

IN THE NAME OF THE PEOPLE

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

*F.B.* born on 12/3/1967 in the village of Dollc (Klina), daughter of *B.K.* and *S.B.* Kosovo Albanian, married and mother of 3 children, primary school accomplished, housewife, of average financial status, with no previous convictions, represented by attorney Zeqir Berdynaj;

charged, according to the Indictment PP. Nr. 2002/2007 dated 2/8/2007 with the following criminal offence:

*Murder pursuant to Article 146 of the Provisional Criminal Code of Kosovo because on the 24<sup>th</sup> of May 2007, at 8.15, in the village of Gjurgjevik I Madh (Municipality of Klina), in the guest room of her house, F.B. intentionally murdered M.B. farmer, 28 years old, from the same village.*

*In particular, F.B. noticed the deceased M.B. entering her house, she went to her bedroom and got the hunting rifle GA, serial number 146143, caliber 12 mm, and went to the guest room and from a distance of two meters shot M.B. at the chest and, after the victim fell down to the floor, the defendant shot twice more at his back, thus causing the death of M.B. as a result of the wounds caused by the gunshots.*

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

After having held the main trial hearings in public on 15, 16, 22 September, 11 November, 1, 3 and 14 December, in the presence of:

- the accused *F.B.* and his defence counsels Mr. Zeqir Berdynaj;
- the Public Prosecutor Ms. Gjemailje Mustapha;
- the injured party Mr. *A.B.*

after the trial panel's deliberation and voting held on the 14<sup>th</sup> of December 2009, based on Article 391 Paragraph (1) of KCCP,

on the 14<sup>th</sup> of December 2009, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the Accused the following

**VERDICT**

*F.B.* is

**FOUND GUILTY**

Of the criminal offence of Murder of *M.B.* pursuant to Article 146 of the PCCK, committed in Gjurgjevik I Madh on the 24<sup>th</sup> of May 2007

therefore the accused is

**SENTENCED**

to **TEN (10)** years of imprisonment.

The time spent in detention on remand by the defendant was already credited against the punishment for the concurring offence of unauthorized possession or use of a weapon.

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

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

**CONDEMNED**

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

## REASONING

### 1. The factual background and the procedural steps

On 24 May 2007 at 8.18 (or 8.20 according to a different police report<sup>1</sup>) the Police Station of Klina received a telephone call from **V.B.**, husband of the defendant **F.B.**. He reported that moments before **F.B.** had killed with a fire gun **M.A.B.**, his cousin and neighbor. According to **V.B.**, the murder had taken place in his house (property of his father **B.B.**), in the village of Gjurgjevik I Madh. The police arrived minutes after (8.30) at the crime scene, securing it. This is the scene which was visible to the officers:

- Upon crossing the gate of the compound of **V.B.** (where the murder had taken place) it was possible to see the defendant, sitting on top of the staircase which is located on the immediate left side of the entrance gate<sup>2</sup>. The stair led to the men's room (so called "guest room"). The defendant was holding in her hands a hunting rifle and her pockets contained four hunting bullets caliber 12 and 2 spent cartridges of the same caliber<sup>3</sup>.
- **V.B.** and his mother were present in the yard which is located in front of the building where **F.B.** was staying<sup>4</sup>; Both of them were crying;
- From the top of the staircase where **F.B.** was sitting, the guest room was accessible. Such guest room was composed of an entrance (hereinafter referred to as the "pre-room") and the actual guest room. The dead body of **M.B.** was placed by the right corner of the guest room of the house, as seen from the landing by the entrance of the guest room<sup>5</sup>. It was lying on the floor, facing downwards, with the head pointing towards the wall opposite to the entrance. It had three gunshot wounds, one on the stomach, one on the left shoulder and another on the back;
- On the floor of the "guest room" it was possible to detect some parts of the plastic lids that previously covered the hunting bullets which had been fired (and which, as a result of the shooting, were ejected out of the barrels of the gun); such items were seized;
- On the walls of the room behind the body the investigators spotted scratches and dents cause by the lead pellets fired from the hunting rifle.

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<sup>1</sup> See police reports of 24.5.2007 signed respectively by Officers Sahibe Shala and Refki Krasniqi

<sup>2</sup> A sketch of the group of houses where the families of the defendant and of the victim lived is attached to the verdict as annex "A". It is the same sketch which was used by the witnesses in order to describe the factual situation.

<sup>3</sup> The rifle, bullets and cartridges were seized by the police

<sup>4</sup> See on this the same police reports quoted above.

<sup>5</sup> A sketch of the guest room, with indication of the precise places in which the seized items were found, is attached to the verdict as annex "B". It was extracted from the report of the scientific Police and was shown to the witnesses in the course of their examinations, for the sake of clarification.

*F.B.* and *V.B.*, considered as suspects, were arrested and the criminal procedure against them was initiated by the District Public Prosecutor in Pejë/Pec through the ruling PPHQ.no.56/07 dated 25.05.2007, following a criminal report filed by the Kosovo Police, Pejë Regional Headquarters – Investigation Unit, case number 2007-DE-491, reference number 2007-HRP-022 dated 25.05.2007.

The investigation developed subsequently with some slowness. Indeed:

- the first examination of *F.B.* by the Public Prosecutor is dated 26.7.2009 (i.e. only two months after the murder took place);
- the record of the examination is taken only in summary;
- the examination of the fingerprints present on the knife was, unexplainably, not performed (and the re-trial Panel had to order such expertise);
- the gun shot residue expertise was not ordered by the Public Prosecutor, despite the police had taken paraffin samples both from the defendant and from *V.B.* (and, again, it was the re-trial Panel to order the expertise on such samples);
- no report of the autopsy was obtained from the anatomopathologist on the occasion of the first main trial.

Eventually, the prosecutor terminated the investigations against *V.B.* and filed the Indictment PP.nr.202/07 dated 02.08.2007 only against *F.B.*, accusing her of the criminal offence of *Murder* pursuant to article 146 of the CCK and of the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to article 328 paragraph 2 of the CCK.

According to the indictment, the defendant *F.B.* on 24 May 2007 at about 08:15, in her house in the village Gjurgjevik i Madh, precisely in the men's guest room, intentionally murdered *M.B.*, 28 years of age, shooting at him thrice with a hunting rifle from a distance of two meters, once in the front part of the trunk and twice in the back, after he had fallen to the ground. Moreover, she was charged of unauthorized use of the hunting rifle, which she used in order to murder *M.B.* The hunting rifle was legally owned by her husband *V.B.*, permit number WRC-03-19476, expiry date 10 February 2008.

The indictment was confirmed on 18 September 2009 by the ruling KAQ.nr.217/07.

The first main trial was conducted in closed sessions on 21, 22, and 23 January 2008. It resulted in the acquittal of the defendant from the criminal offence of murder, and in her conviction for the criminal offence of unauthorized ownership, control, possession or use of weapons and convicted to eight months of imprisonment, by the judgment P.nr.606/07 dated 23.01.2008. The trial Panel reckoned that the murder had been committed by *F.B.* in necessary defence. Against such judgment an appeal was filed by the prosecutor, as well as by the injured party.

