

**DISTRICT COURT OF PRISHTINA**

P. No. 244/10

Date: 17 June 2011

IN THE NAME OF THE PEOPLE

The District Court of Prishtina, in the trial panel composed of:

- 1) EULEX Judge, Mr. Gianfranco Gallo, as presiding Judge,
- 2) Local Judge, Mr. Gëzim Llulluni, as panel member, and
- 3) EULEX Judge, Mr. Ferdinando Buatier de Mongeot, as panel member,

assisted by the court recorder undersigned below, in the criminal case against:

1. Shpejtim ADEMAJ, DoB 13 December 1980, Gjakovë/Dakovica, male, nationality Albanian, citizenship Kosovar, passport number: K00152217, address Jabllanica village, Gjakovë/Dakovica;
2. Avni HAJDARI, father's name Ahmet, DoB 29 August 1958, in Ballovc village, Podujevë/Podujevo, male, nationality Albanian, citizenship Kosovar, address Ballovc village, Podujevë/Podujevo;
3. Fatmir PAJAZITI, DoB 24 May 1959, male, nationality Albanian, with the last known address Smire village, municipality of Viti/Vitina;
4. Xhemajl HALILAJ, father Hamit, DoB. 20 April 1953 in Terdevc, Drenas, nationality Albanian, citizenship Kosovar;
5. Shaip SELMANI, father's name Ismail, 30 November 1961 Emshir neighbourhood Calabria, St Agim Qela Prishtina Sheka 1010002407;
6. Ismail KRAPI, father Rexhep, DoB. 08 June 1980 in Emshir - Calabria, Street Agim Qela, Prishtina Nick Name:Buci ID Number: 1010002482;
7. Rabbit AJVAZI, DoB. 11 September 1975 in Zheger, Gjilan Municipality, nationality Albanian, citizenship Kosovar, ID number 10095961480; and
8. Blerim ADEMAJ, DoB 7 February 1988, Jabllanicë, Gjakovë, male, nationality Albanian, citizenship Kosovar, current address, Av D'EC Hallens 128, 1004 Lausanne, Switzerland.

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All of them but Blerim Ademaj charged pursuant to the indictment of 7 July 2010, filed with the District Court of Pristina on 13 September 2010,  
Blerim Ademaj charged pursuant to the indictment dated 20 January 2011 and filed with the District Court of Pristina on 21 January 2011,

with the criminal offences of

- Organized Crime, contrary to Article 274, paragraph 4 and Article 23 of the CCK
- Smuggling of Migrants in co-perpetration, contrary to Article 138 (6) and Article 23 of the CCK.

After having held the main trial, in the presence of the Public Prosecutor, of the accused, their defence counsels on:

20 January 2011;  
2, 3, 9, 10, 21, 23 and 24 February 2011;  
4 March 2011;  
7, 14, 15 and 18 April 2011;  
12, 13 and 24 May 2011; and  
9, 10 and 17 of June 2011

after the trial panel's deliberation and voting held on 17 June 2011, based on Articles 390 and 391 par. 1 of the KCCP,

on 17 June 2011, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the accused, the following

**JUDGMENT**

**Rabit AJVAZI** is

**ACQUITTED**

*of the criminal offences of Organized Crime, contrary to Article 274, paragraph 4 of the CCK and of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK, since it has not been proven that the accused has committed the act he has been charged with;*

**Fatmir PAJAZITI, Xhemajl HALILAJ and Blerim ADEMAJ** are

**ACQUITTED**

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*of the criminal offence of Organized Crime, contrary to Article 274, paragraph 4 of the CCK, since it has not been proven that the accused have committed the act they have been charged with;*

**Shaip SELMANI and Ismail KRAPI** are

**ACQUITTED**

*of the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK, since it has not been proven that the accused have committed the act they have been charged with;*

