

IN THE BASIC COURT OF PRISHTINË/PRIŠTINA

PKR. nr. 357/14

18 February 2016

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

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF PRISHTINË/PRIŠTINA, in a trial panel comprised of EULEX Judge Mariola Pasnik, as Presiding Judge, EULEX Judge Katrien Gabriël Witteman and Kosovo Judge Naimë Jashanica as panel members, with court recorder Dea Dedi, in the criminal case against:

Name	K.
Surname	D.
Father's name	Xh.
Date of Birth	xxx
Place of Birth	xxx
Gender	xxx
Address	xxx
Nationality	Kosovo Albanian
Citizenship	Republic of Kosovo
ID	xxx

Charged in the Indictment of the Special Prosecutor PP No.: 776-3/2012 dated 25 June 2014 and filed with the Registry of the Basic Court of Prishtinë/Priština on 26 June 2014 with the criminal offences of:

COUNT 1: ENDANGERING INTERNATIONALLY PROTECTED PERSONS, in violation of Article 141 (3) of the former Criminal Code of Kosovo (CCK), punishable by imprisonment of one to ten years, because the defendant **K.D.**, in perpetration and co-perpetration with unknown people, engaged in a violent attack upon the means of transport of internationally protected persons.

COUNT 2: DAMAGE TO MOVABLE PROPERTY, in violation of Article 260 (2) of the former Criminal Code of Kosovo (CCK), punishable by a fine or imprisonment of up to one year, because the defendant **K.D.**, in perpetration and co-perpetration with unknown people, damaged the movable property of other persons, motivated by bias relating to their ethnicity.

after holding the main trial sessions in the Basic Court of Prishtinë/Priština on 14 July, 15 and 16 July, 1, 2 and 14 September, 7 October and 9 November 2015 and 28 January and 15 and 18 February 2016 in the presence of the SPRK Prosecutor, Tiffany Corrine-Moise or her temporary replacement, Tuomas Oja, the defendant, **K.D.** and his counsels the lawyers, M.D. or A.S. and at which the injured parties were either present or summoned throughout;

The trial panel having deliberated and voted pursuant to Article 357 paragraph 2 and Article 359 of the CPC, in open court and in the presence of the parties, renders and announces the following:

JUDGMENT

The defendant, **K.D.** with personal details above, is **ACQUITTED** of;

COUNT 1: ENDANGERING INTERNATIONALLY PROTECTED PERSONS, contrary to Article 141 (3) of the CCK, punishable by imprisonment of one to ten years, because the defendant **K.D.**, in perpetration and co-perpetration with unknown people, engaged in a violent attack upon the means of transport of internationally protected persons.

On 4 April 2012, at approximately 16:15 hrs. in Prishtinë/Priština, **K.D.** was amongst a group of individuals who threw stones at a convoy of two vehicles that was transporting members of a Serbian delegation on an official visit to Kosovo. The attack was violent in nature because the stones thrown were sizable and resulted in the destruction of the glass in two windows of each vehicle. No injuries were sustained to the passengers with the exception of a scratch to the arm and head of one delegation member. However, several members of the delegation had to move quickly inside their respective vehicles to avoid being struck by the stones. They were able to describe shattered glass falling upon them. By his actions, **K.D.** engaged in a violent attack upon the means of transport of internationally protected persons, which attack was likely to endanger the person or liberty of the internationally protected persons, contrary to Article 141 (3) of the CCK, such persons being defined under Article 141 (7.2) of the former CCK.

COUNT 2: DAMAGE TO MOVABLE PROPERTY, contrary to Article 260 (2) of the CCK, punishable by a fine or imprisonment of up to one year, because the

defendant **K.D.**, in perpetration and co-perpetration with unknown people, damaged the movable property of other persons, motivated by bias relating to their ethnicity.

On 4 April 2012 at about 16:15 hrs. in Prishtinë/Priština **K.D.** with other individuals threw stones at a convoy of two vehicles transporting members of a Serbian delegation on an official visit to Kosovo. The attack was directed at two vehicles bearing Serbian government licence plates. The attack on the convoy, which resulted in damage to both vehicles, was motivated by bias relating to the ethnicity and nationality of the Serbian delegation travelling in the convoy.

Because pursuant to Article 364.1.3 of the CPC it was not proven beyond reasonable doubt the defendant, K.D. committed the offences with which he has been charged.

REASONING

A. PROCEDURAL BACKGROUND

1. The indictment in this case was filed on 26 June 2014. The then presiding Trial Judge's attempts to schedule the first session of the initial hearing were thwarted by the defendant's refusal to accept a summons and to recognise the court. When attempts were made to serve him with the summons the defendant refused to accept it and stated he did not recognise Eulex.

2. On 23 September 2014 Kosovo Police brought the defendant before the then Presiding Trial Judge. The then Presiding Trial Judge fixed 20 October 2014 as the deadline beyond which he would not accept objections to evidence or applications

to have the indictment dismissed. On 20 October 2014, the lawyer M.D., counsel for the defendant **K.D.**, filed a request to dismiss the indictment dated 20 October 2014 which was also filed on 20 October 2014. On 20 October 2014 the defendant **K.D.** also filed a request to dismiss the indictment. By rulings dated 20 November 2014 the then Presiding Trial Judge dismissed both the defence counsel's and the defendant's requests. Neither the defendant nor his defence counsel filed appeals against these rulings.

3. The main trial commenced on 14 July 2015 in the Basic Court of Pristina. Subsequent sessions were held on 15 and 16 July, 1, 2 and 14 September, 7 October and 9 November 2015. Sessions were also held on 28 January and on 15 and 18 February 2016.

4. In essence, the prosecution case was that on 4 April 2012 at approximately 16:15 hrs the defendant, **K.D.**, together with other persons unknown, participated in an attack on an official Serbian delegation, comprising of two vehicles and seven delegates, following its visit to the Kosovo Cadastral Office in Pristina. The prosecution alleged the assailants threw stones which smashed the windows of both vehicles resulting in light injuries to one of the occupants. It was alleged the defendant tried to escape but was apprehended in a nearby café by Kosovo Police. It was alleged the defendant was motivated by bias against persons of Serbian ethnicity. The defendant pleaded not guilty to both charges.

B. ADMISSIBLE EVIDENCE

Pre-trial:

5. A considerable amount of statements and reports were generated during the investigation of these alleged offences and neither the defendant nor his defence

counsel objected to the admissibility of any of these. The most important can be summarised as follows.

Kosovo Police Officer Sh.K.'s Report dated 4 April 2012¹ stated:

“On 04.04.2012 at 13:15 hrs at the border point in Merdare we received a delegation from the Republic of Serbia. The delegation arrived in Merdare at 13:15 hrs with two vehicles. 1. Skoda super B BG-244-KS and Audi A8 BG505 PA. These vehicles were carrying 7 (seven) persons [people] whom we escorted to Prishtina, in the cadastral agency of Kosovo at the Archive building of Kosovo which is situated on street Muharrem Fejza. The meeting finished at 16:00 hrs. At 16:08 hrs we received the same vehicles with the same delegation members and we started heading towards Merdare. Upon the arrival at the road in front of Hospital entrance (UCCK) at the passengers crossing point the vehicles of the delegation were attacked from the both sides with stones by 5-7 people whom we didn't see that were gathered but they were casual pedestrians. Once the vehicles were attacked we increased the speed in order to evacuate them...”

6. Officer K. went on to describe how the delegation was escorted to the sanctuary of a nearby police station where the damage to the vehicles was assessed and recorded and medical treatment was offered but declined. Eventually the delegation was escorted back to Merdare arriving there without incident at approximately 19:00 hrs.

7. Kosovo Police Officer V.Z. report dated 4 April 2012² stated:

“On 04.04.2012 I got a duty from AS-2 that together with bike unit (7 police officers and 1 officer in civilian clothing) to go on post at Kosovo Archive point, as there will be a

¹ Prosecution Evidence File at Tab 3 (English version).

