

DISTRICT COURT OF PEJË/PEĆ

P. Nr. 178/2008

11 June 2009

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJË/PEĆ, in the trial panel composed of the International Judge Gianfranco Gallo as Presiding Judge, the International Judge Ferdinando Buatier de Mongeot and the Kosovan Judge Hasan Rizaj as panel members, assisted by the Recording Officer Elizabeth Bateman, in the criminal case against the accused

DANIL NOKAJ, born on 12/4/1970 in the village of Marmullë (Gjakovë), male, father's name Nikolla, mother's maiden name Prene Gojani, Kosovo Albanian, residing in the village of Marmullë, primary school accomplished, unemployed, married and father of 5 children, of average financial situation, with no previous convictions, in detention on remand since 29 May 2008, represented by attorneys Fazli Balaj and Mustafa Radoniqi;

charged, according to the Indictment PP. Nr. 340/2005 dated 25/8/2008 and filed with the Court on the same day, with the following criminal offence:

Murder committed out of blood feud and in a brutal or insidious manner, pursuant to Article 30, par. 2, items 1 and 4 of the Criminal Law of Kosovo of 1977, in conjunction with art. 22 of the YCL, of Tunë Allakaj and Dedë Allakaj, committed at the Urë e Jakes, village of Marmullë (Gjakovë/Dakovica Municipality) on the 19th of March 2004.

In particular, Danil Nokaj, 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 the distance of 4-5 meters several bursts of gunfire, hitting Tunë Allakaj and Dedë Allakaj with numerous rounds in several parts of their bodies, thus causing them injuries which led to their death.

The murder was committed in the framework of the blood feud initiated by the son of the deceased Dedë Allakaj, Anton, who murdered the late Engjell Nokaj, relative of the defendant Danil Nokaj.

Crimes punishable by ten to forty years of imprisonment.

After having held the main trial hearings in public on 21.04.2009; 05.05.2009; 06.05.2009; 07.05.2009; 12.05.2009; 13.05.2009; 14.05.2009; 18.05.2009; 21.05.2009; 10.06.2009; 11.06.2009, in the presence of:

- the accused Danil Nokaj and his defence counsels Mr. Mustapha Radoniqi and Fazli Balaj;
- the Public Prosecutor Mr. Gezim Kollqaku;
- the injured party Mr. Luz Allakaj and his defense counsel Mr Haxhi Millaku

after the trial panel's deliberation and voting held on the 11th of June 2009, based on Article 391 Paragraph (1) of KCCP,

on the 11th of June 2009, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the Accused the following

VERDICT

Danil Nokaj is

FOUND GUILTY

Of the criminal offence of Murder committed out of blood feud and in a brutal or insidious manner of Tunë Allakaj, pursuant to Article 30, par. 2, items 1 and 4 of the Criminal Law of Kosovo of 1977, in conjunction with art. 22 of the Yugoslavian Criminal Law, committed at the Urë e Jakes, village of Marmullë (Gjakovë/Dakovica Municipality) on the 19th of March 2004

And

Of the criminal offence of Murder committed out of blood feud and in a brutal or insidious manner of Dedë Allakaj, pursuant to Article 30, par. 2, items 1 and 4 of the Criminal Law of Kosovo of 1977, in conjunction with art. 22 of the YCL, committed at the Urë e Jakes, village of Marmullë (Gjakovë/Dakovica Municipality) on the 19th of March 2004;

therefore the accused is

SENTENCED

to twenty years of imprisonment for the criminal offence of Murder committed out of blood feud and in a brutal or insidious manner, pursuant to Article 30, par. 2, items 1 and 4 of the Criminal Law of Kosovo of 1977, in conjunction with art. 22 of the Yugoslavian Criminal Law, of Tunë Allakaj, committed at the Urë e Jakes, village of Marmullë (Gjakovë/Dakovica Municipality) on the 19th of March 2004

and

to twenty years of imprisonment for the criminal offence of Murder committed out of blood feud and in a brutal or insidious manner, pursuant to Article 30, par. 2, items 1 and 4 of the Criminal Law of Kosovo of 1977, in conjunction with art. 22 of the Yugoslavian Criminal Law, of Dedë Allakaj, committed at the Urë e Jakes, village of Marmullë (Gjakovë/Dakovica Municipality) on the 19th of March 2004

Therefore Danil Nokaj is sentenced to an aggregated punishment of thirty-three (33) years of imprisonment for both murders.

The time spent in detention on remand by the defendant is to be credited against the punishment, pursuant to Article 391 Paragraph (1) Subparagraph 5 of the PCPCK.

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCPCK with the exception of the costs of interpretation and

translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCPCK.

REASONING

1. The background of the case and the procedural steps

The present trial is the third one stemming out of the murder of Tunë and Dedë Allakaj. The proceedings against Anton Nokaj, Simon Nokaj and Rrok Bezhi have already been terminated. Each of them was convicted and the verdicts are part of the case file of this trial. Anton Nokaj and Simon Nokaj are serving a prison sentence and Rrok Bezhi is currently at large.

The investigation against Danil Nokaj was initiated on 28.7.2005 and, after its suspension, on 29.05.2008 a ruling for re-initiation of the investigation was issued, together with the ruling for detention on remand against the defendant.

On 25.08.2008 the indictment was filed

On 17.10.2008 the confirmation hearing was held and the ruling on confirmation of the indictment was issued.

On 27.11.2008 the defense counsels filed a request for dismissal of the presiding judge which was rejected by the Supreme Court.

On 05.01.2009 the defense counsels requested the case to be assigned to EULEX judges. Subsequently, on 14.01.2009, the President of EULEX Judges held the hearing and on 26.01.2009 EULEX judges were assigned to the case.

Main trial sessions were held on the following dates: 21.04.2009; 05.05.2009; 06.05.2009; 07.05.2009; 12.05.2009; 13.05.2009; 14.05.2009; 18.05.2009; 21.05.2009; 10.06.2009; 11.06.2009.

On 28.05.2009 the Trial Panel issued an Order for the Acquisition of Metering of Telephone Calls.

During the main trial the following witnesses were heard:

1. Luz Allakaj (injured party), 05.05.2009
2. Gjon Nikolla, 05.05.2009
3. Vilson Nikolla, 05-06.05.2009
4. Anton Nikolla, 06.05.2009
5. Gjin Preqi, 07.05.2009
6. Prene Nokaj, 12.5.2009
7. Trashe Nokaj, 12.05.2009
8. Pren Hili, 13.05.2009
9. Alfred Nokaj, 13.05.2009
10. Mentor Bytyqi, 14.05.2009
11. Gjoke Komani, 14.05.2009
12. Qlirim Hajdini (ballistic expert), 18.05.2009
13. Arsim Gerxhaliu (forensic expert), 18.05.2009
14. Biter Prekaj, 18.05.2009
15. Danil Nokaj (defendant), 21.05.2009
16. Ismet Fetaj, 10.6.2009

The following statements (which were given by witnesses previously in front of the investigators or during other main trials) were acquired *ex officio* and used in order to confront the witnesses during their examinations. The statements listed from 1 to 10 relate to witnesses who were interviewed during this main trial, whereas the following ones refer to statements which, upon agreement between the parties, were read out (or considered as read out) during the main trial without interviewing the witness:

1. Lux Allakaj: interviews by the prosecutor 14.4.2004 and 31.7.2008 during the investigation against Anton Nokaj; testimonies in the trial against Anton Nokaj 1.3.2005 and 12.4.2005.
2. Gjon Nikolla: interview by the prosecutor 26.4.2004 during investigation against Anton Nokaj; interview by the prosecutor 31.7.2008 during the investigation against Danil Nokaj; testimony in the trial against Anton Nokaj 3.3.2005.
3. Vilson Nikolla: interview by the prosecutor 25.2.2005 during the investigation against Anton Nokaj; interview by the prosecutor 31.7.2008 during the investigation against Danil Nokaj; testimony 31.3.2005 in the trial against Anton Nokaj.
4. Anton Nikolla: statement to the police 19.3.2004 during investigation against Anton Nokaj; interview by the prosecutor 31.7.2008 during the investigation against Danil Nokaj; testimony 2.3.2005 in the trial against Anton Nokaj.
5. Gjin Preqi: interview by the prosecutor 31.7.2008 during the investigation against Danil Nokaj
6. Pren Hili: interview 2004 by the prosecutor during the investigation against Anton Nokaj; interview by the prosecutor 21.10.2005 during the investigation against Simon Nokaj; testimony 13.4.2005 in the trial against Anton Nokaj.
7. Mentor Bytyqi: testimony 31.3.2005 in the trial against Anton Nokaj
8. Gjoke Gomani: interview by the prosecutor 27.4.2004 during the investigation against Anton Nokaj; testimony 5.4.2005 in the trial against Anton Nokaj.
9. Qlirim Hajdini (expert witness): testimony 2.3.2009 in the trial against Anton Nokaj.
10. Arsim Gerxhaliu (expert witness): Testimony 30.3.2005 in the trial against Anton Nokaj.
11. Mikel Berisha: statement to the police 28.4.2005 during the investigation against Simon Nokaj; interview by the prosecutor 21.12.2005 during the investigation against Simon Nokaj; interview by the prosecutor 8.8.2008 during the investigation against Danil Nokaj
12. Mhill Berisha: interview by the prosecutor 30.12.2005 during the investigation against Simon Nokaj; testimony in a trial against Anton Nokaj 31.3.2005

13. Robert Zef Delija: statement to the police 8.3.2004; interview by the prosecutor 29.4.2004 during the investigation against Anton Nokaj; testimony in a trial against Anton Nokaj 5.4.2005
14. Zef Mark Delija: testimony in a trial against Anton Nokaj 6.4.2005
15. Anton Marku (who bore the name of Anton Rasi): testimony in a trial against Anton Nokaj 17.3.2005

The following witness statement was provided by the parties and considered as read out without interviewing the witness: Mikel Berisha, interview by the prosecutor 4.8.2005 (provided by the lawyer of the injured party Haxhi Millaku 13.5.2009, minute page 13, par 2).

