

## **BASIC COURT OF PRISTINA**

**PKr. No. 383/09**

The judgments published may not be final and may be subject to an appeal according to the applicable law.

**9 September 2014**

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

**BASIC COURT OF PRISHTINA/PRIŠTINA – Serious Crimes Department** in the trial panel composed of the EULEX Judge Piotr Bojarczuk as a Presiding Judge, the EULEX Judge Mariola Pasnik and Kosovo Judge Nora Bllaca-Dula as panel members, assisted by the EULEX Legal Assistant Musa Bajraktari, in the criminal case PKR. 383/2009 against the following accused charged with the indictment of the State Prosecutor Office PP. nr. 465-6/09, dated 13 August 2009, and confirmed with a ruling of Confirmation Judge, KA. Nr. 348/09, dated 05.10.2009, in the criminal case against:

1. **A. C.**, father`s name xxxx, mother`s name xxxx mother`s maiden name xxxxxx, born on xxxxxx in xxxxxx, accused of the following criminal offences:

1.1. ‘that On 22.05.2009, at around 13:40 hours, in the village Zabel i Ulët, Municipality of Drenas, near the village mosque, because of the aggravated relations and continuous conflicts between the defendant A.C., with the daughter of the deceased R. A., Q. A., to whom the defendant A.C. was married, and because of the continuous violence that was used on her by her husband, she left her house many times and she went at her father`s place, with the vehicle type “Mercedes” , grey colour, property of the second defendant, which was used by the defendant R. A. C. left his house in the village Korroticë, he went to the village Zabel i Ulët near the mosque, where he parked the vehicle and waited about 30 minutes for the father (now the deceased) of the ex-wife of the defendant A.C., who at that time was inside the mosque praying, whose vehicle was noticed that was parked before by the defendant A.C., therefore he knew that he was there, so when the deceased stepped out of mosque and approached his vehicle, because of unscrupulous revenge, by thinking that he was the reason why his spouse was not returning home, the

defendant A.C. with intention to deprive him of his life, approached the deceased and at a distance of 3-4 metres away, has fired four times with automatic gun towards him, by hitting him with four bullets on the vital parts of his body, by causing him deadly injures, because of which the person died instantly. After the committal of the crime with the same vehicle he returned to village Korroticë at his house.

which was classified in the Indictment as Aggravated murder under Article 147, item 9 of the Criminal Code of Kosovo (hereinafter “CCK”);

1.2. ‘that on the date, time and place described above in the item 1, without having a valid permit issued by the competent authority (the Ministry of Interior of Kosovo) for authorized ownership of such weapon, he was in the possession of the automatic firearm “AK-47”, (calibre 7.62x39mm with serial number 09809-84) which he took it from his home and committed the criminal offence described above under item 1’,

which was classified in the Indictment as Unauthorized ownership, control, possession or use of weapons under Article 328 Paragraph 2 of CCK in conjunction with the criminal offence described above under item 1;

2. **R. O.**, father’s name xxxx, mother’s name and maiden name xxxx, born xxxx in xxxx, accused of the following criminal offence:

2.1. ‘that on the day, time and place described in item I.1 above he has taken part in the assistance, by waiting inside the vehicle about 30 minutes, the first defended caused the death of deceased R. A.’,

which was classified in the indictment as criminal offence of assisting Aggravated Murder under Article 147 paragraph 1, item 9, in connection with Article 25 of CCK;

After having held the main trial hearings in public on 15,18, November and 11 December 2013 and 17, 21, 23, January, 13 February, 07 March 2014, 11 April 2014, 02 July 2014 and 5<sup>th</sup> September 2014;

In the presence of:

- the accused A. C. and his defence counsel D. R.;
- the accused R. O. and his defence counsel I.D. on 07 March 2014 the accused R. O. was presented by B. A., and
- the injured party Z. A. and his representative R. G.;

After the trial panel deliberation and voting held on 05 September 2014, based on Article 359 Paragraph 1 of the Criminal Procedure Code of the Republic of Kosovo (hereinafter CPC);

On 9 September 2014, pursuant to Article 359 of the CPC, pronounces in public the following:

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

### **I. A. C. is GUILTY because:**

**on 22.05.2009, at about 13:40 hours, in the village Zabel i Ulët, Municipality of Drenas, near the village mosque:**

**he was in the possession of the automatic firearm “AK-47 calibre 7.62x39mm with serial number 09809-84 without a Weapon Authorisation Card or a permit which was a category A2 weapon as defined in the Article 4 Paragraph 1 subparagraph 1.1.2 of the Law on Weapons of 17 September 2009 (Law No. 03/L-143), and:**

**he intentionally used the AK-47 in such a way that he aimed and fired four shots at R. A. who was standing in front of the mosque’s yard, while opening his car’s door where approximately 20 other people were leaving the mosque after performing Friday prayers;**

**and by this action A. C. deprived with a direct intent the deceased R. A. of his life by hitting him with four bullets on the vital parts of his body, by causing him deadly injures, because of which the person died instantly;**

**and by doing so A. C. committed in concurrence the following criminal offences:**

- I.1. **Unauthorized possession of weapon under Article 374 Paragraph 1 of the CCRK;**
- I.2. **Aggravated murder under Article 147, item (9) of the CCK;**

**II. A. C. is hereby SENTENCED:**

**pursuant to Article 3 paragraph 2 of the Criminal Code of the Republic of Kosovo entered into force on 1 January 2013 (hereinafter “CCRK”) in conjunction with Article 374 Paragraph 1 of CCRK for the criminal offence of Unauthorized possession of weapon under Article 374 Paragraph 1 of CCRK described under I.1 to two (2) years of imprisonment;**

**II.1. pursuant to Article 3 paragraph 2 of the CCRK in conjunction with Article 147, item 9 of the CCK, for the criminal offence of Aggravated murder to Long-Term Imprisonment for a period of 25 (twenty five) years;**

**II.2. pursuant to Article 3 paragraph 2 of CCRK in conjunction Article 71 Paragraphs 1 and 2.1 of the CCK for both of the above offences A.C. is hereby sentenced to an aggregate punishment of 25 (twenty five) years of imprisonment.**

**III. Pursuant to Article 364 Paragraph 1 subparagraph 1.3 of CPC R. O. is hereby ACQUITTED because it has not been proven to the requisite standard or beyond reasonable doubt that on 22.05.2009, at about 13:40 hours, in the village Zabel i Ulët, Municipality of Drenas, near the village mosque, he has taken part in the assistance, by waiting inside the vehicle about 30 minutes, while the first defendant caused the death of deceased R. A.**

**IV. Pursuant to Article 374 Paragraph (3) of the CCRK, the automatic firearm “AK-47” calibre 7.62x39mm with serial number 09809-84 shall be forthwith confiscated and destroyed.**

- V. The Injured Party may pursue any claims for compensation through the civil courts.**
- VI. Pursuant to Article 365 paragraph 1, item 1.5 of the CPC the period of deprivation of liberty of A. C. from 22 May 2009 to 09 September 2014 shall be included in the aggregate punishment of long-term imprisonment imposed on him.**
- VII. Pursuant to Article 453 Paragraphs 1 and of the CPC, the cost of the criminal proceedings shall be partially reimbursed by A. C. in a scheduled amount of Euro 100 and the remaining cost of the criminal proceedings shall be paid from the budgetary resources.**

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## **I. Procedural Background:**