² Prosecution Evidence File at Tab 5 (English version).

delegation from Serbia. Upon arrival at the offices of Kosovo Archive, we contacted the director; M.M., regarding premise security, as well as with a representative from Prime Minister's office. We talked to them and informed that we are about external security of premise, but with the request of director, two officers remained inside the premise of Archive of Republic of Kosovo. At about 14:00 hrs, the delegation arrived at Kosovo Archive, under the escort of Kosovo police vehicle, both vehicles of delegation with plate numbers; Shkoda BG-xxx-KS and Audi A8 with plate no. BG-xxx-PA, both of it in black color, were parked at the entry of Archive, and which were secured by a sufficient number of police officers, and at all times stayed in parking lot. At about 16:10 hrs. when I was informed by bike unit that the delegation is preparing to leave, I sent civilian vehicle of South Police Station up to the ring road which is towards Matiqani area, (nearby EULEX), all this in order to block the road until the delegation leaves the area, behind the delegation vehicles was another Kosovo police vehicle with 4 police officers on board. After the delegation left, I and officer in civilian clothing, two police officers on uniform, headed to police station, and reached at main entry of UCCK, I saw police officers running towards barracks named "Hamëz Jashari", after stepping of vehicle I was informed that stones have been thrown at delegation vehicles, by some males which were gathered but moving as pedestrians,. Upon this information we headed to Technical Faculty, with one of police officers who was able to identify suspects. When arriving at technical faculty, police officer was able to recognize two suspects, who in those moments were entering a coffee bar, but it was clear that both of them were tired off running. We headed towards them, one of them noticed us and started to run, while we arrested the other one, accompanied him at police station, who apart name and surname didn't accept to say anything else. When we arrived at the station, noticed that delegation vehicles were there too, an ambulance team arrived in order to provide medical aid, they didn't accept the aid, and it was clear that none of them was injured. When ambulance team left, one of delegation members required to use toilet, and when came back from it, he touched t-shirt lapel with blood on left side, and we noticed

that he did this on purpose, what for we informed international representatives, which also were present, until he returned from toilet hadn't any blood stains, we also informed Government representative on actions of Serbian delegation member. At about 16:15hrs, the delegation escorted by 3 police vehicles on which the delegation was in) as well as two police tow trucks loaded with delegation vehicles, and 4 other police vehicles, was escorted to border point in Merdare, without any problem, and at 19:00hrs. we reached Merdare, and after they crossed border point of republic of Kosovo, we returned to Pristina”.

8. Kosovo Police Officer G.B.'s Report dated 4 April 2012³ stated:

“Today we were assigned from 14:00 hrs at Kosovo archive building where a meeting with the delegation of Serbian party was being held. Everything was in order at the location and no problems to be mentioned. At 16:00 hrs the meeting was over and the delegation continued to the Kosovo cadaster offices under police escort. On street Muharrem Fejza, nearby the roundabout the convoy was attacked and since we were on official civil vehicle and since my colleague Xh.H. knew the description of the persons we continued looking for them. On street Agim Ramadani we stopped a person who was matching the description and kept him under control together with the sergeant sierra echo 4 (V.Z.) until the unit as-101 arrived and escorted the suspicious person to the south police station. We spent some time looking for other persons [people] but we couldn't see them.”

9. Finally, Kosovo Police Officer Xh.H.'s Report also dated 4 April 2012⁴ stated:

“Today on 04.04.2012 I was securing the cadaster premises from 14:00 hrs together with the units as-150, as-151, as-152, as-155 and as-156 regarding a visit of a delegation from Serbia. At around 16:10 hrs the delegation left the cadaster

³ Prosecution Evidence File at Tab 6.

⁴ Prosecution Evidence File at Tab 4.

building and while they were moving on St. Muharrem Fejza and once we approached the roundabout nearby the main hospital entrance suddenly some people, three people started throwing stones towards the vehicles with the Serbian plate numbers. Immediately our unit started pursuing the suspicious people and together with as-150 we managed to stop one of them on St. Agim Ramadani at the technical faculty. After this AS-101 came and transported the suspicious person to the station, whereas we patrolled for a while looking for other persons but didn't see them."

10. Subsequently, on 5 April 2015 Officer E.D. of Kosovo Police compiled a forensic report⁵ which stated:

"On 04.04.2012 at approximately 16:00 hrs. at [the] police station were brought two vehicles with Serbian place number[s] which were demolished at UCKK entry...We proceeded with examination of [the] demolished vehicles. On this examination were; I (E.D.), B.B. and a colleague from regional forensic...Vehicles were inside police station fence, and both of it were demolished. First vehicle was Skoda Super b with plate BG xxx KS and second vehicle was AUDI with plate BG xxx. Both vehicles were black. First vehicle had demolishing at the top scratching, the glass of back door on left side and scratching at first door closely to door handle, there were scratching even on right side on upper side, whereas inside were two stones, one of it at first driver's seat, and other stone on back seat behind driver's assistant. Whereas second vehicle Audi had demolished both windows of first doors and inside on driver's seat was a stone".

11. Finally, on 30 September 2013 by then former Kosovo Police Officer Xh.H.

⁵ See Forensic Unit report dated 05/04/12 Evidence Binder, Tab 16.

provided a witness statement to French Police⁶ in which he stated:

“On the day of facts I was a police officer in Prishtina, I was on duty, and I was securing a building chosen for a dialogue between Kosovars and Serbs. At the time of facts, when the convoy was leaving the building, I was in a police vehicle to go back to my work place. I was behind the convoy when I saw people throwing stones toward the convoy composed of two cars. We were five police officers in our vehicle, we stopped our vehicle, and each officer ran towards an individual. I, accompanied by one police officer Z. G.B. number xxx, ran towards one individual.

We arrested one individual and hand-cuffed him. Another individual escaped (at large). I precise the arrested person was the only one to be arrested for these accusations. I am sure I saw this person throwing stones towards the convoy; I didn't lose him from sight while running. I would add that we handed over this individual to other police officers who took him over to police station.

I was behind the convoy when the incidents happened, I saw some people throwing stones, and I ran towards one individual only, while I didn't clearly see the other individuals. At present I could not recognize the second person who escaped. I arrested the individual about 150 meters far from convoy, in AGIM RAMADANI Street. When arrested, he did not rebel. I handed over the individual to police officers; I was looking for the second individual, but in vain. I returned to my duty. I didn't lose from sight the individual I apprehended. While apprehending him, I didn't speak nor did the individual say anything except « leave me ». At the moment of apprehending the individual was breathless. I saw very well that the individual that I then arrested threw stones to the vehicles windows; he was clearly

⁶ See witness statements of Xh.H. dated 30/09/13 Evidence Binder, Tab 15, p 122-125 ENG, p 129-132 ALB, p 137-138 SER.

aiming at hitting the vehicles windows.”

12. In the indictment the prosecutor stated the former Kosovo Police officer, Xh.H. now resided in xxx, xxx, but was a “crucial witness” in this case, and requested he give evidence at the main trial via video-link from France. This was duly arranged via International Legal Assistance with the relevant authorities in France for whose assistance and co-operation the trial panel is very grateful.

Main trial:

13. After a number of unsuccessful attempts to bring the defendant before the court the main trial began in earnest on 15 July 2015. The prosecutor opened her case by stating *inter alia* at the time of the incident the defendant was a student and an alleged member of the political party “*Vetëvendosje*”. She stated the visiting Serbian delegation comprised of two lawyers, an engineer, an advisor, an interpreter and two drivers and were in Pristina for a two hour meeting with the representatives of the EU and the Cadastral Office of Kosovo as part of the Pristina-Belgrade dialogue.

14. The prosecutor stated after the meeting ended at approximately 16:15 hrs, the Serbian delegation left for Belgrade in two (2) official vehicles - a black Audi A8, bearing registration number BG-xxx PA and a black Skoda Superb, bearing registration number BG-xxx KS and both vehicles belonged to the Administration for Joint Services of the Republic Bodies based in Belgrade. A Kosovo Police escort was assigned to the convoy.

15. The prosecutor stated upon the arrival of the convoy at the road in front of the UCK Pristina hospital entrance, the convoy came under attack from individuals on both sides of the pedestrian crossing. Stones were thrown causing damage to the vehicles and this alleged act formed the basis of Count 2 of the indictment. The prosecutor submitted the police reported the attack was caused by a few individuals in the street, who gave the impression of being gathered but were in fact walking as casual pedestrians⁷.

16. The prosecutor stated immediately after the incident, Kosovo Police officers began to patrol the area and its environs. Moments later, the officers recognised the perpetrators, left their respective vehicles and ran after the individuals concerned. She stated this pursuit was captured on videos later uploaded onto the YouTube website. She stated the defendant was subsequently apprehended and arrested in the area of the engineering faculty in Str. "Agim Ramadami"; approximately 150 metres from where the incident originally took place. However, the other suspects involved managed to evade capture from the authorities.

17. Meanwhile, the Serbian delegation was escorted by Kosovo Police officers to the South police station where the delegation reported the incident and the vehicles were examined forensically.

18. The prosecutor submitted the incident was motivated by bias relating to the ethnicity of the victims. She stated her belief there was a degree of planning involved in the incident, as the defendant and the hitherto unknown suspects gathered in close proximity to the Cadastral Office on a route they knew the Serbian convoy would take to return to Belgrade, and had in their possession items that they used to damage the vehicles namely large stones/bricks. They timed to

⁷ S. K. Statement 4.4.2012, tab 3

perfection the specific moment in which to throw the large stones/bricks in order for the damage done to be localized. The prosecutor submitted this was confirmed by the fact no other vehicle had been hit and/or damaged by the defendant and the other individuals involved except the vehicles belonging to the Serbian officials. The prosecutor submitted the defendant and others had a clear intention i.e. to violently attack the Serbian representatives and damage their vehicles. The prosecutor submitted the defendant was in no doubt the occupants of the vehicles were internationally protected persons.

