

DISTRICT COURT OF PEJË/PEĆ
P. Nr. 211/09
31 March 2010

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 Virginia Micheva-Ruseva and the Kosovan Judge Osman Cucovic as panel members, assisted by the Recording Officer **Valentina Gashi**, in the criminal case against the accused

DEMIR QENA, Kosovo Albanian, born on 10/02/1973, in village Romajë in Gjakova Municipality, residing in the above village, son of Zekë and Ryve, married, four children, primary school accomplished, of average financial state, in detention on remand at Prizren Detention Centre since 28 August 2008,

charged, according to the Indictment PP. Nr. 310/08 dated 23 March 2009, with the following criminal offence:

Aggravated Murder contrary to Article 147 paragraph 1, item 3 and 7 of the Criminal Code of Kosovo (CCK) committed the night between 24.08.2008 and 25.8.2008, in Volljake village, Klina Municipality.

After having held the main trial hearings in public on 26, 27, 28 January 2010, 9, 10, 11, 18, 22, 25 February 2010 and 15, 16, 25, 26, 29 and 31 March 2010 in the presence of:

- the accused Mr. Demir Qena and his defence counsel Mr. Haxhi Cekaj;
- the EULEX Public Prosecutor and the Kosovan District Public Prosecutor Ali Uka,
- the injured party Ibrahim Shala and his legal representative, Ms. Nushe Kuka-Mekaj;

after the trial panel's deliberation and voting held on 31 March 2010, based on Article 391 Paragraph (1) of Kosovo Criminal Code of Procedure (KCCP),

on 31 March 2010, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the Accused and the EULEX Public Prosecutor, the following

VERDICT

Demir Qena

is

FOUND GUILTY

of Aggravated Murder contrary to Article 147 paragraph 1, item 3 and 7 of the Criminal Code of Kosovo (CCK) as to the murder of Ylber Shala committed, on 24.08.2008, in Volljake village, Klina Municipality, because, in the night between 24.08.2008 and 25.8.2008, in Volljake village, Klina Municipality, intentionally and deceitfully deprived the late Ylber Shala, from Rogove village, Gjakova Municipality, of his life for the purpose of obtaining material benefit since he owed the victim around 20.000 Euros.

In particular, on 24.8.2008, at 22:42:35 hrs, the defendant called by his phone the victim and asked him to have a meeting in order to give him 10.000 Euros. After they met the victim was taken to a forest nearby Volljake village, where the defendant shot at him several times with an automatic weapon of unknown type, calibre 7.62x36mm hitting him in the head and other parts of the body thus causing his death.

THEREFORE, the accused, is

SENTENCED

To twenty three/23/years of long term imprisonment for the criminal offence of *Aggravated Murder, contrary to Article 147 paragraph 1, item 3 and 7 of the Criminal Code of Kosovo (CCK);*

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 and Article 278 Par. 7 of the KCCP.

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP 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 are obtained pursuant to Article 100 Paragraph (2) of the KCCP.

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

On 23 March 2009, the District Public Prosecutor of Pejë/Peć filed the indictment number KAQ 106/09 against Demir Qena, accusing him of the criminal offence of Aggravated Murder contrary to Article 147, paragraph 1, items 3 and 7 of the CCK.

According to the indictment, on 24 August 2008, at around 23:30 hrs, in Volljake village, in Klinë/Klina Municipality, Demir Qena killed Ylber Shala with an intent to gain material benefit, intentionally and deceitfully, because he owed to the victim around 20,000 €.

The indictment was confirmed on 8 May 2009 by the Confirmation Judge.

B. COMPETENCE OF THE COURT

1. Procedure, Competence and Panel Composition of the District Court of Peja/Pec.

In accordance with the Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the accused was charged with Aggravated Murder, in violation of Article 147, paragraph 1, items 3 and 7 of the KCC, punishable by imprisonment of at least ten years or of long-term imprisonment. Therefore, District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offences, according to the indictment, were committed in village Volljake, in Klinë/Klina Municipality, which is within the territory of the District of Pejë/Peć. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Pursuant to the Article 3.3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, upon request from any party in the proceedings, the President of the Assembly of EULEX Judges can decide that Eulex takes over the case when it is considered necessary for the proper administration of justice and when the criminal offence is comprised is listed in Article 33 of the LoJ.

The injured party in this trial, Mr, Ibrahim Shala filed a request with the President of the Assembly of EULEX Judges on 28 September 2009 requesting that EULEX Judges be assigned to this case, due to the fact that the defendant was benefiting from a network of support and that some witnesses had overturned their original statements. Furthermore, the criminal offence of "Aggravated Murder" is listed in Article 3.3 item g.

After having held a hearing in the District Court of Pejë/Peć on 8 December 2009 where all the parties were heard, the President of the Assembly of EULEX judges decided to assign the case P.nr.211/09 to EULEX judges in Pejë/Peć.

The Trial panel for this case was composed of a mixed panel of two EULEX Judges and one Local Judge. None of the parties objected to the panel composition.

2. The Main Session

The main trial was held in public on 26, 27, 28 January 2010, 9, 10, 11, 18, 22, 25 February 2010 and 15, 16, 25, 26, 29 and 31 March 2010 in the presence of the accused and his defence counsel, the EULEX Public Prosecutor, the Kosovan District Public Prosecutor, the injured party Ibrahim Shala and his legal representative.

In accordance with the article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary.

C. SUMMARY OF EVIDENCE PRESENTED

1. During the proceedings of the main trial, the following witnesses and expert witnesses were examined by the parties and by the trial panel:

- Ibrahim Shala, on 26 January 2010;
- Teuta Konjuhi, on 27 January 2010;
- SA , on 27 January 2010;
- Halil Qadraku on 27 January 2010;
- Urim Pervizaj, on 28 January 2010;
- Visar Thaqi, on 28 January 2010;
- Avdi Shala , on 28 January 2010;
- Besnik Ahmetaj, on 9 February 2010;
- Mustafe Gjuliqi, on 10 February 2010;
- Shpend Pervizaj on 10 February 2010;
- Sokol Daqaj, on 11 February 2010;
- Valon Arifaj, on 11 February 2010;
- Iftimon Qoqaj, on 11 February 2010;
- Sahit Duraku, on 18 February 2010;
- Smajil Duraku, on 18 February 2010;
- Rame Hajdaraj on 18 February 2010;
- Abit Demiraj, on 15 March 2010;
- Halit Daqaj, on 25 March 2010;
- Imer Daqaj on 25 March 2010 ;
- Arsim Gerxhaliu, expert witness, on 26 March 2010.

2. Statements, police reports and other documentary evidence read out during the trial sessions.

a) Documentary evidence and reports

During the main trial, the following documents were considered as read as evidence, pursuant to art. 367 KCCP:

- Police reports

- Police officer's report dated 25.08.2008
- Report of police investigator Fatos Hasanaj, prepared by Klina Investigation Unit with number 2008 DE 880, dated 25.08.2008
- Police Report with number 2008-DE-880 Ref. 2008-HRP-164, dated 26.08.2008, prepared by Peja Regional Investigation Unit
- Report of police investigator, Gani Lajqi, from Regional Police Directorate with number 2008 DE 880 ref. 2008 HRP-164, dated 30.08.2008
- Penal denouncement from Peja Regional Investigation Unit to the District Public Prosecution Office dated 30.08.2008
- Informative report by investigative officer, lieutenant Riza Mahaj from Peja Regional Investigation Unit, with Ref no: HRI/PE/1010/498/08, dated 23.09.2008
- Informative report by investigative officer, lieutenant Riza Mahaj from Peja Regional Investigation Unit, with Ref no HRI/PE/1010/565/08 dated 29.10.2008
- Informative report by lieutenant Riza Mahaj, regional investigation officer in Peje, with Ref no: HRI/PE/1010/693/08, dated 04.12.2008, regarding the IME expertise done by PTK Legal Office in Prishtina of the defendant's phone, as well as the photo of IME's number in the defendant's phone,
- Minutes of the search of Demir Qena, dated 28.08.2008

- Autopsy reports, crime scene reports

- "Autopsy report" of Ylber Shala prepared by KPS Peja Regional Forensic Unit, with number 2008 DE 880, dated 26.08.2008
- Photo album of the autopsy (40 pages, 80 photographs)
- Medical report confirming death, dated 25.08.2008
- Crime scene report prepared by the KPS, Peja Regional Investigation Unit, with number 2008 DE 880, dated 25.08.2008
- Photo album of the crime scene report (28 pages, 56 photographs)

- PTK and IPKO reports

- PTK report on received and dialled calls and SMS-s exchanged between the defendant Demir and now the late Ylber Shala.
- Phone listings and SMS listings
- IPKO phone listing of outgoing phone calls from phone number 049 204 152 from 23 August 2008 to 25 August 2008

b) Statements

Pursuant to Article 368 of the KCCP, on the basis of the consensus of the parties (see the minutes of the hearing held on 26 January 2010), the following

statements were read out as evidence, replacing the direct examination of the below witnesses:

- Statement of Halit Shala, given before the Public Prosecutor on 27.10.2008
- Statement of Sami Hoti given before the Public Prosecutor on 27.10.2008
- Statement of Marjan Markaj before the Public Prosecutor on 27.10.2008
- Statement of Arben Preqi before the Public Prosecutor on 24.09.2008 and before the police on 25.08.2008
- Statement of Miftar Berisha before the Public Prosecutor on 19.09.2008 and before the police on 25.08.2008
- Statement of Esat Bacaj before the Public Prosecutor on 19.09.2008 and before the police on 25.08.2008
- Statement of Enver Demaj before the Public Prosecutor on 06.02.2008 and before the police on 29.08.2008
- Statement of Ylber Shala given before the police of Prizren on 21.05.2008

The following statements, lacking the consent of the parties, were acquired pursuant to Art. 368, par. 1, item 1 of the KCCP and were read out in the hearing held on 16 March 2010.

- Statements of Ramadan Daqaj given before the Public Prosecutor on 11.02.2009 and before the police on 27.10.2008;
- Statements of Daim Daqaj given before the Public Prosecutor on 19.02.2009 and before the police on 29.08.2008.

D. FACTUAL RECONSTRUCTION OF THE EVENTS

In the following part of the reasoning the various statements will be presented in reference to the most relevant events of the present case.

The debt between Ylber Shala and Demir Qena

According to the indictment, Demir Qena deprived Ylber Shala of his life, due to the fact that he owed the victim between 18.000 and 20.000 Euros. A number of witnesses were examined as to the existence of such a debt between Demir Qena and Ylber Shala and as to the amount of this debt.

- **Ibrahim Shala**, the injured party, was examined on 26 January 2010. His testimony mostly consisted of what was reported to him by his son Advi Shala. He stated that he had been friends with Demir Qena since 1999 and that they had met during the war. He reported that, in May 2008, he had overheard Demir Qena and his son Ylber Shala arguing over the phone and when he asked for the reasons of the argument, neither Demir Qena nor Ylber Shala said anything to him.

According to the witness, both Demir Qena and Ylber Shala were summoned by the police in Prizren to give a statement as to the criminal offence of Threat against an individual called Gazmend Kuqi: Ibrahim Shala had requested further information to the police as to the case and the reply was his son should not associate with Demir Qena. Actually when Ylber came back to Kosovo in the summer 2008, he was spending a lot of time with Demir Qena.

Ibrahim Shala stated that, on 22 August 2008, there was an argument between Demir Qena and Ylber Shala in the center of the village. Avdi Shala and some villagers witnessed the scene and heard Demir Qena saying to Ylber Shala: "I don't have the money now, I will give it to you on Saturday". At that time the witness did not know anything about the argument, but, on 24 August 2008, he could see that his son Ylber Shala was nervous, even though he did not explain the reasons. After the death of Ylber, his other son Avdi informed Ibrahim he had been told by Ylber that, on the night of 24 August, he had to meet Demir who would return him 10.000 Euros.

Ibrahim stated that, on the night of 24 August, Ylber left home with his car and that, at around 21:30, only Avdi came back by that car.

Ibrahim was told by his son Avdi about the debt existing between Demir Qena and Ylber Shala after the funeral. He did not know where Ylber had taken such an amount of money to lend. Furthermore, Ibrahim Shala did not know that in the period close to the murder, Ylber had a gun and only learnt about it after his death.

Ibrahim also mentioned that he used to lend money to Demir Qena whenever he was asking for. Over 2007 and 2008, he lent him around 4.000 Euros once and 5.000 Euros on another occasion. He used to lend him money as Demir Qena was helping him with his gravel business. Furthermore, Ibrahim Shala was questioned as to the involvement of Demir Qena in the reimbursement of a debt contracted by Valon Arifaj towards Ibrahim Shala. Valon Arifaj owed 9.000 Euros to Ibrahim Shala in relation to a truck. Demir Qena intervened in order to get the money from Valon Arifaj by force and give it to Ibrahim Shala, even though Ibrahim Shala did not ask him to do so. Ibrahim Shala further stated that Demir Qena still owed him 5.500 Euros.

- **Avdi Shala** was examined on 28 January 2010. He mentioned the special relationship that he had with his brother Ylber and that the latter used to confide more with him than with the other members of the family. Therefore, Avdi was informed by Ylber about the debt of 20.000 Euros between Demir Qena and his brother which was contracted in March 2008. Avdi stated that there might have been a document in writing about this debt, but that Ylber had kept it. When Ylber Shala returned to Kosovo from Italy on 26 July 2008, he kept contacting Demir Qena by phone and in person, in order to have his money back. However, Demir kept on postponing the payment. On 22 August 2008, Demir and Ylber met to discuss the payment of the debt and had an argument. Avdi stated that his brother had told him that, since Demir kept postponing the payment, Ylber had put his gun in Demir's mouth and that Demir was "crying like a child".

After this, Demir promised he would give him part of the money on 24 August and the rest on 1 September 2008. On the point, Avdi stated that his brother Ylber had said to him: "I will either take the money from him or I will take his soul. It is either me that does this to him or him that does it to me".

Avdi confirmed that his father Ibrahim Shala had been informed about the debt between Demir and Ylber only after the murder had occurred.

Avdi also mentioned the fact that after he had returned from Italy, Ylber was carrying a weapon on his waist and that he had the gun with him the night he was killed.

- **Teuta Konjuhi** was examined on 27 January 2010. She was the girlfriend of the victim, Ylber Shala. They last met on 22 August 2008 in Prizren and Ylber Shala mentioned to her that maybe he should postpone his return to Italy because he was expecting 'Baca Deme' to pay his debt.

On 24 August 2008, around 21.30, Teuta and Ylber had a phone conversation which lasted 40 minutes. During the above conversation, Ylber received another phone call and asked Teuta to hold the line as he would speak to Demir who was ringing on the other phone. She overheard Ylber asking: "Are you sure you will pay me back half of the debt?" and she recognised the voice of Baca Deme. Then Ylber told her that he was now sure he would get half of the money back. When asked how she could recognise the voice of Demir Qena, since she had only met him twice before, she replied that she knew it was Demir Qena, as Ylber said "How are you Baca Deme?".

In May 2008, together with Ylber, she met with Demir and his girlfriend in a restaurant and Demir gave 200 Euros to Ylber as a part of the reimbursement of the debt. This was the first time she met Demir Qena whom she knew at the time under the name 'Baca Deme'. The second time she saw him was at a bus station, but they were a bit distant and she did not greet him.

The witness also affirmed that she was present during some phone calls between Demir and Ylber related to the debt and specified that Demir would sometimes call Ylber and say that he would sell something and give him back 5.000 Euros. Ylber would often try to contact Demir in order to have his money back, but he was never successful.

The witness stated that Ylber had told her that he had earned the money lent to Demir.

