

**BASIC COURT OF MITROVICË/MITROVICA**

**P. nr. 199/2015**

**14 June 2016**

**IN THE NAME OF THE PEOPLE**

**THE BASIC COURT OF MITROVICË/MITROVICA**, in the Trial Panel composed of EULEX Judge Franciska FISER, as Presiding Judge, and EULEX Judges Vidar STENSLAND and Rene Van VEEN as Panel Members, with the participation of EULEX Legal Adviser Dukagjin KERVESHI as the Recording Officer, in the criminal case against:

**S.G., born on ..., in the village of ... in ..., residing in the same permanent residence, employed at ..., married with three children, average economic status;**

*indicted with:*

- **Aggravated Murder** of I.I. in violation of Article 147, Item 4) of the Criminal Code of Kosovo (hereinafter: CCK); and
- **Unauthorized Ownership, Control, Possession or Use of Weapons** in violation of Article 328, Paragraph (2) of the CCK;

*and*

**A.G., father's name ..., Mother's name ..., maiden name ..., born .... in the village of .... in ..., Kosovo Albanian, residing in "...." Street, Mitrovica, unemployed, married with three children, average economic status;**

*indicted with:*

- **Aggravated Murder** of M.I. in violation of Article 147, Item 4) of the CCK;
- **Attempted Aggravated Murder** of B.I. in violation of Article 147, Item 4) of the CCK;  
and
- **Unauthorized Ownership, Control, Possession or Use of Weapons** in violation of Article 328, Paragraph (2) of the CCK;

both accused through the Indictment of the Prosecution Office of the Republic of Kosovo dated 26 May 2010, amended on 17 March 2016 and 13 June 2016;

*after* having held the Main Trial sessions, all open to the public, on 7 March 2016, 17 March 2016, 23 March 2016, 26 April 2016, 29 April 2016, 10 May 2016, 13 June 2016 and 14 June 2016, the crime scene visit on 26 April 2016, all in the presence of the EULEX Prosecutor of the Republic of Kosovo, the Defendant S.G. and his Defence Counsel H.ZH., the Defendant A.G. and his Defence Counsel H.M., on 7 March 2016, 17 March 2016, 23 March 2016 and 26 March 2016 also in the presence of injured party B.I. and on 17 March 2016 also in presence of injured party F.I.;

*following* the Trial Panel's deliberation and voting held on 14 June 2016;

*pursuant* to Article 392, Paragraph (1) of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: CPCK) on 30 June 2016 in a public hearing and in the presence of Defendant S.G., the Defendant A.G., the EULEX Prosecutor, injured party B.I. and his Defence Counsel G.R.;

renders the following:

## **JUDGMENT**

## I.

### Under COUNT 1, Aggravated Murder of M.I. and under COUNT 2, Attempted Aggravated Murder of B.I.:

the Defendant **A.G.** is found **GUILTY** because:

On 4 December 2009 after 12.00 near the junction of the streets “S. V.” and “U.” in Mitrovicë/Mitrovica, more specifically outside of the house of R.G.’s, on the small alley passing in front of G.’s house and leading left turn to I.’s house, A.G. with S.G., A.G.1 and R.G. met I.I., B.I. and M.I.. Due to an ongoing conflict between the families of the deceased I.I. and R.G., members of both families started arguing which accumulated into a fist fight between S.G. and B.I..

Then B.I. jumped into his car BMW together with his wife M.I. and drove away towards the center of Mitrovica in order to search for help from the police, while the other members of both families remained on the spot.

After short time, B.I. and M.I. returned in the BMW. The police car came immediately after BMW and stopped on the west side of “U.” Street while B.I. turned into “S.V.” Street.

While B.I. was driving on “S.V.” street, A.G., S.G., Ag. G., R.G. and I.I. were standing on the road near the left turn of the alley.

A.G. pointed the gun type M57-TT with serial number ... and fired at the approaching BMW car. B.I. then turned the car towards A.G. and hit A.G. with the left front part of the vehicle.

B.I. continued to drive after the hit and when he was about to take a turn towards I’s house, A.G. fired with his gun in the direction of the BMW car, aiming at B.I. and hit his left arm. With this A.G. intentionally attempted to deprive of his life the victim B.I..

B.I. continued to drive the car BMW around the corner, stopped in front of the I’s gate and jumped over the wall into I’s yard while A.G. followed the car.

M.I. was exiting the vehicle when A.G. intentionally fired with the gun-pistol type M57-TT with serial number ..., in the direction of and hit M.I. on the right arm and caused a lethal wound. The trajectory of this projectile went from the right side toward the left, and from up to down, and

slightly backwards; the bullet was found in the left hole of the thorax. With this, A.G. has deprived of her life the victim M.I..

Thereby, A.G. committed:

- criminal offence of Attempted Murder of B.I., contrary to Article 146 of the CCK in conjunction with Article 20 of the CCK; and
- criminal offence of Murder of M.I., contrary to Article 146 of the CCK: and

THEREFORE **A.G.** is **CONVICTED** of committing the criminal offence of **Attempted Aggravated Murder**, contrary to Article 147, Item 11) of the CCK in conjunction with Article 20 of the CCK, thereby re-qualifying count 1 from the charge of Aggravated Murder, contrary to Article 147, Item 4) and count 2 from the charge of Attempted Aggravated Murder, contrary to Article 147, Item 4).

## **II.**

Under COUNT 3, Unauthorised Ownership, Control, possession or use of Weapons:

the Defendant **A.G.** is found **GUILTY** because:

On 4 December 2009 after 12.00 near the junction of the streets “S.V.” and “U.” in Mitrovicë/Mitrovica, more specifically outside of the house of R.G.’s, on the small alley passing in front of G’s house and leading left turn to I’s house, A.G. without a valid permission issued by the competent body, was in possession of a loaded pistol type M57-TT with serial number ... which was later confiscated by the police.

THEREFORE, **A.G.** is **CONVICTED** of committing the criminal offence of **Unauthorised Ownership, Control, Possession or Use of Weapons**, contrary to Article 328, Paragraph (2) of the CCK.

## **III.**

Under COUNT 1, Aggravated Murder of I.I.

The Defendant **S.G.** is found **GUILTY** because:

On 4 December 2009 after 12.00 near the junction of the streets “S.V.” and “U.” in Mitrovicë/Mitrovica, more specifically outside of the house of R.G.’s, on the small alley passing in front of G’s. house and leading left turn to I’s. house, S.G. with A.G., A.G.1 and R.G. met I.I., B.I. and M.I.. Due to an ongoing conflict between the families of the deceased I.I. and R.G., members of both families started arguing which accumulated into a fist fight between S.G. and B.I..

Then B.I. jumped into his car BMW together with his wife M.I. and drove away towards the center of Mitrovica in order to search for help from the police, while the other members of both families remained on the spot.

After short time, B.I. and M.I. returned in the BMW. The police car came immediately after BMW and stopped on the west side of “U.” Street while B.I. turned into “S.V.” Street.

While B.I. was driving on “S.V.” street, A.G., S.G., A.G.1, R.G. and I.I. were standing on the road near the left turn of the alley.

At the same time, another person and S.G., intentionally fired in the direction of and hit I.I.; specifically S.G. fired with the gun-pistol type TT with serial number ....

I.I. who sustained wounds on right side of head, left side of the neck, right side of the chest, and his left arm, died on the spot due to hemorrhagic shock caused by gunshot injuries.

With this, S.G. has deprived of his life the victim I.I..

THEREFORE, **S.G.** is **CONVICTED** of committing the criminal offence of **Murder** contrary Article 146 of the CCK in conjunction with Article 23 of the CCK, thereby re-qualifying from the charge of Aggravated Murder, contrary to Article 147, item 4) of the CCK.

**IV.**

Under COUNT 2, Unauthorised Ownership, Control, possession or use of Weapons:

The Defendant **S.G.** is found **GUILTY** because:

On 4 December 2009 after 12.00 near the junction of the streets “S.V.” and “U.” in Mitrovicë/Mitrovica, more specifically outside of the house of R.G.’s, on the small alley passing in front of G’s house and leading left turn to I’s house, S.G. without a valid permission issued by the competent body, was in possession of a loaded pistol type TT with serial number .... which was later confiscated by the police.

THEREFORE, **S.G.** is **CONVICTED** of committing the criminal offence of **Unauthorised Ownership, Control, Possession or Use of Weapons**, contrary to Article 328, Paragraph (2) of the CCK.

#### V.

THEREFORE, pursuant to the provisions of Article 36, Paragraph (1) Sub-Paragraph (2) and Article 38, Paragraphs (1) and (2) of the CCK, the court imposes the following sentences:

- **A.G.** having been convicted of the criminal offence of Attempted Aggravated Murder under count 1 and count 2 is **SENTENCED** to fourteen (14) years of imprisonment;
- **A.G.** having been convicted of the criminal offence Unauthorised Ownership, Control, Possession or Use of Weapons under count 3 is **SENTENCED** to one (1) year of imprisonment.

Pursuant to Article 71, Paragraph (2) Sub-paragraph (2) of the CCK the court imposes the following **AGGREGATED** punishment:

**A.G.** is **SENTENCED** to fourteen (14) years and six (6) months of imprisonment.

#### VI.

THEREFORE, pursuant to the provisions of Article 36, Paragraph (1) Sub-Paragraph (2) and Article 38, Paragraphs (1) and (2) of the CCK, the court imposes the following sentences:

- **S.G.** having been convicted of the criminal offence of Murder under count 1 is **SENTENCED** to ten (10) years of imprisonment; and
- **S.G.** having been convicted of the criminal offence Unauthorised Ownership, Control, Possession or Use of Weapons under count 2 is **SENTENCED** to one (1) year of imprisonment.

Pursuant to Article 71, Paragraph (2) Sub-paragraph (2) of the CCK the court imposes the following **AGGREGATED** punishment:

**S.G.** is **SENTENCED** to ten (10) years and six (6) months of imprisonment.

## **VII.**

Pursuant to Article 391, Paragraph (5) of the CPCK and Article 278, Paragraph (7) of the CPCK, the time spent in detention on remand and house detention by **A.G.** from 4 December 2009 until the Judgment becomes final shall be credited against the punishment.

## **VIII.**

Pursuant to Article 391, Paragraph (5) of the CPCK and Article 278, Paragraph (7) of the CPCK, the time spent in detention on remand and house detention by **S.G.** from 4 December 2009 until the Judgment becomes final shall be credited against the punishment.

## **IX.**

The weapon - pistol type TT black in color with serial number ..., containing bullets is hereby **CONFISCATED** pursuant to Article 60, Paragraph (1) and Article 328, Paragraph (5) of the CCK.

The weapon - pistol type M57-TT with serial number ....., containing bullets is hereby **CONFISCATED** pursuant to Article 60, Paragraph (1) and Article 328, Paragraph (5) of the CCK.

## **X.**

Pursuant to Article 102, Paragraphs (1) and (4) of CPCK **A.G.** shall pay the costs of the proceedings in an amount of four hundred (400) euros no later than 30 days from the day this Judgment is final.

Pursuant to Article 102, Paragraphs (1) and (4) of CPCK **S.G.** shall pay the costs of the proceedings in an amount of four hundred (400) euros no later than 30 days from the day this Judgment is final.

## **XI.**

Pursuant to Article 112, Paragraph (2) of the CPCK, the injured parties are instructed that they may pursue their entire property claims in civil litigation.

## **REASONING**

### **A. PROCEDURAL BACKGROUND**

1. On 26 May 2010, the District Public Prosecutor of Mitrovicë/Mitrovica (the Prosecutor) filed the Indictment PP nr. 405/09, thereby charging the Defendants S.G., A.G.1 and A.G. with two criminal offences of ‘Aggravated Murder’, in violation of Article 147 Item 4) of

the CCK and with one criminal offence of ‘Aggravated Attempted Murder’ in violation of Article 147, Item 4) of the CCK, as read in conjunction with Article 20 of the CCK and all these offences punishable pursuant to item 11) of Article 147 of the CCK and Article 23 of CCK. The mentioned Defendants were also charged with ‘Unauthorized Ownership, Control, Possession or Use of Weapons’, in violation of Article 328 Paragraph (2) of the CCK in real joinder with the criminal offences described above.

2. On the same Indictment, the Defendant B.I. was charged with the criminal offence of ‘Attempted Murder’ in violation of Article 146 read in conjunction with Article 20 of the CCK. Also, the Defendant Xh.I. was charged with the criminal offence of ‘Threat’ in violation of Article 161 Paragraph (4) read in conjunction with Paragraph (2) of the CCK.
3. The Indictment was confirmed on 14 June 2010. On 2 December 2010, the President of the Assembly of EULEX Judges assigned the case to EULEX judges based on Article 3.3 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors. Since then EULEX Judges retained competence over the case.
4. The first Main Trial Proceedings were opened on 17 October 2011 and concluded on 8 November 2011, when the verdict was orally announced.
5. Based on that verdict, the Accused S.G. was found guilty of one criminal offence of ‘Aggravated Murder’ of I. and M.I. pursuant to Article 147 Item 11) of the CCK and of one criminal offence of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK, whereas he was found not guilty of the criminal offence of ‘Attempted Aggravated Murder’ of B.I., as per Article 147 item 4) of the CCK. He was sentenced to an aggregate punishment of fourteen (14) years and six (6) months of imprisonment.
6. The Accused A.G.1 was found guilty of the criminal offence of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK, whereas he was found not guilty of the criminal offence of ‘Aggravated Murder’, as per Article 147 Item 4) of the CCK, and of ‘Attempted Aggravated Murder’, as per Article 147 item 4) of the CCK. He was sentenced to one year of imprisonment.
7. The Accused A.G. was found guilty of the criminal offence of ‘Murder’ of M.I. pursuant to Article 146 of the CCK and of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK. He was found not guilty of

- the criminal offence of ‘Attempted Murder, contrary to Article 146 of the CCK read in conjunction with article 20 of the CCK. He was sentenced to an aggregate punishment of four (4) years of imprisonment and 1000 euro fine.
8. The Accused B.I. was found guilty of the criminal offence of ‘Attempted Murder’ in violation of Article 146 in conjunction with Article 20 of the CCK. He was sentenced to seven (7) years of imprisonment.
  9. The Accused Xh.I. was found not guilty of the criminal offence of ‘Threat’ in violation of Article 161 Paragraph (4) of the CCK.
  10. Following the appeals filed against that Judgment, on 25 March 2013, the Court of Appeals of Kosovo, by its Judgment PAKR 962/2012, uphold the mentioned appeals and, based on article 402 Paragraph (1) of the new Criminal Procedure Code (CPC), corresponding to Article 424 Paragraph (1) of the CCK, *ex-officio annulled the entire judgment, thereby sending the entire case for a re-trial.*
  11. On 20 May 2013, the re-trial proceedings opened with case number P 887/13. In the course of those proceedings, the Prosecutor withdrew the charges in relation to Count III of the Indictment, therefore in relation to the Defendant Xh.I. and the charge of ‘Threat’. However, following the intention of one of the Injured Party to take up subsidiary prosecution, on 21 May 2013 the Trial Panel severed the proceedings against the Defendant Xh.I. for the criminal offence under Count III of the indictment. Since no appeals were filed against this Ruling, it has become final.
  12. On 5 June 2013 the re-trial proceedings under case number P 887/13 concluded with the below verdict.
  13. The Accused S.G. was found guilty of the criminal offence of ‘Aggravated Murder’ of I.I. and M.I. contrary to Article 23 and Article 147, item 11) of the CCK, in accordance with Article 2 (1) of the CCK, and of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK in accordance with Article 2 (2) of the CCK, pursuant to Article 388(1) of the KCCP; whereas he was found not guilty of the criminal offence of ‘Attempted Aggravated Murder’, under Article 20, Article 23 and Article 147, item 11) of the CCK, in accordance with Article 2 (1) of the CCK. He was sentenced to an aggregate punishment of fourteen (14) years and six (6) months of imprisonment.

14. The Accused A.G.1 was found guilty of the criminal offence of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK, whereas he was found not guilty of the criminal offence of ‘Aggravated Murder’, as per Article 147 Item 4) of the CCK, and of ‘Attempted Aggravated Murder’, as per Article 147 item 4) of the CCK. He was sentenced to one year of imprisonment.
15. The Accused A.G. was found guilty of the criminal offence of ‘Aggravated Murder’ of I. and M.I., under Article 23 and Article 147, item 11) of the Criminal Code of Kosovo, in accordance with Article 2 (1) of the CCK, of Attempted Aggravated Murder of B.I. under Article 20, Article 23 and Article 147, item 11) of the CCK, in accordance with Article 2 (1) of the CCK, and of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK in accordance with Article 2 (2) of the CCK; pursuant to Article 388(1) of the KCCP. He was sentenced to an aggregate punishment of twenty (20) years of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) item 2 of the CCK.
16. The Accused B.I. was found not guilty and thus acquitted of the criminal offence of ‘Attempted Murder’.
17. Against this Judgement, appeals were filed by Defence Counsel H. Zh. for Defendant S.G. and by Defence Counsel H.M. for Defendant A.G..
18. On 15 April 2014, the Court of Appeals issued its Judgment PAKR 124/14, again annulling the first instance Judgement and sending back the case for re-trial.
19. On 6 March 2015 the re re-trial proceedings under case number P. 68/14 concluded with the below verdict:

The Accused S.G. was found guilty of the criminal offence of ‘Aggravated Murder’ of I.I. and M.I. contrary to Article 147, item 11) of the CCK, in accordance with Article 2 (1) and (2) of the CCK, and of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK in accordance with Article 2 (1) and (2) of the CCK, pursuant to Article 388(1) of the KCCP; whereas he was found not guilty of the criminal offence of ‘Attempted Aggravated Murder’ of B.I., under Article 20, Article 23 and Article 147, item 11) of the CCK, in accordance with Article 2 (1) of the CCK. He was sentenced to an aggregate punishment of thirteen (13) years and six (6) months of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) item 2 of the CCK.