19. In his opening statement, then counsel for the defendant, the lawyer M.D., stated his client rejected the indictment and was pleading not guilty. He submitted the indictment was based only on witness testimonies, which were “*rather ambiguous*”. He stated his client was accused in co-perpetration but no other alleged co-perpetrators were present before the court. He stated the indictment was based on the testimony of the witness Xh.H., whose testimony he “*rejected and disputed*”. He implied this witness had given his evidence in return for the xxx authorities treating his application for asylum in xxx favourably. He also stated the stones allegedly thrown in the incident had not been recovered and subjected to any form of forensic analysis. He stated he did not dispute the vehicles in the convoy were damaged but a number of people were present when this occurred and it could not be proven his client was involved.

20. The first witness to testify at the main trial was V.Z.. She stated she recalled the incident and at the time she was a sergeant attached to the fifth sector of Kosovo Police in Pristina. She recalled compiling a report on 4 April 2012 in relation to the incident and giving a statement to the EULEX Prosecutor on 25 February 2013. On 4 April 2012 she was assigned to go to the Cadastral Office of Kosovo to provide security for the visiting delegation. She stated she was there

with motorcycle unit officers and other police officers. There were approximately eight in total. She was in uniform. She described the location of the Cadastral Office.

21. Sgt. V.Z. stated she was aware a Serbian delegation was visiting and she also knew the purpose of their visit. She stated she was positioned on the second floor of the Cadastral Office but she was not static and moved around supervising police officers at their stations. She kept moving from one station to another station but could not say if she was mostly inside or outside.

22. Sgt. V.Z. stated police arrived at the Cadastral Office at approximately 13:00 hrs and the delegation arrived at 14:00 hrs. She described the make-up of the Serbian convoy. She stated the meeting ended at approximately 16:00 hrs. She stated at that point she was close to the EULEX HQ and was blocking traffic so the delegation could move unimpeded. She stated she did not witness the attack because the roundabout was *“positioned at a lower level”*. She stated she was informed about it on the radio very soon after it occurred.

23. Sgt. V.Z. stated she got into a vehicle and went to the roundabout and she saw police officers running towards the Hamez Jasharri barracks and Ulpiana. She stated she also ran *“through the technical faculty from the upper part on Agim Ramadani Street”*. She stated she was with her colleagues from the motorcycle unit, M.B., Sh.M., and H.K..

24. Sgt. V.Z. stated she was in possession of a suspect description given by a police officer who was in the vicinity. She stated *“we”* managed to see two persons, trying to enter a coffee bar who were evidently gasping and trying to catch their breath. She stated *“we”* managed to stop one of them and the other went further to the red flats in Sunny Hill and hid somewhere there. She stated the

person stopped was detained according to the information given by the police officer in the vicinity but she did not see him in person throwing stones. She stated she could not remember which officer stated this but it might have been M. B. or Sh.M. She did not know and could not say if the officer who transmitted the information was present with her when she apprehended the suspects.

25. Sgt. V.Z. stated the throwing of stones took place at the crossing of the entrance road to the hospital and the Street “Fehmi Lladrovci”, and *“the police officers, according to the position of the place, being on the right side and seeing the road, and I being in the vehicle with the police officer continued on the left side, heading towards the stairs of the technical faculty, trying to close the passage and when we got up on the upper part, I do not remember which of the officers caught them, but it was one of the motorcycle drivers following the vehicles that were attacked”*. Sgt. V.Z. stated she only saw one suspect running from the coffee bar towards the blocks of buildings but she stated she only saw him from the rear.

26. At this point the prosecutor put it to Sgt. V.Z. there were some inconsistencies between her evidence and what she stated before the Eulex prosecutor on 25 February 2013. Sgt. V.Z. stated the actions attributed to Officer M.B. on pages 81 and 82 of the English version of her statement to the prosecutor should instead have been attributed to Officer A.Rr..

27. Sgt. V.Z. stated it was one of the officers on a motorcycle who stated the suspects were the two persons running towards the coffee bar but she could not remember which officer this was. She stated the officers on the motorcycles were not with her when they saw the suspects running but they were on the opposite side and they were coming towards each other. She stated *“they tried to apprehend the two, and in this case they managed to apprehend the gentleman here, while the*

other one managed to escape penetrating through the premises and going up to the blocks up there. And I asked to be provided with a vehicle for transportation and I took care of the safety of the apprehended person. These were my actions”.

28. The prosecutor then put it to the witness that on page 5 of the English version (page 82 in the case file) of the statement she gave to the prosecutor on 25 February 2013 she had replied to a question, *“as soon as we arrived at the stairs of the technical faculty, there were two people trying to get inside the coffee bar, and we got out of the vehicle, then one of them, who had already entered the coffee bar, he saw us, and started running”* and this was different from what she was now saying i.e. she had no contact with or sight of these individuals.

29. Sgt. V.Z. stated her evidence was she saw these persons when she went to the technical faculty, and when they were stopped by the motorcycle unit, one was stopped and the other one ran away. She added *“We went back to the cars, continued further, actually, not I, but only they, but that was in pursue of the second person. Another vehicle came and took him and we continued further the pursuit”*.

30. Sgt. V.Z. stated she could not remember if either of the two suspects had said anything at the coffee bar. The prosecutor put it to her that on page 5 of the English version of her statement to the prosecutor dated 25 February 2013 she had stated: *“One of them who had entered the coffee bar, he saw us and started running away calling the ‘police’ and H. and A., I am not sure, started chasing him”*. Sgt. V.Z. stated she remembered when the person fled and when he stopped but not when he was arrested and handcuffed but she stated she did stay with him in between two civilian vehicles.

31. Sgt. V.Z. stated one of the suspects ran away from the coffee bar while the defendant stopped at the coffee bar inside or at the door but she could not be sure which. She stated she restrained this person and he was out of breath. She stated she called for transport for him that later attended but she could not say for how long she was with him. She stated this person was the defendant, **K.D.** However, she stated at no time did he mention he had an injury. She could not remember if they had any form of conversation. She could not recall if he had an injury or even if she had accompanied him to the police station. She agreed her report stated he did so. She recalled there was an ambulance at the police station but she could not recall if the defendant had availed of any medical treatment there.

32. In response to questions from M.D., the counsel for the defendant, the witness, Sgt. V.Z. stated she heard the attack took place between the entrance road to the hospital and the roundabout to Str. “Fehmi Ramadani” (sic). She stated the street connecting this roundabout to another roundabout with a large Kosovo flag is “Fehmi Lladrovci” street. She stated the defendant was arrested while entering the cafeteria. She stated she was not responsible for blocking or securing the roads. She stated it was a matter of seconds from when the defendant was actually apprehended to when she arrived.

33. In response to questions from the trial panel, the witness, Sgt. V.Z. stated as far as she could remember the Serbian delegation was escorted by motorcycle police unit and there were no problems reported during their meeting. She stated when she arrived at the point where the defendant **K.D.** had been apprehended, the only significant physical feature she noticed was he was breathing quickly. She stated police radio indicated there were at least three perpetrators involved in the attack and she heard the description of the clothing of the suspects but she could not recall it. However, she was sure the defendant, **K.D.** wore clothes that matched the

description. She stated the description was given by the officers in the motorcycle unit. She stated there were “*plenty of people*” in the coffee bar when the defendant was apprehended but not many outside. She stated the defendant was stopped by the motorcycle unit as he entered the coffee bar. She stated she recalled an officer from the motorcycle unit saying “*this is the one, his friend ran away*”.

34. Judge Witteman put it to the witness she had previously mentioned Officer M.B. as the one who identified the defendant. The witness stated she could not be sure but she now believed it was actually Officer Xh.H. who saw the persons throwing stones. She stated Officer M.B. told her it was Officer Xh. H.. However, she also stated that as the motorcycle unit all wore helmets it was difficult to tell one from the other.

35. In response to a question from the defendant **K.D.**, the witness stated the first time she had seen his face on 4 April 2012 was when he was arrested by her colleagues. She stated she was very nearby at that point. She stated the defendant did not have an obvious injury to his leg and he did not complain of one either there and then or back in the police station. She denied she had any dealings with him back in the police station and specifically that she had mis-treated him and demanded the names of others involved in the attack.

36. The first witness to testify before the main trial panel in the session on 16 July 2015 was D.P.. He gave a statement to Kosovo Police on 4 April 2012. He confirmed his presence in Pristina as part of the Serbian delegation on 4 April 2012. He named the members of the delegation and the vehicles they were travelling in. He stated the convoy was escorted by Kosovo Police from the border at Merdare. He stated to the best of his recollection there were two Kosovo Police SUV vehicles, one in front of the Serbian convoy and one behind it.