- **Valon Arifaj** was examined on 11 February 2010. He mentioned that, in August 2008, he traveled to Albania with Demir Qena and that the latter mentioned to him that he owed some money to Ylber Shala. In fact, according to the witness, Demir had previously asked Ylber to borrow some money for him from SM so that Demir could lend the money to GK i. According to Valon, the amount of money owed by Demir to Ylber was between 10.000 to 15.000 Euros. Ylber requested the money back to Demir as SM was asking for it, but Demir said that GK was not paying it back to him. Valon reported that Ylber Shala started to carry a gun with him, as he was afraid both of SM and Demir Qena; however, Ylber was certain that

SM would not harm him, but go and request the money directly to his father Ibrahim. Ylber Shala told him that he did not want his father to find out that he had borrowed the money from SM and that he had been requested by Demir Qena to do this.

Valon further mentioned during his examination that Demir Qena had told him that Ylber was becoming a nuisance, as he kept calling him on the phone and that Demir was sorry about his father, but he was going to have no other option but to "fuck his mother" (which means to kill him).

As to another debt of 9.000 Euros between Ibrahim Shala and Valon Arifaj, Valon reimbursed his debt towards Ibrahim by giving the money to Demir. Valon reported that he paid in total 13.000 Euros to Demir as to this debt and that Demir threatened him on a number of occasions regarding the debt.

The events of the night between 24 August 2008 and 25 August 2008: the phone call, overheard by Avdi Shala, made by the defendant to the victim. Ylber Shala is seen alive for the last time at the roundabout of Rogove village.

According to the indictment, Demir Qena and Ylber Shala had a phone conversation on 24 August 2008 at 22.42 and they agreed to meet each other in Rogova village, so that Demir could pay a part of the debt, *i.e.* 10.000 Euros.

Two witnesses were examined as to the alleged meeting between Demir Qena and Ylber Shala on the night of 24 August 2008: Avdi Shala and Teuta Konjuhi.

- **Avdi Shala** stated that he had met with his brother Ylber in a bar, around 22.00, on 24 August 2008, and that, between 22.00 and 22.30, Ylber received two phone calls on his mobile phone. Then they left together by car and Ylber received another phone call to which he replied saying: "Hello Deme". Avdi then heard that the person was asking for a meeting, but Ylber said it was too late. Avdi recognised the voice of Demir Qena. The latter then insisted to meet Ylber that evening at all costs. Avdi specified that the conversation was very clear to him as they were both seating in a car. When the conversation was over, Ylber told his brother to go home with the car and that he was going to meet Demir Qena to get part of the money he owed him. In the statements given by Avdi Shala to the police and the prosecutor, Avdi did not mention that Ylber told him he was going to meet with Demir, but that Ylber said he was going to be home late. When confronted with these statements, Avdi replied that he mentioned this in his previous statements and that he was certain that Ylber told him he was going to meet with Demir.

Asked by the Presiding Judge at what time Avdi left Ylber that evening, he replied that it was 22.45 and that he was at home at 22.50. However, earlier in his examination he stated that he was home at 22.30. He then clarified that they left the bar at 22.30 and shortly after he left his brother at the roundabout in Rogove village, while he continued towards home. The Presiding Judge asked how Demir Qena knew where Ylber was. Avdi said that Ylber mentioned to Demir that he

was in the car in Rogove village and that he would get out in a minute. Upon being challenged that these details had been never mentioned before, Avdi Shala specified that he wanted to make things clearer during the present examination. The witness drew a sketch of the roundabout.

- **Teuta Konjuhi** also testified that she overheard a phone conversation between Ylber Shala and Demir Qena around 21.30 on 24 August 2008 in which Ylber asked when the money would be returned to him and, on that occasion, Ylber told her that he was eventually certain he would get the money back.

The report on the phone metering dated 8 March 2010 confirmed that a number of phone calls were exchanged on 24 August 2008 between Ylber Shala's number (044 — 042) and Demir Qena's number (044 — 210). As to the latter number, it was active only from 20 August 2008 and was utilized only to contact Ylber Shala. This VALA number was bought in a shop in Romaje, whose owner Enver Demaj stated in front of the police and the prosecutor that he did not remember to whom he had sold this card.

The police were able to prove that this number belonged to Demir Qena, since an order for metering was issued as to the IMEI number 35805601862079 (the number of one of the two telephones in possession of the defendant when he was arrested) and from that IMEI number it came out that two SIM cards had been utilized (044 — 210 and 044 — 591) with this mobile. Furthermore, two SMS were sent on 23 August 2008 from number 044 — 210 to Ylber's number: the first, at 19:41, with the following text: "text me in this number but don't mention my name. Text me now" and the second, at 19.45, with the following text: "We have to meet sometime to go to one place. I just have to meet with Ibra after two hours then we meet together". Ibrahim Shala clarified in his examination that Demir Qena was the only one to call him with the nickname "Ibra".

From the metering report dated 8 March 2010 it resulted that, on 24 August, six phone calls were made from Demir Qena's number (044 — 210) to Ylber Shala's number (044 — 042). Furthermore one SMS was sent from Demir's number to Ylber's number at 22.38 of 24 August, saying: "Leave".

The events of the night between 24 August 2008 and 25 August 2008: the wedding party at Daqajs' house in Krajik village and the alleged presence of Demir Qena at that party.

As to the presence of Demir Qena at a wedding party organised at Daqaj's house on the night of 24 August 2008 in Krajik village, a number of witnesses were presented by the prosecutor, by the defence and by the panel to assess whether Demir Qena was at the wedding party, and if so, at what time.

Most of the witnesses denied having seen Demir Qena at the wedding party:

- **Urim Pervizaj**, stated, in his examination in court on 28 January 2010, that he went to the wedding party at around 19.00 or 20.00 and that he could not remember clearly at what time he left, but it was around 23.00 and 24.00. Confronted with his statements given before the Prosecutor and the police, in which he stated that he went home at 01.00, he admitted that time had passed since that evening and that his memory was probably better at the time he gave the statements. He did not wear a watch that evening and was under the influence of alcohol. He stated that he had not seen Demir Qena at the wedding party. He stayed under the tent the whole evening and did not move around.
- **Sahit Duraku** was presented by the defence. During his examination, he stated that he was present at the wedding party held at Daqaj's house on 24 August 2008 and that he knew Demir Qena only by name, but not as to his appearance. Asked by the defence counsel of the defendant whether he could point at Demir Qena in the courtroom, the witness said he could not. The Presiding Judge then informed the witness that the individual on the left side of the courtroom was in fact Demir Qena, the witness stated that he had never seen him and that his appearance did not mean anything to him.
- **Smajl Duraku** was presented by the defence. During his examination, he stated that he was present at the wedding party of Enver Daqaj, he had arrived at 19.30 and had left at 23.00. He sat under the tent which was a trifle uphill in respect to the entrance. He knew Demir Qena however he had not seen him for a long time. When asked by the Presiding Judge whether he could recognise Demir Qena in the courtroom, the witness was able to point at him. He stated that he did not see him at the wedding that night.
- **Abit Demiraj** was presented by the defence. During his examination, he stated that he could not remember precisely at what time he had arrived at the wedding party, but he recalled it was dark and that he had come with the musicians. He stated that he was very drunk that evening and had stayed probably until 05.00. He mentioned that around 01.00 the guests started to leave the party, as it was getting cold. He sat under the tent and did not move at all. He did not see Demir Qena at the wedding party.
- **Sokol Daqaj** was presented by the defence. During his examination, he stated that he was present at the wedding party only between 20.00 and 21.00, whereby he assisted the cook. Asked if he knew Demir, the witness answered that he knew him by sight but that he could not see Demir Qena at the party. The witness was able to recognize the defendant in the court room.
- **Iftimon Qoqaj** was presented by the defence. During his examination in court, he stated that he had arrived at the wedding party in the afternoon, as he was related with the family and stayed until 01.00 or 02.00. During the party he was moving around between the tent and the house the whole night and he could not see Demir Qena. He also stated that there were no tables disposed close to the shed

where the cook was preparing the food. Asked to recognize the defendant in the courtroom, he said that he knew Demir Qena and then pointed at him.

- **Shpend Pervizaj** was examined *ex officio* by the panel. During his examination, which was mostly related to the presence of Demir Qena in a bar called 007 in Krajk village, he mentioned that he asked Demir Qena and his friend Halil, when they had arrived at bar 007, if they had been to the wedding party of Enver Daqaj earlier. Demir Qena replied that they had not gone to the party, as they had been busy somewhere else. Asked by the panel whether he was sure about this circumstance, Shpend confirmed that he was absolutely certain about that.
- **Ramadan Daqaj** stated, in front of the police on 27 October 2008 and in front of Public Prosecutor on 11 February 2009, that Demir Qena did not attend the wedding party of his brother Enver and that he was not invited. The panel attempted on many occasions to summon him, but the efforts were fruitless, since he is residing in Croatia but his place of residence is unknown.
- **Daim Daqaj**, in his statement in front of the police, given on 29 August 2008, affirmed that Demir Qena had not been formally invited to the wedding party, but only informally by phone, on the day of the wedding. However, neither Demir Qena nor his friend Halil Qadraku was present at the wedding party. Daim Daqaj gave an utterly different version of the facts in front of the Public Prosecutor on 19 February 2009: on that occasion he said that Demir Qena and Halil Qadraku were present at the wedding, they had arrived around 23.00 or 23.20 and they had stayed for 20 minutes only.

Some other witnesses mentioned that Demir Qena stayed very briefly at the gate of the courtyard where the wedding party was held:

- **Halit Daqaj** and **Imer Daqaj** were both examined on 25 March 2010. They are the brothers of Enver Daqaj, the groom who held the wedding party in Krajk village on the night of 24 August 2008. **Halit Daqaj** was not present at the wedding party, but, when he returned to Kosovo three months after the wedding, he talked with his family about the wedding party and asked his brother Daim Daqaj whether Demir Qena had been present at the wedding or not. Daim replied that Demir showed up just at the gate to hand over the keys of the car. **Imer Daqaj** was present at the wedding party and stated that the party lasted from 20.00 until 02.00, when most of the guests left the place. After 02.00, only close family members remained. During the wedding party, he was busy walking around and greeting guests at the entrance of the tent. Demir Qena was not formally invited to the wedding, but informally over the phone by Daim. **Imer Daqaj** stated that he saw Demir Qena that night: he was not under the tent with the guests, but at the gate outside the yard with his brother Daim and was bringing Daim's car back, since the latter had lent it to Demir earlier (Daim informed his brother Imer about this afterwards). Then, he saw both Demir Qena

and Daim Daqaj in Daim's car, driving down the road and leaving the gate, although he could not specify which one of the two was driving. This happened towards the end of the party, but the witness was not certain of the time, he said it might have been around midnight. When Daim came back, after approximately 30 minutes, Imer asked him where he had been and Daim replied that he had given a lift to Demir to a hotel in a place called Dushanova (which is the Serbian name for Arbana neighbourhood), because Demir's car had broken down.

Some other witnesses stated that Demir Qena was present at the wedding party:

- **Halil Qadraku** testified in front of the court that he spent the evening of 24 August 2008 with Demir Qena and that they were close friends, as they had known each other since the war. Demir Qena had tried to contact Halil Qadraku two or three times that day, but Halil Qadraku was busy. Then he contacted Demir around 19.00 with his VALA number and they decided to meet in Landovica. When asked by the Presiding Judge about the reasons why there was no record of phone conversations between the phone number of Halil Qadraku (044 — 009) and Demir Qena's numbers, the witness replied that Demir might have called him on his IPKO number or on Shefkije Gashi's number (the wife of the witness). From the metering report it results that, from Demir's IPKO number (049 — 152), two phone calls were made to Halil's IPKO number (049 — 009) on 24 August 2008, the first at 09.22 and the second at 17.13. According to the witness, Demir Qena informed him that they had been invited to the wedding of the brother of Daim Daqaj. Therefore they drove from Landovica and went to Demir Qena's house to have a few drinks and then arrived at Daim Daqaj's house between 21.00 and 22.00. Halil stated that they had stayed there for one hour or one hour and a half and that he was home around midnight. In his statement in front of the police given on 27 August 2008, Halil Qadraku said that he and Demir had arrived at the Daqaj's place between 20.30 and 21.00 and had stayed there until midnight. Asked to explain the discrepancies between his testimony in court and his previous statements as to the timings, Halil said that he did not wear a watch that night and that he was very drunk, so the times indicated were just approximate. They sat at the wedding place around a table with Daim and a few cousins of Daim Daqaj. However, the table was not located under the tent, but in a corner at around 20 to 30 meters from the tent. He talked to Daim Daqaj during the wedding party..
- **Rame Hajdare** was presented by the Defence. He attended the wedding party on 24 August 2008, arriving at 20.00 and departing around 23.45. Rame Hajdare was sitting under the tent with the guests. He stated that at the party he saw Demir Qena who was sitting further away. He could see him, because the witness went to take a jumper from his car at around 23.00 and glanced at a white plastic table which was located on the right side of the gate. Demir Qena was sitting there with two other persons. When Rame looked at him, Demir lifted his glass of beer to greet him. The witness drew a sketch of the wedding place, indicating the entrance gate, the position where his car was, the tent and the table where Demir

was sitting. Asked by the prosecutor how many times he had met Demir Qena before, he replied that he had met him only once, a year before the wedding party, in his shop in Podujevo, when Demir was accompanied by Daim Daqaj. Therefore, at the wedding party, it was the second time that he had seen Demir Qena. The witness stated that he had no idea why Demir Qena had been charged and that he never discussed this matter with the Daqaj brothers. Asked by the prosecutor the reasons why such a small event like the presence of Demir Qena at the wedding party had remained in his memory, he stated that he did not know.

The trial panel issued a search order on 22 March 2010 as to the residence and premises of Enver Daqaj, in order to find and confiscate the DVD related to the wedding party held on 24 August 2008. The search was performed on 23 March and, in a report bearing the same date, the police informed that, after having seen the DVDs of the wedding party, neither Demir Qena nor Halil Qadraku could be seen on the recordings.

The events of the night between 24 August 2008 and 25 of August 2008: the presence of Demir Qena at bar 007 in Krajk village.

The defendant, as well as a number of witnesses, reported that Demir Qena was present in a bar called 007, in Krajk village, during the evening of 24 August 2008.

- **Halil Qadraku** mentioned that, after the wedding at Daqaj's house, he and Demir went for a drink to bar 007. He did not mention having been to the bar in his statement to the police, but only in the one given to the prosecutor. According to the witness, he and Demir reached the bar around midnight.
- **Urim Pervizaj**, the owner of bar 007, also testified about the presence of Demir Qena and Halil Qadraku in his bar during the critical night. However, he did not see them directly, as he was attending the wedding party at Daqaj's place and was very drunk. The following day he was told by his brother Shpend that Demir Qena and another person called Halil had been at the bar during the night, asking for Urim to give them a lift to Prizren, as Demir's car had broken down. However, Shpend refused to wake up his brother and ask for the car. In his statements to the prosecutor and to the police, Urim said that he came back from the wedding at approximately 01.00, however, during his examination, he could not remember what he did after 23.00 (even though he stated that his memory was surely more precise when he gave the statements during the investigation). His brother Shpend told him that Demir and Halil Qadraku came to the bar after Urim went to sleep and, according to the witness, this is why he mentioned in his statement to the prosecutor that they had come around 01.30. However he could not be certain of the time, as he was already asleep.
- **Shpend Pervizaj** was called *ex officio* by the trial panel to testify about this specific event. He is a police officer. He stated that, on 24 August 2008, he had replaced his brother Urim as a bartender at bar 007, as Urim had attended the

wedding party. He affirmed that his brother had come home from the party between midnight and 01.00. Initially he said that Demir Qena and his friend Halil had arrived at the bar at around 01.30, but, in the continuation of his examination, he precised that the two of them had come between midnight and 1:30.

The witness added that Demir and Halil stayed at the bar for around 20 minutes and that Demir made a phone call to Daim Daqaj, in order to ask him to lend them his car, as Demir's vehicle, parked in front of the bar, had broken down. The witness specified that Demir Qena and Halil Qadraku had been the last customers and, soon after they left, he had closed the bar.