The Accused A.G. was found guilty of the criminal offence of ‘Aggravated Murder’ of I. I. and M.I., under Article 23 and Article 147, item 11) of the CCK, in accordance with Article 2 (1) and (2) of the CCK, of Attempted Aggravated Murder of B.I. under Article 20, Article 23 and Article 147, item 11) of the CCK, in accordance with Article 2 (1) and (2) of the CCK, and of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ pursuant to Article 328 Paragraph (2) of the CCK in accordance with Article 2 (2) of the CCK; pursuant to Article 388(1) of the KCCP. He was sentenced to an aggregate punishment of seventy (17) years and six (6) months of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) item 2 of the CCK.

20. Against this Judgement, appeals were filed by Defence Counsel H. Zh. for Defendant S.G. and by Defence Counsel H.M. for Defendant A.G..
21. On 13 October 2015 April 2014, the Court of Appeals issued its Judgment PAKR PAKR.nr.430/2015, annulling the first instance Judgement and sending back the case for re-trial.
22. On 01 March 2016, the Main Trial proceedings re-opened against the two Accused, S.G. and A.G., this time under case number P. 199/15.

## **B. COMPETENCE OF THE COURT**

23. Under Article, 11 Paragraph (1) of the Law on Courts, Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.
24. Article 9, Paragraph (2) Subparagraph (2.7) of the same Law states that the Basic Court of Mitrovicë/Mitrovica is established for the territory of the Municipalities of Mitrovicë/Mitrovica South and Mitrovicë/Mitrovica North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zvečan, Skenderaj/Srbica and Vushtrri/Vučitrn. Based on the filed Indictment, the alleged criminal offences have taken place in Mitrovicë/Mitrovica and, therefore, within the territorial jurisdiction of the Basic Court of Mitrovicë/Mitrovica.
25. According to Article 15, Paragraph (1) Subparagraph (1.11) of the above mentioned Law on Courts, the criminal offence of ‘Aggravated Murder’ fall within the jurisdiction of the

Serious Crimes Department of the Basic Court. Therefore, the entire case was adjudicated by the Serious Crime Department.

26. In accordance with Paragraph (2) of the same Article and pursuant to the decision<sup>1</sup> to assign the case to EULEX Judges dated 8 December 2015 and referred to above, the case was heard by a Trial Panel composed by EULEX Judge Franciska Fiser, acting as Presiding Judge, EULEX Judge Vidar Stensland and EULEX Judge Rene Van Veen, as panel members.

### **C. THE MAIN TRIAL**

27. The Main Trial hearings were open to the public and they were held on 7, 17 and 23 March 2016, 26 and 29 April 2016, 10 May 2016, 13 and 14 June 2016, the crime scene visit on 26 April 2016, all in the presence of the EULEX Prosecutor of the Republic of Kosovo, the Defendant S.G. and his Defence Counsel H.ZH., the Defendant A.G. and his Defence Counsel H.M., on 7 March 2016, 17 March 2016, 23 March 2016 and 26 March 2016 also in the presence of injured party B.I. and on 17 March 2016 also in presence of injured party F.I..

28. During the Main Trial session of 17 March 2016, the Accused S.G. pleaded guilty to the count of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’, but not guilty to the other counts. The Accused A.G. pleaded guilty to the count of ‘Unauthorized Ownership, Control, Possession or Use of Weapons’ for possession the weapon on that day, 4 December 2009, but not guilty to the other count.

### **D. EVIDENTIAL PROCEDURE**

#### *i) Evidence presented during the course of the Main Trial*

29. During the course of the Main Trial the following Witnesses were heard:

- B.I. (Witness called as Injured Party) was heard on 23 March 2016;

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<sup>1</sup> GJA.no. 454/15.

- Police Officer F.K. (Witness called *ex-officio* by the Court) was heard on 23 March 2016 and during the crime scene inspection of 26 April 2016;
  - Police Officer R.I. (Witness called *ex-officio* by the Court) was heard on 23 March 2016 as well as during the crime scene inspection of 26 April 2016;
  - A.G.1(Witness called *ex-officio* by the Court) was heard on 23 March 2016 as well as during the crime scene inspection of 26 April 2016;
  - F.L.(Witness called by the Defence Counsel of the Defendant A.G.) was heard on 29 April 2016;
  - E.K.(Witness called by the Defence Counsel of the Defendant A.G.) was heard on 29 April 2016.
  - The Expert Witness, Ballistic Expert H.K. (Witness called *ex-officio* by the Court) was heard on 10 May 2016 as well as during the crime scene inspection of 26 April 2016;
  - The Expert Witness, Forensic Expert T.G.(Witness called *ex-officio* by the Court) was heard on 10 May 2016 as well as during the crime scene inspection of 26 April 2016;
30. During the session of 23 March 2016, the parties agreed to consider as read the statements previously given in Court by Witnesses F.I., J.S., R.G., S.M., V.M., M.G., B.O., and A.Z., in accordance with Article 368, Paragraph (1), Subparagraph (1) of the CPCK.
31. During the session of 23 March 2016, all parties agreed to present each Witness with his previous statement given in Court in the previous proceedings and to ask the Witness whether he or she stands by it or whether he or she modifies it or if he or she has anything to add. It was made clear that each party would retain the right to examine, cross-examine and question at full length each witness. Additionally, each party would be able to present at any time new evidence.
32. During the session of 23 March 2016, the parties agreed to consider as read the statements previously given in Court on 24 May 2013 by Expert Witness Doctor M.G.in accordance with Article 368, paragraph 1, subparagraph 1 of the CPCK.
33. During the session of 29 April 2016, the parties agreed to consider as read the statements previously given in Court 27 May 2013 and 6 February 2015 by Ballistic Expert Witness H.H. and her report dated 9<sup>th</sup> of August 2010 in accordance with Article 368, paragraph 1, subparagraph 1 of the CPCK.

34. During the Trial Session of 23 March 2016, the Sketch<sup>2</sup> was exhibited into the record as, respectively,

Exhibit A:

The sketch with marks made based on answers of witness B.I.;

Exhibit B:

The sketch with marks made based on answers of witness F.K.;

Exhibit C:

The sketch with marks made based on answers of witness R.I.;

35. On 26 April 2016, a crime scene inspection was carried out and the Sketch mentioned in previous point was used during this inspection.

36. During the Trial Session of 10 May 2016, the Sketch<sup>3</sup> was exhibited into the record as, respectively,

Exhibit D:

The sketch with marks made based on answers of expert witness H.K..

37. During the same Trial Session of 10 May 2016, also the other exhibits were administered as evidence, namely:

Exhibit E:

The photo of maleoulos lateralis submitted by expert witness Doctor T.G.;

Exhibit F:

The photo of maleoulos medialis submitted by expert witness Doctor T.G..

38. During the Trial session of 13 June 2016, the medical report of The Radiology Clinic of University Clinical Centre of Kosovo dated 12 May 2016 was adduced as evidence in these proceedings.

39. During the Trial Session of 13 June 2016, the parties agreed to consider as read all the evidence from the list of material evidence submitted by the Prosecution,<sup>4</sup> except the criminal report and also adduced as evidence in these proceedings all the evidence that were administered in the previous trials.

40. The defendant A.G. gave a statement during the Trial session of 13 June 2016. During the same session the defendant S.G. stated the will to stand by his statements given during the

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<sup>2</sup> Prosecution Binder no. #III, page 34.

<sup>3</sup> Prosecution Binder no. #III, page 34.

<sup>4</sup> Minutes dated 13 June 2016, Annex "A".

previous proceedings in P 22/2010 on 2 November 2011 and in P 887/2013 on 28 May 2013.

*ii) Motions*

41. During the hearing session of 17 March 2016, the Defence Counsel H.M. filed a motion requesting the appointment of traffic expert. The Defence Counsel reasoned this motion during the session of 23 March 2016. During the same hearing session the Defence Counsel withdrew the proposal for summoning the witness P. F. and instead of hearing this witness Defence Counsel proposed E. K..
42. During the same session of 17 March 2016, the Prosecutor proposed to summon for the site visit a traseology expert. The parties agreed that H.K. shall be appointed as an expert.
43. On 24 March 2016, the Presiding Trial Judge issued an Order and appointed H.K. as ballistic expert who informed the Court that he cannot give his findings and opinion without participation of medical expert. Therefore, the Doctor T.G. has been appointed as medical expert.
44. During the hearing session of 10 May 2016, the Defence Counsel H.M. filed motions requesting:
  - the issuing an order for Gjilan Hospital to provide the Court with information on the treatment of the defendant A.G. and on whether the cast was applied on him or not;
  - to hear Doctor X. L. as a witness.
45. On 11 May 2016, the Presiding Trial Judge sent letters to Gjilan Hospital, to Gjilan Detention Centre and to Dubrava Detention Centre requesting to provide the Court with medical documentation related to the defendant A.G..
46. On 11 May 2016, the Presiding Trial Judge issued a Ruling appointing The Radiology Clinic of University Clinical Centre of Kosovo to perform a CT for the defendant A.G..
47. During the hearing session of 13 June 2016, the defence counsel of the Accused A.G., lawyer H.M. filed a motion requesting the collection of some additional evidence, namely an orthopaedist expertise on the injuries that the defendant A.G. has sustained when he was hit by the car as well as his possibility to move.

48. During the hearing session of 13 June 2016, the Trial Panel in accordance with Article 152, Paragraph (3) of the CPCK issued a Ruling thereby rejecting the following motions:

- Motion filed by Defence Counsel H.M. to appoint a traffic expert;
- Motion filed by Defence Counsel H.M. to appoint an orthopaedist expert;
- Motion filed by Defence Counsel H.M. to summon Doctor Xh. L.;

with the reasoning that, that these three evidence are not necessary since the medical expert T.G. has given his opinion on the injuries that A.G. has sustained when he was hit by the car as well as his possibility to move. Furthermore, the Medical Report prepared by Doctor Xh.L., the medical documentation received from Dubrava Detention Centre and Gjilan Detention Centre and the Medical Report dated 12 May 2016 are already a part of the case file, and were admitted and adduced as evidence in this proceeding.

## **E. APPLICABLE LAW**

49. Pursuant to Article 544 of the new Criminal Procedure Code (CPC) which entered into force on 01 January 2013<sup>5</sup>, the re-trial was carried out according to provisions of the old Criminal Procedure Code of Kosovo (CPCK).

## **F. FACTUAL FINDINGS AND ANALYSIS OF EVIDENCE**

### ***F.1 Charges against the Defendant A.G.***

**Count 1 – Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I.**

50. Upon amended indictment on 13 June 2016, under Count 1 the defendant A.G. was indicted with Aggravated Murder of M.I., contrary to Article 147 Paragraph (1), item 4) of the CCK and under Count 2 the defendant A.G. was indicted with Attempted Aggravated Murder of I.I., contrary to Article 147 Paragraph (1), item 4) of the CCK.

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<sup>5</sup> CRIMINAL No. 04/L-123 PROCEDURE CODE;

51. Pursuant to Article 387, Paragraph (2) of the CPC, the Trial Panel assessed conscientiously each item of evidence, administrated during the main trial, separately and in relation to other items of evidence and on the basis of such assessment reached the conclusion on which facts it considered as proven and which not proven.

*The existence of morality issue between I. family and G. family as the motive for criminal offence*

52. The Trial Panel finds that the motive of this criminal offence was a morality issue between I. family and G. family due to allegations that M.G., the son of R.G. and brother of S.G., had had sexual intercourse with late M.I. while her husband B.I. was in prison which then resulted with a request made by I. family for G. family to leave their house. I. and G. family were neighbors.<sup>6</sup>

50. This fact is established based on the testimonies of witnesses, namely R.G., M.G., F.I., J.S., S.M. who acted as mediator and his son V.M..

51. Witness R.G. is the father of the defendant S.G.. He gave his statement in front of the Court on 18 October 2011 and 21 May 2013. Pursuant to Article 368, Paragraph (1) Sub-Paragraph 1 of the CPCK, R.G. did not give his statement in front of the Court in main trial P 68/2014<sup>7</sup> as well as in this main trial<sup>8</sup> since the parties agreed to consider as read his previous statements.

52. When heard as a witness, R.G. on 18 October 2011 stated<sup>9</sup> that he was living in Mitrovica on U. Street and that before December 2009 he has been a neighbor with the I. family for 12 years. He stated that before the incident on 4 December 2009, it was after Bajram, when B.I. came to his house and asked R. to go with B. to his [B.'s] house in Bair, a neighborhood of Mitrovica. At B.'s house, B. pulled out his gun and put it on the table and told R. that R.'s son M. has had a relationship with B.'s wife M.. B. requested from R. to pay 25.000 euros, if he [R.] wants to make up with B. and if does not pay then R. has to move from his house. R. denied that his son M. had had a relationship with M., got

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<sup>6</sup> See also Ruling PAKR. No. 962/2012, page 7, English version.

<sup>7</sup> Case P 199/2015, Minutes dated 5 February 2015.

<sup>8</sup> Case P 199/2015, Minutes dated 23 March 2016, page 6.

<sup>9</sup> Case P 22/2010, pages 12 and 13.

up and left the house. When R. came back home, he called his son S.G. and told him everything what happened so far. Then R., together with S. went to J.S., the father of M.. They all met in R.'s house, S. went and brought also B. and then R. in front of them reiterated that he [R.] owed nothing to B.. S. took B. and J.S. back to B.'s house and after this R., together with his sons S., M. and J. went and reported the case to the police. Three days later, the police informed R. what the Prosecutor had said and suggested R. to send a mediator to I's. family in order to solve the case. That night R. went and picked up S.M. and his son V.M., who are related by marriage to I's. family and asked them to go to I.I. and B.I.'s household. R. asked S. to tell I. that he [R.] owes I. family nothing and that he [R.] is prepared to swear on this. I. replied that R. has to swear in front of 24 elders; R. agreed and told I. that he [I.] can choose the people. Two or three days later I. told S. that they [I.] want to come to R. to gather together. R. called S. in order to join them since he [R.] does not hear well. S. came to R.'s house but I's. did not. I's. called S. and told him that they [I.] would not come and would wait for S. at his flat. I., B. and Xh. told S. that they don't want R. to swear in front of the elders, and gave R. an ultimatum to leave the house and to go out until next day; and in case R. doesn't leave, I., B. and Xh. would come and killed R.. R. also stated that this happened on the night before the incident took place and that S. heard these words.

53. On 21 May 2013, R.G. reiterated<sup>10</sup> what he said previously and also stated that initially was J.S., the father of M., who came to R.'s house before the festivities and asked if M. is at home. When M. joined them, J.S. said that they [I.] are beating his daughter [M.] because they [I.] are alleging that M. has a relationship with M., a son of R.. R. swore to J. that this is not a true, and also M. swore that he even doesn't know that woman [M.]. After two to three days later, R. met I. and asked him why he [I.] sent these people [J.] to R.'s house and who told I. such things. When I. replied it was Xh., R. grabbed I.'s arm and took him to his [I.'s] house in order to speak with Xh.. Xh. was sleeping; I. said they will wait for him to wake up and so R. went home. When Xh. woke up, they [I.] called R., R. went to I's. yard, where I. stopped R. and told him that Xh. refused to talk with R.. R. continued his way to a shop and at that moment B. and Xh. came with the car and they stopped R. by saying: "Uncle, your son M. has stepped on our ground." and "...M.

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<sup>10</sup> Case P 887/2013, pages 8, 9 and 10.

apparently is having a relationship with the wife of B..” and they said also “but we have a witness.” When R. asked them to bring a witness, Xh. said: “I know this; I saw this myself.” and “I saw it from my vehicle and I noticed when she [M.] was walking, he [M.] was following her with his eyes.”

54. Witness M.G. gave the statements on 19 October 2011 and 23 May 2013. Pursuant to Article 368, Paragraph (1) Sub-Paragraph 1 of the CPCK, M.G. did not give his statement in front of the Trial Panel in this main trial<sup>11</sup> since the parties agreed to consider as read her previous statements.

55. On 19 October 2011, M.G. described<sup>12</sup> an incident when B.I. entered into G’s. yard. She stated that it was 7:00 o’clock in the morning, the gate was locked; B. jumped over the wall and entered their living room through the front door. M. testified that B. said to R.: “Get dressed and come to my house in Bair.” M. didn’t know what the reason was; and why B. told R. to go with him; they got into the car and went to Bair. On question how long R. stayed at B.’s house in Bair, M.G. stated that B. put the handgun on a table and asked R. to pay 25.000 euros; and when R. replied that he had no money and that there is no reason for him to pay, B. told R. that he would throw him out of the house if he doesn’t pay. M.G. also stated that R. called S.G. when he [R.] came back home. They [R. and S.] went to see J.. M. also described how after this event R. reported the case to police; what the police answered him and how R. sent S. to I.. When asked, M.G. replied that she didn’t followed R. when B. took him to his house in Bair.

56. Witness F.I. gave the statements on 17 October 2011, 20 May 2013 and 14 January 2015. Pursuant to Article 368, Paragraph (1) Sub-Paragraph 1 of the CPCK, F.I. did not give the statement in front of the Trial Panel in this main trial<sup>13</sup> since the parties agreed to consider as read her previous statements.

57. On 17 October 2011, F.I. stated<sup>14</sup> that her family came back from Germany after the war and that they were neighbors with G. family. At that time she was living together with her husband I.I., her sons Xh. I. and B.I. and his wife M.I.. After B. was released from the prison, F.I. became aware of allegations that M. had “dealings” with R.’s son, M. G.. The

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<sup>11</sup> Case P 199/2015, Minutes dated 23 March 2016, page 6.

<sup>12</sup> Case P 22/10, page 15.

<sup>13</sup> Case P 199/2015, Minutes dated 23 March 2016, page 6.