37. D.P. stated he was sitting on the front passenger seat of his vehicle and there were two passengers in the rear. There was also a driver. He stated the journey from Merdare went smoothly and the meeting lasted for between one and a half hours and two hours. He stated that when leaving the Cadastral Office there was only one Kosovo police vehicle in front of the convoy. He stated the convoy was attacked no more than a couple of minutes after it left the Cadastral Office and the attack took place at the roundabout.

38. D.P. stated he saw some of the faces of the people who threw stones but he could not identify them beyond reasonable doubt. He stated he could not be sure how many people were involved in this incident but it seemed like there were three. He stated another Kosovo Police vehicle quickly arrived at the scene.

39. In relation to the alleged perpetrators of the attack, D.P. stated the incident occurred over three years ago but as far as he could remember there were two male persons approximately 1.80cm, aged 25-30 approximately and of average build. He stated the third person was also male and he was a bit shorter than the other two and a little bit chubbier. He stated the three assailants attacked the vehicles from different directions and this was borne out by the fact the vehicle was hit on the left and right sides and one person came from behind.

40. D.P. stated the person who hit the driver's window was at a distance of 1 to 1.5 metres. He stated he recalled one person running with a rock in his hand and he had an angry face. He could not say if any of these individuals had shouted or screamed. He stated he believed some five or six stones had hit his vehicle breaking windows and damaging the bodywork. He stated one or two rocks landed in the vehicle. He stated one rock entered through the right rear window and flew 1mm from the eye of Ms. A. who was sitting in the rear. He stated another rock

was shaped like an ostrich egg and, after breaking the window, fell in front of him and after arriving at the Police Station he noticed his head was cut but he assumed this was caused by flying glass as the rock had not hit him. He stated some of his colleagues sustained superficial injuries but no serious ones. He stated he received medical attention in the Police Station and on his return to Serbia but his head injury was not serious. He stated at the time of the attack his concern was for his female passengers and to get them away safely as he feared for their lives.

41. D.P. stated as far as he could recall he was sat in the first vehicle of the convoy as it left but the second vehicle was also attacked. He stated he met his colleagues from the second vehicle in the police station after the attack. He stated the atmosphere among his colleagues there was one of fear and disbelief. He stated he did not think it appropriate for him to speculate about the motive for the incident. He stated he was conscious of tension in the air that day, but no incident like this had happened before.

42. In response to questions from counsel for the defendant **K.D.** the lawyer M.D., D.P. stated he was in the Skoda “Superb” vehicle. He stated he was not conscious of any protest by people in the vicinity of the Cadastral Office. He said he could not say if he was aware if any persons in the vicinity were prepared to attack the convoy. He stated the assailants ran towards the convoy. He stated one approached from the right, one from the left and one from the rear. He stated he could not identify the defendant, **K.D.** as one of the assailants. In response to questions from the trial panel, D.P. stated he did not see in which direction the assailants left the scene.

43. The next witness to testify before the main trial panel on 16 July 2015 was Kosovo Police officer M.B.. He confirmed he gave a statement to the Eulex Prosecutor on 25 February 2013. He confirmed the contents of the statement.

44. At the time of the incident, he was attached to the south Pristina police station motorcycle unit. His duty that day was to secure the building of the Kosovo Cadastral Agency. He was assigned to a four-wheel vehicle and was in uniform.

45. Officer M.B. stated he took up duty after 16:00 hrs but he could not remember exactly when. He stated the meeting in the building ended sometime after 16:00 hrs. He stated the Serbian delegation left the building escorted by the motorcycle unit who left after them and his vehicle went immediately after them. He stated he was accompanied in the vehicle by Kosovo Police Officer Sh.M.. Officer M.B. was shown his earlier statement in which he had stated in the vehicle were “*me, Sh., A. and H.*” and he agreed this was correct but he could not say where each of his colleagues were seated in the vehicle. He stated their vehicle was followed by an unmarked Kosovo Police vehicle. He stated his belief this vehicle was occupied by Sergeant V.Z., G.B. and Xh.H..

46. Officer M.B. stated his first inkling something was wrong came at the roundabout where he heard noises resembling something being broken. He said he and his colleagues noticed three males on the right hand side of the road approximately 70 to 80 metres away. He stated the driver stopped the vehicle and the occupants gave chase. He stated one male went towards ‘Ulpiana’ and two went towards the technical faculty. He stated that when he first observed the three males they were throwing what appeared to be stones. He stated the males were not old and aged between 20-30 years approximately. He stated they were wearing normal, non-distinctive clothing. He stated he was not sure they were throwing

stones, but this was confirmed to him when he saw the stones in the car in the police station.

47. Officer M.B. stated himself, "*H. and A.*" gave chase immediately to apprehend the males and Shemsi continued following the delegation by car. He said the males were running too fast and could not be caught. He said he did not notice any of the males being physically uncomfortable at the time. He stated himself and A. returned to the scene of the incident but he thought H. continued to give chase. He stated he subsequently heard on the radio that one assailant was apprehended. He stated he found out in the police station afterwards the arresting officer was Officer Xh.H.

48. The Presiding Trial Judge put it to Officer M.B. that at Page 63 of the English version of his statement to the prosecutor he named two people who arrested the assailant, "*Xh. and G.*". Officer M.B. stated maybe Sgt. V.Z. was with them too and he could not be sure because what he stated was based on conversations he had with his colleagues at the police station.

49. He stated A. was with him in the vehicle and Xh.H. was in an unmarked vehicle at the Cadastral Office. He stated Xh.H. did not travel in the same vehicle as him at any stage.

50. Officer M.B. stated he did not remember the name of the person who was arrested or what police station he was taken to. He confirmed he had a conversation with Sergeant V.Z. about the incident.

51. The Prosecutor put it to Officer M.B. that Sgt. V.Z. had said another person had in fact arrested the suspect but Officer B. later told her that it was in fact Xh.H. who arrested him. Officer M.B. replied Sergeant V.Z. was wrong when she stated

to the prosecutor that he had affected the arrest and he had clarified to the prosecutor it was Xh.H. who had in fact affected it. A video recording of the incident that was subsequently up-loaded to YouTube was then played in the courtroom. Officer M.B. stated it showed him giving chase first and followed by A. and H. . He stated it showed two males running in the direction of the faculty and the other towards 'Ulpiana'.

52. In response to questions from counsel for the defendant, **K.D.**, the lawyer M.D., Officer M.B. stated he could not say if the defendant, **K.D.** was one of the three males he saw running from the crime scene. He did not dispute his earlier assertion to the prosecutor that the males were 15 metres away whereas now he was saying 80 metres, and he stated as a long time had passed since the incident he could not be sure what the true distance was. However, he agreed the incident was likely to have been fresher in his mind in February 2013 than in July 2015. Officer M.B. stated he saw two of the three assailants on the right side of the roundabout and, once he exited the vehicle, saw the third one running towards 'Ulpiana'.

53. Judge Witteman put it to the witness he had stated only one person was arrested and only now did he remember there was another person or persons arrested. Officer M.B. stated he did not know where this person was arrested but he knew a person was arrested as a suspect. He also stated Officer Xh.H. was not with his group in the vehicle or close to the crime scene at the time of the incident because he was supposed to arrive later. Officer M.B. agreed with Judge Witteman that from their positions neither Xh.H., Sgt. V.Z. or Officer G.B. could see the attackers.

54. Officer M.B. agreed with Judge Witteman he had given his statement to the prosecutor on the same day as Sgt. V.Z.. He stated they met at the police station

after she had given her statement and she informed him he would be summoned by the prosecutor to give a statement because he said it was him who made the arrest. However, Officer Berisha stated he corrected Sgt. V.Z. on this point and confirmed it was then Officer Xh.H. who made the arrest. However, he then said he could not be sure if this conversation had taken place in person or over the telephone but he was sure they had spoken.

55. The prosecutor then put it to Officer M.B. his evidence now was that Officer Xh.H. was not at the crime scene at the time the incident took place. He agreed with this. The prosecutor stated in his statement of 25 February 2013 Officer Berisha stated Officers H. and G.B. had made the arrest and had probably seen the defendant throwing stones but was now saying they were not at the crime scene when the incident occurred but only came after the incident. Officer M.B. stated he could not explain this now.

56. The next witness to testify before the main trial panel on 16 July 2015 was Kosovo Police Officer Sh. K.. He also submitted a report on 4 April 2012 in respect of the incident. He stated he recalled filing the report and he stood by its contents.

57. Officer Sh.K. stated at the time of the incident he was attached to the Kosovo Police Unit responsible for escorting special delegations. He stated on the day he received the Serbian delegation at Merdare. He stated the journey to Pristina was uneventful. He was driving a vehicle with his colleague A.S.. Officer Sh.K. stated he escorted the delegation to their meeting and left but was designated to return at 16:00 hrs.

