

**IN THE DISTRICT COURT OF PEJA/PEC**  
**Case P. Nr.112/10**  
**15 October 2010**

**IN THE NAME OF THE PEOPLE**

The District Court of Peja/Pec, in the trial panel composed of Judge Malcolm Simmons as Presiding Judge and Judges Verginia Micheva-Ruseva and Lumturije Muhaxheri as Panel members and Court Recorder Robina Struthers, in the criminal case against Danil Nokaj (hereinafter "the Defendant"), charged pursuant to Indictment PP. number 340/2005 dated 25 August 2008 with two counts of murder committed out of blood feud and in a brutal and insidious manner under Article 30 (2) items 1 and 4 of the Criminal Law of the Socialist Autonomous Province of Kosovo of 1977 (hereinafter "the CLK"), in conjunction with Article 22 of the Criminal Law of the Socialist Federal Republic of Yugoslavia (hereinafter "the CLSFRY"), punishable under Article 30 (3) of the CLK, after holding a public trial on 12 July 2010, 20 July 2010, 2 September 2010, 3 September 2010, 7 September 2010, 8 September 2010, 28 September 2010, 30 September 2010 and 12 October 2010 at which Mr. Ali Uka appeared for the Prosecution, Mr. Zenel Mekaj and Mr. Haxhi Cekaj appeared for the Defendant and Mr. Haxhi Millaku appeared for the Injured Party, and at which the Defendant and the Injured Party Luz Allakaj were also present throughout, on 15 October 2010 took and publicly announced the following

**JUDGMENT**

The Defendant Danil Nokaj born on 12 April 1970 in the village of Marmullë, Gjakovë/Đakovića Municipality, male, father's name Nikolla, mother's maiden name Prene Gojani, Kosovo Albanian, residing in the village of Marmullë, primary school education, unemployed, married, father of 5 children, of average financial situation, with no previous convictions, in detention on remand in Kosovo since 29 May 2008 is

**GUILTY**

Because

1. On 19 March 2004 at around 10.30 am in the Village of Marmulle, Gjakova Municipality at the Ure e Jakes, as a co-perpetrator, intentionally and brutally murdered Dede Allakaj in revenge for the murder in July 2000 of Engjell Nokaj by Anton Allakaj, the son of Dede Allakaj, together with Anton Nokaj and Simon Nokaj, as well as other persons currently unknown or at large, armed with automatic weapons ambushed Dede Allakaj who was traveling in a Mercedes motor vehicle registration number 119 KS 154 together with his brother Tune Allakaj and fired indiscriminately into the said motor vehicle, as a result of which Dede Allakaj was hit by a number of bullets causing the laceration of vital organs including brain, trachea and blood vessels of the neck resulting in his death at the scene and thereafter fleeing the scene in an Opel Vectra motor vehicle registration number 408-KS-799 driven by the Defendant;

2. On 19 March 2004 at around 10.30 am in the Village of Marmulle, Gjakova Municipality at the Ure e Jakes, as a co-perpetrator, intentionally and brutally murdered Tune Allakaj in revenge for the murder in July 2000 of Engjell Nokaj by Anton Allakaj, the son of Dede Allakaj, together with Anton Nokaj and Simon Nokaj, as well as other persons currently unknown or at large, armed with automatic weapons ambushed Tune Allakaj who was traveling in a Mercedes motor vehicle registration number 119 KS 154 together with his brother Dede Allakaj and fired indiscriminately into the said motor vehicle, as a result of which Tune Allakaj was hit by a number of bullets causing the laceration of the left carotid artery and thereafter fleeing the scene in an Opel Vectra motor vehicle registration number 408-KS-799 driven by the Defendant. As a result of the injuries he sustained in the attack, the said Tune Allakaj subsequently suffered a haemorrhagic shock resulting in his death en route to hospital in Pristina;

THEREFORE, under Counts 1 and 2 above, as a co-perpetrator the Defendant has committed the criminal offence of murder committed out of a blood feud and in a brutal manner pursuant to Article 30 (2) items 1 and 4 of the CLK in conjunction with Article 22 of the CLSFRY punishable under

Article 30 (3) of the CLK and

### **SENTENCED**

to long-term imprisonment of 25 (twenty-five) years.

Pursuant to Article 73 of the Criminal Code of Kosovo, the sentence of imprisonment shall take into account the time the Defendant has already spent in detention in Switzerland from 10 July 2007 to 28 May 2008 when the Defendant was extradited to Kosovo and his detention in Kosovo since 28 May 2008.

In accordance with Article 102 (1) of the Criminal Procedure Code of Kosovo (hereinafter "the CPCK") the Defendant shall pay the costs of these criminal proceedings in the sum of 500 (five hundred) Euros. The Defendant shall also pay the sum of 100 (one hundred) Euros in respect of the Scheduled amount.

Pursuant to Article 393 (5) of the CPCK the Defendant shall remain in detention until the Judgment becomes final.

Pursuant to Article 112 (2) of the CPCK, the Injured Party shall pursue any claim for compensation through the civil courts.

Pursuant to Article 391 (1) (6) of the CPCK, the final Judgment may be announced in the public media.

### **REASONING**

The Indictment PP. number 340/2005 is dated 25 August 2008.

The Defendant was charged with two counts of murder under Article 30 (2) items 1 and 4 of the CLK, in conjunction with Article 22 of the CLSFRY, of Tunë Allakaj and Dedë Allakaj, committed at the Urë e Jakes in the village of Marmullë (Gjakovë/Dakovica Municipality) on 19 March 2004. In particular, the Defendant, in complicity with Simon Nokaj, Anton Nokaj and Rrok Bezhi, armed with automatic rifles of 7.62 mm calibre, of unknown type, ambushed Tune

Allakaj and Dede Allakaj near the Bridge of Jaka. The group fired from a distance of 4-5 meters several bursts of gunfire, hitting Tunë Allakaj and Dedë Allakaj with numerous rounds in various parts of their bodies, thus causing them injuries which led to their deaths. The murder was committed in the framework of a blood feud initiated by the son of the deceased Dedë Allakaj, Anton, who murdered the late Engjell Nokaj, a relative of the Defendant. The offences carry a punishment of ten to forty years imprisonment.

The Indictment was confirmed on 17 October 2008.

The First Main Trial took place between 21 April and 11 June 2009.

On 11 June 2009 the Defendant was convicted of two counts of Murder "committed out of blood feud and in a brutal or insidious manner". The Defendant was sentenced to 20 years imprisonment on each count with a compound sentence of 33 years.

On 6 April 2010 the Supreme Court of Kosovo annulled the first-instance verdict and returned the case for retrial.

The offences were committed prior to the coming into force of the Criminal Code of Kosovo (hereinafter "the CCK") on 6 April 2004.

Article 2 (1) and (2) of the CCK provides that the law in force at the time of the commission of the criminal offence shall be applied unless the subsequent law is more favourable to the defendant.

Article 147 (3) of the CCK provides a punishment of at least ten years or long-term imprisonment for defendants convicted of murder committed in a cruel or deceitful way. The same applies under subparagraph (9) to those convicted of murder committed out of unscrupulous revenge or other base motive.

Article 37 (2) of the CCK provides that long-term imprisonment means a term of 21 to 40 years.

The death penalty was abolished<sup>1</sup> and replaced by a term of

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<sup>1</sup> UNMIK Regulations 1999/24 and 2000/59.

imprisonment of up to 40 years.

Article 30 (2) of the CLK that was in force at the time the offence was committed provides that a term of imprisonment of at least 10 years or the death penalty shall be imposed on those convicted of murder committed in a brutal or insidious manner or as a result of a blood feud.

The criminal acts charged in the Indictment carry a term of imprisonment of 10 to 40 years under both the law in force at the time of the commission of the offence and under the subsequent law. Since the new law is not more favourable to the Defendant the Court has applied the law in force at the time of the commission of the offences.

The Court heard the testimony of Luz Allakaj, Gjon Nikolla, Vilson Nikolla, Gjin Preqi, Mhill Berisha and the Defendant.

The prior statements and/or testimony of **the following witnesses** were agreed, thereby obviating the need to recall them:

- Anton Nikolla : Testimony on 6 May 2009 in first trial, Statement to the police 19 March 2004, Statement to the prosecutor in the Danil Nokaj case 31 July 2008, Testimony in the trial against Anton Nokaj on 2 March 2005, as agreed during court hearing dated 12 July 2010 and Statement to the prosecutor in the case against Anton Nokaj et al. 6 April 2004 as agreed during court hearing dated 28 September 2010;
- Zef Delija : Testimony in the trial of Anton Nokaj on 6 April 2005 as agreed during court hearing dated 12 July 2010;
- Robert Delija : Statement to Police 8 March 2004, Statement to the Prosecutor on 29 April 2004, Testimony in the trial of Anton Nokaj on 5 April 2005, as agreed during court hearing dated 12 July 2010;
- Pren Hili : Testimony on 13 May 2009 in Defendants first trial, Statement to the Prosecutor in Simon nokaj case on 21 October 2005, as agreed during court hearing of 30 September 2010;

- Biter Prekaj: Testimony on 18 May 2009 in Defendants first trial, as agreed during court hearing dated 12 July 2010;
- Anton Marku : Testimony in the trial of Anton Nokaj on 17 March 2005, as agreed during court hearing dated 12 July 2010;
- Mentor Bytyqi: Testimony on 14 May 2009 in first trial, Testimony in the trial of Anton Nokaj on 31 March 2005 as agreed during court hearing dated 12 July 2010;
- Gjok Komani: Testimony on 14 May 2009 in Defendant's first trial, Statement to the Prosecutor in the case of Anton Nokaj et al. on 27 April 2004, Testimony in the trial of Anton Nokaj on 5 April 2005, as agreed during court hearing dated 12 July 2010;
- Prene Nokaj: Testimony on 12 May 2009 in Defendants first trial, as agreed during court hearing dated 12 July 2010;
- Trashe Nokaj : Testimony on 12 May 2009 in Defendant's first trial, as agreed during court hearing dated 12 July 2010;
- Alfred Nokaj: Testimony on 13 May 2009 in Defendants first trial, as agreed during court hearing dated 12 July 2010.

The prior statement of Mikel Berisha dated 4 August 2008 was admitted into evidence pursuant to Article 368 of the CPCK through a ruling issued on 30 September 2010.

The Ruling of the Public Prosecutor ordering the metering of telephone calls made by Gjin Preqi on 19 March 2004 and the metering records/police report were agreed.

The Crime Scene Report of Gjakova Forensics Unit 2004 DB 810 dated 24 March 2004 was agreed.

Photographs of the Opel Vectra motor vehicle registration number 408-KS-799 were agreed.

The Vehicle Examination Report of Mercedes motor vehicle registration number 119 KS 154 dated 23 April 2004 was agreed.

Photographs of the Mercedes vehicle registration number 119 KS 154 were agreed.

The Crime Scene HNP number 30/04 dated 19 March 2004 was agreed.

The Ballistics Report B040258 dated 14 May 2004 of Qlirim Hajdini was agreed.

The testimony of Qlirim Hajdini of 18 May 2009 in the Defendants first trial was agreed.

The Autopsy Report (Tune Allakaj) number MA 04/065 dated June 2004 of Asim Gerxhaliu was agreed.

The Autopsy Report (Dede Allakaj) number MA 04/064 dated May 2004 of Asim Gerxhaliu was agreed.

The testimony of Arsim Gerxhaliu of 18 May 2009 in Defendants first trial was agreed.

The testimony of Arsim Gerxhaliu of 30 March 2005 was agreed.