The following material evidence was acquired *ex officio*:

- A. the scheme of the crime scene
- B. crime scene report 2004 DB 810 dated on 19/03/2004
- C. the legend of evidence description 2004 DB
- D. crime scene report of Gjakova Forensics Unit 2004 DB 810 dated on 24/03/2004
- E. photos of the vehicle of the convicted Anton Nokaj, model Opel Vectra, plates 408 KS 799
- F. report upon vehicle examination of Mercedes 300 D and the photos of the mentioned vehicle conducted during examination by Peja Regional Investigations Unit
- G. report of the crime scene HNP no. 30/04 dated on 19/03/2008 compiled by investigative judge Hilmi Hoxha from Gjakova
- H. ballistic report of the cartridges, live rounds and shell casings and three metallic pieces dated on 18/05/2004 marked as no. B 040258 examined by expert of ballistic Qlirim Hajdini
- I. autopsy report ref. MA 04-065 dated on June 2004 regarding the deceased Tunë Allakaj
- J. autopsy report ref. MA 04-064 dated on May 2004 regarding the deceased Dedë Allakaj
- K. the crime scene inspection report compiled by court in village Marmullë during the trial against Anton Nokaj and Rrok Bezhi;
- L. Ruling of the Public Prosecutor ordering the metering of the telephone calls performed by Gjin Preqi on the 19th March 2004 and documentation of the Police in execution of that order;

The following material evidence was presented by the parties:

- M. Copy of a Croatian passport nr. 002225246 in the name Zlatko Prgomet, used by the defendant.

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

2.1. With regard to the applicable substantial law, it has to be noted:

- that the murder of Tunë and Dedë Allakaj took place on the 19th of March 2004.
- That the substantive law applicable to the case is the one in force when the crime was committed, unless a more favorable one entered into force subsequently (art. 2 Kosovo Criminal Code, identical to the Criminal Law of Yugoslavia to this regard);
- That the law in force at the time of commission of the crime was the Criminal Law of Kosovo of 1977: art. 30, para 2, of CLK established for the crime of aggravated murder the penalty of imprisonment of at least 10 years or the death penalty (which, following the regulations of the SRS 24/1999 and 59/99, was transformed in the imprisonment between a minimum of 10 years and 40 years);
- That the Criminal Code of Kosovo, which entered into force in 2004, punishes (art. 147, para 3) the same crime with the imprisonment of at least 10 years or with the long term imprisonment (i.e. a deprivation of liberty between 21 and 40 years).
- That therefore the framework of punishment provided for by both laws (CLK 1977 and CCK 2004) is a deprivation of liberty between a minimum of 10 years and a maximum of 40 years (regardless of the fact that in the new code such deprivation of liberty also takes the name of "long term imprisonment");
- That the long term imprisonment is characterized also by a more severe regime in terms of statutory limitation (art. 92 PCK compared to art. 92 CLY) and of execution of sentences.

Thence the Criminal Code of Kosovo (2004) cannot be regarded as a more favorable law and therefore the Criminal Law of Kosovo (1977) (in connection with the Criminal Code of the Socialist Republic of Yugoslavia) applies to the present case.

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

The District Court of Pejë/Pec is territorially competent, since the village of Marmullë is within the jurisdiction of the District Court of Pejë/Pec.

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

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

In this case, two EULEX judges have been appointed by the President of EULEX Judges on 26.1.2009, following a request from the defendants to substitute the local judges with international judges. They have been flanked by a Kosovo judge throughout the trial.

It has to be added that *in limine litis* the parties had nothing to comment or to question about the composition of the panel.

3. The merits of the case

3.1. All witnesses made reference, during the course of their testimonies, to a sketch which was present in the case file. It has been attached to this reasoning for the sake of easy consultation.

Since the sketch does not respect proportions, it must be considered as merely indicative. A list of letters has been added in order to make the consultation of the sketch clearer:

- A: Crime scene
- B: Rrok and Pal Bezhi's house
- C: Demjan's Wire
- D: Zef Delija's shop
- E: Vilson and Gjon Nikolla's houses
- F: Anton Nokaj's house
- G: School
- H: Danil Nokaj's house
- I: Luz Allakaj's house.

3.2. The evidentiary proceeding has been characterized by the presence of two distinct descriptions of the events of the 19th of March, 2009.

The first one derives from the witnesses Luz Allakaj, Vilson Nikolla, Gjon Nikolla, Anton Nikolla, Gjin Preqi, Mhill Berisha and Mikel Berisha. All these witnesses gave statements which linked Danil Nokaj to the crime (either because they said they saw him escaping together with the other assailants, or because they said they saw him shoot into the air for celebrating after the crime, or because they said that the name of Danil Nokaj was quoted by the victim before dying). These witnesses provide the backbone of the accusation and have to be read in conjunction with the material evidence and with the statements made by other witnesses who, despite not referring directly to Danil Nokaj, provide corroborating information.

The second description radically differs from the first and *de facto* provides Danil Nokaj with an alibi (reference is made here to the statements of witnesses Prene Gojani, Trashe Nokaj and – to a lesser extent - Alfred Nokaj, all indicated by the defense).

3.3. The Panel assessed, at the end of the main trial, that the first version is the only one which can explain the events of the 19th of March 2004 in such a way that all the evidentiary elements arisen during the trial (and notably those of an objective and material nature) can find a suitable explanation.

Below is a detailed reasoning of the above conclusion.

An outline will be given for each of the relevant testimonies, in order to:

- resume their contents and the factual reconstruction which stems out of it;
- assess them under the point of view of the personal credibility of the witnesses and of its logicalness and coherence, as well as with regard to its harmonization with the other statements.

This analysis of the oral evidence will be preceded by an assessment of a part of the material evidence present in the case file.

4.1. The police report of 19 March 2004, the examination of the car of the victims of 22 April 2009, the ballistic expertise

At 10.40 of 19 March 2004 the Police in Gjakova received a report about a shooting which occurred in the village of Marmullë. The shooting was reported to have happened at 10.30¹.

At 10.45 a patrol of the Gjakova Police reached the crime scene, located at the Urë e Jakes ("The bridge of Jaka"), on the road which led to Marmullë coming from the main road Gjakova-Prizren.

An investigation unit from the Police of Gjakova reached the crime scene at 11.30 of the same day and performed an initial assessment. The green Mercedes D300 property of the Allakaj brothers could be seen, riddled with bullets. The dead body of Dedë Allakaj was in the front passenger seat. He had been shot with automatic guns. The police was informed that another person, Tunë Allakaj, who had been driving, was "heavily wounded" and had been transferred to the hospital of Gjakova.

The vehicle was shot with bursts of automatic gun from the front part and the right side. 19 empty casings and two live shells were found at the crime scene (the calibre was 7,62x39). 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.

16 other empty casings (7,62x39) were seized by the Police at or by the house of Anton Nokaj (who, together with Rrok Bezhi, was immediately regarded as a possible suspect). The car of the victims was further examined later on by the Police on the 22nd of April 2004 .

The following bullet holes were documented on it:

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

¹ The timing contained in the reports of the police is important, because there were some discrepancies among the witnesses as to the precise timing of the event (their collocation of the shooting ranged between 10.00 and 10.30).

- a bullet hole in the right rear side of the car, caused by a weapon fired from the back
- a 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.

Consequently, altogether 24 bullet holes appear in the car, without counting those in the tyres. Two of them were for sure fired by a weapon shooting from the front of the vehicle (the one which hit the hood above the engine and the one which hit the side mirror); another five had been most likely shot from the front as well (the ones in the windscreen - which might, though, also be the exit holes of the bullets entered from the back window: the police report was not clear on this).

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

Of the 35 spent casings which were overall found at the crime scene or at Anton Nokaj's house, 24 were fired from one weapon, nine (plus the live shell) were fired from a second weapon, and two empty cartridges were fired from a third weapon.

This conclusion is contained in the ballistic report compiled by the witness Qlirim Hajdini. He was also examined during the main trial during the hearing of the 14th May 2009.

The panel deems that the above conclusions are convincing: they are based on factual elements which are properly and clearly exposed by the expert, through a reasoning which is free from logical gaps or errors, in correct application of the standard procedure for this kind of scientific examination (i.e. microphotography comparison of the shooting traces present on the spent casings).

It has to be noted that the parties did not question the outcomes of the ballistic expertise under this regard.

The defense counsels only limited themselves to alleging that there was not enough evidence that the casings which were examined by the expert in the laboratory were the same which had been seized by the investigators at the crime scene. On this the expert witness was able to provide a satisfactory explanation during the examination, clarifying the paper track of the chain of custody of the body of evidence.

4.2. The autopsies

The forensic doctor Arsim Gerxhaliu performed the autopsies on the bodies of the victims (see case file, autopsy reports of 20 March, 2004). He was also examined during the main trial.

He confirmed:

- that Tunë Allakaj's death was 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 resulted in a haemorrhagic shock;
- that Dedë Allakaj's death was a consequence of the laceration of vital organs (brain, trachea and blood vessels of the neck) due to perforating injuries caused by projectiles shot by fire weapons.

This provides further verification of the circumstance (never contested by the parties) that the death of the victims was directly caused by the shooting which took place in the ambush of 19th March 2004.

4.3. The metering of the telephone calls

The public prosecutor ordered the acquisition of the metering of the telephone calls of Danil Nokaj and Gjin Preqi. The results have been lawfully acquired to the case file. Their significance for the adjudication is assessed below sub 4.4.g.

4.4. The testimonies

a. Luz Allakaj

Luz Allakaj is the brother of Tunë and Dedë Allakaj.

He was called to testify six times, during the investigative stage and on the occasion of the previous main trials held against Anton Nokaj, Simon Nokaj and Rrok Bezhi.

The contents of the testimony of Luz Allakaj during the main trial can be summarized as follows:

- a blood feud between the Nokaj and Allakaj families of the village of Marmullë started in the year 2000 when the son of Dedë Allakaj killed Engjell Nokaj;
- on the 19th of March 2004 the witness was at home with Tunë and Dedë, who were leaving the house² with their Mercedes D300;
- some minutes after they had left, he was informed by his cousin and nephew that some bursts of Kalashnikov had been shot from the direction of the Urë e Jakes (Bridge of Jaka). This made him concerned, since he was aware of the ongoing blood feud with the Nokaj family;
- he, therefore, immediately took his vehicle in order to check what had happened. On his way towards the Urë e Jakes, he met Anton Nikolla before arriving at the grocery shop of Zef Mark Delija (which lies at a distance of about 150-200 meters from the Urë e Jakes). Anton Nikolla told him: *“Go fast, your brothers have been shot at”*, adding that it had been done by the Nokajs;
- proceeding towards the crime scene he passed in front of the shop of Zef Mark Delija³, where he noticed (among other 15-20 people) Vilson Nikolla who, as well, told him: *“Go fast, because they killed your brothers”*, adding that it was *“The Nokaj”*.
- Finally, about 10-20 minutes after the shooting, he arrived at the crime scene⁴. There he found the brother Tunë and Dedë still inside the car. Dedë was already dead, whereas Tunë was still alive. Opening the door of the car, Luz Allakaj asked Tune who had shot and Tunë answered: *“Nokaj”*;
- Immediately after Luz Allakaj, Gjon Nikolla, Vilson Nikolla, Anton Nikolla, Gjok Berisha and Pieter Oroshi turned up at the crime scene

² The victims' house is marked with the letter "T" in the attached sketch

³ The shop is marked with the letter "D" in the attached sketch.