The Supreme Court of Kosovo, deciding on the appeals, issued the judgment Ap.nr.333/2008 dated 05.02.2009, confirming the first instance judgment as to the conviction, and quashing it as to the acquittal for the murder charge, sending it back to the District Court of Peja for retrial. According to the judgment of the Supreme Court:

- the first instance verdict was issued based, among other statements, on those of *B.B.* and *F.B.* who according to the law were exempted from the duty to testify pursuant to article 160 par. 1 item 2 KCCP, and during the main trial exercised this right and didn't testify, therefore violated article 403 par. 1 item 8 and 12 of KCCP.
- The evidentiary proceeding of the first trial was affected by the lack of fingerprints expertise (of the knife found by the police near the left arm of the victim) and by the lack of an autopsy report, even though in the case file there were pictures taken during the autopsy;
- The first instance court did not properly provide the reasons supporting the existence of necessary defence.

The Supreme Court, therefore, ordered the first instance court, on the occasion of the retrial, to obtain the abovementioned expert analyses and to evaluate them in relation to the defence of *F.B.* (and in particular with regard to the claim of necessary defence). It has to be added that the verdict of the Supreme Court also made reference (as a consequence of an evident clerical mistake) to the necessity to obtain the conclusions of the "toxicology expert" regarding the possible existence in the body of the victim of "*inorganic substances that might have been consumed by the victim before the act of murder, respectively that might have been placed in a violent way in the body of the deceased after the act of the murder*". That it is about a cleric mistake, is made clear by the fact:

- that the case file does not contain any request forwarded by the pre trial judge to any expert in toxicology, and
  - that such a kind of expertise would have nothing to do or to add to the investigation on the violent (gunshot) death which was being handled.
- Such part of the verdict of the Supreme Court, therefore, was not taken in consideration on the occasion of the retrial.

Following the return of the case in the District Court of Peja, the injured party filed a request to the President of the Assembly of EULEX Judges, to take over the case for adjudication. On 08 April 2009 with the decision of the President of the Assembly of EULEX Judges, the case was handed over to EULEX Judges for the retrial. The main trial was held in closed session on 15, 16, 22 September, 11 November, 1, 3 and 14 December 2009, in the presence of the defendant *F.B.*, her defense counsel Mr. Zeqir Berdynaj, the District Public Prosecutor Mrs. Gjemajlije Mustafa and the injured party *A.B.*

Before the trial commenced, the Presiding Judge had requested from the Forensic Institute in Prishtina, the Autopsy Report which was drafted by the Pathologist Dr. Arsim Gerxhaliu on the 25<sup>th</sup> May 2007, after performing the autopsy of the victim M.B.

During the first hearing, the Presiding Judge, in the presence of the parties issued the following orders (in compliance with the contents of the Supreme Court judgment):

- Order for Ballistic Expertise of the hunting rifle,
- Order for Fingerprints Examination of the knife and the spent rifle cartridges, and
- Order for Gun Shot Expertise of the gunpowder samples taken from the defendant F.B.'s and V.B.'s hands.
- Order for Acquisition of Metering of Telephone Calls for numbers 044/431-563, 044/729-625 and 044/744-114

On 29 September 2009 the Presiding Judge issued another order to the Dubrava Prison and Detention Center in Peja, to provide the court with the list of persons who visited M.B. during his time in prison, respectively detention. During the main trial the following witnesses/expert witness were heard:

- a) H.B. as witness on 16 September 2009;
- b) S.T. as witness on 16 September and on 03 December 2009;
- c) R.B. as witness on 16 September 2009;
- d) A.B. as witness on 16 September and on 03 December 2009;
- e) A.G. as expert witness on 17 September 2009;
- f) A.B. as witness on 22 September and on 03 December 2009;
- g) M.B. as witness on 22 September and on 03 December 2009;
- h) V.B. as witness on 22 September and on 03 December 2009;
- i) Y.B. as witness on 22 September 2009;
- j) F.L. as expert witness on 11 November 2009.

The defendant could not be examined by the panel, having exercised her right to remain silent pursuant to the article 356 par. 2 item 1 KCCP. It is worthy to note that upon availing herself of her right to remain silent, she stated that in any case she made reference to the statements given by her during the first main trial. Upon agreement between the parties, the following statements/documents were considered as read at the main trial:

- Criminal report of 24-05-2007
- Police report, initial report of the incident 24-05-2007
- Officer's report of 24-05-2007
- Report of the investigative police of 24-05-2007
- Report of the investigative officer of 24-05-2007
- Crime scene report of 24-05-2007
- Crime scene sketch and legend drafted by Police officer Blerim Tigani, bearing no date

- Photo album of the crime scene drafted by Police officer Valbona Kralani
- Report done by the police officer who assisted in the autopsy
- Photo album of the autopsy
- Sketch of the houses of the *B.* family drafted by Police officer Enis Boshtrakaj
- Photos taken out of the camera of the victim, in particular one photo of the defendant which was referred to by the parties, the defendant being half-naked
- Police report of 03-06-2007
- Statement of *V.B.* from 26-07-2009 given to the Public Prosecutor
- Autopsy report by Arsim Gerxhaliu
- Ballistic report of 13-10-2009
- Report on finger prints examination of 13-10-2009
- Report on gun shots residue examination of 18-11-2009
- Reply of the Dubrava Prison and Peja Detention Centre regarding the visits received by *M.B.*, dated 05-10-2009.
- Phone metering for numbers 044-431 563, -729 625 and -744 114
- GSM card papers envelope, leaflet given to the panel during this main trial
- Certificate of confiscation of the weapon of 24-05-2007
- Certificate of confiscation of the kitchen knife found in the crime scene of 24-05-2007
- Medical report of Peja Regional Hospital of 24-05-2007
- Medical report of Municipal Family Health Centre in Klina of 24-05-2007

After deliberation, the Verdict was read out during the hearing of 14 December 2009, in the presence of the defendant.

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

**2.1.** The defendant is accused of murder according to art. 146 of the Provisional Criminal Code of Kosovo. Such offence is punishable by imprisonment of not less than five years and (in accordance with art. 38, para. 1, PCKK) no more than twenty years

**2.2.** In accordance with article 23 paragraph 1 of the Kosovo Code of Criminal Procedure (henceforth: KCCP), District Courts shall have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long-term imprisonment. The District Court of Pejë/Pec is territorially competent, being the village of Gjurgevik I Madh part of the Municipality of Klina, which falls within the jurisdiction of the District Court of Pejë/Pec.

**2.3.** The offence falls within the scope of art. 3, para 3, of the Law on Jurisdiction (3 – L053/2008), which sets forth the subsidiary competence of EULEX Judges. Art. 3 para 3 states that in the cases of subsidiary competence EULEX Judges can take over the case upon appointment by the President of EULEX Judges, following a request by either party of the proceeding or by the President of the respective Court, for any reason when this is considered necessary to ensure the proper administration of justice.

In this case, two EULEX judges have been appointed by the President of EULEX Judges on 8.4.2009, following a request from the acting President of the District Court of Peja to substitute the local judges with EULEX judges. A Kosovo judge has been part of the Panel throughout the trial pursuant to article 4.7 of Law on Jurisdiction. It has to be added that *in limine litis* the parties had nothing to object about the composition of the Panel.

### 3. The merits of the case

The Panel deems that at the end of the main trial the guilt of *F.B.* has been proved beyond reasonable doubt and she must, therefore, be held liable of the murder of *M.B.*, based on the following elements.