The agreed evidence was deemed as read into the record.

The Court put in evidence an aerial photograph<sup>2</sup> of the locus.

The Panel attended a Site Inspection of the locus on 8 September 2010 pursuant to a court order dated 19 August 2010.

On 19 March 2004 at around 10.30 am Dede Allakaj and Tune Allakaj were shot with automatic weapons as they drove in a Mercedes motor vehicle registration number 119 KS 154 towards the Ure e Jakes (hereinafter "the Bridge") in the village of Marmulle in the Municipality of Gjakova.

On 6 May 2005 Anton Nokaj was convicted of the murders of

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<sup>2</sup> Exhibit C1

Dede Allakaj and Tune Allakaj which was partially approved by the Supreme Court judgment dated 19 May 2006 which modified only the sentencing. The Supreme Court judgment was further affirmed by a Supreme Court judgment dated 26 September 2007 as to the protection of legality.

On 19 February 2007 Simon Nokaj was also convicted, as co-perpetrator, of the murders of Dede Allakaj and Tune Allakaj.

Anton Nokaj pleaded guilty to the murders of Dede and Tune Allakaj. It was his case that he acted alone.

An investigation unit from the Police of Gjakova attended the crime scene at 11.30 on the day in issue and performed an initial assessment. The Mercedes D300 motor vehicle registration number 119 KS 154 remained in situ. The body of Dedë Allakaj was in the front passenger seat.

During their examination of the scene police found 19 empty casings and two live shells were found at the crime scene (the calibre was 7.62 x 39). The spent cartridges were found near the vehicle, one of them immediately under the front of the vehicle and the others at various distances on the road or on the right side of the road behind the vehicle.

An additional 16 empty casings (7.62 x 39) were seized by the Police at or near the house of Anton Nokaj.

The Mercedes was further examined by the Police on the 22 April 2004. The following bullet holes were documented:

- five bullet holes in the windscreen;
- six bullet holes in the rear window;
- all four side windows were broken and perforation and scratching traces were present in the seals;
- one bullet hole was in the engine hood, caused by a weapon fired from the front;
- one bullet hole in the right side, between the front wheel and the front door, fired at an oblique angle downwards;

- one bullet hole in the mirror, caused by a weapon fired from the front of the car;
- two bullet holes in the front door on the right side, caused by weapon fired from the right side;
- five bullet holes in the rear door on the right side, caused by weapons fired from the right side, back to front;
- one bullet hole close to the cap of the fuel tank caused by a weapon fired from the right side;
- one bullet hole in the right rear side of the car, caused by a weapon fired from the back;
- one bullet hole in the rear tyre on the right side;
- in the rear door on the left side an exit hole;
- bullet holes in the upper part of the front seat on the passenger's side, at the headrest.

A total of 24 bullets holes were found in the chassis of the Mercedes.

Apart from one spent cartridge found under the front of the vehicle, the others were found behind the vehicle at a distance of between 6 and 28 meters.

**Luz Allakaj** testified at the first trial on 5 May 2009. He gave statements to the Prosecutor on 14 April 2004 and July 2008. He testified in the trial against Anton Nokaj on 1 March 2005 and 12 April 2005.

On 19 March 2004 Luz Allakaj was at home with his brothers Tunë and Dedë Allakaj.

At approximately 10.30am Tune Allakaj and Dede Allakaj left home in a Mercedes D300 registration number 119 KS 154 driven by Tune Allakaj.

Shortly after Tune Allakaj and Dede Allakaj left home Luz

Allakaj was informed by Robert Allakaj and Gjergj Allakaj that they had heard gunshots from the direction of the Bridge.

Luz Allakaj described being concerned for his brothers given the ongoing feud with the Nokaj family.

He drove his Volkswagen Passat motor vehicle towards the Bridge. He was accompanied by Robert Allakaj and Gjergj Allakaj. This was consistent with the testimony he gave before the Investigative Judge on 14 April 2004. Counsel for the Defendant challenged this evidence on the basis that, when interviewed on 25 November 2005 he had stated only that he was accompanied by Robert Allakaj. This discrepancy was irrelevant to the facts in issue.

En route to the Bridge, Luz Allakaj met Anton Nikolla. Luz Allakaj testified Anton Nikolla told him "*Go fast, Tune has been shot at*". No mention was, apparently, made of Dede Allakaj. This evidence was consistent with what Luz Allakaj testified before the Investigative Judge in April 2004. When he testified at the first trial he said Anton Nikolla had stated "*Go fast, your brothers have been shot at*".

He gave evidence that he could not recall if Anton Nikolla mentioned by whom Tune had been shot. This was inconsistent with the evidence he gave at the Defendants first trial when he said Anton Nikolla stated the shooting had been perpetrated by "the Nokaj". When he testified before the Investigative Judge in April 2004 Luz Allakaj referred to his meeting with Anton Nikolla and said Anton Nikolla told him "*they shot Tune*". In that statement it is said that it is only when he is outside the store that anyone tells him it was "Nokaj".

Luz Allakaj testified that he continued to drive towards the Bridge. His route took him past the shop of Zef Mark Delija {hereinafter "the shop"}<sup>3</sup>. Upon his arrival at the shop<sup>3</sup>, he noticed approximately fifteen - twenty people standing outside. He asked them what had happened. Someone, he could not recall who, stated "*Go quickly, your brothers have been shot*"

Luz Allakaj testified that some of the persons present said

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<sup>3</sup> Number 3 on Exhibit C1

his brothers had been shot by "Nokajs". He said he could not recall who said this. When he testified at the Defendants first trial he attributed this comment to Vilson Nikolla who said "go fast because they killed your brothers" while, in answer to the question "Who were they?" Vilson Nikolla replied "the Nokaj". In his statement of 14 April 2004 the only conversation with people outside the store he refers to is someone telling him "They shot Tuna" and in reply to his inquiry "Nokaj". In his evidence on 1 March 2005 when asked who outside the store identified the shooters as "the Nokajs" he replied "I think it was Vilson Nikolla".

Luz Allakaj testified that he arrived at the scene<sup>4</sup> within 7 - 8 minutes of leaving his house. When he testified at the first trial he thought he arrived at the scene some 10 - 15 minutes after the gunshots were heard but when further cross-examined he said it was twenty minutes to the store and a further one minute to the crime scene. Gjon Nikolla, Vilson Nikolla, Anton Nikollla, Gjok Berisha and Pieter Oroshi arrived at the scene soon after Luz Allakaj

Upon his arrival at the scene Luz Allakaj saw his brothers Mercedes stopped in the middle of the road. The engine of the Mercedes was not running. He immediately noticed what appeared to be bullet holes in the vehicle. He noticed shell cases on the ground around the vehicle. Tune Allakaj and Dede Allakaj were still inside the vehicle. Tune Allakaj was sitting in the drivers seat and Dede Allakaj in the front passenger seat. Dedë Allakaj appeared to be dead. Tunë Allakaj was still alive.

Luz Allakaj described opening the door of the vehicle. He testified before this Court that he asked Tune "Who did this". Tune replied "Nokaj".

In his statement of 14 April 2004 he said Gjon Nikolla arrived at the scene and helped him to move Tunë to the back seat of the car.

This was consistent with his testimony on 14 April 2004, 31 July 2008 and 5 May 2009, 1 March 2005 and 12 April 2005.

Luz Allakaj testified that Tune was able to get out of the vehicle and into the back of the vehicle through the rear

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<sup>4</sup> Number 5 on Exhibit C1

nearside door.

Luz Allakaj testified that he asked Gjon Nikolla to drive the Mercedes to the hospital. Gjon Nikolla got into the drivers seat and attempted to start the vehicle.

Luz Allakaj testified that he again asked Tune Allakaj who was responsible. Tune Allakaj replied "*Nokaj, Danil, Anton, Simon, Leonard and Rrok Bezhi*"

That evidence was consistent with the testimony he gave before the Investigative Judge in April 2004.

When he testified at the first main trial Luz Allakaj said that in answer to his question Tune replied "Nokaj". Subsequently when in the back of the seat of the car Luz Allakaj stated that he again asked and got the answer "*Danil Nokaj, Anton Nokaj, Rrok Bezhi, Leonard Nokaj and Simon Nokaj*". Indeed, in answer to a question by the Presiding Judge, Luz Allakaj testified "[Tune]...mentioned the names and surnames". The evidence he gave at the first main trial was consistent with his testimony on 31 July 2008 and 1 March 2005.

Luz Allakaj testified that, during this exchange, Tune Allakaj said the Defendant was "in front". Tune Allakaj apparently did not mention the position of the other persons to whom he had referred.

When Luz Allakaj testified before the Investigative Judge on 14 April 2004 he stated, inter alia, "*I sat next to Tune and asked him again what happened. Once again he said 'Nokaj, Danil, Anton, Simon, Leonard and Rrok Bezhi. Danil was the one in front.'*"

Luz Allakaj was cross-examined by counsel for the Defendant regarding his failure on other occasions to mention the fact Tune Allakaj had purportedly said the Defendant was "...the one in front". In reply Luz Allakaj testified this was simply because he had not been asked.

When he testified on 14 April 2004 he said Tune spoke with some difficulty. It is clear from the post mortem report and the evidence given by Doctor Arsim Gerxhalliu on 30 March 2005, to which reference will be made herein, Tune had suffered, inter alia, injuries to his right cheek and tongue.

Being unable to start the Mercedes Tune got out of the vehicle and got into the rear of Luz Allakajs Volkswagen Passat motor vehicle. Vilson Nikolla drove the Passat to the hospital in Gjakova. He was accompanied in the vehicle by Anton Nikolla.

Luz Allakaj drove Anton Nikollas car to the hospital.

Upon his arrival at the hospital Luz Allakaj testified about a further short conversation with Tune Allakaj during which he asked Tune *"The persons you mentioned to me were they the ones who did this"*. Tune Allakaj replied by nodding. That is consistent with his statements of 14 April 2004 and 31 July 2008.

**Gjon Nikolla** testified in the first trial on 5 May 2009. He gave statements to the Prosecutor on 26 April 2004, 25 November 2005 and he was interviewed by the Prosecutor on 31 July 2008. He testified in the trial against Anton Nokaj on 3 March 2005.

He has known the Defendant since childhood. They were co-villagers. He described his relationship with the Injured Party as being on good terms. He was aware of a blood feud between the Nokaj and Allakaj families arising from the death of Engjell Nokaj.

On the day in issue Gjon Nikolla was on the first floor balcony of his house when he noticed a Mercedes D300 being driven towards the Bridge. He testified the gates of his property were open and that he had a clear view of the road. He recognized the vehicle as belonging to members of the Allakaj family.

At approximately 10.30am he heard gun shots. He testified he was unable to determine if the shots were from an automatic weapon. The sound of the gunfire came from the direction of the Bridge.

He got dressed and got into his vehicle. Luz Allakaj drove past in his vehicle. Gjon Nikolla waved at Luz Allakaj, gesticulating that he should go towards the Bridge. That is consistent with the evidence he gave on 3 March 2005 and 5 May 2009.

He drove his own car towards the Bridge.

En route to the Bridge he passed the shop. As he approached the shop he saw persons standing outside. He could not recall speaking to anyone en route to the Bridge. In his evidence on 3 March 2005 he said Vilson Nikolla stated something had happened to Tune and Dede.

Upon his arrival he approached the deceased's vehicle from the right side. Luz Allakaj approached the vehicle from the left side.

Gjon Nikolla testified that it appeared Dede Allakaj was already dead. He then went to the left side of the car. Tune was conscious.