58. Upon his return, Officer Sh.K. stated his vehicle was first in the convoy escorting the Serbian delegation. There was no other marked police vehicle in the

convoy. He stated the stone-throwing incident occurred approximately 2 to 3 minutes after the convoy left the Cadastral Office. He stated he heard his colleague say: 'attack', whereupon he continued faster with the delegation to reach a safe place. He stated he did not see any individual near the car as he was opening the road for other vehicles. He stated the Serbian vehicle was near his lead vehicle, as was the practice. He stated the convoy was attacked by a "*bunch of people*" which in his statement made at the time he estimated as between 5 to 7 people.

59. Officer Sh.K. stated that as he sped up to escape. So too did the Serbian delegation and they proceeded to the yard of police station number 4 in Lakrishte. He stated his colleague leaned out of the window to see what was going on.

60. On arrival Officer Sh.K. stated the Serbian delegation refused first aid from Kosovo institutions. He stated he informed the relevant Kosovo Police Unit to deal with the damage to the vehicles and also inspected it himself out of curiosity. He stated he did not see any physical injuries. He stated both vehicles had sustained damage to the glass and the body-work. He stated later the convoy proceeded back to Merdare. His vehicle took the lead in a convoy of 5 to 6 vehicles and there were no further incidents.

61. In response to questions from the lawyer M.D., counsel for the defendant **K.D.**, Officer Sh.K. stated no members of the Serbian delegation were bleeding in the police station after the incident.

62. In response to questions from Judge Witteman, Officer Sh.K. stated he subsequently heard 2 or 3 persons were arrested in relation to the incident but he could not be sure about this.

63. The next witness to testify before the main trial panel on 16 July 2015 was Kosovo Police Officer G.B.. He also submitted a report on 4 April 2012 in respect of the incident. He stated he recalled filing the report. He also confirmed he gave testimony before the prosecutor on 27 February 2013. He stated he stood by the contents of the report and his subsequent testimony.

64. Officer G.B. stated he was employed as a police officer since 2002 and at the time of the incident he was working in the motorcycle unit attached to the south Pristina police station in the Dardania area. He stated his unit was sent to the Kosovo Cadastral Agency to secure the building. He stated the unit arrived at 14:00hrs - before the delegation. He stated there were no problems when the delegation arrived. He was positioned outside the Kosovo Cadastral Agency with several colleagues but he could not remember who exactly. He stated they moved around the facility to keep it secure. Officer G.B. stated when the meeting ended initially the unit remained at the Kosovo Cadastral Agency until other units came to provide transport to the station.

65. Officer G.B. stated his unit remained at the Kosovo Cadastral Agency for a short period of time until an unmarked police vehicle arrived. He stated he could not recall who travelled in the car with him but he thought there were 4 to 5 officers who, as far as he could remember, were all in uniform.

66. Officer G.B. stated he did not witness the attack on the delegation but rather heard about it on police radio. He stated a colleague who could identify one of the attackers came to the vehicle and together with him and based on his description, the unit was subsequently able to apprehend the defendant, **K.D.** He stated the colleague was Officer Xh.H.. He stated Officer Xh. H. was at the traffic roundabout near the hospital before he came to Officer B.'s vehicle.

67. Officer G.B. stated it was approximately 2 to 3 minutes from the time Officer Xh.H. entered the vehicle until he saw the suspect. He stated when Officer H. entered the vehicle they travelled in the direction of the technical faculty. He stated Xh.H. also sat in the vehicle and another colleague got out making a total of five occupants. He stated Officer Xh.H. identified the defendant, **K.D** in his presence as he was entering a coffee bar. He stated they all exited the vehicle. He stated the suspect was apprehended at one of the coffee bars opposite of technical faculty and this was approximately 100 to 200 metres from the scene of the incident. He stated the suspect was with another person at the time and they were walking together towards the coffee bar and had entered it. He stated officers entered the coffee bar and approached these persons, and asked them to come outside but when they did so one of them ran away, and the defendant **K.D.** was apprehended. He stated Officer Xh.H. had recognized him from the vehicle. He stated he had observed him crossing the street and he was walking normally. When apprehended, he stated the suspect was nervous but cooperative. He did not say or do anything. Officer G.B. stated he did not personally arrest the defendant but he observed it and participated in it. He stated after his arrest, the suspect was taken by police car to the police station and he had no further dealings with him or with the Serbian delegation for that matter.

68. In response to questions from the lawyer, M.D., counsel for the defendant **K.D.**, Officer G.B. stated the unit travelled through “Muharrem Fejza” street, then turned right to “Fehmi Lladrovci” street and then turned right again to the road which he believed was “Agim Ramadani” Street, and this led to the coffee bar where the defendant was arrested. He stated that upon arrest the defendant was not detained for a long time outside the coffee bar but only until a marked police car arrived to transport him to the police station. He could not remember which police

officers stayed with him until the car came and he did not subsequently travel in the police car with the suspect.

69. Officer G.B. stated he did not pursue the suspect who had escaped, as this might have led to the escape of the one suspect the unit had managed to apprehend. He confirmed he was in the same unit as Officer Xh.H. and it was his duty to secure the building.

70. In response to questions from Judge Witteman, Officer G.B. stated Officer Xh.H. was earlier transported in another vehicle and he probably had the opportunity to see how the incident unfolded and therefore could identify the person based on his physical appearance. Officer B. stated he could not say why Officer H. could only identify one suspect. However, he did state Officer H. was able to say the suspect had a beard. Officer G.B. stated he did not at any time witness any suspects running from the scene. Later he did not hear if anybody else had been apprehended.

71. In response to a question from the Presiding Trial Judge, Officer G.B. stated he worked in the same unit as Officer M.B. and Sgt. V.Z. was a team leader. He stated he could not be sure if he was with them when the attack occurred. Similarly, he could not explain why he now recalled Officer Xh.H. describing the suspect as having a beard but not when he was interviewed by the prosecutor in 2013.

72. The trial panel received the evidence of former Kosovo Police Officer Xh.H. on 1 September 2015 via video-link from the District Court of Rennes in France. The witness gave evidence in the presence of the Clerk of the Court, Mme. Nathalie Romaire and at the beginning of the session she confirmed the witness had identified himself to her satisfaction.

73. Xh.H. stated he recalled the incident and the report he filed on the same date. He confirmed he also gave a statement to Police Sergeant Raoul Riou on 30 September 2013. He stated he stood by the contents of his report of 4 April 2012. However, the statement of 30 September 2013 had not been taken in the presence of a certified interpreter but only a person who could speak Albanian and French.

74. Xh.H. stated at the time of the incident he was police officer assigned to the motorcycle unit, south police station in Pristina. On the day of the incident he was in uniform and his duty was to provide external security the Kosovo Cadastral Office. He stood outside the building to prevent unauthorized persons gaining access. He stated he was already in this position before the Serbian delegation arrived. He stated all seven members of his motorcycle unit were present. They had arrived there by official police vehicle. He stated he saw the Serbian delegation arrive. He stated there were two vehicles escorted by a Kosovo police SUV. He stated at this point he was approximately 20 to 30 metres away from the main door of the building.

75. Xh.H. stated he was still in the same location when the Serbian delegation left the building at approximately 16:00hrs. The two delegation vehicles were again escorted by a Kosovo Police vehicle. He stated he informed his deputy commander Officer B.B. and he was relieved from duty. He stated almost instantly he proceeded towards the city and the station in the rear (middle) of a marked Golf 5 driven by Officer Sh.M. and accompanied by A.S. and G.B.. He stated there was a fifth officer present but he could not say if this was Officer V.P. or Officer M.B.. He stated they were approximately 100 metres behind the convoy but were closer by the time they reached the junction at Street "Fehmi Lladrovci". He stated he could see the convoy clearly even though there were other vehicles between them. He stated the police had not blocked any of the approach roads to the roundabout.

He stated when the Serbian delegation vehicles reached the roundabout his vehicle was less than 10 metres behind. He could not recall if there were vehicles between them but he stated in any event he had a clear view of what was going on in front of him.

76. The prosecutor then showed Xh.H. a map of the area and he pointed out the Cadastral Office of Kosovo marked “*Arkivi i Kosoves*”. He also pointed out the roundabout and the *`Fakulteti Teknik`*.

77. Xh.H. stated the incident took place between the entrance road to the hospital and the entrance to the roundabout. He stated his vehicle was approximately 20 to 30 metres away when the attack began. He stated at that point he and his colleagues exited their vehicle, and then the persons attacking the Serbian delegation vehicles started walking away.

78. Xh.H. stated he first knew something was wrong when he saw persons on both sides of the street, on the left and on the right, throwing either rocks or heavy objects. He stated as far as he could remember there were 2 persons on the left side and 3 persons on the right side but it could have been 5 or 6 or more. He stated he did not know what these people were throwing as he was not focused on that. He stated there was more than one person throwing objects but he could not say how many. He stated he saw the objects hit the two Serbian delegation vehicles.

