

## DISTRICT COURT OF PEJË/PEĆ

P. Nr. 268/2008

1 July 2009

### IN THE NAME OF THE PEOPLE

**THE DISTRICT COURT OF PEJË/PEĆ**, in the trial panel composed of the EULEX International Judge Ferdinando Buatier de Mongeot as Presiding Judge, the EULEX International Judge Gianfranco Gallo and the Kosovo Judge Haxhi Derguti as panel members, assisted by the Recording Officer Vlora Johnston, in the criminal case against the accused

**BEKIM ZEKA**, son of Sherif and Hanife, maiden name Morina, born on 01/12/1975 in Abri e Poshtme, Municipality of Skenderaj, current resident of street, "28 Nentori" in Skenderaj, has accomplished primary school, married and father of two children, of low financial status, Albanian, citizen of Kosovo, in detention since 27/07/2008.

AND

**ARBEN ZEKA**, son of Sherif and Hanife, maiden name Morina, born on 02/05/1977 in Abri e Poshtme, Municipality of Skenderaj, current resident of village Murgë, Municipality of Skenderaj, has accomplished primary school, single, of low financial status, Albanian, citizen of Kosovo, in detention since 27/07/2008.

Accused of the following criminal offence:

*Murder committed in complicity for personal gain (pursuant to Article 30, par. 2, item 3 of the Criminal Law of Kosovo of 1977, in conjunction with art. 22 of the YCL) of Ejup Broqi, committed in Cerovik (Klina) on an uncertain date by the end of June 1999.*

*In particular the defendants, in execution of their plan of killing a Serb/Gipsy taxi driver in order to take his car and his belongings, made the witness T.H. wear a military uniform, through this inducing the victim Ejup Broqi, a taxi driver, to transport them to the village of Gllobare in Drenas with his vehicle Opel Ascona, of red colour. Once arrived in the village of Cerovik, the defendant Arben Zeka grabbed the victim by his throat. Both defendants subsequently started to beat him, dragging him out of the car towards the forest, where some minutes after they shot him twice with a pistol owned by Bekim Zeka, thus causing his death. The defendants afterwards took the victim's car and wallet.*

*Crime punishable by ten to twenty years of imprisonment.*

After having held the main trial hearings in public on 15, 16, 18, 30 June and 1 July, in the presence of:

- the accused Arben Zeka and Bekim Zeka and their defence counsels Mr. Zenel Mekaj and Abit Asllani (or their substitutes);
- the Public Prosecutor Mr. Gezim Kollqaku (or his substitute);
- the injured party Ms. Shukrije Broqi,

after the trial panel's deliberation and voting held on the 30<sup>th</sup> of June 2009, based on Article 391 Paragraph (1) of KCCP, on the 1<sup>st</sup> of July 2009, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the accused the following

### **VERDICT**

**ARBEN ZEKA** and **BEKIM ZEKA** are

### **FOUND GUILTY**

Of the criminal offence of the **murder, committed in complicity for personal gain**, of Ejup Broqi, pursuant to Article 30, par. 2, item 3 of the Criminal Law of Kosovo of 1977, in conjunction with art. 22 of the Yugoslavian Criminal Law. Crime committed in the village of Cerovik (Klina) on an uncertain date at the end of June 1999;

Therefore:

the accused **BEKIM ZEKA** is

### **SENTENCED**

to twenty (20) years of imprisonment for the same criminal offence;

the accused **ARBEN ZEKA** is

### **SENTENCED**

to fifteen (15) years of imprisonment for the same criminal offence.

The time spent in detention on remand by the defendants is to be included in the amount of punishment, pursuant to Article 391 Paragraph (1) Subparagraph 5 of the PCCK.

Pursuant to Article 102 Paragraph (1) of the PCCK, the defendants shall reimburse the costs of criminal proceedings with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCCK.

Pursuant to art. 112, paragraph 2 PCCK, each one of the defendants is

### **CONDEMNED**

to the payment of the sum of € 10.000,00 (ten thousand/00) to the injured party Shukrije Broqi as partial compensation for the damages suffered. The Court herewith instructs the injured party that she may pursue the rest of the property claim in civil litigation.

## REASONING

### 1. The background and the procedural steps

In the end of the month of June 1999 Ejup Broqi, a taxi driver of Peja, husband of Shukrije Broqi, went missing.

After long researches by the family members, a body was found in the vicinity of the village of Cerovik (Municipality of Klina). It was recognized as Ejup Broqi's by the brother of the victim and given back to the family, who buried the body (see the "Case Summary" dated 21.6.2004 and the statements made by Gzim Broqi to the Police on 31.3.03, considered as read by the parties at the hearing of 16.6.2009).

The entry hole of a bullet was visible on the neck of the corpse and its exit hole was on the throat<sup>1</sup>.

At first the investigations were pointless, also due to the particularly difficult socio-political conditions of Kosovo at that time.

It has to be added that only three/four years after did the family decide to officially report the case to the State Police<sup>2</sup>: nonetheless the investigations were substantially at a deadlock and so remained until July 2008, when an unexpected event unblocked the stalemate.

Indeed on the 27<sup>th</sup> of July 2008 Sherif Zeka, father of the defendants, reported to the Police the theft of his car, allegedly committed by the sons Bekim and Faruk. Thence the criminal investigation n. 2008 Bf 0874 was initiated.

On the occasion of his report regarding the theft, requested of what kind of people his sons Bekim and Faruk were, and whether or not they had committed any other crimes before the theft, Sherif Zeka added the following words: *"About one year after the war (of 1999) as far as I can remember it was summer, my sons Faruk and Bekim have taken a taxi driver from Peja, I do not know his name, brought him in village Cerovik of Klina Municipality, robbed him and killed him by taking off his head and then threw him in the forest, got his red Ascona that he kept for some time, I don't know for how long he drove it around Peja, and everywhere in Kosovo"*<sup>3</sup>.

Thus the investigations for the murder gained new momentum, aiming initially at Bekim and Faruk Zeka.

After the examination of the witness T.H., thanks to a rectification by Sherif Zeka it turned out that Faruk was not involved in the commission of the crime. Instead of Faruk, Arben Zeka was investigated, because T.H. indicated him as the accomplice of Bekim Zeka in the murder.

<sup>1</sup> See again the statements of Ejup Broqi, who on this aspect recalls that the assessment was done by Dr. Isa Kaliqani the same day of the discovery of the corpse.

<sup>2</sup> A summary of the case can be found both in the "Case summary" dated 21.6.2004 and in the "Police Officer's Report" of 28/7/2008, both in the case file.

<sup>3</sup> See statements made by Sherif Zeka on 27.7.2008 to the Police Station of Skenderaj

On 27.07.2008 Bekim Zeka and Arben Zeka were arrested.

On 29.07.2008 Kosovo Police filed a criminal report to the District Prosecutors Office against the two defendants, which was followed on the same day by the ruling on initiation of the investigation and the application for detention on remand.

On 20 October 2008 the Public Prosecutor filed the indictment PP.no.259/2008 in the District Court of Peja/Pec, against the defendants Bekim Zeka and Arben Zeka, accusing them of the criminal offence of murder in complicity pursuant to article 30, par. 2, item 3 of CLK.

According to the indictment, on a not confirmed day, by the end of the month June of 1999 in the village Cerovik, Municipality of Klina, intentionally and in order to get financial benefits for themselves, the defendants murdered Ejup Broqi from Peja, 46 years of age.

By these actions the defendants committed the criminal offence of murder in complicity pursuant to article 30, par. 2, item 3 of CLK, punishable by imprisonment of not less than ten (10) years and no more than twenty (20) years, pursuant to the section 1.5 of the UNMIK regulation 1999/24.

The hearing on confirmation of the indictment was held on 20 November 2008, in the presence of the defendants, their defence counsels and the public prosecutor, confirming the indictment with the ruling KAQ.nr.316/08 dated 20 November 2009.

The main trial was held in public on 15, 16, 18, 30 June and 01 July 2009, in the presence of the accused Bekim Zeka, his defence counsel Abit Asllani, the accused Arben Zeka, his defence counsel Zenel Mekaj, the Public Prosecutor Gezim Kollcaku and the injured party Shukrije Broqi.