He testified that Luz Allakaj said to Tune "who was it brother?" Tunë replied "The Nokajs". In his statement of 26 April 2004 he stated Luz Allakaj asked Tune "brother are you alive?". In that statement he did not mention any other exchange between Luz Allakaj and Tune prior to Tune transferring to the back seat of the Mercedes. However, it is consistent with the evidence he gave on 3 March and 25 November 2005 and when he testified on 5 May 2009.

Gjon Nikolla testified that Tunë was able to walk to the rear of the Mercedes where he sat on the rear seat. He was seated immediately behind the drivers seat. Gjon Nikolla attempted to start the vehicle.

Gjon Nikolla testified that Luz Allakaj again asked Tune who was responsible.

Gjon Nikolla testified Tune replied "Anton, Danil, Rrok, Simon and Leonard. That is consistent with his statement of 26 April 2004, his testimony of 3 March 2005, his statement of 25 November 2005 and his testimony on 5 May 2009. Gjon Nikolla said Tune made no further reference to the Defendant.

Gjon Nikolla testified he heard the names *clearly*. This is consistent with the statement he gave to the investigative judge on 26 April 2004. In that statement he said Tune spoke with some difficulty. It is also consistent with the statement he gave on 25 November 2005 and his evidence on 5 May 2009.

In his statements of 31 July 2008 Gjon Nikolla said he

heard Tune say "Danil Nokaj, Rrok Bezhi, Simon Nokaj, Anton Nokaj and Leonard Nokaj". This is consistent with his statement of 26 April 2004.

Being unable to start the Mercedes Tune was transferred to the Volkswagen Passat of Luz Allakaj. That vehicle was then driven to the hospital in Gjakova by Anton Nikolla. He was accompanied in the vehicle by Vilson Nikolla.

Gjon Nikolla drove to Gjakova with Luz Allakaj. He testified Gjin Preqi later offered to drive them to Pristina because they did not have a car. He subsequently followed the ambulance to Pristina. He returned to Marmulle with Luz Allakaj, Gjin Preqi and Sokol Preqi.

**Vilson Nikolla** testified in the first trial on 5 and 6 May 2009. He was interviewed by the Prosecutor on 25 February 2005, and 31 July 2008. He testified in the trial against Anton Nokaj on 31 March 2005.

Vilson Nikolla resides in the house<sup>5</sup> opposite the shop of Zef Delija<sup>6</sup>.

Vilson Nikolla is blind in his left eye and was at the relevant time. He testified vision in his right eye - both long and short - is good. He said he does not wear glasses.

He testified that at approximately 7.30am on the day in issue he was in the bedroom on the second floor of his house when he saw the dark blue Opel Vectra of the Nokaj family stationary on the driveway of Rrok Bezhis house<sup>7</sup>.

During the site inspection the Panel went into the bedroom on the second floor of Vilson Nikollas house from which he said he had a clear view of Rrok Bezhis house. The Panel was satisfied it would have been possible for Vilson Nikolla to identify a vehicle on the driveway of Rrok Bezhis house and to recognize persons standing at the Cross adjacent the Bezhi property and/or on the driveway of the Bezhi house.

At approximately 9am he left his house and walked to the

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<sup>5</sup> Exhibit C1 number 7

<sup>6</sup> Exhibit C1 number 3

<sup>7</sup> Exhibit C1 number 6

house of Anton Nikolla<sup>8</sup>. The Defendant and Rrok Bezhi were still standing outside Rrok Bezhi's house. Again, during the site inspection the Panel was satisfied that from road adjacent Vilson Nikolla's house it would have been possible for him to recognize persons standing on/adjacent the Bezhi property.

Vilson Nikolla testified that he remained at Anton Nikollas house for approximately 1 hour<sup>9</sup>. He then walked home.

Vilson Nikolla testified the Defendant and Rrok Bezhi were still outside the latters house.

Vilson Nikolla testified that at approximately 10 - 10.30am he was in the yard of his brothers Ndrec Nikolla house<sup>10</sup> when he heard gunshots coming from the direction of the Bridge. It was his impression the shots were fired from several automatic weapons, fired at the same time. He went onto the ground floor balcony and stood on a narrow railing several centimeters off the ground from which position he looked towards the Bridge. He saw the roof of deceased's vehicle stopped near the Bridge. He could not see any persons at or near the vehicle.

The events about which the witness testified occurred more than six years prior to the site inspection in a different season. Given those facts, it is perhaps unsurprising the landscape has changed. It was impossible for the Panel to conclusively determine whether it would have been possible for Vilson Nikolla to see the roof of the vehicle. The Panel could clearly see a police vehicle parked on the Prizren to Gjakova road beyond the Bridge. The Bridge itself was in a dip in the road. However, there was no dispute the deceaseds Mercedes was stopped near the Bridge.

Vilson Nikolla testified the Opel Vectra was stationary outside Rrok Bezhis house.

He described his walking fast along the path<sup>11</sup> from his brother's house<sup>12</sup> towards the main road.

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<sup>8</sup> Exhibit C1 number 2

<sup>9</sup> When he testified at the first trial he estimated between 30 and 40 minutes.

<sup>10</sup> Exhibit C1 number 10

<sup>11</sup> Exhibit C1 number 11

<sup>12</sup> Exhibit C1 number 10

As he walked along the path<sup>13</sup> towards the main road he saw the Opel Vectra reversing from the Bezhi property along the road towards the Bridge. He could not see how many persons were in the vehicle. He testified he could not recognize the driver. Although the Panel was satisfied it would have been possible for Vilson Nikolla to recognize persons standing on/adjacent the Bezhi property it would not be as easy to recognize someone sitting in a vehicle.

The vehicle reversed approximately 50 meters. The vehicle stopped. The driver got out and got onto the back seat. When he was examined on 2 September 2010 he said it was only when the Opel Vectra passed him that he realized the person who had reversed the vehicle towards the crime scene was Leonard Nokaj. He saw three people running from the Bridge towards the Opel Vectra. The Defendant was one of the three men. He was wearing a hat. He testified he had seen the Defendant wearing the same hat earlier in the day as he stood talking with Rrok Bezhi. The Defendant was followed by Anton Nokaj and Simon Nokaj. All three were carrying long-barreled weapons. That is consistent with his statement of 25 February 2005.

He subsequently saw Rrok Bezhi near his house. He too had something in his hand but he could not see what it was. Rrok Bezhi opened the door of his house, deposited the item he had been carrying and ran towards the road.

The Opel Vectra stopped near the Cross adjacent Rrok Bezhis house and Rrok Bezhi got into the vehicle.

The Opel Vectra drove along the road towards the shop and the place near where Vilson Nikolla was standing. Vilson Nikolla was standing half-way along the path between Nrec Nikollas house and the main road opposite the shop.

Vilson Nikolla estimated the Opel Vectra past him at a distance of approximately 20 - 30 meters and at a speed of approximately 30 - 40 Kph. He saw the front of the vehicle as it approached the shop. He saw the occupants of the vehicle were the Defendant, Anton Nokaj, Simon Nokaj, Leonard Nokaj and Rrok Bezhi. He said the Defendant was driving. That is consistent with his statement of 25 February 2005. He testified he saw a Kalashnikov lying across the Defendants chest.

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<sup>13</sup> Exhibit C1 number 11

The Opel Vectra slowed as it approached the shop. It did not stop. He said the drivers window was open half way. He said the Defendant said something to Pren Hili who was standing outside the shop. He did not hear what was said. The vehicle then continued towards the village. The Panel was satisfied that, from his position on the path on the other side of the road from the shop, it would have been possible for him to observe if the driver's window was open.

In his statement of 25 February 2005 he said he heard from people standing in front of the shop the Defendant had said to Pren Hili "*I finished my mission*". That is hearsay.

Further, during the site inspection the Panel was satisfied that from his position on the path it would have been possible for Vilson Nikolla to recognize the occupants of the vehicle.

He subsequently heard further shots from an automatic weapon. The shots were from the far end of the village. The Panel is satisfied that is where the Defendant and other members of the Nokaj family reside.

Vilson Nikolla gave evidence that he was standing in front of the shop when Luz Allakaj drove up to and stopped his vehicle in front of the shop. He testified Luz Allakaj asked what had happened? Vilson Nikolla told Luz Allakaj his brothers had been shot.

Vilson Nikolla was driven by Anton Nikolla to the Bridge.

Upon his arrival at the scene Luz Allakaj was talking with Tune Allakaj. He said he could not hear their conversation.

Tune Allakaj was transferred to the Passat. Vilson Nikolla drove the Passat to the hospital in Gjakova. Anton Nikolla accompanied him in the vehicle. He estimated the journey to the hospital took approximately 10 - 15 minutes.

Vilson Nikolla testified that during the journey to the hospital Tune repeated two or three times the names of the persons he said had fired the shots into the car hitting him and Dede Allakaj. He said it was Danil, Simon, Anton and Rrok Bezhi. In his statement of 25 February 2005 he said Tune mentioned Danil, Simon, Anton, Rrok Bezhi and

Leonard. When he testified before the Court he could not recall Tune Allakaj mentioning Leonard Nokaj.

**Gjin Preqi** testified in the first trial on 7 May 2009. He was interviewed by the Prosecutor on 8 August 2005 and 31 July 2008.

Gjin Preqi is the owner of a coffee bar in the village of Bishtazhin. The Defendant was a regular customer. Gjin Preqi testified he knows the Nokaj family and Luz Allakaj. He said he had known the Defendant since school. He and the Defendant were more than mere acquaintances. Indeed, they occasionally met for coffee.

Gjin Preqi testified that he and the Defendant exchanged mobile phone numbers. He could not recall when.

At the time of the incident Gjin Preqi's mobile telephone number was 044 136 648. There was no dispute 044 127 118 was the Defendants phone number.

Gjin Preqi testified that at approximately 10 - 10.30am on the day in issue he was in the cemetery of Gradish, approximately 2 - 2.5 kilometers from the village of Marmullë when he heard approximately 3 or 4 bursts of gunshots coming from the direction of Marmulle.

He testified that at approximately 10.30 - 10.40am he telephoned the Defendant whom he knew lived in the village because he wanted to know what had happened.

Gjin Preqi testified that when the Defendant answered the phone he asked "What's new, because I heard the shots?" whereupon the Defendant replied "*We have killed the Allakaj and revenged our blood*". He said he asked the Defendant "where?" whereupon the Defendant replied "Bridge of Jakes". He then asked the Defendant "who?". The Defendant replied "Dede and Tune". Gjin Preqi testified the Defendant's voice sounded out of breath. That evidence was, in all material respects, consistent with the testimony he gave on 8 August 2005 and 7 May 2009.

The parties agreed the telephone metering records of telephone calls made from Gjin Preqi's mobile telephone.

Those records showed that at 10.41 on 19 March 2004, a

telephone call lasting 20 seconds had been made from the telephone of Gjin Preqi to the Defendant's mobile telephone. That is consistent with his account of his having telephoned the Defendant.

Interestingly, those records also showed that at 13.24 on 18 March 2004 Gjin Preqi had made a telephone call to the Defendants mobile telephone. That telephone call lasted 1 minute and 2 seconds. Gjin Preqi was asked about that call. He testified that he had telephoned the Defendant to invite him to meet for a coffee. He said he met the Defendant later that day.

Gjin Preqi drove to the scene with Sokol Preqi. Upon their arrival he saw the Mercedes stationary in the road. Dede Allakaj was still in the vehicle.

