

DISTRICT COURT OF PEJA/PEC

P.nr. 329/09

Dt. 19 November 2009

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of the International Judge Gianfranco Gallo as Presiding Judge, the International Judge Ferdinando Buatier de Mongeot and the Kosovan Judge Hasan Shala as panel members, assisted by the Recording Officer Valentina Gashi, in the criminal case against the accused

IDRIZ GASHI, born on 1 May 1960 in Lutoglava, male, father's name Bajram, mother's maiden name Hanife Xhurxhevic, Kosovo Albanian, nickname Galan, residing in Snodroppsgatan 28, 21527 Malmoe, Sweden, temporary address in Pristina, Eqrem Qabej Road, Block 3, # 13, occupation financial consultant, currently in house arrest at Grand Hotel, Pristina, apartment n. 714;

charged, according to the Indictment PP. Nr. 36/06 dated 8 February 2007 and filed with the Court on the same day, with the following criminal offence:

War Crimes against the Civilian Population contrary to Article 142 of the SFRY Criminal Code

because, on the morning of 12 August 1998, Sanije Balaj, a Kosovan-Albanian woman, was questioned by members of the Kosovo Liberation Army (KLA) controlling the Baran Village area. She was then taken by Idriz Gashi (aka Galan) and to a wooded area known locally as "Lugu i Isufit" where Idriz Gashi then shot her to death. In Lugu i Isufit, in the vicinity of the village of Vranoc, Peja/Pec Municipality, on 12 August 1998.

After having held the main trial hearings in public on 21, 29 and 30 October 2009 and on 12, 17 and 19 November 2009 in the presence of:

- the accused Mr. Idriz Gashi and his defense counsel Mr. Beke Lajqi;
- the Eulex Public Prosecutor Mr. Robert Dean;
- the injured party . ;

after the trial panel's deliberation and voting held on 19 November 2009, based on Article 391 Paragraph (1) of KCCP,

on 19 November 2009, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the Accused, the Eulex Public Prosecutor, the following

Verdict

Idriz Gashi

is

FOUND GUILTY

of War Crimes against the Civilian Population, contrary to Article 142 of the SFRY Criminal Code, Articles 3 and 147 of the 4th Geneva Convention and Article 4 of the II Additional Protocol of the Geneva Conventions, as to the murder of Sanije Balaj, committed in Lugu i Isufit, in the vicinity of the village of Vranoc, Peja/Pec Municipality, on 12 August 1998.

THEREFORE, the accused, is

SENTENCED

to fourteen/14/years of imprisonment for the criminal offence of War Crime against the Civilian Population contrary to Article 142 of the SFRY Criminal Code, Articles 3 and 147 of the 4th Geneva Convention and Article 4 of the II Additional Protocol of the Geneva Conventions;

The time spent in detention on remand (including the time spent in detention in Sweden pending the extradition to Kosovo for the above criminal offence) and in house arrest by the defendant is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5, Article 531, Par. 4 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 08 February 2007, the Unmik Public Prosecutor filed the indictment PP.no.36/2006 with the District Court of Peja/Pec, against the defendant Idriz Gashi, accusing him of the criminal offence of War Crimes against the Civilian Population, contrary to the Article 142 of the SFRY Criminal Code and of Aggravated Murder contrary to article 30 par. 2 item 1, 2 and 5 of Criminal Law of Kosovo.

According to the indictment, on the morning of 12 August 1998, Sanije Balaj, a Kosovan-Albanian woman, was questioned by members of the Kosovo Liberation Army (KLA) controlling the Baran Village area, she was then taken by Idriz Gashi (aka Galan) and [redacted] to a wooded area known locally as "Lugu i Isufit", in the vicinity of the village of Vranoc, Peja/Pec Municipality, where Idriz Gashi shot her to death. Idriz Gashi accused Sanije Balaj of being in complicity with the enemy Serbian forces.

After the confirmation hearing on 23rd March 2007, the confirmation judge of District Court of Peja issued the ruling PP.nr.36/2006, dismissing the indictment in regard to the criminal offence of *Aggravated Murder* contrary to article 30 par. 2 item 1, 2 and 5 of Criminal Law of Kosovo, whereas she confirmed the indictment for the criminal offence of *War Crimes against civilian population* contrary to Article 142 of the SFRY Criminal Code.

The Main Trial (case number P. 537/07) was held in the premises of the District Court of Peja and, on 22 June 2007, the defendant was found guilty and sentenced to fifteen years in prison.

The judgment was timely appealed by the defendant. The Supreme Court found that [redacted] had been wrongly qualified by the Court of first instance as a witness; whereas he should have been qualified as cooperative witness since there was still an ongoing investigation as to the same murder against him. Therefore since there were not the necessary corroborative elements to sustain his accusatory statement against the defendant (in particular the testimonies of [redacted] and [redacted] were found blurred and unable to provide such corroboration). Therefore the Supreme Court, on 02.06.2009, through the decision n. Ap.Kz.465/08, quashed the first instance judgment and sent back the case file to the District Court of Peja for retrial. Furthermore, by a separate ruling, the Supreme Court substituted detention on remand with house detention.

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 is charged with War Crimes against the Civilian Population, in violation of the Socialist Federal Republic of Yugoslavia Criminal Law (SFRY CL) article 142, punishable by imprisonment of not less than five (5) years and no more than twenty (20) years. Therefore, District Court of Peja has the subject-matter to adjudicate the case.

The criminal offences, according to the indictment, were committed in the vicinity of village Vranoc, Peja Municipality, which is within the territory of the District of Peja. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Peja has the territorial jurisdiction to adjudicate the present case.

Pursuant to the article 3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, EULEX Judges assigned to criminal proceedings will have the jurisdiction and competence over any case investigated or prosecuted by the Special Prosecutors of Republic of Kosovo.

The present case was investigated and indicted by the Special Prosecutor of Kosovo and, therefore, in accordance with the article 4.7 of LoJ, the Trial Panel of the District Court of Peja/Pec 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 21, 29, 30 October, 10, 12, 17 and 19 November 2009, in the presence of the accused Idriz Gashi, his defense counsel Bekë Lajçi, the Special Public Prosecutor Robert Dean and one of the injured parties, . 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 were examined:

- a) examined on 30 October 2009
- b) examined on 10 November 2009
- c) examined on 10 November 2009
- d) examined on 12 November 2009
- e) examined on 17 November 2009
- f) examined on 19 November 2009

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

2. a) Documentary evidence and reports

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

- Police report without date drafted by KPS
- Police report dated 27.04.2005
- Police report dated 03.07.2005
- Police report dated 01.08.2005
- Police report dated 03.08.2005
- Police report dated 09.12.2005
- Autopsy Report and DNA report
- Ballistic Report
- Photographic arrays and results
- Photographs provided by the defendant
- Photograph of Sanije Balaj
- Area Maps
- Minutes of site inspection and pictures of the site dated 30 May 2007
- Minutes of site inspection dated 14 June 2007
- Letter of Idriz Gashi sent to the Prosecutor dated 16 November 2006.

2. b) Statements

Pursuant to Article 368, Par. 1, n. 3, on the basis of the consensus of the parties (see the minutes of the hearing held on 21 October 2009), the following statements were read out as evidence, replacing the direct examination of the below witnesses:

- Statement of [redacted] given to Investigative Police on 10 May 2005;
- Statement of [redacted] given to the Prosecutor on 22 November 2006;
- Testimony of [redacted] given in front of the panel on 17 May 2007;
- Statement of [redacted] given to Investigative Police on 01 November 2002;
- Statement of [redacted] given to Investigative Police on 06 July 2005;
- Statement of [redacted] given to Investigative Police on 16 September 2005;
- Statement of [redacted] given to the Prosecutor on 14 February 2006;
- Testimony of [redacted] given in front of the panel on 10 May 2007;
- Statement of [redacted] given to Investigative Police on 21 October 2002;
- Statement of [redacted] given to Investigative Police on 26 April 2005;
- Testimony of [redacted] given in front of the panel on 09 May 2007;
- Statement of [redacted] given to Investigative Police on 21 October 2002;
- Statement of [redacted] given to Investigative Police on 26 April 2005;
- Testimony of [redacted] given in front of the panel on 09 May 2007;
- Self-Written Statement of [redacted] dated 28 September 2002;
- Statement of [redacted] given to Investigative Police on 02 October 2002;

- Testimony of [redacted] given in front of the panel on 09 May 2007;
- Testimony of [redacted] given in front of the panel on 17 May 2007;
- Testimony of [redacted] given in front of the panel on 14 June 2007;
- Testimony of [redacted] given in front of the panel on 24 May 2007;

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.

Departure of Sanije Balaj from Strelc.

According to the testimony of [redacted], on 12 August 1998, Sanije Balaj told him that she wanted to go to Peja to buy a telephone. In the morning of that day Shaban Balaj asked his cousins [redacted] and [redacted], who stopped at his house in Strelc, to pick up her sister Sanije take her to Peja. They did so and proceeded to Baran village where the headquarters of the KLA were situated¹.

[redacted] confirmed that, on 12 August 1998, between 8.00 am and 9.00 am, he went to [redacted] place in a Zastava car driven by [redacted]. They were planning to go to Rosuje to accompany there a little boy, [redacted] following his father's instructions. They also gave a lift to Sanije since she wanted to go to Peja².

[redacted] testified more or less on the same lines and gave some additional details: on 12 August 1998, at around 09:30 am, he went to [redacted] place in a red Zastava car with [redacted] and [redacted]. They were on their way to take [redacted] the son of his uncle [redacted] to Rosuje as instructed by the boy's father. At [redacted] place, Sanije Balaj joined them, since she had to buy some food items and supplies in Peja and they headed towards Rosuje.³

According to the defendant Idriz Gashi, on the morning of 12 August 1998, after he had spent the night with [redacted] and [redacted], he went to Baran Headquarters with both of them in a red Golf car. He mentioned that his purpose was to go to Gillogjan, but didn't explain why he stopped in Baran and did not continue to Gillogjan.⁴

¹ Testimony in front of the panel, 9.5.2007, pag. 6.

² Testimony in front of the panel, 9.5.2007, pag. 22.

³ Testimony in front of the panel, 9.5.2007, pag. 29.