1. On 22 May 2009, at around 13:40, in village Zabel i Ulet, Drenas Municipality, near the mosque of the village, the victim R.A. was shot dead.
2. On 22 May 2009, after several investigative steps Kosovo Police initially arrested A.C. (around 15:00 o'clock) and subsequently R.O. (around 19:00 o'clock). The police suspected that they were both involved in the murder of the victim R.A. Upon a court order both defendants were placed in detention on remand which was extended several times until the announcement of this judgment by the court.
3. On 24 May 2009 Kosovo Police filed a criminal report No. 2009-AG-0424 to Pristina Public Prosecution Office alleging that the defendant A.C. murdered the victim R.A., whereas the other defendant, R.O., assisted A.C. in this murder.
4. On 13 August 2009 Pristina Public District Prosecution Office filed the Indictment PP. nr. 465-6/09 charging the first defendant, A.C., with Aggravated Murder, in violation of Article 147, paragraph 1, item 9 of CCK and Unauthorized Ownership, Control, Possession, or Use of Weapons, pursuant to Article 328 Paragraph (2) of the CCK, whereas the second defendant, R.O., was charged with Assistance to the commission of the criminal offence Aggravated Murder, in violation of Article 147 paragraph 1, item 9, in connection with Article 25 of CCK.
5. On 5 September 2009, Pristina District Court issued its ruling KA.Nr.384/09 confirming the indictment in its entirety. The case proceeded to main trial. Several hearings were conducted by trial panel composed of local judges but the case did not come to its conclusion until October 2013. Subsequently, the defendant filed a petition to EULEX Assembly of Judges to take the case over.
6. On 8 October 2013, the President of the Assembly of EULEX Judges pursuant to the Law on Jurisdiction, Case Selection and Case Allocation on EULEX Judges and Prosecutors in Kosovo, (Law No. 03/L-053) decided to assign the case to EULEX Judges.

7. The new composition of the trial panel conducted main trial hearings on 15, 18, November and 11 December 2013 and 17, 21, 23, January, 13 February, 07 March 2014, 11 April 2014, 02 July 2014 and 5<sup>th</sup> September 2014.
8. On 5 September 2014 the court announced its verdict in an open session in the presence of the abovementioned parties. The first defendant A.C. was found guilty as charged, whereas the second defendant was acquitted of all charges.

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

9. The Law of Courts, Law no. 03/L-199 (LC) entered fully into force on 1 January 2013 (Article 43). This regulates the territorial and substantive jurisdiction of the Court pursuant to Articles 9, 11 and 15.
10. The offence falls within the substantive and territorial jurisdiction of Basic Court of Prishtina (prior to 1 January 2013 the District Court of Prishtina). The offence of Aggravated murder carries a minimum sentence of at least 10 years and falls under the subject matter jurisdiction of the Basic Court in the first instance (see Article 22 Paragraph (1.53) of the new Criminal Procedure Code No. 04/L-123 (CPC) and Article 15 Paragraphs (1.11) and (1.21) of the LC). As the Indictment alleges that offence was committed in a place called “Zabel i Ulët” village, Municipality of Gllogoc, it falls within the territorial jurisdiction of the Basic Court of Prishtina under Article 29 Paragraph (1) of the CPC and Article 9 Paragraph (2.1) of the LC.
11. The Trial Panel of the Basic Court of Prishtina was correctly composed of a mixed panel of two EULEX Judges and one Local Judge in accordance with Article 4.7 of the Law on Jurisdiction. No issue was raised by the parties regarding the composition of the panel.

### **III. The Applicable procedural law:**

12. Addressing the issue of applicable procedural law in this case, the trial panel notes that on 1 January 2013 a new Criminal Procedure Code came into force in Kosovo. The Criminal Procedure Code (Criminal No. 04/L-123) (CPC) replaced the Provisional Criminal Procedure Code of Kosovo (as amended) (UNMIK Regulation 2003/26) (CPCK) (Articles 545(2) and 547 of the CPC). Transitional and saving provisions apply which determine the application of the procedure under the CPC and the continued application of the CPCK in specific circumstances.
13. As the indictment was confirmed by final decision before 1 January 2013, Article 541 (2) determines the use of CPC, therefore, the court decided to conduct the proceedings in accordance with the provision of the new Criminal Procedure Code of Kosovo (2013).
14. The Legal Opinion of the Supreme Court of Kosovo No.56/2013 dated 23 January 2013. Point 1 of this legal opinion states:

“[f]rom January 1, 2013, in all on-going criminal proceedings initiated prior to entry into force of the present Code and in cases to which indictment has been filed and confirmed ...the provisions of the new Code shall apply *mutatis mutandis* (Article 540, 541 of the CPC) except in cases where the main trial has already commenced (Article 541.1 of the CPC)” and

“article 545 of the CPC is considered a general rule (*lex generalis*). Thus it is understood to be a general rule that the filing of the indictment indicates, whether the old or new Code is applicable” and

“in relation to that, Article 541 of the CPC is considered *lex specialis*, specifying that the new Code will be applicable in cases, when the indictment was filed and confirmed prior to the entry into force of the CPC (paragraph 2). Both cases refer to the situation on the ground that main trial has not yet been started and thus will be conducted in compliance with the provision of the new Code”.

15. The Trial Panel treated the Supreme Court's decision with high respect, but the opinions of the Supreme Court are not binding. Nevertheless, Trial Panel held that Article 545 is the *lex generalis* and Article 541 paragraph 2 is the *lex specialis*, which is also in line with interpretation of the legal opinion of Supreme Court that forms strong base for the court to proceed according to the New Code.
16. When we look at the beginning of both Codes, *Chapter one: Fundamental Principles and Definitions*, we will see that the general principles are the same for both Codes. The main difference which is visible in comparison with both codes is the regulations about direct examination and cross- examination of the witnesses. So the Trial Panel decided that in this case the New Code protects the interest of all parties in a better way than the Old Code. The second reason is that the general rule in every means of law is that the New Law is better than the Old one. The third reason is that we start the Main Trial from the beginning, and completely new panel members so for the Panel this Main Trial is not the continuation of the old trial; it is a new Main Trial. Thus the new code should be applied.
17. The panel also highlights that if we consider this main trial as a one that has already commenced, it would be in violation of Article 311 paragraph 3 of the CPC that reads "... or if it is held before a new presiding trial judge, the main trial shall commence from the beginning...". Certainly, at the moment the case was assigned to EULEX Mobile Judges Unit it goes without saying that the case is being adjudicated before new presiding judge and taking into account explicit wording of the law "*the main trial shall commence from the beginning*", it leaves no room for other interpretation for the court but to apply new Code and that the main trial begins anew.

#### **IV. Established facts by the trial panel:**

18. Initially the court will present the facts which have been established thereafter it will present the evidence administered during the main trial as well as the analysis of those evidence which resulted in establishing the facts of the case.