Gjin Preqi subsequently went to Gjakova with Sokol Preqi in order to purchase personal items from a shop near the hospital. He could not recall the name of the shop. While there he says he saw a crowd outside the hospital. That was a remarkable coincidence. It seems more likely Gjin Preqi was simply being inquisitive. He said he stopped to enquire what was happening. He subsequently followed the ambulance to hospital. Also in the vehicle were Sokol Preqi, Gjon Nikolla and Luz Allakaj.

Gjin Preqi had been expected to attend his uncle's funeral at the cemetery at Gradish at 2pm that afternoon. He returned home after the funeral.

Counsel for the defence made much of the fact Gjin Preqi had driven Luz Allakaj to hospital in Pristina. Counsel sought to infer Gjin Preqi was biased towards the Injured Party. The Court did not accept that assertion. It appears Gjin Preqi was friendly towards both the Defendant and members of the Allakaj family. There was no evidence to suggest Gjin Preqi harbored any animosity towards the Defendant. There is no evidence Gjin Preqi's testimony was contrived to assist the prosecution.

**Mikel Berisha** was, at the time of trial, residing in Poland.

Securing his appearance before the Court would, in the opinion of the panel, involve considerable difficulties and inevitably delay the conclusion of the trial. In the

circumstances, pursuant to Article 368 of the CPCK, the Court admitted the records of testimony given by Mikel Berisha on 4 August 2005 through a ruling issued on 30 September 2010. The Court interpreted the provisions of Article 368 narrowly and only admitted prior testimony and not prior, unsworn, statements. When assessing the prior testimony of Mikel Berisha the Court was mindful of the provisions of Article 157 of the CPCK.

Mikel Berisha stated that he stood by his statement of 28 April 2004.

The Court chose not to rely on the evidence of Mikel Berisha in reaching its verdict. The Defendant had not had an opportunity to challenge the evidence of Mikel Berisha at his first trial and was denied an opportunity to challenge that evidence before this Court. In the circumstances, the Court concluded it would not be in the interests of justice to rely upon it.

**Mhill Berisha** was interviewed by the Prosecutor on 30 December 2005. He testified at the trial of Anton Nokaj on 31 March 2005.

He could not, by reference to the aerial photograph<sup>14</sup>, indicate his house. However, during the site inspection the panel visited his house and identified it on the aerial photograph<sup>15</sup>.

Mhill Berisha has known the Defendant since childhood. He testified he does not socialize with members of the Nokaj family.

Mhill Berisha testified that at approximately 10.30am on the day in issue he was in his house watching TV. He heard gunfire "*from the end of the village*". He could not recall how many shots. He later testified he heard one shot.

He went outside. He said he did not see a car. He repeatedly testified that he had not seen anything. He testified he did not see any member of the Nokaj family in the village on the day in issue.

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<sup>14</sup> Exhibit C1

<sup>15</sup> Exhibit C1 number 13

He said he later heard shots from the house of Anton Nokaj.

The evidence Mhill Berisha gave before this Court contradicted, in several important material respects, the testimony he gave on 31 March 2005 and 30 December 2005.

Mhill Berisha cannot read. The evidence he gave on 31 March 2005 is recorded in the minutes of the trial of Anton Nokaj. At the end of the minutes of the evidence he gave on 30 December 2005 is a declaration that the minutes were read to the witness and that he had signed them without objection. Mhill Berisha confirmed that it was his signature on the minutes but he could not recall signing them.

When he testified on 31 March 2005 Mhill Berisha stated that on the day in issue he heard gunshots. He went onto the balcony on the third floor of his house. Approximately 7 - 8 minutes later he saw an Opel Vectra. He testified it was driving towards the house of Anton Nokaj. It stopped close to the door of his house. He described the Defendant, Rrok Bezhi, Anton Nokaj, Simon Nokaj and another person whom he did not recognize alighting from that vehicle. He said the Defendant fired shots into the air. Thereafter the Defendant opened the door of his yard and drove off in his BMW motor vehicle.

When he was examined by the Prosecutor in December 2005 Mhill Berisha stated that at 10am on the day in issue he was in the yard at the front of his house when he heard gunshots. He said he climbed to the "fifth"<sup>16</sup> floor balcony of his house in order to see what had happened. In his testimony of 31 March 2005 he said "third" floor. The Court finds this confusion was the result of two things. Firstly, in American English the ground floor is referred to as the 'first' floor. Secondly, the basement has been included in the calculation of the number of floors.

During the site inspection the Panel went to the second and third floor of Mhill Berisha's house. From the balconies on the second and third floors one has a clear view of the gates at the entrance to the Defendants yard.

Approximately 7 - 8 minutes thereafter he saw an Opel Vectra drive towards and stop at the Defendants house. He

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<sup>16</sup> Exhibit C1 number 13

said the Defendant, Anton Nokaj, Simon Nokaj and Rrok Bezhi got out of the car.

He stated the Defendant fired shots from a Kalashnikov into the air before driving his own vehicle in a northerly direction towards the "houses of Gojani". The others got into the Opel Vectra which drove towards Anton Nokaj's house.

**Mentor Bytyqi** was a technician employed in the hospital in Gjakova.

Mentor Bytyqi testified on 31 March 2005 at the trial of Anton Nokaj. He described Tune Allakaj arriving at hospital. He said Tune told him he was in pain. He testified "Tune's Brother" spoke with Tune in the Intensive Care Unit of the Hospital prior to his being transferred to Pristina.

Mentor Bytyqi further testified on 14 May 2009 at the Defendant's first trial. He described Tune Allakaj arriving at hospital. He testified Tune was able to get out of the car unassisted. Prior to his entering the Intensive Care Tune said his brother had been murdered.

Mentor Bytyqi testified that he asked Tune what had happened. In reply he said he had been shot.

Mentor Bytyqi accompanied Tune to hospital in Pristina. During the journey he spoke with Tune. He again said he was in pain. It appears that during the journey Tune was quite lucid and could be understood. He died en-route to Pristina.

**Gjok Komani** was an Emergency Room doctor at the hospital in Gjakova. He was interviewed by the Prosecutor on 27 April 2004. He testified on 5 April 2005 at the trial of Anton Nokaj. He further testified on 14 May 2009 at the Defendant's first trial.

When he was interviewed on 27 April 2004 Gjok Komani stated that on the day in issue he saw Tune Allakaj. He was not on duty. Luz Allakaj was also present. He did not hear either Luz Allakaj or Tune Allakaj say anything. It was his opinion that, given the injuries Tune Allakaj had sustained, he would have been unable to speak.

He made a further statement on 5 April 2005 regarding the incident. On that occasion he said Tune Allakaj said he was "OK" and that he was able to understand him clearly. Dr. Komani's evidence in this regard was inconsistent.

When he testified on 14 May 2009 at the Defendant's first trial Gjok Komani said Tune Allakaj had sustained an injury to his face. There was blood in his mouth. He said it was difficult for Tune Allakaj to articulate his words but he thought that, in answer to a question, Tune Allakaj stated "yes, yes, I am breathing".

Dr. Komani was asked about the inconsistency with his statement of April 2004 when he said Tune Allakaj was unable to speak. He explained this by stating "When I arrived at that moment he was not bleeding heavily but then he started bleeding heavily and the aspirator was used on several occasions to clean his mouth. The translation for my original statement is wrong. It was a very vague sound and I could not hear it very well."

**Anton Nikolla** gave a statement to police on 19 March 2004, there is a record of witness hearing dated 6 April 2004, minutes from Anton Nokaj's trial dated 2 March 2005, and interview with the prosecutor dated 31 July 2008 and the evidence he gave at the defendant's first trial on 6 May 2009.

At 10.30am on the day in issue he heard gunshots from the direction of the Bridge. He said he knew members of the Allakaj family would travel to Gjakova that morning. He knew the Allakaj family was in a blood feud. He drove to the Bridge. En route he passed a vehicle travelling in the opposite direction. He described the vehicle as an "Opel Kadett". In that vehicle he recognised Anton Nokaj and Rrok Bezhi. He subsequently arrived at the Bridge to find the deceased.

In his statement of 6 April 2004 Anton Nikolla said that at approximately 10am on the day in question he heard gunshots from the direction of Bishtazhin. He described seeing a "Vectra" drive past him in front of his house. Inside the car he recognised Anton Nokaj and Rrok Bezhi. There was another person driving the car that he did not recognise. He was aware of the blood feud between the Allakaj and Nokaj families. Further, he knew some members of the

Allakaj family would travel to Gjakova. En route to the Bridge he saw Luz Allakaj. Luz Allakaj asked him what had happened. In reply Anton Nikolla said "it looks like they killed them".

Anton Nikolla stated he drove to the scene. Upon his arrival he saw the bullet holes in the Mercedes. He realised Dede Allakaj was dead. Tune Alakaj was sitting behind the steering wheel. He described Luz Allakaj and Gjon Nikolla taking Tune from the vehicle. He and Vilson Nikolla then drove Tune to the hospital in Gjakova.

When he testified on 2 March 2005 at the trial of Anton Nokaj Anton Nikolla described seeing Anton Nokaj and Rrok Bezhi in the Vectra. He testified Rrok Bezhi was sitting on the back seat and Anton Nokaj was sitting in the front passenger seat.

When he testified at the Defendants first trial on 6 May 2009 Anton Nikolla said he was in the yard of his house when he heard three bursts of gunfire that sounded different. The shots were fired one after another with seconds in between.

Approximately five minutes after hearing the gunfire he described seeing an Opel Vectra drive past his house and he said he recognised Anton Nokaj and Rrok Bezhi inside the vehicle. He said he was 5 meters away and the Vectra was travelling at approximately 50kph.

When he testified at the Defendant's first trial he said there were four people in the car. He recognised Anton Nokaj and Rrok Bezhi. He said he could not recognise the driver or a fourth person in the car. He was asked about this during the Defendant's first trial. He testified he could not see the driver of the vehicle in Court. He denied he was afraid.

Anton Nikolla drove towards the Bridge. En route he stopped at the shop. Vilson Nikolla stated "go and tell Allakaj that Nokaj family has killed somebody within the Allakaj family". He said he drove back towards the village. En route he met Luz Allakaj. Anton Nikolla told him that Nokaj had killed Dede and Tune.

Luz Allakaj was the first to arrive at the crime scene. Gjon Nikolla, Anton Nikolla and Vilson Nikolla arrived

thereafter.

Vilson Nikolla drove Tune to the hospital in Gjakova. Anton Nikolla accompanied them. When he testified at the Defendant's first trial he described a conversation between Tune Allakaj and Vilson Nikolla during the journey to the hospital in Gjakova. He testified Tune wanted to say something. Vilson stopped him. He said he heard Tune mention the name Rrok.

**Zef Delija** testified on 6 April 2005 at the trial of Anton Nokaj. He said that at approximately 9 - 9.30am on the day in issue Rrok Bezhi entered his shop and requested a rake for his yard.

At approximately 11am he heard gunshots. He went out and looked in the direction of the Bridge. He said he saw Rrok Bezhi in the yard of his house. He then described seeing a car approaching his shop at high speed. He said he did not see who was in the car because a garbage bin was obstructing his view.

**Robert Delija** testified on 5 April 2005 at the trial of Anton Nokaj that on the day in issue he was at the shop. He described seeing Zef Delija and Rrok Bezhi pass by, heading in the direction of the Bezhi house. Rrok Bezhi was carrying a rake. It was approximately 9 - 9.30am.

He described hearing a burst of gunfire. He went outside and looked towards Bistrashin because he said that was the direction from which the shooting came. He described seeing Rrok Bezhi in his yard. He said after 20 seconds he heard further shots.