#### 3.1. *F.B.*'s confession

The defendant confessed on two occasions (in front of the public prosecutor on 26.7.2007 and in front of the first trial panel on the 23<sup>rd</sup> Jan 2008) having killed *M.B.* Both confessions were formal and therefore fully admissible, having been rendered, following the necessary warnings, in the presence of the defence counsel<sup>6</sup>. It is therefore necessary to assess whether the confession rendered by *F.B.* can be deemed as reliable or not.

To this extent, firstly (and from a general viewpoint) the Panel considers that the confession is a particularly significant kind of oral evidence, in which the knowledge of events does not derive from the memory and sensorial perception of a third person and thus related to facts committed by others, but rather from the direct experience of the author of the statement about something committed by him/herself. There is no rule attributing a predetermined, legal (binding) evidentiary value to confessions in the current Kosovo code of criminal procedure. This means that the judge must freely assess the weight and reliability to be attributed to it. This, of course, within the limits of logical reasoning and with a duty for the judge to provide reasons for his decision.

The above entails that, as such and technically speaking:  
- on the one side a confession does not necessarily need external corroboration in order for a judgment to be based on it (even if, as it will be highlighted further, the evidentiary proceeding in the present proceeding provided several elements of external and internal corroboration);

- on the other side, though, a confession can be disregarded by the Panel whenever for logical reasons it cannot be reckoned as reliable.

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<sup>6</sup> It is worth noting that also immediately after the arrest *F.B.* admitted (to the police officer Saibe Shala who was with her) having been responsible of the crime.

Of course in assessing the confession the judge must bear in mind rules of general experience, among which the one according to which it is unlikely that somebody would accuse himself of a crime (thus being faced with the subsequent heavy penalty for such a crime) unless he really committed it: this does not relieve the Panel, obviously, from the duty to assess the contents and reliability of the confession, in order to exclude the possibility of its falsity. Finally, the Panel deems that the contents of a confession can – if needed - be assessed in a diversified way (i.e. deeming one part as reliable and another one as not reliable) whenever these parts are not logically interfering with each other, in so far as the judge provides an adequate reasoning for his choice.

Coming to the merits of the confession, in front of the Public Prosecutor on 26.7.2007, *F.B.* stated:

- that the relationship of her family with the family of *M.B.* had always been smooth and positive;
- one year after the war, while she was in the cow stable (located some hundreds meters from her house) *M.* entered armed with a gun and ordered her to give him money<sup>7</sup>. After she told him she had no money, he raped her and ordered her not to tell anybody about it, threatening her seriously for the case she should not obey;
- two more times in the following years *M.* raped *F.B.*, taking advantage of the absence of her family members;
- after the second rape, *F.B.* approached *M.*'s mother, telling her about the behavior of *M.*. *M.*'s mother begged her not to tell anybody, promising that she would find a suitable solution;
- *F.B.* never told her family about such events;
- on the critical day, while she was working in her yard, *M.B.* entered the yard and headed towards the men's room which is located at the second floor of *F.B.*'s house. Seeing this, *F.* went into her apartment (located on the first floor of the same house), where she took her husband's rifle and headed towards the men's room. There she wanted to scare away *M.B.*, in order to discourage him from further threatening her.
- When she entered the men's room, *M.* was looking out of the window. She shot for a first time towards his chest from a distance of 2-3 meters and he fell down immediately after.
- *F.B.* did not remember whether she shot more times<sup>8</sup> or not; she remembered sitting on the stairs holding the weapon and seeing the husband and the mother in law in the yard afterwards.

<sup>7</sup> The defendant added that *M.* assumed that *F.* had money since several of her family members lived and worked abroad.

<sup>8</sup> When examined by the Public Prosecutor on 26.7.2007 *F.B.* stated: "When I entered the room *M.* was standing looking out of the window, then I with the weapon that I had already loaded in the room, shot once on the front part of his chest from a distance of 2-3 meters I noticed him falling down and then I don't remember whether I shot any more or not". The same circumstance was confirmed in front of the first trial panel, though adding that *F.B.* could see *M.B.* falling down on his knees.

- the picture of herself naked contained in the camera of M.B. was taken by M. with the intention to have an additional means of blackmailing, in case she should tell anyone of the events;
- she did not know where from M.B. had taken the knife which was on the floor beside him.

In front of the trial panel, on the occasion of the first main trial, the defendant repeated the above sequence of the events, though with the specifications which are highlighted below. It has to be stressed that the examination performed in front of the trial panel was much more in detail compared to the previous one in front of the Public Prosecutor.

- The first rape occurred in 2003 (and not in 2000, as stated by F.B. in front of the Public Prosecutor), one month and a half before M.B. was put in jail;
- the following day she decided to speak with M.'s mother about what had happened (and not after the second rape, as stated in front of the Public Prosecutor);
- the second rape occurred after he had been released from jail;
- two or three weeks after M.'s mother died, M. raped her in her guest room. After the rape, he took a picture of hers with his camera, threatening her that he would spread it in the internet in case she should reveal what happened.

It is worth summarizing extensively the statements (rendered by F.B. in front of the trial panel) regarding specifically the shooting. She told:

- that it was not her intention to kill M., but only to scare him in order to convince him not to come into her house any more;
- that when she noticed him going upstairs in her guest room, she entered her house, took the rifle and loaded it, and thereafter she went upstairs towards the guest room, where she saw M. standing in front of the window, looking outside;
- that as soon as M. noticed her carrying the weapon, he pulled out a knife (later to be found on the crime scene beside the body of M.), while with the other hand he tried to reach out towards the rifle.
- that at this point, when he was at a distance from her of two steps, F.B. shot, not aiming at him, but rather at the window;
- that after the first shot M. fell down on his knees.
- That it was impossible for her to clarify how many times more she shot, since she was "totally unconscious".
- that she had had no previous phone conversations with M.B.

### 3.2. *The assessment of the confession in conjunction with the other elements of corroboration*

The Panel deems that the confession of *F.B.* is reliable, at least as to its main part (i.e. as at least to the fact that *F.B.* shot *M.B.*). Being this confession the backbone of the evidentiary framework against the defendant, it is necessary to provide accurate reasons for such an assessment. The panel deems that significant external elements of corroboration arose during the evidentiary proceeding. Indeed:

- the murder was committed inside *F.B.*'s house, precisely in the guest room which is located above apartment where she lives with her family. This bears a significant evidentiary relevance, because it automatically limits the range of possible suspects to two, i.e. *F.B.* and *V.B.*. In fact, the sons of *V.* and *F.B.* were not at home, having gone to school, and *B.B.* (*V.*'s father) had left at 8.00 a.m. to pay condolences to another family. No other people lived in the house in question<sup>9</sup>.
- the defendant was found by the Police *at the crime scene immediately after* the events had taken place. She was at distance of a few meters from the dead body of *M.B.*, who had been shot thrice with a hunting rifle. This matches perfectly with the description of the defendant (who, besides admitting the first shot, does not deny having shot more than once);
- the weapon (hunting rifle) which the defendant was holding in her hands was compatible with the gunshot wounds which caused the death of *M.B.*<sup>10</sup>. Such wounds had been produced only minutes before (see ballistics report, autopsy report and the timing provided by the witness statements and the police reports);
- the defendant proved to be able to shoot, reload the weapon and shoot again in a very short time (25 seconds<sup>11</sup>), thus matching with the version of her husband regarding the time lapse between the second and the third shot<sup>12</sup>;

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<sup>9</sup> Of course, under abstract point of view it cannot be excluded that a third person had entered *F.B.*'s house at the same time when *M.B.* had entered it, in order to kill him there. Criminal proceedings, though, are not the place to consider all abstract possible explanations for some occurrences, but only those which can explain events with a high degree of rational credibility.