<sup>14</sup> Case P 22/2010, pages 10, 11, 12, 13 and 14.

witness stated that I. family didn't take any action and that M. went and spoke with her father, J.S.. Then, as the witness stated, R.G. came on his own for the first time; later he sent S.M.. She remembered that S.M. said "R.G. sent me on this issue, I don't know what to say, because she [M.] admitted in her own words." and "who are we going to believe now?" But F.I. was not present at that moment; only B., his wife M. and S. stayed there. She stated this happened after Bajram in 2009. F.I. also didn't hear I.I. telling the G. family that they must leave their residence; she stated her husband could not say such things. The witness also didn't know anything about that I. family would demand any reparation or compensation from the G. family; but Fata stated "if people are disgraceful, this is what they do."

58. On 20 May 2013, witness F.I. talked<sup>15</sup> about the problems that her son, B. had with M.; how M. went back to her father's house for eight months before returning again to the I's. house. When rumors were spread about M. having a relationship with M. G., the late I. brought M. and B. to family house in the village Bair, where they stayed for two months. The witness also stated that there were already issues between R.G. and her husband, the late I.I., when R. was requesting some land from I. in order to facilitate the passage since a very narrow road was leading to G's. house.
59. Witness J.S. gave the statements on 17 October 2011, 20 May 2013 and 5 February 2015. Pursuant to Article 368, Paragraph (1) Sub-Paragraph 1 of the CPCCK, J.S. did not give the statement in front of the Trial Panel in this main trial<sup>16</sup> since the parties agreed to consider as read his previous statements.
60. On 17 October 2011, J.S. stated<sup>17</sup> that was Xh., B. brother, who actually accused the late M. having a sexual relationship with M. G. while B. was in prison. The witness described the event, when B. and his brother sent late M. with a taxi to J.'s house and M. told J. next day that they [B. and his brother] called J. "in relation to something." So, J. went with M. to I's. house and there were F.I., B. and his brother who lives in Germany [L.] and shortly after also I. joined them. All of them told J. that they didn't see anything about M., except Xh. who said "you don't know what kind of daughter you have." The witness also stated that two days before Bajram in 2009, he [J.] went to R.'s house and

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<sup>15</sup> Case P 887/2013, pages 22 – 31.

<sup>16</sup> Case P 199/2015, Minutes dated 23 March 2016, page 6.

<sup>17</sup> Case P 22/2010, pages 20, 22, 23, 24, 25.

said to R. “Dani [meaning R.] I was told by I. that my daughter [M.] had a relationship with your son [M.];” and when heard this, R. was shocked and replied “my son is ill.” J. asked R. to go to I. and solve the matter. Three days later, when J. went to Bair, and found out that R. didn’t come to I., J. went back to R. and told him to go to I. and clarify the matter as it was an urgent issue. On Monday, when Bajram was over, R. came to J. house and they all went to B.’s house. On this occasion, M. confirmed to him about having an affair with M. G., but J. said she was lying as she was beaten and threatened by I..

61. On 20 May 2013, J.S. confirmed<sup>18</sup> that he had been twice in R.’s house and that once having visited G. family, there were 12 family members there; and that also B. was present. The witness stated that those 12 people were discussing whether M. had a relationship with one of G. family and how to sort this out. Amongst them, J. recognized only the old one [R.] and his son M..
62. On 5 February 2015, the witness stated<sup>19</sup> that this event when 12 persons were in R.’s house, happened a month before the day the murders occurred.
63. Witness S.M. gave the statements on 19 October 2011, 23 May 2013 and 5 February 2015. Pursuant to Article 368, Paragraph (1) Sub-Paragraph 1 of the CPCK, S.M. did not give the statement in front of the Trial Panel in this main trial<sup>20</sup> since the parties agreed to consider as read his previous statements.
64. On 19 October 2011, S.M. stated<sup>21</sup> that R.G. came to his house and asked him to act as mediator between the two families. Upon the R.’s request S. went to I. house and spoke with I.. They were about to reach a solution for G. family to leave their house. The witness then went to R., told him about this request and that R. replied: “If need be, I will leave the house, because I don’t want any problems between the two sides. He [I.] can pick out three people to assess the value of the house and the location of the house. I. can give me [meaning R.] the money and I will leave.” S. stated that I. didn’t accept this; S. went again to I. and tried to persuade him, and I. said to him: “let him swear along with 24 old wise men that there is no trick to this.” As R. agreed, they set a date to go to

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<sup>18</sup> Case P 887/2013, pages 34, 35, 39.

<sup>19</sup> Case P 68/2014, page 5.

<sup>20</sup> Case P 199/2015, Minutes dated 23 March 2016, page 6.

<sup>21</sup> Case P 22/2010, pages 3, 4.

mosque and take the oath there. But this also failed since I. again refused the proposal. S. went to R. and informed him what I. said and told both parties that they were on their own from then. The witness stated that while visiting I.I. there were threats made by I. and other family members against R.G.; S. tried to soften those threats; and that he [S.] repeated those words of threats to R.G.. The witness stated that the whole proceeding lasted one week and that it must have been after Bajram 2009.<sup>22</sup> And the witness also stated that I. family never asked from G. to pay 25.000 euros in his [S.'s] presence.<sup>23</sup>

65. On 23 May 2013, S.M. in addition stated<sup>24</sup> that he was together with his son V.I. at R.'s house; and that every time when R. contacted him, R. asked him in person, not through phone and that R. was always accompanied with one or two members of family.

66. Witness V.M. gave the statement on 19 October 2011. Pursuant to Article 368, Paragraph (1) Sub-Paragraph 1 of the CPCK, V.M. did not give the statement in front of the Trial Panel in this main trial<sup>25</sup> since the parties agreed to consider as read his previous statement.

67. V.M. confirmed<sup>26</sup> that he went only once with his father S. to I.'s house where also Xh., B., his wife [M.] and his mother [Fata] were present; he heard only a part of the conversation between them and stated that mostly I. and Xh. were speaking. The witness remembered that they said that G. family would have to leave the house in order for this issue to be fixed.

68. On 4 March 2015, the defendant A.G. stated<sup>27</sup> that on the critical day, on 4 December 2009, he had a discussion with R.G. [who is his uncle] in the occasion what had happened between the neighbors and what disagreements they had. During this discussion, R. mentioned how he [R.] sent people to late I. but I. didn't respond to any such agreement efforts. 20 or 30 minutes later, when S. and Ag. arrived, S. talked to his father [R.] for the disagreements they had with late I., how to handle this and how to send somebody over there to prevent what has been already happened. The defendant stated<sup>28</sup>

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<sup>22</sup> Case P 22/2010, page 6.

<sup>23</sup> Case P 22/2010, pages 8 and 9.

<sup>24</sup> Case P 887/2013, pages 29 and 30.

<sup>25</sup> Case P 199/2015, Minutes dated 23 March 2016, page 6.

<sup>26</sup> Case P 22/2010, pages 11, 12.

<sup>27</sup> Case P 887/2013, page 11.

<sup>28</sup> Case P 887/2013, page 12.

that he [the defendant] also proposed to R. to send the same person again or somebody else in order to fix this matter.

69. On 13 June 2016, the defendant also stated<sup>29</sup> that it was Bajram when he went to pay visit to his uncle R.G.; there was a discussion between R. and others but he [the defendant] didn't hear what they were talking about. On his way out and when he approached the uncle's gate, J.S. started telling him about the matter; J. was talking about M., and that I. family was accusing M. G. having intimate relations with M.. But he [the defendant] told J. that he had to go for Friday prayers. The defendant also stated he didn't want to be involved in their matters and he continued his way to prayers; and then he [the defendant] understood that something was wrong. On critical day, before the murders occurred, it was R.G. who started the conversation with the defendant; R. told the defendant that he [R.] received threats from I.I.; that he [R.] has to either leave the house or be killed and that R. was looking for a way out. R. told the defendant that he had sent the people to I.I. but I. declined all proposals. The defendant stated that R. asked him for an advice since he [the defendant] goes to the mosque and he is acquainted to Imam. The defendant advised R. to send the same people to I. that R. had sent before. During their conversation S. and Ag. arrived to R.'s house. The defendant stated that conversation between him and R. was almost at the end and then S. started talking to R.. They said that "we should not ask in haste and not rush, do not raise the tension;" and that A.G.1 said "we should send the same people as before." When asked, the defendant stated he is convinced that they [S. and Ag.] knew there was a disagreement between G. and I. family since they came [to R.'s house] on that day for a certain purpose. The defendant stated that "the purpose would be perhaps that they [S. and Ag.] were informed by their father [R.] to come there, and for what they came there for?"

70. Based on above testimonies, the Trial Panel found it undisputed the fact that the G. and I. family were in dispute over allegations of a sexual relationship between M.I. and M. G. and that all this started before the day when murders occurred. There were some discrepancies in witnesses' testimonies on who went first to R. and told him about such allegations. R. and M.G. stated it was B.; F.I. said that I. family spoke first with J.S. and then it was R. who came to I's. house and after this he [R.] sent S.M. to I. J.S. stated that

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<sup>29</sup> Case P 199/2015, pages 12, 13, 18, 19, 20.

he spoke first with I. family and then he went to R. and asked him [R.] to go to I. and solve the matter.

71. Based on testimonies, the Trial Panel established that the dispute between to families existed and that there were attempts to settle the matter. It can be also established that I. family requested initially from R.G. to move. Later on, I.I. requested from R.G. to swear in front of 12 (according to S. 24) elders.
72. The Trial Panel did not find it proven that I. family requested from R. to pay 25.000 euros and in case they would not pay, for them [G.] to leave the house. There were R. and M.G. who stated that B. requested the payment of 25.000 euros; although M. was not present when B. and R. had discussion on this.
73. The Trial Panel found the statement of S.M. as the most credible. He acted as a mediator between both families. S. stated that it was R. who asked him to go to I. and spoke with him. This proves that initially there was a discussion between the families on how to settle the matter and when they [the families] didn't reach a solution, S. was engaged to mediate between them. And S. stated that in his presence I. family never asked from G. to pay 25.000 euros. And also J.S. who was also involved in the discussion from the beginning never mentioned in his statement that such a request was made.

*A.G.'s knowledge on existence of morality issue between I. family and G. family*

74. The Trial Panel considers that the defendant A.G. was aware about the on-going disagreement between G. and I. family.
75. The defendant stated<sup>30</sup> that he understood that something was wrong when he visited R. on Bajram and met J.S.; and later on, on 4 December 2009, before the incident, R.G. told him about the disagreements and asked him for an advice.
76. On 18 October 2011, R.G. stated<sup>31</sup> that until the critical day, 4 December 2009, neither A.G.1 nor A.G. knew anything about what happened before.

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<sup>30</sup> Case P 199/2015, pages 12, 13, 18, 19.

<sup>31</sup> Case P 22/2010, pages 12 and 22.

77. M.G. on 23 May 2013 confirmed<sup>32</sup> that A.G. came at their [R.'s] house many times in order to pick up R. to go to the mosque.
78. On 2 November 2011 S.G. stated<sup>33</sup> that A., Ag. and his father R. including S. are the same family. S. confirmed that A. and Ag. were present when R. family had guests, nephews, uncles, in-laws on 30 November 2009, three days after small Bajram and that he [S.] went to get B. and J.S.. There was a room full of people, relatives and S.'s explanation was that "there was nothing bad there, just a social conversation." and not an attempt to resolve the matter between two families.
79. Since the defendant A.G., according to his own statement, met R. at least two to three times per month; he was R.'s nephew and as such a part of G. family; as well as the fact that both families were prepared to discuss the matter of alleged intimate relationship between M. and M. in front of elders, the Trial Panel deems it unlikely that the defendant A.G. only on 4 December 2009 became aware about the disagreements between two families. The Trial Panel considers that A. must be aware on the matter between G. and I. family at least on 30 November 2009, three days after the small Bajram or even before.

*The presence of persons in R.G.'s and I.I.'s house on 4 December 2009 before the murders occurred*

80. The Trial Panel considers it is without any dispute that on 4 December 2009, A.G.1 and S.G. came to R.G.'s house where A.G. has already been present.
81. On 18 October 2011, witness R.G. stated<sup>34</sup> that S.G. and A.G.1 came to his house in the company of A.G., that all of them came together. This is in contradiction with R.'s statement of 21 May 2013 and what witness M.G., A.G.1, S.G. and A.G. stated.
82. On 21 May 2013, R.G. stated<sup>35</sup> that it was Friday, and that usually A. comes on Fridays because they both go and pray on Fridays at the mosque in Zhabar. And then R. stated

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<sup>32</sup> Case P 887/2013, page 25.

<sup>33</sup> Case P 22/2010, page 8.

<sup>34</sup> Case P 22/2010, pages 13 and 28.

<sup>35</sup> Case P 887/2013, page 10.

that it wasn't long, half an hour when S. and Ag. arrived and they said [to A.]: "where are you hiding, we were at your place and you weren't there, we couldn't find you there."

83. M.G. on 23 May 2013 stated<sup>36</sup> that S. came together with A.G.1 to R.'s house an hour or two after A..

84. S.G. on 2 November 2011<sup>37</sup> and on 28 May 2013<sup>38</sup> stated that he had looking for A. at A.'s house together with Ag.. When A.'s wife told them where he [A.] was, S. came together with A.G.1 to R.'s house. When they [S. and Ag.] arrived at R.'s house, A. has already been there.

85. A.G. on 4 March 2013 stated<sup>39</sup> that he had a discussion on that critical day with his uncle R. and that not a long time passed; perhaps 20 or 30 minutes later S. and Ag. arrived at R.'s house.

86. In relation to I. family, F.I. on 17 October 2011 stated<sup>40</sup> she was inside the house on that critical day, together with her husband I.I., and her son Xh. I., who was sleeping. That day also her son B., together with his wife M. came in order to get some documents that he needed for social services.

87. B.I. on 1 November 2011 stated<sup>41</sup> that he had a breakfast with his wife and children in their house in Bair on that day; then he took a taxi and went to his father I.I. and his brother in order to take a vehicle that he needed. He took brother's vehicle, turned back to his house in Bair; and together with his wife M. and their children came back to his parents' and brother's village in Zhabor.

*The start of argument between members of G. and I. family on 4 December 2009 before the murders occurred*

88. Based on presented evidence, the Trial Panel established that on that critical day, after 12.00 outside of the house of R.G.'s, on the small alley passing in front of G's. house and

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<sup>36</sup> Case P 887/2013, page 23.

<sup>37</sup> Case P22/2010, page 4.

<sup>38</sup> Case P 887/2013, page 7.

<sup>39</sup> Case 68/2014, page 11.

<sup>40</sup> Case P 22/2010, page 14.

<sup>41</sup> Case P 22/2010, page 10.

leading left turn to I's house, A.G., S.G., A.G.1 and R.G. met initially I.I. A bit later B.I. along with his wife M. came with vehicle BMW and stopped by them. The members of both families started arguing which accumulated into a fist fight between S.G. and B.I.

89. Witness R.G. on 18 October 2011, stated<sup>42</sup> that A.G. and A.G.1 had to go to work and they got up since their bus was at about 12:30 or 13:00. R. got up too, to see them off. When he [R.] went to the gate, he saw I. who was waiting for them. R. stated that he was the first, S. was behind him. As soon as S. came out, I. grabbed S. by the arm saying: "Come here I want to say something to you." Whilst they [I. and S.] were talking, B. turned up in his car. When B. came nearby I., M. came out of the car and started screaming and saying something. S. told M.: "Go back inside the car and don't shout." and then B. came also out of the car and all three of them [B., M. and I.] jumped on S.'s back and wanted to hit S.. Seeing this, R. ran over to them and told them: "Go away; what are you trying to do to us?" B. got inside the car and together with M. drove off, while S. was still scuffling with I.. R. stated that he [R.] went over to S. and slapped him three times and told him to let go of I.. S. let I. go and then R. grabbed I. telling him to go away. R. stated that A. and Ag. did not come outside the gate at all. Then Ag. and S. went on their way to work and A. also left for Friday praying but only three or four minutes passed when B.I. came back with his car.
90. R.G. gave the statement also on 21 May 2013. He reiterated his previous statement adding<sup>43</sup> that M. got out of the car when S. said to her: "shut your mouth, get inside the car." and then M. jumped and grabbed S. on his face and put her fingers in his [S.'s] eyes. After this also B. got out of the car and then all three of them [I., B. and M.] were on top of S.. I. hit S. at the lower part of the jaw. First, R. stated that A. and Ag. didn't move; they stayed next to the side door. Further on, R. stated that A. and Ag. were following him [R.], meaning they were behind him; they didn't leave the yard at all.<sup>44</sup>
91. Witness A.G.1 on 5 February 2015 stated<sup>45</sup> that when S. got out, he [S.] was physically confronted with B. and I.. After this, B. got in the car and left and it didn't take very long when he [B.] came back.

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<sup>42</sup> Case P 22/2010, page 12.

<sup>43</sup> Case P 887/2013, page 10.

<sup>44</sup> Case P 887/2013, page 17.

<sup>45</sup> Case P 68/2014, pages 12.

92. B.I. gave the first statement on 1 November 2011. He stated<sup>46</sup> that after driving through the gate, he began driving through the street and the very minute he took the curve, he saw S., who appeared first, followed by Ag. and A. who came out the last, and then R. followed soon. They started coming in the direction of his [B.'s] vehicle. B. stopped the car; S. walked towards the door of the vehicle, opened the door and told B.: "do not move or otherwise I will fuck your mother and blow your head off." B. answered: "shoot because I am not scared at all." Then S. punched him [B.] on the nose. At that moment Ag. also came and they took B. and put him against the wall. When I.I. came and pulled one of them from B., S. turned around and hit I. with the handle of his gun.
93. On 23 March 2016, B.I. gave the statement as a witness and reiterated<sup>47</sup> that he was in the vehicle together with his wife [M.] when S. came on the side of his door, and pointed the gun at him [B.]. Then the quarrelling began between him and A., Ag. and S.; R.G. was also there; and in meantime I.I. came. This incident took place in front of the gate of neighbor Mehmet Isufi. B. stated that M. came out of the vehicle too and then the fist fight between S. and B. happened. B. also stated that all three of them [S., A. and Ag.] except R.G. had weapons on their hands.
94. The defendant A.G. on 4 March 2015 stated<sup>48</sup> that they [A., Ag., S. and R.] were on the way out; and since it is very narrow alley they walked one after the other, R. was first, then S., Ag. and him [A.]; Ar., R.'s son was also there. They were on the road opposite R.'s door when they met I. S. addressed I. with words "We sent people in order to reach agreement settlement and you didn't respond anything in terms of agreement." During this conversation B. came with his car; he stopped the car a bit before R.'s door, got out of the car and M. as well, and then the arguing started with fighting and hitting each other. At the same time the defendant stated he hasn't seen them hitting each other; but he [A.] grabbed S. in order to prevent the fight between them [B. and S.]. B. and M. got back into the car and drove in the direction of the center of Mitrovica.
95. S.G. gave the first statement on 2 November 2011. He stated<sup>49</sup> that they [S., Ag. and A.] were leaving R.'s house and were confronted with I.I. who said to R. "R. haven't I told

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<sup>46</sup> Case P 22/2010, page 10.