79. Xh.H. stated he was 20 to 30 metres away when the incident started but he did not stop at that distance and instead approached with the vehicles to the very point of the incident and then stepped out with the result he was less than five metres away when the individuals were throwing the objects. He stated the entire incident lasted less than a minute. He stated he exited from the rear right side of the vehicle.

80. Xh.H. stated when he and his colleagues exited their vehicle there was no formal division of duties. He stated as they stepped out of the vehicle, they noticed one male crossed Str. “Fehmi Lladrovci” and went towards the Ulpiana area while the other two crossed the street and went upwards. He stated he was not instructed to chase anybody nor did he instruct anybody to do so. He stated his belief himself and Officer G.B. started chasing the two males who ran towards Str. “Agim Ramadani” and another police officer chased the person who ran towards Str. “Fehmi Lladrovci”. He said he personally witnessed the two males he gave chase to throwing objects at the delegation convoy. He stated they were in plain clothes without any distinctive insignia.

81. Xh.H. stated these two males were running away from the scene and they took refuge in a cafe. He stated his belief the two males had not noticed him and his colleagues because their police vehicle was unmarked. He stated he kept them in his vision from the time they moved away up to the moment they were apprehended and even saw when they entered the café and at what table they sat down. He stated the chase was very short. He stated the café was one of the café bars on Str. “Agim Ramadani” but he could not remember which one.

82. Xh.H. stated that when he entered the café there was no doubt in his mind the two persons seated there and to whom he approached had been throwing stones at the roundabout. He stated he was with another officer and they tried to arrest both persons however, one escaped. He stated himself and his colleague apprehended the remaining male and some other officers arrived to assist. Xh.H. stated the male he managed to apprehend had no difficulties in walking or running. He stated his reaction upon arrest was normal but outside the bar both tried to escape and the second male succeeded. Xh.H. stated the only interaction he had with the male who did not escape was to ask him about his health and his well-being and possibly

if the handcuffs were too tight or too loose. He stated the detainee did not complain of any injury or ask for any medical treatment.

83. Xh.H. stated he did not know this person's name nor could he recognize him anymore. The prosecutor then put the defence allegation that he was only giving this evidence to enhance his chances of getting asylum in France but Xh.H. denied this and stated he had not mentioned this (or any other) case to the French authorities.

84. In response to questions from counsel for the defendant **K.D.**, the lawyer M.D., Xh.H. stated on the day he was on duty assigned to secure the outside of the Kosovo Cadastral Office but he was based within the curtilage of the premises.

85. Xh.H. stated at the point of the attack, as far as he could see, there were two persons on the left side and three persons on the right side of the road. He stated he exited the vehicle from the right side and followed the persons who were on the right side. He clarified how his vehicle approached the delegation at the roundabout and how the distance between them was not more than 10 metres when the attack occurred. He stated when he and his colleagues exited their vehicle the attack had ceased.

86. Counsel for the defendant **K.D.**, the lawyer M.D., then put it to the witness the distance between the scene of the incident and the place where the arrest took place was not very short and was in fact rather a long distance, and even an athletic runner would require two or three minutes to cover it. Xh.H. replied he and his colleagues walked a part of the journey on foot and then their colleagues came and picked them up in vehicles.

87. Xh.H. stated there were other persons in the café bar apart from the two males they had followed. He stated he saw these two persons when they crossed the road, entered the café bar and sat at the first table turning their backs against the windows and the entrance and facing the inner part of the café bar. He stated they did not have drinks on their table. He stated both males were requested to go outside and produce their ID cards and they did so without protest but when his colleague told them that they were the ones who had attacked the convoy they then started running away.

88. Xh.H. stated after the arrest he called the base station and asked for assistance to escort the person to the station and the unit Alfa Sierra 101 came about 10-15 minutes later, picked up the person and took him to the station. He stated after that he had no further dealings with him. He did not know the name of the officer he handed the defendant over to. He stated the detainee's attempt to escape was the only facet of his resistance to arrest. He was not aware of any other persons being detained or arrested following the event.

89. The witness Xh.H. stated he had been in France since November 2012.

90. In response to questions from the defendant **K.D.**, Xh.H. stated when he and his colleagues exited their vehicle the assailants were 5 to 10 metres from him but in the chase the assailants gained ground on them and quickly passed them out. However, he stated he had the defendant in his sight 70% of the time. He stated he returned to his vehicle and it proceeded towards Str. "Agim Ramadani" but he kept the assailants in his view and did not lose sight of them. He stated he returned to another vehicle quickly as he realized it would be better to pursue the assailants in the vehicle.

91. In response to questions from Judge Witteman, Xh.H. was unable to say what the distance was from the traffic lights to the café bar on “Agim Ramadani” Street. He stated the suspects were red in the face and gasping when he encountered them in the café bar.

92. In response to questions from the Presiding Trial Judge, Xh.H. confirmed he was able to keep sight of the assailants most of the time he was being driven in the unmarked car. He agreed he did not see them 100% of the time as he had to watch where he was going. He was not driving. He was sure they did not hide or enter any premises.

93. Xh.H. stated the person that ran towards Ulpiana was of average build and not as thin as the two who ran away. He could not state how many pedestrians were in the immediate vicinity when the attack began, but indicated it was between 10 and 50. He stated that although there was something of a traffic jam when the attack took place, he could still see the attack and the assailants very clearly. He said the other pedestrians did not interfere with his view of the two assailants he was pursuing.

94. Xh.H. stated he was 100% sure one of the two persons he encountered in the café bar and whom he instructed to come outside to identify themselves was one of the persons who carried out the attack at the roundabout. However, he also stated on the day the incident took place he would have been able to identify all three assailants but now, three and a half years later, he might not even be able to identify the person who was at the café bar and who was handcuffed.

95. The Presiding Trial Judge then put it to Xh.H., that in his statement given in September 2013 he stated, *“I was behind the convoy when it happened, I saw other persons throwing stones and I ran after one individual only and I did not see many*

other persons. Now I cannot identify the second person who escaped” but now he was saying he saw the faces of all the attackers and was able to recognize them. She asked him to explain this contradiction.

96. In response Xh.H. simply stated he stood by his report filed in April 2012. However, the Presiding Trial Judge put it to him in that report he stated he saw three people throwing stones whereas now he was saying it was five. In response he stated he saw 5 persons, but since they only arrested one person when they returned to the police station “they” told them to write down three persons. He stated as far as he could recall people were throwing stones from both sides of the road and the attack happened very quickly.

97. In response to questions from defence counsel M.D., Xh.H. stated both his vehicle and the delegation were moving and when the attack happened, they had closed the distance between their vehicle and the delegation. They arrived at the scene and alighted from their vehicle. He stated at the time of the attack, the Serbian vehicles were stopped and they were waiting so the suspects stepped forward towards the convoy.

98. On 1 September 2015 the trial panel received testimony from the witness H.B.. He confirmed he was interviewed about the events in question on 12 December 2012. He stated in April 2012 he was a consultant for the Central Bank of Kosovo. However, he worked for the Cadastral Agency of Kosovo for ten years prior to that and he was invited to attend the meeting with the Serbian delegation on 4 April 2012. He stated the purpose of the meeting was the implementation of the agreement that was entered in Brussels concerning the cadastre. He stated it was an official meeting as opposed to a courtesy call. He stated it was not until he went home that he saw on TV that the delegation had been attacked. He was not in a

position to give evidence on how the attack occurred, much less who might have been responsible.

99. The next witness was B.B.. He gave evidence before the main trial panel on 2 September 2015. He was a police officer and a forensic investigator who, on 4 April 2012, was an intern under the supervision of Officer E.D.. He recalled seeing the two cars but he was not authorized to handle the case but only to see how the procedure was conducted. He stated his recollection one vehicle was an Audi and the other a Skoda.

100. B.B. stated his opinion the damage to both vehicles was minor, namely smashed glass and dents to the bodywork. He saw stones inside one vehicle and he assumed they had broken the glass. He stated the stones were of a size that could be held in the hand. He stated as far as he could recall one vehicle had both front windows broken whereas the other had only the driver's side broken. When shown photographs by the prosecutor, he recognized the damaged cars.

101. In the main trial session of 14 September 2015 the prosecutor formally withdrew from the witnesses who were part of the official delegation and in the convoy⁸. She stated they would only be able to testify about the fact of the attack itself whereas the real issue in the case was one of identification.