<sup>10</sup> See on this the written report and the trial examination (second main trial) of the anatomo-pathologist Arzim Gerxhaliu

<sup>11</sup> See statements of witness *F.L.* on the occasion of the hearing of 3 December 2009. He is the police officer who performed a reconstruction of the crime scene and on that occasion could notice the skills of *F.B.* as above described.

<sup>12</sup> On this, note that during the examination in front of the second trial panel, *V.B.* stated that at the moment of the second gunshot he was at the bottom of the stair which led to the guest room. He climbed it at first running and after that at a slower pace. Thereafter he further slowed his pace, not being sure of what was going on inside the guest room and being afraid of being shot at. Only after having

- The police was called by the defendant's husband very shortly after the murder (see timing of events in the police reports contained in the case file and see also the statements of V.B. on this). This short lapse of time implies that it would have been extremely difficult for the defendant and the husband (who entirely confirmed her account of the facts) to, in hypothesis, build up a common strategy and version of the facts<sup>13</sup>;
- The camera of the victim M.B. contained a photo of the defendant naked, taken from close up within a room. This mere fact makes it clear that there had been some kind of sexual behaviour/intercourse between F.B. and M.B. be it forced or voluntary. The defendant appears naked, holding in her hands some clothes with the apparent intent to dress up. Her face appears to be vexed (though it is not possible to precisely elaborate, from the simple view of the picture, the state of mind of the defendant at that moment). Such picture was taken after the death of the mother of M.B. took place<sup>14</sup>. Her death happened around one month before the critical day. The photograph was taken in the guest room located above F.B.'s apartment<sup>15</sup>. Even though the look of F.B.'s face in the photo and her posture do not offer, in themselves, sufficient hints in order to affirm beyond reasonable doubt what happened before the photo was taken, the Panel notes that the above circumstances, again, are compatible with the description provided by the defendant.

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crossed the pre-room he could hear the third gunshot. This description of the events is compatible with a time lapse of around 25 seconds between the second and the third shot.

<sup>13</sup> This leads the Panel to concur, from still another viewpoint, that the conformity between the versions of F. and V.B. depends on their truthfulness rather than on their being the outcome of a plot. It could be argued, at the level of mere hypotheses, that there had been a preventive plot between F. and V.B. to committing the murder or, at least, as to who had to take the blame for the murder) leading to the subsequent willingness of F.B. to lie as to the involvement of her husband. It has to be noted that there is in the case file no specific factual element pointing towards this, but only a speculation (based on the alleged existence of a love affair between F. and M.B.). It has to be noted, moreover, that even admitting the existing of a plot between F. and M.B., the liability of F.B. would still be standing, as participant in the murder or at least as assistant in the murder (because it would be difficult, otherwise, to explain the possibility of two immediate matching versions from F. and V.B. regarding the events of 24.5.2009).

<sup>14</sup> The circumstance is made clear by the fact that in the memory of the camera the above picture is recorded after the pictures related to the mourning over M.B.'s mother's body.

<sup>15</sup> All the witnesses examined during the second main trial confirmed the circumstance (see record of the hearing of 1 December 2009): this completely discredits the allegation of the injured party A.B. according to which such photo had been taken inside M.B.'s apartment. This, additionally, casts a negative light on the attitude of A.B. with regard to the present trial and his tendency to exaggerate the circumstances against F.B. and her husband, with a view to substantiate the allegations of the existence of a love story between F. and M.B.

- *F.B.* always admitted her liability and never (since the very first moments of the investigation) tried to step back from her admissions. The same attitude was kept also on the occasion of the first main trial, i.e. after she had been being kept in prison for eight months.
- *V.B.*, husband of *F.B.*, provides a thorough confirm to the confession of the defendant. In particular he stated:
  - That on the critical day the sons left for school at about 7.30 a.m. and the father at about 8.00 a.m., whereas he remained home until the father's comeback, in order to subsequently leave towards Pristina. The last time he saw her wife was when they greeted their children out at 7.30;
  - That at the time of the shooting he was in the basement of his workshop, which faced the yard, on the opposite side of the family house<sup>16</sup>, working at the beehives;
  - That he came out of the basement only when he heard a gunshot. At first he thought that the gunshots were coming from outside his property: he therefore initially headed towards the gate, but when he reached it, he heard the second gunshot coming from the upper guestroom (whose entrance was on top of the staircase beside the entrance gate)<sup>17</sup>;
  - He therefore rushed up the staircase<sup>18</sup>, running for the first half of it and then walking up the second half. Once on top of it, he paused, carefully, not knowing what was going on inside the room and being concerned of exposing himself to danger.
  - From the top of the stairs he was able to see, by the corner of the guest room beyond the "pre room" the lying body of *M.B.*<sup>19</sup>. The distance between him and the body was of about 9-10 meters. After pausing on the entrance of the "pre room" he headed carefully towards the entrance of the guest room.
  - Only when he reached its threshold could he notice his wife, on the left, more or less in the middle of the guest room, at a distance of around three meters. When he noticed her, she was in the act of shooting for the third time at the victim<sup>20</sup>

<sup>16</sup> The distance between the workshop and the family house was of around 50 meters: see statement of *V.B.* of 22/9/09 page

<sup>17</sup> The witness during the examination was shown several photos contained in the Police reports and recognized, in particular, the photos of the staircase in question.

<sup>18</sup> The staircase, according to the witness, was about 5 meters long and 18-20 steps

<sup>19</sup> For the description of the facts the witness referred to the sketch drafted by the Police investigator Blerim Tigani, contained in the case file. He stated that the situation depicted in the sketch corresponded precisely to the factual situation of the critical day. *V.B.* added that he was able to recognize the lying body as *M.B.*'s only once he had entered the guest room. He also referred to photo n. 7 contained in the Police report drafted by Officer Valbona Kralani, present in the case file. He stated that his wife was standing more or less in the place where the label n. 4 was placed in the photo.

<sup>20</sup> The witness stated that before shooting the defendant was moving her hands over the rifle. He was not able to remember for how many seconds this went on, despite the intense examination by the trial Panel.

- After the third gunshot, he cursed the wife and then approached her trying to drag her away from the scene, only to withdraw immediately, given that she turned towards him, shocked, in a fashion that made him think that another gunshot might be fired accidentally. He therefore left the wife at the crime scene and headed downstairs, in order to fetch the telephone and call the police. When he came back, he saw the wife sitting on top of the stairs and he cursed her again, but did not approach her, also because meanwhile his mother had fainted in the yard, out of the shock;
- 3 to 5 minutes elapsed between the shooting and his calling the police.

V.B. is the only person who was present at the events of 24.5.2007 (at least at their second part). The Panel is well aware of the fact that V.B. had been previously investigated for this same crime. This circumstance, though not entailing a "formal" weakness of his testimony (since the charges against him were later on dropped), has to be considered alongside with the fact that V.B. is the only possible alternative (or cumulative) culprit of the murder: there might be, therefore, a concrete possibility that he might aim at putting on the wife the blame for the murder, in order to get off scot free<sup>21</sup>.

It has to be noted, though, that despite the careful examination by the Panel, the witness fell in no contradiction and remained steady in his version of the facts<sup>22</sup>. In any case, given the above concerns, the testimony of V.B., though confirming the confession of F.B., can be regarded only as a weaker element of corroboration, compared with the other ones previously described.