Furthermore, Shpend said that he saw Demir and Halil arriving by car from the direction of Romaje and not from Daqaj's house, where the wedding party was held and that there was only one road going from the place of the wedding party to bar 007.

The witness drew a sketch depicting the road in front of the bar, the terrace of the bar, the place where Demir's car was parked and the direction from which the car came.

- **Daim Daqaj** did not testify in the main trial as it proved impossible to summon him, due to the fact that he was residing abroad and that his exact place of residence was unknown. His statements were acquired on the basis of a ruling of the panel and read out in the hearing. In his statement given to the prosecutor on 19 February 2009, he stated that Demir had called him around midnight, half an hour after he and Halil Qadraku had left the party, to tell Daim that his car had broken down and to ask him to come to bar 007 with his car. He went to the bar and left his car with Demir to drive Halil back to Landovica. Then Demir brought back the car to the yard gate where the wedding party was held and asked Daim to drive him to Arbana.

However, in the statement he gave to the police on 29 August 2008, a few days after the wedding, he stated that Demir was never at the wedding and that he had contacted him at about 01.30 or 02.00 and asked for Daim's car. Daim went to the bar, gave the car to Demir and went back to the wedding party on foot. Demir returned the car to Daim at the yard gate at around 03.00 and then Daim gave a lift to Demir to motel Besa in Arbana.

The events of the night between 24 August 2008 and 25 of August 2008: the presence of Demir Qena at Motel Besa in Arbana neighbourhood in Prizren.

The Defendant stated that he was at Motel Besa in Arbana neighbourhood in Prizren during the night between 24 and 25 August 2008. A number of witnesses were called to assess the presence of the defendant at this motel and the time of his arrival and departure.

- **Besnik Ahmetaj**, the manager of Motel Besa, stated that he was on holiday from mid-August 2008 until the end of August 2008, so he was not present in the hotel on the critical night. Examined as to the practice in force in the hotel, he explained that the employees were instructed to write down the sharp time of arrival and departure of the clients.

In reference to Demir Qena, the witness confirmed the content of a receipt bearing the name of the motel, which showed that the defendant checked-in on 25 August 2008 at 01.10, checked out on the same day at 10.30 in the morning and that he was accompanied by a woman (the witness explained that the indication "+ 1" on the notebook stands for the presence of a woman). As to the main door of the hotel, the witness explained that it was always closed at night, from midnight to 08.00, but that it was possible to enter the hotel using the entrance door of the restaurant.

- **Visar Thaqi**, worked as a waiter at Motel Besa and stated that, on the night between 24 and 25 August 2008, he was at the motel and saw Demir Qena arrive at 01.00 or 01.15, when he booked a room. This time was registered in the logbook of the hotel, as well as on the receipt of the payment of the room. Demir Qena then stayed in the restaurant for 30 minutes and went to this room. His girlfriend came at around 02.15. He did not see Demir Qena leave the hotel that night and he denied that the defendant had asked him to put on the receipt a different and earlier time of check-in.

- **Mustafe Gjuliqi** worked at the reception of motel Besa on 25 August 2008 from midnight until 08.00 and stated that it was him who indicated the check-in time on the receipt when Demir Qena asked him for a room. Demir's girlfriend came later, after 02.00. The witness clarified that there were two entrances to the building, one to the motel and one to the restaurant and the restaurant remained open all night long. He denied that the defendant had asked him to put a different time of check in.

- **SA** stated that she met Demir Qena on the night between 24 and 25 August 2008 at Motel Besa. She rang him on 24 August in the evening and Demir Qena called her back in order to arrange the meeting. She stated that she had arrived at the Motel Besa around 02.00 and spent the night in the motel with Demir Qena until the morning, when they checked out at 10.30. In her statement before the prosecutor, given on 13 October 2008, she stated that she had arrived at the Motel between 02.30 and 03.00.

From the phone metering report as to Demir's IPKO number (049 — 152), a few phone contacts between the two of them are indicated: SA's number (044 — 703) rang Demir at 23.52; then there are three phone calls from Demir to SA's number: at 00.12, at 00.52 and at 01.15.

- **Valon Arifaj** stated that, on the crucial night, around midnight or 01.00, he was at the terrace of the restaurant of Motel Besa, playing table tennis. While driving to the motel, Valon crossed Demir's car, a white Opel Vectra on the road leaving

from the motel. He saw that Demir had got out of the car and that the car was driven by Halil Qadraku and moving towards the city center. He had time, since he was driving at a speed of 40 or 50 km/hour, to notice that the driver was Halil Qadraku, due to his white hair and moustache, and that there was another person in the car, named Safet Totia. Moreover, Valon affirmed that Visar Thaqi told him that Demir had asked to register his check-in time at 22.00, instead of the actual time, but that Visar Thaqi refused, as it was against the hotel's policy.

During his examination, the public prosecutor pointed out a phone call made at 00.41 on 24 August from Demir from his IPKO number 049 — 152 to Valon's number 044 — 655, Valon stated that he was already at the hotel when he got this phone call from Demir which was related to 1.000 Euros that Valon had to pay Demir and that the phone call was made five minutes after he saw Demir entering Motel Besa. However, it turned out that this phone call was made not on the critical night, but on 24 August 2008, i.e. the night between 23 August and 24 August 2008.

The morning of 25 August 2008: the discovery of the corpse of Ylber Shala.

According to two police reports dated 25 August 2008, the body of Ylber Shala was found in a forest nearby Volljake village, in Klina municipality, on 25 August, at 13.00, by two individuals, **Esat Baca**j and **Myftar Berisha**. These two persons gave a statement to the police and to the prosecutor explaining that they had spotted a lifeless body visible from the road. At the crime scene, several cartridges 7.62 x 25 mm were found. Doctor Frrok Prenaj certified the death, caused by firearm shots, in a report dated 25 August 2008.

The autopsy and the examination of the expert witness Doctor Arsim Gerxhaliu: the indication of the time of the death.

On 26 August 2008, the pre-trial judge issued an order for conducting an autopsy in order to confirm the cause of the death, to describe the external and internal features of the corpse, to determine the external and internal injuries, the manner by which the wounds had been caused and whether there were residuals of gun powder, so that the distance of the shots could be estimated, and finally which of the wounds proved to be fatal.

The autopsy was performed on 26 August 2008 by Doctor Arsim Gerxhaliu. During his examination, the expert witness provided the trial panel with the autopsy report with OMPF reference number MA-08-194 which was distributed to all the parties. In this report, the following injuries are described as follows:

"1. On the lateral left side of the head, 4 cm under the horizontal line, an injury is observed- with disordered shape of the overall size of 17 x 16 cm (no. 1), with its edges out, other secondary injuries around the injury, in the inner side of the same, the skull is fractured (multi fracture) and the brain is also contused. The same with high accuracy is

an exit hole and continuity of the channel who links with the point 11 of the posterior part of head- behind the right ear 3.5cm of size 6,5 x 5,5 cm with disordered edges (entrance exit).

2. On the right part of the arm-chest, it is observed a disordered injury (entrance hole) of size 30 x 24mm, point of round shape. The same it is observed on the continuity of the injured channel of the upper part of the back- the left side, point 13 (exit hole).

3. On the left upper side of the back, an exit hole is observed, point 12 of normal shape, its size 9x8mm with even edges and the same continues downward the muscular part and exits in the point 14 (exit hole, just 10.5cm underneath).

4. On the right side of the chest, point 3 entrance hole that continues in the inner part of the sternum with its injured channel to the right of the bottom of the neck, point 7 exit wound.

5. On the right side of the neck, injury no. 5 is noted, entrance hole and exits shortly after 1cm with the exit hole no. 6.

6. Injury no. 8 is an entrance hole that continues upwards in the region of neck, in the lower region of jaws to exit underneath the hole no. 1 by damaging regional organs of neck and producing regional fractures.

7. On the right part of thigh, it is noted an injury no. 10 as entrance hole that continues in the depth of its injured channel by attacking soft parts, the cartridge found just under the skin point 16, of the soft part of buttock.

8. There is an entrance hole on the right arm, no. 9 that exits through the inner surface of the arm, point 17.”

He therefore concluded that : “Upon the hereby report, after the performed examination of autopsy of the dead body therefore I express my opinion that the death of the deceased Ylber Shala, happened as a consequence of the injury (contusion) of brain and to the liver that resulted with bleeding. The certain injury is owing to freed cartridges of gunshots firing with firing arm.”

Arsim Gerhalliu was examined *ex officio* by the trial panel on 26 March 2010, in order to specify, in particular, the causes of the death, the time of the death and the direction of the shots. The causes of the death were established as being damages to the skull, to the chest and to the abdomen, which proved to be fatal. The doctor could state that at least eight (8) bullets had been shot at the victim. As to the time of death, the expert witness could give just an approximate time, indicating it occurred between 17.00 on 24 August 2008 and 03.00 on 25 August 2008.

According to the expert witness, it was highly likely that the first wound inflicted to the victim was the one on the head and that, as to this wound, a number of bullets (or pallets) were shot from behind at a distance of less than one meter.

According to the pathologist, it was possible that the injuries to the abdomen and the chest were inflicted two or three minutes later. The direction of the shots, as to these wounds, was from the front and downwards and some of the shots might have been fired when the victim was already lying or falling. The expert witness also mentioned the possibility that two different weapons had been utilized for the murder.

The expert witness expressed the possibility that the victim was not killed at the crime scene, but that he was transported there, due to the fact that one of the bullets had

encountered an important resistance before entering the body (which should show that Ylber was behind a concrete element - or something similar - and such shelter was not found at the crime scene).

The version given by the defendant

The defendant was examined on 16 March 2010. During the investigative stage, he decided to stay silent in front of the police on 29 August 2008, whereas he gave a statement to the prosecutor on 29 October 2008.

Events before the wedding

The defendant stated that, on 24 August 2008, in the evening, he was in phone contact with Daim Daqaj who invited him to come to the wedding of his brother. He could not remember the exact time of this phone call, but he specified it was in the evening, as it was already dark. He was also not sure whether he contacted Daim or if Daim contacted him. The Presiding Judge pointed out that there was a phone call of 49 seconds from Demir's number (049 — 152) to Daim's number (044 — 325) at 20.00 of 24 August. Demir replied that this phone call could have been the one he was talking about and added that he had explained to Daim that he had already arranged to meet with Halil, and that Daim replied that Halil could come to the wedding party as well. Demir had been in phone contact with Halil earlier that day, when Halil was attending a commemoration for a former KLA commander.

The defendant stated that, around from half an hour to one hour later, he had met Halil in Landovica and they had set off together with Demir's car to Demir's village, Romaje, which was distant around 15 to 20 minutes drive. Then they had a few drinks at Demir's place where they stayed between 30 to 60 minutes and they set off for the Daqaj's wedding party which was not more distant than a 5 minutes drive. Therefore, the estimated time of arrival at the Daqaj's house was between 22.05 and 22.35. In the statement given to the prosecutor, Demir Qena stated that they arrived at the wedding party between 22.30 and 23.00.

The wedding party

At the wedding party, they met with Daim Daqaj, but Halil did not want to sit under the tent, as he was drunk, so they sat in the yard outside, around a plastic table, 4 or 5 meters from the gate. Demir stated that they stayed at the wedding party for less than an hour. So they left the wedding place around 22.35 to 23.00. Later on, when examined by the defence counsel of the injured party as to the time of departure, the defendant stated that they left the party between 23.00 and midnight. In the statement given to the prosecutor, Demir Qena stated that they stayed at the party for 40 minutes and that they left around 23.30 and midnight.

Bar 007

Demir and Halil left for bar 007 in Krajk village for a drink and where they stayed there around 20 minutes. Then Demir realised his car had broken down and called Daim for assistance. Daim came and Demir gave a lift to Halil with Daim's car and returned the car to Daim by bringing it at the gate of the courtyard of Daqaj's house. Then, Daim gave him a lift to Motel Besa in Prizren.

In the statement given to the prosecutor, Demir Qena stated that they had stayed approximately for 30 minutes in bar 007, when he realised his car could not be started and therefore, he called Daim Daqaj who came with his black Golf. They all set off to Landovica to give a lift to Halil. Then Demir and Daim went back to Daim's house, where Daim gave the car to Demir who drove to the petrol station Eurogini, and then to a pizza restaurant. Finally he phoned Daim and told him to get his car in the road in front of Daim's home, it was before 01.00.

Motel Besa

After Daim brought him to Motel Besa, he booked a room around 01.00. His girlfriend SA arrived one hour later. In the statement given to the prosecutor, he said that Daim offered to give him a lift to Motel Besa, where his girlfriend arrived around one hour and a half later by taxi.

In the phone listings, it is shown that Demir Qena contacted SA three times that night from his IPKO number, at 00.12, at 00.52 and at 01.15. Asked by the Presiding Judge, he stated that, as to the first phone call, he spoke to SA, then, as to the second phone call, he was not certain who he had spoken with, but, as to the third phone call, he had spoken to SA's sister, as SA had already departed and had left home her mobile phone. Demir Qena stated that he had not departed from the motel until the next morning. In a subsequent examination on 29 March 2010, the defendant stated that he had actually left the Motel that night: actually first he had gone to the Motel with Daim's car to book the room, in case SA would get to the hotel before him, and then he had returned the car to Daim at his place where he had been given a lift back to the hotel by Daim.

The debt

In his statement given to the prosecutor, Demir Qena stated that he owed Ylber Shala 5.000 Euros as to the payment of a debt to Ylber Shala, (the brother in law of Ylber Shala, namesake of the victim) and that on 16 August 2008, he had given 6000 Euros to Ylber Shala to pay for his debt.

In his examination on 16 March 2010, he confirmed that he borrowed 3.000 Euros from Ylber Shala's brother in law and that the debt increased to 5.000 Euros, due to the interest. The defendant specified that he had paid his debt on 16 August 2008, so he did not owe anything to Ylber Shala. He stated more than once that it was untrue he owed Ylber Shala 20.000 Euros.

3. Additional evidence and records acquired during the sessions of the main trial.

The court *ex officio* requested the criminal record of the defendant from the District Court of Peja, from the Municipal Court of Peja, from the District Court of Prizren, from the Municipal Court of Prizren and from the Municipal Court of Gjakova. According to the registry of these courts, the defendant has previously been convicted of the criminal offence of Threat (contrary to Article 161 of KCC) and sentenced to a suspended sentence of 2 months imprisonment.

Furthermore, the court issued a number of orders to the police according to Article 360 paragraph 5 of KCCP, and the police provided the following reports in accordance:

- Report from the Peja police on distances between several locations dated **2 February 2010**

The police provided the distance between locations such as Daqaj's house, the roundabout in Rogove municipality, the crime scene in Volljake village, the motel Besa in Arbana, Prizren.

In particular, the police reported that the distance between the roundabout in Rogove village (*i.e.* where Ylber Shala got out of the car after the last telephone conversation with the defendant) and the crime scene in Volljake village (*i.e.* where the body of Ylber Shala was found) is 32 km and the distance between the crime scene and Daqaj's house in Krajk village is 43 km.

- Report from the Peja police providing copy of the logbook of Motel Besa, dated **19 February 2010**

After being requested by the trial panel, the Peja police attended Motel Besa and took copies of the logbook of Motel Besa concerning the night between 24 and 25 August 2008. The copies indicate that Demir Qena checked-in on 25 August 2008 at 01.10 with a woman (as there was the mention of +1 on the sheet) and checked-out at 10.30.

- Report from the police dated **12 and 16 February 2010** about the order issued by the panel as to the phone metering on IPKO numbers.

The police provided two letters from IPKO, dated 8 February 2010 and 12 February 2010, stating that IPKO does not keep phone listings after 6 months; therefore the order could not be implemented.

- Report from the police dated **8 March 2010** about the order issued by the panel as to the phone metering on VALA numbers.