19. It was not disputed between the defendant A.C. and the witness Q.A. that they were initially lovers for some years and that later they got married. Unfortunately, their relationship deteriorated, especially after their first child was born in 2008. The defendant A.C. used physical and psychological violence against his wife repeatedly until his wife was forced to leave him and go to live in her parents' house. The custody of the children was entrusted to the defendant A.C. This couple split and went back together several times. The imam O. M. mediates several times between the defendant A.C. and Q.A. as well as the family members of the couple. However, it seems that their relationship was unstable and for that reason the last time they split was January 2009 and did not go back together anymore.
20. The defendant A.C. was asking from his wife to go back to the house several times. The couple continued to have communication between themselves even after January 2009. However, the witness Q.A. was refusing to go back and live together with A.C.. The latter was of the opinion that the late R.A., the father of his wife, was an obstacle for the couple to get back together. However, the court found that there is nothing to substantiate this allegation. In contrary, the witness O. M. testified that initially the victim R.A. was trying to reconcile the couple. The other witness Q.A. stated that the victim stated to her that it was her decision whether to go back to her husband or not.
21. Later the couple divorced in court and the custody of the children remained with the defendant A.C.
22. On the critical day, on 23 May 2009, the defendant A.C. after spotting the car of the victim R.A. parked near the mosque in the village Zabel i Ulet, Drenas Municipality went and parker near the mosque and waited for his victim to come out of the mosque. He was waiting outside the mosque in a gray Mercedes that was in the ownership of the other defendant R.O. At approximately 13:40 the victim R.A. came out of the mosque and wanted to enter his car. At that moment the defendant A.C. shot several time the victim R.A. who died on the spot. After the shootings he left the crime scene and headed towards Komorane and went home. At that time he sent an SMS text message to his wife notifying her that he killed her father using offensive language "come and pick up the rotten body at the mosque". This shows that the murder was premeditated and planned

well in advance. The murder was committed out of an unscrupulous revenge against the father of his wife. The court considers that the purported harm that was done by the victim R.A. to the defendant A.C. and the reaction of the later by killing the victim is widely disproportionate. Killing someone just because the victim is supporting his daughter is shocking and as such it is a clear unscrupulous revenge.

23. As far as the defendant R.O. is concerned the prosecution, which has the burden of proof, was not successful in proving beyond a reasonable doubt that the defendant R.O. was present and assisted A.C. on the critical day when the murder occurred. The prosecution presented some evidence which raise some suspicions that the defendant R.O. was on the critical day at the crime scene: his car was present at that day on the critical moment near the crime scene, he tested positive for gunshot residues in his right hand and a witness testified that he thought there were two persons at the crime scene at the day of the murder without being sure without having identified any of the persons who were in the car. All of these elements are enough to support at best a well-grounded suspicion that the criminal offence took place, but never enough to meet the standard of proof beyond reasonable doubt. The thesis of the prosecutor was seriously undermined with the findings of experts from Croatia who testified that it was possible to transfer the gunshot residues through a handshake or by touching afterwards the rifle from which the shots were made. In addition, the thesis of the prosecutor was further diminished from the responses of experts from Albania who testified that no gunshot residue was found on the clothes of the defendant R.O. Further, the expert testified that lapse of 5 years period of time since the alleged gunshots were fired does not render impossible finding gunshot residues.

24. Moreover, the defense presented many witnesses, who even though had enough reasons to testify in favor of both defendants, because they were related, the prosecution was not able to put forward anything during cross examination which would diminish their theory.

25. Therefore, having in mind all these circumstances, the court was obliged to acquit the defendant R.O. due to lack of conclusive evidence which would prove beyond a reasonable doubt the guilt of this defendant. The principle of *in dubio pro reo* applies in the present case.

## **V. Evidence Administered at the Main Trial:**

26. The Court heard the following witnesses:

- Q.A.
- Sh. G.
- A. J.
- A. H.
- F. F.
- Expert Witness – Doctor N. H.
- KP Officer – L. R.
- KP Officer – E. G.
- KP Officer – R.B.
- KP Officer – Sh. B.
- O.M.
- A. C.
- M. C.
- Expert Witness – Doctor N.M.

27. The Court heard statements from both defendants:

- A.C.
- R.O.

28. The following Expert and Forensic Reports:

- Medical Examiner's Office-Autopsy Report-MA09-136 R.A. -examination performed by Dr. M. G., DSc., Forensic Medical Doctor-Eulex 00643, dated 27 May.2009, (tagged as binder 3, page 30);
- Forensic Photographer: D. Sh.- Medical Examiner's Office- Department of Justice, MA09-136, dated 23 May 2009, (tagged as binder 2);

- Forensic Photographer: A. W., Death Investigator: D. K., Medical Examiner Office-EULEX Justice, Ex09-037, 22 May 2009, Location: Zabel I Poshtem, (tagged as binder 2);
- Crime Scene Section Autopsy Report-Regional Forensic Unit-Prishtina, dated 23.05.2009, (tagged as binder 3, page 30);
- Report of Inspection site-Regional Forensic Unit-Prishtina, dated 22.05.2009, (tagged as binder 3, page 30);
- Minutes of suspect (A.C.) interrogation compiled by police officer L. R. #6240 of RIU in Prishtina, case no. 2009-AG-0424, dated 23.05.2009 (tagged as binder 3, page 29);
- Minutes of suspect (R.O.) interrogation compiled by police officer E. M. #4775 of RIU in Prishtina, case no. 2009-AG-0424, dated 23.05.2009 (tagged as binder 3, page 29);
- Ruling on detention of a person against the arrested A.C., arrested on 22.05.2009, at 15:00 h, dated 22.05.2009 (tagged as binder 3, page 29);
- Ruling on detention of a person against the arrested R.O., arrested on 22.05.2009, at 19:00 h, dated 22.05.2009 (tagged as binder 3, page 29);
- Official Memorandum from Police Officer L. R. #PK6240-CRIMINAL REPORT, dated 24.05.2009 (tagged as binder 3, page 28);
- Initial/Incident report from Drenas Police Station dated 22/05/09 (tagged as binder 3, page 28);
- Kosovo Police Flash Report, dated 22.05.2009 (tagged as binder 3, page 28);
- KP Officer's Report Mr. A. M. KPS7377, dated 22.05.2009 (tagged as binder 3, page 28);
- KP Officer's Report Mr. R. M. KPS 2524, dated 22.05.2009 (tagged as binder 3, page 28);
- KP Officer's Report Mr. E. K. KPS #6620, dated 22.05.2009 (tagged as binder 3, page 28);
- Crime scene department-Description of Photos, dated 28.05.2009 (tagged as binder 3, page 28, original photos also can be viewed in binder 2);
- Forensic Examination Report-Ballistic examination of the Automatic weapon AK-47, Lab no. 2009-1181, dated 06/07.2009 (tagged as binder 3, page 26);

- Croatian Examination Report of GSR analysis, reference no: 511-01-115/1-6295/09.DT Zagreb, 18 August 2009 (tagged as binder 3, page 25);
- University Clinical Centre of Kosovo-Department of Psychology, Report on the mental situation of A.C., ref no. 145 dated 20.05.2010 of the Dermatologist Dr. Y. B., Dr.sc. N. Sh. Neuropsychiatrist, and Mr.sci. N. M. Psychologist, (tagged as binder 3, page 24);

29. The following miscellaneous, rulings and orders:

- Certificate on Temporary Seizure of items from the suspect A.C., RCU-Prishtina, Case No: 2009-AG-0424, dated 23.05.2009, Prishtine, (tagged as binder 3, page 28);
- Certificate on Temporary Seizure of items from the suspect R.O., RCU-Prishtina, Case No: 2009-AG-0424, dated 23.05.2009, Prishtine, (tagged as binder 3, page 28);
- Request for expertise/analysis of evidence in the crime laboratory centre of Kosovo, dated 17.06.2009 (tagged as binder 3, page 26);
- Order to Crime Laboratory Centre in Prishtina to perform ballistic examination, GJPP.no.136/09, Prishtie, dated 17.06.2009 (tagged as binder 3, page 26);
- Ruling in Initiation of Investigations, PP.no.465-6/2009, dated 26.05.2009, Prishtine, (tagged as binder 3, page 23);
- Indictment of the State Prosecutor Office. PP. nr. 465-6/09, dated 13.August.2009 (tagged as binder 3, page 20);
- Confirmation of Indictment with a ruling of Confirmation Judge, KA. Nr. 348/09, dated 05.10.2009 (tagged as binder 3, page 20);
- Minutes from the session for the confirmation of the Indictment dated 05.10.2009 (tagged as binder 3, page 20);
- Order to establish Main Trial, PKR. No. 383/09, dated 30 October 2013, (tagged as binder 4, page 31);
- Proposal by defence counsel Mr. I. D. to summon as a witness Mrs A. C. and M. C., dated 18.11.2013, (tagged as binder 4, page 31);