- The expert witness A.G. provides further elements of objective corroboration to the confession of F.B. (and to the statements of V.B.). During the hearing of 22.9.2009 he stated, in fact:

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<sup>21</sup> The trial Panel, aware of this alternative possibility, explored painstakingly the possible alternative explanation of an eventual responsibility of V.B. (assuming the truthfulness of the version provided by the injured party, according to which a love affair had been existing between F. and M.B.). The evidentiary proceeding and the case file, though, provided no specific objective element in that direction.

<sup>22</sup> This is particularly true with regard to the exact sequence of the shooting of the 24<sup>th</sup> of May 2009, on which the trial Panel focused extensively.

- That inside each of the three wounds a significant number of hunting pellets caliber 12 was found<sup>23</sup>. It was also possible to find inside the wounds several of the plastic pieces which form part of the hunting cartridges and of the plastic cork contained inside the cartridge.
- The anatomo-pathologist clarified that the gunshots came from a distance which was for sure greater than 1 meter (no burnt area having been spotted on the skin around the wounds). At the same time he stated that the distance between the shooter and the victim could not be more than five meters, given the width of the wounds and the presence of the plastic pieces inside the wound<sup>24</sup>. Also these circumstances are in line with what stated by *F.B.*
- The expert witness was able to describe (in a convincing manner) the sequence of the shooting. In particular, he stated that the first shot hit the victim at the liver, thus causing immediate shock and intense bleeding, to which the sudden fall forward of *M.B.* followed. This technical reconstruction of the events matches with the description contained in the confession of *F.B.* (who, as well, recalled specifically *M.B.* falling forward on his knees).

The other expert analyses ordered by the trial panel added nothing to the evidentiary framework<sup>25</sup>.

### *3.3. The unclear elements of the confession and their significance*

It is now necessary to assess the existence and (in the affirmative case) the significance of possible contradictions within the confessions and/or between the two versions of the confessions rendered by the defendant in front of the public prosecutor and in front of the first trial Panel. Furthermore, the existence other possible alternative explanations of the events of 24 May 2007 will be evaluated.

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<sup>23</sup> The same kind of hunting rifle which was being held by the defendant.

<sup>24</sup> According to the expert witness, if the distance had been greater than that, on the one side the size of the wound caused by the lead pellets would have been wider and, on the other side, the plastic pieces coming from the cartridge would not have traveled together with the lead pellets, but would have gone astray.

<sup>25</sup> In particular, the gunshot residue analysis brought no results as to the presence of traces on the defendant and on her husband. It has to be noted, on this, that the collection of the gunshot residue samples was performed by the Police in a rudimentary way (use of cotton swabs) which, according to what was anticipated by the experts to the trial Panel, prevented a proper performance of the analysis. It has to be added that the analysis was conducted more than two years after the collection of the samples of gunpowder.

The fingerprint examination gave no results as to the presence of papillar traces of whomever on the knife. This, though appearing weird, can find an explanation either considering that the handle of the knife was a rough surface, or assuming a mishandling of the evidentiary item.

The ballistic expertise, in itself, provided no additional information to the trial Panel. The Panel, though, could examine the expert witness *F.L.* obtaining information as to the timing of the rifle reloading (and his statements have been highlighted above).

3.3.1. A couple of minor discrepancies between the two versions of the confession exist. It has to be underlined that the trial Panel was willing to examine the defendant during the second main trial, in order to try and obtain clarifications. This was not possible, due to the choice of F.B. to remain silent during the second main trial. The discrepancies refer (a) to the precise year in which the first of the reported episodes of violence occurred and (b) to the occasion on which F.B. decided to tell M.'s mother of what had happened.

3.3.2. Apart from the above, some other circumstances reported in the confession appear, in the opinion of the panel, as peculiar. Reference is made, firstly, to the fact that on the critical day, according to the description of the defendant, suddenly and without a clear reason M.B. appeared inside the property of the defendant and, without permission, he headed towards the upper floor of her building. This behaviour of M.B. appears to be not completely explained (what was his aim in heading towards the upper room?). No element arose from the case file, which could shed light on this circumstance. Secondly, also the behaviour of the defendant, faced with the unexpected presence of M.B. in her property, seems peculiar, in some way excessive (even considering her description of the previous rapes and her claim of necessary defence having allegedly been assaulted by the victim).

3.3.3. Connected to what above *sub* 3.3.2., an additional remark must be made with regard to the assessment of the motives to kill, on which the reliability of the confession was put in question by the injured party. According to the injured party, on the basis of the declarations of some witnesses related to him (S.T., R.B., V.B., A.B.), F.B. and M.B. had allegedly been involved in a previous love affair. In particular:

3.3.3.1. the witness S.T., sister in law of the victim and living in the same house, is the main source of information<sup>26</sup>. According to her, the defendant and M.B. were involved in a love affair and because of this they had been meeting frequently. M.B. would reach the defendant's house from the second floor of his house, thence he used to reach the gate of F.B.'s. Other times (during the last five months) he would reach the defendant's house through a hole made in the net of a window. According to the witness, F. and M. had made "holes everywhere" in order to meet. She also saw them together several times in the yard, by the dog's den.

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<sup>26</sup> Most of the other above mentioned witnesses referred to her as to their knowledge of some particulars.

S.T. added that on one occasion, around the year 2000, she had seen F.B. and M.B. kissing on the mouth<sup>27</sup>. S.T. stated, moreover, that F.B. once asked her to buy a telephone SIM card for her, in order to maintain contacts with M. when he was in jail for a robbery. S. allegedly entrusted the brother in law V.B. with the task to buy the card. V.B., heard as a witness on 16 September 2009, confirmed that he bought a SIM card and gave it to S.T. S.T. reported that she later on gave such card to F.B.

3.3.3.2. The witness R.B. is a neighbour of S.T., and a close friend of the family of the victim (she stated that M.B.'s mother was like her adoptive mother).

She stated that on one occasion, when M. was not older than 17 years (and F. was about 10 years older than him) she saw the two kissing each other by the barn; various times she could see from her house (overlooking F.B.'s yard) the two meet (though her statements made in front of the PPO and in front of the trial panel contradict as to the reciprocal attitude of M. and F.B. during such meetings, as well as to the capability of the witness to see what was happening during the alleged encounters, as well as to the exact place where they allegedly used to meet). Requested by the Panel whether she had noticed other sexual behaviours between F. and M., she hyperbolically stated that she saw them kissing "hundreds of millions of times".

3.3.3.4. A.B. is the brother of the victim. He stated (in summary) that he knew of a long term relationship between M. and F.B. Confronted by the Panel, though, he admitted having never seen personally anything more than the defendant and M.B. talking to each other through the fence in the yard. He added that he once talked to the brother M. in order to urge him to interrupt the relationship: M. allegedly replied that it was not his fault, but that it was F.B. who was running after him.

#### 3.4. Overall evaluation

The Panel notes the following in assessing the above evidence:

3.4.1. The elements of external corroboration highlighted above sub 3.2 are of the greatest evidentiary value. In the opinion of the Panel such corroboration is sufficient in order to overcome the inconsistencies noted above sub 3.3.1. It has to be added that such inconsistencies are, *per se*, not of substantial significance and thus not able to affect the reliability of the confession. First, they do not refer to the core of the confession (i.e. to the events of the 24.5.2007), but to the previous years and to the alleged rapes between the defendant and M.B.