**Avni HAJDARI and Shpejtim ADEMAJ** are

**FOUND GUILTY**

*of the criminal offence of Organized Crime, contrary to Article 274, paragraph 4 of the CCK, because throughout the year 2009, until October 2009, in the territory of Kosovo, actively participated in the criminal activities of an organized group composed of themselves, Anton Gecaj, Ismet Rama, a person with the nickname Joca, Ismail Krapic, Shaip Selmani and other people yet to be identified. The main activity of the organized group was the illegal smuggling of migrants from Kosovo to other countries of Europe (mainly France, Germany, Switzerland, and Austria) thus gaining enormous material profits from the above activity. The organization could count on a well organized structure which, under the lead of Anton Gecaj, in exchange of an amount of money varying from 3000 to 1500 Euros per migrant, collected and transported the migrants from Kosovo to Serbia (for this part of the criminal activity mainly Avni Hajdari, Ismet Rama, Shpejtim Ademaj, Ismail Krapic and Shaip Selmani were involved) then through Serbia (for this part of the criminal activity Joca was mainly responsible) and then from Serbia to Hungary (for this part of the criminal activity Anton Gecaj was in charge) and then from there to the above indicated destinations. The activities of the organized group resulted, on 14 October 2009, in the death of the following migrants: E J, Ilir Agushi, Brahim Koci, Florin Ademi, Elfete Ademi, Albert Ademi, Florian Ademi, Lendita Krasniqi, Agnesa Krasniqi, Anita Krasniqi, Rrahim Mirena, Valbona Mirena, Doruntina Mirena, Dafina Mirena and Agnesa Mirena.*

**Shpejtim ADEMAJ** is

**FOUND GUILTY**

*of the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK because on 14 October 2009, in the territory of Kosovo, acting as a member of a criminal group and in co-perpetration with Anton Gecaj and others, in a manner that endangered the lives and safety of the migrants, engaged in the smuggling of the migrants Ilir Agushi, Lendita Krasniqi, Agnesa Krasniqi, Anita Krasniqi from Kosovo to Switzerland, Brahim Koci from Kosovo to Germany; in particular Shpejtim*

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*ADEMAJ transported the above migrants to Gjilan where they were picked up by other drivers in order to be conducted illegally outside Kosovo and was supposed to receive part of the price of the smuggling (which was 3000 Euros each for I Aand Brahim Koci and 10000 Swiss Francs for the Krasniqi family) once the migrants had reached their final destination;*

**Avni HAJDARI** is

**FOUND GUILTY**

*of the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK because on 14 October 2009, in the territory of Kosovo, acting as a member of a criminal group and in co-perpetration with Anton Gecaj and others, in a manner that endangered the lives and safety of the migrants, engaged in the smuggling of the migrants B R, E Jand their two children, Florin Ademi, Elfete Ademi, Albert Ademi, Florian Ademi from Kosovo to Austria; in particular Avni Hajdari made the arrangements for the price of the smuggling and for the transport outside Kosovo of the migrants and was supposed to receive the price for the smuggling (which was 6.500 Euros for the Rama family and 6900 for the Ademi family) once the migrants had reached their final destination;*

**Ismail KRAPI** and **Shaip SELMANI** are

**FOUND GUILTY**

*of the criminal offence of Organized Crime, contrary to Article 274, paragraph 2 of the CCK, thus reclassified the original charge, because from June until September 2009, in the territory of Kosovo, actively participated in the criminal activities of an organized group composed of themselves, Anton Gecaj, Ismet Rama, a person with the nickname Joca, Avni Hajdari, Shpejtim Ademaj and other people yet to be identified. The main activity of the organized group was the illegal smuggling of migrants from Kosovo to the other countries of Europe (mainly France, Germany, Switzerland and Austria) thus gaining enormous material profits from the above activity. The organization could count on a well organized structure which, under the lead of Anton Gecaj, in exchange of an amount of money varying from 3000 to 1500 Euros per migrant, collected and transported the migrants from Kosovo to Serbia (for this part of the criminal activity mainly Avni Hajdari, Shpejtim Ademaj, Ismet Rama, Ismail Krapic and Shaip Selmani were involved) then through Serbia (for this part of the criminal activity Joca was mainly responsible) and then from Serbia to Hungary (for this part of the criminal activity Anton Gecaj was in charge) and then from there to the above indicated destinations.*