- Court Order to identify the whereabouts of evidence named as NV#14.1, NV#14.2 and the grey colour shirt, dated 17/12/2013 (tagged as binder 4, page 24);
- Request to the competent authorities of ALBANIA for Mutual Legal Assistance in Criminal Matters, dated 27 December 2013 (tagged as binder 4, page 24);
- Request to the competent authorities of ALBANIA for Mutual Legal Assistance in Criminal Matters to perform expertise of evidences, dated 30 January 2014 (tagged as binder 4, page 15);
- Maternity leave approval for Q. A. by Centre for Preschool Education “Ardhmeria”, No. 47106, dated 15.08.2006, Drenas, (tagged as binder 4, page 22);
- Decision of Director of Education Directorate with regard to the approval of unpaid leave for Q.A., no 467/1, dated 09.01.2009, Drenas (tagged as binder 4, page 22);
- The judgment of Prishtina District Court C.no.549/2009, dated 25.06.2009, for the termination of marriage that took place on 12.04.2006 between Q. C., maiden name A. as claimant and A.C. (tagged as binder 4, page 22);
- Decisions of the Directorate for Health and Social Welfare, Social Welfare Centre Glogovac, QPS No.870, dated 13.04.2010, through which D. C. was appointed as the custodian of minors L. (A.) C. born on xxxx and H. (A.) C., born on xxxx (tagged as binder 4, page 22);
- Death Certificate of the A.’s father, now the deceased H. C. who passed away on 28.02.2011, dated 02/12/2013 (tagged as binder 4, page 22);
- Proposal for witness hearing Mr. O.M. dated 03.02.2014. (tagged as binder 4, page 14);
- Request addressed to all Basic Court in Kosovo to disclose previous criminal records if any for A.C. and R.O. dated 03.February 2014 (tagged as binder 4, page 14);
- Authorisation for replacement of defence counsel att. I. D., dated 07.03.2014, (tagged as binder 5, page 28);
- Expert Witness Report from ALBANIAN, for the examination of samples taken from firearm residue, no. 1059 Prot, dated 10.03.2014, (tagged as binder 5, page 26);

- Request from A.C. to return his belongings, dated 20.03.2014, (tagged as binder 5, page 26);
- Authorization for replacement of defense counsel att. I. D., dated 10.04.2014, (tagged as binder 5, page 23);
- Request to the competent authorities of CROATIA for Mutual Legal Assistance in Criminal Matters to express complimentary expertise opinion, dated 14 April 2014 (tagged as binder 5, page 21);
- Request to the competent authorities of ALBANIA for Mutual Legal Assistance in Criminal Matters to express complimentary expertise opinion, dated 14 April 2014 (tagged as binder 5, page 20);
- MLA Response from ALBANIA-Delivery of Complementary Expertise opinion, dated 19.05.2014, (tagged as binder 5, page 17);
- MLA Response from CROATIA -Delivery of Complementary Expertise opinion, class: 720-03/14-01/2847, ref no. 514-06-0201-14-04, dated 23.05.2014, (tagged as binder 5, page 14);
- Ruling of Extension until the judgment becomes Final, dated 09 September 2014, (tagged as binder 5, page 9);
- Enacting Clause of Announced Judgment dated 09 September 2014, (tagged as binder 5, page 9);

30. The following witness statements and records of main trial:

- Witness Statement of Mr. Sh. G. given in front of Police, dated 22.05.09 (tagged as binder 3, page 28);
- Witness Statement of Mr. F.F given in front of Police, dated 22.05.09 (tagged as binder 3, page 28);
- Record on Examination of the Defendant A.C. in front of Public Prosecutor, dated 04.06.2009 (tagged as binder 3, page 22);
- Record on Examination of the Defendant R.O. in front of Public Prosecutor, dated 09.06.2009 (tagged as binder 3, page 22);
- Witness Statement of Mr. A. H. given in front of Public Prosecutor, dated 24.06.09 (tagged as binder 3, page 21);
- Witness Statement of Mr. A. J. given in front of Public Prosecutor, dated 24.06.09 (tagged as binder 3, page 21);

- Witness Statement of Mr. Sh. G. given in front of Public Prosecutor, dated 12.06.09 (tagged as binder 3, page 21);
- Witness Statement of Mrs. Q.A. given in front of Public Prosecutor, dated 17.06.09 (tagged as binder 3, page 21);
- Witness Statement of Mr. F.F given in front of Public Prosecutor, dated 12.06.09 (tagged as binder 3, page 21);
- Record of the Main trial dated 15 November 2013, (tagged as binder 4, page 29);
- Record of the Main trial dated 18 November 2013, (tagged as binder 4, page 29);
- Record of the Main trial dated 11 December 2013, (tagged as binder 4, page 22);
- Record of the Main trial dated 17 January 2014, (tagged as binder 4, page 19);
- Record of the Main trial dated 21 January 2014, (tagged as binder 4, page 18);
- Record of the Main trial dated 23 January 2014, (tagged as binder 4, page 17);
- Record of the Main trial dated 13 February 2014, (tagged as binder 5, page 30);
- Record of the Main trial dated 07 March 2014, (tagged as binder 5, page 27);
- Record of the Main trial dated 11 April 2014, (tagged as binder 5, page 19);
- Record of the Main trial dated 02 July 2014, (tagged as binder 5, page 15);
- Record of the Main trial dated 05 September 2014, (tagged as binder 5, page 8);
- Record of the Main trial dated 09 September 2014, (tagged as binder 5, page 7);
- Closing speech from Prosecutor's Office, PP.no. 465-6-2009, PKR.383/2009, dated 05 September 2014, (tagged as binder 5, page 10);
- Closing speech from att. D. R., PKR.383/2009, dated 05 September 2014, (tagged as binder 5, page 10);
- Closing speech from att. I. D., PKR.383/2009, dated 05 September 2014, (tagged as binder 5, page 10);

## **VI. Assessment of evidence:**

### *The testimony of witness Q.A.*

31. On 17 June 2009 the witness Q.A. stated as follows before the prosecutor:

Q.A. and A.C. met each other when Q. was nineteen (19) years old. They were lovers for five years and then they married. During this time they had some problems which were not serious. After the witness gave birth to her first child in xxxx the problems started. During four years that they lived together A. often beat Q. because of being jealous and for other reasons as well. The witness was subject to psychological violence as well. One time the witness was forced to jump of the window after being beaten severely by A.C.. Q. thought that A. was going to kill her and that is the reason why he jumped of the window. She suffered several fractures in her body. A.C. was later convicted for this event and sentenced with a suspended sentence. A.C. and Q.A. were separated several times. Q.A. gave birth to the second child on 2008. In 2009 Q.A. separated again from A.C. because the latter was very jealous and was beating her. However, they did not stop the communication and A.C. was asking Q.A. to go back home and live together again. A.C. was blaming Q.A. and R.A. on why he was convicted by the court for the violence he used against Q.A..

At the critical day A.C. called Q.A. at around 13:30. The latter did not open the telephone to A. Then an SMS was sent by A.C. to Q.A. saying "Come to the mosque and pick up the rotten body".

Q.A. heard from someone that at the day of the murder A.C. was together with R. at the crime scene. She even heard that a third person was present as well.