<sup>27</sup> The witness added that this "caused her to vomit".

Secondly, it is also possible to admit a wrongful memory of the defendant as to details (dates) related to facts allegedly happened many years before. This can be particularly true with regard to the timeframe of the first rape, also bearing in mind that memory mechanisms for such particularly traumatizing events can be hindered or altered, thus rendering the memory less precise.

3.4.2. As to the evaluation of the circumstances indicated *sub* 3.3. and of the testimonies indicated by the injured party (see above *sub* 3.3.3 ff), a joint analysis is useful, given the intertwine between the two issues. The Panel notes the existence of elements of unreliability in these testimonies. In fact:

- The witnesses (in particular *S.T.*, *R.B.* and *A.B.*) showed keenness in testifying against the version of the defendant, stating that that there had been a love affair between *F.* and *M.B.*. The Panel noted their clear tendency to exaggerate circumstances regarding the alleged love story between *F.* and *M.B.*, this stems out in particular with regard to all the circumstances in which (according to the witnesses) the defendant and *M.B.* were having "sexual" contacts. For instance, more than once the witnesses (*R.B.* and *S.T.*) after stating that they had seen the defendant and *M.B.* kiss "millions of times"<sup>28</sup> in open air, after confrontation from the Panel were obliged to dramatically shrink the amount and extent of such occasions<sup>29</sup>. The same exaggerating attitude appears when, incredibly, *S.T.* stated that *F.* and *M.* used to meet at "no specific time, but any time *F.B.* was free she would call *M.* and ask him to go and see her and *M.* would leave the bus without conductor, get a taxi and get to her"<sup>30</sup>. Furthermore, the witness *A.B.* first stated that he had seen the defendant and *M.B.* having a sexual relationship and then, after confrontation, he had to admit that he had simply seen them "talking through the fence".
- On another occasion the witness *S.T.* showed the same accusatory attitude stating that *F.B.* had told her (without being asked and without a logical connection with the context of the narration) that she was having a love story with *M.* on her own will and that nobody was forcing her<sup>31</sup>. This allegedly spontaneous statement of *F.B.* appears to the Panel unlikely, if not even illogical, given the fact that the topic of that conversation was different: *S.T.* was allegedly trying to convince *F.B.* to stop seeing *M.B.* and therefore it cannot be understood why should *F.B.* in that context, try to stress the fact that she was not obliged to go with *M.* (which

<sup>28</sup> See e.g. with regard to *R.B.* records of 17 September 2009, page 28 and the subsequent confrontation from the Presiding Judge

<sup>29</sup> On this, for instance, *R.B.* ended up stating that she was not able to see what the defendant and *M.B.* were doing, since they were, allegedly, behind the dog's den.

<sup>30</sup> See records of the main trial, 22 September 2009, page 17

<sup>31</sup> See e.g. statements of *S.T.*, hearing of 15.9.2009, pag 12.

would have been not only obvious, but the reason itself for S.T.'s attempt to convince F. to quit that relationship<sup>32</sup>;

- it appears from the statements of the witnesses A., V. and A.B. that they have only a *de relato* knowledge of the facts specifically referring to the alleged love story (being their source of information mainly the witness S.T.). The witness A.B. only adds a reference to an alleged conversation between him and the brother M., in which the latter said that it was F.B. who was running after him and not viceversa).
- the testimony of A.B., in particular, is *per se* of no evidentiary relevance: he clearly stated that he had known nothing of the alleged love story up until the day of the murder and that all he knew was told him by relatives (S.T. in particular). Not only: he showed an eager tendency to make precipitous and inaccurate statements against F.B.<sup>33</sup> and showed a general aggressiveness against her throughout the main trial;
- the witness S.T. (as said, the main source of information regarding the love story) contradicts herself as to her overall attitude towards F.B. and her attitude regarding the alleged love story. Indeed, on the one side she said that she was completely disgusted by the love story (to the point that she reported vomiting when she, allegedly, saw the two kissing) and that several times she urged F. to stop going after M.B.; on the other side, contradictorily, she seemingly supported the love story (e.g. having coffee with F. at M.'s place when F. was allegedly visiting him, providing her with a SIM card in order to enable her to keep in contact with M., discussing with her about the details of her relationship<sup>34</sup>). The same contradictions appear when S.T. stated that she could not stand seeing the meetings of F. and M. (this causing her vomit and obliging her to turn back), while on the other side she stated that she knew that F. and M. met regularly because she followed her "every moment"<sup>35 36</sup>. Another contradiction appears as to the fact that allegedly M. and the defendant had opened a hole in the net under the storage room window. On the one side, the witness stated that such window had allegedly been opened some five months before the murder of M.B.<sup>37</sup>. On the other hand, she stated immediately after that such hole had been closed by them five months before the death of M.B.. Only to add immediately after (thus showing again her attitude to make incredible exaggerations) that F. and M.B. "had opened many holes, everywhere"<sup>38</sup>.

<sup>32</sup> On the contrary, the Panel deems that this testimony of S.T.'s can easily find a logical explanation if considered as a further attempt to prevent the Panel from believing F.B.'s version.

<sup>33</sup> This is the case, e.g. for the photography depicting F.B. naked. To that regard, A.B. sustained with great determination that such picture had been taken in his and B.'s house, but the circumstance was radically discredited by all the other witnesses examined during the hearing of 1.12.2009.

<sup>34</sup> See for instance the issue of the hole allegedly made in the net under the window of the storage room: records of the main trial, hearing of 16 September 2009, page 10. Even more contradictorily, the witness stated that (despite her contrariety to the love story, to the point of "vomiting") on the occasion of the alleged opening of the passage in the net under the window of the storage room F.B. discussed

- all the witnesses above mentioned are strictly related to the family of M.B.  
This enhances the possibility of a conspiracy against F.B. ∴ and the Panel cannot but note the existence of a suitable motive for the injured party to counter F.B.'s version, in the light of the shameful and criminal behaviour of M.B. depicted in F.B.'s account.
- as to the SIM card allegedly handed over by S.T. to F.B. in order to enable her to keep in touch with M.B., the following must be remarked:
  - the witness S.T. was contradictory as to whether she was aware in advance (i.e. before buying it) that F.B. needed the SIM card in order to contact M.B.<sup>39</sup>
  - S.T. and V.B. did not provide sufficient clarification as to the fact that the SIM card allegedly given by S.T. to F.B. was the same contained in the plastic frame which was handed over to the Trial Panel. Moreover, there can be no certainty of the fact that the handwritten telephone number (044431563) appearing on the paper leaflet attached to the said plastic frame was the one referred to the SIM card in question; therefore there is no certainty as to whether the SIM card which was indicated by the witness to the Panel was the same which was allegedly given to F.B.
  - even admitting that the SIM card had been in the beginning handed over to her, in any case there can be no certainty that such SIM card was *de facto* used by F.B. throughout the years without being used by other persons.

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with her about the issue, saying that "It would be good for M. to cut the net in that window, in the first floor, so that he would not be seen by the neighbours".

<sup>35</sup> See minutes of the main trial, hearing of 16 September 2009, page 17. Such a statement is yet another example of the attitude of the witness to exaggerate the circumstances regarding the alleged love affair between F. and M.B.

