘**R**.’’ in the vicinity and had coffee together. After some minutes, up to a maximum of one hour, they left the restaurant and went towards the martyr’s cemetery. They entered the van belonging to the defendant and headed for the village of **Z.**, Municipality of Prishtina. This village is approximately 3.3 kilometers from Prishtina, **I.K**<sup>3</sup>.
98. At the time the defendant and the victim arrived in the village of **Z.**, they started to argue about their relationship. The victim wanted to terminate this relationship and start a new life. The defendant disagreed. Seeing that the victim was determined to continue her life without him he decided to kill her. Thus, the defendant struck the victim several times on her head with a heavy object causing grave bodily injury thus depriving the victim of her life. The motive of the murder was that the defendant could not image his life without the victim and seeing the latter to start a new life with someone else. The murder was committed in a ruthless and violent manner causing the victim grave bodily injury which caused the death of the victim.
99. After the murder took place the defendant tried to conceal the identity of the victim by taking the purse out of her and throwing it in the woods as well as taking he jacket and throwing it some meters away.

### **VIII. Legal qualification of the act charged**

100. The indictment charges the defendant of Aggravated Murder under Article 147(5) and (9) of CCK. This article reads as follows:

***Aggravated Murder***

***Article 147***

*A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed on any person who:*

...

*5) Deprives another person of his or her life while acting ruthlessly and violently;*

...

*9) Deprives another person of his or her life because of unscrupulous revenge or other base motives;*

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<sup>3</sup> See <https://maps.google.com> direction: Prishtina, Isa Kastrati to **Z.**, Prishtina.



101. In the present case the perpetrator acted ruthlessly and violently because he repeatedly struck the victim in the head and body with a heavy object causing her grave bodily injury, other penetrating and lacerating injuries, hematomas in different parts of the body, fractures in skull as well as severe injury to the brain thus depriving the victim of her life. The victim had a painful death. It is clear that this murder was committed in a ruthless and violent manner. Therefore this element of aggravation is consumed at the present case.

102. Further, the perpetrator committed this criminal offence for low motives. The defendant had a long relationship with the wife of the son of his brother, who decided to leave him and start a new life. The defendant based on low motives and unscrupulous revenge deprived the victim from her life. He could not imagine see the victim start a new life even though this was the will of the victim. Thus, the second element of aggravation is fulfilled too.

### **IX. Sentencing:**

103. In order to impose the punishment for the defendant, pursuant to Article 64 of CCK, the court has to impose the punishment within the limits provided by law. Article 147 of CCK determined that for aggravated murder ‘*A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed*’. So according to the provisions of CCK (2004) the minimum punishment for the criminal offence of Aggravated Murder is 10 and maximum is 20 years as described in Article 38 (1) of the CCK; the other possibility is long-term imprisonment that varies from 21 to 40 years as described in Article 37(2) of the same code.

104. On 1 January 2013 the Criminal Code of Kosovo entered into force. Article 179 of new Criminal Code of the Republic of Kosovo for the criminal offence of Aggravated Murder has established the punishment of minimum 10 years to 25 years as described in Article 45(1) with the alternative of life long imprisonment.

105. The court concludes that the Criminal Code of Kosovo (2004) is more favorable legislation thus applicable in the present case. Considering mitigating and aggravating circumstances, as described below, the panel came to the conclusion that based on the old CCK only long-term imprisonment of 22 years is proportionate to the gravity of the criminal offence. Considering exactly the same set of mitigating and aggravating circumstances but under new criminal law the adequate punishment would be the same.

106. The court concludes that the sentence of 22 years imprisonment is proportionate to the gravity of the offence and the conduct and circumstances of the offender. The following circumstances were taken into account as aggravating circumstances in imposing the punishment for the defendant:

- The victim was killed in a ruthless and violent manner leading to a painful death and disfigurement of the body of the victim
- The defendant and the victim had an questionable love relationship with a family member
- The victim was a young girl and had her life in front of her

107. The following circumstances were taken into account as mitigating circumstances in imposing the punishment for the defendant:

- The court decided to take into account as mitigating circumstance the fact that the defendant spent a very long time in detention on remand. Thus, the court on behalf of the state as a remedy for his Human Right violation decided to impose a more lenient punishment in the present case.
- The defendant has no previous criminal record
- The defendant is married and has children as well as old parents that he has to take care of.

## **X. Costs of Criminal Proceedings**

108. The court decided to order the defendant to pay the cost of criminal proceedings in the amount of 100 euros as a lump sum. This is not the entire amount of court proceedings but the court pursuant to Article 102(4) of CPMK decided to partially relieve the defendant from the costs of criminal proceedings because higher payment will jeopardize the support of the family of the defendant. According to the statements given before the court no-one in the family is working: the father and the mother of the defendant are receiving small pensions, the wife of the defendant is a house wife and his children a minors.

## **XI. Property Claim**

109. Since the information collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court pursuant to Article 112(2) of CPCK decided to instruct the injured party that he may pursue the entire property claim in civil litigation.

## **XII. Conclusion:**

110. Having carefully scrutinized all evidence of the case and having heard all the proposed witnesses the trial panel concluded that it was proven beyond reasonable doubt that the defendant committed the criminal offence as charged in the indictment, therefore the court decided as in the enacting clause.

**Arkadiusz Sedek**  
**Presiding EULEX Judge**

**Nora Bllaca,**  
**Kosovo Judge**

**Willem Brower,**  
**EULEX Judge**

**Natasa Malasevic**  
**Court Recorder**

**LEGAL REMEDY:** Authorized persons (defendant, prosecutor and injured party) may file an appeal against this judgment to the Court of Appeals through this court. The appeal may be filed within fifteen days (15) from the day the copy of this judgment has been served.