⁴ Statement in front of the panel, 24.5.2007, pages 13 and 20

The arrival at Baran. Sanije Balaj is taken by the military police in order to be interviewed.

stated that, on their way to Rosuje, at Baran village where the military police headquarters were located, fifty or a hundred soldiers stopped them. They were wearing uniforms that he described as having "army color".⁵ Upon cross examination during his examination on 9 May 2007, he specified that "in general, the army and the soldiers had a green uniform and the other ten percent were wearing black". In his statement in front of the police he mentioned "an armed group in uniform, with UCK emblem".

added that he recognized from Vranoc village, from Zllapek village and , the brother of among the people who stopped them. They declared that they intended to interrogate Sanije Balaj and therefore took her out of the vehicle and led her to the army barracks where the headquarters were situated. They allowed only to accompany Sanije Balaj to the KLA headquarters in Baran. After 15 to 20 minutes, returned to the car and suggested that they took the boy and then came back for Sanije. According to and were wearing black uniforms, but he could not remember what was wearing⁶.

stated that, at Baran, near the school, there were military barracks or encampment⁷ as well as soldiers in the street. In his police statement he stated that at the school there was a "UCK command" and the soldiers had "UCK emblems". They were stopped by who said that he had a question for Sanije Balaj. Sanije Balaj and approached a white Mercedes Benz 200 and walked for five minutes. insisted on going with them, but the soldiers invited him to wait. More specifically, informed that they would not allow Sanije Balaj to leave the place, because she had to be interrogated. In his examination on 9 May 2007, specified that, at that moment, he did not know why Sanije Balaj had been taken, but he learnt later that "her name was in a book of collaborators with the enemy forces".

followed and Sanije to another building near the school, but he was stopped before entering the building by some soldiers who told him to leave and added that had left and a supervisor who was supposed to interrogate Sanije. saw take a notebook from the vehicle and heard say to Sanije: "You are wanted and you have to come with us". stated that, in the building together with Sanije, there were and After around twenty minutes, a military supervisor () approached the building and said that he had to interview Sanije and invited to leave and to come back after 30 minutes. Then he entered the room. According to

⁵ Testimony in front of the panel, 9.5.2007, pag. 26

⁶ Testimony in front of the panel, 9.5.2007, pag. 27

⁷ Testimony in front of the panel, 9.5.2007, pag. 29

and were ordered to leave the place and three soldiers remained with . The witness then left⁸. During his examination on 9 May 2007, the witness specified that at that time he did not know , but he got to know his name from when was enquiring about the fate of Sanije. The witness added that in the course of the visit paid by to the Balaj family, a few days after the disappearance of Sanije, stated that he had nothing to do with what was happened and that Sanije had been taken by a soldier known as Galan.

testified that, in the morning of 12 August 1998, he and (the chief commander in Baran) were at the commander's office inside the premises of the new school in Baran. and showed up and told them that they had taken in some suspects who were collaborating with the Serbs. They needed somebody to interview them. was chosen due to his experience as a police officer. accompanied and to the place where Sanije Balaj was being held and, on seeing her, realized that he knew her by face, but he didn't know her name.⁹

As to this point, in his testimony given on 16 May 2007, stated that he had known Sanije Balaj for a long time. He met her at his brother's restaurant during 1993 – 1994, when she had visited the restaurant with her brother . On 12 August 1998, stated that he was outside at the HQ of the military police in Baran Village. He saw Sanije Balaj escorted by two officers in the direction of the military police HQ. didn't recognize the two officers.¹⁰ Five to six minutes later he saw her cousins and wait for her in a kiosk. He stated that he did not know whether or interrogated her. But according to him, it was who accompanied her and brought her to the office of the military police.¹¹

stated that, on 12 August 1998, he was with a group of men at the Baran HQ, amongst them there was . He was on duty that day. At around 9:00 or 10:00 in the morning he saw a woman enter the HQ with a group of 5 – 6 men. After 20 to 30 minutes he saw her leave the HQ with a group of men, amongst whom there was a person nicknamed "Galan". He recognized Galan since it was the second time he saw him, the first time was in Vranoc one or two days earlier. On the point, it is appropriate to report an abstract of the examination of performed on 30 October 2009:

⁸ Testimony in front of the panel, 9.5.2007, pages 29-30 and police statements of 21.10.2002 and 26.4.2005.

⁹ Testimony in front of the panel, 10.5.2007, pag. 7, police statement 6.7.2005, statement in front of the Prosecutor, 14.2.2006.

¹⁰ Testimony in front of the panel dated 12.11.2009, page 10:

Presiding Judge: Do you know the names of these two police officers?

: Those names I don't know. We were not interested in the names of those particular soldiers or any other soldiers....

¹¹ Testimony in front of the panel dated 12.11.2009.

Presiding Judge: I want to go back again to the moment you first saw this person Galan. In that statement on the 13 December 2002 to the police when I confronted you 10 minutes ago you said there was no question before your answer.

: About what?

Presiding Judge: When I said that you told the police you saw Sanije Balaj leaving the school with Galan and you said that you could not recall the question or it was a bit different; now is it clear for you what I was saying?

: Yes.

Presiding Judge: Now we have another part of the statement; the question in the statement was: "when did you see Sanije Balaj for the first time and how do you know her?". You answered that you did not know her but saw her for the first time in the primary school going out with Galan. You said to us that you had seen Galan one or two days before the event in the HQ in Vranoc.

I also said I saw Galan once in Vranoc one day earlier and never again.

Presiding Judge: You saw Galan for the first time in Vranoc and the second time in Baran Village coming out of the school with a group of people together with Sanije Balaj?

I cannot say he was accompanying her.

Presiding Judge: You saw him for the second time exiting the school and close to him was Sanije Balaj.

: Yes.¹²

Interrogation of Sanije Balaj by

According to the testimony given by _____, he was asked by _____ to interview the girl and therefore he went together with _____ and _____ to the school where Sanije was held. Once he reached the room where Sanije was staying, _____ took her ID card and asked her: "Where are you going, because they have stopped you and are saying that something is wrong with you because you are not taking the shortest route to Peja, but going through Rosuje instead". He added: "What is worse in your case is that these guys are saying you are collaborating with the Serbs". Sanije Balaj answered: "I do not know what these guys are saying, I don't know. What I can tell you is my destination, where I'm going" (testimony of _____, 10 May 2007, pag. 7).

According to _____, Sanije replied that she was going through Rosuje to Klicina where her aunt would be waiting for her to go to Peja to buy a wireless telephone set. Suspicious arose because she wanted to cross a Serb area to go to Peja as there were safer routs to go there. She wanted to cross Klicina village to go to Peja and a "very notorious police station was located in that village, manned by paramilitaries who were committing massacres" (statement of _____, 14 February 2006, pag. 6).

Cuf stated that, during the interrogation, _____ and _____ intervened several times, accusing Sanije Balaj of not telling the truth, of being a Serbian collaborator and of traveling to meet Serbs. _____ asked them not to interrupt and finally told them to leave the room. In fact, according to _____, when _____ first

¹² Testimony in front of the panel, 30.10.2009, pag. 14.

came to the office of [redacted] was collaborating with a Serb, [redacted] 2007, pag. 16).

[redacted] stated that he had suspicion that Sanije Balaj (see testimony of [redacted], 10 May

Furthermore, during the interview, both [redacted] and [redacted] went through the notebook of Sanije and said: "see what is in there". Sanije Balaj explained that in the notebook there were names and addresses of the people she knew. According to [redacted], in the notebook there were a few Serb names, but he stated that the entire interview lasted five minutes and in any case was very brief.¹³

[redacted] stated that Sanije Balaj was taken to the military police and was interrogated as she was probably a suspect. He denied being present inside the room when Sanije Balaj was interrogated. He stated that he was outside the building and could only see inside the room through the windows of the building that Sanije Balaj was together with [redacted] he could not see anybody else. He was outside when Idriz Gashi walked along him. He didn't see him entering the building, but he saw him inside the room through the windows of the building.¹⁴

Presence of the defendant at the interview of Sanije Balaj

According to [redacted] during the interview, besides [redacted] and [redacted], there was also a third person present who remained silent. On 16.9.2005, interrogated by the police, [redacted] identified in a photo line up the picture of Idriz Gashi as the third person present during the interview of Sanije and also added that this person was called Galan or Galan (in the interview [redacted] specified that, at that time, he did not know this nickname and that he came to know about this afterwards).¹⁵

In the interview in front of the Prosecutor, on 14 February 2006, [redacted] specified that it was Galan himself who informed [redacted] about his name and his village of origin (Lutoglav, in the municipality of Peja). In the same interview [redacted] added that he had also heard that the defendant lived in Sweden and when he came back he introduced himself as Senior Officer Galan. He confirmed that the defendant was present at the interview.¹⁶

During the examination in front of the panel, on 10 May 2007, [redacted] stated that the defendant had no uniform on the day when the interview took place. He was not interested to know who the third person present at the interview was and he did not pay attention to the uniform "because some wore uniforms and some did not". Confronted on the basis of his previous statement given to the Prosecutor, to whom he had told that this person was wearing a camouflage uniform, he elaborated and said "*By camouflage, I meant mixed colors and not plain as entirely black or green. It was mixed with stripes*

¹³ Statement of [redacted], 14 February 2006, pag. 9.

¹⁴ Testimony in front of the panel dated 12.11.2009, page 11.

¹⁵ Testimony dated 10 May 2007, page 7, 10 and 11; Statement of [redacted] given in front of the police dated 16 September 2005; Statement given in front of the Prosecutor dated 14 February 2006, page 10.

¹⁶ Statement of [redacted], 14 February 2006, pag. 10.

and patches”¹⁷. did not know whether Sanije Balaj knew the defendant, but he recalled that she had stated that she knew and ¹⁸.

The defendant Idriz Gashi stated that, in the morning of 12 August 1998, at the barracks at Baran HQ, he had interviewed the girl he had seen murdered in the forest at Lugu i Isufit,¹⁹ but, he did not remember whether he was present when were interviewing Sanije Balaj.²⁰

In the previous main trial he stated that, in Baran, came outside and begged him to interview Sanije Balaj, since she knew them and was not respecting them at all.²¹

Release of Sanije Balaj by

According to the version given by , after around five minutes after he had started the interview, he realized that it would be impossible to have a women present during the interrogation and therefore he decided to interrupt it and addressed to Sanije Balaj the following words: “We cannot conduct this interview. You are not allowed to go to Peja, because you are now a suspect. You have to go back to your village to get permission to go to Peja from headquarters of the village. Then if we need to, we will come to your village headquarters or to your family to talk to them about you”²².

According to , Sanije Balaj was released by and was allowed to go home. accompanied her from the military barracks to the police station and said: “Now she is free to go and her family is coming to pick her up”. From that moment nobody was interested in dealing with her and she was left waiting for her cousins and ²³

¹⁷ Testimony in front of the panel dated 10.5.2007, pag. 15

¹⁸ Testimony in front of the panel dated 10.5.2007, pag. 17

¹⁹ Statement in front of the panel dated 17.11.2009, page 12:

Idriz Gashi: We went to the woods, but stayed behind.

Presiding Judge: And you saw the body?

Idriz Gashi: Yes.

....

Presiding Judge: That was the same female you interviewed that morning in the barracks in Baran Village?

Idriz Gashi: Yes.

²⁰ Testimony in front of the panel dated 17.11.2009, page 16:

Hasan Shala: When examined Sanije Balaj in the red school, were you present at that time?