Further, Q.A. was never told by her father to separate from A. The victim always told her that it was her decision to go back with her husband or not.

32. On 15 November 2013 the witness Q.A. testified in court before this trial panel. The witness only repeated the answers that she gave before the prosecutor. No new evidence was put forward to the court by this witness.
33. The court concludes that the testimony of this witness is credible. The witness and the defendant A.C. admitted that they had an unstable relationship for a while. Further, it is not disputed that the defendant A.C. employed violence against this witness. The defendant A.C. was even convicted for domestic violence. All important facts which help

the court to come to a conclusion about this case and for which this witness testified are not disputed. Moreover, the testimony of this witness is corroborated with other testimonies given by the defendant or other witness. From this testimony the court draws the conclusion that the relationship between Q.A. and the defendant A.C. was deteriorated and dysfunctional due to physical and psychological abuse from the defendant on his wife. This evidence helped the court come to conclusions about the motive of the murder.

***The testimony of witness F.F***

34. On 22 May 2009 the witness gave the following account before the police:

On 22 May 2009 the witness was working in a booth which is located near approximately 150 meters away from the mosque in the village Zabel i Ulet. At around 13:40 the witness heard some shots. While he was approaching the mosque he saw a grey Mercedes nearby. He notices two persons: one carrying an automatic weapon in his hand and the second person was empty handed. To the witness recollection, both entered the grey Mercedes and the person who was empty handed drove the car. He saw a person near the mosque lying in the ground near the vehicle. Subsequently, police came and asked the witness to give a statement to the police station in Drenas.

35. On 12 June 2009 the witness gave the following account before the prosecutor:

On 22 May 2009 the witness was working in a booth which is located near the mosque in the village Zabel i Ulet. The witness usually does not work between 13:30 and 16:00. At the critical day he closed the booth at 13:40 and headed to go home. After passing ten meters he heard some gun shots. From that place the mosque is around 150-200 meters far away. He then walked towards the mosque and saw a car in front of the mosque. Both front doors of the car were closed almost in the same time and the witness remembers that there were two persons in the car but he cannot give description of any of the persons. Further, the witness states that in his opinion there were two persons as the front doors of the cars were closed almost in the same time. The witness did not see the

person shooting the victim but he saw him with the automatic gun in his hand entering the car. The person with the gun in his hand entered in the right side of the car, whereas he is not sure who entered in the left side. He remembers that there were two persons but he cannot tell this for sure.

Two persons visited the witness yesterday (11 June 2009) at his booth to have a conversation about the testimony he was going to give about this case. The witness was afraid of these two persons because they told him that they saw the statement he gave before the police and that they were aware that he testified that there were two persons in the car. The witness told these two persons that it was his opinion that there were two persons in the vehicle. These two persons presented themselves as being from the village of Korrotica e Nalte.

36. On 17 January 2014 the witness testified before the trial panel. He stated that he supports the previous statements he gave before the police. At the critical day he was at the crime scene. He thinks that he saw two persons entering in the vehicle after he heard the shots, however, he is not sure about it.
37. The court concludes that the testimony of this witness is credible. He stated at what he saw at the critical day. However, when it comes to a decisive fact, which is whether there was only one person who entered the car after the shots, or there were two, the witness is not sure. He was not sure when he gave his statement to the police, he was not sure when he gave the statement to the prosecutor and finally he was sure how many persons he saw at the time when he testified before the trial panel. It is clear from all the testimonies that he gave that it was his impression that there were two persons. He never showed the level of security as to what he saw which would please the court and remove all reasonable doubts and establish the fact that the defendant R.O. was present when the murder took place. Even if the witness would have been sure that there was a second person in the car together with the defendant A.C., he never identified the second person to be R.O.
38. Therefore, doubts regarding the factual situation should not be interpreted to the detriment of the defendant. This person was the key prosecution witness which purported

to prove the guilt of the defendant R.O. However, this witness did not provide evidence which would convince the court beyond reasonable doubt that the defendant R.O. was at the crime scene on the critical moment.

***The testimony of witness Sh.G.***

39. On 22 May 2009 the witness told the police as follows before the police:

On 22 May 2009 the witness visited the Mosque in Zabel i Ulet for prayers. When he got out of the Mosque he heard a gunshot. He saw a person that fell down on the ground near his car. He saw a young man enter another car who headed towards Komoran village. He does not remember what the color of the car was. He does not remember whether someone else was together with the young man, either.

40. On 12 June 2009 the witness told the prosecutor as follows before the prosecutor:

On the critical day the witness visited the mosque in village Zabel i Ulet for prayers. When he finished the prayer he got out of the mosque and saw the victim being shot. The victim had his keys in his hand at the moment he got shot. At that moment the victim fell in the ground. The witness cannot recall how many shots he heard. The person who shot the victim entered a car and headed towards village Komoran. The witness does not recall if someone else was together with the murderer. He only knows the person who shot the victim as a face. Before shooting the victim the witness did not hear the murderer say anything. Two days before giving the interview to the prosecutor a woman visited his house and told him that he should have not testified in this case. This woman told the witness that she is the sister of the person who shot the victim. The woman tried to explain the conflict between her brother and his wife for 7-8 years.

41. On 15 November 2013 the witness testified before the trial panel. The essence of his testimony is identical as he testified before the police and the prosecutor.

42. This witness was consistent in what he told the police, the prosecutor and finally to the court. He was present at the day of the murder and saw the victim fall in the ground. He

did not hear any word exchange between the murderer and the victim. Further, he just saw a car moving fast from the crime scene. He could not recognize the person who shot the victim, nor could he tell the court how many people were in the car. Considering the age of the witness and taking into account his consistency the court finds credible the testimony of this witness.

43. Taking into account that this witness could not tell before the police, prosecution and the court how many people he saw entering the car with A.C., the court concludes that this testimony was not of a big relevance in rendering this judgment.

***The testimony of O.M.***

44. This witness who serves as imam of a mosque gave his testimony before the court on 7 March 2014:

A.C. asked the imam me to go and meet R.A. in order to work out reconciliation between A.C. and his wife Q.A. Initially the imam was successful to reconcile the couple. This reconciliation took place with the contribution of R. Once again A.C. and his wife fell out. I. doesn't know what the reason was. Once again attempts were made to reconcile them and again reconciliation took place between the couple and again with the contribution of A.C. and R.

45. The court finds that this testimony corroborates to other evidence of the case, namely the testimony of the defendant A.C., the witness Q.A. and other evidence of the case. The fact that A.C. and Q.A. had problems was never disputed by any one. The process of reconciliation of the couple with the mediation of the imam was not disputed by the parties as well. Therefore, the court finds this testimony to be credible.
46. This testimony shows that the victim R.A. was not an obstacle to stable relationship between Q.A. and A.C. In fact, the witness shows that the victim made several attempts to reconcile the couple. This testimony, in corroboration with other evidence, such as the statement of Q.A. and A.C. himself, helped the court reach a conclusion as to the motive of this criminal offence.

*The testimony of witness A. J.*

47. On 24 June 2009 the witness gave the following statement before the prosecutor:

At the day of the murder the witness visited the mosque in the village Zabel i Ulet to do the Friday prayers. The witness knows A.C. from before but he did not socialize with him. At the day of the murder the witness saw A.C. when he got out of the mosque. A.'s car was in the way of his car and the witness asked A.C. to free the road so he could pass. A.C. told him to wait for some minutes. After a while A.C. released the road and he was able to pass. During all this time A.C. was alone in his car seating in the driver's seat. The witness was not present when the murder occurred as he headed towards Drenas earlier.