After the shots he saw an Opel Vectra driving at high speed. He could not see who was inside the vehicle because a large garbage container was obstructing his view.

He described hearing further shots coming from Marmulle village later in the day.

When he testified on 29 April 2004 Robert Delija stated that, when he first heard the gunfire, he saw Rrok Bezhi in the yard of his house. He appeared to be raking.

**Pren Hili** gave a statement on 27 April 2004 that, on the day in issue, he was at the shop when he noticed Rrok Bezhi

in the yard of his house.

Approximately 3 - 4 minutes after entering the shop he heard a burst of gunfire from the direction of Bishtazhin. A second burst of fire was heard immediately thereafter. Rrok Bezhi was still in his yard.

Approximately four minutes after the second burst of fire a navy blue Opel Vectra drove past at speed. It was travelling from the direction of Bishtazhin towards the centre of Marmulle. Pren Hilli testified he was approximately 3 meters from the vehicle. He said he saw the driver but did not recognise him. He did not see if there were any passengers in the vehicle.

When he testified on 13 April 2005 at the trial of Anton Nokaj he stated that sometime after 10am he was at the shop. He described seeing the deceaseds vehicle drive past. Shortly thereafter he heard a burst of gunfire.

Together with other persons he left the store and stood in front of the store facing the village. He described seeing a person in Rrok Bezhi's yard. He thought it was Rrok Bezhi but conceded it could have been one of his brothers. A short while thereafter the dark blue Opel Vectra of Anton Nokaj drove past. He testified the vehicle was being driven at high speed. Thereafter he heard another burst of gunfire. He testified he could not see the occupants of the vehicle because his view was obstructed by a garbage container.

When he testified on 21 October 2005 Pren Hili stated that on the day in issue in the Opel Vectra were Anton Nokaj, Danil Nokaj and Simon Nokaj. Simon Nokaj was sitting in the back seat behind the driver. He estimated he was 3 - 4 meters from the car when it past him. The vehicle was travelling at approximately 30 - 40 KPH. Pren Hili testified he did not state this previously because he was afraid of the Nokaj family.

When he testified on 13 May 2009 at the Defendant's first trial he said that on the day in issue he was at the shop when the deceaseds Mercedes drove past. He subsequently heard a burst of gunshots. He described hearing two burst one after the other. He went outside.

He described a vehicle driving past him. He was

approximately 5 - 6 meters from the car when it drove past. He was asked about his statement of October 2005 when he stated he saw the Defendant, Anton Nokaj and Simon Nokaj in the vehicle. He testified he did not see who was in the vehicle because his view of the vehicle was obstructed by a garbage container outside the shop.

**Biter Prekaj** gave a statement on 8 August 2008 in which he stated that he was a corrections officer at the prison in Peja. One of the detainees was Rrok Bezhi. He said Rrok Bezhi told him the Defendant, Anton Nokaj, Simon Nokaj and Leonard Nokaj were responsible for the murder of Tune and Dede Allakaj.

When he testified on 18 May 2009 at the Defendant's first trial he denied he had spoken to Rrok Bezhi about the murder of the Allakaj brothers. He said he overheard Rrok Bezhi refer to the fact Anton Nokaj and Simon Nokaj had been convicted of the murders. He testified Rrok Bezhi never mentioned the Defendant. He denied mentioning the Defendant in his prior statement.

The evidence of this witness regarding what he says Rrok Bezhi stated is hearsay.

**Anton Marku** testified on 17 March 2005 at the trial of Anton Nokaj. At 10.15 - 10.30am he was in Marmulle when he heard bursts of gunfire. He went to the shop. There he met Prek Gjogja, Nikole Delija, Pren Hili and others.

He described the Opel Vectra of Anton Nokaj drive past the shop. He said it was going slowly because of the speed bump and because of the people in front of the shop. He testified there were 5 people in the car. He said he could not recognise any of them.

He said he did not see Rrok Bezhi in the yard of his house either before or after he heard the gunfire.

**Prene Nokaj** testified on 12 May 2009 at the Defendant's first trial that on the day in issue in the morning the Defendant was working in the yard of the family home planting onions and garlic. She testified that she had taken him coffee and water.

She testified she heard a shot. She could not recall the time but stated it was during the morning. She did not know

how many shots had been fired. She thought the shots were fired from an automatic weapon. She said the Defendant was still in the yard when she first heard the shots. She said she asked the Defendant about it. She testified the Defendant went to see what had happened. She went into the house. She testified she subsequently spoke with the Defendant's wife who stated she had seen Anton Nokaj with a gun, shooting in the air. The Defendant's wife told her the Allakajs had been killed. She thought this conversation took place approximately 10 - 20 minutes after she had heard the shots.

She was unequivocal in her testimony that when she heard the shots the Defendant was in the yard of the house.

**Trashe Nokaj** testified on 12 May 2009 at the Defendant's first trial that on the day in issue she saw the Defendant working in the yard. She said she spoke to him. She subsequently went back into the house. It was approximately 10am although she could not be sure. She heard a noise that she described as a "bang". She went to the window. She estimated it was approximately 10 minutes between speaking with the Defendant and hearing the shots. She testified she went outside and started running. The Defendant started running as well and he said to her "what was that?" She testified she said to the Defendant she thought Anton Nokaj had killed someone. She testified she did not hear anything before the shooting in Anton Nokaj's courtyard. She heard the voice of Anton Nokaj in his yard. He said he had killed the Allakajs. She said she had heard no prior shots.

Trashe Nokaj testified she saw the Defendant in the yard approximately 15 minutes before she heard the shots in the yard of Anton Nokaj's house.

**Alfred Nokaj** testified on 13 May 2009 at the Defendant's first trial that, on the day in issue, he was working in the field when the Defendant came and told him that they should go home because Anton Nokaj had taken blood revenge. He said he did not hear any shots that day. He did not know at what time he had spoken with the Defendant but thought it was before 11am.

The **Defendant** testified that his relationship with the Allakaj family was neither good nor bad. However, he described an altercation with Luz Allakaj soon after the

war.

Referring to the day in issue, the Defendant testified that at approximately 10am he was in the garden at his home. He said he was ploughing. He described hearing gunshots nearby. He said he met his aunt. She told him "Anton has avenged his brother's death". The Defendant told Alfred Nokaj that Anton had avenged his blood. The Defendant said he returned home to continue gardening. He denied he subsequently left his home in his black BMW.

The Defendant was asked about the telephone conversation with Gjin Preqi on 19 March 2004 about which the latter had testified. He said he received a telephone call from someone. He said he did not know the identity of the caller. The caller asked him if he had heard shooting. He told the caller he had not. It appears that was the extent of their conversation.

The Defendant was also asked about a telephone conversation with Gjin Preqi on 18 March 2004. He could not recall the conversation. However, he conceded it was possible Gjin Preqi had called him. He denied that he had subsequently met Gjin Preqi for coffee.

The Defendant testified that 3 or 4 days after the murders of Dede and Tune Allakaj he left Kosovo. He travelled to Croatia via Montenegro. He said he had a valid UNMIK passport. However, he did not travel on that passport. Instead, he said he entered Montenegro unlawfully. He subsequently obtained a forged Croatian passport in the name of Zlatko Prgomet. The date of issue of that passport is 9 August 2004. He testified he eventually made his way to Switzerland where he worked with his brother-in-law. There was no dispute the Defendant was arrested in Switzerland in July 2007.

The Defendant testified that in 2003 he had made an unsuccessful application for a permit to work in Switzerland. He said his departure from Kosovo was for purely economic reasons. He said he had delayed his departure until after his wife had given birth. He denied that his leaving Kosovo had anything to do with the murders of Dede and Tune Allakaj.

The Defendant testified he had not seen Rrok Bezhi in the morning of 19 March 2004.

The Defendant testified on 21 December 2000 at the trial of Anton Allakaj as to the murder of Engjell Nokaj.

The Defendant was examined by the Prosecutor on 19 August 2008. He was represented by experienced counsel during that examination. He confirmed the signature on the Minutes was his. He said he had not read the Minutes prior to signing them.

The Defendant testified at his first trial on 21 May 2009.

### **Evaluation of the evidence**

On 1 July 2000 Anton Allakaj, son of Dede Allakaj, murdered Engjell Nokaj.

The relationship between the Allakaj and Nokaj families could be described as, at best, acrimonious.

Luz Allakaj as well as several Prosecution witnesses testified about the fact of their being a blood feud between the Allakaj and Nokaj families.

Reconciliation has never been achieved between the respective families following the murder of Engjell Nokaj who were, at the relevant time, in a blood feud. Both families reside in the Village of Marmulle. Engjell Nokaj and the Defendant are cousins.

The Court finds that, at the relevant time, there existed a blood feud between the Allakaj and Nokaj families.

The Defendant testified that at approximately 10am on the day in issue he was in the garden of his home. That is consistent with the evidence of Trashe Nokaj and Prene Nokaj. He described hearing gunshots nearby. He said he met his aunt. She told him "Anton has avenged his brother's death".

Having purportedly just been informed his cousin Anton Nokaj had murdered members of the Allakaj family the Defendant testified he resumed gardening. That beggars belief.

The Defendant was asked about the telephone conversation with Gjin Preqi on 19 March 2004. The Defendant testified he received a call from someone who asked him if he had heard shooting. That is consistent with the testimony of Gjin Preqi. He said he told the caller he had not. According to the telephone metering records that conversation lasted 20 seconds. He said he did not know the caller. It is inconceivable the Defendant did not know the caller was Gjin Preqi. It is even more surprising given the fact he had spoken by telephone with Gjin Preqi the day before. Gjin Preqi testified the Defendant seemed out of breath - as though he had been running.

When he testified on 21 May 2009 the Defendant denied he had exchanged telephone numbers with Gjin Preqi. That contradicted the testimony of Gjin Preqi.

The Defendant was asked about his telephone conversation with Gjin Preqi on 18 March 2004. He could not specifically recall the conversation. However, he conceded it was possible Gjin Preqi had called him. He denied that he had subsequently met Gjin Preqi for coffee.

The Defendant testified he had not seen Rrok Bezhi in the morning of 19 March 2004. That contradicted the evidence of Vilson Nikolla.

The Defendant left Kosovo 3 or 4 days after the murders. He said this was for purely economic reasons unrelated to the murders. It may well be that he had previously made an unsuccessful application for a permit to work in Switzerland. However, his departure cannot be explained as mere coincidence. Of his own admission, he was in possession of a valid UNMIK passport. However, he chose not to use that passport to travel from Kosovo to Montenegro. He said he was not sure if that passport was valid for transit to Montenegro. Instead, he arranged to be spirited out of Kosovo with false papers. The Court finds he was attempting to evade justice for the murders of Tune and Dede Allakaj.

The Court found the testimony of Luz Allakaj, Gjon Nikolla, Vilson Nikolla and Gjin Preqi compelling. Their witness testimony was, in all material respects, consistent. Further, in the case of Gjin Preqi, his testimony was supported by telephone records.

Inevitably, witnesses will forget or confuse events about which they are being asked to testify - especially when those events occurred some years prior to their testifying. Inconsistencies - even contradictions - with prior testimony or statements do not necessarily undermine the probative value of such testimony. This is particularly so when the inconsistency does not relate to a material fact in issue. Witnesses observing the same event - or a series of events - occasionally perceive different things.

The trial panel had the benefit of assessing the credibility of each witness that testified. Of course, the Panel also had the opportunity to review the prior testimony and or statements of those witnesses who did not testify but whose evidence was agreed.