Pursuant to article 15 of KCCP, international interpreters translated the court proceedings and all court documents relevant to the trial into Albanian and English.

During the main trial, the following witnesses were heard:

- a) T.H. as witness on 15 June 2009
- b) Sherif ZEKA as witness on 16 June 2009
- c) Driton AVDIU as witness on 16 June 2009
- d) Faruk ZEKA as witness on 16 June 2009
- e) Gani MORINA as witness on 18 June 2009

The defendants were examined in the hearing of 18 June 2009.

Upon agreements between the parties, the following statements were considered as read at the main trial:

- statements made by the injured party Shukrije Broqi in front of the Public Prosecutor on the 15<sup>th</sup> September, 2008
- statements made by Qerim Camaj in front of the Police on the 27<sup>th</sup> May, 2004
- Statements made by Arif Arifaj in front of the Police on the 20.1.2004;
- statements made by Gzim Broqi in front of the Police on the 31.3.2003.

The verdict was read out in public in the hearing of 1 June 2009. On the same day detention on remand was extended until the verdict was final.

## **2. Applicable law, competence of the Court and composition of the Panel**

**2.1.** The defendants are accused of aggravated murder according to art. 30, para 2, n. 3, of the Criminal Law of Kosovo. Such offence is punishable by imprisonment of not less

than ten (10) years and no more than fifteen years, pursuant to the section 1.5 of UNMIK regulation 1999/24. Imprisonment of twenty (20) years is also possible for the most serious cases.

The Panel concurs with the Public Prosecutor that the substantive applicable law is the Criminal Law of Kosovo of 1977 as amended by the Regulation 24/99 of UNMIK.

In fact:

- the murder of Ejup Broqi took place at the end of June 1999.
- the substantive law applicable must be the one in force when the crime was committed, unless a more favorable one entered into force subsequently (art. 2 Kosovo Criminal Code, identical to the Criminal Law of Yugoslavia to this regard);
- the law in force at the time of commission of the crime was the Criminal Law of Kosovo of 1977. Its art. 30, para 2, established for the crime of aggravated murder the penalty of imprisonment of at least 10 years or the death penalty (which, following the regulations of the SRSG 24/1999, was transformed in the imprisonment between a minimum of 10 years and 15 years, or the imprisonment of 20 years);
- That the Criminal Code of Kosovo, which entered into force in 2004, punishes (art. 147, para 3) the same crime with the imprisonment of at least 10 years or with the long term imprisonment (i.e. a deprivation of liberty between 21 and 40 years).

Thence the Criminal Code of Kosovo (2004) is not more favorable and therefore the Criminal Law of Kosovo (1977), in connection with the Criminal Code of the Socialist Republic of Yugoslavia, applies to the present case.

2.2. In accordance with article 23 paragraph 1 of the Kosovo Code of Criminal Procedure (henceforth: KCCP), District Courts shall have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

The District Court of Pejë/Pec is territorially competent, being the village of Cerovik within the Municipality of Klina, which falls within the jurisdiction of the District Court of Pejë/Pec.

2.3. The offence falls within the scope of art. 3, para 3, of the Law on Jurisdiction (3 – L053/2008), which sets forth the subsidiary competence of EULEX Judges.

Art. 3 para 3 states that in the cases of subsidiary competence EULEX Judges can take over the case upon appointment by the President of EULEX Judges, following a request by either party of the proceeding or by the President of the respective Court, for any reason when this is considered necessary to ensure the proper administration of justice.

In this case, two EULEX judges have been appointed by the President of EULEX Judges on 8.4.2009, following a request from the acting President of the District Court of Peja to substitute the local judges with EULEX judges.

A Kosovo judge has been part of the Panel throughout the trial pursuant to article 4.7 of Law on Jurisdiction.

It has to be added that *in limine litis* the parties had nothing to object about the composition of the Panel.

### 3. The merits of the case

On the basis of the evidence collected the Panel deems that the guilt of Arben and Bekim Zeka has been proved beyond reasonable doubt.

The backbone of the evidentiary framework against the defendants is provided for by Sherif Zeka, 7. H. and Faruk Zeka.

A lesser contribution was provided by the witnesses Gani Morina and Driton Avdiu.

The defendants themselves provided, to the extent which will be outlined below, corroboration to the statements of the witnesses who accused them.

#### 3.1. Sherif Zeka

The statements made by Sherif Zeka are of great importance for the adjudication of the case, because it was only thanks to them that the investigation could be resumed and the defendants discovered.

On the occasion of the hearing in front of the trial Panel the witness evidently tried to step back from his statements made in front of the investigators, where he had accused his two sons of the murder of the taxi driver. This obliged the Panel confront the witness with his previous statements and subsequently, adopting the greatest care, to evaluate which of the versions was the most credible (and which parts of it could be relied upon).

In front of the Police and the Public Prosecutor the witness was clear in stating against the defendants, on the occasion of a proceeding which had nothing to do with the murder, but with the theft of his car. In particular, on 27.7.2008 he told:

- That there had been a deterioration of his relationship with the sons Bekim and Faruk, culminating with the theft of his car by them, which induced him to report to the Police;
- that before the theft took place his son Bekim had told him that sometime in 2000 or 2001, he - along with the brother Faruk - had hired a taxi driver from Peja; when they reached the hill of Cerovik near Klina and the taxi driver asked for the payment of the ride, they started to argue and fight, eventually killing the taxi driver and taking his vehicle (a red Opel Ascona);
- that he rebuked the son and forbade him to keep the Opel Ascona in his house;
- that Bekim, after that, used the vehicle for at least another 5 months.

In front of the Public Prosecutor Sherif Zeka provided a partially different version of the facts (as to when Bekim confessed him about the murder). He stated:

- that he had known about the murder only two years earlier (i.e. about in 2006) from his co-villager Gezim Gagiqi. The latter told him that his son Bekim immediately after the war killed a taxi driver from Peja and took from him his vehicle;
- that afterwards he asked Bekim whether that was true, receiving a negative answer;
- that subsequently, more than one year before being interrogated by the Police, an unknown person went at Bekim's house and grabbed Bekim's wife by her hair, telling her that he knew whom Bekim had killed after the war: therefore Sherif

Zeka again asked Bekim about his involvement in the killing. Bekim this time answered that immediately after the wartime he and a girl ( T.H ) "took a taxi driver with his red Ascona, sent him in the forest of the village of Cerovik, robbed him and then killed him taking away his vehicle".

- what he had reported to the Police regarding the involvement of Faruk in the killing was not true, since Faruk at that time was "sick and not able to commit such things", having being wounded during the war;
- that he received no information from Bekim about the possible involvement of Arben;
- that it was true that Bekim had owned a red Opel Ascona immediately after the wartime;

On the occasion of the main trial the witness dramatically changed his version on a pivotal point. He stated that Bekim never told him he had killed the taxi driver, and that this information was given to him only two years earlier by his friend Gezim Gagiqi. He confirmed, nevertheless, that after the war the son Bekim used to drive a red "Opel Ascona" car, which he told he had bought.

The witness was heavily confronted with the statements made in front of the Police and of the Public Prosecutor, which have been recalled above.

He was not willing/able to provide an explanation for the two different versions.

The Panel noted that he was very keen on trying to take the blame off Arben, by stating that he could not have committed the crime because he was "always together with him", day and night.

Coming to the assessment of the statements of Sherif Zeka, the Trial Panel deems that, despite the contradictions highlighted above, for sure there is a part of the statements made during the investigations which is trustworthy.

Reference is made here to the initial statements, which triggered the investigation.

In particular, no doubt can there be regarding the fact:

- that Bekim Zeka told Sherif Zeka that he together with somebody else (whose identity cannot be drawn from Sherif Zeka's statements, but which is made clear by the other witnesses' statements) took part in the murder of a taxi driver from Peja;
- that Bekim Zeka told Sherif Zeka that the murder took place "around the year 2000", in the vicinity of the village of Cerovik, according to these modalities: when the taxi reached the hill of Cerovik, near Klina, and the taxi driver asked for the payment of the ride, a fight started, which eventually ended with the murder of the taxi driver and the taking of his vehicle
- that Bekim Zeka owned for a certain time after the war a red Opel Ascona (this circumstance was never retracted).