The police were requested to report on whether there had been any phone contacts between 20 August 2008 and 25 August 2008 as to several telephone numbers belonging to Ylber Shala, Demir Qena, Halil Qadraku, Shefkije Gashi, Teuta Konjuhi, SA , Daim Daqaj, Valon Arifaj, as well as the positioning of these mobile phones.

The police reported that the phone with IMEI number 35805601862079, which was seized from Demir Qena on the day of his arrest, had utilized two SIM cards, i.e. 044 — 210 and 044 — 591.

While number 044 — 591 was not used during the critical night until 04.25 in the morning of 25 August 2008 (when this number was reported to be located in Arbana area of Prizren, where Motel Besa is located), the number 044 — 210 was used on several occasions to contact exclusively Ylber Shala's mobile phone, i.e. 044 — 042. The positioning of the mobile shows that:

- at 18.45, Demir Qena's mobile activated antenna Damjan_1 which covers the area between the villages of Rogova, Lubizhde e Hasit, Krushe, Zym and Romaja
- at 21.45, Demir Qena's mobile activated antenna Cermjani 1 which covers the area between the villages Kralan, Shqiponje, Mirushe, Zatriq, Klina and Cermjan. The police reported that in this area it is located the place where the crime was committed (village Volljaka of Klina).
- At 22.08 Demir Qena's mobile activated antenna Gja Blloku 2 which covers the area of Gjakova city.
- At 22.25, Demir Qena's mobile activated antenna Damjan 2 which covers the area between the villages of Lubizhde e Hasit and Damjan.
- At 22.42, Demir Qena's mobile activated antenna Krusha 2 which covers the area between the villages of Zym, Krushe and Krajk.

The police concluded that : *“Based on these data it is found that the phone bearing IMEI number 35805601862079 has used two phone cards, the number 044 — 210 and 044 — 591. It is worth mentioning that the phone bearing IMEI number 35805601862079 found in possession of Demir Qena at the time of his arrest, on the critical day of date 24/08/2008 in the period of time from 18:45 hrs through 22:42 hrs has moved in the area of Klina, Gjakova and Prizren and the same was constantly in phone contacts with the victim located/identified/ in the vicinity of the crime scene.”*

- Report from the police dated **12 March 2010** with result of the phone metering and positioning performed on the VALA phone number of Halil Qadraku.

The police provided details of the phone contacts on Halil Qadraku's telephone numbers and also the related positioning. It appears that there is only one conversation with Demir Qena on 25 August 2008 at 09.53. The positioning of Halil Qadraku's phone shows that he was in Prizren region at 20.12, on the critical night: after that time the numbers indicated by Qadraku were not utilized any more and therefore no positioning is available.

- Report from the police dated **23 March 2010** with the outcome of the search order at the house of Enver Daqaj and DVD

The police were ordered by the trial panel on 22 March 2010 to search and seize the DVD recording relating to the wedding of Enver Daqaj of 24 August 2008. The police performed the search of Daqajs' house on 23 March 2010 and reported that the video recording was viewed and that neither Demir Qena nor Halil Qadraku could be seen on the video recording.

- Statement of Ylber Shala given to Prizren police during his examination on 21 May 2008 as to the Threat to GK

In this statement, Ylber mentioned that Demir owed him 8.000 Euros which he had lent to Demir three or four months ago. However, Demir was not paying him back, as the person to whom Demir lent the money was not paying him back either. Demir borrowed Ylber's phone to call the person in order to get back the money and was very nervous after the phone call. Then an unknown man called on Ylber's phone swearing at him and at Demir. Therefore, Ylber got furious, swore back and threatened the person on the phone. Ylber thinks that the person on the phone was the person to whom Demir had lent the money. In a judgment issued on 25 May 2008, the Municipal Court of Prizren sentenced Demir Qena, Ylber Shala and Valon Arifaj to two months suspended imprisonment for the criminal offence of Threat to GK

Ylber's statement was admitted into evidence in the hearing session of 29 March 2010, pursuant to Article 368, paragraph 1 of the KCCP.

E. EVALUATION OF PRESENTED EVIDENCE

1. Factual findings and examination of the pieces of evidence

After having reported all the pieces of evidence presented during the main trial, as to the factual reconstruction of the events occurred on the crucial night between 24 and 25 August 2008, the following points can be considered as proven and not in doubt, based on the autopsy, the testimonies of the witnesses, the results of the metering and positioning on the mobile numbers utilized by the protagonists of the events and on the admissions of the defendant:

- The corpse of Ylber Shala was found in the Village of Vulljake, Klina Municipality on the right side of the intersection Vulljake-Qupeva, on 25 August at 11.30 am (see the police reports dated 25 August 2008);
- According to the autopsy report and the testimony of the pathologist, doctor Arsim Gerxaliu, the main cause of death was the massive destruction of the brain as a consequence of the gunshots fired against the head of the victim;
- After considering the results of the covert measures issued in the proceedings and the testimony of doctor Gerxaliu, the time of death can be indicated in a period of

time between 22:42 (the last phone call received by the victim) on 24 August 2008 and 3:00 on 25 August 2008;

- From the metering report, dated 8 March 2010, it results that, on the evening of 24 August 2008, the victim received four phone calls on his telephone number 044 — 042 from the number 044 — 210: the first phone call was at 21:45:28, the second at 22:08:08, the third at 22:25:30, the fourth at 22:42:35;
- From the above metering report, it results that, on 24 August 2008, at 22:38, from the number 044 — 210 to the number 044 — 042 the following text message was sent: "Leave".
- The number 044 — 210 was one of the numbers in possession of Demir Qena, since, as it is stated in the metering report dated 8 March 2010, the above telephone SIM card is linked to the IMEI number of the mobile seized to Demir Qena when he was arrested;
- As to the IPKO number 049 — 152, the related telephone card was found in possession of Demir Qena on the day of his arrest and therefore it is undeniable that it was utilized by him (see police report dated 23 September 08 and signed by police officer Riza Mahaj).
- As to the other telephone numbers relevant in the present case (and in particular the telephone numbers utilized by Ylber Shala, Daim Daqaj, Teuta Konjuhi, SA , Halil Qadraku, Valon Arifaj), the witnesses themselves (for Ylber the indication came from his brother Avdi) indicated which numbers were in their possession and therefore the issue is undisputed and uncontested.

Apart from these undisputed and objective findings, other elements of the case were contested by the defence, starting from the alleged debt between the defendant and the victim.

In fact, as to the fact that Demir Qena owed Ylber Shala a relevant amount of money, notwithstanding four testimonies consistent with each other on this point, the defendant stubbornly claimed that he had paid the entire debt a couple of days prior to 24 August, also alleging that he had documents proving his affirmations (documents which have never been submitted to the court).

On this point, the version of the defendant, which is confined to mere allegations without any proof, must be discarded and deemed as utterly unreliable.

Actually, as to the fact that the debt still existed on 24 August 2008, the testimonies of Teuta Konjuhi and Avdi Shala are particularly significant and reliable, as it results from the following abstracts taken by the minutes of their examination:

Public Prosecutor: Do you remember when the last time you spoke to Ylber on the phone was?

Teuta Konjuhi: Yes, on the 24th, it was a Sunday.

Public Prosecutor: What time?

Teuta Konjuhi: Around 9:30 pm.

Public Prosecutor: How long did the conversation last?

Teuta Konjuhi: Approximately 40 minutes. I didn't check the time. It was over half hour.

Public Prosecutor: Do you remember where you were when you called Ylber on the phone?

Teuta Konjuhi: I was at home when I called him. We continued chatting on the phone. He didn't hang up the phone but he said, "can you hang on as I will speak to Demir who is ringing me on the other phone". He didn't stop the conversation. At the same time he was speaking with him on the other phone.

Public Prosecutor: What did you hear during that conversation?

Teuta Konjuhi: I heard Ylber say, "are you sure you will pay me back half of the debt?" I could hear also Baca Deme's voice, slightly, when he said, yes, this is done, no problem." This conversation lasted about 1 min, when Ylber was talking to him. We then continued to talk, he spoke to me. This time he said he was sure he would be paid the money. He said he would give half of the money. We continued for a short while after and finished the conversation and we didn't speak again that night.

Public Prosecutor: after Ylber finished this conversation with Demir, what did you speak about?

Teuta Konjuhi: Nothing, apart that he said that he called him on the phone and he said he was going to pay him half of the debt. That night I didn't try to contact again Ylber until the next day.¹

It must be noted that the above phone conversation between the witness and Ylber, (during which she overheard the latter talking with the defendant about the debt), is not completely corroborated by the results of the metering reports.

In fact, Teuta initially stated that she called Ylber from her VALA number (044 — 992) on his VALA number. However, in the metering report issued on the number belonging to the victim, there is no trace of a conversation of 40 minutes on the evening of 24 August 2008.

When the witness was asked by the Presiding Judge whether the conversation with Ylber could have taken place between two IPKO numbers, she replied that both of them had also IPKO numbers (Teuta had number 049- —596, whereas Ylber had number 049- — 598) and that it could have happened that the conversation had taken place on their IPKO numbers.

Presiding Judge: Is it possible that as to the last conversation you had with Ylber you called him on the IPKO number?

Teuta Konjuhi: I called him from my phone —992, I called him on his Vala.

Presiding Judge: When you spoke to the police, on the occasion of your first interview, you said that on the 24th you said you called Ylber on his IPKO number and that during that conversation Ylber called Demir from his Vala number, since the IPKO number was of course busy.

Teuta Konjuhi: It was something like that. On that night I know I didn't have credit on my IPKO number, it might be something like that.

Presiding Judge: I know that you call from IPKO to IPKO usually, so you spend less money.²

¹ Minutes of 27 January 2010, pag. 36.

² Minutes of 27 January 2010, pag. 40.

Unfortunately, there is no metering report as two these IPKO numbers and, since IPKO stores the data only for a period of six months, as indicated in the police reports dated 12 and 16 February 2010, it was not possible for the panel to obtain such data and to have an objective confirmation of the version given by the witness.

However, an indirect corroboration of the testimony of Teuta is given by the metering as to the Vala number of the victim (044 — 042). According to the police report dated 8 March 2010, at 21:45 of 24 August, Demir Qena, from his number 044 — 210, called Ylber Shala on his number 044 — 042 and the conversation lasted 25 seconds. This objective finding confirms the narration of Teuta that, during her conversation with Ylber, on the evening of 24 August around nine (conversation which likely took place on their IPKO numbers and lasted around 40 minutes), Ylber was called on his Vala number by Demir Qena.

And this version is corroborated by the statement given by Teuta Konjuhi to the police on 25 August 2008, where she mentioned that she had called Ylber Shala with her IPKO number that evening.

And, as to the fact that the debt still existed on the night of 24 August, the testimony of Teuta is confirmed and corroborated by the version given by Avdi Shala, the brother of the victim.

Eulex Prosecutor: We know this did not actually happen, so what really happened on that Sunday?

Avdi Shala: I went out with friends, as every other day, and at around 10 o'clock in the evening Ylber Shala came to the bar I was at with my friends. I was there together with Lavderim and Gazmend Berisha. Ylber Shala ordered a coffee, and from 10.00 until 10.30 he received two phone calls. At around 10.30, we left the coffee bar and headed home. On the way home, Ylber Shala received a phone call from Demir Qena. When receiving the phone call, Yuli said, "Hello Dem", and Demir asked him for a meeting, asked to meet with him. And Ylber Shala said, "Tonight is late", and Demir insisted on two or three occasions that they had to meet that night at all costs. At that point, the call was terminated. Yuli gave me a packet of cigarettes and the keys to the vehicle and told me to go home. He said "I am going to Demir's to get the sum of 10,000 Euros we have agreed to. If he isn't going to give me the money he will give it to me on Sunday."

Eulex Prosecutor: To the Public Prosecutor you did not say that. You said something different than that.

Presiding Judge: To remind you what you said. These are your words. The statement given to the police and the one given to the Public Prosecutor is more or less the same. "I heard when Ylber said, "tonight is late." However he said, "We have to meet" and Ylber switched off the phone. Then Ylber stopped the vehicle and said to me to go home by the vehicle, and added that, "tonight I will be home late." Then he added, "Don't call me on the phone, it will be switched off." He did not say he was going to meet Demir Qena.

Avdi Shala: The telephone call and the reply my brother gave indicate information about this.

Presiding Judge: You assume he was going to meet Demir Qena. But he did not say that he was going to meet Demir Qena.

Avdi Shala: No. He told me, after the phone conversation was over and he switched the phone off, he told me where he was going.

Presiding Judge: In the statement you gave to the police, it is not said hereafter those words. Also checking the statement given to the Public Prosecutor: you were more specific. You said "Dema told him by phone that they had to meet somewhere. My brother Ylber told me that tonight was too late, and Dema tried, probably once again, but my brother closed the telephone and he gave to me the keys of the car so I took the car and left towards my home, while Ylber continued towards the village, walking. I don't know where he went." This is not the same.

Avdi Shala: What do you mean?

Presiding Judge: In the two statements you gave to the investigators, you didn't mention that your brother said to you, "I'm going to meet Demir Qena" Are you sure that he uttered those words?

Avdi Shala: Yes.

Presiding Judge: How come in these two statements you didn't state anything about these words said by your brother?

Avdi Shala: I mentioned these words in front of the police and the Public Prosecutor.

Presiding Judge: Are you sure to this fact that he said to you clearly he was going to meet Demir Qena?

Avdi Shala: Yes.

Presiding Judge: OK, we can move on.

Eulex Prosecutor: In the minutes of the statement you gave the Public Prosecutor, in regard to the reason why he went to see Demir Qena, you said, "I know that that day Ylber went to village Romaje to take money or kill him, since he was very frustrated the money was not being paid back." Did he say something like, "it's either him or me"?

Avdi Shala: He wanted to get the money at all costs, but Demir Qena asked him for an extra two days until Sunday. He said, "OK, I'll meet you on Sunday at any cost." This was the agreement.

Eulex Prosecutor: From what I read, I conclude that you were of the opinion he was ready to kill him.

Avdi Shala: Yes, it was like that. It was in order for him to get the money back, because Demir disappointed Ylber on several occasions and he was really frustrated about being treated like that. He came up to that moment.³

Apart from the discrepancy as to whether or not Ylber had said to his brother that he was going to meet Demir, (difference which will be examined further on), the testimony of Avdi Shala in reference to the persisting existence of the debt on the evening of 24 August is very solid and consistent with his previous statements. Therefore there are no reasons to discard it.

³ Minutes of 28 January 2010, pag. 26-27.

As to the amount of the debt, the versions of Teuta and Avdi are perfectly consistent with each other (both of them indicated that the debt was of 20.000 Euros and that half of the debt would be paid on the night of 24 August).

The reliability of the above testimonies is further corroborated by the statement of Ibrahim Shala who declared that his son Avdi, after the death of Ylber, told him that Demir was about to give back Ylber 10.000 Euros, which is exactly half of the debt (minutes of 26 January 2010, pag. 17). Of course Ibrahim is repeating what he heard from his son Avdi, but his words confirm the genuineness of the testimony of Avdi.

Only Valon Arifaj spoke about a debt of around 10.000-15.000 Euros between the defendant and the victim, even though he admitted that he could not remember the exact amount of money (minutes of 11 February 2010, pag. 16).

In any case, the above four testimonies are consistent with each other as to existence of a debt between the victim and the defendant at the time Ylber was killed; and, regardless of whether the amount owed was of 20.000 or of 10.000 Euros, thinking of the general economic conditions in Kosovo and in particular of the economic status of the defendant (defined by the latter himself as poor, see the minutes of 26 January), the amount of money owed by Demir to Ylber was significant.

Furthermore, it must be added that, as it results from the testimony of Avdi, Ylber had threatened heavily Demir just two days prior to the murder, on 22 August, by putting a gun in his mouth, because Demir had not paid the debt yet. The situation had become so tense that Ylber had declared to his brother Avdi that he was ready to kill Demir, if he had not given back the money.