⁴ Marked with the letter "A" in the attached sketch.

- Luz Allakaj and Gjon Nikolla helped Tunë out of the front seat and to the back seat of the Mercedes, in order to drive him to the hospital of Gjakova. From the back seat he repeated to Luz that the ambush had been perpetrated by Danil Nokaj, Anton Nokaj, Rrok Bezhi, Leonard Nokaj and Simon Nokaj⁵;
- Tunë was then moved from the Mercedes (which was not working due to the damages reported) to the VW Passat of Luz and with that car he was taken to the hospital of Gjakova;
- Some minutes after Tunë had been admitted in the emergency room, Luz was allowed to enter as well. There he could stand by the injured brother and asked him again whether the shooters were the same persons that he mentioned before: this time Tunë answered "yes" by nodding without talking.

The testimony of Luz Allakaj has to be handled with particular care, given the strict blood relationships linking him with the deceased Tunë and Dedë Allakaj (moreover if we consider his personal involvement in the facts which preceded and, in a way, triggered the blood feud between the two families).

It is easy to note that the pivotal part of the testimony is when the witness reports the words of Tunë Allakaj regarding the presence of Danil Nokaj among the shooters.

It is the opinion of the panel that the testimony of Luz Allakaj is credible, for the following reasons:

- the witness, despite having testified on several occasions (four statements have been acquired to the case file) and despite having been heavily confronted by the defense counsels, always provided a narration of the facts which had a significant degree of coherence. No relevant contradictions could be found between the different statements (apart from minor ones which can be easily explained with the time lapse and which have, anyway, been credibly amended by the witness by referring to the first statements issued in front of the investigative judge), despite the length and complexity of the statements and the time distance between each of them. Also during the examination of the 5th of May 2009 he was consistent and endured without contradictions the challenging of the defense counsels;
- the narration of Luz Allakaj is logically coherent, containing no gaps or loopholes under this regard. It matches well with the morphology of the area and with the chronology of the events of the 19th of March.
- the narration harmonizes itself in a satisfactory way with the testimonies provided for by most part of the other witnesses (with the exception of the witnesses indicated by the defense, on which we shall elaborate further on). In fact:

⁵ During the main trial Luz Allakaj was confronted with his previous statements given in 2004, when he reported that Tunë did not repeat four times the family name "Nokaj", but only once, saying: "Nokaj, Anton, Simon, Leonard, Danil and Rrok Bezhi". Upon confrontation, the witness stated that the version given in front of the investigative judge was the most reliable one, given its closeness to the time of the events. It is worthy to note that in the testimony given in front of the investigative judge in 2004 to which the witness referred to as being the more accurate contain a very significant specification. Tunë Allakaj, in fact, is reported as saying the following sentence: "*Nokaj. Danil, Anton, Simon, Leonard and Rrok Bezhi. Danil was the one in the front*".

The specification is relevant: it enables to understand that the perception and memory of the victim was particularly firm with regard to the person of Danil Nokaj, whose figure evidently stepped out of the group. It also makes it clear that if any doubt might be alleged with regard to Tunë's memory of the other participants' identity, the same cannot be said with regard to Danil.

- Luz Allakaj stated that he had reached the crime scene only 10/20 minutes after the gunfire took place. This is fully consistent with the fact that he had not noticed the blue Opel Vectra of the assailants rushing away from the crime scene towards the house of the Nokajs immediately after the gunfire⁶, which had been seen by nearly all the other witnesses who were by the shop of Zef Delija;
- he remembered meeting Anton Nikolla (before the shop of Zef Delija) and Vilson Nikolla (in front of the shop, in a group of other persons). The circumstance is fully confirmed by the latter ones;
- the timing of the sequence of the events which the witness saw at the crime scene was confirmed by the other witnesses who were present there (Gjon Nikolla, Vilson Nikolla, Anton Nikolla):
 - Gjon Nikolla, who was in the Mercedes D300 car together with Luz and Tunë Allakaj, could hear the words which were being spoken by the victim, including the specific reference to Danil Nokaj (see further elaboration on this).
 - Vilson Nikolla confirmed that he had seen Luz Allakaj driving from his house towards the crime scene, and (what is more important) confirmed that he had told him to rush because the Nokajs had ambushed his brothers (on this see below).
 - Anton Nikolla as well confirmed that he had met Luz Allakaj on his way towards the crime scene.
- The timing of the sequence of facts at the Hospital of Gjakova provided for by Luz Allakaj is fully confirmed by the statements of Mentor Bytyqi, Gjon Komani and Gjon Nikolla.
- there is full proof of the ability of Tunë Allakaj to walk and to speak and of his being conscious after the shooting, at least until when he reached the hospital of Gjakova (see below);

The panel debated at length the circumstance (which at first looked dubious) that the victim was able to recognize all the participants in the ambush. To this, though, the Panel opposed the following convincing arguments:

- it is credible and logical that one of the first things asked to a person who was shot at (after realizing his being alive and able to walk and thus, apparently, not in a critical condition⁷) is the identity of the perpetrators
- the circumstance that the ambushers did not take precautions and did not try to conceal themselves is easily explained with the fact that the murder took place in the framework of a blood feud and in the environment of a small village, where two big families were openly confronting each other. Such circumstances make it easy to admit that concealing was not the major concern of the assailants. It is important to highlight that this is not only an assumption of the trial panel. Such an attitude of the killers emerges clearly from the development of the events, as confirmed by several witnesses and by the material evidence. In fact, it is fully proven

⁶ Marked with the letter "H" in the attached sketch.

⁷ See on this also the statements of Anton Nikolla, who stated that his first impression was that "95%" Tunë Allakaj was going to survive.

that upon returning to the respective homes, Danil Nokaj and Anton Nokaj blatantly fired a burst of Kalashnikov into the air, with the intent of celebrating⁸. Not only: Danil Nokaj, immediately after the shooting, openly told the witness Gjin Preqi (that had called him on the phone) that they had killed the Allakajs (on this, see the further elaboration on the statements of Gjin Preqi).

- the circumstance that the car of the victims was shot at also from the front (on this, see the inspection of the victims' car performed by the Police on the 22nd of March 2009, already described above) bears relevance as to the fact that it was not only possible, but very likely that the ambushers (who shot standing on the road or immediately at its side, as it is made evident by the location of the case shells found at the crime scene) had been seen by the victims (who were both sitting in the front of the car).
- The fact that the memory of Tunë Allakaj was particularly precise with regard to Danil Nokaj, who was referred to as the one who "*was in the front*" among the shooters;
- The circumstance that the victim Tunë Allakaj was conscious, *compos sui* and able to talk, is clearly affirmed by several witnesses. It has substantially not been disputed by the defense counsels of the defendant. The victim, indeed:
 - Was able to walk, both at the crime scene and upon arrival in the hospital of Gjakova, minutes later (sign that the fatal outcome of the injuries turned out only progressively)
 - Despite suffering and in distress, was not impeded a clear perception of the events⁹.
 - Talked to Luz Allakaj at the crime scene in the presence of Gjon Nikolla, who also heard him quoting the name of Danil Nokaj as one of the murderers;
 - Talked to Vilson Nikolla while being transported to the hospital of Gjakova, again referring to the names of the assailants;

⁸ The circumstance is confirmed, with regard to Danil Nokaj, by the witnesses Mhill and Mikel Berisha. With regard to Anton Nokaj, the circumstance is undisputed by the parties (and in any case there is the statement of Trashe Nokaj and there is the material evidence constituted by the case shells found by the police in Anton Nokaj's house)

⁹ The circumstance is not disputed. In any case, it is worthy to note that the Panel obtained a technical description of the mental state and capability of Tunë Allakaj which confirms his state of consciousness. This comes from the testimony given by Dr Gjoke Komani at page 15 of the minutes of 14.5.2009, quoted here for convenience: "*We were dealing with a poly-trauma and hemorrhagic shock, which was caused by stronger objects or even firearms, when we approached to the patient we took into consideration two factors. The hemorrhagic shock is manifested in two stages. The compensatory state, where the body fights the disease itself, and the de-compensatory stage, otherwise known as terminal stage, where despite the medical assistance given the result is fatal. I reached him when he was at the compensatory stage, meaning he had a pulse, there was blood pressure and the characteristics of the skin were still preserved and the consciousness of the patient was preserved. This is the criteria via which we can determine the objective status, which includes all systems. These were the characteristics the patient had at the compensatory stage*". It stems out from this statement that the biological indicators at the moment when the victim was in the ER show – from a medical viewpoint - that Tunë Allakaj was conscious.

- Communicated on several occasions with Mentor Bytyqi, the warden of the hospital of Gjakova (who later accompanied him in the ambulance), and with Dr. Gjok Komani (who tended him in the emergency room)¹⁰;
- Was seen at the hospital of Gjakova communicating with Luz Allakaj.

b. Gjon Nikolla

Gjon Nikolla witnessed at the hearing of the 5th of May 2009. The case file contains other interviews that he released in four previous occasions.

Below is a summary of the relevant parts of his statement (as integrated with the circumstances reported to the investigative judge in 2004, to which the witness made reference during the examination):

¹⁰ The circumstance reported by Luz Allakaj found full confirm through the statements of Mentor Bytyqi (minutes of 14.5.2009, page 4) and Gjoke Komani (minutes of 14.5.2009, page 14). The two witnesses coincide perfectly as to the capability of the victim to communicate.

The perception of the two witnesses and their evaluation of the difficulty of communication are described with different words.

Bytyqi refers the capability of the victim to articulate an understandable speech.

Komani states that the victim could speak understandably, though he adds that this could happen "*with difficulties*". In the opinion of the Panel this cannot be regarded as a contradiction between the testimonies of the two witnesses, and least of all of falsity of the testimony of Mentor Bytyqi.

It has to be added that Dr Komani had more difficulties in understanding the speech of the patient because he was standing at a greater distance from the head of the patient (see pag. 13 of the minutes).

Moreover, Dr Komani only addressed one single question to the victim. Finally, he intervened in the emergency room only after Bytyqi (and it is therefore obvious that the quick worsening of the health conditions of the patient entailed a greater difficulty in the speech as the time passed).