The Court found Luz Allakaj to be a competent, credible and truthful witness.

The Court found Gjon Nikolla to be a truthful witness.

An issue was properly raised during the trial of the reliability of witness identification. This was especially important given the distance over which Prosecution witnesses claimed to have observed the Defendant. In his closing statement, Counsel for the Defendant referred the Court to the fact that during a site inspection in 2005 Wilson Nikolla was unable to identify two police officers placed at the spot where he said he could identify the defendant.

However, a distinction should be drawn between (a) identification and (b) recognition.

Most Prosecution witnesses had known the Defendant since they were young. Given that fact the Court was not concerned with their identification of the Defendant but, rather, their *recognition* of him.

A witness attending an identification parade might have difficulty reliably identifying a stranger whom he or she had observed perhaps only fleetingly, and/or over a long distance and/or possibly in poor visibility.

A witness would have less difficulty recognizing over a long distance, even fleetingly, someone whom he or she had

known for a long time. The witness might recognize that person by their physical characteristics, demeanour and possibly by reference to their clothing.

Vilson Nikolla testified that during the journey to the hospital Tunë said his attackers were Danil, Simon, Anton and Rrok Bezhi. In his statement of 25 February 2005 he said Tune mentioned Danil, Simon, Anton, Rrok Bezhi and Leonard. When he testified before the Court he could not recall Tune Allakaj mentioning Leonard Nokaj.

During the site inspection the Panel considered the testimony of Vislon Nikolla regarding his recognition of the Defendant and assessed that evidence during the site inspection. The Panel was satisfied it would have been possible for Vilson Nikolla to recognize the Defendant from where he was standing (a) in the bedroom of his house (when the Defendant was standing at the Cross adjacent the Bezhi property) and (b) the pathway from Ndreç Nikollas house to the shop of Zef Delija (when the Defendant was running towards the Opel Vectra and when the said vehicle subsequently passed the shop of Zef Delija).

Vilson Nikolla testified he saw the Defendant running from the direction of the Bridge towards the Opel Vectra. He said the Defendant was carrying a weapon. He said the Defendant drove the Opel Vectra from the scene. He said the vehicle subsequently passed within 20 - 30 meters of him and he saw the Defendant driving.

When he testified before this Court he seemed sure it was Leonard Nokaj who reversed the Opel Vectra from the Bezhi house towards the crime scene. If that were correct, it is inconceivable Tune Allakaj would have mentioned Leonard as being one of his assailants. However, Vilson Nikolla was quite clear in his testimony that he could not recognise the driver as the vehicle reversed. It was only later, as the vehicle passed him that, from their respective positions in the vehicle, he believed the driver to have been Leonard Nokaj. However, both Luz Allakaj and Gjon Nikolla testified Tune mentioned Leonard Nokaj as being one of his attackers. In the circumstances, it seems likely Vilson Nikolla was mistaken when he said Leonard Nokaj was the driver.

If Vilson Nikolla was mistaken about the fact Leonard Nokaj drove the vehicle to the crime scene is he also mistaken

that the Defendant was one of the persons running from the crime scene and the same person who drove the vehicle from the crime scene? No.

Vilson Nikolla saw the driver of the Opel Vectra alight from the vehicle. He saw three men running from the crime scene towards the waiting vehicle. All three men were carrying long-barreled weapons. One of the three men got into the drivers seat of the Opel Vectra. As the vehicle passed him he saw the Defendant driving. It follows as a matter of simple logic that the Defendant was one of the men Vilson Nikolla had seen running from the crime scene carrying a long-barreled weapon.

The Court found Vilson Nikolla to be a truthful witness.

The Court found that in all relevant, material respects the evidence of Luz Allakaj, Gjon Nikolla and Vilson Nikolla was consistent.

When he gave a statement on 21 October 2005, describing events after the shooting, Pren Hili said the Defendant, Anton Nokaj and Simon Nokaj were in the Opel Vectra as it drove past the shop. When he testified at the Defendant's first trial he said his view of the vehicle was obscured by a garbage container.

The prior testimony of Mikel Berisha was admitted into evidence pursuant to Article 368 of the CPCK pursuant to a court order dated 30 September 2010 but not relied-upon by the Court in reaching its verdict. The prior statements of Mikel Berisha were extremely damaging to the Defence who had never had an opportunity of testing that evidence in cross0examination.

Mhill Berisha previously testified<sup>17</sup> he saw the Defendant alighting from the Opel Vectra and firing shots from a Kalashnikov into the air. When he testified before this Court on 7 September 2010 he claimed not to have seen anything that day.

Gjin Preqi was, at the time of the murders, acquainted with both the Defendant and the Allakaj family. He testified about his telephone conversation with the Defendant immediately after the shooting. The fact of that telephone

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<sup>17</sup> 31 March 2005 and 30 December 2005

conversation having taken place is supported by the telephone records. He testified the Defendant stated "We have killed the Allakaj and revenged our blood". The Court found Gjin Preqi to be an honest and reliable witness.

Counsel for the Defendant invited the Court to refute this evidence on the basis, *inter alia*, a murderer would not advertise his crime. However, this was a public execution. The perpetrators were clearly unconcerned about the possibility of their being discovered. In fact, it appeared the more public the execution the better. This was a matter of familial pride within the context of a blood feud.

The evidence of Luz Allakaj, Gjon Nikolla and Vilson Nikolla regarding what they say Tune Allakaj said about the identity of his assailants is hearsay. Article 157 (1) of the CPCK provides that the court shall not find the accused guilty based solely, or to a decisive extent, on testimony or other evidence which could not be challenged by the defendant or defence counsel through questioning during some stage of the criminal proceedings. This includes hearsay.

Nevertheless, hearsay evidence is admissible. The issue that comes before the Court is the probative value of that evidence - specifically its weight.

The first issue to be determined by the Court is whether, in fact, Tune uttered the names attributed to him by Luz Allakaj, Gjon Nikolla and Vilson Nikolla.

Luz Allakaj testified before this Court that he asked Tune "Who did this". Tune replied "Nokaj".

Luz Allakaj testified that he asked Tune a second time who was responsible. He said Tune replied "Nokaj. Danil, Anton, Simon, Leonard and Rrok Bezhi" That was consistent with the testimony he gave before the Investigating Judge in April 2004.

However, when he testified at the Defendant's first trial Luz Allakaj said that in answer to his question Tune replied "Danil Nokaj, Anton Nokaj, Rrok Bezhi, Leonard Nokaj and Simon Nokaj". Indeed, when the Presiding Judge sought clarification of precisely what Tune said, Luz Allakaj testified "[Tune]...mentioned the names and

surnames". That evidence was consistent with his testimony on 31 July 2008.

Gjon Nikolla testified Luz Allakaj asked Tune "*who was it brother?*" to which Tunë replied "*The Nokajs*".

Gjon Nikolla testified that after Tune had been transferred to the back seat of the Mercedes Luz Allakaj again asked Tune who was responsible. Tune replied "*Anton, Danil, Rrok, Simon and Leonard*". That is consistent with his statement of 26 April 2004, his testimony of 3 March 2005, his statement of 25 November 2005 and his testimony on 5 May 2009.

A further issue arose regarding precisely what were Tune's first words to his brother. Perhaps Luz Allakaj did ask "*brother are you alive?*". The relevant, material part of that exchange relates to what Tune said about the identity of his attackers.

Luz Allakaj testified Tune also stated the Defendant was the one "*in front*". When asked why he had not previously mentioned that fact after he mentioned it once in a statement given in 14 April 2004 but not in subsequent statements he simply said he had not been asked.

Gjon Nikolla testified he heard the names *clearly*. This is consistent with the statement he gave to the investigative judge on 26 April 2004.

In his statements of 31 July 2008, Gjon Nikolla said he heard Tune say "*Danil Nokaj, Rrok Bezhi, Simon Nokaj, Anton Nokaj and Leonard Nokaj*".

Vilson Nikolla testified that during the journey to the hospital Tunë repeated two or three times the names of the persons he said had fired the shots into the car hitting him and Dede Allakaj. He said it was Danil, Simon, Anton and Rrok Bezhi. In his statement of 25 February 2005 he said Tune mentioned Danil, Simon, Anton, Rrok Bezhi and Leonard. When he testified before the Court he could not recall Tune Allakaj mentioning Leonard Nokaj.

The witnesses are not always consistent about the precise language used by Tune on each of the occasions he was asked to identify his attackers. However, a common thread runs through their testimony. The witnesses are clear Tune

mentioned "Nokaj" and "Danil". The Court finds Tune Allakaj named the Defendant as one of his attackers.

Being satisfied that Tune named the Defendant as one of the persons responsible for his murder and the murder of his brother, the Court must consider what weight it can attach to that evidence.

In determining the probative value of this evidence, the Court has adopted the following five-stage test:

- i. Can the possibility of concoction or distortion be disregarded?
- ii. To answer this, the Court should be satisfied the event was so unusual, startling or dramatic that it dominated the thoughts of the victim causing an instinctive reaction without the chance for reasoned reflection, in circumstances that were approximate if not actually contemporaneous with the event;
- iii. To be sufficiently spontaneous the statement must be closely connected with the event causing it;
- iv. There must be no special features making concoction or distortion likely;
- v. There must be no special features likely to result in error, for example, drunkenness.

Luz Allakaj, Gjon Nikolla and Vilson Nikolla testified Tune Allakaj named, inter alia, the Defendant as one of his attackers. He mentioned the Defendants name at the scene within minutes of the shooting and, a short time thereafter, during the journey to hospital in Gjakova. He did this prior to any medical intervention that might have compromised his ability to reason or his ability to provide a coherent account of events. Tune suffered serious injuries. Indeed, those injuries proved fatal. He might well have perceived his own death. He had just witnessed the brutal murder of his brother. He had suffered an injury to his face and tongue. He had blood in his mouth. His speech was impaired. He was, nevertheless, with difficulty able to articulate his words.

Given those features, the Court finds the statements made by Tune Allakaj were made sufficiently spontaneously to the event in issue and in circumstances in which he was so emotionally overpowered by the event that the possibility that he was lying can be disregarded.

Mhill Berisha was less candid when he testified. His evidence was not contrived to assist the Defendant. Instead he simply professed ignorance of the events on the day in question. He sought to distance himself from the evidence he gave in his interview with the prosecutor on 30 December 2005 and previously in evidence on 31 March 2005 wherein he candidly described events that were, in essence, consistent with the testimony of other witnesses. He was clearly reluctant to become embroiled in a dispute that had consumed harmony within his community. The Court did not accept the testimony Mhill Berisha gave before the Court that he did not see anything. That evidence so contradicted his prior evidence that it was simply untenable. Instead, the Court chose to accept the evidence Mhill Berisha gave on 31 March 2005 and subsequently in his interview with the prosecutor on 30 December 2005.

The prior statements and/or testimony of Anton Nikolla, Zef Delija, Robert Delija, Pren Hili, Biter Prekaj, Anton Marku, Mentor Bytyqi, Gjok Komani, Prene Nokaj, Trashe Nokaj and Alfred Nokaj were agreed.

Anton Nikolla described seeing an Opel Vectra drive past him after hearing gunshots. He said he recognised Anton Nokaj and Rrok Bezhi inside the vehicle. He could not recognise the driver or a fourth person in the car. He said he was approximately 5 meters from the vehicle that was travelling at approximately 50kph. At the Defendant's first trial he said he did not recognize the Defendant as the driver of the Vectra.