Eulex Prosecutor: You were interviewed by the Public Prosecutor on 24th September 2008.

Avdi Shala: I cannot remember the date exactly, but yes I remember I was interviewed.

Eulex Prosecutor: You stated, in regard to the meeting between Demir Qena and Ylber Shala the Friday before the critical night, you said, "Yuli told me after this action that Demir started to cry like a child and told Ylber that on Sunday he would pay back the debt." And also that "Yuli has put the gun on Demir's mouth." and that, "he was crying like a child."

Avdi Shala: I have mentioned this. He resorted to use this method in order for Demir Qena to give back the money he owed him, because he kept going on and on and not giving the money back.

Eulex Prosecutor: I just want to know if this is what he told you.

Avdi Shala: Yes it was.⁴

* * *

Eulex Prosecutor: In the minutes of the statement you gave the Public Prosecutor, in regard to the reason why he went to see Demir Qena, you said, "I know that that day

⁴ Minutes of 28 January, pag. 24.

Ylber went to village Romaje to take money or kill him, since he was very frustrated the money was not being paid back." Did he say something like, "it's either him or me"?

Avdi Shala: He wanted to get the money at all costs, but Demir Qena asked him for an extra two days until Sunday. He said, "OK, I'll meet you on Sunday at any cost." This was the agreement.

Eulex Prosecutor: From what I read, I conclude that you were of the opinion he was ready to kill him.

Avdi Shala: Yes, it was like that. It was in order for him to get the money back, because Demir disappointed Ylber on several occasions and he was really frustrated about being treated like that. He came up to that moment.⁵

For the above reasons, it is undeniable that Demir had a strong and immediate motive to kill the victim in order to get rid of the debt and to stop the threats perpetrated against him by Ylber Shala.

It is a solid and strong piece of circumstantial evidence against the defendant.

It is noteworthy that, according to what was stated by Valon Arifaj, Demir Qena had openly expressed his intention to kill Ylber Shala, as it results from the following abstract:

Public Prosecutor: Before Ylber got killed, do you remember having any conversation with Demir Qena?

Valon Arifaj: Demir Qena had come to my premises and told me that he was becoming a nuisance as he kept calling him on the phone. Demir Qena told me he was sorry about his father, as a matter of fact, but he was going to have no other option but to "fuck his mother". (Interpreter note: meaning to kill him). The way things are going he is either going to have to kill me or I will have to kill him.

Presiding Judge: So this is the meaning of "I will have to fuck his mother"?

Valon Arifaj: This is how it is said here. And after this conversation I informed Ibrahim Shala that I thought that Ylber was "in deep shit". Ibrahim Shala told me he had noticed this as well, as Ylber Shala had already been three times to Demir Qena's house. Ibrahim Shala told me this.⁶

Even though the testimony of Valon is not completely reliable (he appeared to get confused between what had happened on the crucial night and what had happened the night before), this part of his statement is absolutely consistent with what was referred by Avdi as to the mounting tension between the victim and the defendant.

As to the constant contacts between Ylber and Demir, on the evening of the 24 August, Avdi Shala testified that, between 22.00 and 22.30 of 24 August, his brother received two phone calls and that, later than 22.30, after having left the bar in Gjakova, his brother had a telephone conversation with the defendant.

⁵ Minutes of 28 January, pag. 27.

⁶ Minutes of 11 February 2010, pag. 21.

This version of the events is utterly confirmed by the results of the metering on the telephone numbers utilized by the victim and by the defendant (see the report dated 8 March 2010).

In fact, from that report it results that:

- on 24 August 2008 at 22:08:08 a phone call was made from number 044 — 210 (utilized by the defendant) to number 044 — 042 (utilized by the victim) and the conversation lasted 2 minutes and 36 seconds;
- on 24 August 2008 at 22:25:30 a phone call was made from number 044 — 210 to number 044 — 042 and the conversation lasted 1 minute and 46 seconds;
- on 24 August 2008 at 22:42: 35 a phone call was made from number 044 —210 to number 044 — 042 and the conversation lasted 25 seconds.

As to the intention of the victim to meet the defendant on the crucial night, it is undeniable that, in his testimony in front of the Court, the witness added something which did not result in the statements given during the investigation: in particular, in front of the court, he added that, after the last phone call with the defendant, his brother told him that he would meet Demir that night and receive part of the money, whereas, according to his previous statements, he had just said that, after the conversation with Demir, Ylber got out of the car without saying where he was supposed to go.

Eulex Prosecutor: We know this did not actually happen, so what really happened on that Sunday?

Avdi Shala: I went out with friends, as every other day, and at around 10 o'clock in the evening Ylber Shala came to the bar I was at with my friends. I was there together with Lavderim and Gazmend Berisha. Ylber Shala ordered a coffee, and from 10.00 until 10.30 he received two phone calls. At around 10.30, we left the coffee bar and headed home. On the way home, Ylber Shala received a phone call from Demir Qena. When receiving the phone call, Yuli said, "Hello Dem", and Demir asked him for a meeting, asked to meet with him. And Ylber Shala said, "Tonight is late", and Demir insisted on two or three occasions that they had to meet that night at all costs. At that point, the call was terminated. Yuli gave me a packet of cigarettes and the keys to the vehicle and told me to go home. He said "I am going to Demir's to get the sum of 10,000 Euros we have agreed to. If he isn't going to give me the money he will give it to me on Sunday."

Eulex Prosecutor: To the Public Prosecutor you did not say that. You said something different than that.

Presiding Judge: To remind you what you said. These are your words. The statement given to the police and the one given to the Public Prosecutor is more or less the same. "I heard when Ylber said, "tonight is late." However he said, "We have to meet" and Ylber switched off the phone. Then Ylber stopped the vehicle and said to me to go home by the vehicle, and added that, "tonight I will be home late." Then he added, "Don't call me on the phone, it will be switched off." He did not say he was going to meet Demir Qena.

Avdi Shala: The telephone call and the reply my brother gave indicate information about this.

Presiding Judge: You assume he was going to meet Demir Qena. But he did not say that he was going to meet Demir Qena.

Avdi Shala: No. He told me, after the phone conversation was over and he switched the phone off, he told me where he was going.

Presiding Judge: In the statement you gave to the police, it is not said hereafter those words. Also checking the statement given to the Public Prosecutor: you were more specific. You said "Dema told him by phone that they had to meet somewhere. My brother Ylber told me that tonight was too late, and Dema tried, probably once again, but my brother closed the telephone and he gave to me the keys of the car so I took the car and left towards my home, while Ylber continued towards the village, walking. I don't know where he went." This is not the same.

Avdi Shala: What do you mean?

Presiding Judge: In the two statements you gave to the investigators, you didn't mention that your brother said to you, "I'm going to meet Demir Qena" Are you sure that he uttered those words?

Avdi Shala: Yes.

Presiding Judge: How come in these two statements you didn't state anything about these words said by your brother?

Avdi Shala: I mentioned these words in front of the police and the Public Prosecutor.

Presiding Judge: Are you sure to this fact that he said to you clearly he was going to meet Demir Qena?

Avdi Shala: Yes.⁷

On the discrepancy, it must be said that the minutes of the examinations in front of the police and in front of the prosecutor were not taken *verbatim* and therefore it is possible that some unintentional omissions were committed while summarizing the statement..

In fact, in the minutes of the examination of 24 September 2008 in front of the prosecutor, it is stated that the witness was "*sure, on the basis also of the telephone conversation, that Ylber had to meet Deme and take the money which Dema owed him*". It is therefore highly probable that something went missing in the process of summarizing the answers of the witness and that he actually had given more or less the same version also in front of the prosecutor.

And, in any case, there is not a real contradiction between the two versions, since it is clear that, according to all the statements given by Avdi, a meeting was agreed between Ylber and Demir on the critical day and that the former was going to receive part of the money, since he gave instructions to his brother on how to receive the remaining amount (minutes of 28 January 2010 and also examination in front of the prosecutor dated 24 September 2008).

Eulex Prosecutor: Was there any agreement with you and your brother in case Demir Qena would not pay?

Avdi Shala: We did not have an understanding in case Demir Qena did not pay the money, but on the critical night Ylber Shala told me, "The sum of money that Demir

⁷ Minutes of 28 January 2010, page 26-27.

Qena is not going to give me back on Sunday he will give it back to you on Sunday 1st September 2008, which is the half of the money already borrowed."

Eulex Prosecutor: On 1st September, to whom was the money supposed to be given to?

Avdi Shala: He did not tell me to whom this money was being delivered to. When Demir Qena would give me the sum of 10,000 Euros, 1,000 Euros of this 10,000 Euros was for me to take. Then my brother told me, "When you receive the 10,000, after you take your 1,000, I will tell you on the phone who to give the 9,000 to."⁸

In particular, that a meeting on Sunday between the victim and the defendant had already been scheduled results also from the part of the testimony of Avdi Shala in which he stated that Demir had been given by Ylber a postponement of two days as to the payment of the debt and that the deadline for the payment was Sunday.

Eulex Prosecutor: In the minutes of the statement you gave the Public Prosecutor, in regard to the reason why he went to see Demir Qena, you said, "I know that that day Ylber went to village Romaje to take money or kill him, since he was very frustrated the money was not being paid back." Did he say something like, "it's either him or me"?

Avdi Shala: He wanted to get the money at all costs, but Demir Qena asked him for an extra two days until Sunday. He said, "OK, I'll meet you on Sunday at any cost." This was the agreement.

Eulex Prosecutor: From what I read, I conclude that you were of the opinion he was ready to kill him.⁹

The version of Avdi (*i.e.* that Ylber had to meet Demir on that night) is also supported by a logical argument: the strange behaviour of Ylber, who got out of the vehicle soon after the phone call with Demir (in which the defendant insisted on having the meeting on that night) and therefore changed his original plan (which was to go home together with his brother), can be easily explained by the fact that he finally decided to meet Demir in order to have the money back.

Moreover, another objective element supports the version given by Avdi and it is the text message sent on 24 August 2008 at 22: 38 from number 044 — 210 (Demir's number) to 044 — 042 (Ylber's number) in which it was written: "Nisu" which means "Depart/Leave".

Thinking of the context in which the message was sent (Demir calling repeatedly Ylber in order to meet him), the meaning of the text message appears to be clear and gives the sense that a meeting was eventually arranged, otherwise the message would be completely meaningless and inexplicable.

Also from the other text messages sent by Demir to the victim on 23 and 24 August, it is evident that Demir, throughout the above two days, kept asking Ylber to meet each other. In fact from the metering report dated 8 March 2010, it results that:

⁸ Minutes of 28 January 2010, pag 25.

⁹ Minutes of 28 January 2010, pag 25.

- on 23 August 2008 at 19:41 the following text message was sent from 44 210 to 44 042: *"Text me on this number but don't mention my name. Text me now"*;
- on 23 August 2008 at 19:45 the following text message was sent from 44 10 to 44 042: *"We have to meet sometime to go to one place I just have to meet with Ibra after two hours then we meet together"*;
- on 24 August 2008 at 12:48, the following text message was sent from 44 10 to 44 042: *"Where are you don't go anywhere today as you have to send me there/give me a ride/, reply"*.

The content of the text messages offers a strong corroboration of the narration of Avdi and of the fact that Demir and Ylber had to meet very soon.

Also from the testimony of Teuta Konjuhi above reported, it appears evident that Demir and Ylber, on 24 August 2008, had reached an agreement as to the payment of part of the debt and that payment was imminent. This circumstance confirms that Ylber had to meet Demir on that night.

Therefore both the testimonies on this point and the results of the metering indicate that on 22, 23 and 24 August there were constant contacts between the victim and the defendant in order to meet and that the agreement on 22 August was that the debt would have been paid on Sunday (*i.e.* 24 August).

The circumstance that the defendant and the victim were supposed to meet on 24 August, that on 22 August it was agreed that two days after Demir would pay half of the debt and the constant calls and text messages from Demir to Ylber in order to actually meet constitute further pieces of circumstantial evidence against the defendant. Not to mention that, according to the results of the metering, Demir Qena was the last person to speak on the phone to Ylber before he was killed.

Another piece of circumstantial evidence against the defendant is the alibi through which he defended himself at the main trial, alibi which proved to be utterly false.

In fact the defendant gave his version of the events, as to the contacts between him and the victim, and more in general as to the reconstruction of his movements on the crucial night, denying firmly any meeting with the victim and claiming his participation in the wedding party of Enver Daqaj.

However his reconstruction appears to be utterly unreliable and not credible for the following reasons:

Demir Qena recalled his movements on the crucial night as follows, starting from the objective data that (as a result of the metering report performed on his IPKO number 049 152) at 20.00.56 on 24 August 2008 he called Daim Daqaj.

Presiding Judge: So at 8 you called Daim Daqaj. You said that more or less after 30 minutes – 1 hour you met Halil Qadraku. It is 8.30-9, more or less. Then you said it took 20 minutes to reach Romaje from the place you were with Halil Qadraku.

Demir Qena: It was not 20 minutes.

Presiding Judge: You said 15-20 minutes. This means you were at your place around 9-9.30.

Demir Qena: Yes.

Presiding Judge: Then you said you stayed at your place more or less half hour.

Demir Qena: Longer than half hour.

...

Demir Qena: 30-60 minutes, I am certain.

Presiding Judge: That is fine. This means that around 10 pm-10.30 you left your place in Romaje. Then you told us that it took 5 minutes to reach the place of the wedding, correct?

Demir Qena: 5 minutes, yes.

Presiding Judge: So in your version, you reached the wedding, at about 10.05-10.35. Then you said you stayed at the wedding less than one hour.

Demir Qena: Yes.

Presiding Judge: A lot less or a little less?

Demir Qena: We had 3 beers, as long as I stayed in my village.

Presiding Judge: So from 30-60 minutes?

Demir Qena: I am certain more than 30 minutes, not less.

Presiding Judge: So it means that around 10:35 – 11 you left the wedding, correct?

Demir Qena: I am not sure.

Presiding Judge: I am taking these hours according to your version. So at 8 you called Daim Daqaj. Where were you at 8?

Demir Qena: In Prizren.

Presiding Judge: Then you went to Landovica?

Demir Qena: Yes, on my way home.

Presiding Judge: Landovica is between Prizren and Romaje?

Demir Qena: Yes.

Presiding Judge: From Romaje you went directly to Krajike?

Demir Qena: I don't know if you are aware that the villages are first Landovica, then Krajike and then Romaje.

Presiding Judge: So you passed by Krajike to reach Romaje?

Demir Qena: Yes.

Presiding Judge: Then went back from Romaje to Krajike?

Demir Qena: Yes.

Presiding Judge: Then you stayed at the wedding?

Demir Qena: Yes.

Presiding Judge: Then when you left the wedding party, what did you do?

Demir Qena: We left the wedding. Urim's café was open. It is called '007'.

Presiding Judge: Where is this café 007, in Krajike?

Demir Qena: On the main road.

Presiding Judge: In Krajike?

Demir Qena: The road that connects Prizren with Romaje

Presiding Judge: How long did you stay in 007?

Demir Qena: I think we had a beer each.

Presiding Judge: So more or less 30 minutes, less or more?

Demir Qena: I don't remember. We had so many drinks at Daim Daqaj's and then at home.

Presiding Judge: So it was less or more than 30 minutes? Can you say?

Demir Qena: I am capable but I cannot tell the exact time by minutes.

Presiding Judge: I am talking in terms of 30 minutes.

Demir Qena: We had a drink each. I had already had three drinks at home, then 3 at Daim Daqaj's.

Presiding Judge: Did you stay in 007 after you had the beer?

Demir Qena: No, we didn't stay.

Presiding Judge: So you drank and left?

Demir Qena: Yes.

Presiding Judge: Where did you go after leaving 007?

Demir Qena: As we left I gave Halil Qardaku a lift by Daim Daqaj's car as my car broke down due to a faulty belt.

Presiding Judge: So you drove Halil Qardaku to Landovica?