48. On 18 November 2013 the witness testified as follows before the trial panel:

On the critical day the witness visited the mosque for prayers. When he finished the prayers he left the mosque and went to take his vehicle. He met A.C. whose vehicle blocked his. The witness told A.C. to move his vehicle. A.C. was confused and said "two minutes" and then I waited a while and the witness waved to remind him and he said "wait 5 minutes". Then the witness saw A.C. going into the vehicle pulling backwards and then he moved his vehicle. A.C. started the engine of his vehicle and there was a lot of smoke. The witness told A.C. "cousin your car is on fire" but A.C. did not pay any attention to this. Subsequently, the witness went on his way.

49. On 18 November 2013 this witness testified before the court. The essence of his testimony was that he testified the defendant A.C. was alone in the grey Mercedes at the critical day.

50. The court notes that the prosecution alleges that this witness is not credible. However, the prosecutor during his examination did not put anything forward that would diminish the credibility of this witness. Therefore, the court, in absence of compelling evidence that would prove otherwise is obliged to consider this testimony as credible. Any doubts regarding the existence of facts should be always interpreted in favor of the defendant.

***The testimony of witness A.H.***

51. On 24 June 2009 the witness gave the following statement before the prosecutor:

At the critical day the witness, together with four friends of mine, were returning from the school in Drenas to the village Korrotica e Epërme. A.C. often gave the witness a ride when he saw him returning from the school. At that day A.C. did not stop the car to give the witness and his friends a ride. A.C. was not with his red Mercedes but he was driving another Mercedes which was of gray color. A.C. was alone in the car.

52. On 18 November 2013 this witness testified before the court. The essence of his testimony was that he testified the defendant A.C. was alone in the grey Mercedes at the critical day.

53. The court notes that the prosecution alleges that this witness is not credible. However, the prosecutor during his examination did not put anything forward that would diminish the credibility of this witness. Therefore, the court, in absence of compelling evidence that would prove otherwise is obliged to consider this testimony as credible. Any doubts regarding the existence of facts should be always interpreted in favor of the defendant.

***The testimony of A. C.***

54. This is a witness proposed by the defense. She is the sister of the defendant A.C. and the wife of the defendant R.O. On 7 March 2014 she testified before the court as follows:

On the critical day she woke up early in the morning to go to her workplace. She was accompanied by her husband R.O. to her working place. At around 12:00 o'clock R. picked her up to the school where she was working and they together went to the house of A.C. R parked the car at the place called "at the trees". A, A and R had a coffee together and after a while A.C. left the house without telling anyone where he was going. After a while she saw outside the house A.C. with a rifle in his hand. She was shocked and asked A.C. where was he going. The latter responded that he came back and that he

had just murdered his wife Q.A. At that point A. shouted loudly and fainted. She does not remember seeing R touching the rifle.

55. The court notes that the witness is the wife of the defendant R.O. and the sister of the defendant A.C.. The witness has a strong motive to testify in a way that would be in favor of both defendants. In the other hand the prosecution is alleging that this witness is not credible. However, the prosecutor during his examination did not put anything forward that would diminish the credibility of this witness. Therefore, the court, in absence of compelling evidence that would prove otherwise is obliged to consider this testimony as credible. Any doubts regarding the existence of facts should be always interpreted in favor of the defendant.

***The testimony of M.C.***

56. On 17 January 2014 the witness testified before the trial panel. She is related to both defendants, namely she is A.C. is her brother, whereas R.O. is her brother in law. She testified as follows:

She doesn't remember the exact day of the critical day. However, on that day, her brother with his children and her sister with her husband were all at home. Her sister and brother in law came as guests. The witness prepared coffee for them and they all had coffee together. Then the witness went to the other room to get ready since she had to go to work. Later she went to the same room where her brother and brother in law and all of them were. She went to take her brothers daughter who was a baby and to see if she needed to change her nappy. When she re-entered the room she saw that her brother was not there. She thought that her brother was taking care of her paralysed father. Later she heard a noise coming from her sister so she understood something was wrong. She went there quickly and saw that her sister had fainted. She could not take care of my sister as she had the kids who were crying so she told her brother in law to take care of my sister. Her brother in law and her went outside and saw her brother coming holding the weapon that he had and then he took care of the kids. Her brother called the police. The police came and went inside the rooms. She took the kids and brought them over to her

husband's house as they were crying. She doesn't know what happened apart from the moment when her brother came to greet us to the uncle's yard where she was together with the kids he said bye left.

57. The court notes that the witness is related to both defendants. The witness has a strong motive to testify in a way that would be in favor of both defendants. In the other hand the prosecution is alleging that this witness is not credible. However, the prosecutor during his examination did not put anything forward that would diminish the credibility of this witness. Therefore, the court, in absence of compelling evidence that would prove otherwise is obliged to consider this testimony as credible. Any doubts regarding the existence of facts should be always interpreted in favor of the defendant.

***The testimony of Expert Witness N. H.***

58. On 11 December 2013 the expert witness testified before the court. The testimony of this witness was that the defendant has neither at the time of the perpetration of the act, nor now has any permanent or temporary disorder of psychotic quality. Further, the expert stated that the current level of intellectual function excludes the possibility of diagnosis of mental deficiency. And finally the expert stated that at the time of the commission of the criminal offence the patient was able to understand the significance and the consequences of the act.
59. The opinion of the expert in this matter in fact is not disputed by the parties. The court finds the testimony and the report prepared by the expert witness as plausible and credible.
60. This is important evidence which shows that the defendant was not suffering from any mental disorder.

***The testimony of Expert Witness N.M.***

61. On 17 January 2014 the expert witness testified before the trial panel and in essence she said that the defendant showed some emotional liability but without any damages of personality.
62. The court notes that this finding was not disputed by the parties. In addition the court finds the witness and the report prepared by the witness as credible.
63. This is important testimony which proves that the defendant A.C. did not suffer from any personality disorder which in the best case would have been considered only as a mitigating circumstance.

***First ILA from Republic of Croatia***

64. On 18 August 2009 the expert D.T. working for the Ministry of Interior of Croatia, namely the Forensic Science Center within the General Police Directorate, conducted the following expertise:

**Evidence for examination:**

- D#1 Samples collected with GSR stub from the right hand of R.O.
- D#1.1 Samples collected with GSR stub from the left hand of R.O.
- D#2 Samples collected with GSR stub from the right hand of A.C.
- D#2.1 Samples collected with GSR stub from the left hand of A.C.

**Questions:**

1. To perform examinations on the above mentioned evidences.
2. If it is possible to ascertain of gunshot residue on above mentioned evidence and to ascertain if suspect shoot with firearm.

**Conclusion:**

1. Gunshot residue particles were found on the sample item D#1
2. No gunshot residue particles were found on the sample in item D#1.1, D#2 and D#2.1

65. This is an expertise which appears professional and credible. The parties did not dispute it. The importance of this piece of evidence is that it raised doubts as to whether the defendant R.O. was together with the defendant A. C. when he committed the murder on the critical day. However, this is only a doubt and the prosecution thesis was seriously undermined with the opinion of the expert deriving from the second ILA from Croatia.

***Second ILA from Republic of Croatia***

66. On 14 May 2014, following an ILA Request from this court, the expert witness D. T. was examined in order to clarify his expertise dated 18 August 2009. The expert stated that he stand behind the findings of his report. However, he stated as follows:

**Question:**

If it is possible to transfer the particles or gunshot residue, which are generated when a bullet is discharged from a firearm, from the person (in this case the defendant, A.C.) who allegedly fired the weapon, to another person (in this case the co-defendant, R.O.) who asserts that he had no contact with the weapon, by shaking hands?