Idriz Gashi: I cannot remember, there were many people. and were there, the guys from the military police.

Hasan Shala: Were you present?

Idriz Gashi: I cannot remember.

I met here for the first time in this Court.

²¹ Minutes of the previous Main Trial dated 24.05.2007, page13 – 14.

²² Testimony in front of the panel dated 10.5.2007, pag. 7, statement of 14 February 2006, pag. 8.

²³ Minutes of the previous Main Trial dated 16.05.2007.

Interrogation of Sanije Balaj by the Defendant

According to _____, Sanije Balaj was in an office at the police station and was waiting for her cousins to come and pick her up when the defendant Galan came out of the car near the kiosk and came to the police station. _____ did not know whether he came on purpose or accidentally and ran into the person, but Idriz entered inside and questioned Sanije Balaj. Afterwards he came out with a small notebook in his hands.²⁴ In his examination on 12 November 2009 he changed somehow his version by affirming that he "saw him (Idriz Gashi) walking along us, between me and the school, where we were sitting. I didn't see him enter. From the position we sat we could not see him enter, but we saw him inside through the windows. I don't know what he talked with her in the room. After a while he came outside with Sanije Balaj and a small notebook in his hand. He addressed us, military police officers, he offended us, "You see what kind of person you have inside and you don't care!" And then he opened that note book, he mentioned some names and phone numbers of some criminals, Serbian police officers, but since we were some 10 metres from him, we couldn't see those names in the note book. We saw he was very nervous and agitated. He addressed me and asked me to drive Sanije Balaj and take her to HQ in Gllogjan. Idriz Gashi, sitting here, can remember well. I didn't know he was such a tough guy, when he committed this crime and trying to get others involved".²⁵

According to the defendant, he was asked by _____ to interview Sanije Balaj. Before starting the interview, Idriz asked her to empty her bag and noticed her make-up, some money and a small notebook. When he opened the notebook he read a Serbian name _____ on it, asked who he was and Sanije replied he was a friend, while _____ and _____ and some other persons in the corridor said that _____ was the Commander of Decani Police Station. The defendant specified that he intended to persuade Sanije Balaj to bring _____ to a neutral zone, so he could catch him alive and use him for an exchange for Ukshin Hoti.²⁶

Departure of Sanije Balaj from Baran in the red Golf

_____, in his testimony given on 10 May 2007, stated that he asked _____ and _____ to drive Sanije Balaj home and both of them replayed that they would give her a lift. He then left to go to his office and two minutes later he saw Sanije Balaj entering the rear part of a red Golf car that was parked in front of the main gate of the school. As far as he could remember, he saw _____ take the driver's seat. He also saw another soldier enter the rear part, but he did not recognize that soldier. That was the last time _____ saw Sanije Balaj.²⁷

²⁴ Testimony in front of the panel, 16.5.2007, pag. 9

²⁵ Testimony in front of the panel, 12 November 2009, pag. 11.

²⁶ Minutes of the previous Main Trial dated 24 May 2007, page 14; Statement in front of the Prosecutor dated 13 October 2006.

²⁷ Testimony in front of the panel dated 10.5.2007, pag. 8 and 14

According to the statement of [redacted] given in front of the Prosecutor on 14.2.2006, when he decided to release Sanije Balaj, he asked her if she wanted to have lunch with him. Since, she didn't, he asked the military police if they had a car to drive her home. After an affirmative response from the military police, he asked her once more if she wanted to go with him or with them ([redacted] and [redacted]) and she replied once more that she would go with the other two. [redacted] then left the room and exited the school building and headed for another building. He had walked for around 50 meters when he heard a car engine, turned and saw Sanije Balaj entering the red Golf car in the back seat. Since that car was mostly used by [redacted] and [redacted], and he had left her with them, he assumed that Sanije was in that car with [redacted] and [redacted]. In the course of the interview [redacted] specified that actually he just saw Sanije enter the car in the rear part and another person enter the car as well and sitting at the driver's seat.²⁸

The defendant Idriz Gashi affirmed in all his statements (even in the last one given on 17.11.2009) that Sanije Balaj departed from Baran in a red Golf together with him, seated in the passenger seat, and [redacted] who drove the car. They wanted to reach Glllogjan, but had to stop in Pozhare because of the heavy shelling. According to the defendant, he wanted to go to Glllogjan, because he wanted to talk to somebody there in order to convince Sanije to bring [redacted] to the village Rosuje, as it was considered as a neutral zone, and to apprehend him alive and to use him for an exchange for Ukshin Hot. He specified that this was a strategy adopted by him and his friends.²⁹

According to [redacted], when the defendant came out of the room where Sanije Balaj was interviewed, he had a small notebook with him and told them "you see what kind of person you have inside and you don't care" and ordered him to drive him and Sanije to Glllogjan.³⁰

Avni added that in the red Golf the defendant was armed with an AK-47 and a pistol, model TT, whereas he was unarmed, since that day he was free of duty.³¹ In the statement given in front of the panel on 16 May 2007 he said that he had left his weapon in his personal vehicle³².

Reaching the forest at Lugu i Isufit.

According to the witness [redacted], on 12 August 1998, he was tending cattle at Lugu i Isufit. He saw a car stopping and two men and a female coming out of the car. One of the men was wearing a uniform. The two men came out of the front part of the car while the woman from the rear part.³³

²⁸ Statement given in front of the Prosecutor dated 14.02.2006, pages 8, 9 and 12.

²⁹ Minutes of the previous Main Trial dated 24 May 2007, page 14

³⁰ Testimony in front of the panel dated 12 November 2009, page 11.

³¹ Testimony in front of the panel dated 12.11.2009.

³² Testimony in front of the panel dated 16.5.2007, pag. 13 and 28.

³³ Testimony in front of the panel dated 17.5.2007, pages 35 and 36 and testimony in front of the panel dated 10.11.2009.

The witness saw the woman being forced out of the car. The man in uniform opened the rear door and dragged the girl out in a very aggressive way. Then he saw the three of them walking into the woods, with the armed and uniformed man leading and the girl in between the two men. Two or three minutes later, he came out and shouted at [redacted] and at the two other boys who were with him to go home and they complied with the order. After around half an hour walking, before reaching home, he heard one or two shots coming from the direction of Lugu i Isufit. When he went home he first told his mother and then his father what had happened.³⁴

The witness [redacted] explained that, on that day, he was driving the car towards Glllogjan together with the defendant and Sanije Balaj. When they passed village Vranoc the defendant told him to make a turn and after he drove for further 200 meters he was told to stop. Then [redacted] stated the following: *"I think I heard Sanije Balaj asked Idriz Gashi if she could talk to him in private. I am not sure I think Idriz Gashi didn't say anything at all. He only took her out of the vehicle and they began walking in the direction of the woods. After they got out of the vehicle and went to the scene of the incidents, after some 40 seconds two shots were heard. I heard the shots. I opened the door of the car. I wanted to get out of the car, but I didn't get out completely, only with one leg. Idriz Gashi came back with a gun in his hand. He said "If anyone hears about this, you'll have the same fate". He had a cartridge in the muzzle and he put the hand gun in his belt. ... He got into the vehicle and told me "If anyone finds out what happened here, you'll have the same fate". We drove silently to Baran Village. I left the vehicle by the HQ, took my own vehicle and drove back home. I stayed at home that day. I was very angry with what had happened."*³⁵

[redacted] added that he also saw some young shepherds at a distance of 50-60 meters while he was in the car at Lugu i Isufit.

According to the defendant Idriz Gashi, on that day he left the Headquarters in Baran with Sanije Balaj and [redacted] in a red Golf and headed towards Glllogjan. During the way they stopped in Pozhare, because of the heavy shelling. In Pozhare he handed over Sanije Balaj to [redacted] together with her small notebook. Then he tried to go to Glllogjan on foot and after about an hour later he returned to Pozhare, since it was impossible to reach Glllogjan, due to the heavy shelling. When he returned to Pozhare, he saw only [redacted] whereas both [redacted] and Sanije were not there anymore. Then the defendant and [redacted] left for Baran in a white minivan (the red Golf was not in Pozhare any more). Along the road from Pozhare to Baran they encountered some young shepherds at the place called Lugu i Isufit who told them that something had happened in the forest, that two men and a female had come and that the shepherds heard some shots. Then Idriz and [redacted] went to see what had happened. He entered the woods and saw the body of Sanije Balaj, the girl he had interviewed that morning. Then they left for Vranoc, they didn't go to Baran at all. Along the road Idriz told [redacted] that surely she had not been murdered by Serb paramilitaries, but by UCK soldiers.³⁶

³⁴ Testimony in front of the panel dated 10.11.2009, pages 7-8.

³⁵ Testimony in front of the panel dated 12.11.2009, pages 14 and 16.

³⁶ Statement in front of the panel dated 17.11.2009, pages 10-14.

Argument between the defendant and

According to _____, the defendant had argued twice with his brother _____, as to the murder of Sanije Balaj. The first time occurred at the headquarters in Baran, but he just heard about it, since he was not present. The second argument occurred in his house in Vranoc. In the first main trial the witness said that he was present when _____ and the defendant had the argument. On 12.11.2009, in front of the panel, he stated that he was not sure whether he was in the same room with them or in the other room of the house, but after he was reminded of his previous testimony he confirmed his presence during the argument:

“Presiding Judge: You said in front of the court, regarding the argument in Vranoc, “After they, meaning Galan and Idriz, exchanged some insults, Galan said: “I have killed her myself. And you have nothing to do with that.” And _____ replied “Where and why did you kill her?” And Galan replied: This is my problem. If someone goes looking for her, tell them I killed her, you are allowed to tell them that.”” And you added it was four of you, Galan, _____ and you. That’s what you said.

_____ : It’s true. I remember now as you reminded me. You reminded me of the exact words said by him there.

Presiding Judge: This happened in Vranoc at your place?

_____ : Outside the HQ, outside my house.”³⁷

The defendant Idriz Gashi confirmed in front of the panel that there was a conversation between him and _____ in Vranoc in _____ house, near the river Bistrica in relation to Sanije Balaj and after this discussion he left for Lugu i Isufit with _____ to bury the body of Sanije, in order to protect it from wild animals. His intention was to bury the body temporarily, to inform her family of the murder and to bury her according to the tradition.³⁸

Temporary burial of Sanije Balaj

_____ stated that, on 12 August 1998, in the late afternoon, he and _____ went home after having left the headquarters in Baran. There they met _____ who told _____ that he had heard from his son that somebody had been killed at "Lugu i Isufit". Therefore they gathered in a group, with _____ and his son _____ and went to Lugu i Isufit³⁹.