<sup>36</sup> The Panel confronted the witness with this ambiguous attitude, but the witness did not provide a precise answer to the contestation. It is noteworthy that S.T. also contradicted herself (see minutes of the second main trial) as to the words allegedly uttered by her to the police officer who came to her house on the morning of the murder. Finally, the Panel confronted S.T. with the contradictions arising between her statements in front of the PPO and the ones in front of the trial panel regarding the issue of the time at which the alleged meetings between F. and M. took place (since in front of the trial Panel she stated that there was not a precise time, whereas in front of the PPO she stated that they happened at 12.00 daytime). See records of the main trial, hearing of 16 September 2009, page 18

<sup>37</sup> See page 10 of the minutes of 16 September 2009

<sup>38</sup> Such a sentence of the witness, again, is evidently non credible.

<sup>39</sup> In a first moment she stated that F. told her that the SIM card would be used to call M. ("Presiding Judge: Did F.B. tell you the reasons why did she want this or no? S.T.: To speak to M. Presiding Judge: Did you ask her why don't you use your phone? S.T.: She said that they can see my call log"). As soon as the Presiding Judge faced her with the fact that this was not credible, being contradictory with her allegedly being fiercely against the love story, she changed her version and said that F.B. told her only afterwards that the SIM card was needed in order to call M.

As a consequence, the Panel deems that there is no sufficient evidence that the telephone contacts registered in the telephone metering of the number 044431563 must be referred to contacts between F. and M.B.

- It must be noted, additionally, that the alternative reconstruction proposed by the injured party (i.e. that it was not F.B. who killed M.B., but V.B.) is not corroborated by evidentiary element external to the testimonies of the family members of the injured party himself (who, in any case, refer nothing about the murder, but only about the previous conduct).
- It must be added, finally, that no specific evidence exists of the fact whether V.B. had been previously aware of the alleged love affair, nor of the rapes. This entails that there is no evidence (but only a mere speculation) that he might have formed a motive to kill<sup>40</sup>. The simple fact that V.B. was present in his compound (inside the workshop, according to his version of the events) when the murder took place is obviously not a sufficient reason to convict him. His participation in the murder is, therefore, nothing more than a logical possibility based on the evidence gathered.

3.4.3. Summing up, the Panel deems the following:

3.4.3.1. as to the circumstances assessed above *sub* 3.3.2. and to the alternative version described in 3.3.2.1 *ff.*, the Panel concurs that they contribute to cast some unclear light on the confession, namely on the motives to kill and on the reason why (and the modality by which) M.B. entered F.B.'s house (was he invited/attracted there by the defendant or by somebody else? Did he enter her house on his own initiative?).

3.4.3.2. The Panel reckons, though, that these parts of the confession do not bear a decisive significance against the liability of F.B.'s self accusation, in light of the strong elements of external corroboration to the confession and of the above highlighted contradictions and suspicious elements of the testimonies quoted at 3.4.2. *ff.*

3.4.3.3. The Panel notes, though, that even if a greater relevance should be attributed to these circumstances, and the opinion of the injured party as to the existence of a previous love story between F. and M.B. should be believed, this would not be enough to exclude the liability of F.B. for the murder.

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<sup>40</sup> It cannot be regarded as true what the injured party stated ("Even the cows knew that there was a love story"), since the injured party himself had to later admit in front of the trial panel that he was not aware of the existence of a love story involving the son.

Logical and factual reasons would allow, in that case, to attribute credibility to a part (i.e. as to the liability for the murder) and not to another (i.e. as to the rapes)<sup>41</sup>. It must be noted to this regard, in fact:

A. that even admitting the existence of a previous love affair does not tell anything about its duration and the possible outcome of it. In particular, it does not exclude the eventuality of its violent or even tragic epilogue, for many a possible reason<sup>42</sup>;

B. that if this were the case, F.B.'s depicting a violent attitude from M.'s side would be useful for her in order to have better defensive chances. In other words, whatever the nature of the previous relationship between F. and M. the Panel deems that it would be logical to admit that she elaborated a story of previous rapes and threats, in order to provide herself with a better possibility (a) to substantiate her strategy of necessary defence, (b) to save her reputation in front of her family and society and (c) to prevent possible (violent) retaliation from her husband.

3.4.3.4. The evidence above described is clear as to F.B.'s thrice shooting at M.B. and as to her causing his death as a consequence of the gunshot wounds. The act of shooting was voluntary and the intent was to kill, and the Panel deems that the conditions for necessary defence, claimed by the defendant in her confession, are not met. This is made clear by the plain examination of F.B.'s account of the events of 34.5.2007, which can be summarized as follows:

- She saw M.B. enter the compound and head towards the upper room (guest room)
- She "felt lost" and wanted to put an end to M.B.'s attitude towards her;
- She got armed with the husband's gun, loaded it and got a pocketful of spare cartridges
- She went to the guest room and saw M.B. at the window
- She shot at him from a distance of a couple of meters.

It has to be noted that the version of the confession made in front of the Public Prosecutor is much more synthetic and entails only a reference to the presence of a knife beside the body of the victim.

The version given to the first trial panel is much more elaborated, adding:

- that when M. saw her facing him with a gun, he exclaimed: "You bitch wanna scare me?" and approached her, pulling out a knife and trying with the other to disarm her;

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<sup>41</sup> It must be recalled here that in principle it is possible to attribute credibility only to a part of the confession and not to other parts, if factual and logical reasons should lead to do so.

<sup>42</sup> E.g. jealousy, or one part's decision to put an end to the affair, or blackmailing (which, by the way, would explain the presence of a naked photo of F.B. in M.'s camera);

- that *F.B.* told him to back off more than one time
- that she eventually shot, but only in order to scare him and not to kill him
- that she was not able to describe what happened after the first shot.

The Panel deems that the conditions for necessary defence are not met, based on the circumstances, highlighted in the confession rendered by *F.B.* as confirmed by part of the material evidence and by the expertise, that:

- the defendant was not initially being attacked by *M.B.* She had followed him into the guest room;
- she did so after having loaded the hunting rifle and taking an extra pocketful of cartridges;
- at the moment of shooting she was not obstructed from reaching the door; the distance between her and *M.* was (according to the same words of the defendant) of two meters (or at least two steps, as stated later in front of the trial Panel): this provided her with a possible way out without the need to resort to killing the victim;
- she did not limit herself to shooting once, but she did it three times;
- all three times the shots were aimed at vital parts of the body;
- after the first two gunshots *F.B.* reloaded the gun and shot again the victim at the back.

The above factual circumstances are, in the opinion of the Panel, not compatible with necessary defence. They are, on the contrary, an objective confirm of the existence of the aim to kill. In particular, the fact that the shots were several, the fact that the second and the third shot were fired by the defendant when the victim was lying on the ground<sup>43</sup>, the fact that she reloaded the gun and then shot again, are all circumstances that, with a strong convincing power, lead the Panel to admit the existence of the willingness to kill<sup>44</sup>.

#### 4. The punishment

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

With regard to the modalities of the conduct and the objective characteristics of the crime committed by *F.B.*, it must be considered that the defendant faced the victim

<sup>43</sup> The defendant specifically admitted this during her second confession, by saying that *M.* fell after the first shot. It is self evident that in such a situation, with the defendant lying – face downwards – on the ground, the fact that *F.B.* instead of leaving the room shot again twice to his back is a clear sign of the existence of the *mens rea* of murder.

<sup>44</sup> And this conclusion is not weakened even by the presence of a knife by the body of the victim: a knife on which no fingerprints were retrieved by the Police. In the opinion of the Panel the above sequence of the events make it clear that the intent to kill was present, even admitting that the victim had been holding a knife.

with a loaded rifle, after following him into the room in which the crime was to be committed.