**Response:**

It is possible that when a person who has fired a shot from a firearm gets in touch with another person, such as by handshake, GSR particles are passed from the former to the latter. Please note that some 4 hours after the shooting 90% or even all of those particles fall off the fist as they are on the surface of the fist, or any other object, and are not glued to them.

If the shooter washes his hands thoroughly after the shooting, all the particles might fall off during the first half an hour. Yet, if he, for example, puts the firearm into his pocket prior to washing his hands, and then touches the firearm or some of its parts after the washing or the following day, the particles may pass onto his fist again and if after that he shakes hands with someone they can be passed onto the hand of that person.

[....]

I would like to say that particles from that automatic weapon or from A.C.'s fists could have passed onto R.O.'s fists when A.C. got into the car, if R gripped the weapon or in

any other way got in touch with A.C. or with the weapon, either in the car, in A.C.'s residence or any time before the police took traces from their fists.

67. This evidence was detrimental in seriously undermining the thesis of the prosecutor who was claiming that the defendant R.O. assisted the defendant A.C. in committing the murder. This evidence raised reasonable doubts as to whether the defendant was present and thus assisted the defendant A.C. in commission of the criminal offence. Shaking of hands with the other defendant A.C. (which was alleged by both defendants that it took place) could have been the source of the gun powder residues found in the right hand of the defendant R.O.

### ***First ILA from Republic of Albania***

68. The Albanian authorities replied on 10 March 2014 following a request for international legal assistance dated 28 January 2014. The content of the expertise is as follows:

#### **Evidence:**

NV# 14.1 (Sample for powder particles taken with cotton taken in the outer part, alongside of glass of the front door of the right side of vehicle);

NV# 14.2 (Sample for powder particles taken from the internal part close to the glass of the front door of the right side) and

Nr 01 grey colour shirt (M 39/40 Westbury Bodytrash), taken from defendant R.O..

#### **Question:**

The examination shall be performed in order to establish possible presence of powder which would arise in the process of firing ammunition from the firearms and indicative for the remainder of the initial charge of ammunition from above named evidence NV# 14.1, NV# 14.2, and Nr 01 grey colour shirt (M 39/40 Westbury Bodytrash).

If performing of such examination can be conducted, how long it will take till the result of such examination can be known?

**Response:**

On the clothes and cotton that were subject to experiment, was not evidenced any presence of nitrates and nitrites that are a present as an the additional factor of shooting.

69. This expertise was conducted to determine whether gunpowder residuals could be found on the clothes that R.O. supposedly was wearing at the day the shootings took place. The result was negative and this strengthens the allegation of the defendant R.O. that the gunpowder residuals that were found in his right hand came from a handshake he had with the defendant A.C.

***Second ILA from Republic of Albania***

70. The Albanian authorities replied on 19 May 2014 on the request for international legal assistance to Albanian authorities dated 14 April 2014. The content of the expertise is as follows:

**Question:**

With reference to the report dated 10<sup>th</sup> March 2014 please state your opinion as to whether performing an analysis of these items of evidence after a period of five years has elapsed renders it impossible to determine the presence of gunshot residue generated in the process of discharging a firearm.

**Response:**

Regarding the determination of duration of deposited shooting waste deriving from gun powder, at the deposited location there is no certain formula but they can survive very long that can be up to 5 years in case we do not move it from the mechanical deposited location, as moving it or washing it, this is asserted based on the experience.

71. This evidence proves that if preserved properly the lapse of years is not an obstacle to determine if there are gun powder residuals in the clothes. Presumably the clothes that were tested were preserved properly by Kosovo Police and the result is negative for gun powder residuals.

*Other witnesses and documentary evidence*

72. The court heard some Kosovo Police officers as witnesses, namely L.R., E. G., R. B. and Sh. B. All of them were involved in investigation of this murder and undertook actions within their competence.
73. KP Officer L.R. was an investigator in this case. He drew up the criminal report as well as prepared the Report of the Inspection Site which summarized the evidence which were seized at the crime scene. The witness stood behind the reports prepared by him during the investigative stage.
74. KP Officer E. G. was in charge of taking investigative actions of crime scene inspection, taking gunpowder samples from both suspects at the Police Station in Gllogovc, being present during the autopsy and taking pictures together with R. B. He participated in the examination of the vehicle together with the other KP Officer Sh. B. The witness stood behind the reports prepared by him during the investigative stage.
75. KP Officer R. B. was part of the team which examined the crime scene. The witness supported the reports that were prepared regarding the investigative actions were he participated.
76. KP Officer Sh. B. was in charge of examination of the Mercedes with plates 479 KS 450, pursuant to the request from the investigators of the case. He took samples from outer and inner glass of the right door (opposite of driver) of the vehicle. These samples went later for examination. The samples were marked as 14.1 (the interior side of the glass) and 14.2. (the outside of the glass).
77. The court notes that the testimony of these witnesses only support the documentation that was produced by the police in the court of investigative stage. They testified in respect of explaining what investigative measures were undertaken and their involvement. Their testimony is credible and their involvement was not challenged by anyone.

*The statements of defendant A.C.*

78. On 22 May 2009 the defendant A.C. used his right to remain silent before the police.

79. On 4 June 2009 the defendant A.C. gave the following account before the prosecutor:

I was married to the daughter of the victim R.A. for five years and we had two children. We had a stable relationship until the first child was born. From this moment our relationship started to deteriorate because of the influence of the victim on Q.A. I was convicted with two and a half years suspended jail sentence because of using physical violence against his wife Q.A. The couple broke up approximately ten times before the tragic event. After they broke up for the last time, A.C. sent many people to the victim in order to convince him to allow Q.A. to go back to the house of A.C. and be together again. These attempts were in vain. A.C. wrote many SMSs to his wife Q.A. asking her to be together but the latter refused. A.C. thought that the main reason they could not be together was the influence of the victim over his wife.

On the critical day, on 22 May 2009, A.C. woke up at approximately 11:00 o'clock and went to Drenas together with his son. He sent flowers to the grave of his mother. A.C. called R.O. in telephone and found out that he was at a cafeteria named "xxx" in Drenas. Thereafter, A.C., together with his son, went to this cafeteria and met with R.O. They stayed together for a while and then A.C. together with his son left, whereas R stayed at this cafeteria. At approximately 12:30 A.C. arrived at his home in Korrotica. While coming back home he saw the vehicle of the victim parked near the mosque in the village Zabeli i Ulte.

After a while at A.C. home arrived R.O. with his wife who was A's sister. R and his wife visited A's house everyday as the wife of O. (A's sister) was taking care of the two children of A.C. and Q.A. A.C. and R had coffee together. Subsequently, A.C. took the automatic rifle that he had in his house and took R's car and headed towards the mosque in Zabeli Ulet village. He took R's vehicle because he wanted the victim not to recognize him otherwise he would flee. He went to the mosque and waited for the victim to get out of the mosque. After a while he saw that the victim was approaching his car and A.C. got

out of the car and approached the victim. A.C. told the victim “where are you R., for five months you are stopping your daughter to come back, you are giving me no answer and you don’t care about it”. The victim opened the door of his car and A.C. thought that he was taking something and that’s why A.C. started to shoot towards him. A.C. doesn’t know how many times he shot the victim. A.C. remembers someone saying the words “Allah Allah” after he shot the victim. After A.C. murdered the victim wrote an SMS to his wife saying “come to the mosque and pick up the rotten body”. After that A.C. went home to say good bay to his children and his family and immediately called the police.