When they reached Lugu i Isufit, they separated into two groups: he and _____ on one side, _____ and the others on the other side. _____ and _____ were heading towards the spring and, just before reaching it, they heard a voice shouting “Stop”, followed by the sound of the gun being triggered. He kept _____ behind him and heard _____ talk to a person nicknamed “Galan”. He had recognized Galan, because he had seen him in the morning of the same day at the headquarters in

³⁷ Testimony in front of the panel dated 12.11.2009, pag. 20

³⁸ Statement in front of the panel dated 17.11.2009, pag. 14.

³⁹ Testimony in front of the panel dated 30.10.2009, pag. 7.

Baran. The witness specified that it was not the first time that he saw that person: the first occasion had been one day before in Vranoc, where he knew that his nickname was Galan,⁴⁰ the second occasion he had seen that morning exiting the school in Baran among a group of people close to Sanije and the third occasion had been at Lugu i Isufit.⁴¹ When he approached, he saw talking to Galan and heard Galan saying "I had killed her because I found a notebook containing Serbian names on it", and then he read out loud the names from the notebook.⁴²

According to the witness, Galan had ordered him and to stay, while the others were told to leave the place. At that moment the witness noticed coming out from the woods and saying to Galan the following: "The hole is ready but he can not put her in the hole by himself". Then Galan told the witness to help to bury the body. He recognized the body of the girl he had seen earlier that day at Baran Headquarters. After he had helped, he returned to the place where Galan and were standing and left to cover the body. Ten minutes later joined them, and then Galan told the witness and to leave and they went towards one direction whereas Galan and went to the other direction.⁴³

According to, he and Galan went to the crime scene in order to bury the body of Sanije Balaj. They went there together with who was driving the car. When they arrived, they stayed at the crime scene, while drove away. Galan first

⁴⁰ Testimony in front of the panel dated 30.10.2009, pag. 8:

Presiding Judge: How did you know this person was Galan?

: When I went from the place with the son of to the place was I found out there it was Galan.

Presiding Judge: But how did you find out?

: I had seen him prior to this occasion.

Presiding Judge: Yes but how did you know his nickname?

: I heard it at Vranoc HQ.

⁴¹ Testimony in front of the panel, 30.10.2009, pag. 13-14:

Presiding Judge: Now we have another part of the statement; the question in the statement was: "when did you see Sanije Balaj for the first time and how do you know her?". You answered that you did not know her but saw her for the first time in the primary school going out with Galan. You said to us that you had seen Galan one or two days before the event in the HQ in Vranoc.

: I also said I saw Galan once in Vranoc one day earlier and never again.

Presiding Judge: You saw Galan for the first time in Vranoc and the second time in Baran Village coming out of the school with a group of people together with Sanije Balaj?

:: I cannot say he was accompanying her.

Presiding Judge: You saw him for the second time exiting the school and close to him was Sanije Balaj.

:: Yes.

Presiding Judge: And the third time you saw this Galan was at "Lugu i Isufit" when you were asked to help to bury the body?

:: I counted that as the second time as I saw him twice in one day.

Presiding Judge: You saw the same Galan twice on the same day?

:: Yes. I counted that as once.

Presiding Judge: So you saw the same Galan once in Vranoc, once in Baran Village and finally in "Lugu i Isufit"?

:: Yes.

⁴² Testimony in front of the panel dated 30.10.2009, pag. 8-9 and 13.

⁴³ Testimony in front of the panel dated 30.10.2009, pages 7-11.

went to the place where the body of Sanije Balaj was lying and then ordered him to dig up a hole in order to put the body inside, while Galan was guarding.⁴⁴ Approximately ten minutes later [redacted] heard Galan shout "Don't move or I will shoot you", then he heard Galan ordering [redacted] to go and help [redacted] to bury the body. [redacted] came and helped him to bury the body. Afterwards they separated and went home.⁴⁵

[redacted] went to the forest at Lugu i Isufit with [redacted] and [redacted], because the son of [redacted] had told them that somebody had been killed there. The time was about 16:00 or 17:00 hours. When they reached the spot, a person, whom he did not know at that time, shouted "Stop". According to him, [redacted] was obliged to go in the forest with [redacted], while he stayed with Galan. [redacted] confirmed that Galan said that if someone looked for her, he had killed the girl, adding that she had some telephone numbers belonging to Serbs⁴⁶. He recognized Galan, since it was the second time he saw him (the first time was in Baran).⁴⁷

The witness [redacted] was together with his son [redacted] and a person named [redacted] going to the direction of the place where his son had heard the shots. When they reached the place, he heard somebody shout "Stop", and then the same person told him to take the children and leave. He heard [redacted] or [redacted] calling a name "Galan". Then they left, leaving [redacted] and [redacted] behind. [redacted] and [redacted] returned to the village about half an hour later.⁴⁸

The exhumation of the body of Sanije Balaj

According to [redacted], two or three days after the murder, he was in Baran headquarters with other soldiers when Idriz Gashi came in a black jeep together with [redacted], nicknamed "[redacted]", and two other soldiers. Idriz Gashi told him to go with Toger and other soldiers and to indicate them the place where the body of Sanije Balaj had been buried in order to exhume the body. Since [redacted] was scared, he took [redacted] together with him for safety reasons.⁴⁹

When they reached the place of burial, he was with "[redacted]", [redacted] and two other soldiers he didn't know. They had a shovel with themselves and a blanket. "[redacted]" told [redacted] to start digging and the other two soldiers helped him. They exhumed the body, wrapped it with the blanket and then loaded it on the trunk of the jeep. Then they drove him and [redacted] until Bistrica River and they left.⁵⁰

⁴⁴ Testimony in front of the panel dated 12.11.2009, pag. 21.

⁴⁵ Testimony in front of the panel dated 12.11.2009, pag. 21-22.

⁴⁶ Testimony in front of the panel dated 17.05.2007, pag. 21

⁴⁷ Testimony in front of the panel dated 17.05.2007, pag. 25

⁴⁸ Testimony in front of the panel dated 10.11.2009, pages 14-15.

⁴⁹ Testimony in front of the panel dated 12.11.2009, pag. 23.

⁵⁰ Testimony in front of the panel dated 12.11.2009, pag. 24.

The defendant confirmed that there was an exhumation about three days after the murder. On that day he went to Baran with _____ – “_____”, but he didn’t go with them in order to exhume the body.⁵¹

The identification of Sanije Balaj

Shaban Balaj last saw Sanije Balaj on 12 August 1998 at 8:30am at his house at Strelac, where she used to live with him. On that day Sanije Balaj was wearing a long dress of different colors of white and green with buttons, orange slippers and two rings.⁵²

_____ stated that, on the day of the murder, Sanije Balaj was wearing a white dress with black spots and had a handbag. Though it was getting dark when he went to the forest with the defendant to bury the body, _____ could recognize the body of Sanije Balaj.⁵³

According to _____, Sanije Balaj was wearing a gray – colored dress and carrying the bag/purse with her. To the police he stated that Sanije Balaj “had a white skirt and a white blouse and a handbag.”⁵⁴

_____ stated that when he saw the body in the forest at Lugu i Isufit he immediately realized it was the same girl he had seen in the morning. She had blood on their left side of her chest and she wore a dress with some spots.⁵⁵

Identification of the Remains of Sanije Balaj

The remains of Sanije Balaj were found and identified on 31 May 2007. In the case file the document marked as Document A/Exhibit 41 refers to the discovery of the remains of Sanije Balaj and of the recovery of others 38 bodies in September 1999 in the area around the canal in Glogjan leading to Lake Radoniqi.⁵⁶

The materials in Exhibit 41 also summarize the records obtained by Serbian forensic experts monitored by the OSCE and representatives of the UK and USA. Initially, 12 of those 39 bodies were identified. The remaining bodies were then buried in Gjakova at the Piskote Orthodox Cemetery. Over the course of the following years, the remains of unidentified bodies were inspected, autopsied and attempts were made to make an identification of the said bodies. Document A/Exhibit 41 sets forth the chronology of Court orders and series of investigative steps taken; among these there are three DNA reports dated 28 May 2007 which indicate that one of the unidentified bodies recovered in

⁵¹ Testimony in front of the panel dated 17.11.2009, pages 14-15.

⁵² Testimony dated 9.5.2007, pag. 14 -15.

⁵³ Testimony dated 16.5.2007, pag. 20, testimony dated 12.11.2009, pag. 23.

⁵⁴ Testimony dated 9.5.2007, pag. 30, police statement dated 21.10.2002.

⁵⁵ Testimony dated 17.5.2007, pag. 7.

⁵⁶ Court Case File, Binder n.7

the canal at September 1998 and then transferred to Piskote Cemetery were the remains of Sanije Balaj. The Prosecution also presented a copy of a report (Document B/Exhibit 41) concerning the autopsy performed on the remains of Sanije Balaj⁵⁷.

Mr. _____, an expert from the Office of Missing Persons and Forensics (OMPF), testified in the first main trial in relation to the contents of Documents A and B/Exhibit 41.⁵⁸

He stated that, in 2001 the International Red Cross informed the Missing Persons Unit about the existence of 25 graves behind the church in Piskote Cemetery. The information that the International Red Cross received was that the mortal remains buried in Piskote Cemetery could be related to the bodies recovered in Ratishe Canal. Due to the cooperation with the Serbian authorities, it was possible to identify by traditional methods, 12 bodies which were returned to the families.

The rest of the mortal remains, which were not identified at that time, after the autopsy, were buried in Piskote Cemetery. The graves were marked with wooden sticks, with letters R, E and D. After proper investigations and following a Court order, the Missing Persons Unit exhumed the bodies buried in Piskote Cemetery. At that time a bone sample was taken from each body and sent to the International Commission for Missing Persons for DNA analysis. After this exhumation all bodies were put back in coffins and the burial location was left in the same condition as it was before the exhumation. In 2003 the Missing Persons Unit with the close collaboration of the OMPF did the secondary exhumation of the Piskote site. All mortal remains were taken to the mortuary for autopsy and the OMPF was obliged to keep mortal remains in the OMPF facilities till such time as the mortal remains would be identified.

The expert witness also testified on the reliability of DNA testing. *“There is the agreement with the International Commission for Missing Persons which is doing a DNA testing of remains, especially bone samples and comparing them with the relatives of the missing persons collected in the region. Based on the DNA analyzed from the relatives and bone samples of mortal remains, having the DNA profiles of the families of missing persons from one side and on the other side DNA sample extracted from the bone of mortal remains, it is possible to compare the DNA profiles, based on which the mortal remains could be identified. In accordance with the statement of the International Commission for Missing Persons identification is accurate more than 99.9 percent using this kind of method, which leaves no doubt that if we have a positive DNA identification, found mortal remains are identified with 99.9 percent certainty”*⁵⁹.

Investigations by the KLA as to the disappearance of Sanije Balaj

_____ and _____ stated that, some days after the disappearance of Sanije, they gave a statement to _____ and _____, officers of the KLA. According to Shaban the KLA investigators were able to complete their investigations.⁶⁰

⁵⁷ Court Case File, Binder n.7

⁵⁸ Testimony dated 14.6.2007.