102. The defendant, **K.D.** gave evidence himself at the main trial session on 9 November 2015. At this session he was represented by new counsel, namely A.S. who the trial panel assigned *ex officio* to replace the previous defence counsel as the defendant had claimed in the session on 7 October 2015 that he was not

⁸ The Presiding Trial Judge attempted to serve summonses on the witnesses in Serbia through the EU Liaison Office in Belgrade. However, due to ongoing difficulties between the respective Ministries of Justice in Kosovo and Serbia this proved impossible. Subsequently, the witness **D.P.** undertook to deliver these summonses but he did not return any delivery receipts. He confirmed by telephone that the witnesses had received them but they did not attend at any of the main trial sessions.

representing him in the way he wished. The main trial panel assigned defence counsel, A.S. to represent the defendant. The panel wishes to commend Mr. S. for the professionalism with which he handled the case despite only coming into it at a relatively late juncture.

103. **K.D.** stated on the day he was having coffee in a cheap bar popular with students. He was alone but there were other people in the bar. He stated he arrived in the bar at approximately 15:00 hrs and the police came at approximately 16:00 hrs but he could not be sure of these times as he did not check his watch. He stated he was sitting down drinking his coffee when they came in. He could not recall exactly how many there were. They approached him and told him to stand up and said, *“We have to arrest you”*. He stated he asked, *“Why?”* but they did not answer but instead became aggressive. He stated he told them to take it slowly and said, *“I am injured and everything will be fine”* and he tried to protect his leg and then they put handcuffs on his hands.

104. **K.D.** stated he had to protect his leg as he had a torn ligament and torn meniscus. He stated he did not know if he had sustained these injuries two or three years previously but he was constantly in receipt of medical treatment. He stated he provided the prosecution with documentary proof of this. He stated in practical terms his injury meant he could not run and could only walk short distances and cautiously at that. He could not engage in sporting activity. He was not presently undergoing treatment.

105. **K.D.** stated he did not know the police officer Xh.H.. His counsel put it to him Xh.H. identified him and he personally arrested him at the café bar on the day of the alleged incident but **K.D.** stated he had only seen him for the first time when

he gave his testimony via video-link on 1 September 2015. He was clear he, Xh.H., was not present at the café bar during his arrest on 4 April 2012.

106. In response to questions from the prosecutor, **K.D.** stated the arresting officers were aggressive and did not give him an opportunity to speak to them. He stated he did not make a formal statement at the police station on the day either. He could not recall if he gave a statement to the Eulex prosecutor on 7 December 2012. He agreed the document he filed on 20 October 2014 requesting dismissal of the indictment was the first time he provided his account of what happened on 4 April 2012 and this was two years, six months, and sixteen days after the incident allegedly occurred.

107. **K.D.** agreed in this document he had stated *“I pleaded to them, meaning the police officers, to arrest me quietly because I could not move my right leg, which was 90 percent disabled. I had ruptured my ligament and knee meniscus for several months”*. The prosecutor put it to him the discharge letter from the District hospital of Prizren where he was admitted on 8 May 2012 and released on 14 May 2012 stated, *“The patient came to the hospital for a left knee injury, the injury has occurred as a result of a fall that happened three years ago”* and asked why he was now saying the injury was to his right knee. **K.D.** replied the injury was to *“the left side of the right leg”*. He agreed he sustained the injury in 2009 or 2010. He stated he was on the waiting list for surgery for a long time. He stated he was treated and operated on in Prizren.

108. The prosecutor put it to **K.D.** his submission of October 2014 stated he had ruptured his ligaments and meniscus *“for several months” (disa muaj)*. **K.D.** stated when the injury initially occurred for up to one year he walked on clutches and after that period he was on a waiting list for surgery and was all of the time in

receipt of therapy. He stated he attended the hospital regularly for ice treatment and was told his turn had not come yet.

109. The prosecutor put it to **K.D.** he was claiming he was in receipt of medical treatment since at least 2009, but there was no medical evidence to corroborate his account he had an injury on the 4 of April 2012. He replied he could not answer “yes or no” but he had furnished all relevant medical documentation in his possession. He stated he was not using walking aids on the day of his arrest. He stated at the time he was residing in Pristina.

110. **K.D.** was adamant he did not try to run away from police officers either before or after his arrest. When the prosecutor asked if he tried to explain to the arresting officers this was a case of misidentification he said they replied; “*we know this*” and they did not say anything more and they were very aggressive, especially when the lady sergeant arrived.

111. In response to questions from his defence counsel, **K.D.** stated he sustained his knee injury playing football and there were witnesses. He stated he had no previous criminal convictions and this was the first time he was investigated for a criminal offence.

112. In response to questions from Judge Witteman, **K.D.** indicated on a map the location of the coffee bar he was arrested in. He stated he was sitting on the left side at the entrance to the bar. He stated he did not see anybody outside.

113. **K.D.** further stated he was an activist in the “*Vetëvendosje*” political movement. He stated on his arrest the police told him there was another activist apprehended and who was waiting for him at the police station. He alleged they told him they had arrested him at the crime scene and his name was Xh.. However,

K.D... stated once they arrived at the station he was placed in a room, and then taken (handcuffed) to Xh. He stated he was taken to detention on remand for a period of 72 hours and he was shown a person who he did not recognise and they asked him, *“did you see this one today at the crime scene”* and he said; *“I never saw him”*. He stated this person was a member of the parliament, Mr. Xh.C. from the municipality of Rahovec. **K.D** stated this man was released and the police said; *“if he was released why we have to keep the other one”* and a superior officer said; *“this is not a decision for you to make and it is an issue that we are waiting for an order to arrive”*. He stated this superior officer was a female sergeant. He stated a police officer said *“somebody has to take this over and we have to prove somehow that we have taken a person in and take this person for holding considering that 24:00 hours of the evening have already passed. They won’t speak or say anything. Send him for holding only”*.

C. DOCUMENTARY EVIDENCE

114. The trial panel received and considered the following items of documentary evidence:

- (a) The entire contents of the prosecution case file PP. 776-3/2012;
- (b) Letter from Joint Officer for Service of Republic Organs of Serbia⁹;
- (c) CD containing footage uploaded to YouTube of the alleged incident filed by the prosecution;¹⁰
- (d) Reply of Municipality of Pristina to trial panel’s questions about maps and photographs¹¹;
- (e) Reply of District Hospital Prizren to trial panel’s questions about

⁹ Main trial file Volume I at tab B

¹⁰ Main trial file Volume III at cover index

¹¹ Main trial file Volume III at Tab 10

defendant's treatment;¹²

(f) Treatment report and discharge form from District Hospital Prizren;¹³

(g) Photographs of locus filed by Defence¹⁴;

(h) Submission of defendant, **K.D.**¹⁵;

(i) Photographs of locus¹⁶;

(j) Reply of Cadastral Agency of Kosovo¹⁷;

(k) Reply of Director of Inspectorate¹⁸;

(l) Reply of University Clinical Services¹⁹

D. ANALYSIS OF THE EVIDENCE and FACTUAL FINDINGS

115. There was no dispute that on 4 April 2012 at approximately 16:15 hrs, an official convoy of two vehicles which formed part of a Serbian delegation that had just finished a meeting with the Kosovo authorities at the Cadastral Agency of Kosovo, was attacked by persons throwing stones as it proceeded along Str. "Muharrem Fejza" towards a roundabout at the junction of that street and Str. "Fehmi Lladrovci". Both vehicles were damaged in the attack and one occupant received light injuries to his head. The defendant, **K.D** was indicted with the alleged offences herein in respect of this incident.

116. The prosecutor, the defendant and his defence counsel furnished final speeches in writing to the trial panel and these were of great assistance in

¹² *Do.* at Tab 11

¹³ *Do.* Volume III at Tab 15

¹⁴ *Do.* Volume III at Tab 16

¹⁵ *Do.* Volume III at Tab 17

¹⁶ *Do.* Volume III at Tab 19

¹⁷ *Do.* Volume III at Tab 30

¹⁸ *Do.* Volume III at Tab 29

¹⁹ *Do.* Volume III at Tab 28

identifying and resolving the key issues in this case. The trial panel extends its gratitude to the parties for this.

117. The incident was captured (probably on a mobile telephone) and the footage later uploaded to YouTube. The footage is 44 seconds in duration and while it is a little grainy and shaky it is nonetheless decipherable. The footage begins after the attack has already occurred. It shows three uniformed Kosovo Police officers, two of whom²⁰ appear to have alighted from a marked Kosovo Police Golf V vehicle, at a pedestrian crossing on Str. “Muharrem Fejza” in Pristina. The footage shows two people running away from them at a distance of initially 5 to 10 metres. At first, the officers give chase on foot but abandon this after only a few metres as the two people gain ground on them and they presumably realise they cannot catch up on foot. It is impossible to describe these two people beyond noting the one ahead appears to be smaller than the one behind.