Demir Qena: Yes.

Presiding Judge: And then?

Demir Qena: Then I went to Petrol station EuroGjini. I took 1000 Euros. I went back. I went to Daim Daqaj's and then Daim Daqaj took me to motel Besa and that was it.

Presiding Judge: The second time you went to Daim Daqaj's place, did you enter the garden or not?

Demir Qena: No; by the gate only.

Presiding Judge: And then Daim Daqaj drove you to Motel Besa?

Demir Qena: Yes.¹⁰

First and foremost: the above version given by the defendant is blatantly disavowed by the data of the metering issued on the numbers used by the defendant, metering which provided also the position of the mobile used by the defendant.

In fact, in the metering report dated 8 March 2010, it is indicated that:

- *On 24 August 2008 at 21:45:28 a phone call was made from number 044 — 210 to number 044 — 042 and the conversation lasted 25 seconds and the position of the phone during this conversation was identified by antenna Cermjani 1 that covers area between villages Kralan, Shqiponje, Mirushe, Zatriq, Klina and Cermjan. It is worth mentioning that in this area it is located the place where the crime was committed- village Volljaka of Klina.*

According to the reconstruction made by the defendant, on 24 August at around 21:45, he should have been at his place in Romaje together with Halil Qadraku having beers and chatting. The area of Romaje is completely different from the area of the villages of Kralan, Shqiponje, Mirushe, Zatriq, Klina and Cermjan covered by antenna Cermjani 1.

- *on 24 August 2008 at 22:08:08 a phone call was made from number 044 — 210 to number 044 — 042 and the conversation lasted 2 minutes and 36 seconds and the*

¹⁰ Minutes of 16 March 2010, pag. 17-20.

position of the phone during the conversation was identified by antenna Gja Blloku 2 that covers area of Gjakova city.

According to the reconstruction made by the defendant, on 24 August at around 22:08, he should have been either in Romaje area or in Krajik area at the wedding party of Enver Daqaj (or moving from his place in Romaje to the wedding party in Krajik). These two areas are different from the area of Gjakova city covered by antenna Gja Blloku 2.

- *on 24 August 2008 at 22:25:30 a phone call was made from number 044 — 210 to number 044 — 042 and the conversation lasted 1 minute and 46 seconds and the position of the phone during the conversation was identified by antenna Damjan 2 that covers area between villages Lubizhde e Hasit and Damjan.*

According to the reconstruction made by the defendant, at around 22:25 of 24 August, he should have been either in Romaje or in Krajik area at the wedding party of Enver Daqaj or at bar 007 (or moving from his place in Romaje to the wedding party in Krajik). These areas are different from the area of the villages Lubizhde e Hasit and Damjan covered by antenna Damjan 2.

- *on 24 August 2008 at 22:42:35 number 044 — 210 phoned number 044 — 042 and the conversation lasted 25 seconds, the position of the phone during the conversation is identified by antenna Krusha 2 that covers area between villages Zym, Krushe and Krajik.*

According to the reconstruction made by the defendant, at around 22:42 of 24 August, he should have been in Krajik area either at the wedding party of Enver Daqaj or at bar 007 and this is the only part of the version of the defendant which is consistent with the data provided by the metering and positioning. But, on the other hand, the version of the defendant is not consistent with most of the testimonies given in the main trial which indicate that he was not present at the wedding party and that he showed up at bar 007 later than midnight (these testimonies will be assessed in the continuation of the reasoning).

Furthermore, it is worth noticing that the distance between the area where Demir was at 22:42 and the roundabout in Rogove where Ylber got out of the car after the conversation with Demir is of around 11 kilometres: therefore the position of the defendant indicated in the metering report allowed Demir to reach quickly the victim and pick him up.

Confronted by the Presiding Judge as to the results of the metering and of the positioning the defendant tried to explain the contradictions as follows:

Presiding Judge: Since this is your version, one more question. On that night did you give your mobile to someone or did you keep it with you?

Demir Qena: My mobile and my car is for widespread use. Anyone can use them.

Presiding Judge: Did you give them on that night to anyone else or not?

Demir Qena: I cannot remember.

Presiding Judge: According to the position related to your mobile, it was the mobile which was seized from you by the police. There are two telephone numbers connected to this mobile. They are connected to an IMEI number. These numbers are 044- —210 and 044- —591. I am at page two of the report of 8 March 2010. At 21:45:28 from this number —210, there was a phone call and that call activated the antenna; from this antenna we were able to locate the position of this mobile. This mobile was in the area covering these villages. We are at 9:45. According to your reconstruction you should be in Romaje. But this mobile was located in the area covering the villages of Kralan, Mirushe, Zatrike, Klina and Cermjan. This is a completely different area from that of Rumaje. Can you explain how this is possible?

Demir Qena: This number you just mentioned?

Presiding Judge: Yes.

Demir Qena: What telephone is it?

Presiding Judge: This is the telephone that was seized from you by the police.

Demir Qena: Both telephones seized?

Presiding Judge: The one telephone corresponding to the IMEI number, number 358056010862079.

Demir Qena: This phone was with Valon Arifaj at the time. I took this phone back from Valon Arifaj on the day I was arrested. Ibrahim Shalaj was present.

Presiding Judge: So this telephone was not with you on that night according to you, but in the hands of Valon Arifaj?

Demir Qena: If it is a Nokia.

Presiding Judge: I don't know. We are talking about the telephone number.

Demir Qena: Valon Arifaj took this telephone from me two or three days earlier. He took it in my village as he had a flat battery

Presiding Judge: When did this happen?

Demir Qena: 2-3 days before the murder.

Gjakova city covered by antenna Gja Blloku 2.

Presiding Judge: Let us go ahead and then see. Then according to the metering and positioning report, this mobile at 22:08 called the number of the victim. The mobile was in the area of Gjakova, not in Krajike area. Then at 22:25 the same mobile called again the number of the victim. It was in another area; the area covering the villages of Lubishte, and Damjan. Finally at 22:42 this mobile called again the telephone of the victim, and finally this mobile was in the area covering the villages of Zyme, Krushe and Krajike. I will remind you that I am not confronting you at this point, but just reminding you that the brother of the victim told us that during the last conversation, around 22:30-22:40 on the evening of the 24th, he overheard your voice, on the mobile talking to his brother. It might be that your mobile was taken by Valon Arifaj. You should take into consideration that this is coming out of the blue and inconsistent with the other testimonies. I am informing you of what the situation is. One more question. On the 24th, did you send any text message to the victim?

However, also the explanations of the contradictions proved to be utterly false. Firstly a logical consideration: it casts a heavy shadow on the reliability of the version of the defendant the fact that he recalled this very important circumstance (*id est* that his mobile

had been taken by Valon Arifaj before the crucial night) only after he was confronted with the discrepancies between his version and the results of the positioning. It is also suspicious that he never reported in his previous statement in front of the prosecutor the paramount circumstance that on the crucial night he was not in possession of one of his mobiles.

Secondly, the version of the defendant, on this specific point, is disavowed by the testimonies of Avdi Shala and Teuta Konjuhi combined with the results of the metering. In fact both witnesses said that, on the critical night, they had heard Demir talk on the phone with Ylber.

On the point, the results of the metering have clarified that on 24 August 2008, at 21:45, from the telephone number 044 210 (linked to the IMEI n. 35805601862079 which identifies the telephone seized to the defendant when he was arrested and that according to him was in possession of Valon Arifaj the night of the murder) a call was made to the number 044 042 belonging to Ylber (the time indicates that this is the phone conversation between Demir and the victim overheard by Teuta, while she and Ylber were talking on their IPKO numbers); afterwards, at 22:42, another phone call was made from the same mobile to the above number belonging to Ylber (and the time indicates that this is the phone call where Avdi overheard Demir talking to Avdi).

Moreover, the version on the point given by Demir is also contradicted by the testimony of Ibrahim Shala who, according to the defendant, was present when Valon took from Demir the mobile: in fact the injured party resolutely denied that Valon had ever taken possession of the mobile of Demir in front of him.

First issue, first question, the defendant said that one or two days prior to the murder, Valon Arifaj took his mobile and he said that you were present when this happened, how did the things go, were you present or not?

Ibrahim Shala: I was not present I did not see anything, I do not know anything about it.

Presiding Judge: Did anyone tell you that Valon had taken the mobile of Demir Qena?

Ibrahim Shala: No one told me. I do not know anything about that, I heard it for the first time during the trial.¹¹

Finally, from the metering and positioning report dated 8 March 2010, it results that the other number linked to the above IMEI, (i.e. 044 591), activated the antenna of Arbana in Prizren at 04.25 on 25 August 2008. Arbana is the area where the motel Besa is located, where Demir Qena spent the night: a further indication that the mobile in question was in the hands of the defendant the night of the murder.

Therefore it must be argued that what was said by the defendant as to the fact that his mobile was stolen by Valon Arifaj is blatantly mendacious.

¹¹ Minutes of 26 March, pag. 20 and 21.

But the falsities and the contradictions in the version of the defendant are not finished: also the reconstruction made by the defendant of his movements after 22:42 of 24 August is not consistent with most of the testimonies and with the results of the metering.

In fact, according to the version of the defendant, he arrived, together with Halil Qadraku, at the wedding party at around 22:00/22:30 and stayed there for a time which he estimated longer than 30 minutes and shorter than one hour (meaning that he left the party earlier than 23.30 at the latest; however, in the course of the examinations, after having been confronted with the discrepancies between this version and the one given during the investigation, he specified that he had left the wedding party at a time which could be estimated between 23:00 and midnight).

Then Qadraku and the defendant went to bar 007, where they stayed for some time (the defendant could not specify whether it was more than 30 minutes). He realized that his car was not working any more and called Damir Daqaj to borrow his car and finally left bar 007 by Daim's car. He gave a lift to Qadraku to Landovice, then went to Eurogjini gas station to collect 1.000 Euros, went back to the wedding place (he showed up just before the gate) and finally was driven by Daim to motel Besa.

First of all, as to his presence at the wedding party, most of the witnesses examined on the point denied having seen the defendant at the wedding party: actually, the only two witnesses who affirmed that he was present at the wedding party were Halil Qadraku and Rame Hajdare.

The testimony of Halil Qadraku raises big concerns as to its credibility. In fact, notwithstanding the witness declared that he was at the wedding party together with the defendant, nobody saw him.

Moreover, in the DVD recorded at the wedding party no images either of Halil Qadraku or the defendant were found (see police report dated 23 March 2010).

Furthermore, the negative evaluation of the reliability of Halil Qadraku derives also from the contradictions between his testimony and the statement he gave during the investigation. In particular, there are paramount discrepancies as to the time of alleged departure of Halil and Demir from the wedding party. In fact, during the investigation, the witness said that they arrived at the party at 20.30/21.00 and that they left around midnight (meaning that they stayed at the party more than three hours), whereas, in front of the court he said that they stayed at the party not more than one hour and half. After being confronted, the witness was not able to indicate, not even roughly, a time of departure from the wedding. The blatant contradictions emerge clearly in the following abstract of the minutes:

Presiding Judge: Since you said you arrived at the wedding party around 9 or 10, in this statement you said 8.30 to 9.00. Let us assume you were there at 9pm. 1.5 hours more brings us to 10.30pm. So, until midnight what did you do?

Halil Qadraku: We had a few more drinks in another bar.

Presiding Judge: How long did you stay in that bar?

Halil Qadraku: I don't know. We were enjoying ourselves. I am unable to tell even if I had said to be more specific, however even then I pointed out that I was not certain about it. Even today I might come up with a specific time, but I would be uncertain of it.

Presiding Judge: You said in front of the police you said that you arrived at about 8.30 to 9 in the evening. Can this be correct, or not?

Halil Qadraku: I wouldn't believe so. When we set off from Landovica, this was the time.

Presiding Judge: How come you said in front of the police, just 2 days after the party, that the time was 8.30pm to 9pm in the evening?

Halil Qadraku: My meeting with Demir Qena, they might have considered that as the time.

Presiding Judge: No, you said "we joined the wedding at 8.30 – 9", meaning you arrived at the wedding. We are talking about the time of arrival at the wedding party and 2 days after the wedding you said it was 8.30 – 9 in the evening.

Halil Qadraku: I am not denying this. I am telling you I am not certain, even at that time I told the police that I didn't check my time.

Presiding Judge: What did you think: that the time which was indicated in the statement in front of the police is more accurate, or that the other time that you gave to us now is more correct?

Halil Qadraku: I don't know. I know what time it was when we met Demir Qena, to the wedding, to the bar, all of this was over in a period of 3 hours.

Presiding Judge: You are sure that after the wedding you went to a bar and that you stayed at the bar? For how long?

Halil Qadraku: I don't know.

Presiding Judge: Roughly.

Halil Qadraku: This is bothering me, as even then I was told this and I was uncertain of it. Even then I would say that I was uncertain. I roughly gave these details. They may have been accurate or inaccurate. I know how much time I spent with Demir Qena. It was around midnight when I went home.

Presiding Judge: You said you left the wedding party at midnight. So you see the time is completely wrong. If you left the party at midnight, then you went to this other bar, then it is impossible that you were home by midnight, unless you were in two places at the same time, but I don't think this is possible.

Halil Qadraku: All I know is that is the time we spent there, it could have been this or that...

Presiding Judge: Furthermore, in the police statement did you say anything about this further time spent in the bar? You just said you left the wedding party and you went along with Demir Qena and Daim to take your vehicle because the car of Demir Qena was not working. You didn't say anything about the further stop at the bar. How come that there is this discrepancy?

Halil Qadraku: Is it possible – they have written so, but I have to point out that his car broke down outside the bar. We were drinking there. I could have failed to point this out, however I was referring to the time I spent all the time I was with Demir Qena.

Presiding Judge: You mean midnight?

Halil Qadraku: The period of time, from the minute I met Demir Qena until midnight. I would like to apologise to the court and point out that even 2 days later, I was still half drunk.

Presiding Judge: Your hangover lasted 2 days.

Halil Qadraku: Not referring to the time I was at the police. I could have given a certain time.

Presiding Judge: In front of the Public Prosecutor, on 24 September, your version changes. Now the bar appears, but Daim is not present any more.

Halil Qadraku: Daim was not present in the bar. Demir Qena phoned Daim to come. He might have passed a message through someone else to come and drive me to my car. I don't know how he got in touch with him, but I know that he came and took us by his Golf to my car in Landovica.

Presiding Judge: And here you say you stayed with the wedding party until midnight.

Halil Qadraku: Once again I can say that I stayed until midnight, part of the time I was elsewhere.

Presiding Judge: But to say you were at the wedding and to say you were with Demir Qena until midnight are two different things.

Halil Qadraku: Even the midnight thing as far as I am concerned, I did not take as specific, it is a rough time.

Presiding Judge: Can you be more accurate? At what time did you leave the party?

Halil Qadraku: I don't know. I'm not certain.

Presiding Judge: You are not able to indicate a time. But you can say that you stayed at the party, one hour or one and a half hours.

Halil Qadraku: Once again, I don't know the exact time

Presiding Judge: Are we talking about minutes or hours?

Halil Qadraku: I don't know. I cannot determine the time.

Presiding Judge: Is it possible, for instance, that you stayed at the party for 20 minutes?

Halil Qadraku: I am not certain to tell you how long we spent in the wedding

Presiding Judge: Again I ask you, did you stay in terms of minutes or in terms of hours? It is strange that you can't remember.

Halil Qadraku: No, it was 1 to 1 and a half hours.

Presiding Judge: And can you be more accurate as to the time of arrival at the wedding party?

Halil Qadraku: No. we already had had a bag of beers earlier and I don't know.

Public Prosecutor: I will return to the point, how long did you spend in the wedding. Did you make a phone call, or did anyone get in touch with you over the phone?