The information that the injury suffered by Tune Allakaj in his mouth did not prevent him from articulating an understandable speech is obtained also from the following sources:

- the statements of Dr Gjok Komani (minutes of 14.5.2009, pages 12 ff.), which states that the flow of blood in the mouth of the victim was not great when he saw him and therefore also the use of the mouth aspirator was "*as the need arose*";
- the statements of the expert witness dr. Arsim Gexhaliu.

Not an excessive importance can be attributed to the fact that Dr Gjok Komani was not able to clearly hear the sounds articulated by the victim, given that the environment atmosphere in the ER was frantic and noisy (and therefore Dr Komani based his assessment on the capability to speak of the victim also on "secondary impressions").

Further circumstances coincide perfectly: the timing of the coming of Luz into the room (10-15 minutes) coincides perfectly with the version provided for by Luz Allakaj.

It has to be added that if the intent of Mentor Bytyqi had been that of falsely supporting the accusation against Danil Nokaj, it would have been easy for him (who for several minutes was besides the victim, also during the moments in which Luz Allakaj was speaking with Tunë in the Emergency Room: circumstance confirmed also by Dr Komani at page 13 of the minutes of the 13th of May) to add that the victim had quoted the name of Danil Nokaj.

On the contrary, the witness is clear in stating that by no means he could hear the victim spell any name.

The information that the injury suffered by Tune Allakaj in his mouth did not prevent him from articulating an understandable speech is obtained also from the following sources:

- the statements of Dr Gjoke Komani (minutes of 14.5.2009, pages 12 ff.), which states that the flow of blood in the mouth of the victim was not great when he saw him and therefore also the use of the mouth aspirator was "*as the need arose*";
- the statements of the expert witness dr. Arsim Gexhaliu.

- on the critical day he woke up at about 8 a.m. and was in the balcony of his house¹¹. At about 10.00 a.m. he noticed the Mercedes D300 of the Allakajs travelling towards the Urë e Jakes (which is at a distance from Gjon Nikolla's house of about one km or less: see page 25 of the minutes of the 5th of May 2009) and after that he heard "*several shots of weapons*" from a kind of weapon whose type the witness was not able to recognize;
- Gjon Nikolla entered his house, got dressed¹² and thereafter went towards the crime scene in order to check what had happened. At that time Luz Allakaj passed by with his vehicle driving towards the crime scene;
- Luz Allakaj arrived at the crime scene before Gjon Nikolla. The latter approached the car of the victims from the right side, where was Dedë Allakaj, whereas Luz approached from the left side;
- Since Dedë had already passed away, Gjon Nikolla approached the left side of the car in order to help Luz Allakaj assist the brother Tunë, who was still alive and conscious. On this occasion he heard Luz ask the brother whether he was alive and immediately after: "*Brother, who has done this?*" and Tunë's answer: "*The Nokaj*".
- Tunë was able to walk and thus they could help him sit on the back seat of the Mercedes D300, while Gjon sat at the driver's seat and Luz sat beside Tunë. Again Luz repeated the same question and Tunë reiterated, this time with more details: "*Anton, Danil, Rrok, Simon and Leonard*¹³". The witness stressed that he heard "*very clearly*" when the victim quoted those names (see records of the hearing of 5th May 2009, page 28).
- Noticing that the Mercedes was damaged and could not move, they shifted the victim into the VW Passat of Luz. This car was driven towards the hospital by Anton Nikolla and Vilson Nikolla.

Gjon Nikolla is personally credible: neither blood relationship with the injured party have arisen from the evidentiary proceeding, nor other circumstances which might indicate an intention of the witness to support the injured party's reconstruction of the events.

No hatred or enmity with the defendant has been proved by the defense counsels. Indeed, during the examination, the defense has not questioned the personal credibility of the witness, but has focused on the contents of his statements

The narration of Gjon Nikolla is intrinsically credible: the sequence of events contained in it is logical, is consistent with the morphology of the area and with the timing of the events arising out of the evidentiary proceeding.

¹¹ The house of Gjon Nikolla is marked with the letter "E" on the attached sketch. The house, according to the testimony of Gjon Nikolla, lies at a distance of about 200 meters from the grocery shop of Zef Delija, marked "D" on the sketch. The house of Vilson Nikolla lies close to Gjon Nikolla's, facing the shop of Zef Delija's. No visual obstacles existed between Vilson's house and the crime scene.

¹² The witness recalls that while getting dressed he could hear a car horn coming from outside, but that he was not able to see the vehicle from which the horn was being blown

¹³ The witness, after being confronted, stood by the statements he gave to the investigative judge on the 26th April 2004 (i.e. 5 days after the event), which contain the following words: "*Daniel Nokaj, Rrok Bezhi, Anton Nokaj, Simon Nokaj and Leonard Nokaj*"

The witness was examined on several occasions. His statements are in general coherent throughout the various examinations. Only some discrepancies arose. In particular during this main trial:

- the witness stated that his father told him, after the shots, that the Allakajs had been shot at (See minutes of the 5th of May, 2009: "*My father went out and observed what was going on, and the reply from my father was that they were shooting at the family Allakaj*").
- The witness stated that the first words uttered by Luz Allakaj to Tunë Allakaj were: "*Brother, who was it*" and not (as stated in front of the investigative judge: "*Brother, are you alive?*")
- He never mentioned in front of the investigative judge the fact that he heard a car horn from his room;
- The witness did not remember, when witnessing in front of the panel, having seen Vilson Nikolla among the 15 bystanders at Zef Delija's shop, whereas he remember it witnessing in front of the investigative judge.

The above discrepancies, in the opinion of the Panel, bear no relevance as to the overall credibility of the witness. In fact:

- first, the witness, when faced with these discrepancies, convincingly stood by the statements that he had made in front of the investigative judge immediately (five days) after the events, when his memory was practically immediate;
- this bears relevance also as to the fact that the witness in front of the trial panel did not remember the circumstance (reported vice-versa to the investigative judge) that the very first question put by Luz to Tunë was: "*Brother, are you alive?*". In any case, such question is a very generic question, somehow obvious in such a situation, and it is therefore understandable that during a trial whose the focus was on the liability of the defendant the witness may have taken it for granted.

Finally, the credibility of the statements of the witness Gjon Nikolla is externally corroborated by the statements of other witnesses, dealt with above and below, as to:

- the movements of Luz Allakaj before and at the crime scene;
- the sequence of events after the arrival at the crime scene
- the capability of Tunë Allakaj to speak;
- the words uttered by Tunë Allakaj to Luz Allakaj;
- the events at the hospital of Gjakova.

c. Vilson Nikolla

Vilson Nikolla testified at the hearing of 5th and 6th of May 2009. The case file contains 4 other testimonies rendered by him during this proceeding and during the other proceedings related to the murder of Tunë and Dedë Allakaj.

The testimony of Vilson Nikolla is complex and long. Thus a thorough confrontation was needed during the main trial in order to assess the credibility and the exact contents of the memories of the witness.

Below is a summary of the testimony.

- Vilson Nikolla lives in the house located opposite to the shop of Zef Delija¹⁴. He was there in the morning of the murder. According to him, the house lies at a distance of 300-400 meters from the bridge of Jaka.
- Before the shooting took place, the witness saw Danil Nokaj hanging out with Rrok Bezhi outside the house of the latter (marked with "B" in the attached sketch). Vilson Nikolla stated that the presence of Danil Nokaj went on for about three hours, up until about 10.30 in the morning. During that time the blue Opel Vectra of Anton Nokaj's (which subsequently was seen transporting the authors of the murder) was parked inside the yard of Rrok Bezhi's;
- He heard the gunshots, having the impression that they came from different weapons;
- after the gunfire ceased he headed towards the shop in order to see what was happening;
- immediately after the shooting, he saw the blue Opel Vectra of Anton Nokaj's reversing from the gate of Rrok Bezhi's towards the crime scene. It halted at the so called "Damien's wire" (a wire fence bordering the road, situated 100-150 meters from the crime scene in the direction of the village of Marmullë: it is marked with "C" in the attached sketch)¹⁵. Leonard Nokaj was driving the car (the identity of the driver was clarified only later on: see further)
- once the car arrived at a distance of about 60 meters from the beginning of the "Damien's wire" in the direction of the village of Marmullë (according to the sharp measuring performed, in the presence of the witness, during the crime scene inspection on the occasion of the trial against Anton Nokaj) the car was boarded by Danil, Anton and Simon Nokaj who were running from the direction of the crime scene carrying long barreled weapons. The witness thus deducted they were the participants in the ambush. The scene was noticed by the witness from the balcony in front of his house. He specified that he could not recognize the persons from there, but only at a later stage, when they passed by on the blue Opel Vectra. Danil Nokaj took the driver's seat and Leonard took the back seat. It is at

¹⁴ The house is marked with the letter "E" in the attached sketch.

¹⁵ Minutes of 6.5.2009. See in particular page 18. The witness stated that the first moment in which he saw the car moving towards the crime scene, it was at a distance of 300 meters from him, very close to the yard of Rrok Bezhi's house. The witness was precise in stating that it was not possible for him to recognize from that distance the driver of the car, and that it became possible only at a later stage, i.e. when the car came back from the crime scene towards the village of Marmullë, after having picked up the assailants, among which the current defendant, who were fleeing.

Many other witnesses (Anton Nikolla, Pren Hili, Mikel Berisha, Mhill Berisha, Zef Mark Delija, Robert Zef Delija) confirmed, independently from each other, that the blue Opel Vectra soon after the shooting rushed from the bridge of Jaka towards the village carrying at least three persons (on their identity, see below).

This provides a clear confirm of the fact, stated by Vilson Nikolla, that the car (which previously was parked at Rrok Bezhi's) went towards the crime scene and thereafter rushed back carrying the participants in the ambush.

The statements of the witness(es) are credible, given:

- the short distance between the witness(es) and the Opel Vectra (around ten meters)
- the plurality of independent testimonies
- the fact that case shells were found at the place of Anton Nokaj's, and there is evidence that Anton Nokaj fired a burst of gunfire upon entering his house after the murder.

- this moment that the witness recognized Leonard Nokaj¹⁶. Rrok Bezhi did not board the car immediately, but kept running towards his house, entered the house, closed the door and subsequently boarded the Opel Vectra
- The car subsequently drove towards the village, passing at a distance of 20-30 meters from the witness, who was then able to recognize the passengers above mentioned. In doing so, the car was noticed also by witnesses Anton Nikolla¹⁷, Pren Hili, Mikel Berisha and Mhill Berisha. Vilson Nikolla remembers having clearly seen Danil Nokaj among the occupants of the car.
 - Vilson Nikolla then headed towards the crime scene (alongside with his uncle Anton Nikolla, who drove him there) where he was entrusted with the task of driving Tunë Allakaj to the hospital. During the trip Tunë repeated more than once to Vilson the names of the assailants, quoting them as Danil, Simon, Anton, Leonard Nokaj and Rrok Bezhi¹⁸. The witness was clear in stating that he told the victim not to speak, since he already knew the identity of the murderers.