<sup>47</sup> Case P 199/2015, pages from 9 to 13.

<sup>48</sup> Case P 68/2014, page 12.

<sup>49</sup> Case P 22/2010, page 10.

you to leave the house and not gather people around here?” Shortly afterwards B. and his wife M. arrived in the car and all three of them [B., M. and I.] attacked him [S.]. Then B. and M. left the scene; the fight stopped and they talked in a social manner.

96. S.G. gave the statement also on 28 May 2013 and he stated<sup>50</sup> that actually I. family ambushed him [S.] and the others [Ag., A., R.] when they were leaving R.’s premises. With being “ambushed” the defendant explained that they [I.] wanted to attack him.

97. Witnesses M.G. and F.I. stayed in their houses and they didn’t witness the events outside of the houses.

98. It was not disputed that B.I. along with M.I. left the place and drove with his car towards to Mitrovica.

*The return of B. and M. with the car red BMW, and the start of shooting*

99. B.I. on 1 November 2011 stated<sup>51</sup> that he left the place of argument with his car along with M.. First he tried to find a number to inform the police but he could not recall it, so he continued driving towards bus station in the center of Mitrovica. When he came across a police patrol at the bus station, he stopped the car and told the police that three persons are endangering the life of his father [I.I.] with weapons in their hands. The police officer asked him “where” and B. replied “follow me.” B. couldn’t estimate how fast he was driving; the police car was following him in a distance from 50 – 60 meters. B. stated that from a distance of some 50 meters before, where the dispute took place, he heard a shot from a gun. On specific question when he heard the first gun shot, B. stated<sup>52</sup> that “he [B.] was parallel with the truck, 20 meters before leaving the asphalt road [U. Street] and driving into the street [S.V. Street].”

100. When heard as a witness on 23 March 2016, B.I. stated<sup>53</sup> again that he heard a gunshot before he left the asphalted road “U. Street” and turned into the alley where his house is. But he couldn’t say who shot.

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<sup>50</sup> Case P 887/2013, page 13.

<sup>51</sup> Case P 22/2010, page 10.

<sup>52</sup> Case P 22/2010, page 14.

<sup>53</sup> Case P 199/2015, page 15.

101. Witness F.K. gave the statements on 18 October 2011, 21 May 2013, 15 January 2015 and 23 March 2016.
102. On 18 October witness F.K. stated<sup>54</sup> that he was together with colleague R.I.; he was giving a fine and issuing a ticket to a citizen who committed an offence. They were towards the end of this procedure, when a red BMW vehicle approached them, and stopped in front of them on their left side. They [B. and M.] addressed them [K. and I.] saying “There are some people killing one another while you are just standing here.” Then a driver of red BMW very aggressively made a U-turn at the junction, passing from the left side to the other side of the road and continued driving towards the direction of Shipol. They [F.K. and R.I.] started to follow the car; it was driving very fast, and the car was already 150 meters away, going towards the highway of U. in the direction of village Zhabar. The witness stated that they [K. and I.] were able to follow the car at a distance of 150 – 200 meters and were always able to see it. About a kilometer from the place where they started to follow it, they saw the car going from the right side of the road to the left side, entering a small road that brings you to a gravel street and which goes a bit upwards. When K. and I. tried to pull over and get out of the car the witness heard some gunshots. On specific question when he heard gunshots, K. stated<sup>55</sup> that at the moment when the person [A.] was hit with the car, the gunshot was heard; the witness saw one person falling down and after that the witness heard uncontrolled shots.
103. The same sequence of events the witness F.K. reiterated during the testimony on 21 May 2013,<sup>56</sup> adding that they [K. and I.] were in official vehicle when gunshots were heard; there were multiple shots when the BMW car took the bend; and then he and his colleague [I.] exited the car.
104. On 23 March 2016, the witness stated<sup>57</sup> that they [K. and I.] stopped their car at the moment when vehicle [the BMW car] went toward the people [standing on the “S.V. Street”] and hit the person.
105. Witness R.I. gave the statements on 18 October 2011, 23 May 2013, 15 January 2015 and on 23 March 2016.

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<sup>54</sup> Case P 22/2010, pages 33, 34.

<sup>55</sup> Case P 22/2010, page 36.

<sup>56</sup> Case P 887/2013, pages 33, 34.

<sup>57</sup> Case P 199/2015, page 29.

106. In his statement on 18 October 2011, witness R.I. confirmed<sup>58</sup> he was together with colleague F.K. when issuing a ticket of fine to a citizen, when a man in a red BMW drove up to them saying something about a murder case that happened in Zhabar village. R.I. together with K. decided to follow the red BMW; I. was a driver of the police vehicle. The witness stated it was not possible to follow the red BMW very closely since the car was driving very fast, but they [I. and K.] had the car in their sight for the whole time. When the BMW car took the narrow street on the left, I. stopped the police car on the main street, on the highway. The witness stated that he was still sitting in the car when the BMW car had taken a turn on a left to narrow gravel road; I. saw a group of people standing in a circle on that narrow road. When the BMW car approached this group of people, the car placed one of them against the car with the front left side of the vehicle. The witness stated that at that moment he realized that something serious was taking place. So he turned off the vehicle, and took out the key. While he [I.] was opening the door to exit the vehicle, he heard gunshots and saw that one of the people who were standing in the group was falling on the ground.

107. On 23 May 2013, the witness reiterated the sequence of events of his first statement, and added<sup>59</sup> that at the moment the BMW car hit the person, a shot was heard; a firearm shot. And when he [R.I.] got to the other side of the road [U. Street] he heard the other shots too.

108. Witness R.I. stood by his previous statements also on 15 January 2015 and on 23 March 2016. On 23 March 2016, on specific question what was the time duration of the shooting, the witness stated<sup>60</sup> that he cannot say whether there were seconds or minutes but when the vehicle continued further towards the left side, they had no view over the car any longer, however fire shooting was heard.

109. A.G.1 was heard as a witness on 5 February 2015 and 23 March 2016. On 5 February 2015, the witness stated<sup>61</sup> that after the car hit A. and when he got inside the yard, he heard fire shots. And then, when he [A.G.1] got out of the yard, he shot in the air.

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<sup>58</sup> Case P 22/2010, pages 48, 49, 53.

<sup>59</sup> Case P 887/2013, pages 8, 17.

<sup>60</sup> Case P 199/2015, page 39.

<sup>61</sup> Case P 68/2014, pages 9, 14.

110. The defendant A.G. gave his statements on 4 March 2015 and 13 June 2016. On 4 March 2015, he stated<sup>62</sup> he heard shooting when B. came back and hit him with the car.
111. Analyzing the above statements, the Trial Panel considers B.I.'s statement that he heard the first gunshot before he left the asphalted road "U. Street" and turned into the S.V. Street as logical. B.I. was consistent in his statements; he added some details when he was asked some more specific questions.
112. And the Trial Panel also considers that B.I.'s testimony does not contradict the statements of the witnesses F.K. and R.I.. They indeed stated that they heard first shoots when they were still in official vehicle [K.]; or respectively I. stated he heard first gunshots while he was opening the door to exit the vehicle.
113. The Trial Panel considers that it is possible that the gunshots K. and I. heard were the shots, they heard as first shots. But, as both of them stated, they drove around 150 – 200 meters behind B.'s car; there was a heavy traffic; witness K. also admitted<sup>63</sup> that the police car had a siren on while they were following the BMW car. And as B. stated, he heard the first shot when he was still driving on the main road, namely 20 meters before leaving the main road. B. saw that his father [I.I.] was already hit when A. turned to him and began firing at him; and that I. was already down, when B. came to the door of R.G..<sup>64</sup>
114. Based on all, the Trial Panel considers the situation as stated by B. that the shooting begun before he [B.] turned into S.V. Street and hit A.G. with the car as completely logical, possible and truthful.

### *The attempted murder of B.I.*

115. Witness F.K. on 18 October 2011, stated<sup>65</sup> that he saw a couple of person, there were 5 to 6 or more people, standing on the road which B. took after he turned left from the main road. At the moment when the BMW car went towards these people, K. noticed that people went on the side of the road. The witness recalled that the BMW car hit one

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<sup>62</sup> Case P 68/2014, page 12.

<sup>63</sup> Case P 22/2010, page 43.

<sup>64</sup> Case P 22/2010, pages 14, 15, 21.

<sup>65</sup> Case P 22/2010, page 34.

of these people; that person was wearing a beard. The witness also noticed that the BMW car very aggressively took a small road, entered that street, and while they [K. and I.] were trying to pull over and get out of the car, some gunshots were heard. It was witness's testimony<sup>66</sup> that when the car hit the person from the left side of the vehicle and placed the person against the wall, the vehicle was still moving and holding the person against the vehicle. So, this person went to the other side; and then the vehicle made an aggressive movement and the driver of the car managed to take the bend of the road and entered the side-street. K. also stated that he did not see any weapon on the hand of a person with a beard who was hit by the BMW car and that the other people that were standing on the road dispersed.<sup>67</sup>

116. On 21 May 2013, the witness reiterated<sup>68</sup> that they [K. and I. as a driver of a police car] stopped their car on the right hand side of the asphalted road and at that very moment they saw the BMW car driving towards the group of 4, 5 or 6 people; the persons dispersed on the right hand side of the side-road while the BMW car hit one of the persons with the left hand side of the car and pushed this person towards the wall. At that very moment they [K. and I.] also heard a gunshot; and while they were getting out of the car, they noticed that another person from the group of people fell on the ground. Then the witness saw that the BMW car took a bend on the left side and took another alley. On specific question whether there were one or more shots, K. stated<sup>69</sup> that at the moment when the car took the bend there were multiple shots; and after this he and his colleague exited the police car.

117. On 15 January 2015, witness F.K. stated<sup>70</sup> that first the BMW car hit the person with a beard and at that instant moment the fire shots were heard. The witness also stated that he could not notice the position of hands of the person who was hit. Also on 23 March 2016, K. stated<sup>71</sup> that because of the BMW car which was driving in the direction of a person who was hit by the car, he [K.] was not able to see if the person who was hit, had anything in his hands.

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<sup>66</sup> Case P 22/2010, page 36.

<sup>67</sup> Case P 22/2010, pages 40 and 41.

<sup>68</sup> Case P 887/2013, pages 32, 33.

<sup>69</sup> Case P 887/2013, page 34.

<sup>70</sup> Case P 68/2014, page 5.

<sup>71</sup> Case P 199/2015, page 28.

118. R.I. on 18 October 2011 stated<sup>72</sup> that he stopped a police car on the main road, when the BMW car had taken the left turn. I. saw a group of people standing in a circle and when the BMW car approached this group of people, the car placed one of them against the car with its front left side. At that moment I. was still sitting in the car; he turned off the vehicle, took out the key and while opening the door to exit the vehicle he heard gunshots and also saw one of the people within the group falling on the ground.
119. On 23 May 2013, witness R.I. reiterated his previous testimony, adding<sup>73</sup> that at the same time the BMW car hit and was pinning the person to the wall and while he [I.] was getting out from the car, he saw another person falling on the ground. And at the moment the vehicle hit the person a shot was heard. The witness also stated<sup>74</sup> that at the moment when a person was hit by BMW car and pushed towards the wall, the hands of this person were on the top of the bonnet; the back wheels of the vehicle were still spinning and just two or three seconds after that the shooting started.
120. R.G. on 18 October 2011 in his witness's testimony stated<sup>75</sup> that when B.I. came back with his BMW, Ag. and S. moved away by jumping over the side of the road. B. went with the car towards A. and hit him. At that moment, R. covered his face and doesn't know what happened afterwards. The witness also stated that when he turned around, he saw I. was killed and that B. tried twice to hit A. with the car.<sup>76</sup> When confronted with the statement he [R.] gave to the police namely "As soon as he [B.] hit A.G. at the wall, he [B.] began getting away towards his house. In that moment shots were heard. And I [R.] don't know who shot. I just saw I. lying down behind me." R. stated "That is how it happened but I did not hear shots."<sup>77</sup>
121. On 21 May 2013, R. was heard again as a witness and he also stated<sup>78</sup> that he was not aware that I.I. and M.I. were killed that morning; that he didn't hear gunshots; that he found out this later when the police have taken him although he didn't see when the police arrived.

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<sup>72</sup> Case P 22/2010, pages 49, 53.

<sup>73</sup> Case P 887/2013, pages 7, 8.

<sup>74</sup> Case P 887/2013, page 19.

<sup>75</sup> Case P 22/2010, page 13.

<sup>76</sup> Case P 22/2010, page 17.

<sup>77</sup> Ibid.

<sup>78</sup> Case P 887/2010, pages 11, 18.

122. A.G.1 was heard as a witness on 5 February 2015. He stated<sup>79</sup> that when the BMW car appeared, he [Ag.] grabbed R. and got inside the yard and after they got inside the yard, he heard shots. When Ag. got outside, he shot in the air and he saw A. lying on the ground on the left side of the road and on the right side he saw the second person lying on the ground.
123. When B.I. gave his statement on 1 November 2011, he stated<sup>80</sup> that he heard a shot from a gun before coming to the place where the dispute took place. When he got closer to his father [I.I.], he lost control of the vehicle. At that moment, A. began shooting in his [B.'s] direction; and at that very moment B. saw Ag. and his father [I.I.] who was trying to get up as he had fallen down. And B. furthermore stated: "At that very moment, I can't say exactly, I may have stopped the vehicle, I may have pulled the breaks but I noticed that I was too close to where they were and at that moment I took my feet off the brake pedal with the intention to get away from there and I saw A. shot me on my left wrist. At that moment, I lost control of myself and I was no longer aware [...]" And B.I. also stated<sup>81</sup> "I was here exactly in front of the R.G.'s house. When I arrived there, A. turned in my direction and fired a shot in my direction. [...] the vehicle that I was driving was swerving from one side to the other and I know that the vehicle hit something and did 'boom' and when I began to take a curve and to drive towards my house I saw A. as it would appear in my left that was near 24, he fired at me and hit me on my wrist and then he fired 2 – 3 shots.[...]" On specific question whether was his father [I.I.] shot before B. saw A. shooting at him, B. replied that his father was already hit when A. turned to him [B.] and began firing at him. The witness also clarified that A. was on the left hand side and his father [I.I.] was on the right hand side.<sup>82</sup>
124. B.I. reiterated his testimony when heard as a witness on 14 January 2015,<sup>83</sup> as well as on 23 March 2016.<sup>84</sup> On 23 March 2016, B.I. added that S.G. and A.G.1 were on the right side and that A.G. shot him [B.] with the gun before B. hit A. with the car. On

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<sup>79</sup> Case P 68/2014, pages 9, 10.

<sup>80</sup> Case P 22/2010, page 10.

<sup>81</sup> Case P 22/2010, page 15.

<sup>82</sup> Case P 22/2010, page 28.

<sup>83</sup> Case P 68/2014, page 22.

<sup>84</sup> Case P 199/2015, page 15.

specific question, how many times did A. shoot in his direction, B.I. stated<sup>85</sup> he was not able to count, he was not concentrated on this. But he remembered that A.'s pistol was blocked and it threw away a round. B. clearly saw A. when he cocked the pistol; and these firing and cocking of the gun happened prior to hitting A. with the car.

125. B. I. on 23 March 2016 stated<sup>86</sup> that the window on his left side of the car was closed. When A.G. started shooting in his direction the mirror broke down as well as the window on the left side. Although B. didn't know whether the window was broken at the same time when a bullet hit his arm, it was broken when he [B.] was about to take a turn.

126. The defendant A.G. on 4 March 2015, testified<sup>87</sup> that in the occasion when B. came back with his car with a high speed not all of them could escape, so only Ag., R. and Ar. got inside through the door whilst A. and S. stayed outside the gate. S. went on the right side of the road, he [A.] leant himself against the wall, and B. turned his car and hit A. as he was leaning against the wall. A. stated that he doesn't know how he managed to escape that hit; he put his hands on the hood of the vehicle and the car twisted him, clashed his legs and hit him against the wall. A. stated that he fell on the ground and was about to faint; he was getting dizzy and during this hitting he heard also shooting.

127. The defendant A.G. stated that when he heard S. shooting on the direction of the late woman [M.] he saw a weapon close to him and he took that weapon; he didn't use it and he put it on his waist.<sup>88</sup> The defendant also stated that he didn't see any weapon on B.'s hands as well he didn't see any weapon on I. or on the ground close to I. while I. standing or bending over with his hands on his chest.<sup>89</sup> And it was also the defendant's testimony that when he saw S. shooting, he didn't see any weapon on the ground.

128. The Trial Panel considered all above statements and found the statement given by B.I. being worth of trust and reliable. B.I. was consistent in his statements even when describing the details of the event, while the witness R.G.'s testimony cannot be deemed as reliable. R.G. stated he covered his face and didn't see and hear anything. When R. was confronted with previous statement, when he [R.] stated that he had heard the shots, R.'s answer in these proceedings was he did not hear shots.