Thus the Panel deems that it is necessary to disregard completely the retraction attempted during the main trial.

Proof of the truthfulness of this initial version lies derives from the fact that:

- it was precisely thanks to these words of Sherif Zeka's that the Police could focus the investigation on the defendants, which (faced with these precise statements) subsequently admitted their presence at the crime (though they tried to put the blame on each other regarding who eventually beat and killed the taxi driver) and confirmed that the modalities were exactly those indicated by Sherif Zeka;

- also T.H. confirmed the circumstances indicated by Sherif Zeka;
- Sherif Zeka's statement as to Bekim's confession has a good degree of precision and detail and it found a precise verification in reality: it exactly referred to the place where the murder took place, to its modalities and "steps" and (though with a slightly lesser degree of precision) to the time of commission of the event, providing a clear description of the victim and of the precise intent of the perpetrators: it is impossible to think that such a precise and detailed description could have happened only by chance; similarly, it is not possible to think that Sherif Zeka could have obtained from third persons the precise description of the modalities of the aggression and of the intent of the aggressors;
- on the occasion of both the examinations made in front of the Police and of the Public Prosecutor the witness confirmed having received the confession from Bekim (though in front of the Public Prosecutor a confrontation was necessary in order to refresh Sherif Zeka's memory thereon). The abrupt and totally unexplained change of version which took place in front of the Trial Panel can find an explanation thinking of the difficulty to accuse the sons in their presence (and after having visited them several times in jail) and thinking of the lapse of time between the theft of the car and the main trial (which makes it understandable that during this time the witness might have reconsidered the extremely serious consequences of his statements against the sons).

The contradictions in the statements of Sherif Zeka regarding the person(s) who was (were) with Bekim (in front of the Police he stated that it was Faruk, in front of the Public Prosecutor he stated that it was T.H. make it impossible to get from those statements a reliable conclusion as to their identity. It can be affirmed, though, that Sherif Zeka is clear as to the fact that Bekim was not alone when he committed the crime. Sherif Zeka on the occasion of his examination in front of the trial Panel attempted with great insistence to exonerate his son Arben, trying to provide him with an alibi.

This attempt turned out to be bumbling, given its evident non credibility.

The witness, in fact, after admitting that he had no precise idea about the year, day and hour in which the crime was committed, nonetheless stated that he was together with Arben at the moment of the crime, since they were always "day and night" together.

The illogicality of such statement can find an explanation only admitting the desperate attempt of a father to save the son. This intention of Sherif Zeka is made evident also by the fact that he is totally contradictory as to the relationship with Bekim and the other sons: in front of the Panel he tried to say that relationships are good with everybody, but immediately after he stated that the sons stole the car, and therefore he had expelled the son from the house (see also on this the statements of Faruk Zeka).

The relationship (and mutual integration) of the statements of Sherif Zeka with the other pieces of evidence will be clarified below.

### 3.2. T.H.

T.H.'s statements are of pivotal importance for this trial.

Her personal involvement in the events of June 1999 and the partial discrepancies which arise when examining her various statements impose the greatest care in assessing them.

She was examined by the Police on the 28<sup>th</sup> of July 2008 and by the Public Prosecutor on the 1<sup>st</sup> of August 2008 and on the 15<sup>th</sup> of October 2008.

The trial Panel examined her during the hearing of the 15<sup>th</sup> of June, 2009.

During the trial examination the witness was many times confronted with the relevant parts of the previous statements. She repeatedly confirmed that the statements made in front of the investigators were the most accurate ones. For this reason and for the sake of completeness, given the importance of her testimony, it is convenient to summarize here all the statements made by the witness in front of the Police, the PPO and the trial Panel, always bearing in mind the basic rule for the evaluation of evidence provided for by art. 367 KCCP, according to which the content of statements made during the investigative stage can be used as evidence in so far as the defense was put in the position to challenge them.

In front of the Police T.H. stated:

- that upon the end of the war in Kosovo she moved from Pristina to Peja, where she started living together with Bekim Zeka;
- Sometime in July-August 1999 Bekim Zeka and Arben Zeka, talked about finding a Serbian or a gipsy and taking his vehicle;
- One day, in execution of this idea, Bekim told T.H. to wear his KLA uniform and introduce herself to one taxi driver as their superior. They went to the railway station of Peja, where they noticed two taxis, a red Ascona and a red Golf;
- Bekim or Arben (the witness was not clear on that) proposed to take the Ascona, as the taxi driver was a gipsy. Thus they approached the taxi driver and agreed on a ride to the village of Obri for ten Deutsche Marks;
- She sat on the front seat, the defendants on the back seat. She was wearing the KLA uniform, Arben had military uniform pants and a plain shirt and Bekim was in civilian clothes<sup>4</sup>. The witness, in particular, was wearing Bekim's uniform and a pair of white sandals.
- After the village of Kijeva they took a secondary road to the village of Cerovik. When the taxi reached a narrow uphill section of such road, Arben grabbed the taxi driver by the throat from behind, while Bekim started punching him on his chest and head;
- At this point the taxi driver stopped the vehicle and Bekim stepped out, while Arben kept grabbing the victim (who was shouting) by the chest;
- Both defendants then dragged the victim out of the vehicle, punching him, kicking him and telling him that they wanted to kill him. Meanwhile T.H. got out of the car and moved away about twenty meters out of fear. From there she could still hear the victim scream and the defendants beat him up;
- Twenty minutes later she heard two gunshots and afterwards Bekim's voice saying: *"Come as we killed him, help us to push the vehicle as it does not start"*. She went back to the crime scene and found Bekim inside the vehicle; she and Arben then pushed the vehicle till it started;
- She got on the front seat while Arben was on the back seat. He said that they got the wallet of the taxi driver and there was no money, only documents and photographs, as the witness could directly see;

<sup>4</sup> The witness under this regard corrected herself at the end of her interview, when the examiners touched more specifically upon the issue of the clothes of the group.

- Then they headed towards the village of Obri, which they reached when it was already dark. There they went at Driton's house (a cousin of the Zekas'), where they spent the night in three separate rooms;
- The following evening they went to Peja at Bekim's family's and until she stayed there Bekim did not speak with his parents about the case. T.H. spoke about the case only around two years after, with his father;
- Bekim was the one carrying the gun.

The witness reiterated the same statement when interviewed by the Public Prosecutor during the investigations, with some slight differences/additions, recalled below:

- the witness said that the plan of the Zekas was not only to take the car of the Serbian/Gipsy taxi driver, but also to execute him, and that she was aware of it;
- she said that her wearing the military uniform of Bekim's was specifically aimed at convincing the taxi driver more easily;
- both brothers talked to the taxi driver at the train station of Peja in order to bargain the ride;
- after the gunshots had been fired, T.H. saw the gun on Bekim. It was black;
- one week after the crime (and not on the same night, as Bekim stated in front of the PPO) they went to Bekim's Uncle Gani;
- the red Opel Ascona was driven by them around Peja after the murder.

The Public Prosecutor examined the witness a second time on the 15<sup>th</sup> October 2009.

On this occasion, she was faced with the statements made by the defendants.

She confirmed her previous statements, adding the following:

- Both defendants were responsible for the murder: Bekim was in her opinion "more responsible" because he was the one carrying the gun, but also Arben was responsible because he had "*beaten up the taxi driver during the whole time*";
- Bekim himself told her "*I killed him*";
- Once in the car after the murder, Arben was holding in his hands the documents of the deceased and then he gave the wallet to Bekim; both checked the documents.

T.H. was extensively examined by the trial Panel at the hearing of 15<sup>th</sup> October 2009. All the circumstances arisen in the previous examinations were touched upon.

The examination turned out to be particularly difficult, due to the precarious emotional state of the witness and her (alleged) need for care and loss of memory after a surgery which she underwent one month before the hearing.

During the examination, after specifying that at the time of the events she was only fifteen years old; she confirmed the core of the statements made previously.