Vilson Nikolla drove Tune Allakaj to the hospital in Gjakova. He was accompanied by Anton Nikolla. He described a conversation between Tune Allakaj and Vilson Nikolla during the journey to the hospital. He testified Tune wanted to say something. Vilson stopped him. He said he heard Tune mention the name Rrok.

Mentor Bytyqi described brief conversations with Tune Allakaj upon his arriving at hospital. Tune was lucid and

capable of communicating - albeit with some difficulty. He described Luz Allakaj talking briefly with Tune.

Gjok Komani said it was difficult for Tune Allakaj to articulate his words but that he was able to understand him. Gjok Komani was not the attending physician. Mentor Bytyqi and Gjok Komani had both previously testified that Tune was able to communicate, albeit with increasing difficulty due to his injuries and later the medical intervention.

Prene Nokaj and Trashe Nokaj are the mother and aunt respectively of the Defendant. It was their evidence that the Defendant was at home at the time of the murders. That evidence was directly contradicted by other witnesses.

Vilson Nikolla testified he had seen the Defendant at the house of Rrok Bezhi prior to the murders. He testified the Defendant was one of the persons he had seen running from the direction of the Bridge towards the Opel Vectra immediately after the shooting. He said the Defendant was carrying a gun. Vilson Nikolla testified the Defendant was driving the Opel Vectra when it passed the shop of Zef Delia. Pren Hili testified on 21 October 2005 the vehicle was being driven by the Defendant. Anton Nikolla testified Anton Nokaj and Rrok Bezhi were in the vehicle when it past him. He could not recognize the driver. Mhill Berisha saw the Defendant alighting from the Opel Vectra and fire a weapon into the air. Gjin Preqi testified about his telephone conversation with the Defendant at 10.41 when the Defendant stated "*We have killed the Allakaj and revenged our blood*". Luz Allakaj, Vilson Nikolla and Gjon Nikolla heard Tune Allakaj name the Defendant as one of his attackers. The Court finds the prior testimony of Prene Nokaj and Trashe Nokaj was, in all material respects, false and contrived to assist the Defendant.

Alfred Nokaj testified that, on the day in issue, he was working in the field when the Defendant came and told him that they should go home because Anton Nokaj had taken blood revenge. He said did not hear any shots that day. He did not know at what time he had spoken with the Defendant but thought it was before 11am. He did not provide an alibi for the Defendant. He could not recall the time he spoke with the Defendant. The substance of his evidence was the fact the Defendant had stated Anton Nokaj had taken blood revenge. That evidence was hearsay. Alfred Nokaj

gave no first-hand evidence in support of the defence case. In any event, given the factual findings of the court to which reference is made herein, the Court finds it unlikely the Defendant in fact told Alfred Nokaj that it was Anton Nokaj and Anton Nokaj alone who had taken revenge.

Zef Delija testified on 6 April 2005 at the trial of Anton Nokaj. Having heard gunshots he described seeing a vehicle approaching his shop. He said he did not see who was in the vehicle because his view was obscured by a garbage container.

Robert Delija testified on 5 April 2005 at the trial of Anton Nokaj. After the shots he saw an Opel Vectra driving at high speed. He too could not see who was inside the vehicle because a large container was obstructing his view.

Pren Hili gave evidence on 27 April 2004 that, having heard gunshots he saw a navy blue Opel Vectra drive past within 3 meters of where he was standing. He said he saw the driver but did not recognise him. He did not see if there were any passengers in the vehicle.

When he testified on 13 April 2005 at the trial of Anton Nokaj he described hearing the gunshots and then the dark blue Opel Vectra of Anton Nokaj driving past.

When he was questioned on 21 October 2005 Pren Hili stated that on the day in issue in the Opel Vectra were Anton Nokaj, Danil Nokaj and Simon Nokaj. He stated that he did not say this previously because he was afraid of the Nokaj family.

When he gave evidence on 13 May 2009 at the Defendant's first trial he said he did not see who was in the vehicle because his view of the vehicle was obstructed by a garbage container outside the shop.

Anton Marku testified on 17 March 2005 at the trial of Anton Nokaj. He described hearing gunshots and then seeing the Opel Vectra belonging to Anton Nokaj driving towards the shop. He testified there were 5 people in the car. He said he could not recognise any of them.

Like Mhill Berisha, Zef Delija, Robert Delija, Pren Hili, and Anton Marku were less than candid in their evidence. They too professed ignorance of the events on the day in

question. Having visited the locus in quo and having stood outside the shop of Zef Delija the Panel finds it inconceivable that a garbage container should obscure the witnesses' view of the street or prevent their observing the approach of the Opel Vectra and seeing its occupants. They lied when they said they could not see the occupants of the vehicle.

Biter Prekaj gave a statement on 8 August 2008 in which he stated Rrok Bezhi told him the Defendant, Anton Nokaj, Simon Nokaj and Leonard Nokaj were responsible for the murder of Tune and Dede Allakaj.

When he testified on 18 May 2009 at the Defendant's first trial he denied Rrok Bezhi mentioned the Defendant.

Like many of the other witnesses in this case Biter Prekaj changed his evidence. In any event, the evidence of this witness regarding what he says Rrok Bezhi stated is hearsay.

During their examination of the scene police found 19 empty casings and two live shells were found at the crime scene (the calibre was 7.62 x 39). The spent cartridges were found near the vehicle, one of them immediately under the front of the vehicle and the others at various distances on the road or on the right side of the road behind the vehicle.

A total of 24 bullet holes were found in the chassis of the Mercedes. Five bullet holes were observed in the windscreen; six bullet holes in the rear window; all four side windows were broken and perforation and scratching traces were present in the seals; one bullet hole was in the engine hood, caused by a weapon fired from the front; one bullet hole in the right side, between the front wheel and the front door, fired at an oblique angle downwards; one bullet hole in the mirror, caused by a weapon fired from the front of the car; two bullet holes in the front door on the right side, caused by weapon fired from the right side; five bullet holes in the rear door on the right side, caused by weapons fired from the right side, back to front; one bullet hole close to the cap of the fuel tank caused by a weapon fired from the right side; one bullet hole in the right rear side of the car, caused by a weapon fired from the back; one bullet hole in the rear tyre on the right side; in the rear door on the left side an exit

hole and bullet holes in the upper part of the front seat on the passenger's side, at the headrest.

Dede and Tune Allakaj were found inside the vehicle. There is no evidence that either Tune or Dede Allakaj were in possession of a weapon at the relevant time. None was found at the crime scene. The Court does not accept the Defence assertion that some of the spent cartridges found at the scene support the Defence assertion the deceaseds were armed and/or that Anton Nokaj was acting alone.

Apart from one spent cartridge found under the front of the vehicle, the others were found behind the vehicle at a distance of between 6 and 28 meters. As a matter of simple logic, this would suggest the vehicle was moving slowly forwards when the shots were fired.

Qlirim Hajdini conducted microscopic comparison of 35 7.62 x 39mm calibre cartridge cases and one 7.62 x 39mm calibre misfired cartridge recovered from the scene.

In his report dated 14 May 2004<sup>18</sup>, which was clarified by the evidence he gave on 13 May 2009 at the Defendant's first trial, he stated that of the 35 cartridge cases 24 were fired from one weapon. Of the remaining cartridge cases, 9 and the one misfired cartridge were fired from a second weapon. The remaining 2 cartridge cases were fired from a third weapon.

Two of the bullet cases were fired by the same weapon and three did not have sufficient characteristics for further analysis.

In his conclusion Qlirim Hajdini concludes the 35 cartridge cases and the 1 misfired cartridge case were fired by three different 7.62 x 39mm weapons. Given the fact shots were fired from three different weapons it follows, as a matter of simple logic, that at least three persons were involved in the murders. That is consistent with the real evidence and is consistent with the evidence of Vilson Nikolla who described seeing three persons carrying guns running from the scene of the shooting towards the waiting Opel Vectra. The Defendant was one of the three armed men.

All items were submitted to the Open Case Library of the

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<sup>18</sup> Submitted under Memorandum dated 18 May 2004

Ballistic Section. There were no matches.

No evidence was put before the Court regarding what, if any, search had been conducted immediately outside the Defendant's yard. There was no dispute that shell cases were found outside the yard of Anton Nokaj. This is, of course, relevant to the testimony of Mhill Berisha who testified the Defendant was the driver of the Opel Vectra that he alighted from the vehicle and fired into the air. The most likely explanation for the absence of such evidence is simply that police did not conduct an examination of the ground outside the Defendant's yard. It appears that, at that stage, police enquiries were focused on Anton Nokaj. There was no motive for Mhill Berisha to lie about that. Was he confused between the Defendant and Anton Nokaj? No. He said the Defendant went into his yard and subsequently left in his BMW motor vehicle.

Arsim Gerxhalliu performed autopsies on both Dede Allakaj<sup>19</sup> and Tune Allakaj<sup>20</sup>. He testified on 30 March 2005 at the trial of Anton Nokaj. He further testified on 18 May 2009 in Defendant's first trial.

The following is a transcription of the English translation of the autopsies performed on both Dede Allakaj and Tune Allakaj.

Ded Allakaj sustained the following injuries:

1. On the rear side of the right ear is a superficial injury to the skin measuring 95 x 15 mm (1.1), with a depth of up to 5 mm - extending from back - front puncturing (perforating) the right earlobe exactly in the middle - continuing until before the ear. The skin around is slightly darkened - particularly in the beginning of the rear part.
2. On the rear left side (occipital) of the head, 3 cm below the upper horizontal line and 2 cm from the middle of the rear anatomical line appears a skin injury in the shape of a star measuring 30 x 18 mm, with irregular edges and slightly inward - blooded - and comprising an entry hole (2.2) - where projectile enters the head attacking frontal part of

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<sup>19</sup> MA/04-064

<sup>20</sup> MA/04-065

the skull (after opening a hole is of the size 8 x 7 mm with a cone detached inward of skull 15 x 12 cm) - thus gives a radiating skull fracture (pushing toward frontal side) - there appears a destruction of the frontal part in many particles - then it injures - of a brain-mantel of a hard and soft brain (laceration) - upper part of the left brain hemisphere - and then injures frontal part (in large scale) and the fracture is interconnected with other fractures - a projectile exists on the left part of a frontal bone, 3 cm away from the middle anatomical line (after opening a hole is of the size 9 x 9 mm with cone detached outward - 14 x 12 mm) - thus shows an injury consisting of the exit hole (2.2) - of irregular circular shape measuring 13 x 9 mm - with edges almost of regular shape and detached outward - and covered with blood. Path - the trajectory of the projectile is from back - front and slightly from the right towards the left.

3. In the rear lower part of left occipital, 5.5 cm below of described injury under 1.1 - appears a skin injury of regular shape - star that measures 27 x 18 cm (3 cm far from rear middle anatomical line - and 8.0 cm below of upper horizontal line) - edges are irregular and intruded - covered with blood - the same ones consists of entry hole (3.1) - where the projectile enters in the head attacking a skull bone ( after opening of the skull bone - measures are 9 x 8 mm with expansion of the cone towards inside 13 x 13 mm) thus giving radiating fracture of the skull that is interconnected with other fractures - and then injuries - hard and soft cover of the brain (laceration) - lower part of left hemisphere (along this part is noticed a bleeding alongside the bases of left hemisphere) - and then the orbit of the eye and zygomatic bone (during this path left eye was injured) - and then the projectile goes out - 13 mm down and out of the outer corner of left eye and thus gives an exit hole(3.2), (10 cm down from the upper horizontal line)round -shaped with regular edges torn outside and covered in blood, dimensions of 15 x 10 mm. The trajectory of the projectile is from back to front, from up - down and from right slightly to the left.
4. In the outer back side of the neck, on the left side, a 48 x 39 mm injury appears of an irregular round form - with a linking bridge of skin tissue in the front

side, with edges curled on the inside - especially the location where the projectile entered is well-stamped - the same entry corresponds with the entry point (4.1); after the projectile entered, its trajectory attacked the regional muscles (the metal cartridge bit is in this area), the blood vessels (the left side destroyed in continuity), the left side of the hyoids bone is broken, the upper part of the trachea is damaged on its left back side, and opening the trachea revealed the (swallowed) projectile at the bottom of it, 1.5 cm further down from the bifurcation, on the left side. Photo RTG 1. (The projectile and cartridge to be sent to the police for further ballistic examination). The trajectory of the projectile is from behind towards the front.