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<sup>85</sup> Case P 199/15, pages 48, 49.

<sup>86</sup> Case P 199/2015, pages 51, 52.

<sup>87</sup> Case P 68/2014, page 12.

<sup>88</sup> Case P 68/2014, pages 13, 19.

<sup>89</sup> Case P 68/2014, page 18.

129. Although witnesses K. and I. stated they didn't hear the shooting before B. hit A. with the car, the Trial Panel concluded that their statements do not contradict B.I.'s statement. Witnesses K. and I. were still in their police car, they stopped on the right side of the main road, when B. hit A.G.; there was heavy traffic on the main road. K. and I. stated they heard a gunshot at the moment when the car hit A.. But as they also stated, everything happened within seconds and they were focused on the whole situation in order to find out what's happening and not on details. Because of this, K. and I. also didn't see any weapon on A.G.'s hands.
130. The Trial Panel found it proven the fact that B.I. was shot on his left arm by the defendant A.G., while he was driving the BMW car.
131. Firstly, the Trial Panel found it proven that the defendant A.G. was in possession of the gun that was confiscated from him as well as the Trial Panel found it proven that the defendant A.G. used that gun when shot B.I. and later on M.I. (this will be assessed in special chapter).
132. Such conclusion was made by the Trial Panel upon careful consideration also other evidence which fully corroborate B.I.'s statement. The other evidence that were considered by the Trial Panel, are assessed below.
133. The Examination Report of the BMW car dated 9 December 2009<sup>90</sup> shows that shooting traces were found only on the left front part of the vehicle; the left mirror was broken; the left front window was broken and there was presence of multiple glass pieces on the driver's seat.
134. The Examination Report of the BMW car was prepared by B.O., a forensic officer, who examined the BMW car and was heard as a witness on 27 May 2013 and 15 January 2015. On 27 May 2013, when the witness was presented with the Examination Report and the photos no. 5, 13 and 14, B.O. confirmed<sup>91</sup> that the damages on the driver's side of the car were caused by a bullet. The witness also confirmed that the damages seen on the photos no. 10, 11 and 12 were caused by a bullet.

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<sup>90</sup> Prosecution Binder #III, pages 39 – 50.

<sup>91</sup> Case P 887/2013, page 25.

135. The Trial Panel appointed a medical expert T.G. and ballistics expert H.K. and they together prepared a Report dated “April 2016.”<sup>92</sup> In the opinion they gave, they confirmed that a wound that B.I. sustained on the back of the left hand was caused by the firearm, and that this wound was caused when B. had his hands or a hand on the steering wheel of the BMW car. Furthermore, the experts established that while B. was driving the BMW car, the person, who shot at B.I., was on B.’s left side, respectively on the left side of the vehicle. The distance between the shooter and the victim was of more than one meter. Based on damages caused by firing to the BMW car, the experts couldn’t give the precise position from which the shots came because the trajectory of the projectile was not established. Nevertheless, the experts determined that the person or persons, who shot towards the BMW car, were on the left side of the vehicle.
136. The medical expert T.G. and the ballistics experts H.K. gave their oral findings and opinion also on the session of 10 May 2016. The experts explained that while they were compiling the written report they prepared their personal sketches and created imaginary trajectories by making connection with entry hole and shells that were found on the scene.<sup>93</sup>
137. The medical expert T.G. reiterated<sup>94</sup> that based on damages on the BMW car it can be determined that B.I. received the shot which caused a wound on his left hand, from the left side. Although, the experts couldn’t determine whether it was on the frontal or rear part.
138. Based on above and considering the dynamics of further events, when B.I. continued driving around the corner, stopped the car in front of the I’s. gate and from where he jumped then over the wall into I’s. yard, the only moment when B.I. could be shot on his left arm was, when he started taking a curve towards I’s. house. And at that moment, A. I. was the only person who was on the left side of the vehicle; the others dispersed to the right hand side of the side-road.<sup>95</sup>

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<sup>92</sup> See the Minutes dated 10 May 2016.

<sup>93</sup> Case P 199/2015, page 14.

<sup>94</sup> Case P 199/2015, page 15.

<sup>95</sup> Case P 873/2013, Minutes 21 May 2013, page 33.

139. The Trial Panel cannot trust A.G.'s statement,<sup>96</sup> when he stated that a weapon was close to him [to A.] and he grabbed it but he didn't use it; he put it on his waist. This statement is in contradiction with his [A.'s] testimony<sup>97</sup> given later on. The defendant A.G. stated that when he saw S. shooting he didn't see any weapon on the ground. He saw weapon on S.'s and Ag.'s hands but he didn't see any weapon on B.'s hand, neither on I. nor on the ground close to I.; as well as A. didn't see M. having a weapon or shooting.
140. When the police officers K. and I. came to the spot, they gave orders to S. and Ag. to drop their weapons. At that time A. already had a weapon on his waist and there is no evidence which would prove that anybody else was in possession of that third weapon. It was the defendant A.G., who had that weapon, used it and was later on seized from him.
141. Actually, it was only S.G. who stated<sup>98</sup> that I.I. was in possession of that weapon. S. stated that the gun I. had had on his arm fell next to A. when I. fell. In one of his statements, S. stated that he [S.] kicked I.'s weapon away when I. was shot and fell on the ground. On 28 May 2013 S.G. stated<sup>99</sup> that he moved the weapon from I.'s hand further away.
142. The photos no. 27, 28, 29, 30 and 32 from Photo Album<sup>100</sup> show the position of I.I. after he fell on the ground; he was lying on the ground on his chest and with his hands under his body. S.G.'s statements were not consistent. The Trial Panel did not consider S.'s statements as reliable and trusted and concluded that I.I. was not in possession of the weapon as well I. didn't use any weapon.
143. Therefore, the Trial Panel concluded that the weapon which A.G. had on his waist was the gun that A.G. possessed and used when fired in direction of B.I..

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<sup>96</sup> Case P 68/14, page 18.

<sup>97</sup> Case P 68/14, page 19.

<sup>98</sup> Cases P 22/2010, pages 6, 12, 13, 14,15, 16 and P 887/2013, pages 6, 17, 18, 19, 20.

<sup>99</sup> Case P 887/2013, page 6.

<sup>100</sup> Prosecution Binder #II, pages 38 – 40.

The murder of M.I.

144. F.K. on 18 October 2011 when heard as a witness stated<sup>101</sup> that they [F.K. and R.I.], after the police car stopped; after the gunshots were heard; and after one person had remained on the ground, made an agreement how to proceed and share their tasks. K. went on the right side and he told his colleague I. to go on the left side. The witness explained that the position of the road where the incident had occurred was a bit upwards; it was higher than the main road where they parked the police car. When they approached the place where the incident took place, K. saw two people in front of him; one of them was holding a gun; the person who was not carrying a weapon was unshaved. K. ordered the person carrying a gun to throw his weapon away; he did without any resistance. Then K. ordered him to lie down on the ground; another person also lay down on the ground together with the first one. The person who had a gun was handcuffed. While I. was handcuffing that person who had a gun, K. noticed the BMW car parked some 15 – 20 meters away and he [K.] also noticed another person who was holding a weapon on his hands. K. gave this person the same orders and he went towards this third person while his colleague I. stayed with first two persons. K. went 15 – 20 meters towards the third person; handcuffed him and asked for police assistance from the police communication center. When dealing with the third person, K. also saw a female outside the vehicle; she was on the ground near the vehicle.

145. In addition, F.K. stated<sup>102</sup> that, while he and I. were still in police car, they saw that after hitting the person, the BMW car went towards the side road and took a band; therefore it was difficult for them [K. and I.] to see and observe the movement of the vehicle.

146. On 21 May 2013, witness F.K. reiterated his previous testimony, specifying<sup>103</sup> that while he and I. exited the police car and were coming near there were multiple gunshots.

147. R.I. on 18 October 2011 stated<sup>104</sup> that after he stopped the police car, he continued on foot along the secondary street; the BMW car went behind the wall by an electric

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<sup>101</sup> Case P 22/2010, page 34.

<sup>102</sup> Case P 22/2010, page 37.

<sup>103</sup> Case P 887/2013, page 35.

pylon. When he [I.] came at the corner of the side-road, K. came out and gave orders to two persons who were standing in a distance of 5 - 6 meters from I.; one of them was carrying a weapon. When I. repeated the orders, these two persons lay down on the ground; I. handcuffed the one who had a weapon on his hands and was keeping the other person under control by paralyzing him with a certain movements of hands. He also saw the third person carrying a weapon who was standing a bit further from the BMW vehicle. I. confirmed<sup>105</sup> that he saw a female lying down next to the BMW vehicle; she was lying by the door of the vehicle.

148. Witness R.I. on 23 May 2013 reiterated his previous statement and he also confirmed<sup>106</sup> that he heard the shots when he got to the other side of the main road after exiting the police car.

149. On 18 October 2011, R.G. stated<sup>107</sup> initially that after hitting A.G. two times, B.I. then went upwards in the direction of his house; B. exited the car and enter his house and he [R.] never saw B. after this. The witness then stated<sup>108</sup> that he couldn't see B.I., B. just drove away; R. saw B. driving away. R. stated that he never saw M.I.'s body lying on the ground;<sup>109</sup> he realized that M. was killed about 10 – 20 minutes later when the ambulance came. When heard as a witness on 21 May 2013, R.G. stated<sup>110</sup> that he didn't see the police arrived; he didn't hear the gunshots and that he was not aware that this critical morning I.I. and M.I. were killed.

150. B.I. on 1 November 2011 stated<sup>111</sup> that after he was shot by A., and he [B.] realized his vehicle hit somebody; he took the corner to go towards the gates. B. got out of the car and all three of them [A., S. and Ag.] began to run in his direction and they began shooting at him. At that very moment, seeing that the gates were closed, he leant with his hand on the wall and jumped over into the yard. B.I. stated he heard very well when the door of the vehicle were opened and M. screamed 'let go of my hair' and another voice 'not the wife'. Then he heard the gun fired three times. On specific

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<sup>104</sup> Case P 22/2010, page 49.

<sup>105</sup> Case P 22/2010, page 51.

<sup>106</sup> Case P 873/2013, page 17.

<sup>107</sup> Case P 22/2010, page 23.

<sup>108</sup> Case P 22/2010, page 24.

<sup>109</sup> Case P 22/2010, page 31.

<sup>110</sup> Case P 873/2013, pages 11, 18.

<sup>111</sup> Case P 22/2010, page 11.

question how B. saw all three of them [A., S. and Ag.], B. replied<sup>112</sup> that when he got out of the car, S. was the first person, he was in close distance, then Ag. was further down and A. was the last one. Then B. jumped over the wall and after that he heard three shoots. B.I. also stated<sup>113</sup> he didn't notice that M. was hit by a bullet while he [B.] was still in the car. B. heard M. shouting "oh, they killed our father" when B. arrived at the curved part of the road where his father [I.I.] was shot. And the last time B. heard M. was, when she was saying "let my hair go."

151. On 14 January 2015 and 23 March 2016, B.I. reiterated his previous statement and added<sup>114</sup> that after he hit A. and when he continued forward toward his entrance door, he saw from the mirror inside the car all three of them [A., S. and Ag.] running behind the car.

152. On 4 March 2015, the defendant A.G., stated<sup>115</sup> that he heard shooting during the hitting of the BMW car although he didn't know who shot, Ag. or S.. He [A.] fell down; the car entered the curve in order to move ahead; A. tried to get up but he couldn't make it. A. walked two or three steps but he fell at the corner of the wall. A. stated that he saw B. going back on his way home; he saw how B. opened the door of his car, then put his hands on the wall and jumped over the wall into his yard. A. was lying on the ground, he had severe pains, he heard shooting and he saw I. putting his both hands on his chest; I. was falling on his knees and was falling down. S. and Ag. were very close to I.. A. saw Ag. very close to I. with the pistol on I.' head and Ag. shot I. twice. A. also saw S. walking very fast; A. also heard shootings but he didn't know if S. or Ag. shot in the direction of the car. A. stated, he started to vomit and he saw S. going towards the car; the late wife [M.] was standing when S. shot in her direction and A. saw M. falling backwards; A. saw S. shot M. again and she fell on her back. During these shootings, A. saw a weapon close to him; he took a weapon and put it on his waist. A. doesn't know whose weapon it was. After A. took the weapon, he saw Ag. coming to help him to get up. As soon as they got up, the police arrived and they said "put your weapons on the ground." Ag. threw a weapon away from himself; then the police ordered both of them to

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<sup>112</sup> Case P 22/2010, pages 25, 26.

<sup>113</sup> Case P 22/2010, page 29.

<sup>114</sup> Case P 68/2014, page 23 and case P 199/2015, pages 15, 16.

<sup>115</sup> Case P 68/2014, pages 12, 13.

lie down on the ground. A. answered “I cannot because as you can see I am devastated” and he sat somehow in sitting position and the police officer twisted his arm backwards. A. said that no one got hurt from his hands or actions. A.G. also stated<sup>116</sup> that the passenger’s door of the car was opened; M. was almost in front of the door, just a little bit further from the door, but close to the door. A. reiterated he saw M. bending over when he heard the first shot; and then M. fell like when somebody tries to sit down and she fell backwards on the ground. When the second shot was heard, then M. fell on her back and after the third shot her arms were spread and she was lying on her back with stretched arms.

153. The defendant again reiterated<sup>117</sup> he didn’t have a pistol on his hand. The police didn’t handcuff him. While he was entering the police car, he was asked by the police if he had anything with him and he told the police that he had a pistol and that he got it from the ground. The police officer asked him where he had a gun and the defendant told him “it is on my waist.” The police officer took the pistol out of A.’s waist.

154. The defendant also stated<sup>118</sup> that he saw weapon on S.’s and Ag.’s hands but he didn’t see any weapon on B.’s hand, neither on I. nor on the ground close to I. when I. was bending over with his hands on the chest; as well as he didn’t see M. having a weapon or shooting. It was A.’s testimony<sup>119</sup> that when A. saw S. shooting, he didn’t see any weapon on the ground. And when A. saw S. shooting those three shots in the direction of M., that weapon was close to him [A.] and he grabbed that weapon but he didn’t use it; he put it on his waist.

155. On 13 June 2016, the defendant stated<sup>120</sup> he was at the corner of the wall, close to the electric pole, while S. and Ag. were near him, aligned on his right side. A. stated he was in a position as same as when one would kneel, his left leg was extended and he supported his body with his right leg as the left one was injured. Then A.G.1 came and helped him; Ag. put his arms under the A.’s armpits and lifted him up.

156. The statements of both police officers K. and I. who were heard as witnesses, confirmed the fact that after one person [I.I.] fell on the ground; after the BMW car hit

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<sup>116</sup> Case P 68/2014, pages 14, 15.

<sup>117</sup> Case P 68/14, pages 15, 16.

<sup>118</sup> Case P 68/14, page 18.

<sup>119</sup> Case P 68/14, page 19.

<sup>120</sup> Case P 199/15, pages 13, 14.

one person [A.G.] and after B. continued driving the car towards I's. gate, the shooting was heard. Although those two witnesses, mostly because of the terrain which is a bit upwards and the bend of the side-road, didn't see who actually fired those shots.

157. As the Trial Panel already explained in previous chapter, the Trial Panel found as proven the fact that the defendant A.G. was in possession of a gun. The Trial Panel found proven that A. used that gun also when he shot M.I.

158. When assessing the evidence which prove that the defendant A.G. intentionally fired with the gun-pistol type M57-TT with serial number ..., in the direction of and hit M.I. on the right arm and caused a lethal wound, the Trial Panel found B.I.'s statement reliable and trustful.

159. B.I.'s statement, that M. was alive and not wounded until B. stopped the car in front of I's. gate and jumped over the wall into yard, is corroborated with following evidence.

160. The defendant A.G. on 4 March 2015 stated<sup>121</sup> that after the hit by the BMW car, he fell on the ground; he was about to faint; he was getting dizzy; he tried to get up but he couldn't make it; he walked two or three steps but fell at the corner of the wall. Nevertheless, A. stated he heard shootings, he saw I. with both hands on his chest; he saw I. falling on knees and then falling down; he saw Ag. and S. close to I.. And A. also described in details what Ag. and S. did; how and who approached the BMW car; how and who shot at M. and how she fell down as well as her position after shooting. Furthermore, the defendant A.G. stated<sup>122</sup> he was lying on the ground when Ag. came and helped him to stand up. When A. was taken by the police to Mitrovica; they examined his legs. A. stated, he had some injuries on his chest; he had "shock on his because he was twisted;" his leg was banded but no gypsum was used. The defendant stated that his left leg was injured; it was broken or cracked, some lotion was applied to his right leg as it was swollen and some therapy for the pain has been prescribed in the medical clinic.

161. On 13 June 2016, the defendant A.G. stated<sup>123</sup> that actually R.G. said the words "do not kill the woman." When R.G. repeated those words several times, A. was at the corner of the wall, close to the electric pole and both S. and Ag. were near him aligned on

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<sup>121</sup> Case P 68/2014, page 12.

<sup>122</sup> Case P 68/2014, page 14.

<sup>123</sup> Case P 199/2015, page 13.

his right side. A. also stated<sup>124</sup> he was in kneeling position, his left leg was extended and he supported his body with his right leg. Then Ag. came and helped him.

162. The defendant A.G.'s statements contradict medical documentation and medical expert's opinion. There are three medical reports<sup>125</sup> in relation to the defendant A.G., namely the report dated 4 December 2009, prepared by Doctor Xh.L. who examined the defendant first, the report dated 6 December 2009 prepared in Gjilan Detention Center and the report dated 4 March 2010, prepared in Dubrava Detention Center.

163. On 17 April 2016, the Trial Panel appointed an expert for forensic medicine T.G., and provided the expert with all three above quoted medical reports.