In particular, she confirmed:

- that she had met the Zekas ten years before, being Bekim's girlfriend for one month and a half;
- that on the day of the events, she went to the train station with both the defendants. They told her to wear the military uniform of Bekim and to behave like a military, in order to find a taxi driver (either a Serb or a Gipsy) in order to take his car and to kill him. Arben was wearing the pants of an uniform as well;
- That they found a suitable taxi driver, who accepted to carry them. T.H. sat on the front passenger seat and the defendants on the back seats;

- That once arrived at the road entering Cerovik, surrounded by a forest, Arben grabbed the victim by the neck, then both defendants started beating him and dragging him towards the forest. In particular:
  - o While Arben was grabbing the victim by the throat, Bekim (while still inside the car) started beating the victim;
  - o Then the defendants forced the victim out of the car, while the beating was going on; at this point, T.H. ran away uphill, scared, reaching a distance of 20 meters from the crime scene;
  - o Both defendants dragged the victim towards the forest<sup>5</sup>
  - o The beating went on for about 20 minutes before the gunshots were fired<sup>6</sup>.
- She was called back by Bekim, who wanted her help in order to start the car of the victim: she helped the defendants push the car;
- She saw that the defendants had taken the wallet of the victim and were checking it, but no money was found therein;
- After the murder, the three went to the village of Abri, at the place of Driton Avdiu's (a cousin of the defendants'), and there they spent the night;
- She had seen the gun also before the critical day and that she knew it was in the possession of Bekim.

It looks evident that some particulars were added by T.H. in front of the trial Panel, compared to the previous examinations. In particular:

- it was Bekim who took the initiative to kill somebody (*"He told us: 'Let's find somebody to kill'"*)<sup>7</sup>
- following this idea of Bekim, he and Arben reached an agreement thereupon<sup>8</sup>
- while dragging the victim towards the forest the defendants insulted him and told him *"We want to kill you"*.

These additions are not in contradiction with the previous statements.

Some discrepancies arose with the statements made previously.

In particular:

- in front of the trial Panel T.H. stated that both Arben and Bekim told her to wear the military uniform (whereas in front of the Public Prosecutor she said that it had been only Bekim). It must be added, though, that after confrontation with her previous statement, the witness repeatedly stated that she integrally stood by it, adducing the above mentioned memory and stress problems
- she stated, about the beating inside and outside the car, that *"Bekim grabbed his neck and took him out of the car. Then both of them dragged him to the forest while beating him. Then I escaped up hill and after a while I heard the shots. Immediately after they called me to go back there: they wanted to ignite the car but it was not working, so there was the need to push the car.... they told me everything was done and told me to push the car"*<sup>9</sup>.

<sup>5</sup> The witness was able to remember that both defendants were involved in the dragging only upon confrontation with her previous statements;

<sup>6</sup> The witness was able to remember this circumstance only after confrontation with her previous statements

<sup>7</sup> See minutes of 15.6.2009, page 18

<sup>8</sup> See minutes of 15.6.2009, page 19

<sup>9</sup> The defense counsel of Bekim Zeka confronted the witness with the previous statements (where she stated that it was Arben who first grabbed the victim by the throat). The witness repeatedly told that she stood by

On the occasion of the examination in front of the trial Panel, the witness at times tried to step back from some of her previous statements which showed her possible involvement in the criminal conduct of the defendants.

In particular:

- The issue whether T.H. at the time of hiring the taxi, was aware of the intention of the defendants to kill (in front of the trial Panel the witness on a couple of occasions admitted being aware of it; on another couple of occasions she generically stated that she "knew nothing" or that "she was only a girl" at the time of the crime).
- The issue whether she was forced (and by whom) to wear the KLA uniform in order to obtain a better convincing effect towards the taxi driver: on the occasion of the examination in front of the trial Panel, in fact, T.H. stated that the defendants forced her to wear the uniform (and it has to be added that the witness, correcting herself by referring to the statements previously made to the Public Prosecutor, eventually concluded that who forced her to wear the uniform was the sole Bekim).

Coming to the evaluation of T.H.'s testimony, the following can be said:

- the witness appeared to be in great distress and confusion during the main trial. In the opinion of the trial Panel, the direct presence of the defendants, one of which had been her partner when she was fifteen years old was clearly a reason for this;
- The witness admitted (also during the main trial, despite a couple of contradictory attempts to withdraw this) that at the time of the events she was aware of the intentions of the defendants to kill the victim, not limiting themselves to stealing his car. Such behaviour of the witness must be regarded as a good indicator of truthfulness, because by admitting her awareness about the defendant's intention and her contribution to their action she might have exposed herself to a possible criminal prosecution: T.H. did not, in fact, try to get rid of her possible share of liability by trying to put the blame on the other participants. It must be noted, on the contrary, that this was precisely the behaviour of the two defendants, who utterly denied having committed any act of criminal relevance (each one of them denying that they had the mere intention to steal the car of Ejup Broqi's).
- The defence was not able to raise reasonable doubts as to the credibility of T.H. In particular, the defendants only limited themselves to stating that T.H. had the intent to take revenge against them for having been seduced and left by Bekim. This defence is not convincing. In fact:
  - o T.H. testified ten years after the end of her relationship with Bekim Zeka, after she had married another person and she had become mother of a child. It is important to note that she was not willing to testify, and she

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the statements she made on the three previous occasions, stressing her current stress and memory problems and adding that she felt threatened.

The same goes with regard to whom told her, after the gunshots, that "everything was done". In front of the Panel she stated that both the defendants told so, whereas in front of the Public Prosecutor she stated that only Bekim had told so. Again, referring to her current memory problems, the witness referred to the statements rendered in front of the Public Prosecutor as the most accurate ones

was summoned only because her name had been pronounced by the others who testified before her. Nothing, therefore, seems to indicate the existence of the eagerness to take revenge against the defendants;

- She spoke also against herself, admitting (in front of the PPO and, at times, also in front of the Panel) that while she was helping the defendants hire the taxi, she knew that they had the intention to kill the taxi driver. This is, as clarified above, a symptom of truthfulness, because it excludes that T. put the blame on the defendants in order to get rid of her responsibilities;
- Most part of what she stated was confirmed by the defendants themselves and by other witnesses (see below further elaboration on this);
- Also admitting T.H.'s intent to falsely accuse Bekim for the offence received by him, there would be no reason at all for her to include Arben in the plot. Arben Zeka himself, when requested about his relationship with T., was not able to indicate any reason of enmity with T. and, on the contrary, expressly stated that he had not a problem with her when she was living with his family.

- The Panel holds that the narration of the witness is intrinsically coherent, despite the slight contradictions which have been highlighted above. T.H. provides for a satisfactory layout of the sequence of the events (and it must be considered that ten years have passed since the facts, bearing in mind as well that the witness was, back then, only fifteen years old). The narration of T.H. is very detailed (in any case, more detailed than the narration of Bekim and Arben Zeka): despite this amount of detail, the statements of T.H. contain no significant discrepancies throughout the several examinations she underwent. On the contrary, the Panel could not help but note the numerous discrepancies existing between the statements rendered by Bekim and Arben Zeka during the hearing of 18 June 2009 and the statements rendered in the previous examinations.

- Apart from the fact, already highlighted, that at the time of the events the witness was only fifteen years old and that the events took place ten years before, the following must be considered: First, it has to be stressed that the witness, confronted with the previous statements, always solved the discrepancies by stating that the correct version was the one given in front of the Public Prosecutor, adducing her current condition of personal distress and confusion. Secondly, these minor discrepancies do not refer to the core of the statements of T.H. which remain solid as to the fact that:

- both Arben and Bekim were involved since the planning phase;
- both of them participated in the beating of the victim;
- both of them were present at the moment of the shooting and both committed a conduct which bore causal relevance for the commission of the criminal offence (in fact: both beat the victim before the execution, both dragged him towards the place of the execution, both were in the place of the execution until the gunshots were fired).