80. The statement of A.C. given before the court is generally credible. Most of his narrative is supported by other evidence in the case as well. His statement is not credible when he attempts to depict the victim as the source of his problems and the divorce with his wife. This is contradicted by the statements of Q.A. and the statement of the imam O.M. This account is in contradiction with other evidence of the case and the court finds it not credible.

81. The remainder of his account corroborates to the other evidence of this case. He states that he committed the murder alone which corroborates with the statement of the other defendant R.O. as well as the expertises conducted by the experts in Albania and Croatia. Further, his testimony was corroborated by the witnesses that were proposed by the defense: A. J., A.H., A. C. and M. C. All these witnesses place the defendant R.O. in a difference place from the crime scene at the critical moment.

### ***The statements of defendant R.O.***

82. On 23 May 2009 the defendant R.O. gave the following account before Kosovo Police:

R Gashi visited the house of the defendant A.C. at the day of the murder at approximately 12:30 together with his wife. The witness was driving a grey Mercedes C220 and he parked the vehicle approximately 30 meters away from the house of the defendant A.C. At the time of the visit A.C. was in his house. A.C. and R had coffee together. Ten minutes after R’s arrival A.C. left the house, whereas R stayed inside the house watching TV. R. phoned A.C. after he left the house and the latter told him that he

will be back at home very soon. After some time, A.C. came back home. He had a Kalashnikov in his hands and told to those present in the house that he shot a person, namely the father of his wife. Subsequently, A.C. notified the police about the incident.

83. On 9 June 2009, the defendants R.O. gave the following account before the prosecutor:

R. is married to A.C.'s sister, A.C. They both live in Bresje village in apartment. A. works in Korrotice e Eperme village as a teacher. At the day of the murder he accompanied his wife to his work place in the morning. Subsequently, he met with A.C. in Drenas and spent some time together. They talked with each other only about a passport. They stayed together for approximately 15-20 minutes together and then R headed towards Korrotice e Eperme village to collect his wife. Together with his wife they went to the house of A. They visited A's house every day because A. was taking care of A's children. They arrived there at around 12:30 and A.C. was in the house at that time. R left the car in the yard of A's house. The car keys were inside the car. R had coffee together with A.C. and the latter after a while went out and did not tell where he was going. After 30 minutes A.C. called R by phone to apologize that he had to leave and informed R that it will not take long and he will come home. R was not aware A.C. took his car when he went out because he was not even asked about this. After some time A.C. came back home with a Kalashnikov in his hands. A.C. told that he murdered the father of his wife. A.C. apologized to R for using his car. Subsequently, A.C. notified the police about the incident. Confronted with the statement of the witness F.F. who stated that A.C. was together with another person who was driving the vehicle, R stated that he was not together with A.C. at the time of the murder.

84. On 13 February 2014 R.O. stated before the court as follows:

At the day of murder R.O. woke up early to take his wife to her workplace from Bresje to Kotorica village. R dropped his wife at the school and went to Drenas. He met with A.C. at a pizza restaurant in Drenas and they discussed something about a passport. He stayed there until 11:30 when he headed towards Kotorica village in order to collect his wife. Together with his wife A.C. went to A.C. house and they arrived there at approximately 12:30. R had coffee together with A. Subsequently, the latter went outside

and R. together with his wife and A. children stayed home. While R was watching TV, A.C. phoned him and asked him if he was bored and notified him that he wouldn't be late and he'd come soon. After a while A.C. arrived home and told that he murdered his wife Q.A.. At that time R's wife fainted. Later police arrived and handcuffed A.C. At that moment the latter apologized R. because he used his car. They shook hands together and A.C. was taken by Kosovo Police.

85. The court observes that the statements given by the defendant before Kosovo Police, State Prosecutor and the court have some discrepancies between each other. However, it is worth mentioning that the key elements of this narrative remained the same as of the first questioning before Kosovo Police. The defendant presented his thesis on what happened on the critical day. The narrative of this defendant was at least successful in presenting a reasonable doubt that the thesis of the prosecutor does not stand. He stated that at the critical moment he was not together with the defendant A.C. at the crime scene. This is supported by the statement of the defendant A.C. and all the witnesses proposed by the defense. Additionally, the expertise reports conducted by Albanian and Croatian experts support the theory of this defendant. The defendant stated that he shook the hand of the defendant A.C. before the later was arrested and the expertise conclude that it is possible that the gunshot residues were transferred from the hand of A.C. to that of R.O.. Therefore, *in dubio pro reo*.

## **VII. Legal qualification:**

86. The murder was committed by the defendant intentionally, cold blooded and in a premeditated manner. The motive for this murder undoubtedly an unscrupulous revenge and for low motives. The defendant killed the father of his wife because the victim was supporting his daughter. In the mind of the defendant the victim was the main cause he was separated from his wife. In the other hand, the evidence of the case show clearly that the victim had never done any harm whatsoever to the defendant. The low motive of the defendant is showed clearly in the SMS text message that he sent to his wife immediately after the murder. Even if the evidence of the case would show that the victim was suggesting his daughter to leave her husband who was maltreating physically and

psychologically, it would be no defense for the defendant A.C. It would still be an Aggravated Murder.

87. Therefore, the interpretation of the defense that the defendant A.C. committed Murder in violation of Article 146 of CCK is simply not supported by evidence. In the other hand, the court shares the opinion of the prosecutor, which is supported by evidence of the case that the defendant A.C. committed Aggravated Murder in violation of Article 147, paragraph 1, point 9 of CCK (2003).
88. As far as the defendant R.O. is concerned since the court could not establish the facts which are necessary to form elements of the criminal offence for which he was charged the only consequence was acquittal from this charge.
89. The defense allegation that the criminal offence of Unauthorized possession of weapon under Article 374 Paragraph 1 of CCRK was included in the Law 04/L-209 on Amnesty. The court disagrees with this interpretation as the Article 4 (1.3) of the Law on Amnesty stipulates that the amnesty is not granted for the criminal offences which resulted in grievous bodily injury or death. In the present case the criminal offence resulted in death. Therefore, the court is of the opinion that this criminal offence is not covered by amnesty.

### **VIII. Sentencing:**

90. The court assessed aggravating and mitigating circumstances when imposed the punishment.
91. The court considered an aggravated circumstance that the defendant committed the criminal offence in a premeditated manner, in a public place and in front of many people. The murder was committed for unscrupulous revenge. In addition, as aggravating circumstance it was considered the behavior of the defendant just after the murder telling the victim's daughter in a derogatory language that he murdered her father.

92. The court considered as mitigating circumstance the fact the defendant was correct and cooperative with the court and authorities in all phases of criminal procedure as well as the fact that the defendant is the father of minor children.

**IX. Cost of criminal proceedings:**

93. The court decided pursuant to Article 453 Paragraphs 1 and of the CPC that the cost of the criminal proceedings shall be partially reimbursed by A.C. in a scheduled amount of Euro 100 and the remaining cost of the criminal proceedings shall be paid from the budgetary resources. This is due to the fact that financial resources of the family of A.C. after he was put in detention on remand were substantially reduced and imposing the whole amount of the proceeding on the defendant or his family would be a big burden on the defendant or his family.

**X. Property claim:**

94. 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 463(2) of CPCK decided to instruct the injured party that she may pursue the entire property claim in civil litigation.

**XI. Conclusion:**

95. 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 A.C. committed the criminal offence as charged in the indictment, whereas the court concluded that there is no evidence to the requisite of proof beyond reasonable doubt that the defendant R.O. committed the criminal offence for which he was charged for.

96. Therefore, the court decided as in the enacting clause.

**Piotr Bojarczuk**  
**Presiding EULEX Judge**

**Tsvetelina Zhekova**  
**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.