⁵⁹ Testimony dated 14.6.2007, pag. 6

⁶⁰ Testimonies dated 9.5.2007, pages 13 e 31.

stated that , who was a Brigadier Commander, came to Baran and told that he had to go to Prapaqan in order to help to shed light on the Sanije Balaj case. took a car and went to Prapaqan. There he saw the late and . There were other people around, but he did not recognize them. He knew who was conducting the interview. That was two weeks after the killing of Sanije Balaj⁶¹.

Also and stated that, four or five days after killing of Sanije Balaj, they gave evidence at the military barracks at Prapaqan before and others in Prapaqan⁶².

testified that, during the course of his investigation, he attempted to locate records of the proceedings or investigations conducted by the KLA at Prapaqan specifically in relation to Sanije Balaj. The officer learnt that the first location of the interviews was at Prapaqan at KLA barracks located there. There was a school building at Prapaqan and he went to that school and spoke with the deputy headmaster. The latter confirmed to him that the school was used for investigations during the war. The deputy headmaster added that no records were left there and when the Serbian offensive took place the inside of the school was burnt out and a safe containing document went missing.⁶³

2. c) Statement of the accused

On 17.11.2009, the defendant, in front of the trial panel declared to stand by his previous statements given on 24.5.07, 15.11.06 and 13.10.06. However on 17.11.2009 and on 19.11.2009 he was asked some clarifications as to the part of the narration concerning his departure from Baran on 12 August 1998 in the red Golf and he accepted to be examined. Below, there is an abstract of the two examinations:

Presiding Judge: Do you stand by your previous statements, given on 24-05-07, in front of the Trial Panel, and on 15-11-06 in front of Mr. Dean, the Public Prosecutor?

Idriz Gashi: Yes.

Presiding Judge: And the one given in front of the Pre Trial Judge on 13-10-06?

Idriz Gashi: Yes.

Presiding Judge: Since you stand by them, if I have understood properly, your version of the events is as follows; I think it is uncontested that on 12-08-98, you left Baran Village in a red Golf with and Sanije Balaj. Is that correct?

Idriz Gashi: Yes. Until Pozhare.

Presiding Judge: If I understand, you were heading towards Glllogjan, but you were obliged to stop in Pozhare because of the heavy shelling.

Idriz Gashi: That is true.

⁶¹ Testimony dated 10.5.2007 and statement dated 14.2.2006, pag. 14

⁶² Testimonies dated 17.5.2007, pages 8 and 23; statement of dated 22.11.2006, pag. 6.

⁶³ Testimony dated 17.5.2007, pag. 42.

Presiding Judge: In Pozhare, you met . . . You handed over Sanije Balaj to him.

Idriz Gashi: Yes.

Presiding Judge: Together with this notebook.

Idriz Gashi: Yes, it was a little notebook.

Presiding Judge: And then you tried to walk to Glllogjan.

Idriz Gashi: Yes.

Presiding Judge: After 40 minutes or one hour you went back to Pozhare, because of the bombing.

Idriz Gashi: It could be more than 40 minutes, but it is true I came back.

Presiding Judge: You said between 40 minutes and one hour, is that correct?

Idriz Gashi: Yes, however it could be more than one hour, maybe one hour and twenty or one hour and forty.

Presiding Judge: When you were again in Pozhare, you saw . . . and not Sanije Balaj, and also not . . . You did not see the Red Golf?

Idriz Gashi: Yes.

Presiding Judge: From Pozhare you tried to reach again Glllogjan with . . . inside a white mini van. Is that correct or not?

Idriz Gashi: No, we did not try at that moment to go there.

Presiding Judge: Where did you want to go?

Idriz Gashi: We went back. I asked him, "Where are the others?" He said, "They went back." I asked him, "Why didn't you go as well?" He answered, "I was waiting for you as you might come back before the shelling."

Presiding Judge: Where did you go?

Idriz Gashi: We went to Baran Village with the white mini van.

Presiding Judge: During this travel from Pozhare to Baran Village, you encountered a shepherd who stopped you at "Lugu i Isufit", is that correct?

Idriz Gashi: There were children.

Presiding Judge: They stopped the car and said to both of you, or just to you, I am not sure, that something had happened in the forest.

Idriz Gashi: Two people came and they said a female, not a woman or girl. Then they said they heard shots, and they left.

Presiding Judge: Then you went to check in the forest if there was a corpse?

Idriz Gashi: We went to see what happened.

Presiding Judge: With . . . ?

Idriz Gashi: I asked . . . could Paramilitaries enter the valley from the other side, because children told us they were dressed in black. Very often Paramilitaries dressed like that.

Presiding Judge: Did you see the corpse on that occasion?

Idriz Gashi: We went to the woods, but . . . stayed behind.

Presiding Judge: And you saw the body?

Idriz Gashi: Yes.

Presiding Judge: That was the first time that you went to "Lugu i Isufit", on that day?

Idriz Gashi: Yes.

Presiding Judge: Then what did you do? Did you go back to Baran Village?

Idriz Gashi: We went to Baran Village. I told that she was not murdered by Paramilitaries.

Presiding Judge: You mean by Serbs?

Idriz Gashi: Yes.

Presiding Judge: That was the same female you interviewed that morning in the barracks in Baran Village?

Idriz Gashi: Yes.

Presiding Judge: In Baran Village you had a discussion with

Idriz Gashi: That was in Vranoc.

Presiding Judge: Then you went to Baran Village?

Idriz Gashi: Vranoc is before Baran Village. We didn't go to Baran Village that day at all.

Presiding Judge: You had this discussion in Vranoc?

Idriz Gashi: In the beginning we had the discussion near a river in Bistrica River, near his house.

Presiding Judge: You went there? (Judge's Note: meaning Vranoc)

Idriz Gashi: No, we went to house.

Presiding Judge: Where is house?

Idriz Gashi: Near the river Bistrica.

Presiding Judge: After this discussion, did you go to "Lugu i Isufit" with in the red Golf car?

Idriz Gashi: Yes.

Presiding Judge: Just you and ? Or did drive you there?

Idriz Gashi: No, only and I was driving.

Presiding Judge: And that was the second occasion that you went to "Lugu i Isufit" that day?

Idriz Gashi: Yes.

Presiding Judge: When you were interviewed by the Public Prosecutor you said that you saw on that occasion two military police officers.

Idriz Gashi: No, they arrived later.

Presiding Judge: On that occasion, when you went for the second time?

Idriz Gashi: After I went there the second time. In the evening.

Presiding Judge: Who were these two police officers? Did you know them?

Idriz Gashi: I knew them by sight.

Presiding Judge: Were they and ?

Idriz Gashi: Yes.

Presiding Judge: The difference between your version and that given by and is that they both say you uttered the words, "I killed the girl." Whereas you deny having said such words. But you do not deny that, on that occasion, you saw and Is that correct?

Idriz Gashi: Yes, they were right there. With a group of people.

Presiding Judge: Was it you who said to this group of people, "Stop"?

Idriz Gashi: Yes. I stopped them, but not in the manner you describe. It is true that I told them to stop, but not in a harsh manner.

Presiding Judge: On this spot, apart from and and the other people who came with them, was there just you and ?

Idriz Gashi: Yes.

Presiding Judge: [redacted] was not present or [redacted] ?

Idriz Gashi: No.

Presiding Judge: On that second occasion was it possible to bury the body or not?

Idriz Gashi: I do not understand the question.

Presiding Judge: Was it possible to cover the body with some ground? I mean, to put the body in a sort of grave? Was that possible?

Idriz Gashi: It was obvious that after the body was found that they had tried to hide the body.

Presiding Judge: They? You mean the people who killed the person?

Idriz Gashi: Yes, I mean [redacted] and [redacted].

Presiding Judge: Yes. According to you Sanije Balaj was killed by [redacted] and [redacted] ?

Idriz Gashi: I didn't see him kill her.

Presiding Judge: Did you say "him" or "them"?

Idriz Gashi: I did not see them do it. I said "them." However, their harshness in conversation and also the animosity was greatest between [redacted] and Sanije Balaj.

Presiding Judge: You, together with [redacted], tried to bury the body. Was it possible to put the body in the grave or not? I am not speaking of a marble grave. I am speaking about a hole in the ground.

Idriz Gashi: It was possible to do it temporarily.

Presiding Judge: To put her in a hole?

Idriz Gashi: Only to cover the body as, due to the shelling, the dogs were digging up the bodies. There were several holes there. My intention was for it to be temporarily buried, to inform the family and then to start the procedure⁶⁴.

Presiding Judge: I would like to go back to the moment in which [redacted] was burying the corpse of Sanije Balaj at "Lugu i Isufit" and on the spot [redacted] and [redacted] arrived. You have already been questioned about this and you said that you never said the following words "if anyone ever asked you tell them I killed her", now you can go I kill her because I found that small note book, do you still deny saying these words, that saying these words does not necessary entail having killed the women do you deny having said such words as I want to let you know having said this does not entail you killed the woman.

Idriz Gashi: This is true because if I had said it the court is to establish I said this "UOK killed her and it is true that she was killed by officers. Is there any person in the world who would commit a crime.

Presiding Judge: So these are the words you uttered on that occasion?

Idriz Gashi: I said that UCK killed her, I had no note on me I had left it to [redacted]

Presiding Judge: So you deny having said you killed her?

Idriz Gashi: Yes.

Presiding Judge: May be you wanted to cover someone else.

⁶⁴ Minutes of 17.11.2009, pages 10-14.

*Idriz Gashi: It would be logical but I did not utter the words, it was a tension situation and UQK killed her, what I told ... I told them. This is the truth.*⁶⁵

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 and from the Municipal Court of Peja. According to the registry of both the courts, previously the defendant had never been convicted of any criminal offence in front of these courts.

Furthermore, the panel *ex officio* acquired the judgment issued by ICTY in the case against Ramush Haradinaj et alii on 3rd April 2008, specifying that the above judgment was not final and that the relevance of it in the present case was confined to the factual circumstance that a judgment which dealt also with the case of Sanije Balaj was issued by ICTY.