- the statements of T.H. have been corroborated by several external evidentiary elements. In particular:
  - o the body of the taxi driver was located in the exact place which was described by the witness (the forest outside the village of Cerovik). The traces in his body indicate that he had been shot dead. He was a person of dark skin, who could easily be taken for a gypsy: this perfectly matches with the narration provided for by T.H. ;
  - o the same goes for the description of the car, which was correctly outlined by her;
  - o the witnesses Arif Arifaj and Qerim Camaj , who were at the train station on the critical day, confirmed that the defendants approached the taxi together (also with T.H. ) in the vicinity of the train station of Peja. This is in line with T.H.'s version and against the defendants' version. It has to be stressed that on the reliability of these witnesses it is not possible to raise doubts, since:
    - they have no link with the parties;
    - they witnessed in the year 2003, when the defendants' names were not even known;
  - o the same witnesses confirmed T.H.'s version as to the clothes she was wearing (and against the defendants' version). This is of significance also as to the circumstance (reported by T.H. defendants) that there was a plan to use T.H. as a means to convince the taxi driver to carry them;
  - o the defendants themselves provide substantial confirm to great part of T.H. statements. In particular, both of them confirm:
    - that on the critical day they were together in the taxi of Ejup Broqi, whom they recruited at the station of Peja;
    - that once arrived in the vicinities of Cerovik, a fight with the taxi driver took place;
    - that at the end of such fight two gunshots were heard;
    - that subsequently the Opel Ascona was taken away and driven by Bekim.
    - That one of them killed Ejup Broqi by shooting at him;
    - That the weapon was a pistol.
 Importantly, Arben Zeka himself, who was indicated by T. as the second participant of the offence, plainly admits his presence on the critical day;
  - o The defendant Bekim Zeka also confirmed the fact (described by T.H. ) that during the beating of the taxi driver she ran away from the crime scene.

A couple of T.H.'s statements do not match with other witnesses' statements on the same circumstances. In particular, she stated that after the murder she, Arben and Bekim went to the village of Obri, where they spent the night at Driton Avdiu's place. This circumstance was denied by Driton Avdiu, who utterly denied that the three (or some of them) had visited his house in Abri. It has to be stressed, to this regard:

- that the defendant Arben Zeka confirmed that at least he personally slept at Driton Avdiu's place (thus discrediting Driton Avdiu's reliability);
- Driton Avdiu had a clear motive not to tell the truth regarding his alleged hosting the defendants after the murder, lest the Panel or the investigators should hold him as an accomplice; the issue will be explored more in detail below;
- The circumstance, in any case, does not refer to the core of the criminal conduct of the defendants. Therefore, the unclear evidentiary framework as to the precise whereabouts of the defendants and of T.H. after the murder does not dismantle the solid evidence related to the core-aspects.
- Even assuming that T.H. had the intent to accuse falsely the defendants, there would have been no need for her to lie on such a side circumstance (above all, involving other people – relatives of the defendants – who might have discredited her).

Finally, it has already been pointed out that the defendants disagree with T.H.'s version only with specific regard to the personal involvement of each one of them in the aggression.

This means (as already stressed) that both defendants share the reconstruction of the events provided by T.H., limiting themselves to trying to step back only with regard to the very last part of her narration.

The non credibility of the narrations of the two defendants will be assessed below.

In any case, and in conclusion, the Panel holds that the discrepancies and slight incoherencies above described are not so significant as to deprive of reliability the whole testimony of T.H., which must be deemed trustworthy.

Its connections and mutual integration with the other corroborating elements will be further highlighted below.

### 3.3. Faruk Zeka

Faruk Zeka witnessed at the hearing of 16.6.2009. He is the brother of the defendants.

At the time of the events (summer 1999) he was recovering from a serious war injury, for which he, until shortly before, had been hospitalized in Albania. The consequences of the injury were evident also on the occasion of the examination at the main trial (the witness was able to talk only with great difficulty).

The statements of Faruk Zeka can be summarized as follows:

- after the war he lived together with his family in Peja.
- His brothers came into possession of a red Opel Ascona, red in colour<sup>10</sup>. Faruk Zeka was not able to recall which of the brothers took the car home;
- The defendants, requested by the father about the provenience of the car, at first explained that they had bought it, then explained that they had taken it from a gipsy taxi driver, whom they subsequently killed<sup>11</sup>;

<sup>10</sup> The colour of the car was remembered by the witness after confrontation with the statements previously made during the investigations.

<sup>11</sup> The circumstance was stated by the witness after confrontation with the statements made before the Public Prosecutor. In fact, the witness declared at the hearing of 16.6.2009 that he completely stood by the following statement: "My brothers Bekim and Arben came to the house with a vehicle Opel Ascona, red in

- Back then, T.H. was living in the Zekas' house for a short period of time;
- The Opel Ascona was usually driven by Bekim Zeka<sup>12</sup>; Arben was never seen by the witness driving a car;
- One and a half years before the case was reported, Faruk Zeka and Bekim Zeka had been expelled by Sherif Zeka from the family house. The reason was (in the case of Faruk Zeka) that he could not work and this led to continuous arguments with the father.

The statements of Faruk Zeka bear significant relevance for this case.

First, it has to be stressed that he is for sure personally credible: no elements or circumstances were put forward by the parties, sufficient to discredit his statements. In particular, no signs of enmity or hatred towards the defendants arose during the main trial, nor any other sign of untrustworthiness of the witness.

The Panel had, on the contrary, a strong impression of detachment and reliability from Faruk Zeka. He was witnessing against the brothers, and it is important to underline that they never even tried to allege that he had any motive to falsely accuse them.

His personal reliability must, therefore, be considered as acquired.

The witness was consistent in reporting without hesitation his memories, referring (when necessary) to the statements previously made during the investigative phase. This is particularly true with regard to the main circumstance which the witness reported (i.e. the fact that he heard his brothers tell their father that they had killed the taxi driver), which is of pivotal importance for the adjudication of this case;

Importantly, the witness provided a narration which is free from internal contradictions, on the few circumstances related to the crime which the witness was able to recall.

Finally, the description of Faruk Zeka finds external corroboration in several evidentiary elements which were acquired to the case file, and described above and below: it has already been described, in fact, how his statements snugly fit in the picture drawn by Sherif Zeka and T.H., and to them provide significant corroboration.

#### 3.4. Qerim Camaj and Arif Arifaj

The version provided by T.H. received an important corroboration from the statements made by these witnesses.

They happened to be at Peja train station when the defendants approached the victim in order to ask him a taxi ride.

The witnesses confirm that:

- The clothing of the three participants (the defendants and T.H. herself) was the same as described by T.H. she was wearing a KLA military uniform,

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*colour and then my father Sherif asked them 'where did you get that vehicle'. Their answer was that they allegedly bought that car and then when my parents insisted, they admitted that this vehicle they took it from a gipsy taxi driver. They took it and sent him to the village of Cerovik and there they killed him and left him in the forest and took his car".* During the main trial he had some hesitations as to who among the two confessed to Sherif Zeka that they had committed the murder. Regardless of the person who physically spoke those words to Sherif Zeka, it is in any case clear from the context of the statements of Faruk Zeka that both defendants were referred to as characters of the murder.

<sup>12</sup> The circumstance was referred by the witness after confrontation with the statements made in front of the PPO.

one of the other two was wearing the pants of a military uniform and a plain t-shirt and the third was wearing plain clothes.

- The three were together when they approached the taxi driver.
- The victim was the second one to be asked, after they had asked a ride to the owner of a Mercedes car.

The Panel deems that there cannot be doubts as to the objectivity of the witnesses.

Indeed:

- they were examined back in 2003, when there was no clue about the identity of the suspects (thus it is impossible to even allege the intent to falsely accuse somebody).
- They are in no way linked to the family of the defendants or to the family of the victim.
- They provided information (as to the clothing of the defendants and T.H. ) which were confirmed precisely by the latter.

### 3.5. Driton Avdiu

This witness provided the Court with side elements which bear some relevance for the adjudication of the case.

In fact, Driton Avdiu confirmed that after the taxi driver had been murdered, he could notice on some occasions the two defendants drive a dark red Opel Ascona.

He added that two-three days after the murder, the villagers started saying that the culprits were Bekim and Arben Zeka.

On the other hand, the witness did not provide confirm to the statements of T.H. according to which:

- Driton was the cousin of the defendants;
- after the murder she, Arben and Bekim reached Driton's house in Abri and there they spent the night.

Regarding the personal credibility of Driton Avdiu, first of all it is important to note that by no means did the defendants allege the existence of motives to falsely accuse them.

With regard to the discrepancies above indicated, in the opinion of the Panel they cannot be overemphasized to the point of discrediting T.H.'s testimony as a whole.