The witness was heavily challenged by the defense counsels and by the panel on this point, of paramount importance for the adjudication of the case. Some aspects of his testimony require particular consideration. In particular:

- o the fact that the distance from the house of the witness and the "Damien's wire" is significant;
- o the fact that he needed to correct himself on the occasion of the confrontation about the place from where he recognized the suspects (at first he stated that he recognized the suspect he was approaching the road from the side ditch, at the level of the Wire of Damien's", whereas subsequently he stated that he recognized him only as he was passing by him on the blue Opel Vectra).

The panel deems that the statements of Vilson Nikolla are credible.

First, no elements of enmity or hatred between him and the defendant were highlighted. It has been ascertained, as well, that there are no (significant) blood relationships of any kind between the witness and the Allakaj family. On the contrary, the defendant himself expressly stated that there were never disagreements with Vilson Nikolla in the past.

It is difficult therefore to believe that the latter would falsely accuse him without a valid reason of an aggravated double murder.

Second, the narration of Vilson Nikolla is logical and intrinsically coherent: when faced with possible elements of illogicality (e.g. regarding the issue of the recognition of the passengers of the car from the distance) he was able to provide coherent and satisfactory clarifications to the panel, on the occasion of the crime scene inspection during the main trial against Anton Nikolla, as well as during this main trial.

¹⁶ It has to be noted that the version is fully consistent with the version provided by the witness on the occasion of the crime scene inspection.

¹⁷ Page 27 of the minutes of 6.5.2009: the witness stated that the car passed in front of his house (which was at a distance of around 500 meters from the crime scene) and he could recognize Anton and Rrok Bezhi. The car passed 2 to 5 minutes after the gunshots were heard (afterwards, reconstructing the events, he states 10 minutes).

¹⁸ During this main trial at first the witness did not recall that Tunë Allakaj also made reference to Leonard Nokaj. After confrontation with the previous statements, he stood by the previous statements of 25 November 2005.

Third, the testimony was repeated on several occasions and throughout them the witness did not show significant external contradictions: the discrepancies which arose (and which were pointed out by the panel and the defense during the examination: see above) are explainable thinking of the time distance from the facts. With specific regard to the above mentioned issue of the moment in which the witness allegedly recognized the defendant, it is enough to note:

- that the moment in which he saw the ambushers board the Opel Vectra by the Damien's Wire and the moment when the car passed by him and he could recognize their identity are immediately subsequent;
- that the persons seen at the Damien's Wire are the same which were recognized seconds after: this, summed with the time distance from the events, convincingly explains this negligible memory shift.

Fourth, it is noteworthy that Vilson Nikolla was able to provide a description of the essential facts (and particularly the identity of the assailants) immediately (minutes) after the events, i.e. when he told to Anton Nikolla and to Luz Allakaj that the Nokajs had assailed the Allakajs, urging the latter to rush to the crime scene.

This circumstance was not disputed by the defense counsels and in any case it found several testimonial confirms. It bears particular relevance because:

- it is not possible that the witness, at that very early stage of the events, could already have been induced to false testimony by the injured party;
- such very early statement is consistent with the description of the events provided for by the witness subsequently, during this main trial;
- the witness was not, at the moment he gave this very first statement, communicating with law enforcement officials. This makes it even more unreasonable to believe that he did so with the hypothetic intention to build up a future false testimony.

Fifth, the statements of the witness are strongly corroborated by further pieces of evidence:

- as to the fact that the blue Opel Vectra rushed from the crime scene towards the village, many other witnesses saw it pass by and several of them noted four to five passengers: see above the elaboration regarding the witness Gjon Nikolla
- the fact that Danil Nokaj was driving the car, stated by Vilson Nikolla, is confirmed by the statements rendered by Mhill Berisha and Mikel Berisha. The statements given by Anton Nikolla provide further support to the same conclusion, in that he stated that Simon and Anton Nokaj were in the car and a third person was driving.
- the fact that the blue Opel Vectra was parked at Rrok Bezhi's house is indirectly confirmed by the fact that no one of the (many) witnesses who were staying at Zef Delija's store could notice the trip of the car from Rrok Bezhi's house towards the crime scene (which in fact did not entail any passage in front of the store itself), but only the passage of the car when it rushed in front of the shop;
- the fact that Anton Nokaj was among the assailants, stated by Vilson Nikolla, is clearly admitted by the defendant himself and by the defense witnesses Prene Nokaj and Trashe Nokaj.

Sixth, there is a clear confirm (provided for by the crime scene inspection which was performed during the trial against Anton Nokaj¹⁹) of the fact that from the house of Vilson Nikolla it was possible to see clearly the crime scene. During the same inspection it was assessed that also the "Damien's Wire" was clearly visible from the balcony of Vilson Nikolla.

Seventh, the fact that the victim was conscious and able to talk and that he uttered the name of the defendant as one of the assailants is confirmed by Luz Allakaj and Gjon Nikolla (and to a lesser extent by Mentor Bytyqi, Gjok Komani and Arzim Gerxhaliju: see above).

d. Anton Nikolla

Anton Nikolla testified at the hearing of the 6th of May 2009.

The case file contains the statements previously rendered by him on five other occasions (during the pre trial stage and on the occasion of the main trial against Anton Nokaj).

The witness is a relative of Gjon and Vilson Nikolla.

Below is an outline of the statements made by the witness: on some occasions they were the outcome of confrontation of the witness with his previous statements (in this case, it is duly highlighted).

- On the critical day the witness was in the courtyard of his home (located at a distance of between 500 and 1000 meters from the crime scene, marked with "L" in the attached sketch);
- He heard the gunshots, "*three times, one after another, between these shots one to one and half seconds time, they sounded differently*²⁰"; five to ten²¹ minutes after he heard the gunshots a vehicle type Opel Vectra passed in front of the courtyard of the witness. He recognized as passengers Anton Nokaj and Simon Nokaj. The distance between the witness and the car was of about 5 meters and nothing could impede his view;
- He could recognize two out of the three passengers that he was able to notice. The third one was a person whom the witness already knew, but he was not able to recognize him²². The witness stated that, apart from these three persons, there was at least another person in the car, whose identity he did not know²³;
- he then took his car and headed towards the direction of the shooting, assuming that it was part of the ongoing blood feud Nokaj-Allakaj. In so doing he passed in front of the shop of Zef Delija²⁴, where he noticed 10-12 people, among which

¹⁹ Such crime scene inspection is lawful evidence for this trial, as it was part of the case file and was in the list of material evidence which was read out to the defendant before his examination took place

²⁰ See main trial records, 6th May 2009, page 27

²¹ The witness at first stated "2 to 5" minutes, but immediately after he corrected himself, reasoning that it was not possible to cover that distance in less than five minutes, given the presence of four speed bumps along the road

²² This apparently contradictory statement, made in a rather weird manner at the hearing of 6th May 2009, made the Panel think that the witness was trying to refrain from testifying on the identity of the passenger.

²³ See statements of 6th May, 2009, page 33.

²⁴ In the assessment of the witness, the distance from the shop to the house of Rrok Bezhi is of around 100 meters (approximately) and from the bridge of Jaka to the new house of Rrok Bezhi the distance, according to the evaluation of the witness, was of about 150 meters (though he stated that it was not an exact measuring)

Vilson Nikolla, who immediately told him: *“Go, tell Allakaj that the Nokaj family has killed somebody within the Allakaj family”*;

- he then headed back towards the village until he met Luz Allakaj, whom he told that the Nokaj had killed Dedë and Tunë²⁵. He then followed him towards the crime scene, where he arrived as third together with Vilson Nikolla (after Luz Allakaj and Gjon Nikolla). He saw Tunë Allakaj and on the basis of his apparent health conditions (capability to walk and speak) he assessed that *“95% he would survive”*;
 - he and Vilson took charge of driving Tunë Allakaj to the hospital of Gjakova with the Passat of Luz Allakaj. During the trip, he asked Tunë whether he was holding on and he nodded. Thereafter Tunë and Vilson started a conversation regarding the identity of the ambushers. After a while, Vilson prevented Tunë from going on talking to him by saying: *“You don’t have to, because I know who they are”*²⁶.
- Anton Nikolla stated that, when Tunë was uttering to Vilson the names of the ambushers, he could hear something, but that he was concentrated in driving, so he paid little attention.
- Once at the hospital, he again noticed that Tunë was still able to stand and walk.
 - Tunë went into the emergency room and, after a while, he himself beckoned Luz (who in the meanwhile had arrived at the hospital). Luz then joined him and after a while he came back to Anton and Vilson and said: *“Ok, we know about Nokaj, but what have I done to Bezhi?”*.
 - The witness added that he had been warned/threatened by Mark Nokaj about witnessing against Danil Nokaj.

Coming to the evaluation about the reliability of the statements of Anton Nikolla, the Panel deems that they are credible.

First, the witness is personally trustworthy. No blood relationship exists between him and the injured party, nor has any enmity between him (or his family) and the accused arisen during the trial. He showed no uncertainties during the examination and namely on the occasion of a couple of confrontations that he was faced with.

The defense counsels or the defendant himself were not able to indicate any possible reason for animosity or enmity of the witness against Danil Nokaj and/or the Nokaj family as a whole. The defense counsels simply confined themselves to attempt to challenge the reliability of the testimony of the witness on single factual circumstances. Not only: the witness has shown (as indicated above) a clear reluctance to express his opinion regarding the passengers of the blue Opel Vectra (and this attitude would be of favor towards the defendant rather than the contrary).

It has to be added that the witness was called to testify several times (five of his previous statements are part of the case file) and he was able, despite the complexity and the

²⁵ Requested by the panel the witness convincingly stated that he was able to tell that the persons killed were Tunë and Dedë because he knew that they were going together to the Fshaj village that morning in order to express condolences to a family

²⁶ The circumstance has been confirmed by the witness twice, before and after confrontation with the statements previously rendered on 2 March 2005.

repetition of the examinations, to render statements which do not substantially differ from each other.

His statement has a high degree of intrinsic credibility. In fact:

- It is coherent; there are no logical contradictions between its parts.
- There are no logical loopholes in the narration and the sequence of events is intrinsically consistent.
- The timing of the events that he provided in the testimony is consistent and is compatible with the distances which have been ascertained during the main trial. The fact that the witness showed some difficulty in providing, in the course of the various statements given, a precise evaluation on the distance between his house and the crime scene (indicated somewhere between 500 and 1000 meters) cannot be overestimated and does not mean that the statements are *per se* false. This is true also with regard to his evaluation of the distances between the relevant places of the village.