E. EVALUATION OF PRESENTED EVIDENCE

1. Factual findings and examination of the pieces of evidence

After the presentation of the above testimonies and statements, as to the factual reconstruction of the events occurred on the crucial day of 12 August 1998, the following points can be considered as proven and not in doubt, based on the autopsy, the testimonies of the witnesses and the admissions of the defendant:

- The corpse of Sanije Balaj was found in a mass grave close to Radoniqi Lake in September 1998. Due to the DNA analysis, it is undoubted and undisputed that the corpse in question was the one of the late Sanije; the autopsy ascertained that she was hit by three firearm shots, one to the head, one to the chest and one to the abdomen;
- Sanije Balaj, in the morning of 12 August 1998, while she was going towards Peja, together with her relatives and , was stopped in Baran by the military police and interviewed by ; also Idriz Gashi aka Galan was present at the interview, even though he did not intervene (the circumstance that during the war the nickname of Idriz Gashi was Galan is undisputed and admitted by the defendant himself);
- and saw Sanije Balaj in Baran exiting the school where she was interviewed, among a group of people including Idriz Gashi;
- Sanije Balaj left Baran in a red Golf together with and Idriz Gashi; the car took the direction to Glogjan (it is noteworthy that the defendant himself admitted that, after the interview of Sanije in Baran, he left for Glogjan together

⁶⁵ Minutes of 19.11.2009, pag. 15.

with her and [redacted] in the red Golf); on the point, it must be stressed out that [redacted], during the first main trial, said that the two person who went into the car together with Sanije were [redacted] and [redacted] (minutes of 10 May 2007, pag. 8), whereas the defendant himself admitted that he and [redacted] entered the car together with Sanije. The contradiction can be easily solved taking in consideration the previous statements of [redacted] on 14 February 2006, interviewed by the Prosecutor, the witness specified (pag. 12) that he was not sure as to the two soldiers who entered the car and that one of the two soldiers might have been Galan. In the interview given to the police on 16.9.2005, Cuf stated clearly that he saw [redacted] enter the Golf in the driver's seat and also spotted another soldier enter the car and he assumed that this soldier was [redacted], since [redacted] and [redacted] were always together, but actually he did not see the other soldier.

For the above reasons it can be considered as undisputed and not in doubt that the two people who entered the Golf together with Sanije and left Baran towards Gillogjan were [redacted] and Idriz Gashi;

- on the same day, [redacted] saw a car stop at Lugu i Isufit and two men exit the vehicle and escort a woman towards the forest; the witness added that one of the two man ordered him to leave the place. [redacted] obeyed and left the place; after around half an hour he heard 2 or 3 shots;
- after reaching his place, [redacted] informed his mother and afterwards his father ([redacted]) of what had happened at Lugu i Isufit and, after some time, [redacted] and [redacted] went to the above place to have a look; once arrived there, a person wearing an uniform ordered them to stop; this person was recognized by [redacted] and [redacted] as the soldier known as Galan, the same person they saw that morning in Baran, at the barracks exiting the school together with Sanije; Galan told [redacted] and [redacted] to remain there, whereas the others were ordered to leave; in particular, [redacted] was ordered to go to the forest and help to dig a grave;
- [redacted] obeyed and went to the forest where he found [redacted] who was already digging; once the hole was completed, the two men put the corpse inside: all the statements ([redacted] and Idriz Gashi) are convergent on the point that the corpse to be buried belonged to the woman stopped on the same day in Baran;
- [redacted] and [redacted] testified that, at Lugu i Isufit, Galan said that he had killed the woman and that the person they saw there was the same they saw at Baran, the morning of the same day together with Sanije Balaj;
- the defendant admitted that he was present on the occasion of the burial of Sanije at Lugu i Isufit and that there, besides [redacted], he saw [redacted] and [redacted].

All these undisputed circumstances lead to the conclusion that Idriz Gashi, aka Galan, on 12 August 1998, at Lugu i Isufit, admitted, in the presence of [redacted] and [redacted], that he had killed Sanije Balaj.

In fact, it is undeniable that on 12 August 1998, [redacted] and [redacted] saw him in Baran and afterwards at Lugu i Isufit when he said that he had killed the woman. Both [redacted] and [redacted]

... knew Galan and therefore it is not possible that they took Galan for another person (furthermore the defendant himself admitted that he saw ... and ... at Lugu i Isufit on the occasion of the burial).

Since Idriz Gashi admitted that, on that day, in the morning, he was in Baran and later on he was in Lugu i Isufit when the corpse was buried, the only possible logical conclusion is that Idriz Gashi is the person called Galan who admitted the murder of Sanije Balaj. As to this point, it must be added that Idriz was recognized as the person called Galan who admitted having murdered the girl also by ... during the first main trial: the statement was acquired in the course of the current main trial: see minutes of 17 May 2007, pag. 26:

Idriz Gashi: Did I stop you with one word?

...: Yes

Idriz Gashi: What did you hear?

...: I said: "It's me"

Idriz Gashi: ... testified that you stayed with me all the time until they buried the corpse. Is this true?

...: Yes

Idriz Gashi: Did I show you the address book?

...: I don't remember

Idriz Gashi: You testified that I said: "If anyone is looking for her, tell them I killed her"

...: Yes, I confirm that.

It is noteworthy that the judgment of the Supreme Court appears not to have taken in consideration this part of the statement given by ... in fact, according to the above judgment, ... simply stated that "a man claiming to be Galan said 'I have killed' and that the statement cannot be considered a conclusive evidence taking in consideration that the identification of the defendant the man who spoke in the dusk is at least doubtful".

Therefore, as to the above indicated part of the testimony of ... the assessment made by the Supreme Court as to the testimony of ..., cannot be considered as binding and gives the panel the possibility to freely evaluate that portion of the statement.

Furthermore, in order to disregard the testimonies of ... and ... and ... the only option would be to assume that a gigantic fabrication against the defendant was organized by the above three persons as to the words uttered by the defendant in Lugu i Isufit, when the attempt to bury the body of the late Sanije was performed: however, as to this point, no proof has emerged of such falsehood or fabrication.

On the contrary, in their testimonies ... and ... appear to be rather prudent and almost reluctant to point the finger against the defendant.

For instance, neither in the first nor in the second main trial ... said that he could recognize Galan, since he saw him just for a few moments and long time had elapsed since the events: (minutes of 17.5.2007, pag. 14; see the minutes of 30.10.2009, pag. 13:

Public Prosecutor: You indicated that after the night of the dead girl's burial that you never saw him again; do you think you could identify him if you saw him?

..... *No, it was a fleeting moment during that day and it is not possible for me to recognize him now).*

Also the testimony of on the point is unclear as it was remarked by the Supreme Court in the decision rendered on 2 June 2009: (minutes of 17.5.2007, pag. 25: *Idriz Gashi: Do you remember me? You had a beard, but I did not recognize you).*

Such answers do not appear to be the typical replies given by people who are trying to manipulate the events with the purpose of falsely accusing somebody; on the contrary, the impression is that both and did not want to accuse openly Idriz Gashi, even though they could not deny that he was Galan and that Galan was the person who admitted the murder at Lugu i Isufit..

Once that the testimonies of and have been reckoned reliable and trustworthy on the point of the words uttered by Idriz/Galan, at Lugu i Isufit, the above words can be defined, technically speaking, as an extrajudicial confession which must be evaluated and assessed thoroughly in order to verify whether it is reliable and whether there might be the possibility of a false self-incrimination.

In fact, it can be deemed as a general principle that the extrajudicial confession, even though does not constitute invincible proof of responsibility, can be the source of the free conviction of the Judge, if it is provided with corroborative elements and if its authenticity and spontaneity is verified.

On the point, firstly it must be taken in consideration the possibility that, when Galan was accusing himself of having committed the murder, he was covering somebody else, maybe or others. In other words, it has to be assessed whether in Lugu i Isufit, on the crucial day, the defendant falsely incriminated himself.

This option appears to be scarcely likely, since this circumstance has been excluded by the defendant himself who has not only denied having uttered the above words, but also excluded that he had any intention to cover anybody in relation to the murder of Sanije Balaj (minutes of 19 November 2009, pag. 15:

Presiding Judge: I would like to go back to the moment in which was burying the corpse of Sanije Balaj at "Lugu i Isufit" and on the spot and arrived. You have already been questioned about this and you said that you never said the following words "if anyone ever asked you tell them I killed her, now you can go, I kill her because I found that small note book", do you still deny saying these words, because saying these words does not necessary entail having killed the women, do you deny having said such words, as I want to let you know having said this does not entail you killed the woman.

Idriz Gashi: This is true because if I had said it the court is to establish I said UCK killed her and it is true that she was killed by officers. Is there any person in the world who would commit a crime?

Presiding Judge: So these are the words you uttered on that occasion?

Idriz Gashi: I said that UCK killed her, I had no note on me I had left it to

Presiding Judge: So you deny having said you killed her?

Idriz Gashi: Yes.

Presiding Judge: Maybe you wanted to cover someone else.

Idriz Gashi: It would be logical but I did not utter the words, it was a tense situation and UCK killed her, what I told. I told them. This is the truth).

Furthermore, in the course of the entire criminal proceedings neither a logical nor a factual element has emerged which can make think that Idriz Gashi had either the interest or the necessity or the willingness of covering the real perpetrator. Therefore the option that in Lugu i Isufit the defendant falsely accused himself must be disregarded as highly unlikely and implausible.

Having said that, it has to be verified whether, in the course of the criminal proceedings, other elements have emerged in order to corroborate the extrajudicial confession.

On the point, first and foremost is the fact that Galan, while he was saying that he had killed the woman, showed [redacted] and [redacted] a notebook belonging to the victim on which there were some names of Serbian people and their telephone numbers. It is the same notebook described by [redacted] in his statements and, according to what was said by Galan at Lugu i Isufit, it was the reason for the murder (testimony of [redacted], minutes of 30.10.2009, pag. 8; testimony of [redacted], 17 May 2007, pag. 21).

The notebook was seen at Lugu i Isufit also by [redacted] (Minutes of 16.5.2007, pag. 41).

The presence of the notebook in the hands of Galan at Lugu i Isufit is a clear and objective element which corroborates the credibility of the extrajudicial confession made by Idriz Gashi.

A further corroborative element is the circumstance that Idriz Gashi was the person who, together with [redacted] left Baran in the red Golf with Sanije inside. And Baran is the last place where Sanije was seen alive before being escorted to the forest where she was killed.

An additional element which corroborates the confession is the fact that Idriz Gashi was actually in Lugu i Isufit armed with an AK 47 in order to bury the corpse of the victim took place, giving orders to [redacted] and [redacted] and stopping people from approaching the place of burial. This involvement in the burial is another corroborative element as to assess positively the reliability of his confession.

In the opinion of the panel the confession and the above corroborative elements are deemed as sufficient in order to found the defendant responsible for the commission of the murder of Sanije Balaj.

Having said that, it must be added that, the above pieces of evidence, although sufficient to condemn the defendant, do not stand alone, since other proofs have emerged in the course of the main trial.

In particular, the testimony of [redacted], even though it presents several discrepancies with the other statements (he denied having questioned the woman whereas [redacted] said clearly that he did, he denied he took to the forest the woman together with Galan, whereas [redacted] said that he saw two men escort the woman to the woods)

and even though it appears to be clearly aimed to lower his eventual involvement in the murder, is consistent with the other testimonies as to what was said by Galan after the girl was buried (*i.e.* that he, Galan, had admitted in Lugu i Isufit, that he had killed the woman: see, minutes of 12 November 2009, pag. 40) and very clear and coherent as to the circumstance that Galan shot at the girl in the forest and as to the recognition of Idriz Gashi as Galan.