First of all, it was already underlined above that Arben Zeka himself discredited the second of these statements, when he said that the evening of the murder he spent the night at Driton Avdiu's. He also added that Driton Avdiu's family owned another apartment in Abri (placed in the basement of the one which was burnt down during the war).

Second, it must be stressed once more that at the time of the events (which took place ten years ago) T.H. was only fifteen years old. She shared her life with Bekim Zeka only for one month-one month and a half. Therefore some confusion on the name or place where she overnights after the murder is understandable. The same might be said only with far more difficulty with regard to the "unforgettable" facts of the aggression, beating and murder of Ejup Broqi (which, for their violent and brutal nature and for their singularity are likely to leave a strong memory in a young person's memory).

Finally, it was already stressed above that Driton Avdiu had an interest to provide a false statement on this specific regard, since hosting the culprits after the murder might theoretically have borne some consequences in terms of getting involved in a criminal proceeding.

### 3.6. Gani Morina

Gani Morina witnessed during the hearing of 18 June 2009.

He is the uncle of the defendants (they are the sons of his sister).

The testimony of Gani Morina contains some elements of relevance for the case.

As for the statements made by Driton Avdiu, there are some discrepancies with regard to the previous statements made in front of the PPO. It has to be added that the witness, when faced with the contradictions contained in his statements, was not able to provide a convincing explanation (this regards, for instance, the issue whether Bekim Zeka had told him about his killing the taxi driver).

Below is a summary of his statements during the main trial:

- T.H. was seen by the witness with Bekim Zeka around the time when the murder took place;
- In the summer of 1999, he heard about the murder of the taxi driver in Cerovik;
- Bekim told him that he had taken the car from a taxi driver in Cerovik.

The witness was heavily confronted with his previous statements made in front of the PPO one year before.

Indeed, in front of the Prosecutor he stated that after the war, back in 1999, Bekim told him that he had killed someone and that he had taken his car. During the main trial the witness tried evidently to step back from such statement: in particular, the witness during the main trial affirmed:

- that both statements (the ones made during the investigation and the ones made during the main trial) were true, contradictorily omitting to consider the huge discrepancies above quoted;
- that it was true that Bekim had told him that he had taken the red Opel Ascona away from a taxi driver, but then as soon as he heard this, he prevented Bekim from telling him the rest of the story, because his sons were present. Therefore he did not hear Bekim tell him that he had killed a person and subsequently taken his car.

Coming to the evaluation of Gani Morina's statements, first we must consider his personal credibility.

The defendants never raised any question about it, nor have they highlighted any reason of enmity or hatred or some interest to tell lies against them.

In addition, his close relation to them must be taken into account (he is their uncle).

Therefore, in the opinion of the Panel a good degree of credibility must be attributed to his statements made against the defendants. This applies, for instance, to the fact that Gani Morina stated that Bekim told him that he *"had taken the car from a taxi driver in Cerovik"*.

With regard to the discrepancies between the statements made by Gani Morina during the main trial and the previous ones, one must be assessed here. It regards whether or not he heard Bekim Zeka tell him that he had killed a person and taken his car.

The Panel deems that it is not credible, to this extent, what Gani Morina stated during the main trial. Indeed:

- if it were true, it would mean that when Bekim Zeka was speaking to him, Gani Morina was able to foretell (or anyway was aware in advance) that Bekim Zeka

was going to tell some circumstances which were so serious that they could not even be heard by a child. This evidently makes no sense, because until then, according to the same words of Gani Morina's, he had no clue that the narration of Bekim contained elements which could not be heard by a child. Therefore there was no reason for him to prevent Bekim from going on with his account.

- Contradictorily, during the main trial Gani Morina confirmed his statement (made during the investigations) according to which Bekim Zeka did not tell him that he had committed the murder *in complicity with somebody else*. This logically implies that Bekim Zeka must have told him that he had committed the murder.

For these reasons the Panel holds that the version of the facts which can be trusted is the one which Gani Morina made in front of the investigators: it must be considered as proven, then, that Bekim Zeka told Gani Morina that he killed a taxi driver and subsequently took his car.

There are sufficient reasons to believe that Gani Morina knowingly made false statements in front of the trial Panel. The Public Prosecutor will be therefore provided with a copy of his statements, in order to enable him to proceed against the witness for the crime of false testimony.

It is extremely important to note, in any case, that during the main trial Gani Morina confirmed that Bekim Zeka confessed to him "having taken" the car from a person in Cerovik.

This provides a heavy corroboration to the declarations of T.H., Faruk and Sherif Zeka, and what is the more, the source is of particular reliability, being it the uncle of the defendant.

### 3.7. The defence of Bekim Zeka and Arben Zeka

#### 3.7.1. Bekim Zeka

Bekim Zeka was examined twice by the Public Prosecutor. During the main trial he was examined on the 18<sup>th</sup> June, 2009.

Below is a summary of his statements rendered during the main trial:

- after the war he reached his family in Vitimirica and lived with them. T.H. stayed there for one month-one month and a half;
- on the critical day, upon order of his mother, he left home with T.H. in order to pick up his sisters at Gani Morina's house; 500 meters after they had left home, Arben joined them;
- The three asked unsuccessfully a first taxi driver for a ride. Thereafter, T. and Bekim proceeded on foot, in order to wait for Arben by the "Ina" gas station. Meanwhile Arben was asking for a ride to another taxi driver whom he allegedly knew.
- The taxi driver and Arben arrived, Bekim got into the car sitting in the front seat, while Arben and T. sat in the back seat; Arben had hired the taxi until Kijeva;
- Once arrived in Kijeva, Bekim wanted to get out, but the taxi driver offered to drive them until Cerovik. Upon arriving in Cerovik, Bekim told Arben to allow the victim to drive back to Peja, but at this moment, all of a sudden, Arben assailed the victim, cursing him and punching him from behind;

- The car stopped and the two went on fighting outside the car. Bekim tried to separate them, hitting both of them, but with no success<sup>13</sup>. Then, noticing that meanwhile T. had escaped, he ran after her. When he was at a distance of around 500 meters, while he was passing in front of the house of Bajram Mehmeti, he heard two gunshots<sup>14</sup>. He then continued till the house of Hadaki, called "the Kulla", where he saw the taxi coming. Arben was driving it. He ordered them to board the car, but he was out of control so Bekim drove towards Gani's house<sup>15</sup>, after having taken Arben's gun, which was on the floor of the car. That was the first time Bekim saw that gun<sup>16</sup>;
- Bekim told Gani: "*Shit just happened*". Then he took the sisters and Uncle Gani and drove back to Vitimirica, dropping T. in Trstenic<sup>17</sup>;
- Once home, he dropped the passengers and immediately took the weapon to the Italian KFOR. When he returned home, Arben had Already told the family of the murder; the father ordered Bekim not to tell anything around;
- Two days after the events, again Bekim told his father that Arben had killed the taxi driver, to which the father answered: "*I know, there is no need to explain it*"<sup>18</sup>;

<sup>13</sup> There is a blatant contradiction between the version provided by the defendant in front of the trial panel and the version provided to the Police during the investigations. He stated in front of the Police that "*The taxi driver stopped the vehicle taking side at the edge of street and cursed Arben. Then immediately all of us walked out of the vehicle then I started to curse the taxi driver, I approached him and punched on his face the taxi driver and he fell on his knees on the ground then also Arben cursed him. Then again I kept punching the taxi driver for three or four more times. He stood up cursing me*". In this version made to the Police, until this moment Arben didn't touch the taxi driver. Whereas it was Bekim who hit the taxi driver. The defendant was not able to provide an explanation for this momentous discrepancy.

<sup>14</sup> After an intense confrontation the defendant repeatedly stated that it took 30 minutes of fast walk to get from the crime scene to Bajram's house. He added that he started walking from the crime scene ten minutes after the fight between Arben and the victim had started. The time distance between the start of the fight till its end sums up to forty minutes.

<sup>15</sup> There was a significant contradiction between this statement and the statements made in front of the Police during the investigation. Indeed, in front of the Police Bekim stated that only he and T.H. went, on foot, to Uncle Gani's house, and that Arben did not come with them and that only afterwards he found Arben at the house of Driton Avdiu. The defendant was confronted on this, but was not able to solve the contradiction.