164. The expert T.G. gave his findings and opinion in writing on 29 and 30 April 2016 as well as orally on session of 10 May 2016. In report dated 29 and 30 April 2016,<sup>126</sup> the expert T.G. wrote that he found from medical report prepared by Doctor Xh.L. that the bone of A.'s left sole [malleolus] has been broken. The expert T.G. emphasized that it has not been defined what part of the bone has been broken; likewise the medical report dated 4 December 2009 does not determine whether or not the breakage of malleolus followed by dislocation or not. In addition, the expert found that the report of Detention Center of Gjilan indicates that RTG of the hip and lower left side at the sole of the left foot has been performed and that RTG results show no bones broken, nor any other critical changes had been observed. Expert T.G., based on the sketch drawn by the physician in the Detention Center of Gjilan, also observed that the contusions were localized in the area of the right knee and sole of the left leg, which matches the torn jeans of the defendant A.G..

165. The expert T.G. gave the opinion that based on the medical documentation the contusions were found in the area of the right knee and heel of the left sole of the foot, but the fissures and fractures of the bone under the left knee (tibia and fibula) did not exist; as well as that the defendant A.G. has sustained no serious contusion of the brain, nor has this been defined in the medical documentation. Therefore, the expert T.G. is of opinion that the defendant A.G. was able to move after a few seconds or after 1 – 2 minutes.

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<sup>124</sup> Case P 199/2015, page 14.

<sup>125</sup> Case P 22/2010, Minutes dated 2 November 2011, page 2.

<sup>126</sup> Case P 199/2015, Court Binder Volume #II, Divider no.8.

166. The expert T.G. also gave the opinion that the injuries found in the medical documentation, with exception of breakage and dislocation, that have not been determined in medical documentation, also allow the defendant A.G. ability to stand on his feet and move to a distance of 20 meters or even longer. And the expert T.G. also opines if there was a breakage of the tibia or fibula bone, in the left side in the instant case, this would render it difficult for the defendant to stand on his feet and to move and act at the distance of 20 meters or more than 20 meters.
167. The expert T.G. gave his findings orally during the session on 10 May 2016<sup>127</sup> and reiterated that the diagnosis of Doctor Xh.L. in report dated 4 December 2009 was erroneous in relation to the fracture of the bone of the malleolus of A.'s left foot since RTG results showed "PVP" which means 'without generic particularities' or 'no changes' and the expert confirmed that the injury was found on the right knee and in the joint of the left sole.
168. Based on recommendation of the expert T.G. to perform a native RTG or CT of the distal part of the tibia bone and left fibula of the bones of the sole of A.'s left leg, the Trial Panel with the Order dated 11 May 2016 appointed The Radiology Clinic of the UCCK to perform the CT as indicated by expert.
169. The Radiology Clinic of the UCCK performed the requested CT and sent the Trial Panel the report dated 12 May 2016<sup>128</sup> with conclusion that CT of the distal part of the left tibia diaphysis and left foot have no signs of traumatic changes.
170. The conclusions of The Radiology Clinic support the expert T.G.'s findings that the fracture on any of extremities was not registered neither in Gjilan or Dubrava Center except in first report compiled by Doctor Xh.L. on the day of incident. And according to the expert, even with a fracture or with a fracture with dislocation would not be impossible for A. to stand or move; although it would be difficult; but everything depends also on each individual person. In instant case, the defendant A.G. was not completely leant against the wall by the car; therefore he sustained only hematomas and scratches that are noted in medical reports. If A. would sustain fracture of entire pelvis area he would suffer for the rest of his life.

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<sup>127</sup> Case P 199/2015, pages 24 – 36.

<sup>128</sup> Case P 199/2015, Court Binder Volume #II, Divider no.4

171. Based on all above, the Trial Panel concluded that the defendant A.G. was able to walk after he had been hit by the BMW car and that A. did walk and did move.
172. Such conclusion is corroborated also by statements of witnesses R.I.<sup>129</sup> and F.K.,<sup>130</sup> who confirmed that the defendant A.G. was not arrested on the same place where he had been hit by the BMW car. In addition, F.K. testified<sup>131</sup> that when he [K.] came to the spot and gave orders to drop the weapon and then to lie down on the ground, there were two people standing in front of him, who were identified as A. and Ag.. The same, that both of these two people were standing on their feet, was confirmed also by witness R.I. on 18 October 2011,<sup>132</sup> on 22 May 2013<sup>133</sup> and on 23 March 2016.<sup>134</sup>
173. The conclusion, that the defendant A.G. was in possession of the weapon, specifically the gun-pistol type M57-TT with serial number ..., and that he did move after he had been hit by the BMW car, led the Trial Panel into conclusion that the defendant A.G. did follow the BMW car and fired with the gun-pistol in the direction of and hit M.I. while she was exiting the vehicle. The evidence that support such conclusion are reasoned in following points.
174. Based on the Autopsy Report dated 14 December 2009<sup>135</sup> it can be established that late M.I. sustained nine (9) gunshot wounds. Five (5) of them were entrances of gunshot wounds and four (4) exits of gunshots wounds. The entrance wound number 1 is associated with exit wound number 7, the entrance wound number 3 is associated with exit wound number 2, the entrance wound number 5 is associated with exit wound number 4, and the entrance wound number 6 is associated with exit wound number 8. The entrance wound number 9 has no exit wound since the bullet remained on left chest of the body.
175. The bullet that was found in the body of M.I. during the performed autopsy<sup>136</sup> was handed over to the police present at the autopsy, namely F.L.. The bullet was delivered as

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<sup>129</sup> Case P 199/2015, Minutes dated 23 March 2016, page 43 and Minutes dated 26 April 2016, page 15.

<sup>130</sup> Case P 199/2015, Exhibit B.

<sup>131</sup> Case P 22/2010, pages 34, 37 and Case P 887/2013, page 36 and Case P 68/2014, page 6 and Case P 199/2016, pages 29, 30.

<sup>132</sup> Case P 22/2010, page 55.

<sup>133</sup> Case P 887/2013, page 9.

<sup>134</sup> Case P 199/2015, page 39.

<sup>135</sup> Prosecution Binder no. #I, pages 95 – 115.

<sup>136</sup> Prosecution Binder no. #III, page 240.

exhibit D#33 and examined by Forensic Laboratory. Based on the Ballistics Report dated 9 August 2010,<sup>137</sup> that bullet was shot from the pistol “C. Zastava” of caliber 7.62x25mm with serial number “C-...” and marked as exhibit F6. And based on Certificate on seized items dated 4 December 2009<sup>138</sup> the pistol of caliber 7.62x25mm with serial number “C-...” was seized from A.G. together with 1 magazine and 4 cartridges.

176. Appointed ballistics expert H.K. and the expert for forensic medicine T.G. in their written report dated April 2016 and amended on 19 and 22 April 2016<sup>139</sup> gave the opinion that M.I. was shot from two positions or angles. The experts opined that the projectile which was stuck on the left side of her chest and was pulled out during autopsy and marked as exhibit D#33, M. could have gotten when she was shot on her right shoulder from the position while she was standing on her feet. This wound was a deadly wound for M.. Based on found shells, marked with 22 and 23, the same wound could have been caused, when M. was sitting in the co-driver’s seat if at the same time the vehicle’s window was open. Other injuries that were found on the deceased M. were caused when M. was lying on the floor on her back, with her legs slightly raised from the gravel road. The trajectory of all the wounds go from down to up.

177. The ballistics expert H.K. and the expert for forensic medicine T.G. were present during site inspection as well as they gave their opinion orally on the session of 10 May 2016.<sup>140</sup> Expert T.G. reiterated that the wound which M.I. sustained on the right shoulder and with its trajectory that went from right toward left side, and from up to down and slightly backwards, whereas the projectile remained in the body of late M., was the lethal wound. It lacerated vital organs, whereby the tissues of lungs were harmed; and where a large quantity of blood was found, around 1,8 liters of liquid blood and 60 ml of liquid blood in left side of thorax cavity; and such quantity of blood caused a death of M.I.. After sustaining this injury on the right shoulder, M. could not make major moves, maybe one or two steps. It was expert’s opinion that M. either sustained this wound while she was in the car and while the window was open or when the car stopped and the car’s door was opened and M. was exiting. Then M. would make two or three steps and then fell

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<sup>137</sup> Prosecution Binder no. #I, pages 50 – 63.

<sup>138</sup> Prosecution Binder no. #II, pages 310, 311.

<sup>139</sup> Case P 199/2015, Court Binder Volume #II, Divider no.12.

<sup>140</sup> Case P 199/2015, pages 4 – 24.

down on the ground immediately; all other wounds she could sustain while she was in lying position with her legs a bit lifted up, in defending position. The expert came to such conclusion because all other injuries are down from up and if M. was on her feet those wounds could not be sustained.

178. The expert G.'s opinion was that M. was turned with right shoulder to the person who shot at her and that she was shot from the distance; it could be more than 70 to 80 cm. Since this wound was perforating and not penetrating and the bullet remained in the body, it caused no bleeding. And since there were no traces of bleeding in the car, the other wounds which were penetrating wounds were caused when M. was already outside of the car.

179. Based on Photo Album<sup>141</sup> the Trial Panel found that the right passenger's window was closed. Based on Table of Measurements at the Scene<sup>142</sup> and the Sketch<sup>143</sup> the Trial Panel established that two bullets ("fisheke") were exhibited by the police as exhibit D5 and D24 and four cartridge cases ("gezhoje") exhibited by the police as D17, D20, D22 and D23.

180. Based on the Ballistics Report dated 9 August 2010<sup>144</sup> the Trial Panel established that exhibits D5 and D24 do not have ballistics characteristics, whereas empty cartridge exhibited as D17 was fired from a weapon - pistol type TT with serial number ..., cartridge exhibited as D20 was fired from a weapon – pistol of caliber 7.62x25mm with serial number ... and cartridges D22 and D23 were fired from a weapon - pistol of caliber 7.62x25mm with serial number "C-...."

181. As already established before, based on Certificate on seized items dated 4 December 2009<sup>145</sup> the pistol of caliber 7.62x25mm with serial number "C-..." was seized from A.G. together with 1 magazine and 4 cartridges. While the other two weapons were seized from S.G. and A.G.1.<sup>146</sup>

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<sup>141</sup> Prosecution Binder no. #III, page 42, photo no. 3.

<sup>142</sup> Prosecution Binder no. #III, pages 35 – 38.

<sup>143</sup> Prosecution Binder no. #III, page 34.

<sup>144</sup> Prosecution Binder no. #I, pages 50 – 63.

<sup>145</sup> Prosecution Binder no. #II, pages 310, 311.

<sup>146</sup> Prosecution Binder no. #II, pages 302 – 305.

182. Furthermore, based on Photo Album<sup>147</sup> and Ballistics Report dated 9 August 2010,<sup>148</sup> the Trial Panel established that from all the weapons seized from the defendant A.G., S.G. and A.G.1 was fired.
183. The Trial Panel found no evidence on that either S.G. or A.G.1 would use the weapon that was seized from A.. As well as the Trial Panel found no evidence that I.I. shot at M. while she was sitting on passenger's seat. The Trial Panel found such possibility impossible since; no one except S.G. saw any weapon on I.'s hands; I.I. was already shot and was falling on the ground, when B. hit A. with the BMW car. Furthermore, the passenger's window was closed and not broken, and there are no shooting traces on the right side of the BMW car.
184. And finally, the ballistics forensic expert H.K. gave his opinion on 10 May 2016<sup>149</sup> stating that if I. when standing at point 4<sup>150</sup> would indeed have shot at the BMW car, the shells D22 and D23<sup>151</sup> would not be left on street. Since the gun ejects the shells 4 to 5 meters away on the right side, the shells would go very far to the right. Therefore, since they were found near the sidewalk they were shot somewhere from the middle of street. The expert marked this point as "x B."<sup>152</sup>
185. On alleged swapping of evidence, claimed again in these proceedings by the defendant A.G. and his Defense Counsel, the Trial Panel heard two witnesses, F.L. and E. K.. They gave the statements on the session of 29 April 2016. F.L.is a Regional Investigator of the Forensic Department and was present during the autopsy of late M.I.. E. K. was also a Regional Investigator in Mitrovica South in December 2009 and he was responsible for evidence room.
186. Based on their statements, the Trial Panel considers that there are no evidence on alleged swapping of evidence. The defendant A.G. and his Defense Counsel did not present any concrete indications on how such swapping of evidence could be done. The Trial Panel found that evidence were collected, sealed and handed over to the evidence room according to the rules.

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<sup>147</sup> Prosecution Binder no. #III, page 42, photo no. 3.

<sup>148</sup> Prosecution Binder no. #I, pages 50 – 63.

<sup>149</sup> Case P 199/2015, page 13.

<sup>150</sup> See Sketch, Prosecution Binder #III, page 34.

<sup>151</sup> See Sketch, Prosecution Binder #III, page 34.

<sup>152</sup> Case P 199/2015, Exhibit D.

187. Based on above established facts and all presented evidence, the Trial Panel concluded that the defendant A.G., after he was hit by the BMW car, followed the BMW car which continued to drive around the corner and stopped in front of the I's gate. When M.I. was exiting the vehicle, A.G. intentionally fired with the gun-pistol type M57-TT with serial number ..., in the direction of and hit M.I. on the right arm. This was a lethal wound which caused M.'s death.

### **Count 3 – Unauthorised Ownership, Control, Possession or Use of Weapons**

188. Under Count 3 the Defendant A.G. was indicted with Unauthorised Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK

189. Pursuant to Article 387, Paragraph (2) of the CPC, the Trial Panel assessed conscientiously each item of evidence, administrated during the main trial, separately and in relation to other items of evidence and on the basis of such assessment reached the conclusion on which facts it considered as proven and which not proven.

190. On 17 March 2016<sup>153</sup> the defendant A.G. stated that he feel guilty for possession of weapon only for that day.

191. Based on Certificate on seized items dated 4 December 2009<sup>154</sup> the Trial Panel established that the pistol of caliber 7.62x25mm with serial number “C-...” was seized from A.G. together with 1 magazine and 4 cartridges.

192. Therefore, the Trial Panel concluded that the defendant A.G. was in possession of this pistol without a valid Weapon Authorization Card.

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<sup>153</sup> Case P 199/2015, page 9.

<sup>154</sup> Prosecution Binder no. #II, pages 310, 311.

## ***F.2 Charges against the Defendant S.G.***

### **Count 1 – Aggravated Murder of I.I.**

193. Upon amended indictment on 13 June 2016, under Count 1 the Defendant S.G. was indicted with Aggravated Murder of I.I., contrary to Article 147 Paragraph (1), item 4) of the CCK.

194. Pursuant to Article 387, Paragraph (2) of the CPC, the Trial Panel assessed conscientiously each item of evidence, administrated during the main trial, separately and in relation to other items of evidence and on the basis of such assessment reached the conclusion on which facts it considered as proven and which not proven.

### ***The existence of morality issue between I. family and G. family as the motive for criminal offence***

195. To avoid repetition, the Trial Panel entirely refers to the reasoning with the same title under chapter “F.1 Charges against the Defendant A.G.; Count 1 – Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I.”

### ***S.G.’s knowledge on existence of morality issue between I. family and G. family***

196. The defendant S.G. is a son of R.G. and a brother of M. G. who allegedly had had sexual relationship with M.I.

197. On 2 November 2011, the defendant S.G. stated<sup>155</sup> that on that critical day, his father [R.] escorted S., A. and Ag. on their way out of father’s house. When the defendant went to the door, the neighbour I.I. was there and I. said to S. “why did you come here? Because you have to leave this house so get your family and get out of here.” The defendant stated that I. assaulted him and that S. told I.: “We have a mediator. My father sent some mediators to you and we are having conversations.”

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<sup>155</sup> Case P 22/2010, page 4.

198. The defendant stated<sup>156</sup> that he became aware of allegations of I. family against G. family on 30 November 2009, when B.I. entered the house and kidnapped his father [R.]. Three days after small Bajram, S. went with J.S. to B. and told B.: “Let us leave these things, you stay in your house and I stay in my house.”
199. On 28 May 2013, the defendant S.G. stated differently,<sup>157</sup> namely that his father [R.] never told him about the problem with the I. family; it was S.’s brother M. who told him that. The defendant stated that M. did not understand why; it was something incomprehensible. S. also stated that he did not believe that M. had had sexual relationship with M.; S. thought it was funny; he did not take it seriously, he did not pay any attention to it.
200. R.G. on 18 October 2011 stated<sup>158</sup> that it was after Bajram when B. came into the yard, knocked and asked R. to come to B.’s house in Bair. When R. came back home, he called S. and told him everything; R. told S. what happened so far. R. then went to pick up J.S.; they came back to R.’s “oda”, the guest’s room, and S. went over to B.’s place and brought also him to R.’s place. After the conversation they all had had, S. took B. and J. back to B.’s place and then S. went together with R. to the police and reported the case.
201. Based on above, the Trial Panel considers that S.G. was fully aware and had knowledge on existence of morality issue between I. family and G. family.

*The presence of persons in R.G.’s and I.I.’s house on 4 December 2009 before the murders occurred*

202. To avoid repetition, the Trial Panel entirely refers to the reasoning with the same title under chapter “F.1 Charges against the Defendant A.G.; Count 1 – Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I.”

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<sup>156</sup> Case P 22/2010, pages 6, 7, 8.

<sup>157</sup> Case P 887/2013, page 8.

<sup>158</sup> Case P 22/2010, pages 4, 5.

The start of argument between members of G. and I. family on 4 December 2009 before the murders occurred

203. To avoid repetition, the Trial Panel entirely refers to the reasoning with the same title under chapter “F.1 Charges against the Defendant A.G.; Count 1 – Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I..”

The return of B. and M. with the car red BMW, and the start of shooting

204. To avoid repetition, the Trial Panel entirely refers to the reasoning with the same title under chapter “F.1 Charges against the Defendant A.G.; Count 1 – Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I.” and adds the following.