On the other hand the testimony of _____ is not reliable as to the part where he described the interview of the victim in Baran. His statement is blatantly contradicted by the version given by _____ which must be considered as reliable and more trustworthy due to his neutral role in the events: _____ clearly said that _____ was present during the interview of the victim in Baran together with _____ and Idriz Gashi and intervened so many times that _____ was obliged to ask him (and _____) to leave the room.

Furthermore the testimony of _____ is not reliable when he reports the events in Lugu i Isufit while the victim was still alive. In fact he denied having escorted the woman to the forest and claimed that he stayed in the car while only Idriz Gashi was conducting the victim towards the forest.

This part of the testimony is blatantly contradicted by the testimony of _____ who is very clear (it is one of the few circumstances recalled by the witness) in saying that the people who escorted the victim in the forest were two. _____ also explained that the time elapsed between the entrance into the forest of the three people and the firing of the shots was around thirty minutes, whereas _____ affirmed that just a couple of minutes had elapsed.

The panel deems the testimony of _____ more reliable, due his lack of whatever involvement in the events which, notwithstanding several flaws in the memory (though easily explainable with the young age of the witness at that time), should grant the authenticity of the testimony.

Therefore, it appears evident from the testimonies of _____ and _____ that the role in the events of _____ was different from what he had described (unlike what he stated he interrogated the victim and escorted her to the forest).

On the contrary, as to the burial in Lugu i Isufit and the self incriminating words uttered by Idriz Gashi, the testimony of _____ is more or less consistent with the testimonies of _____ and _____ and therefore must be considered as reliable in reference to that part.

In like manner, also the part of the testimony in which _____ accuses Idriz Gashi of having shot dead the girl, even though the modalities must have been different from the ones described by the witness, appears to be internally coherent and corroborated by the confession of Idriz.

It is noteworthy to stress out that the circumstance that some parts of the testimony of _____ are not reliable does not entail that his entire testimony has to be disregarded.

In fact it is a general principle that a deposition can be severable as to its reliability, meaning that the Judge can reckon some declarations as reliable, because corroborated by solid and objective elements of confirmation, and disregard other declarations which are contradicted by secure elements.

Finally, in order to have a well balanced evaluation of the events, it must be taken in consideration the version presented by the defendant.

The above version, although internally coherent, presents some blatant contradictions with the statements of the key witnesses.

First: the defendant has always sustained that, when Sanije Balaj was stopped by [redacted] in Baran, he had insulted the girl more than once and had called her a spy, as if he had something specific against her (it must be borne in mind that according to Idriz, [redacted] killed the girl).

This reconstruction is disavowed by [redacted], a relative of Sanije, who was together with her in the car, who said that [redacted] stopped them and said politely that he had to speak to Sanije (see minutes of 9.5.2007).

Second: strangely, in the version given to the Prosecutor on 15 November 2006, the defendant did not mention the name of [redacted] as the person who interviewed Sanije Balaj and, on the contrary, indicated [redacted] as the person who interviewed the victim and that the intervention of Idriz was asked by [redacted]. Even he said that he did not see [redacted] (pag. 11).

Furthermore, according to the defendant (and also to [redacted]), after the first interview of Sanije Balaj, there would have been a sort of second interview of the victim performed directly by Idriz Gashi. This circumstance is disavowed by the testimony of [redacted] who stated that he saw the woman enter the red Golf with the two soldier just a couple of minutes after he had concluded to interview her and that Idriz was silent during the interview (see the minutes of the interview of 14 February 2006, pag. 12: *PP: How much time elapsed when you left the room with Sanije Balaj in it and then you saw her get into the red Golf?* [redacted]: *two minutes, because the distance is rather short and then they had to walk about 75 meters to the car. I walked at a normal pace, as I was not in a hurry. Most likely they left the room right after me*).

Third: according to the version given by the defendant, once that he left Baran in the red Golf, he reached the village of Pozhare and there he handed over the girl and the notebook to [redacted] and tried to reach Gillogjan on foot. That was the last occasion in which he saw Sanije alive.

Again, this version is contradicted by the testimonies of [redacted] and of [redacted] who stated that, in Lugu i Isufit, Galan, after having admitted the murder, showed them a notebook from which he read some Serbian names.

[redacted] declared that he did not see any notebook, but that Galan mentioned a notebook with names of Serbs on it (interview in front of the Prosecutor, 22.11.2006, pag. 5).

Furthermore as to the notebook, the defendant said that before starting his interview of Sanije, he tipped the contents of the handbag of Sanije on the table and he saw the notebook, whereas according to the testimony of [redacted] the book was in the hands

of the interviewers (, and) during the interrogation conducted by .⁶⁶ And that the notebook was already in the hands of is confirmed by who stated that it was taken by directly from the car where Sanije was.⁶⁷

Moreover the version given by the defendant (according to whom the victim would have been killed by and that he never admitted the murder in front of the other people in Lugu i Isufit) stand isolated without a single piece of evidence which can corroborate it.

In fact, the witnesses presented by the defendant, (his testimonies given in front of the panel of the first main trial on 24 May 2007 was acquired in the current trial on the basis of the consensus of the parties), and (they were examined, respectively, on 17 and 19 November 2009) are completely useless both in order to corroborate the version of the defendant and to infirm the version given by the other witnesses.

In particular, was asked during the main trial about a previous declaration of his given in front of the former lawyer of the defendant on 25.9.2008. According to that statement, around the middle of August, saw Sanije Balaj walking close to his bar and asked two individuals to take her to Glllogjan. As to the content of this statement, the witness declared (minutes of 19 November 2009) that he had never known and that he knew nothing about an episode happened in bar in August 2008 in relation to a girl.

Therefore serious concerns and doubt must be raised as to the authenticity of the declaration of 25.9.2008, also thinking of the modalities in which the statement was given (just in front of the lawyer of the defendant).

For all the above mentioned reason the version proposed by the defendant must be disregarded and considered as untrue. On the other hand the several discrepancies and flows in his version contribute to give more credit to the reconstruction which indicates the defendant as the culprit for the murder.

Finally, as to , it is undeniable that the testimony of indicating that the Sanije was escorted by two men to the forest and the fact that the shots were heard about half an hour after the three people had entered the woods at Lugu i Isufit (and not a couple of minutes later as it was stated by) make it clear that was involved in the murder; therefore, notwithstanding the termination of investigation recently issued by the Prosecutor, in light of the new testimonies given during the present main trial, must be denounced to SPRK, since there is a grounded suspicion that he killed, in co-perpetration with Idriz Gashi, Sanije Balaj and therefore committed the criminal offence of War Crimes against the Civilian Population, contrary to Article 142 of the SFRY Criminal Code, Articles 3 and 147 of the 4th Geneva Convention and Article 4 of the II Additional Protocol of the Geneva Conventions, as to the murder of Sanije Balaj, committed in Lugu i Isufit, in the vicinity of the village of Vranoc, Peja/Pec Municipality, on 12 August 1998.

A copy of the minutes of the present main trial shall therefore be send to the SPRK.

⁶⁶ Statement of 14 February 2006, pag. 9.

⁶⁷ Police statement of 21 October 2002

Moreover, due to the above mentioned discrepancies with the other testimonies, it is clear that [redacted] committed the criminal offence of False Statements, contrary to the CCK, Article 307. Therefore the minutes of his testimony shall be sent to the Municipal Prosecutor's office in Peja together with the present judgment in order to start the investigation against him.

2. Motions of the Parties

The Defense Counsel of the defendant raised several questions as to the quality of [redacted] and in particular whether he had to be considered a witness, a codefendant or a cooperative witness.

On the point, it must be specified that, on 15 October 2009, the Prosecutor issued a ruling pursuant to Art. 224 of the KCCP for the termination of the investigation against [redacted]

(initially a suspect together with Idriz Gashi for the murder of Sanije Balaj), but he did not notify the injured parties of this ruling, in order to allow them to exercise the right to undertake prosecution as it is recognized by Art. 62, par. 1 and 2 of the KCCP.

During the trial, it turned out that Sanije Balaj had two brothers ([redacted] and [redacted]) and one sister ([redacted]) and, due to the definition given by the Article 151 of the KCCP (*the term injured party means a person whose personal or property rights are violated or endangered by a criminal offence*), it was undeniable (notwithstanding the contrary opinion of the Prosecutor) that all of them had to be considered as injured parties.

Before the examination of [redacted] and [redacted] declared that they did not intend to exert the right granted to the injured parties by Art. 62 of the KCCP, whereas it was not possible to obtain any declaration from [redacted] (he did not show up and did not address any formal declaration to the court) and therefore, at the moment of the examination of [redacted] was still entitled to take over the prosecution against him.

However, regardless of this, the panel reckoned that, pursuant to the principle *tempus regit actum*, the current status of [redacted] was undoubtedly the one of a witness. In fact, he could not be qualified as a suspect or a defendant, since, at the moment of his interview, 12 November 2009, there was neither a current investigation against him, nor an ongoing criminal proceeding against him, nor could it be said that the authorities of the prosecution had a reasonable suspicion against him (according to the definition of suspect and defendant indicated in Art. 151, n. 1 and 2 of the KCCP).

As to the term *authority of the prosecution* the definition is given by Article 151 of the KCCP by saying that these authorities can be either a Public Prosecutor or a private prosecutor or a subsidiary prosecutor: therefore the injured party who has not decided whether or not to take over the prosecution cannot be listed among the authorities of the prosecution since the term 'subsidiary prosecution' means an injured party who undertakes a prosecution and 'private prosecutor' means an injured party who conducts a prosecution.

In other words the simple abstract possibility that the injured party might decide to start the prosecution against the person does not entitle the above party to assume the position of authority of the prosecution. That qualification can be acquired only if the right to exert the prosecution in lieu of the prosecutor is actually exerted.

Therefore, since [redacted] has not exercised his right, [redacted] could not be defined a suspect or a defendant.

This conclusion entails that [redacted] could not even be qualified a cooperative witness, since, pursuant to Art. 298 of the KCCP, a cooperative witness means a suspect or a defendant willing to cooperate under certain requirements.

It is noteworthy to stress out that, as to [redacted], qualified as cooperative witness by the Supreme Court, the situation had changed, because, after the decision issued by the Supreme Court, the Prosecutor, as said before, issued the ruling on termination of investigation. Therefore the above qualification can not be considered as binding any more.

Again, as to [redacted] the Defense Counsel raised a further issue and, in particular, that all his previous statements had to be considered as not admissible, due to his quality of suspect at that time.

On the point, the panel decided that the statement given by [redacted] on 17 December 2002 in front of the police had to be ruled out, since [redacted] was heard as a suspect and he did not receive all the warnings foreseen by the Article 218 of the Law on Criminal Proceedings of the Former Republic of Yugoslavia, law in force at the time.