<sup>16</sup> In front of the Police the defendant stated that also before the critical day he knew that Arben had a gun and that therefore he was afraid of him. This is in clear contradiction with what stated in front of the Panel and therefore Bekim Zeka was confronted, but was not able to provide a convincing explanation of the contradiction.

<sup>17</sup> Another blatant contradiction appears here with what stated in July 2008 to the Police, where Bekim said that once he reached the house of uncle Gani's, uncle Sylva went to collect Bekim's mother and father and brought them there. Bekim Zeka was confronted, but was not able to provide a convincing explanation of the contradiction. In addition, Bekim Zeka contradicted himself again regarding the trip back home. In front of the Police, indeed, he stated that his father was present with them in the car on the trip back to Peja and that on such occasion Arben confessed to the father: "*We killed him*". When confronted with this during the main trial, Bekim at first stated that it was not true that Sheriff was with them, immediately after he corrected himself saying that, indeed, Arben had only said that Arben himself had killed the taxi driver and, finally, Bekim ended up stating that he could not remember anything about the trip back.

<sup>18</sup> The defendant was heavily confronted with his previous statements on this topic. In fact, in front of the Police and of the Public Prosecutor he stated that he told his parents that Arben had killed the taxi driver, thus causing the sharp reaction of the father, who cursed the sons. During the main trial he repeatedly

- In the opinion of Bekim's the only reason for the fight was the amount of money asked for by the taxi driver for the ride.

Several contradictions arose out of Bekim Zeka's statements. These contradictions (internal contradictions of the statements rendered to the trial Panel and contradictions with the statements made to the Police) have been duly highlighted in the footnotes above.

The credibility of the defence of Bekim Zeka and its compatibility with the evidence collected during the main trial will be performed below.

### 3.7.2. Arben Zeka

Arben Zeka was examined during the hearing of 18 June 2009, after having been interviewed twice during the investigations.

Below a summary of his statements rendered during the main trial:

- Bekim Zeka and T.H. were dating at the time when the events took place. T.H. stayed for some time at the Zekas' place;
- On the critical day Bekim and T. came back from Pristina. He met them at home and after a coffee Bekim and T. decided to go to Pristina by taxi. He joined them because he needed to go to Obri. Bekim and T. hired the taxi, while he was staying at a distance of ten meters from them. They hired the first taxi they approached<sup>19</sup>;
- T. was wearing civilian clothes<sup>20</sup>;
- Arben got into the taxi and sat behind Bekim, who was sitting in the front seat;
- Before reaching Cerovik, Bekim stopped the car by the handbrake, took the keys out and started to beat the taxi driver when they were still inside the taxi<sup>21</sup>, after that he went out, grabbed the taxi driver and dragged him outside, where the beating went on;

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alleged that it was Arben who confessed to the father his deed, so that when Bekim entered home, everybody already knew the events. This version given in front of the trial panel makes it not understandable why two days later Bekim felt the need to tell again his father that Arben had killed the taxi driver. It is the opinion of the trial Panel that this contradiction is nothing but the result of an awkward attempt of Bekim to harmonise with the previous statements (with the result to create another contradiction);

<sup>19</sup> This statement of Arben Zeka is in blatant contradiction not only with the statements of T.H. (and Bekim Zeka), but also with the testimonies of the persons who were present at the train station on the critical day, who unanimously said that, before boarding Ejup Broqi's taxi, the three tried together to hire another cab. This circumstance is certain, because one of the witnesses was one of the drivers whom the three had tried to hire before contacting Ejup Broqi.

<sup>20</sup> The circumstance is contrasted not only by what T.H. stated, but also by the statements of the persons who were present at the train station on the critical day and saw the three approaching the taxi drivers. They say that the woman of the group (i.e. T.) was wearing a military uniform and one of the others was wearing military pants and a t-shirt.

<sup>21</sup> The defendant was faced with the contradictions existing between these statements and those made in front of the PPO on 10<sup>th</sup> of October 2008. In front of the Prosecutor, indeed, he stated that when the taxi arrived near the village of Cerovik, Bekim ordered the taxi driver to stop the vehicle. Then he stepped out of the back door and opened the door of the taxi driver and grabbed him by the throat. Thus in the version given to the PPO the beating started only when Bekim was outside the taxi, and it was the victim who stopped the taxi (and not Bekim by pulling the handbrake). Confronted with these discrepancies, the defendant stated that the correct version was the one told in front of the trial panel.

- As soon as Bekim started punching the victim inside the car, Arben told Bekim: "What are you doing?", and then he left immediately the crime scene without intervening in the fight. He could notice that T. was leaving the crime scene at the same time<sup>22</sup>.
- Arben knew no reasons for Bekim assailing the taxi driver; Arben tried verbally to stop Bekim before leaving. He heard two gunshots when he was on the railway, at ten minutes walking distance from the crime scene;
- Arben went to Driton Avdiu's house in Obri, where he was reached by Bekim and T. Bekim there told him that he had killed a gipsy. They had a coffee and then Bekim and T. left towards Gillobare with the red Opel Ascona. It was already dark. Arben spent the night in Bajram Rexhas' house (he was Driton Avdiu's grandfather), while Bekim and T. went to Gani Morina's.
- The following day Arben came back to Peja by bus. Meanwhile Bekim had told his father about the events and subsequently told Arben that he had confessed to his father.

### 3.8. Joint evaluation of the evidence

The evidence against the defendants is consistent and on its basis it is possible to conclude beyond reasonable doubt that they murdered Ejup Broqi.

First of all, it is certain that on the critical day the defendants hired the victim for a taxi ride from Peja to Cerovik and therefore were in the car with him until the fight took place. This circumstance is expressly admitted by both defendants.

For the same reason (admission by defendants) it is certain that in Cerovik, at the end of the taxi ride, a violent fight burst with the taxi driver: a fight which ended up with the shooting of the victim.

The defendants claimed to be completely innocent, accusing each other of having autonomously assailed the victim without the other's cooperation.

This way they tried to bring into the proceeding an element of uncertainty as to the author of the crime. This defence, though, is clearly contradicted by the overwhelming evidence which has been illustrated above.

In fact, summarizing its contents, the Panel holds that:

1. Bekim Zeka confessed to Sherif Zeka that he, in complicity with somebody else, killed a taxi driver and stole his car: the initial accusation of Sherif Zeka, as reasoned above (see above 3.1) is with regard to this trustworthy. *Per se*, this confession already bears a significant evidentiary value.
2. The circumstance was confirmed by Faruk Zeka, who stated that he had heard the defendants confess to their father that they had stolen the red Opel Ascona from a gipsy taxi driver, whom they also killed<sup>23</sup>;

<sup>22</sup> There was another relevant contradiction on this point with the statements made in front of the PPO on 10th October 2008. On that occasion Arben stated that when he got out of the car, at that moment T. together with Bekim, started to beat up the now deceased driver. In front of the trial panel, on the contrary, he stated that T. just went out of the car at the start of the fight and left the crime scene. Faced with this contradiction he was not able to explain it.

<sup>23</sup> On the statements of Faruk Zeka, see above.

3. The statements of Sherif and Faruk Zeka to the Police are confirmed by T.H.'s statements, which provide significant details (being she a direct witness). It is worthy to note (as a further sign of trustworthiness) that the testimonies of the Zekas and T.H. are completely independent from one another. Importantly, T.H. provided the trial Panel with the identity of the accomplice of Bekim Zeka (Arben Zeka, who subsequently confirmed that he was in the car) and with precise details of the events of the critical day, which add to what was told by the defendants to the investigators. In particular:

- the defendants had the intention to kill a taxi driver and to take his car;
- the three of them went together to the train station and hired a taxi. This was made easier by the fact that T.H. was wearing a military uniform, which the defendants induced her to wear;
- Once arrived in Cerovik the defendants started to beat and punch the victim, inside and outside the car;
- Bekim Zeka was carrying a pistol;
- The victim was dragged by the defendants towards the nearby forest;
- After about twenty minutes since the beginning of the beating, T.H. (who meanwhile had moved out of sight, at a distance of about twenty meters from the crime scene) heard two gunshots. She was then called back by the defendants (or by the sole Bekim Zeka), who told her: "Come back, it is over" or "Come back, we killed him".