The events narrated find consistent corroboration in the statements of other witnesses as to:

- the fact that the Opel Vectra rushed through the village from the Urë e Jakes after the shooting;
- the fact (reported independently also by Luz Allakaj and Vilson Nikolla) that Vilson Nikolla immediately after the shooting was able to report the identity of those who committed the ambush);
- the dynamics of the shooting;
- the identity of (a part of) the passengers of the Opel Vectra.

It is worthy to note that the statements of Vilson Nikolla and Anton Nikolla are fully consistent with each other regarding the events happened after he reached the crime scene. In fact:

- The sequence of the events is described similarly (namely: the capability of Tunë to walk and speak; his position in the car and the position of the other passengers; the dialogue of Tunë with Vilson)
- Anton convincingly stated that he could hear some words of Vilson (who was beside him) and not the words of Tunë (who was sitting behind).
- His statement coincides with the statement of Vilson regarding the fact that some names were uttered by Tunë in the car (this is a clear implication of words spoken by Vilson in order to prevent Tunë from going on speaking) and that Vilson answered to him that he already was aware of the identity of the assailants.

e. Mikel Berisha and Mhill Berisha

The statements of Mikel Berisha and Mhill Berisha have been acquired and given as read during the main trial, upon agreement among the parties.

In the case file there are two statements given by Mikel Berisha. The first is dated 28.4.2005, and was made in front of the UNMIK Police. The second one is dated 21.12.2005 and was rendered in front of the Public Prosecutor.

Since the second one bears no signature of the witness, the panel decided not to consider it for the decision.

The statements made in front of the police are important for the adjudication.

The statements can be summarized as follows:

- on the critical day, at about 10.10 a.m., the witness had just left his compound when he heard automatic gunfire close by, while he was walking on a dirt road, near the gate of Mhill Shala and the electricity substation;
- afterwards he saw the dark blue Opel Vectra of Anton Nokaj's driving (slowly, due to the bends of the road) in his direction along the asphalt road. He had the vehicle under his sight for around one minute;
- while the car passed by the witness, he was able to recognize four out of the five occupants of the car: Danil Nokaj, who was driving, Anton Nokaj sitting as front seat passenger, Simon Nokaj behind the driver, Rrok Bezhi behind the front passenger;
- once arrived at Danil Nokaj's house, Danil got out of the car, fired his Kalashnikov into the air, entered his yard. Simon and Rrok got out as well and headed on foot towards their houses, Anton took the driver's seat and drove towards his house together with the fifth occupant of the vehicle
- after the murder, initiatives (threats and bribes) were taken by the families of Rrok Bezhi and by the Nokajs in order to prevent witnesses to step forward.

It is appropriate to assess the statements rendered by Mikel Berisha in conjunction with the statements of Mhill Berisha: also the statements of the latter were acquired during the main trial and, upon agreement among the parties, considered as read out. The content of the statements of Mhill is very similar to the one of the statements of Mikel.

Mhill Berisha was interviewed on the 31st of March 2005 (during the main trial against Anton Nokaj and Rrok Bezhi) and on the 30th of December 2005 (by the Public Prosecutor Ndrece Dodaj) .

Below is the summary of the statements given on 31.3.2005 during the main trial:

- the murder of the Allakaj brothers took place at about 10.30 a.m. of the 19th of March, 2004; the witness realized that something serious was happening because he heard the gunshots coming "*from the end of the village*" and therefore climbed to the third floor of his house in order to see what had happened;
- after "*7-8 minutes*" he could notice an Opel Vectra coming from down the road towards the house of Danil Nokaj and stopping beside it. Danil got off the car, together with Anton Nokaj, Simon Nokaj and Rrok Bezhi²⁷;
- Danil Nokaj then fired his Kalashnikov, while the others got again into the car and proceeded towards Anton Nokaj's house. Danil Nokaj then took his BMW car and headed towards Anton's place by the other road.

It has to be noted that Mhill Berisha was present during the crime scene inspection which was performed during the main trial against Anton Nokaj (whose minutes have been acquired to the case file). It is noteworthy that the Court could assess that the view from the balcony of Mhill Berisha's house towards the place where he allegedly saw Danil Nokaj get off the Opel Vectra was not impeded by anything.

²⁷ There is a slight difference between the contents of the statements given during the testimony and the statements given on the occasion of the crime scene inspection. As a matter of fact in the former ones the witness stated that all five occupants of the car stepped out of it in front of Danil Nokaj's house, whereas in the latter ones he corrected himself by saying that only Danil, Anton, Simon Nokaj and Rrok Bezhi got off the car. The latter version coincides with Mikel Berisha's version.

The Berishas appear to be personally credible. During the main trial no elements have arisen which in any way might raise suspicions as to their objectivity and fairness.

As sole factual element of non credibility, the defense counsels stressed the fact that Mhill Berisha had borrowed 9.000 Euros from the defendant and put this forward as a possible reason for animosity.

This view cannot be shared.

Indeed:

- the fact that the defendant had borrowed 9.000 Euros to the witness Mhill Berisha, rather than meaning that there was a bad relationship between the two, can be regarded as a hint of mutual trust and friendship;
- the witness reimbursed the loan through his nephew Vilson Nikolla (the circumstance was admitted by the defendant Rrok Bezhi himself during the main trial against him).

The narrations rendered by Mikel and Mhill Berisha are logical and consequent. Their statements, considered in themselves, contain no logical gaps or loopholes and the chronology of the events is clear and consistent. The events described are compatible with the description of the places which was provided for during the crime scene inspection (notably with regard to the possibility for Mhill Berisha to see from his balcony to the place where Danil Nokaj allegedly shot the Kalashnikov from).

The narrations rendered by the Berishas are consistent with each other (and reciprocally corroborate themselves) as to most part of the events therein contained (notably, the fact that Danil Nokaj was at the driver's seat up until the car reached his house, that he stepped out and shot a burst of Kalashnikov, that also three of the other four passengers got off (this being the last version provided for by Mhill Berisha on the occasion of the crime scene inspection), that then Danil Nokaj entered his home and left soon after with his BMW, while the others proceeded).

The two narrations differ with regard to one single aspect: whereas Mikel Berisha stated in front of the police that after Danil Nokaj's shooting, Rrok Bezhi and Simon Nokaj proceeded walking, Mhill Berisha stated that the two got again on the car and proceeded by car.

The assessment of the above mentioned discrepancy must be performed bearing in consideration that the statement given in front of the police is very concise and with the normal flaws of the memory.

It is the opinion of the Panel that such minor discrepancy cannot by itself discredit the description of the facts provided for by the witnesses.

It would be excessive to infer from it that the two Berishas have plotted a joint false testimony.

This is even truer if we consider that Berishas' statements concur with regard to very specific circumstances, some of which do not directly refer to the crime.

Finally, their statements of the two Berishas are fully consistent with the description of the events provided by other witnesses regarding the trip of the Opel Vectra from the crime scene towards the village of Marmullë.

Not an excessive relevance can be attributed to the fact that there is no report of case shells being seized at the house of Danil Nokaj, as it was the case at Anton Nokaj's house.

It has to be considered, in fact:

- that the defense evidentiary proceeding and the defense counsels brought no evidence that a search was done in Danil Nokaj's house (and, considering the serious events which were affecting Kosovo at that time, this cannot be too surprising);
- that the attention of the investigators against Danil Nokaj was not immediate and thus it cannot be excluded that eventual case shells might anyway have been easily removed from the place.

f. Zef Delija, Robert Delija, Pren Hili and Biter Prekaj

The statements of the first two witnesses have been acquired to the case file and, upon agreement between the parties, have been considered as read.

Pren Hili was examined at the hearing of 13.5.2009 and Biter Prekaj at the hearing of 18 May 2009.

It is convenient to treat the statements of the first three jointly, since they are able to provide confirm only of the following circumstances:

- they were together at the shop of Zef Delija, by the road of Marmullë. Other people were present;
- the morning of the 19 March 2009 at around 10.30 a gunfire was heard coming from the direction of the crime scene;
- some minutes after a car of dark colour (Zef Delija), described by Mark Delija as an Opel Vectra and by Pren Hili as the Opel Vectra of Anton Nokaj's, passed by the shop driving at a high speed;
- the witnesses were not able to recognize the passenger(s) of the car.

The circumstances referred by the three witnesses are not contested by the defense.

The circumstance that the witnesses could not recognize the passengers because of a garbage container which obstructed the view is doubtful: during the crime scene inspection it was clarified that the garbage container was not big enough as to impede the view.

Nonetheless, the statements of the witnesses corroborate the testimonies of the other witnesses at least as to their escaping by Anton Nokaj's Opel Vectra and the itinerary followed by the car (i.e. from the crime scene towards Marmullë passing in front of Zef Delija's shop).

And as to these aspects, the statements are deemed by the Panel as being surely reliable.

On the contrary, the statements of Biter Prekaj do not contain elements relevant for the adjudication of the case.

g. Gjin Preqi

The witness of Gjin Preqi is of particular importance for this trial.

He was examined during the hearing of the 7th of May, 2009. He had been already examined (during the investigation and on the occasion of previous trials) other times.

This is the content of his statements:

- Gjin Preqi is the owner of a coffee bar in the village of Fshaj. Danil Nokaj came with some regularity to his coffee bar; between the witness and Danil Nokaj there

- had never been an argument or misunderstanding. Nor was there ever a quarrel with anybody from the Nokaj family;
- He and Danil Nokaj had exchanged phone numbers;
 - The relationship of the witness with the family Allakaj was of simple knowledge;
 - In morning the 19th of March 2009 he was in the cemetery of Jradish, a place located at 2 and a half-three kilometers from the village of Marmullë;
 - In the moment the witness was stepping out of his car at the cemetery, he heard the gunshots (“*several shots*”, later on specified as “*3 or 4 bursts*”) coming from the direction of Marmullë;
 - Immediately (“*maybe one or two minutes*”) after the gunshots²⁸ he called Danil Nokaj in order to ask him what had happened. The witness clarified that he called Danil Nokaj because he was the only person of Marmullë whose telephone number he had knowledge of²⁹;
 - Danil answered as follows: “*We killed the Allakaj at the Bridge of Jaka and revenged our blood*”. Based on the fact that the voice of Danil Nokaj was broken, the witness assessed that he was (or had been) running;
 - Soon after Gjin Preqi, together with Sokol Preqi, reached the crime scene in order to see what had happened; there he noticed “*Dedë who was dead*”.