Halil Qadraku: I don't know.¹²

Moreover, it must be noted that, what was said by Halil Qadraku is not consistent with what was stated by the defendant, who said that they had arrived at the wedding party at around 22/22:30 (and that they had stayed not more than one hour) and therefore far later than the time indicated by the witness. This discrepancy between the two versions is an additional element in the sense that none of them was ever present at the party.

Therefore, for all the above reported argumentation, the testimony of Halil Qadraku must be considered as completely unreliable and must be rejected in its entirety.

¹² Minutes of 27 January 2010, pagg. 14-16.

Also the testimony of Rame Hajdare, the other witness who said that Demir was present at the wedding party, appears to be untrustworthy.

Firstly it seems almost miraculous that he could recognize Demir Qena at the wedding party, if we think that he had seen him before the wedding just once and around one year before.

But, even admitting that the memory of the witnesses is exceptionally sharp, the testimony contains immense contradictions:

Public Prosecutor: You said that you saw Demir Qena with two other persons, can you describe to us these two other people?

Rame Hajdaraj: I think one of them was young the other I don't know.

Public Prosecutor: You said that Demir Qena was drinking a beer on the table, what about the other two?

Rame Hajdaraj: I did not see the other two it was dark¹³.

* * *

Presiding Judge: So was the table of Demir Qena lit or not?

Rame Hajdaraj: There was no light but it was visible.

Presiding Judge: The thing is that you said that since it was dark it was not possible to see the other people sitting at the table of Demir Qena, or was it just Demir Qena that was visible like a god?

Rame Hajdaraj: It was sort of dark; I did not say it was completely dark.

Presiding Judge: Could you see all the people who were at the table or just Demir Qena?

Rame Hajdaraj: I could have seen all of them but I was not interested in the others.

Presiding Judge: Were all of them visible or not?

Rame Hajdaraj: If you see one you can see the others.

Presiding Judge: No, this is not consistent, it is an assumption, please give an answer: yes or no? No comments, yes or no?

Rame Hajdaraj: Yes, they were.

Presiding Judge: Since they were all visible please explain to me what the position of Demir Qena was and the position of the others. I would also like to know the shape of the table; was it round or square, since it was visible.

Rame Hajdaraj: It was a square table.

Presiding Judge: And the size, how many meters?

Rame Hajdaraj: I was a simple table with chairs.

Presiding Judge: No, I want the size.

Rame Hajdaraj: It was standard with six chairs.

Presiding Judge: What was the colour?

Rame Hajdaraj: White.

Presiding Judge: Where were the people sitting?

Rame Hajdaraj: Demir Qena was at the front, the other on the other side.

Presiding Judge: But there were three other people, you said?

Rame Hajdaraj: No it was three all together.

¹³ Minutes of 18 February 2010, pag. 11.

Presiding Judge: While you were walking from the tent to the car, were you constantly looking at the table or not?

Rame Hajdaraj: Just once I noticed that Demir Qena was there and that was it.

Presiding Judge: So it was just a quick glance?

Rame Hajdaraj: Yes, I saw him in passing.

Presiding Judge: And in a quick glance you could notice the other people, the colour of the table... That is impressive.

Rame Hajdaraj: It was a look, as I was walking I saw Demir Qena holding a beer, then I continued and went to pick up the jumper.

Presiding Judge: Yes you said that. Where was the person you said was younger, was he sitting close to Demir Qena?

Rame Hajdaraj: Yes, he was closer to Demir Qena, where Demir Qena was sitting at the table.

Presiding Judge: The other person was sitting where?

Rame Hajdaraj: Next to the boy¹⁴.

As it results from the above abstract, the testimony is affected by colossal internal contradictions. In fact, initially the witness referred that the place where the defendant was sitting was dark and that he could not see the other people staying with Demir; afterwards, pressed by the questions of the panel, he changed his version and stated that the place was visible, that he could see the other people sitting with Demir Qena and even noticing the colour and the shape of the table and the number of chairs around it.

In addition, as to the reliability of these two testimonies, it must be noted that they are in contradiction with the massive number of witnesses denying the presence of Demir and Halil at the wedding party (and the testimonies of two of these witnesses, Halit Daqaj and Imer Daqaj, can be considered particularly important, since they are members of the Daqaj family).

Not to mention the fact that in the DVD neither Halil nor Demir could be seen (see the police report dated 23 March 2010).

Moreover, there is another important testimony, which contradicts the version of the defendant as to his presence at the wedding party.

In fact, Shpend Pervizaj stated that, on the critical night, at bar 007, he had asked expressly Halil Qadraku and Demir Qena whether they had been at the wedding party of Enver Daqaj and the reply was negative as it results from the following abstract.

Presiding Judge: Did you speak to Demir Qena and Halil while they were at your bar?

Shpend Pervizaj: I greeted them. I asked them how they were doing. I asked them if they had been at the wedding. They said they couldn't make it. This is what he said.

Presiding Judge: Demir or Halil?

Shpend Pervizaj: Demir said.

Presiding Judge: Did he explain why he couldn't make it?

¹⁴ Minutes of 18 February 2010, pag 18-19.

Shpend Pervizaj: No, he said they had something to do. He asked where Urim was so he would give them a lift to Prizren, as it was clear their car had broken down. I said he was in bed asleep. Then this person asked Demir, "who is this person?" He answered, "He is Urim's brother, is a police officer" and he said nothing else.

Presiding Judge: Who asked Demir?

Shpend Pervizaj: Halil asked Demir who I was. He said he is Urim's brother.

Presiding Judge: And Halil didn't say anything else?

Shpend Pervizaj: He said he didn't know me as he didn't have a chance to meet. Halil said nothing else.

Presiding Judge: You asked whether they had been at the wedding?

Shpend Pervizaj: Yes. When they arrived at the bar, I asked because I knew he had been invited. Daim said he had invited friends, but when I noticed they came from a different direction, I asked "did you not go to the wedding?" they said they didn't as they had something else to do.

Presiding Judge: Are you sure this is the question you asked them?

Shpend Pervizaj: Yes, I greeted them and asked them "did you not go the wedding Daim invited you to?" They said they had had things to do.

Verginia Micheva-Ruseva: Did they say by chance what they were going to do in Prizren at night?

Shpend Pervizaj: Nothing. They just said they were going. Nothing else; I didn't ask why.

Presiding Judge: Are you pretty sure regarding the answer of Demir that he didn't go to the wedding?

Shpend Pervizaj: I wasn't drunk. I am very certain. I am sure what I asked and what I said.

Presiding Judge: How come you knew that Demir Qena had been invited to the wedding?

Shpend Pervizaj: Daim is a friend of Urim's and Demir's and others. He had his circle of friends who stayed together. He comes to our bar regularly and said there was a wedding party for the wedding guests. He said he had invited Demir, Asllan, Nysret and other friends they stayed together with.

Presiding Judge: Are you sure Daim told you Demir was invited by him?

Shpend Pervizaj: Yes, I am very certain. A day or two before the wedding he said so.

Presiding Judge: Do you know whether he was invited formally, in writing or just orally or by phone?

Shpend Pervizaj: I wouldn't know. All I know is he had invited his friends as he said so. Urim didn't have an invitation in writing either, but he was invited orally.¹⁵

Furthermore, the witness pointed out that, when he saw the car of Demir Qena approaching the bar, the car was not coming from the direction of the place where the wedding party was held, but from a different direction, *id est* from Romaje.

Eulex Prosecutor: How did Demir Qena and Halil arrive at the bar, did they walk or drive?

Shpend Pervizaj: By car.

Eulex Prosecutor: What car?

¹⁵ Minutes of 10 February 2010, pagg 23-24.

Shpend Pervizaj: It was a white Opel, estate car. The light was broken down/off. When he arrived he noticed his neighbour who was a mechanic and asked him if he could fix the light. The neighbour opened the bonnet and said he couldn't fix it.

Presiding Judge: What type of Opel was it? I thought I heard you mention it.

Shpend Pervizaj: Opel Vectra or so. It was a long estate car.

Eulex Prosecutor: They were arriving in their car, so their car was running at the time?

Shpend Pervizaj: Yes, but with faulty lights. He was using a lighter to be able to see in front of the car.

Eulex Prosecutor: Do you remember from which direction they arrived?

Shpend Pervizaj: Yes, from Romaje village.

Presiding Judge: Is Romaje the village of Daim Daqaj?

Shpend Pervizaj: No, Daim's village is my home village, Krajike.

Presiding Judge: What is the direction of Krajike, same as Romaje's or different?

Shpend Pervizaj: All the way from Prizren to Gjakova, in Landovica you take a left turn and the first village is the village of Gjonaj, and then Krajike village, then Collak, Lukinaj, then Romaje village.

Presiding Judge: Where is '007', in which village?

Shpend Pervizaj: In Krajike.

Presiding Judge: Is the house of Daim Daqaj towards Romaje or not?

Shpend Pervizaj: No. Just next to my bar there is a slip road. You have to drive up the hill to get to his house to the left. After 200m you turn right, then another 250 m and then turn left and then you reach the house of Daim Daqaj: at the top of the village. It is a zigzag road all the way to his house.

Presiding Judge: What is the distance between '007' and Daim Daqaj's house?

Shpend Pervizaj: Airborne distance is 300m but by land is about 1km. The airborne distance is an approximate assessment. The road there is a zigzag and more than 500m.

Presiding Judge: As to the direction, the car driven by Demir Qena was not coming from Daim Daqaj's house?

Shpend Pervizaj: No. I am certain about it.

Eulex Prosecutor: Do you remember in which direction they left the bar?

Shpend Pervizaj: When they set off, they did so towards Prizren but I am not certain if they took a slip road to take Daim Daqaj to his home. I know they set off from the parking of my place, I took the glasses inside and that is that.¹⁶

The testimony of Shpend Pervizaj, a Kosovo police officer, appears to be particularly reliable due to its accuracy and internal coherence, and also because the witness appeared to be utterly unbiased, since he did not have any involvement in the matter and did not have any particular relationship either with the victim or with the defendant.

It is noteworthy that the witness added that Qadraku and Qena arrived at bar 007 at a time between 12 and 1.30 a.m. and that they stayed there for around 15-20 minutes.

And finally, the presence of the defendant at the wedding party was also excluded by Halit and Imer Daqaj, both of them brothers of Daim, Ramadan and Enver Daqaj (and therefore witness of particular relevance).

¹⁶ Minutes of 10 February 2010, pagg. 21-22.

Presiding Judge: Do you know a person called Demir Qena

Imer Daqaj: Yes

Presiding Judge: Can you see him in the court room?

Imer Daqaj: yes

Witness points at the defendant

Presiding Judge: Did you see Demir Qena at the wedding party that night?

Imer Daqaj: I have seen him but not under the tent

Presiding Judge: Where did you see him?

Imer Daqaj: I saw him at the gate on the street outside the yard.

Presiding Judge: Was he alone all with others?

Imer Daqaj: When I saw him he was with my brother Daim. Whether there was someone else I did not see because it was dark in that part, Daim was inside the car. I saw the vehicle move down the road.

Presiding Judge: Just to understand, Daim was inside his car?

Imer Daqaj: No, inside our car.

Presiding Judge: What type of car?

Imer Daqaj: Golf 3.

Presiding Judge: What was Demir Qena doing?

Imer Daqaj: He was sitting in the car.

Presiding Judge: On the passenger's seat?

Imer Daqaj: I am not sure who was driving whether it was Daim or Demir.

Presiding Judge: Roughly, what was the time, was the party just about to end, or did it just start?

Imer Daqaj: The wedding had started earlier, it may have been around midnight I am not sure about the time.

Presiding Judge: Was it towards the end of the party or the beginning?

Imer Daqaj: Towards the end.

Presiding Judge: And then your brother and Demir left by car?

Imer Daqaj: Yes.

Presiding Judge: On the same night did you see Demir again or just on this occasion?

Imer Daqaj: Only on this occasion.

Presiding Judge: Your brother Daim, did you see him when he came back, or not?

Imer Daqaj: Yes I asked him where he went by car.

Presiding Judge: And what did he say?

Imer Daqaj: He said he took Demir to a place called Dushanove, as far as I remember.

Presiding Judge: To do what?

Imer Daqaj: I don't know. He said his car broke down and I took him there. What for, I do not know.¹⁷

* * *

Presiding Judge: According to what Daim said was Demir bringing back the car or not?

Imer Daqaj: When he brought the car, he left straight away.

¹⁷ Minutes of 25 March 2010, pagg. 8-9.

Presiding Judge: Before leaving the place together it was Demir who brought the car back to the yard?

Imer Daqaj: Demir brought the car to Daim and together they left.

Presiding Judge: Did by any chance Daim tell you if Demir was alone at the bar '007'?

Imer Daqaj: I don't know that.¹⁸

From the narration of Imer Daqaj, it results that he saw the defendant at the gate of the courtyard where the wedding party was held, inside the car of Daim Daqaj, and that the latter had referred to his brother Imer that Demir had brought back the car which he had borrowed from him and that the two of them had left together in direction of Dushanove.

This version of the events is confirmed by the testimony of Halit Daqaj who, even though was not present at the wedding, reported what was referred to him by the members of his family.

Presiding Judge: Were you present at the wedding party on 24th August 2008?

Halit Daqaj: No I wasn't.

Presiding Judge: Because in the police report which was filed with the court yesterday it is written you spoke to the police officers and you said Demir Qena was not present at the party. How can you be sure if you were not present?

Halit Daqaj: I spoke to the police officer yesterday and according to what my younger brother told me Demir Qena was not invited to the wedding party. It was related to the car he got from Daim Daqaj and he showed up at the gate when he returned the car.

Presiding Judge: You are referring to Daim Daqaj?

Halit Daqaj: No, Imer Daqaj who is outside here.

Presiding Judge: As to the presence of Demir Qena at the wedding party did you only speak to Imer Daqaj or to other brothers of yours?

Halit Daqaj: I have spoken to the entire family to see if he was present or not.

Presiding Judge: What did they say?

Halit Daqaj: I don't know what Daim Daqaj said to the police but he told me that he brought the car keys to me and we had a beer each.

Presiding Judge: Was he present at the party or just at the gate?

Halit Daqaj: At the gate.

Presiding Judge: Did Daim Daqaj tell you at what time Demir Qena was present at the gate? Was the wedding over or not?

Halit Daqaj: I don't know. I wasn't concerned as to the time he was there. All my family got involved.

Presiding Judge: Did you speak to Ramadan Daqaj as to the presence of Demir Qena at the party?

Halit Daqaj: I didn't because by the time the court summonsed the people as witnesses Ramadan Daqaj had gone to Croatia. As far as I know he had seen him somewhere on the road but I am not certain.

Presiding Judge: Have you spoken about the specific episode with your brother Daim Daqaj recently?

¹⁸ Minutes of 25 March 2010, pag. 15.

Halit Daqaj: Yes I have spoken to him and asked him to come to court to give evidence.

Presiding Judge: Have you spoken recently about the presence of Demir Qena at the wedding party? Did you ask recently if Demir Qena was present or not?

Halit Daqaj: No. I spoke to him in person when he gave evidence before the Public Prosecutor here and I asked him to speak the truth.

Presiding Judge: Do you know whether Daim Daqaj was threatened as to this testimony?

Halit Daqaj: I don't believe that.

Presiding Judge: Are you assuming this or have you spoken to him about it?

Halit Daqaj: I have asked him and he said no.¹⁹

It is noteworthy that also Ramadan Daqaj declared, in his two statements, that Demir Qena was not present at the wedding party.

In the light of these three consistent reconstructions of the events occurred at the wedding party, the two blatantly contradictory versions given by Daim Daqaj (the first given to the police in which he denied the presence of both Halil Qadraku and Demir Qena at the wedding party, the second, given to the prosecutor, in which he said that both of them were present at the wedding party and stayed there for around 20 minutes from 23.00 until 23.20) can be properly assessed.