4. A further confirm of the truthfulness of the version of T.H., compared to the one of the defendants, is provided for by the witnesses – Qerim Camaj, Arif Arifaj and Gzim Broqi – who were present at the train station on the critical day. They unanimously remembered that the woman of the group was wearing a military uniform. One of them also remembered that the three of them, together, went to the taxi driver to hire him. This is of significance both of the fact that the defendants' version is untrue and of the fact that they had predetermined a plan to commit the criminal act.

5. The defendants' admissions (as to the facts that they were present in the taxi until the moment of the crime and that the result of the aggression was the murder of Ejup Broqi) provide a significant corroboration to the main part of the statements of Sherif and Faruk Zeka and T.H.

6. It has already been reasoned on why it is not believable that T.H. could have fabricated the accusation against the defendants as a revenge;

7. Finally, it must be stressed that the car of Ejup Broqi, since the day of the murder, remained in the possession of Bekim Zeka, whom several persons saw driving the Opel Ascona during the months following the events. Bekim Zeka himself expressly admitted having been using that car after the critical events.

It is of great evidentiary value that in coincidence with the death of Ejup Broqi his car passed in the hands of Bekim Zeka: this is even more true if we consider that this is perfectly in line with the description of the events made by T.H. (who stated that the murder occurred in order to steal the taxi).

For the above reasons the defensive statements of Bekim and Arben Zeka did not convince the Panel of their innocence.

It is appropriate to add, with specific regard to the assessment of the intrinsic credibility of such defences:

- that the statements made by each defendant in the different stages of the proceeding are very often not coherent with each other: the discrepancies are numerous and relevant and the defendants were unable to provide an explanation thereto;
- that the contents of the statements of the defendants contain several aspects which are *per se* not credible. In particular:
  - it appears unlikely that Arben left immediately the crime scene as soon as he saw the fight start between his brother and the taxi driver, without even trying to intervene to stop it.
  - It is unlikely that Bekim left Arben fighting with the taxi driver, even more because eventually it was Bekim who was always seen in the possession of the Opel Ascona;
  - It remains totally unexplained by the defendants the reason why they felt themselves entitled to maintain possession of the car of the victim after the murder.

No doubt, then, as to the commission of the *actus reus* by the defendants.

There can be no doubt about the existence of the *mens rea*.

There is evidence, in fact, not only of the intention to kill, but also of the premeditation of the murder and of the preparations thereto.

The modalities of the execution of the crime are, not by chance, fully consistent with the plan which had been devised.

It was not possible during the trial to ascertain whether the murder was committed upon order by some accomplice (as it would seem likely, considering the brutality of the crime and the low income obtained by the defendants through such a ruthless behaviour). This might well be the object of further investigation by the PPO.

During the main trial no exculpating elements were highlighted (or even alleged) by the defendants.

Bekim and Arben Zeka must, in conclusion, be held liable for the murder of Ejup Broqi.

### 3.9. The punishment

When deciding on the penalty the court must keep in consideration the modalities of the commission of the crime and the personality of the defendant. The punishment must also be a proper deterrent against further crimes and a proportionate sanction for the offence which was committed.

With regard to the modalities of the conduct and the objective characteristics of the crime committed by Bekim and Arben Zeka, it must be considered that the defendants acted in an extremely brutal manner.

They cold-bloodily assailed the victim (whom they did not even know personally) in a moment in which he was not even able to defend himself.

The victim's capacity of defence was further diminished by the fact that the assailants overwhelmed him numerically.

They chose the circumstances of space (inside a taxi, and in a deserted place) and time which were apt to facilitate their aims and were less likely to disclose their deed to others:

this shows a particular determination to reach their criminal intent (and therefore a greater criminal capacity).

They planned beforehand the crime and involved in it a fifteen year old girl, giving her a part in the plan.

They decided to kill a person in order to obtain a ridiculous economic gain; the killing, moreover, was animated by ethnic hatred (the victim was chosen because of his being a "Serb or a gipsy").

This is particularly significant as to the assessment of the defendants' scarce consideration for human life and, therefore, to the evaluation of their dangerousness for society.

The Panel was impressed by the determination shown by the defendants in perpetrating the murder: despite the victim had been beaten for a long while, during which he had been crying and asking for mercy, the defendants pitilessly executed him. This is more impressive if we think that the defendants did not know the victim before and had no motives to kill (if not the ludicrous economic gain). Eventually, they started using his car in the town where the family of the victim was living.

The evidence collected is clear in indicating that the conduct of the defendants was premeditated, and this further adds to its gravity.

The fact that the events took place after the end of the war, a period in which the socio-political situation in Kosovo was not easy, is not a diminishing circumstance. The murder, in fact, had nothing at all to do with the political issues at stake at those times and the defendants were acting exclusively for their economic interests.

The above reasoning leads the Panel to apply the penalty of imprisonment towards its maximum extent.

According to art. 22 of the Criminal Law of Yugoslavia (1977), "*if the defendants jointly commit a criminal act by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act*".

It is possible for the Panel, though, to calculate the punishment differently for each of the participants, taking into account subjective elements and the different material contribution to the conduct.

The Panel deems that Bekim Zeka's contribution to the commission of the crime was preminent. Thus he deserves a more severe punishment.

In fact:

- he was the owner of the pistol which served for the commission of the crime
- he was the first to ideate the crime;
- he was afterwards seen in the possession of the car which had been stolen to the victim;
- he was regarded by the court as the leading character and the person who played the main role in the conduct.

It would therefore be unfair to punish Arben Zeka with the same severity.

According to the law, the punishment of imprisonment can vary between a minimum of 10 years to a maximum of fifteen years. For the most serious cases it is possible to apply the penalty of 20 years. It is not possible, according to the existing law, to punish somebody with the imprisonment between 15 and 20 years.

The Panel considers appropriate the punishment of fifteen years of imprisonment for the defendant Arben Zeka and (in consideration of the greater role played by him) the punishment of twenty years of imprisonment for the defendant Bekim Zeka.

The time spent in detention on remand will be counted out as punishment.

### 3.10. The property claim

In the first hearing, the injured party Shukrije Broqi requested judicial protection of her rights during this trial.

She reiterated her request on the occasion of the final statements, by submitting a written act.

The death of the husband constitutes a serious civil offence for Shukrije Broqi, given the closeness of the relation with the victim.

She was left alone with a number of sons, with no income to support herself and the education of her sons.

She was deprived of the closest personal relation, during a particularly hard time (Kosovo was back then exiting the war).

Shukrije Broqi is, therefore, entitled to appropriate compensation for the damage suffered, which is twofold: moral damage for the loss of the relation and financial damage for the loss of economic means and income.

The evidentiary proceeding, though, could not provide the Panel with a full proof of the damage which was caused to the injured party.

It is nonetheless necessary to provide her with a partial compensation, addressing her to the civil judge for a precise quantification of the remaining part of the damage suffered.

The Panel deems it appropriate to condemn each one of the defendants to the payment of the sum of EUR 10.000,00 to the injured party.

For the rest, the injured party was instructed to file a lawsuit in front of the civil judge, where complete evidence of the damage suffered will be possible.

Dated this 1<sup>st</sup> day of July 2008

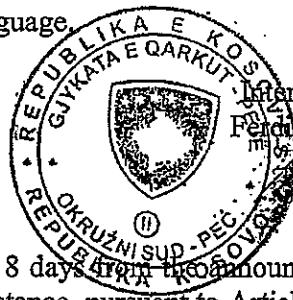
Prepared in English, an authorized language.

International Recording Officer

Vlora Johnston  
*Vlora Johnston*

#### Legal Remedy

An appeal must be announced within 8 days from the announcement of this verdict and shall be filed with the court of first instance, pursuant to Article 398 Paragraph (1) of the KCCP. Authorized persons may file an appeal in written form against this verdict through the District Court of Pejë/Peć to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.



International Presiding Judge  
Ferdinando Buatier de Mongeot

*Ferdinando Buatier de Mongeot*

*[Handwritten signature]*