Coming to the assessment of the testimony, the following needs to be noted:

- Gjin Preqi is personally credible. There are no close relationships between him and the defendant, nor with the injured party. No elements of enmity or hatred with the former or of close friendship with the latter have arisen. The relationship with the defendant was more of friendship than otherwise: Gjin Preqi is the owner of a bar which was attended with some regularity by the defendant. It is important to note that the defendant himself confirmed that the relationship with Gjin Preqi was of positive knowledge (“*I haven’t had any problem with him*”, minutes of 21st of May 2009, examination of Danil Nokaj’s) and that he hanged out at his bar (though not very often). The defense tried to highlight the existence of close relationships with the injured party by stressing that the witness was attending an uncle’s funeral which was to be attended also by the Allakajs. This conclusion cannot be shared by the Panel. Also admitting that the victims were going to pay condolences to the witness’ family, this would not be enough to assume the existence of a close relationship and even less the fact that the witness was falsely testifying. No other facts have arisen during the trial which in some way might discredit the personal credibility of the witness.
- The statements of Gjin Preqi are in themselves logical and consequent. There are no gaps or internal contradictions. The sequence which was narrated is, on the contrary, consistent with the behavior that a normal person would have on a similar occasion (i.e., after hearing several ruffles of gunshot a common person is eager to know what has happened). The fact (highlighted by the defense) that the distance between the witness and the crime scene was of two-three kilometers is not a sufficient reason to disregard the testimony: he, in fact, never claimed (as,

²⁸ See minutes of 7 May 2009, page 9

²⁹ As it can be easily understood, this point is of pivotal importance for the adjudication of this case. It is noteworthy that the witness was able to indicate that the telephone call took place at 10.30 or 10.40;

on the contrary, the defense argues) that he had seen the event, but only that he had heard the shots.

- The statements of Gjin Preqi received a material external corroboration which is of paramount importance. Indeed, at the hearing of the 10th of June, 2009 the trial Panel acquired *ex officio* the metering of the telephone calls made by Gjin Preqi on the critical day³⁰. During the same hearing the Panel heard *ex officio* the witness Ismet Fetaj, who confirmed the consistency of the metering and the operations performed for the execution of the order.
- The telephone number of Gjin Preqi is 044/133648, as it was confirmed during the hearing of the 7th of May. The defendant, on his turn, confirmed that his telephone number was 044/127118. Now, the examination of the metering of the 19th of March 2004 makes it clear that, at 10.41, a telephone call of the duration of 10 seconds was made from the telephone of Gjin Preqi towards the telephone of Danil Nokaj.

Such circumstance bears a multiple significance:

- o The telephone call took place immediately after the shooting, as it is made clear from the timing of the call arising from the metering. This is perfectly consistent with the statements of Gjin Preqi during the main trial;
- o The duration of the telephone call done by Gjin Preqi is fully compatible with its short content, as described by the witness during the main trial (Gjin Preqi stated that he limited himself to ask to Danil Nokaj what had happened and Danil Nokaj answered that they had killed the Allakajs at the Urë e Jakes, thus revenging their blood);
- o The defendant utterly denied not only that he had received a telephone call from Gjin Preqi on the critical day, but also that he ever had provided him with his telephone number. This defensive line is blatantly discredited by the metering.

The Panel, considering the above elements jointly, deems that the testimony of Gjin Preqi is genuine and credible, also as to the content of the telephone call referred by the witness.

The content of the telephone call ("*We have killed the Allakaj at the Urë e Jakes revenging our blood*") provides a powerful corroboration of the participation of Danil Nokaj in the ambush, if we consider:

- o the fact that the defendant talking to Gjin Preqi used the first plural person ("We");
- o the fact that the defendant was able to refer this to Gjin Preqi immediately after the ambush, also providing details as to the place where precisely this had happened;
- o the fact that the witness had the impression that the defendant was running while he was speaking (which is consistent with the sequence of events which was described by the witness Vilson Nikolla, who saw the defendant run towards the blue Opel Vectra after the shooting took place).

³⁰ The metering had been ordered during the investigations against Anton Nokaj. The trial panel was able to obtain both the ruling of the Public Prosecutor ordering the metering and with the printed page containing the telephone calls outgoing from Gjin Preqi's telephone, together with the report of the Police officer executing the investigative action.

h. Mentor Bytyqi and Gjok Komani

The two witnesses were involved in the emergency care of the victim Tunë Allakaj at the hospital of Gjakova. Mentor Bytyqi was the first one to intervene, caring for the victim upon entering the hospital. Gjok Komani, an E.R. doctor, intervened in the Emergency Room, when Tunë Allakaj was already being treated.

The testimony of these witnesses has been already examined and assessed above, when analyzing the testimony of Luz Allakaj.

They provide a relevant contribution for the evaluation of the physical and mental conditions of Tunë Allakaj, and as to whether or not he was conscious and able to speak.

The Panel assesses (and the reasons for this were given above) that the testimonies of the witnesses are relevant and credible when they (though with different nuances) confirm that Tunë Allakaj was still conscious and able to speak when he arrived at the hospital of Gjakova.

It is important to add here that these witnesses have a high degree of personal reliability, because of:

- the professional nature of their intervention;
- their absence of personal relationships with the parties;
- their provenience from a different environment.

4.5. The motives for the crime

There are significant motives for the defendant to commit the crime.

In fact:

- the defendant is a member of the Nokaj family, which is part of the blood feud. The witnesses who were heard clearly explained the extent to which, in a village such as Marmullë, being involved in a blood feud is a compelling reason to take revenge;
- he was personally involved in the events which triggered the feud. He himself admitted the circumstance:
 - o that he had a violent verbal argument with members of the Nokaj family in the shop of Zef Delija, which ended up in him being thrown an object at;
 - o that subsequently members of the Allakaj family tried to assault him before the murder of Engjell Nokaj.

Luz Allakaj confirmed these two episodes, but provided them with much more details. According to him, Danil Nokaj on the first occasion fired two gunshots in the air and on the second occasion was severely beaten by the Allakajs.

Therefore, not only Danil Nokaj had reasons (as a member of one of the conflicting families) to be part of the feud, but he also was directly involved in violent episodes which were suitable to spark off a bloody chain reaction.

Given this, the simple fact (highlighted by the defense) that the grade of blood relation with the deceased Engjell Nokaj was not particularly strict cannot be regarded as decisive in order to exclude the motives to kill in complicity.

4.6. The behavior of Danil Nokaj after the crime

The behavior of Danil Nokaj in the days following the murder is also significant. It is undisputed, in fact, that the defendant three/four days after the crime left the country and entered illegally Switzerland through Croatia. Not only, he did so by using a false Croatian passport (and the defendant himself, in fact, admitted that he used the passport on the occasion of at least one hotel stay).

The substantial time coincidence between the murder and the illegal expatriation is suspicious and can be regarded as an attempt to elude the investigation.

The defendant stated that the expatriation had not been sudden, but that he had applied at the Swiss embassy during the previous three months for a visa. This circumstance, though, did not find any documentary confirmation (which would have been very easy to provide, had it been true) and in any case, even if it were proved that the defendant had applied for a visa, it might well be as an attempt to pre-constitute an explanation for his subsequent escaping.

4.7. Joint evaluation of the elements against the defendant

Though there is no witness who directly saw Danil Nokaj shoot at the victims, there are several significant indirect elements which prove, beyond reasonable doubt, that Danil Nokaj was among the participants in the ambush, thus fulfilling the provision of art. 22 of the Criminal Law of Yugoslavia and art. 30 of the Criminal Law of Kosovo (Complicity in aggravated murder). As it was already highlighted, the testimonies which have been above examined one by one and individually assessed as credible by the panel, acquire more convincing strength when considered jointly.

In the previous elaboration it was already possible to point out the elements of reciprocal support and corroboration of the testimonies with regard to the key elements of the accusation (the presence of Danil Nokaj at the crime scene, his participation in the shooting, his being among the passengers of the blue Opel Vectra fleeing from the crime scene towards the defendant's house, his shooting the Kalashnikov in front of his house).

Not only: the factual reconstruction which arises from these testimonies finds corroboration also in material pieces of evidence, which are objective.

Reference is made to:

- the ballistic expertise, which confirms that the shooting was performed with at least three automatic weapons caliber 7,62x39. This automatically discredits the hypothesis that only Anton Nokaj (who pleaded guilty at his trial) was responsible for the murder;
- the metering of the telephone call performed by Gjin Preqi to Danil Nokaj soon after the event. The relevance of this telephone call is paramount, because it would be unrealistic to believe that the witness might have plotted, at such a short time distance from the crime, a fake telephone call in order to pre constitute factual evidence against the defendant;
- the fact that the victims were shot at (also) from the front: this provides a confirmation of the likelihood that Tunë Allakaj could see the ambushers.

Given the quantity and quality of the witnesses who stated against Danil Nokaj, and the existence of corroborating material evidence, it would be simply unreasonable to give credit to the theory alleged by the defendant (who stated that the injured party had been "going around in the village bribing people for false testimony").

Summarizing the circumstances stemming out of the above testimonies, the following reconstructions of the events of the 19th of March 2004 can be deemed as true beyond reasonable doubt:

- A blood feud between the Nokaj and Allakaj families of Marmullë village (Gjakova) started in the year 2000 and was ongoing at the time of the murder.
- Before the murder took place, the defendant lingered for a couple of hours outside the gate of the house of Rrok Bezhi's;
- At about 10.30 of the 19th of March 2004, Tunë and Dedë Allakaj were killed in an ambush which occurred in the framework of the Nokaj-Allakaj blood feud. At least three automatic rifles were used for the murder and two other persons were involved in the operation;
- Danil Nokaj was among the ambushers.
- After the shooting the assailants escaped towards the village of Marmullë on board the blue Opel Vectra of Anton Nokaj;
- Once arrived at his place Danil Nokaj fired a burst of Kalashnikov while the other passengers of the car proceeded further;
- Danil Nokaj thereafter fled to Switzerland using a false Croatian passport.

It is therefore clear that all the elements of the *actus reus* are present in the case, according to the provisions of art. 30 CLK. Also the circumstantial elements of the second paragraph of such norm have been proven (namely, the fact that the murder was committed in the framework of a blood feud and the fact that the killers ambushed the victims taking them completely by surprise, in an insidious manner).