5. In the left upper quadrant of the back, 3 cm from the mid-anatomic point and 11.5 cm further down from the bottom side of the neck, there is an oval-shaped skin injury with light in-going edges which consists of the entry hole (5.1), dimensions of 12 x 7 mm and 188 mm deep - the tip of the measurer touches on the bone portion of the scapula, which is not broken, however, in this case, during its movement the projectile lost its energy until it reached the body of the deceased, and it is not in the hole. Injury to be found in the skin, under-skin tissue and regional muscle.
6. On the right upper-arm, right at the bottom of the lower arm, on the outer surface, there's a skin injury (superficial injury) of 68 x 20 mm, (6.0) protracted and irregular oval shape, up to 6 mm deep, with a girth ring of 2 mm especially on the back side. The trajectory is from behind to the front.
7. On the exterior back side portion of the right knee there is a skin injury of a round shape with in- going edges , dimensions 9 x 8 mm, which consists of an entry hole (7.1) and it continues further into the leg attacking the skin, the under-skin tissue and the regional muscles, and then goes out to the back part of the inner surface of the right leg - which consists of an exit hole (7.2) - dimensions of 15 x 11 mm, with out-going slightly oval irregular edges. The trajectory goes from right to left, from behind to the front.

8. On the inner surface of the right under-knee (1/3 of its upper part) there is a skin injury 42 x 22 mm, 3 mm deep, of irregular oval shape, with a dark ring of the back side (8.1). The skin has been attacked as well as the under skin tissue and it is a superficial tangential injury. The trajectory (based on the injury and the clothes) goes from behind to the front and from right to left.

In his summary, the pathologist concluded the injury described in items 2, 3 and 7 are penetrating wounds; the injuries described in items 4 and 5 are intruding wounds and the injuries described in items 1, 6 and 8 are tangential superficial wounds. In his opinion, the injuries sustained by the fire weapon are consistent with his sitting position at the moment the injuries were sustained. Dede Allakaj died as a result of the placation-laceration of the vital organs, i.e. the brain, the trachea and the blood vessels in the neck due to the perforating injuries that caused a hemorrhage shock that is consistent with gunshot wounds.

Tune Allakaj sustained the following injuries:

1. On the right side of the face, exactly on the top of the right cheekbone in a distance of 3 cm from the outer angle of the right eye and in a distance of 4,5 cm from the left side of the nose extremity, it appears an irregular skin injury (1.1) in the shape of a star with measures 20 x 15 mm, which is characterized of irregular edges and slightly inward - without a round ring - towards its upper part, there is a slight bruise of dark color up to 1 mm wide, and corresponds to the entry wound. The projectile has penetrated into the body of the deceased causing an injury on the skin face, additionally into its dermal part, and to the bone of the right cheekbone (the same has a radial fracture toward the teeth of the right upper jaw) through its trajectory caused a damage of the right part of the tongue, then the left side of the neck, (including the peripheral muscles and the left carotid artery) further the dermal tissues - and in its exit destroyed the epidermal tissue of the left side of the neck (on the outer surface) exactly 8 cm below from the lower angle of the right earlobe and 1 cm before the middle of rear anatomical line (1.2) with measures 10 x 06 mm, which is of an irregular

oval shape with edges detached outward. It corresponds with the exit wound. In the RTG conducted, small metallic pieces are observed, (the bullet casings) at the bottom side of neck and on the left jaw). The trajectory and the anatomical (channel) of the projectile was from back to front, from upward to downward and from right to left.

2. 18 mm below the described injury in the item 1 (1.1) and in a distance of 28 mm from the lower angle of the earlobe, it appears a skin injury with measures 40 x 20 mm (of an irregular oval shape, and irregular inward edges covered with blood, with a light bruise to 1 mm in the upper part, and it corresponds with the entry wound. The projectile has penetrated into the body of the deceased causing a skin injury, to the dermal tissue on the right side of the face, to the regional muscles and 18 mm deep, exactly at the right side of the right lower jaw, the projectile is found to be attached to the bone, inflicting a fracture upon it. The direction is from the right to left and downwards.
3. 23 mm below and slightly inward the aforementioned wound as described in item 2 in the upper part of the right side of the neck, there is a skin injury, measuring 30 x 15 mm and 5 mm deep, with oval shape with a regular angle from its bottom with a damage of the dermal and epidermal tissue including very superficial part of the peripheral muscles - the injury continues downwards and expands toward the left side causing small injuries of the epidermis, then concluding with a superficial skin injury on the right upper part of the ribcage adjoining with the bottom side of the neck. The wound is superficial and tangential and does not exclude the likelihood of being caused from a peripheral element during the trajectory of the projectile. Direction from the right to the left, from the upward to the downward and slightly from back to front.
4. In the right upper quadrant of the chest - in the right side where the internal part of the left side of the chest starts, there are several superficial injuries on the skin (which includes only the epidermis) with different measures, from 2 x 1 to 11 x

10 mm, and almost all are characterized by a dark color contusion ring around the edges of the injury.

5. In the 1/3 of the upper part of the outer surface of the left parallel there is tangential injury, causing the injury of the epidermal tissue and the dermal tissue, the regional muscles and its ligaments, measuring 9 x 4, 5 cm and 2 cm deep, with irregular edges and of an irregular oval shape, with bruises in the dark color contusion ring from the inner side. Direction from the Front to the Back (believing that the hand was on the steering wheel).
6. In the internal surface of the right parallel it appears to be a brownish blushing measuring 60 x 25 mm.

The pathologist concluded that the fatal wound is the aforementioned injury as described in item 1.

There were no other signs of traumatic bruises observed apart from the aforementioned descriptions of the external and internal examination.

The post-mortem changes observed during the examination of Tune correspond with the time of the death, and the data provided in the police report issued by the forensic unit.

Following the complete procedure of the autopsy and also the police information, the pathologist concluded that Tune Allakaj died as a consequence of the interruption of the left carotid artery from a penetrating laceration of it, due to the action of a high velocity bullet, which finally has resulted in a hemorrhagic shock.

The Court finds the injuries sustained by Dede Allakaj and Tune Allakaj are consistent with multiple gunshot wounds.

Considering inter alia the Crime Scene Report of Gjakova Forensics Unit dated 24 March 2004, photographs of the Opel Vectra motor vehicle registration number 408-KS-799; Vehicle Examination Report of Mercedes motor vehicle registration number 119 KS 154 dated 23 April 2004; photographs of the Mercedes vehicle registration number 119 KS 154; Crime Scene Report dated 19 March 2004; Ballistics Report dated 18 May 2004 of Qlirim Hajdini; the Autopsy Report number MA 04/065 dated June 2004 of Asim Gerxhaliu ;

the Autopsy Report (Dede Allakaj) number MA 04/064 dated May 2004 of Asim Gerxhaliu, the witnesses who testified before this Court and the prior agreed testimony/statements of witnesses, the Court finds that on 19 March 2004 at approximately 10.30am at the Ure e Jakes in the village of Marmulle, Gjakova Municipality the Defendant, as a co-perpetrator, intentionally and brutally within the context of a blood feud, armed with an automatic weapon of 7.62mm ambushed the deceased Dede Allakaj and Tune Allakaj who were travelling in a Mercedes motor vehicle registration number 119 KS 154 firing into the said motor vehicle causing fatal injuries to Dede Allakaj and Tune Allakaj.

A total of 24 bullets holes were found in the chassis of the Mercedes. This was a very public execution.

Dede Allakaj was shot a number of times and suffered lacerations of the brain, trachea and blood vessels of the neck. Tune Allakaj was shot a number of times, his left carotid artery was severed and he died as a result of haemorrhagic shock. This was the brutal execution of Tune and Dede Allakaj as they went about their everyday activities committed out of a blood feud. The Defendant drove the Opel Vectra from the Scene. He left Kosovo a few days later.

Dede Allakaj left a wife and 4 children. Tune Allakaj left a wife and 5 children.

There was no evidence the Defendant was the instigator or that his role in the murders was greater than that of his co-perpetrators. Three weapons were used. Luz Allakaj testified Tune Allakaj stated at the scene "Danil was the one in front". Even if those words were uttered by Tune that does no more than support the Prosecution case that the Defendant was one of the co-perpetrators.

The Defendant has no prior convictions. He is the father of 5 children. Of course, regrettably, they too are victims in this case. It behoves all who commit criminal offences to consider the consequences of their actions.

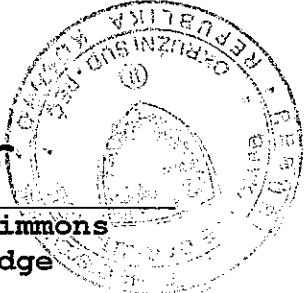
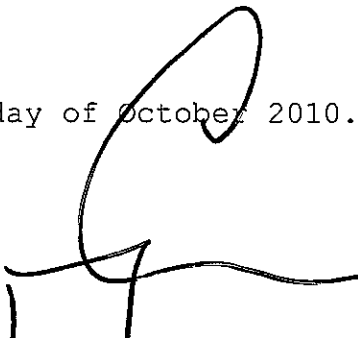
The Defendant described his financial situation as "average".

Having regard to all the circumstances of this case we are

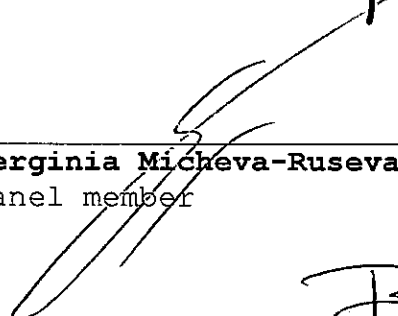
satisfied the sentence is reasonable and proportionate.

For the reasons stated herein we hereby render this Judgment.

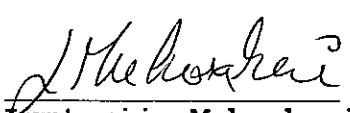
Dated this 15 day of October 2010.



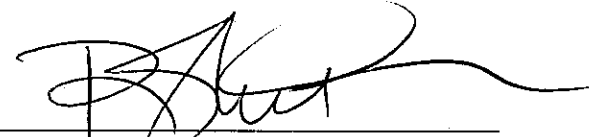
Judge Malcolm Simmons  
Presiding Judge



Virginia Micheva-Ruseva  
Panel member



Lumturije Muhaxheri  
Panel member



Robina Struthers  
Court Recorder

**LEGAL REMEDY:** Pursuant to Article 400 of the CPCK, an appeal should be announced within eight (8) days following the announcement of the judgment. Pursuant to Article 398(1) of the CPCK, the authorized persons may file an appeal of this Judgment within fifteen (15) days of the day the copy of the judgment has been served.