205. On 2 November 2011 the defendant S.G. stated<sup>159</sup> that during the conversation between persons who remained on the spot, B. came back with the BMW car. B. stepped on the gas on the gravel road and headed directly towards the group of people and hit the whole group; they fled sideways to get away; the BMW car hit A. and pinned him to the wall; the car also touched S. a little. S. said he jumped to the left, where some dirt was; he fell a bit into it. In those moments S. heard shots being fired; he [S.] saw the side passenger window open and he saw I. very well firing in the direction of the car.

206. On 28 May 2013 the defendant S.G. stated<sup>160</sup> that he moved on the right side of the road when he saw the BMW car came back; A.G.1 grabbed R.G. and went through little gate; then the car hit A., and crushed A. on the wall. S. saw A. under the car and he [S.] heard the gunshots at that moment. When S. turned his head to have a look, he saw I. shooting with a hand gun. On the same session the defendant S.G. also stated<sup>161</sup> that I. was standing by number 4<sup>162</sup> while he was shooting at the BMW car.

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<sup>159</sup> Case P 22/2010, page 5.

<sup>160</sup> Case P 887/2013, page 6.

<sup>161</sup> Case P 887/2013, page 18.

<sup>162</sup> See Sketch, Prosecution Binder #III, page 34.

The murder of I.I.

207. To avoid repetition, the Trial Panel refers also to the above reasoning with titles “*The attempted murder of B.I.*” and “*The murder of M.I.*” under chapter “F.1 Charges against the Defendant A.G.; Count 1 – Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I.” with the following addition.
208. Witness F.K. on 18 October 2011 stated<sup>163</sup> that he saw the BMW car hitting one person, unshaven, wearing a beard and identified as A.G.. When the BMW car entered a small road, K. and his colleague I. were trying to pull over and get out of the car. At that moment some gunshots were heard. After the first shot, a person fell down. K. could not see the direction of the shots and he [K.] didn’t notice any weapon when this person fell down. K. indicated number 4 on the sketch<sup>164</sup> where that person fell down. On 21 May 2013, F.K. reiterated<sup>165</sup> his previous statement.
209. Witness R.I. on 18 October 2011<sup>166</sup> and 23 May 2013<sup>167</sup> stated that while he was opening the door to exit the police car, he heard gunshots and saw one of the people standing within group falling on the ground. When I. then approached the scene, he saw that person lying down on his chest.
210. Witness R.G. on 18 October 2011 stated<sup>168</sup> that he grabbed his head after A. was hit by a car and that he doesn’t know what happened afterwards. When R. came around, he saw what had happened and R. saw I. was killed somewhere there. On 21 May 2013, R.G. stated<sup>169</sup> that he became aware of shootings and that I.I. and M.I. were killed only when the police have taken him.
211. When A.G.1 was heard as a witness on 5 February 2015, he stated,<sup>170</sup> that as soon as he got out at the gate, he saw the other body lying on the right side and A. was on a left side where A. was hit by a car. Ag. reiterated this statement on 23 March 2016.<sup>171</sup>

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<sup>163</sup> Case P 22/2010, pages 34, 36, 39, 45.

<sup>164</sup> See Sketch, Prosecution Binder #III, page 34.

<sup>165</sup> Case P 887/2013, pages 33, 34, 35.

<sup>166</sup> Case P 22/2010, pages 49, 51.

<sup>167</sup> Case P 887/2013, pages 7, 12.

<sup>168</sup> Case P 22/2010, pages 13, 17.

<sup>169</sup> Case P 887/2013, page 11.

<sup>170</sup> Case P 68/2014, page 10.

212. A.G. gave the statements on 4 March 2015 and 13 June 2016. On 4 March 2015 A. stated<sup>172</sup> that he heard shooting while he was lying on the ground and he also saw I. with his both hands on his chest; I. was falling on his knees and was falling down. A.G. also stated that S. and Ag. were very close to I. and A. saw Ag. with the pistol against I.'s head and shooting I. twice. On 13 June 2016, A. reiterated the previous statement.<sup>173</sup>
213. The defendant S.G. gave the first statement on 2 November 2011. He stated<sup>174</sup> that the BMW car hit A. and pinned him to the wall. The car touched S. only a little; S. jumped to the left and fell a bit into some dirt. In those moments S. heard shots being fired. S. saw I. firing in the direction of the car; the side passenger's window was open. Then I. turned the gun towards S.; but the bullet was caught in the weapon. By the time I. cocked his weapon and chambered the other bullet, S. was forced to pull out his weapon and he fired in I.'s direction. S. doesn't know how many times he fired at I.'s body.
214. The defendant S.G. gave the next statement on 28 May 2013. S. stated<sup>175</sup> that he saw A. who went under the car when he was hit. At that moment S. heard shots and when he turned his head to have a look, S. saw I. shooting with a gun. Since S. was scared and since he had his own gun in the pocket, it was imposed to him at that moment to shoot. S. stated it was without intention and done out of fear to protect himself, his father and cousins. S. stated that I. had a gun on his hand; S. moved that weapon from I.'s hand further away.
215. The defendant stated<sup>176</sup> that 3 – 4 shots were shot by I. at the BMW car, while the car was passing and that I. was standing by number 4<sup>177</sup> at the moment he was shooting. S. also stated that I. was shooting at the car in moments while the car was crushing A. against the wall. When the car then carried on and was about to turn on the left, I. pointed the gun towards S. and then S. shot I.
216. As the Trial Panel has already reasoned in chapter with title "*The attempted murder of B.I.*" under chapter "F.1 Charges against the Defendant A.G.; Count 1 –

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<sup>171</sup> Case P 199/2015, page 57.

<sup>172</sup> Case P 887/2013, page 12.

<sup>173</sup> Case P 199/2015, pages 13, 16.

<sup>174</sup> Case P 22/2010, pages 5, 6.

<sup>175</sup> Case P 887/2013, page 6.

<sup>176</sup> Case P 887/2013, pages 18, 19, 20, 21.

<sup>177</sup> See Sketch, Prosecution Binder #III, page 34.

Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I.” S.G.’s statements were not consistent. The Trial Panel did not find them reliable and trusted.

217. It has been established that when the BMW car came back and was approaching the group of people who were standing on the side-road; A. went on the left side, where the car hit him, while I. and S. went on the right side of the road.

218. It was only S.G. who stated<sup>178</sup> that I.I. was in possession of the weapon; there were no other witnesses confirming S.’s statement; actually the witnesses stated they didn’t see I. with a gun on his hands.

219. The defendant S.G. was not consistent in his statements. On 2 November 2011, S. stated<sup>179</sup> and that the gun I. had on his arm fell next to A. when I. fell. On the same hearing later on<sup>180</sup> S. stated that he [S.] kicked I.’s weapon away when I. was shot and fell on the ground. On 28 May 2013 S.G. stated<sup>181</sup> that he moved the weapon from I.’s hand further away.

220. The witnesses also testified that I.I. put his hands on his chest, fell first on his knees and then on the ground. This fact is confirmed also based on the photos no. 27, 28, 29, 30 and 32 from Photo Album<sup>182</sup> which show the position of the I.I. lying on his chest and his hands under his body.

221. And finally, the ballistics forensic expert H.K. gave his opinion on 10 May 2016<sup>183</sup> stating that the gun ejects the shells 4 to 5 meters away on the right side. If I., when standing at the point 4,<sup>184</sup> would indeed have shot at the BMW car, the shells D22 and D23<sup>185</sup> would not be left on street at all but would go very far to the right. Therefore, since they were found near the sidewalk they were shot somewhere from the middle of street, marked by expert Kelmendi with “x B”.<sup>186</sup>

222. Based on above the Trial Panel concluded that I.I. was not in possession of the weapon as well as I. didn’t use any weapon and shot at the BMW car.

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<sup>178</sup> P 887/2013, pages 6, 17, 18, 19, 20.

<sup>179</sup> Case P 22/2010, pages 6, 12, 13, 14, 15.

<sup>180</sup> Case P 22/2010, page 16.

<sup>181</sup> Case P 887/2013, page 6.

<sup>182</sup> Prosecution Binder #II, pages 38 – 40.

<sup>183</sup> Case P 199/2015, page 13.

<sup>184</sup> See Sketch, Prosecution Binder #III, page 34.

<sup>185</sup> See Sketch, Prosecution Binder #III, page 34.

<sup>186</sup> Case P 199/2015, Exhibit D.

223. The expert for forensic medicine T.G. and ballistics forensic expert H.K. in their opinion dated 22 April 2016 confirmed that I.I. was shot when he was standing from two directions; from the left side and from the right side; whereof wounds caused on his right side prevail and from the distance 70 – 80 cm.
224. Based on the Autopsy Report dated 15 December 2009<sup>187</sup> it can be established that late I.I. sustained eight (8) gunshot wounds; four (4) entrances of gunshot wounds and four (4) exits of gunshots wounds. The entrance wound number 1 is associated with exit wound number 2, the entrance wound number 3 is associated with exit wound number 4, the entrance wound number 5 is associated with exit wound number 6, and the entrance wound number 7 is associated with exit wound number 8. I.I. sustained wounds on right side of head, left side of the neck, right side of the chest, and his left arm, and died on the spot due to hemorrhagic shock caused by gunshot injuries.
225. The defendant S.G. admitted he shot I.I.; although S. stated that he shot I.I. in necessary defense.
226. Nevertheless, based on assessment of all presented evidence the Trial Panel concluded that it was not only the defendant S.G. who shot I.I. and that at the same time another person fired in the direction of and hit I.I..
227. Firstly, witness B.I. and the defendant A.G. stated they saw Ag. who shot I.I. when I. fell on his knees. And secondly, the findings of appointed experts confirm the fact that I.I. has been shot from two directions.

## **Count 2 – Unauthorised Ownership, Control, Possession or Use of Weapons**

228. Under Count 2 the Defendant S.G. was indicted with Unauthorised Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK
229. Pursuant to Article 387, Paragraph (2) of the CPC, the Trial Panel assessed conscientiously each item of evidence, administrated during the main trial, separately and

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<sup>187</sup> Prosecution binder #I, pages 95 – 115.

in relation to other items of evidence and on the basis of such assessment reached the conclusion on which facts it considered as proven and which not proven.

230. On 17 March 2016<sup>188</sup> the defendant S.G. pleaded guilty for this criminal offence.

231. Based on Certificate on seized items dated 4 December 2009<sup>189</sup> the Trial Panel established that the pistol of caliber 7.62x25mm type TT with serial number ... was seized from S.G. together with 1 cartridge in the chamber and 4 in the magazine.

232. Therefore, the Trial Panel concluded that the defendant A.G. was in possession of this pistol without a valid Weapon Authorization Card.

## **G. LEGAL REASONING**

### ***G.1 Charges against the Defendant A.G.***

#### **Count 1 – Aggravated Murder of M.I. and Count 2 – Attempted Aggravated Murder of B.I.**

233. The defendant A.G. was indicted upon amended indictment under Count 1 of committing the criminal offence of Aggravated Murder of M.I., contrary to Article 147, Item 4) of the CCK and under Count 2 of committing the criminal offence of Attempted Aggravated Murder, contrary to Article 147, Item 4) of the CCK.

234. Article 147 Paragraph (1), item 4) of the CCK reads:

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

*[...] 4) Deprives another person of his or her life and in doing so intentionally endangers the life of one or more persons; [...]*

235. It is Prosecution case that the incident took place in the morning; that ‘we all know there are people in the immediate vicinity of the incident’; that R.G. said that a seller in a nearby shop screamed to them to be careful; that witness I. stated that two plain clothed police officers happened to be around; and that F.I. and M.G. were inside their

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<sup>188</sup> Case P 199/2015, page 8.

<sup>189</sup> Prosecution Binder no. #II, pages 302, 303.

houses. It is Prosecution case that all these people were in potential danger of receiving either direct or stray bullet.

236. First of all, the Trial Panel didn't find that the objective element of this criminal offence is proven, namely that the life of one or more persons was endangered.

237. When A. shot at the car and B.I., only the life of M.I. could be endangered; but shortly afterwards A.G. shot at M.I. and this element (endangering) didn't exist anymore since another criminal offence against M. was committed.

238. And when A.G. shot at M.I., no other life or lives were endangered since apart A., S.G., A.G.1 and R.G. no other person was present.

239. The Trial Panel also emphasizes that such danger must be concrete not abstract; and that in instant case the concrete danger did not exist.

240. It is true that witness K. on 18 October 2011 stated<sup>190</sup> that he noticed downwards two people on the paved road; but K. saw these people when the shooting had already stopped and K. and I. had already handcuffed the defendants. K. also stated that he had not seen them before and that his colleague I. saw them; they were police officers in civilian clothing and they offered K. and I. assistance after they had presented police identification cards.

241. As to F.I. and M.G., they were inside their own houses and not present in the vicinity of the incident.

242. Therefore, based on the administrated evidence and as it is reasoned in detail in this judgment until now, the Trial Panel found that the defendant A.G. committed two criminal offences:

- criminal offence of *Attempted Murder* of B.I., contrary to Article 146 of the CCK in conjunction with Article 20 of the CCK; and
- criminal offence of *Murder* of M.I., contrary to Article 146 of the CCK.

243. The Article 146 of the CCK reads:

*"Whoever deprives another person of his or her life [...]"*

244. The Article 20 of the CCK reads:

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<sup>190</sup> Case P 22/2010, page 38.

*“Whoever intentionally takes an immediate action towards the commission of an offence and the action is not completed or the elements of intended offence are not fulfilled [...]”*

245. And Article 147, Item 11) of the CCK reads:

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

*[...] 11) Intentionally commits two or more murders, [...]*”

246. The Trial Panel found that objective and subjective elements of the criminal offense of Attempted Murder of B.I., are met.

247. The defendant A.G. pointed a gun at the BMW car before he [A.] was hit and then shot at the BMW car which was driven by B.I.. The defendant A.G.’s actions in detailed reasoned in this judgment prove that A.G. acted with direct intent to deprive of his life B.I.. B.I. was hit in his left arm which caused bodily harm. B.I. did not die; therefore, the criminal offence of Murder was not completed.

248. The defendant A.G. was fully mentally competent when committed the offence. He used a gun and intentionally shot at B.I..

249. Based on findings of the medical expert, the defendant A.G. has sustained no serious contusion of the brain, nor has this been defined in the medical documentation.<sup>191</sup> There are no circumstances which would exclude his criminal liability pursuant Article 18 and/or Article 19 of the CCK.

250. In relation to criminal offence of Murder of M.I., the Trial Panel found that objective and subjective elements are met.

251. The defendant A.G. was able to walk and he did walk after he was hit by the BMW car. The whole medical documentation, the findings of ballistics and medical experts as well as CT confirm that the defendant A.G. did not sustain any fracture and was able to walk.

252. The defendant A.G. was standing when, the first police officer K. saw him and then when the second one I. had him under control. A.G. followed the BMW car; shot in the direction of M.I. while she was exiting the vehicle, and hit M.I. on the right arm and caused a lethal wound. By such actions as detailed reasoned in this judgment acted with direct intent to deprive of her life M.I..

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<sup>191</sup> Case P 199/2015, Medical Report dated 29 and 30 April 2016, Court Binder Volume #II, Divider no.8.

253. The defendant A.G. was fully mentally competent when committed the offence; there is nothing in the case file that would suggest otherwise. There are no circumstances which would exclude the defendant's criminal liability pursuant Article 18 and/or Article 19 of the CCK.
254. For committing two criminal offences, criminal offence of Attempted Murder of B.I. and criminal offence of Murder of M.I. the Trial Panel convicted the defendant A.G. of committing the criminal offence of *Attempted Aggravated Murder*, contrary to Article 147, Item 11) of the CCK in conjunction with Article 20 of the CCK.
255. Therefore, the Trial Panel requalified count 1 and count 2. The count 1 from the charge of Aggravated Murder, contrary to Article 147, Item 4) and count 2 from the charge of Attempted Aggravated Murder, contrary to Article 147, Item 4) of the CCK.

### **Count 3 - Unauthorised Ownership, Control, Possession or Use of Weapons**

256. Under Count 3, the defendant A.G. was indicted with Unauthorised Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK.
257. Article 328 Paragraph (2) of the CCK reads:  
*[...] Whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorization Card for that weapon shall be punishment by a fine of up to 7.500 EUR or by imprisonment of one to eight years. [...]*
258. It has been established that the defendant used a weapon for which he did not have authorization.
259. The defendant A.G. stated he feels guilty for possession of weapon on that critical day. It was his testimony that otherwise he was never in possession of a weapon.
260. Since the defendant A.G. was in possession of a gun without authorization, the Trial Panel found that objective and subjective elements of this criminal offence are met.
261. The defendant had required intent and was fully mentally competent when committed the offence; as well as there are no circumstances which would exclude his criminal liability pursuant Article 18 and/or Article 19 of the CCK.

## **G.2 Charges against the Defendant S.G.**

### **Count 1 – Aggravated Murder of I.I.**

262. The defendant S.G. was indicted upon amended indictment under Count 1 of committing the criminal offence of Aggravated Murder of I.I., contrary to Article 147, Item 4) of the CCK.

263. Article 147 Paragraph (1), item 4) of the CCK reads:

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

*[...] 4) Deprives another person of his or her life and in doing so intentionally endangers the life of one or more persons; [...]*

264. As for the defendant A.G., the same for the defendant S.G. the Prosecution alleged in the indictment that the lives of other people were endangered. The Prosecution alleged that the incident took place in the morning; that ‘we all know there are people in the immediate vicinity of the incident’; that R.G. said that a seller in a nearby shop screamed to them to be careful; that witness I. stated that two plain clothed police officers happened to be around; that F.I. and M.G. were inside their houses. It was Prosecution case that all these people were in potential danger of receiving either direct or stray bullet.

265. The Trial Panel didn’t find proven the objective element of this criminal offence, namely that the life of one or more persons was endangered. When S. shot I.I., no other life or lives were endangered since apart S., A.G., A.G.1 and R.G. who were participants of the incident, no other person was present; therefore the concrete danger did not exist in the instant case.