As to the statement given by [redacted] on 11 August 2005, statement in which [redacted] was heard as a witness, the panel deemed that the statement had to be ruled out, since [redacted] even though there was no ruling on initiation of investigation yet, was a suspect at that time.

As to the statement given by [redacted] on 30 January 2006, the panel reckoned, due to the principle *tempus regit actum*, that the statement had not be ruled out, since, at that time, a ruling on initiation of investigation against him had already been issued and therefore he was heard as a suspect and received all the warnings foreseen by the law in force at that time.

As to the statement given by [redacted] on 16 May 2007, the panel considered itself bound by the decision issued by the Supreme Court that the statement had not to be considered inadmissible and that only the criterion of judgment utilized by the court of first instance was not correct since the witness should have been evaluated as a cooperative witness.

The Defense Counsel also asked for the exclusion of the statement given by [redacted] in front of the Prosecutor, on 28.12.2005, concerning which, initially, he had given his consensus in order to acquire it pursuant to Article 368 KCCP.

On the point, the lawyer affirmed that the statement was given in violation of Article 6 Paragraph 3 item c ECHR and of Article 153 of the KCCP.

Actually, it turned out that the Prosecutor, acting in his capacity as Unmik Prosecutor took the statement in the United States, without a previous request for International Legal Assistance which should have been addressed to the competent authorities, pursuant to

Article 507 of the KCCP. Therefore the Prosecutor did not have any power to perform the investigative action and consequently the statement was considered by the panel not admissible and ruled out pursuant to Article 154 of the KCCP.

The Defense Counsel of the defendant presented also some piece of evidence which were declared as irrelevant or not admissible by the panel, during the hearing of 10 November 2009.

In particular the Defense Counsel asked the panel to examine as a witness [redacted], but the request was rejected since from his previous statement it was clear that the witness had not assisted directly to the events in Baran and in Lugu i Isufit and that his testimony was superfluous and not relevant.

The Defense Counsel also presented some documents claiming that they were the diary of [redacted] the Panel noted that the document did not bear any signature and therefore it was not possible to verify whether it was actually the diary of [redacted].

Furthermore, in any case that diary would not be relevant to the present case, since, according to what was said by the Defense Counsel himself, the importance of the diary was related to some assessments of the personality of [redacted], a matter completely irrelevant in the present case.

Furthermore the Defense Counsel requested a confrontation among 3 witnesses ([redacted] and [redacted]), due to discrepancies in their testimonies: the panel rejected the request deeming it superfluous and useless: in fact, even though it was true that there were some discrepancies, on the other hand the above witnesses had already given many statements during the previous stages of the proceedings, stating always more or less the same version of the events; therefore, it was highly unlikely that the witnesses might change their previous versions because of the confrontation.

Finally the Defense Counsel asked to rule out the indictment against Ramush Haradinaj et alii filed with ICTY and presented in the current main trial by the EULEX Public Prosecutor: the request was rejected since the above indictment dealt also with the murder of Sanije Balaj and therefore it was considered pertinent and relevant with the specification that the above relevance was confined to the fact that an indictment dealing also with the murder of Sanije Balaj was filed with ICTY.

For the same reason, the panel *ex officio* acquired the judgment issued by ICTY in the case against Ramush Haradinaj et alii on 3rd April 2008, specifying that the above judgment was not final and that the relevance of it in the present case was confined to the factual circumstance that a judgment which dealt also with the case of Sanije Balaj was issued by ICTY.

No motions have been presented by the injured parties.

F. LEGAL QUALIFICATION

1. Legal assessment of the facts by the Court

The constant jurisprudence about War Crimes has established, throughout the years, which are the requirements that found the criminal responsibility of the accused; in particular, the following must be proven as a minimum:

- the existence of an internal armed conflict and the binding nature of applicable international law on the parties;
- the participation of the accused in the armed conflict;
- a nexus between the alleged crime and the armed conflict;
- the civilian (protected) status of the victim;
- that the conduct concerned is in violation of international law effective at the time of the conduct and also falls within those criminal acts identified as war crimes within Article 142 (the so called duality test);
- the participation of the accused in the offence.

The existence of an internal armed conflict and the binding nature of applicable international law on the parties;

An armed conflict exists whenever there is resort to armed force whether between states or protracted armed violence between governmental authorities and organized armed groups. International humanitarian law (IHL) applies from the initiation of such conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached.

In the event of international armed conflict, civilians, persons rendered hors de combat and non-combatants are protected by the basic principles of IHL, in particular the Geneva Conventions of 1949, and their Additional Protocols of 1977. In case of Internal armed conflict, the same persons are entitled to protection under Article 3 common to all four Geneva Conventions supplemented by Additional Protocol II (hereinafter CA3 and APII).

To be considered an internal armed conflict under CA3 the essential criteria is that protracted armed violence takes place between governmental authorities and organized armed groups or between such groups within a State. APII supplements this by requiring that those groups be under responsible command and exercise such control over a part of the territory of the State as to enable them to carry out sustained and concerted military operations and that hostilities take place at a level in excess of that which could be characterized as merely internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

It is uncontested by the parties and it also can be considered as a well-known fact that, in August 1998, there existed an armed conflict involving the KLA and the Yugoslav/Serbian forces, which can be considered as an internal conflict contemplated by CA 3 and AP II.

As to this point it will be sufficient to quote some reports related to the existence in that period of an internal armed conflict.

The OSCE report named "Kosovo: As Seen, As Told" (available on the internet) provides useful insight into major events and developments concerning the hostilities in Kosovo during 1998 and 1999. The above OSCE report (Part 1 Executive Summary p 4) states that *"By the beginning of 1998, the nature of the Kosovo situation had changed. A new element had entered the equation in the form of the Kosovo Liberation Army (UCK), and the Serbian authorities were responding with a huge increase in military force."* The same passage continues a little later, *"The Serbian authorities brought in special security forces in January 1998. They responded to clashes with the UCK by reprisal attacks on villages, using military helicopters and armored personnel carriers, accompanied by brutal house-to-house raids and indiscriminate arrests. Two such attacks on villages in late February were followed by an assault on the village of Donji Prekaze/Prekazi I Poshtem (Srbica/Skenderaj Municipality) in early March, where at least 54 people were killed including a local UCK leader, most of his family and other women, children and elderly men. The reprisals continued with further attacks on villages in the central Drenica region, causing many villagers to flee their homes. In this downward spiral of violence, many Kosovo Albanians, including erstwhile supporters of the LDK's non-violent stance, became UCK members or active sympathizers"*. The same passage also states that, *"Substantial additional Serbian military reinforcements were sent in to Kosovo in May 1998"*, and that a, *"strong final warning"*, from European governments in June was ignored as Serb forces were concentrated in the Drenica region and along the south-western border, using Artillery to force villagers out of their homes and then going in to loot and burn them.

Participation of the accused in the armed conflict

The participation of the accused in the armed conflict is undeniable: the defendant has admitted that in August 1998 he was a member of the KLA (actually he left Sweden in June 1998 and joined immediately the KLA; then, around the end of August 1998, he left for Albania: interview in front of the Prosecutor, 15.11.2006, pages 5-6).

Nexus

The armed conflict played a fundamental role in the ability of the defendant to commit the crimes. The decision of Idriz Gashi to murder Sanije Balaj was clearly linked to the conflict. In fact the purported reason for the action against the victim was because of her supposed collaboration with the Serbs. Idriz Gashi took advantage of his position of member of the KLA in order to be able to force her to enter the red Golf, to oblige her to enter the forest and finally to shoot her. Also the explanation given by Galan at Lugu i Isufit as to the reason why the murder was committed (he showed the notebook belonging to Sanije Balaj) indicates clearly that the girl was executed because she was thought to be a Serbian collaborator.

Status of the victims

Article 142 of the CCY expressly requires that the victim be part of the civilian population. In the case of internal conflict, IHL through the provisions of CA3 and AP11

protects all persons who are not combatants and who do not take a direct part in hostilities. A civilian is defined as someone who does not actively participate in hostilities by intending to cause physical harm to enemy personnel or objects.

Article 5 of the IV Geneva Convention provides that, for a civilian to lose his/her status as a protected person, he/she must be "*definitely suspected* of ... activities hostile to the security of the State..." and the Panel finds that the mere fact that Sanije Balaj had a notebook with the telephone number of some Serbian people on it cannot be regarded as a suspicion of having conducted hostile activities.

Violation of Domestic and international law effective at the time of the conduct – (the so called duality test);

Article 142 CCY provides that the primary definition of the prohibited conduct must be found among the underlying offences listed in Article 142. Secondly, such offence must constitute a violation of international treaties. Yugoslavia ratified the Geneva Conventions and both the Additional Protocols. In relation to acts committed in the internal armed conflict, the act must be committed in violation of the CA3 and/or AP II.

Given the facts and circumstances of this case, it resulted as proven that the defendant committed the murder of Sanije Balaj and therefore this conduct must be taken in consideration in order to fulfill the so called duality test.

As to the murder it must be stressed that this conduct is proscribed both by the Article 3, common to all the four Geneva Conventions, by the Article 4, par. 2 of the AP II and by Article 142 YCC. Therefore the requirement of the duality test is fulfilled.

It is just the case to stress that from the factual reconstruction of the events outlined above it is clear that the murder was willful and therefore no doubts can be raised as to the existence of the *actus reus* and of the *mens rea* in the present case in reference to the defendant.

The participation of the accused in the offences

The participation of the defendant in the criminal acts he has been convicted for has previously been discussed in this reasoning. As noted above, the Court is satisfied beyond a reasonable doubt of the commission by the defendant of the murder of Sanije Balaj.

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 against a member of the civilian population by a heavily armed person. As to the aggravating circumstances, it must be noted that due to the modality of the murder, the death of Sanije Balaj appears to be a sort of execution performed in a brutal manner against a person unarmed with no possibilities to defend herself. As to the mitigating circumstances, it must be taken in consideration the exemplary conduct of the defendant during the main trial.

The punishment, taking in consideration both the aggravating and the mitigating circumstance, shall be of fourteen years of imprisonment.

The time spent in detention on remand (including the time spent in detention in Sweden pending the extradition to Kosovo for the above criminal offence) and in house arrest by the defendant is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5, Article 531, Par. 4 and Article 278 Par. 7 of the KCCP.

As the accused Idriz Gashi was pronounced guilty, he has to reimburse the costs of criminal proceedings with the exception of interpretation.

H. COSTS

Since the accused Idriz Gashi 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

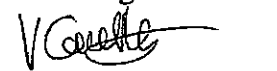
At the beginning of the main trial the injured parties have been reminded of the possibility to file a motion to realize a property claim within the criminal proceeding, pursuant to the KCCP, Article 355, Par. 2, but they declared that they did not intend to file a property claim.

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