118. The footage then shifts to the Serbian delegation itself for approximately thirty seconds. The driver’s side windows of the Skoda Octavia and Audi A8 vehicles have both sustained clear damage of a type consistent with being hit by a stone or other similar object. The vehicles are shown proceeding down Str. “Fehmi Lladrovci” towards the roundabout at the junction with Boulevard “Dëshmorët e Kombit”. They are escorted by a marked, white, Kosovo Police SUV. The trial panel concluded that while the footage was of some use in enabling it to “picture the scene” it was of little evidential value in determining the issue of the defendant’s guilt or innocence.

119. As stated by the prosecutor, both during the trial and in her final speech the key issue in this case was the identification of the defendant, **K.D** as a person who

²⁰ Officers Xh.H. and G.B.

threw stones at an official convoy of Serbian vehicles in Pristina on 4 April 2012, and the key witness in this regard was the then Kosovo Police officer Xh.H.. Xh.H. left Kosovo in November 2012 and is now seeking asylum in xxx.

120. Officer H.'s first statement in relation to the events of 4 April 2012 was made on that date. This statement was in fact his formal report of the incident. As such, it is remarkably brief. In essence, it can be boiled down to a statement that as the convoy approached the roundabout at the junction of St. "Muharrem Fejza" and St. "Fehmi Lladrovci" three people started throwing stones towards the vehicles. Immediately his unit started pursuing the suspects and together with another unit they managed to stop one of them on St. "Agim Ramadani" at the technical faculty. He stated Unit AS-101 came and transported this person to the station and his unit patrolled for a while looking for other suspects but did not see them.

121. Xh.H. made a more detailed statement to French Police in September 2013. The trial panel is satisfied this statement was made voluntarily and there was no evidence to suggest it was in any way influenced by Xh.H.'s application for asylum in xxx. On the contrary, the trial panel assessed Xh.H. as a credible witness who had no reason to lie and, in point of fact, when he did not know or could not recall something or did something he should not have he simply said so.

122. In this statement Xh.H. stated he saw "*people*" throwing stones at the convoy. He stated there were five police officers in his vehicle. They stopped their vehicle and each officer ran towards an individual. He, accompanied by Officer G.B. number 5451, ran towards one individual. He stated they arrested one individual and hand-cuffed him. He stated another individual escaped and the arrested person was the only one to be arrested in connection with the incident. He stated he was sure he saw the person he arrested throwing stones towards the convoy and he did

not lose sight of him while running. He stated “we” handed this individual over to other police officers who took him to the police station. He stated he could not recognize the second person who escaped. He stated the arrest occurred about 150 metres away from the convoy, in Str. “Agim Ramadani”. He stated the person he arrested did not put up any resistance but he was breathless. He stated he never lost sight of him. He stated he saw clearly the individual he arrested threw stones at the vehicles windows and was clearly aiming at the windows.

123. When Xh.H. was heard by the trial panel through video-link at the main trial, his recollection of the incident was different. He stated five people attacked the vehicle, two on the left side of the road and three on the right. His recollection he was 20 to 30 metres away when the incident started and less than five metres away when he alighted from his vehicle, is in accordance with the YouTube footage. The trial panel accepts his evidence himself and Officer G.B. started chasing the two males who ran towards Str. “Agim Ramadani” and another police officer chased the person who ran towards Str. “Fehmi Lladrovci”. It also accepts his evidence he personally witnessed the two males he gave chase to throwing objects at the delegation convoy even if he admitted they were in plain clothes without any distinctive insignia.

124. However, from this point on Xh.H.’s testimony becomes less reliable. His statement he kept the two males in his vision from the time they moved away up to the moment they were apprehended, that he saw when they entered the café and even at which table they sat down and there was no doubt in his mind they had been throwing stones at the vehicles was undermined in cross-examination when he admitted they were only in his vision “*seventy per cent of the time*”. The trial panel agrees with this. Xh.H. had to lose sight of them while he turned to another vehicle that picked him up, got into it, drove down Str. “Muharrem Fejza”, turned

right at the roundabout, drove up Str. “Fehmi Lladrovic”, turned right on Str. “Agim Ramdani”, alighted from the vehicle and entered the café bar. The trial panel finds, in these circumstances, Xh.H. could not have had these two males in his sight for more than seventy per cent of the time he followed them.

125. Nevertheless, this lacuna in the prosecution case was not necessarily fatal had it not been for some other problems. In his testimony to the main trial panel Xh.H. stated he did not know the name of the person he arrested nor could he recognize him anymore. This admission, when considered together with his admission that he only kept the alleged assailants in his vision seventy per cent of the time after the attack, created a reasonable doubt in the minds of the trial panel about the reliability of his identification.

126. A further and more serious doubt was created by Xh.H.’s evidence to the trial panel on 1 September 2015 when asked by the Presiding Trial Judge to account for the discrepancy in his testimonies on the issue of how many people attacked the convoy. He stated²¹

Xh.H.: The truth is there were people on both sides of the street throwing stones. Since we only arrested one person, it is true that I saw 5 persons but when we went to the police station they told us to write down 3 persons.

127. It appears from this testimony that Xh.H. was instructed by (an)other officer(s) to state in his report of 4 April 2012 that there were only three assailants, because the police had only managed to apprehend one suspect and this would look less incompetent if there were as many as five attackers. The trial panel considers it disappointing and very regrettable that any police officer(s) would be concerned

²¹ At page 28 of the English version

with this and even more so that a report would be falsified to support such a misguided perception.

128. It is entirely unacceptable that any officer should state in any report something he/she knows to be untrue and it is even more so if this is done at the behest of (a) fellow officer(s). When faced with evidence tainted in this way, the trial panel is compelled to ask what else in the case did the officer state, either of his own motion or on the instructions of others, which he knew to be untrue?

129. It occurred to the trial panel the prosecutor should have withdrawn the indictment against the defendant, **K.D.** once Xh.H. gave this evidence. In the event, the trial panel came to the conclusion it would be wholly unsafe to rely on the evidence of Xh.H. as his credibility was irrevocably tainted by his admission he had knowingly included false information in his initial report. Once the trial panel reached this conclusion it had no option but to acquit the defendant, **K.D.** of both of the offences before the court.

130. The defendant, **K.D.** gave evidence he suffered a knee injury in 2009 or 2010 which required treatment and eventual surgery in May 2012. His case was this injury prevented him from running away from the scene of the attack in the manner described therefore he was not the man Xh.H. claimed to have observed and pursued. The defendant, **K.D.** presented documentary evidence in support of his claim.

131. The trial panel concluded that, while it had some doubts about the authenticity of the documents tendered by the defendant, he probably did suffer the injury complained of at the time he claimed. In addition, he probably did receive the treatment he claims he did. However, the trial panel also came to the conclusion

this injury would probably not have prevented the defendant, **K.D.** carrying out the attack and making his escape on foot after it.

132. It should also be stated that even if the trial panel concluded the defendant had completely fabricated both the fact and the effect of his injury this would not have lessened the burden on the prosecution to prove his guilt beyond reasonable doubt which it ultimately failed to do.

133. In a similar vein, other evidence the defendant, **K.D.** adduced, or attempted to adduce, in relation to changes in the topography of the area from Str. “Muharrem Fejza” to the roundabout and from there up Str. “Fehmi Lladrovci” to Str. “Agim Ramadani” was ultimately of little or no relevance to the issue of his guilt or innocence and accordingly the trial panel makes no findings of fact based on these submissions.

E. CONCLUSIONS

134. Article 3 of the CPC provides as follows:

Presumption of Innocence of Defendant and In Dubio Pro Reo

- 1. Any person suspected or charged with a criminal offence shall be deemed innocent until his or her guilt has been established by a final judgment of the court.*
- 2. Doubts regarding the existence of facts relevant to the case or doubts regarding the implementation of a certain criminal law provision shall be interpreted in favor of the defendant and his or her rights under the present Code and the Constitution of the Republic of Kosovo.*

135. In this case the court had initial doubts about the evidence of Xh.H. when he stated the persons he chased from the *locus* were only in his sight 70% of the time. These doubts were compounded by his inability to recall the name of the person he arrested or to recognise him in the courtroom. As an aside and with the benefit of hindsight, it would have been a useful exercise for Xh.H. to have formally identified the person he arrested at a subsequent identification parade especially as he did not convey him back to the police station nor did he process him there.

136. However, even if Xh.H. had testified that he never lost sight of the person he chased and he was able to both name and recognise him subsequently the trial panel would still have acquitted the defendant, **K.D.** on the basis that Xh.H.'s report of 4 April 2012 contained information he knew and admitted was false thereby irretrievably tainting his credibility in the eyes of the court.

F. COSTS OF THE PROCEEDINGS

137. As the defendant, **K.D.** was acquitted the costs of the proceedings must be borne by the budget of the Republic of Kosovo.

BASIC COURT OF PRISHTINË/PRIŠTINA

P. nr. 357/14

Dated 18 February 2016

Mariola Pasnik

Presiding Judge

Katrien Gabriël Witteman

Panel Member

Naimë Jashanica

Panel Member

Dea Dedi

Court Recorder