Also the requisite of the *mens rea* is clearly present. In fact:

- the modality of commission of the crime (shooting with an automatic weapon) cannot be explained otherwise than assuming the existence of the will to kill;
- the organization of the ambush, with the involvement of several persons, implies necessarily the conscious willingness to commit the criminal offence;
- the same can be inferred from the facts which preceded the murder (personal involvement of the defendant in at least two violent arguments with members of the opposing family) and from the fact that the murder took place as a revenge for a previous murder committed by the Allakajs.

During the main trial no evidence was collected as to the existence of any justification for the accused, nor has such a defense even been raised by him.

Danil Nokaj must, therefore, be held liable for the murder of Tunë and Dedë Allakaj, committed on the 19th March 2004 in the village of Marmullë (Gjakova).

4.8. The factual reconstruction provided for by the defendant and by the witnesses Prene Nokaj, Trashe Nokaj and Alfred Nokaj

Danil Nokaj pleaded not guilty of the murder of Tunë and Dedë Allakaj.

His defensive line was pointed out during the examination which took place in the hearing of 21 May 2009.

It can be summarized as follows:

- during the year 2000, two quarrels between him and members of the Allakaj family took place, though with no recourse to physical violence.

- In the morning of the 19th of March 1999 he was working alone in his courtyard. The mother came to see him from time to time. He was wearing light coloured working clothes (all his working clothes were light colour).
- Then he heard a gunshot coming from the yard of his brother Anton's. He did not hear any other gunshots (in particular, he did not hear a series of three bursts);
- the crime scene, in the description of the defendant, lied at a distance of about 2000 meters from his house;
- he immediately went to check what had happened and he saw his uncle's wife, who told him: "*Anton has revenged his brother's blood*";
- He immediately, upon request from this uncle's wife, headed towards the Drini I Bardhe, in order to alert his cousin Alfred (who was working there) of what had happened;
- He met his cousin in front of his uncle Frrok's house and informed him (no precise indication of the time was provided by the defendant);
- Three/four days after the events, he left to Croatia, where he stayed about one week, thence he moved to Switzerland with a false Croatian passport.

The version of Danil Nokaj found some support in the statements of his mother Prene Nokaj and of the aunt Trashe Nokaj.

The testimony of Alfred Nokaj is not, in the opinion of the Panel, relevant. Indeed, the witness limits himself to stating that Danil Nokaj came to fetch him in the field which he was cultivating. He provided no clarification as to the precise time in which this happened and therefore it is possible (also admitting the truthfulness of the testimony) that Danil Nokaj went there after his comeback home from the murder.

With regard to Prene Nokaj, the following can be said:

- Her examination was particularly difficult, due to a serious form of deafness affecting her (which prevented her sometimes from understanding the questions despite the presence of the interpreter right beside her). The witness stated that she was last able to hear six or seven years earlier³¹.
- Prene Nokaj stated that, on the critical day, the son was working in the courtyard of his house working with a shovel planting garlic and onions; she brought to him some water and coffee;
- When she was there she heard *three* bursts of gunfire³².
- She immediately went home and there the wife of Danil Nokaj, who was at home as well, told her that she had seen Anton firing gunshots in the air and that "*Anton took the blood back*".

Trashe Nokaj stated:

- that she saw Danil Nokaj in the morning while she was taking the cows to the field. She usually took the cows to the field at nine in the morning and afterwards it took ten minutes to come back from the field;
- Danil was working in his yard when she went out;

³¹ See minutes of 13 May 2009:

"Haxhi Millaku: *Could you please tell the court how long has it been since you were last able to hear?*
Prene Nokaj: *Six or seven years nearly*".

³² The issue of the number of bursts heard by the witness is relevant. Upon insistence from the Panel the witness clearly stated that the number of bursts heard amounted to three.

- around ten minutes after coming back home, she heard a loud gunshot coming from the direction of Anton Nokaj's house. She went to the window and she saw Anton who said that he had paid back the blood of his brother; after repeated requests of clarification, the witness stated repeatedly that Anton Nokaj said those words as if talking on his own and *exactly* at the same time of the gunfire ruffles;
- the gunfire took place at around ten o'clock (though the witness was not able to explain how she could be sure of the time, also in the light of the fact that she was not able to make a reference to any particular events).

Coming to the evaluation of the reliability of Prene Nokaj, the Panel deems the following:

- the witness is a close relative of the defendant. In particular, Prene Nokaj is his mother. This urges the Panel to assess with particular care the credibility of the testimonies, most of all in the light of the extremely serious consequences arising from a possible conviction of the defendant, and therefore the proportionally high interest of the mother to give false statements. It has to be added that the possibility to elope the punishment for false witnessing would be theoretically easy, given the very old age of the witness (and this adds to the reasons for falsely witnessing);
- the witness released an extremely simple statement, basically focusing solely on the fact that the son was at home with her at the moment of the shooting;
- There are internal elements of contradiction in the testimony of Prene Nokaj. She stated, in fact, that she heard three bursts of gunfire. Now, it has arisen from the evidentiary proceeding that only one burst was fired by Anton upon returning home (and this, by the way, is what the defendant himself stated). Only on the occasion of the ambush three bursts of gunfire were shot. Now, it was impossible, given the serious deafness afflicting her, that Prene Nokaj was able to hear those three bursts fired from far away, which nobody else around her was able to hear. This confusion brings a shadow of grave unreliability to the statements of Prene Nokaj;
- the testimony of Prene Nokaj is in total contradiction with the statements of the witnesses examined above under 4.3 as regards the presence of the son at the crime scene.

As to the reliability of the testimony of Trashe Nokaj, the elements of non reliability are even greater here than in the statements given by Prene Nokaj. In fact:

- Also Trashe Nokaj is in close relationship with Danil Nokaj (she lives in the neighboring house and is the wife of Danil Nokaj's uncle) and this suggests the greatest care when considering her words.
- She was unable to provide an univocal explanation of when the shooting took place: on the contrary, she contradicted herself thereupon.

Indeed, she first stated that it happened 20/30 minutes after she took the cows to the field³³. Soon after, she changed such version (which was, though, allegedly supported by circumstantial elements and thus difficult to discredit) saying that the gunfire happened at 10 a.m.. When requested to explain how she knew it was 10 a.m., she gave a contradictory and confused explanation. She said that it was

³³ She stated that she took the cows out at around nine o'clock, that she came back after around ten minutes, and that after another 10/15 minutes she heard the gunshots from her room while ironing.

the time at which she usually took the children to school, though she admitted that on that day she did not take the kids to school. Eventually, after several confrontations, she ended up stating (weirdly) that she specifically remembered having watched the clock (thus providing another different explanation). It is to be added that the witness' precise memory of the watch indicating 10 a.m. at the moment of the gunfire is discredited also by the fact that there is evidence that the shooting at the Urë e Jakes took place at a later moment (according to the police report and to the majority of the other witnesses, around 10.30).

- she clearly contradicted herself in the course of the hearing when she first stated that she saw Anton Nokaj shooting a burst of automatic weapon and a few minutes after she stated that she could not see him, but only hear him;
- she unbelievably stated that, *in the exact moment* when the automatic gun was shooting, she was able to hear Anton say, *as if speaking with himself*, that he had paid back the blood of his brother. It is common knowledge that the noise produced by an automatic weapon is extremely louder than a human voice. This, added to the fact that the witness was not able to see the shooter, renders the truthfulness of the statement highly implausible.

All in all, the Panel had the clear impression that the witnesses indicated by the defense were trying to support the defensive strategy of Danil Nokaj's, aiming at putting the blame for the murder exclusively on Anton Allakaj (who pleaded guilty and whose position had already been decided with a final verdict).

It has to be added that it looks extremely dubious that the witnesses only showed up on the occasion of the main trial, despite the close family ties of the witnesses with the defendant, and despite the fact that allegedly he perfectly knew that they were able to provide him with a defense.

Finally, their version does not have the convincing force of the other one provided for by the witnesses who accused Danil Nokaj, due to:

- the greater degree of personal credibility of the other witnesses (who, for the most part, have no direct tie with the defendant or the injured party);
- the greater accuracy of the factual narration provided for by them (often complex) and its constancy throughout the various examinations which took place during the years;
- the great number of witnesses which, independently from each other and since the very first moments of the investigation, pointed at Danil Nokaj;
- the factual elements of corroboration above described.

4.9. The punishment

The Panel considers particularly relevant the following aspects:

- two aggravating circumstances have been ascertained in the present case;
- the defendant acted in cooperation with more than two other co-perpetrators, thus showing a high degree of determination and the willingness to firmly pursue the criminal intent, being in the position to overcome possible defensive reactions of the victims;
- the defendant, according to the last words of the victim Tunë Allakaj, had a prominent role on the occasion of the shooting (Luz Allakaj stated in front of the

- Investigative Judge – a statement recalled during his examination in front of the Trial panel – that “*Danil was the one in the front*”);
- The killers ruthlessly encompassed in the revenge (which should have been theoretically addressed solely towards Dedë Allakaj, father of Anton Allakaj, who killed Engjell Nokaj) also Tunë Allakaj. Thus it is possible to say that they even exceeded the (*in se* perverse) balance provided for by the traditional rule of the blood feud;
 - the victims were ambushed and executed in a most brutal way, being showered with bullets from at least three different automatic weapons, without any possibility for them to flee or defend themselves;

Blood feuds have no place in a modern society and the persistence of such an usage not only is a sign of primitive behavior, but also constitutes a very dangerous social pattern, likely to perpetuate long chains of violence.

It is not possible in the case of Danil Nokaj to consider (as it was done in the case of Anton Nokaj: see verdict of the District Court of Peja, confirmed by the Supreme Court), the diminished mental capacity to a certain extent as a mitigating factor.

Taking in consideration all elements, and bearing in mind that for one single aggravated murder the law provides for a punishment between a minimum of ten years and a maximum of forty years, the Panel deems it appropriate to inflict a punishment of twenty (20) years for each of the two murders.

An aggregated punishment of thirty-three (33) years is deemed as adequate.

Danil Nokaj is in detention on remand since the 29th of May 2008.

Pursuant to Art. 303 PCPCK the Panel has ordered detention on remand until the verdict becomes final.

The trial panel found that the grounds on which detention on remand was ordered still exist. In particular, there is still a danger that Danil Nokaj might flee (as he already did and as he will most likely do again in consideration of the harsh punishment that he is going to face).

The detention so far suffered will be accredited to the final punishment.

Legal Remedy

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

Prepared in English, an authorized language.

Gianfranco Gallo
International Presiding Judge
Gianfranco Gallo



International Reporting Judge
Ferdinando Buatier de Mongeot
Ferdinando Buatier de Mongeot

International Court Recorder

Vlora Johnston
Vlora Johnston