The defendant's readiness to kill is confirmed by the fact that she, despite being able to leave the crime scene without killing the victim, not only shot once aiming at the trunk, but reloaded the gun and went on shooting for a third time when the victim was lying on the ground.

These circumstances are of relevance against the defendant and lead the Panel to exclude the application of the penalty towards its minimum threshold.

At the same time, the Panel cannot but consider, in favour of the defendant:

- The presence, in the past, of serious episodes of violence from M.B. against her. This makes it more understandable that F.B. was not able to determine herself properly as to the behaviour to be kept in the circumstance;
- the fact that apparently M. pulled out a knife.

Both the above circumstances, as it has been highlighted previously, have to be deemed as proved, despite the presence of some unclear aspects. Their consideration as to the penalty is in favour of the defendant. Even if such circumstances do not reach the threshold of the necessary defence, they bear positive relevance with regard to the personality shown by the defendant and to her criminal capacity.

Finally, it must be taken into account that the defendant confessed her guilt and held a perfect behaviour during the trial. She has no previous criminal convictions (apart, of course, from the criminal conviction of unlawful possession of weapon, which was rendered in the course of this same criminal proceeding).

The Panel reckons that, in consideration of the above circumstances and parameters, the punishment of ten (10) years of imprisonment is appropriate.

The time spent in detention on remand was already counted for the criminal offence which was adjudicated with the previous verdict.

##### 5. The property claim

In the first hearing, the injured party A.B. requested judicial protection of his rights during this trial.

The murder of a son constitutes a serious offence, given the closeness of the relation with the victim. In the instant case, the murder of M.B. implied for A.B. the loss of a collaborator in the transport enterprise run by the family. To this, the pain and suffering connected with the event must be added (and this latter is even greater if we consider that M. and A.B. lived in close proximity, in the same house).

A.B. is, therefore, entitled to appropriate compensation for the damage suffered.

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

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

The Panel deems it appropriate to condemn the defendant to the payment of a provisional sum of EUR 10.000,00 to the injured party.

For the rest, the injured party was instructed to file a lawsuit in front of the civil judge, where complete evidence of the damage suffered will be possibly offered and a thorough compensation be sought after.

It is therefore decided as in the enacting clause.

Prepared in English, an authorized language.

International Recording Officer

Vlora Johnston

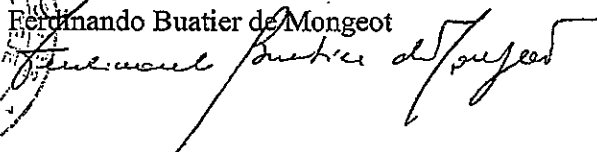


Legal Remedy



International Presiding Judge

Ferdinando Buatier de Mongeot



Pursuant to art. 400 PCPCK, an appeal must be announced within 8 days from the announcement of this verdict.

Pursuant to art. 407 PCPCK, the appeal shall be filed through the District Court of Pejë/Peć to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.

Dated this 14<sup>th</sup> day of December 2009.

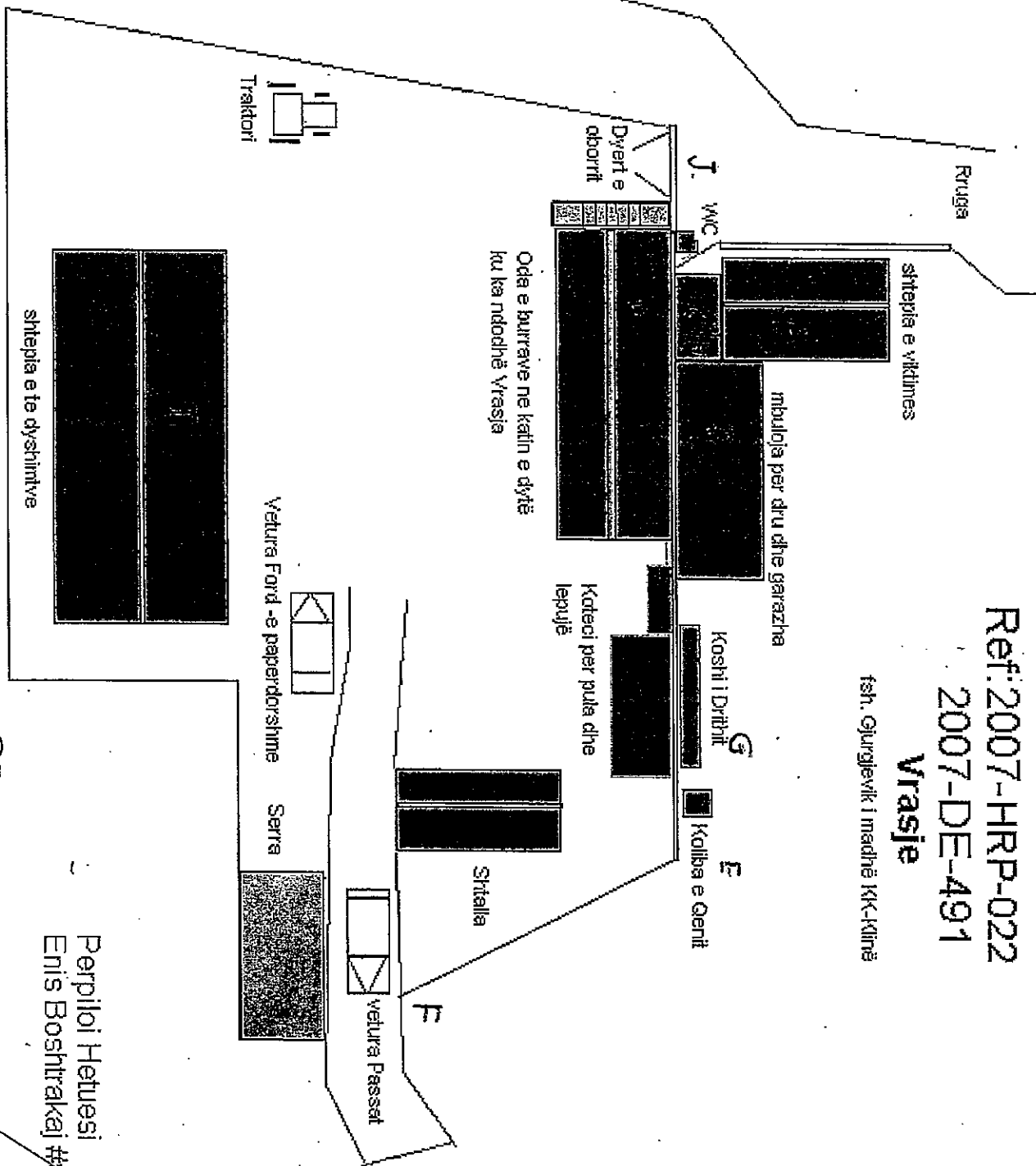
ρ. Nr. 145/2009

Ref: 2007-HRP-022

2007-DE-491

**Vrasje**

tsht. Gjurgjevik i madhë KK-Klinë



Perpiloti Hetuesi  
Enis Boshtrakaj #5554

2007-DE-491

Skica nuk eshte e shkallezuar

Skicen e perpiloi:  
Blerim Tigani #5748

Hyrja  
(Dera e  
oborrit)