Since the statement given by Daim Daqaj in front of the prosecutor is in contradiction with all the other versions given by the members of the Daqaj family and by most of the witnesses, since the only two testimonies which stated that Demir was present at the wedding party must be considered utterly false, since there are colossal contradictions between the version given by Halil and the one given by the defendant as to their presence at the wedding party, the statement given by Daim to the prosecutor must be considered as unreliable and not credible. The reason why the witness changed his version of the events is unknown: maybe he was threatened, even though he denied it to his brother or perhaps he wanted to help somehow the defendant, since they were friends.

Moreover, also the indication given by the defendant of the times of his movements after he left the wedding party is contradictory and conflicts with the results of the metering of the phone calls made by the defendant.

In fact, in front of the panel the defendant said that he left the wedding party between 23:00 and midnight (see minutes of 16 March 2010, pag. 41) and that he and Qadraku went directly to bar 007, where they stayed around 20 minutes.

Besides the fact that the in front of the prosecutor the defendant had indicated a different time of departure from the wedding party (between 23.30 and midnight), it is worth mentioning that, according to the metering report relating to Demir's IPKO number (049 152), there was a phone call on 25 August 2008, at 00.45, to Daim's number and the conversation lasted 45 seconds.

¹⁹ Minutes of 25 March 2010, pagg. 2-3.

The above phone call is clearly the one made by Demir to Daim at bar 007, when he asked the latter to lend him the car, since the following phone calls between the two of them took place at 1.40 and at 1.53 and are therefore too late.

In fact Daim Daqaj, in his statement to the police, declared that he had received a first phone call from the defendant at around 20:30 on 24 August by which Demir Qena asked whether he could attend the wedding party (the witness is clearly speaking about the phone call recorded on the metering report at 20:00).

Then Daim stated that he had received a second phone call in which he was asked by Demir to bring him the car at bar 007 (and this is what actually Daim did, see the statement given to the police on 29 August 2008).

Since this was the second phone call of the night made by Demir to Daim, it must be the one made at 00:45 (even though the witness in his statement indicated that the phone call was made around 1.30-2.00).

And, if this is the phone call in question, its actual time is not consistent with the reconstruction made by the defendant according to whom (taking in consideration the indicated time of departure from the wedding) the phone call should have been made at 00:20-00:30 at the latest.

On the other hand, the time indicated by the metering report is perfectly consistent with the version narrated by Shpend Pervizaj who said that Halil and Demir showed up at the bar between 12 and 1.30 and after some time called Daim.

What happened after the phone made at 00:45 is more or less clear and the narration of the defendant in front of the court is consistent both with the version given by Daim and with the objective evidence: Demir drove Halil Qadraku to Landovice, then went to Eurogini station to collect 1.000 Euros, then went at the gate of the wedding party (where he was seen by Imer Daqaj) and finally was driven by Daim Daqaj to motel Arbena where he checked at around 1.10 (as it results from the check in invoice of the hotel).

Just to stress out once again how deceitful was the behaviour of the defendant, it must be noted that the defendant, as to what happened after he left bar 007, gave two further different versions: one in front of the prosecutor and another different, in front of the Court, on 29 March 2010.

But, in any case, what was done by the defendant after 00:45 is not that important, since what counts is that the reconstruction made by Demir Qena of his movements on the crucial night between 20:00 (the first phone call of the night to Daim Daqaj) and 00:45 (the second phone call to Daim Daqaj) is completely false and disavowed both by the results of the metering and by the testimonies. Above all it appears that he never went to the wedding party, but just showed up after 00:45 at the gate of the courtyard of the place where the wedding party was held, in order to bring back the car to Daim Daqaj and left together with the latter to Motel Besa.

There is a period of time of around 4 hours and 45 minutes in which the movements made by the defendant on that night were completely different from the ones he described.

What results from the objective evidence provided from the metering report of the 8 March 2010 is that, on 24 August 2008 at 21:45, the defendant was in the area of the crime scene (village of Volljake), at 22:08 was in the area of Gjakova, at 22:25 was in the area between the villages Lubizhde e Hasit and Damjan and at 22:42 was in the area between the villages of Zym, Krushe and Krajik. Then shortly before 00:45 he was at bar 007, in Krajik, together with Halil Qadraku.

In this period of time, between 22:42, (*i.e.* the last phone call to Ylber), and around 00:25 (meaning 15-20 minutes before the phone call to Daim), the defendant had the time to pick up the victim close to the roundabout in Rogove, kill him in Volljake (or in another place and then transport the dead body to Volljake) and reach bar 007 in Krajik.

In fact, as it results from the police report dated 8 February 2010, the distance from the area of Krajik (all the witnesses stated that Daqaj's house and bar 007 are very close) until the roundabout of the village Rogove, Municipality of Gjakova (where the victim got out of the car after the conversation with Demir) is of eleven kilometres, whereas the distance from the above roundabout and the crime scene, in the village Volljake, Municipality of Klina, on the road axis Vulljakë – Kramovik – Qifllake – Denje – Xerxe – Rogove, is 32 km.

It was therefore absolutely feasible for the defendant to leave by car around 22:42 from the area of Krajik, to go to Rogove, pick up the victim and then reach the crime scene where Ylber Shala was killed (or the cadaver dropped) and then, at around 00:25 be back in Krajik at bar 007 (the distance between the crime scene and bar 007 is 43 kilometers on the road axis Vulljakë – Kramovik – Qifllake – Denje – Xerxe – Rogove). It is worth noticing that the overall distance Krajik-Rogove-Volljake-Krajik is 86 kilometres, a distance which at night, when there is not traffic, can be covered in less than one hour and half.

In other words, the examination of the times related to the detectable movements of the defendant indicates that not only the alibi provided by Demir is false (as it has been demonstrated above), but the defendant had the time to leave from Krajik, commit the crime and then be back at Krajik at around 00:25. It is also possible that the defendant was killed in another place and then transported to Vulljake, in order to provide an alibi to the defendant who claimed to be in Krajik, first at the wedding party and then at bar 007, at the time the crime was committed.

It is noteworthy that, according to what was said by Sphend Pervizaj, the car of Demir, before stopping next to bar 007, was not coming from the place where the wedding party was held, but from another direction, from Romaje (which is after Rogove coming from Vulljake in the direction of Krajik).

It is a well known general principle that, if on the one hand the defendant does not have to bear the burden of providing an alibi and that the failure of providing it is completely neutral (the burden of proof being on the prosecutor), on the other hand, the false alibi, *id est* the alibi which proved to be pre-arranged and mendacious, can be considered as a

piece of circumstantial evidence against the defendant, since it reveals the *mala fides* (bad faith) of the defendant.

After having assessed the alibi provided by the defendant, it can be said that the above pieces of circumstantial evidence are multiple, grave, detailed and consistent in the direction that, on the night of 24 August 2008, Demir Qena picked up Ylber Shala close to the roundabout of Romaje village and then killed him.

As to the above reasoning, it must be noted that it is a well known general principle that one piece of circumstantial evidence can not constitute a proof of guilt.

But, on the other hand, it is likewise a consolidated general principle that when the pieces of circumstantial evidence against the defendant are multiple, grave, detailed and all of them consistent with each other in the direction of the culpability, the above pieces of circumstantial evidence, considered all together as a whole, can constitute full evidence of guilt (*quae singula non probant et unita probant: i.e. elements which separated do not prove, but joined prove*).

And the only possible and logical consequence which can be inferred from the above pieces of circumstantial evidence (which are, once again, the fact that Demir Qena had a strong and impending motive to kill Ylber Shala, since he owed Ylber a significant amount of money and he had been heavily threatened by the victim, that a meeting to be held on 24 August had already been arranged, that the defendant had been constantly in contact with the victim on the critical day in order to meet him, that the last phone call received by Ylber Shala before his death was made by Demir, that in the above phone call he finally fixed the appointment with the victim the very night of the murder, that just four minutes before this phone call a text message was sent by the defendant to the victim, that after the above phone call Ylber Shala was never seen alive any more, that finally the defendant provided a false alibi and that the defendant had sufficient time to live Krajk at 22:42, pick up the victim, kill him in Volljake and finally be back in Krajk around 00:25).

It is worth noticing that other possible reconstructions of the murder do not provide a reliable explanation of the events: in fact, apart from Demir, the only two other people who might have had interest in killing Ylber were SM and Valon Arifaj.

The former, according to Valon Arifaj, was the person from whom Ylber had borrowed the money that afterwards was given by Ylber to Demir (with the clear intention for Ylber to earn additional money asking for interests).

Presiding Judge: The Public Prosecutor would like to know who Ylber Shala was afraid of?

Valon Arifaj: He was afraid of both Demir Qena and Salih Malushi, but Ylber Shala said that SM would go to Ibrahim Shala and ask for the money. Ylber Shala used to say that as far as SM was concerned because he would go to Ibrahim Shala and ask him to pay the money, but in fact he did not want his father to find this out because he was brought into this by Demir Qena. Ylber Shala said, "I don't want my

father to find out that I borrowed the money from SM and I was forced by Demir Qena to do this."²⁰

From the above abstract, it appears very unlikely that SM was the person who killed the victim. Furthermore, even though it appears that Ylber was scared by SM there is no trace of threats committed by him against Ylber and it is absolutely preposterous that a creditor kills his debtor suddenly, before trying to obtain the money back.

Also, as to Valon, the only possibility that he killed Ylber is that, on 24 August 2008, he was utilizing the mobile of Demir, as it was referred by the defendant, but this option has been already discarded. Furthermore, Valon did not have any reason to kill Ylber, since he owed money to Ibrahim and to Demir Qena and not to Ylber Shala.

Therefore, the above indicated solid and concordant circumstantial evidence against the defendant and the lacking of valid alternative options lead to the only possible conclusion that the person who killed Ylber Shala the night between 24 and 25 August was Demir Qena.

It is again a general principle that, when assessing circumstantial evidence, the inductive method, typical of the circumstantial reasoning, must be restricted to a necessary logical derivation of the unknown datum from the known one, with the consequence that the criminal liability can be founded on the basis of pieces of circumstantial evidence only if the above pieces of evidence give certainty, beyond reasonable doubt, that the fact must be ascribed to the defendant and could not be ascribed to anyone else.

It is exactly the reasoning followed by the panel in order to evaluate the circumstantial evidence against the defendant: multiple, grave, accurate and consistent with each other pieces of circumstantial evidence which lead to the conclusion that the unknown fact (i.e. who was the perpetrator of the murder) can have only one reasonable answer (that the defendant was the culprit).

As to Halil Qadraku, since he said that he was together with the defendant at the wedding party (and this proved to be false) and since Halil and Demir arrived together in Krajik from the direction of Volljake (the place where the dead body of the victim was found) and since the expert witness Arsim Gerxaliu explained that the murder might have been committed by two different shooters, there is grounded suspicion that also Qadraku was involved in the murder and therefore he must be denounced to the District Prosecutor's Office in Peja for the criminal offence of Aggravated Murder of Ylber Shala committed in Volljake, on the night between 24 and 25 August 2008, contrary to Art. 147, item 3 and 7 of the KCC, committed in complicity with Demir Qena. Therefore the minutes of the entire main trial, plus all the orders issued by the panel and the relative police reports shall be sent to the District Prosecutor's office in Peja, together with the present judgment, in order to start the investigation against Halil Qadraku.

²⁰ Minutes of 11 February 2010, pag. 27.

Moreover, due to the proved falsity of the version given in the main trial as to the presence of Demir Qena at the wedding, Halil Qadraku and Rame Hajdare committed the criminal offence of False Statements, contrary to the CCK, Article 307, committed in Peja, respectively on 27 January 2010 and 18 February 2010. Therefore the minutes of their testimonies shall be sent to the Municipal Prosecutor's office in Peja, together with the present judgment, in order to start the investigation against them.

2. Motions of the Parties

During the main trial, all the parties, since it was not possible to summon Daim and Ramadan Daqaj (they were not found at their places of residence in Kosovo), asked for a request for international legal assistance in order to examine the two witnesses. Moreover, some of the parties did not give their consent in order to replace the examination of the above two witnesses by reading the record of their previous statements.

On the point, in the hearing of 15 March 2010, the panel decided, through a reasoned ruling, to acquire the statements already given by the above witnesses, pursuant to Art. 368, par. 1, item 1 of the KCCP, since all the conditions envisaged in the above provision were met.

In fact, according to the police reports dated 28 January 2010 and 22 February 2010, Ramadan Daqaj and Daim Daqaj could not be found at their places of residence in Kosovo, since Ramadan Daqaj was residing in Croatia and Daim Daqaj was residing in Bosnia and Herzegovina and it was not possible to retrieve further specification of their whereabouts.

Therefore it was undeniable that their appearance before the court was impossible or, at least, involved considerable difficulties: consequently the conditions indicated in Art. 368, par. 1, item 1 of the KCCP were met and the statements given by Ramadan and Daim Daqaj in front of the police and the Public Prosecutor could be legitimately acquired, even though in absence of the consent of all the parties.

After the ruling of the panel, the statements were read out during the hearing of 16 March 2010.

Moreover, the defendant asked to examine Mr. Bali Dellova as to the debt with Ylber Shala, but, from the very words of the defendant (see the minutes of 29 March 2010, pages 2-3), it appeared clear that the witness would not be able to say anything relevant as to the above debt and therefore the request was not granted, since it was superfluous and redundant.

The same assessment was made as to the request of the Defence Counsel of the injured party to inspect the place where the wedding party was held.

No other motions were raised by the parties

F. LEGAL QUALIFICATION

1. Legal assessment of the facts by the Court

Concerning the legal qualifications of the criminal acts, no remarks have to be done in relation to the indictment.

In fact, from the evidence already assessed and evaluated, it is undisputable that the murder of Ylber Shala was intentional and planned in advance. The subsistence of the *actus reus* (i.e. the conduct resulting in the death of the victim) and of the *mens rea* (i.e. the intention of perpetrating the murder) is clear and undisputed in the present criminal act.

Also the existence of the two aggravating circumstances indicated in the indictment appears to be undisputable: it is in fact undeniable that Ylber Shala was deprived of his life in a deceitful way (Article 147, par. 1, item 3 of the CCK), since he was allured by the defendant in a meeting and then killed (likely with the assistance of an accomplice); and it is as well undeniable that the main reason for the murder was the money owed by the defendant and that therefore the murder was committed with the purpose of obtaining a material benefit (Article 147, par. 1, item 7 of the CCK),.

G. DETERMINATION OF PUNISHMENT

When imposing the criminal sanction, the court has to bear in mind both the general purpose of punishment - that is to suppress socially dangerous activities by deterring others from committing similar criminal acts - and the specific purpose, to prevent the offender from re-offending.

In the present case the Panel came to the conclusion that, this was a brutal and grave criminal act committed intentionally and planned in advance.

As to the aggravating circumstances, it must be noted that due to the modality of the murder, the killing was perpetrated deceitfully and with the purpose of obtaining a material benefit. As to the mitigating circumstances, it must be taken in consideration that the data from the criminal register indicate that defendant has not a relevant criminal background, since he was convicted previously just for the criminal offence of Threat, contrary to Art. 161 of the CCK.

The punishment, taking in consideration both the aggravating and the mitigating circumstance, shall be a long term imprisonment of 23 years.

The time already spent in detention on remand is to be credited in the sentence.

H. COSTS

Since the accused Demir Qena was pronounced guilty, he has to reimburse the costs of criminal proceedings with the exception of interpretation (KCCP, Article 102, Paragraph

1). A separate ruling on the amount of the costs shall be rendered by the court when such data will be obtained.

I. COMPENSATION CLAIM

At the beginning of the main trial the injured parties have been reminded of the possibility to file a motion to realize a property claim within the criminal proceeding, pursuant to the KCCP, Article 355, Par. 2, but they declared that they did not intend to file a property claim.

Therefore the court did not have to make a specific decision on the issue.

Legal Remedy


Authorized persons may file an appeal in written form against this verdict through the District Court of Peja/Pec to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.

Recording Officer


Valentina Gashi



Presiding Judge


Gianfranco Gallo