266. As the Trial Panel has already mentioned, witness K. on 18 October 2011 stated<sup>192</sup> that he noticed downwards two people on the paved road; but he saw them when the shooting had already stopped and K. and I. had already handcuffed the defendants. K.

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<sup>192</sup> Case P 22/2010, page 38.

also stated that he had not seen them before and that his colleague I. saw them; they were police officers in civilian clothing and they offered K. and I. assistance. As to F.I. and M.G., they were inside their own houses and not present in the vicinity of the incident.

267. Therefore, based on the administrated evidence and as reasoned in detail until now, the Trial Panel found that the defendant S.G. committed a criminal offence of Murder of I.I., contrary to Article 146 of the CCK.

268. The Article 146 of the CCK reads:

*“Whoever deprives another person of his or her life [...]”*

269. The findings of ballistics and medical experts prove that I.I. sustained wounds on right side of head, left side of the neck, right side of the chest, and his left arm, and I.I. died on the spot due to hemorrhagic shock caused by gunshot injuries.

270. Based on experts’ opinion the Trial Panel concluded that it was not only the defendant S.G. who shot I.I. and that at the same time another person fired in the direction of and hit I.I..

271. Article 23 of the CCK defines co-perpetration as follows:

*“When two or more persons jointly commit a criminal offence by participating in the commission of a criminal offence or by substantially contributing to its commission in any other way, each of them shall be liable and punished as prescribed for the criminal offence.”*

272. The defendant S.G. admitted he shot I.I.. The Trial Panel concluded that he actively participated in the commission of criminal offence together with another person.

273. S.G. and another person shot I.I.; the contribution of the defendant S. I. and the contribution of another person had a similar impact and the result of these actions was the death of I.I..

274. The Trial Panel found that objective and subjective elements of the criminal offense of Murder of I.I., are met.

275. The defendant S.G.’s actions in detail reasoned in this judgment prove that S.G. acted with direct intent to deprive of his life I.I..

276. The defendant S.G. stated he shot I.I. in necessary defence since I.I. fired shots towards BMW car; then I. turned to S. and at that moment S.G. in order to protect his life was faster and shot I..

277. As regards to necessary defence, Article 8 of the CCK reads:

*“[...] (2) An act is committed in necessary defence when a person commits the act to avert an unlawful, real and imminent attack from himself, herself or another person and the nature of the act is proportionate to the degree of danger posed by the attack.*

*(3) An act which is disproportionate to the degree of danger posed by an attack exceeds the limits of the necessary defence.”*

278. The Trial Panel found that the defendant by shooting I.I. did not committed the act in necessary defence, S.G. intentionally shot I.I..

279. The Trial Panel has already reasoned in detail in this judgment that first of all, I.I. was not in possession of gun and therefore I. did not shoot at BMW car. It was only S.G. who stated that I.I. was in possession of the weapon. None of the witnesses confirmed S.'s statement; actually the witnesses stated they didn't see I. with a gun on his hands.

280. In addition, the defendant S.G. was not consistent in his statements. He stated that the gun I. had in his arm fell next to A. when I. fell; later, on the same hearing, S. stated that he [S.] kicked I.'s weapon away when I. was shot and fell on the ground; and in his last testimony, S. stated that he moved the weapon from I.'s hand further away.

281. S.'s statements are in contradiction the witnesses' statements who stated that I. put his hands on his chest first, fell on his knees and then fell on the ground. I. was lying on this chest with hands under his body when the police officer came to the spot and this is confirmed also by photos taken during the criminal examination.

282. The Trial Panel concluded that I.I. was not in possession of a gun on that critical day; I. didn't shoot at the BMW car and I. didn't point a weapon against the defendant S.G.; therefore, the requirements of necessary defence do not exist.

283. The Trial Panel found that the subjective elements of the criminal offense are met. The defendant S.G. is criminally liable for his actions; he is mentally competent and he has committed the criminal offense intentionally. There are no circumstances which would exclude his criminal liability pursuant Article 18 and/or Article 19 of the CCK.

284. Therefore, the Trial Panel requalified count 1 from the charge of Aggravated Murder, contrary to Article 147, Item 4) of the CCK and convicted the defendant S.G. of committing the criminal offence of Murder, contrary to Article 146 of the CCK in conjunction with Article 23 of the CCK.

## **Count 2 – Unauthorised Ownership, Control, Possession or Use of Weapons**

285. Under Count 3, the defendant S.G. was indicted with Unauthorised Ownership, Control, Possession or Use of Weapons, contrary to Article 328 Paragraph (2) of the CCK.

286. Article 328 Paragraph (2) of the CCK reads:

*[...] Whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorization Card for that weapon shall be punishment by a fine of up to 7.500 EUR or by imprisonment of one to eight years. [...]*

287. It has been established that the defendant used a weapon for which he did not have authorization.

288. The defendant S.G. admitted he was in possession of weapon; he kept it only when going to work to protect himself. It was also his testimony that on that day he forgot to leave the weapon at home as he usually did when he came back from a work.

289. Since the defendant was in possession of a gun without authorization, the Trial Panel found that objective and subjective elements of this criminal offence are met.

290. The defendant had required intent and was fully mentally competent when committed the offence; as well as there are no circumstances which would exclude his criminal liability pursuant Article 18 and/or Article 19 of the CCK.

## **H. DETERMINATION OF PUNISHMENT**

### ***H.1 Charges against the Defendant A.G.***

291. According to Article 73 of the CCRK and similarly Article 64 of the CCK the Court shall determine the punishment of a criminal offense within the limits provided by law for such criminal offense, taking into consideration the purpose of the punishment, the principles set out in law and the mitigating or aggravating factors relating to the specific offense or punishment, in particular the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, and the personal circumstances of the perpetrator and his

behaviour after committing a criminal offense. The punishment shall be proportionate to the gravity of the offense and the conduct and circumstances of the offender.

292. The CCRK in Paragraphs (2) and (3) of Article 74 enumerates aggravating and mitigating circumstances which shall be considered when determining the punishment but expressly states that such set up circumstances are non-exhaustive. The CCK does not expressly restrict what can be considered as an aggravating or mitigating factor.

293. Based on this, when determining the punishment, the Trial Panel considered the following aggravating circumstances. The defendant A.G. shot several times; both victims, B.I. and M.I. were vulnerable and defenceless.

294. As mitigating circumstance the Trial Panel considered the length of the proceedings, since the criminal offense was committed in 2009 and the time that the defendant A.G. spent in detention. However, the circumstances in which the criminal offenses were committed carry such a heavy weight that the Trial Panel could not find incentives to impose a lesser punishment.

295. Pursuant to Article 3, Paragraph (1) of the CCRK and similarly pursuant to Article 2, Paragraph (1) of the CCK the law in effect at the time a criminal offense was committed shall be applied to the perpetrator.

296. The Defendant A.G. was convicted for criminal offenses under count 1 and count 2, and count 3. He committed the criminal offenses when the applicable law was the CCK, which entered into force on 6 April 2004 under the name of Provisional Criminal Code of Kosovo and was amended on 6 November 2008 merely by changing its name to Criminal Code of Kosovo. The new CCRK entered into force on 1 January 2013, therefore prior to the final decision in this case.

297. According to Article 20, Paragraph (3) of the CCK a person who attempts to commit a criminal offense shall be punished more leniently than the perpetrator, in accordance with Article 65, Paragraph (2) which determines that the punishment imposed for attempt shall be no more than three-quarters of the maximum punishment prescribed for the criminal offense.

298. Pursuant to Article 28, Paragraph (3) of the CCRK a person who attempts to commit a criminal offense, the punishment may be reduced. The Trial Panel may also impose a

punishment below the limits provided for by the law or impose a lesser type of punishment when the conditions as set up in Article 75, Paragraph (1) are met.

299. Pursuant to Article 386, Paragraph (2) of the CPCK the Court is not bound to the provisions set out by the Prosecutor. In addition, Article 3, Paragraph (2) of the CCRK, as well Article 2, Paragraph (2) of CCK states that in the event of a change in the law applicable to a given case prior to a final decision, the law more favourable to the perpetrator shall apply. The Trial Panel concluded that the substantive elements of all the offences, the defendant was convicted for, were the same in CCK as well in CCRK.
300. Thereby, for each count the Trial Panel had to consider what provisions regarding the punishment and sentencing, if any, would have been more favourable for the defendant.
301. For *Attempted Aggravated Murder*, contrary to Article 147, Item 11) of the CCK in conjunction with Article 20 of the CCK (count 1 and count 2), CCK foresees imprisonment of at least ten (10) years or of long-term imprisonment. Pursuant to Article 65, Paragraph (1) of the CCK and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the defendant A.G. to fourteen (14) years of imprisonment.
302. The same criminal act is encompassed in CCRK in Article 179 item 1.11) of the new CCRK. CCRK foresees a punishment of imprisonment of not less than 10 years or of life-long imprisonment. Pursuant to Articles 73 and 74, Paragraphs (2) and (3) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to 18 years of imprisonment.
303. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant received when CCK and when CCRK would be applied the Trial Panel finds Article 147, Item 11) of the CCK in conjunction with Article 20 of the CCK (count 1 and count 2) more favourable than Article 179 item 1.11) of the new CCRK.
304. Based on this, the Defendant A.G. is sentenced to fourteen (14) years of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
305. For *Unauthorized Ownership, Control, Possession or Use of Weapons*, in violation of Article contrary to Article 328, Paragraph (2) of the CCK, the CCK foresees a punishment by a fine of up to 7.500 EUR or by imprisonment of one (1) to eight (8)

years. Taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant for criminal offense of Unauthorized Ownership, Control, Possession or Use of Weapons, to one (1) year of imprisonment.

306. The new CCRK foresees two criminal offences Unauthorized Ownership, Control or Possession of Weapons as per Article 374 of the CCRK; and Use of Weapon or dangerous instrument as per Article 375 of the CCRK. The Trial Panel unanimously agreed that the criminal offence shall be legally qualified as Unauthorized Ownership, Control or Possession of Weapons as per Article 374 of the CCRK.

307. The new CCRK foresees for criminal offence of Unauthorized Ownership, Control or Possession of Weapons a fine of up to 7.500 EUR or imprisonment of up to five (5) years.

308. Taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to one (1) year of imprisonment.

309. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant receive when CCK and when CCRK would be applied the Trial Panel finds Article 328, Paragraph (2) of the CCK more favourable than Article 374 of the CCRK.

310. Based on this, the Defendant is sentenced to one (1) year of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.

311. Pursuant to Article 71, Paragraph (2) Sub-Paragraph (2.2) of the CCK the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of 20 years. Therefore the range of the aggregated punishment is 14 to 20 years.

312. Pursuant to the rules of calculation of concurrent criminal offense pursuant to Article 80, Paragraph (2) Sub-Paragraph (2.2) of the CCRK, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments nor may it exceed a period of 25 years. Therefore the range of the aggregated punishment is 18 to 25 years.

313. Taking into account above provisions the provisions of the CCK are more favourable than the CCRK.

314. Considering and carefully weighed all general and special mitigating and aggravating circumstances the Trial Panel imposes and aggregate punishment of fourteen (14) years and six (6) months of imprisonment.

## ***H.2 Charges against the Defendant S.G.***

315. According to Article 73 of the CCRK and similarly Article 64 of the CCK the Court shall determine the punishment of a criminal offense within the limits provided by law for such criminal offense, taking into consideration the purpose of the punishment, the principles set out in law and the mitigating or aggravating factors relating to the specific offense or punishment, in particular the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, and the personal circumstances of the perpetrator and his behaviour after committing a criminal offense. The punishment shall be proportionate to the gravity of the offense and the conduct and circumstances of the offender.

316. The CCRK in Paragraphs (2) and (3) of Article 74 enumerates aggravating and mitigating circumstances which shall be considered when determining the punishment but expressly states that such set up circumstances are non-exhaustive. The CCK does not expressly restrict what can be considered as an aggravating or mitigating factor.

317. Based on this, when determining the punishment, the Trial Panel considered the following aggravating circumstances. The defendant S.G. shot several times; the victim I.I. was vulnerable and defenceless.

318. As mitigating circumstance the Trial Panel considered the length of the proceedings, since the criminal offence was committed in 2009; the time that the defendant S.G. spent in detention and the defendant's willing to enter the plea agreement. However, the circumstances in which the criminal offenses were committed carry such a heavy weight that the Trial Panel could not find incentives to impose a lesser punishment.

319. Pursuant to Article 3, Paragraph (1) of the CCRK and similarly pursuant to Article 2, Paragraph (1) of CCK the law in effect at the time a criminal offense was committed shall be applied to the perpetrator.
320. The Defendant S.G. was convicted for criminal offenses under count 1 and count 2. He committed the criminal offenses when the applicable law was the CCK, which entered into force on 6 April 2004 under the name of Provisional Criminal Code of Kosovo and was amended on 6 November 2008 merely by changing its name to Criminal Code of Kosovo. The new CCRK entered into force on 1 January 2013, therefore prior to the final decision in this case.
321. Pursuant to Article 23 of the CCK, when two or more persons jointly commit a criminal offence by participating in the commission of a criminal offence or by substantially contributing to its commission in any other way, each of them be liable and punished as prescribed for the criminal offence. Pursuant to Article 31 of the new CCRK, when two or more persons jointly commit a criminal offence by participating in the commission of a criminal offence or by substantially contributing to its commission in any other way, each of them be liable and punished as prescribed for the criminal offence.
322. Pursuant to Article 386, Paragraph (2) of the CPCK the Court is not bound to the provisions set out by the Prosecutor. In addition, Article 3, Paragraph (2) of the CCRK, as well Article 2, Paragraph (2) of CCK states that in the event of a change in the law applicable to a given case prior to a final decision, the law more favourable to the perpetrator shall apply. The Trial Panel concluded that the substantive elements of all the offences, the defendant was convicted for, were the same in CCK as well in CCRK.
323. Thereby, for each count the Trial Panel had to consider what provisions regarding the punishment and sentencing, if any, would have been more favourable for the defendant.
324. For *Murder*, contrary to Article 146 of the CCK (count 1), CCK foresees a punishment of imprisonment of at least five (5) years. Pursuant to Article 65, Paragraph (1) of the CCK and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the defendant S.G. to ten (10) years of imprisonment.
325. The same criminal act is encompassed in CCRK in Article 178 of the new CCRK; CCRK foresees a punishment of imprisonment of not less than 5 years. Pursuant to

Articles 73 and 74, Paragraphs (2) and (3) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the defendant S.G. to 14 years of imprisonment.

326. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant received when CCK and when CCRK would be applied the Trial Panel finds Article 146 of the CCK more favourable than Article 178 of the new CCRK.
327. Based on this, the Defendant S.G. is sentenced to ten (10) years of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
328. For *Unauthorized Ownership, Control, Possession or Use of Weapons*, in violation of Article contrary to Article 328, Paragraph (2) of the CCK, the CCK foresees a punishment by a fine of up to 7.500 EUR or by imprisonment of one (1) to eight (8) years. Taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the defendant for criminal offense of Unauthorized Ownership, Control, Possession or Use of Weapons, to one (1) year of imprisonment.
329. The new CCRK foresees two criminal offences Unauthorized Ownership, Control or Possession of Weapons as per Article 374 of the CCRK; and Use of Weapon or dangerous instrument as per Article 375 of the CCRK. The Trial Panel unanimously agreed that the criminal offence shall be legally qualified as Unauthorized Ownership, Control or Possession of Weapons as per Article 374 of the CCRK.
330. The new CCRK foresees for criminal offence of Unauthorized Ownership, Control or Possession of Weapons a fine of up to 7.500 EUR or imprisonment of up to five (5) years.
331. Taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the defendant to one (1) year of imprisonment.
332. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant receive when CCK and when CCRK would be applied the Trial Panel finds Article 328, Paragraph (2) of the CCK more favourable than Article 374 of the CCRK.

333. Based on this, the Defendant is sentenced to one (1) year of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
334. Pursuant to Article 71, Paragraph (2) Sub-Paragraph (2.2) of the CCK the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of 20 years. Therefore the range of the aggregated punishment is 5 to 20 years.
335. Pursuant to the rules of calculation of concurrent criminal offense pursuant to Article 80, Paragraph (2) Sub-Paragraph (2.2) of the CCRK, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments nor may it exceed a period of 25 years. Therefore the range of the aggregated punishment is 5 to 25 years.
336. Taking into account above provisions the provisions of the CCK are more favourable than the CCRK.
337. Considering and carefully weighed all general and special mitigating and aggravating circumstances the Trial Panel imposes and aggregate punishment of ten (10) years and six (6) months of imprisonment.

## **I. COSTS**

338. The decision on the costs as set out in the enacting clause is made pursuant to Article 102, Paragraphs (1) and (4) of CPCK.

## **J. CALCULATION OF THE TIME SPENT IN DETENTION ON REMAND AND HOUSE DETENTION**

339. For both defendants pursuant to Article 391, Paragraph (5) of the CPCK and Article 278, Paragraph (7) of the CPCK the time spent in detention on remand and house detention from 4 December 2009 until the judgment becomes final shall be credited against the punishment.

## **K. CONFISCATION OF ASSETS**

340. Pursuant to Article 60, Paragraph (1) and Article 328, Paragraph (5) of the CCK the weapon - pistol type TT black in color with serial number ..., containing bullets and the weapon - pistol type M57-TT with serial number ..., containing bullets are confiscated.

## **L. PROPERTY CLAIMS**

341. Pursuant to Article 112, Paragraph (2) of the CPCK, the injured parties are instructed that they may pursue their entire property claims in civil litigation.

**LEGAL REMEDY:** A Defendant, his Defence counsel, the Prosecutor or Injured Parties have 15 days from service of this judgment right to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.

### **BASIC COURT OF MITROVICË/MITROVICA**

**P. Nr. 199/15**

**14 June 2016**

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**Franciska FISER**

**EULEX Presiding Judge**

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Dukagjin KËRVESHI

Recording Officer

Drafted in English, as an authorized language