**Fatmir PAJAZITI** and **Xhemajl HALILAJ** are

**FOUND GUILTY**

*of the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK because on 14 October 2010, in the territory of*

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*Kosovo, acting as a member of a criminal group and in co-perpetration with people yet to be identified, in a manner that endangered the lives and safety of the migrants, engaged in the smuggling of the migrants Rrahim Mirena, Valbona Mirena, Doruntina Mirena, Dafina Mirena and Agnesa Mirena from Kosovo to France; in particular Fatmir Pajaziti made the arrangements for the price of the smuggling and for the transport outside Kosovo of the migrants and was supposed to receive 8500 Euros from Xhemajl HALILAJ, who was acting as a guarantor for Rrahim Mirena, once the migrants had reached their final destination;*

**Blerim ADEMAJ** is

**FOUND GUILTY**

*of the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK because on 14 October 2010, in the territory of Kosovo and in the territory of Switzerland, acting as a member of a criminal group and in and in co-perpetration with Anton Gecaj, Sheptim Ademaj and others, in a manner that endangered the lives and safety of the migrants, engaged in the smuggling of the migrants Ilir Agushi, Lendita Krasniqi, Agnesa Krasniqi, Anita Krasniqi from Kosovo to Switzerland; in particular Blerim Ademaj made the arrangements for the price of the smuggling, put in contact the migrants with Anton Gecaj and was supposed to receive part of the price of the smuggling (which was 3000 Euros for I Aand 10.000 Swiss Francs for the Krasniqi family) once the migrants had reached their final destination;*

*THEREFORE, the accused, are*

**SENTENCED**

***Shpejtim ADEMAJ***

*To 14 years of imprisonment and 200.000 Euros of fine as to the criminal offence of Organized Crime, contrary to Article 274, paragraph 4 of the CCK;  
To 2 years of imprisonment for each migrant smuggled as to the criminal offences of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed five criminal offences contrary to Art. 138, 6 of the CCK);*

*the aggregated punishment, pursuant to Article 71, paragraphs 1 and 2 of the CCK, is determined in 17 years of imprisonment and 200.000 Euros of fine;*

*the fine shall be paid within 3 months from the day the judgment becomes final.*

***Avni HAJDARI***

*To 16 years of imprisonment and 250.000 Euros of fine as to the criminal offence of Organized Crime, contrary to Article 274, paragraph 4 of the CCK;*

*To 2 years of imprisonment for each migrant smuggled as to the criminal offences of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed eight criminal offences contrary to Art. 138, 6 of the CCK);*

*the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 19 years of imprisonment and 250.000 Euros of fine;*

*the fine shall be paid within 3 months from the day the judgment becomes final.*

***Ismail KRAPI and Shaip SELMANI***

*To 8 years of imprisonment each for the criminal offence of Organized Crime, contrary to Article 274, paragraph 2 of the CCK.*

***Fatmir PAJAZITI***

*To 2 years of imprisonment for each migrant smuggled as to the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed five criminal offences contrary to Art. 138, 6 of the CCK);*

*the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 7 years of imprisonment.*

***Xhemajl HALILAJ***

*To 1 year and 6 months of imprisonment for each migrant smuggled as to the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed five criminal offences contrary to Art. 138, 6 of the CCK);*

*the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 2 years of imprisonment.*

*Pursuant to Articles 41, 42, 43 and 44 of the CCK the sentence against Xhemajl HALILAJ*

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*is suspended and therefore the punishment shall not be executed if the convicted person does not commit another criminal offence for a period of 3 years.*

### ***Blerim ADEMAJ***

*To 2 years of imprisonment for each migrant smuggled as to the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed four criminal offences contrary to Art. 138, 6 of the CCK);*

*the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 5 years of imprisonment.*

*The time spent in detention on remand by Fatmir Pajaziti, Avni Hajdari and Shpejtim Ademaj from 16.12.2009 until the judgment becomes final is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.*

*The time spent in house detention by Xhemajl Halilaj from 16.12.2009 until 14.09.2010 is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.*

*The time spent in detention on remand by Shaip Selmani and Ismail Krapci from 16.12.2009 until 17.12.2009 and from 17.6.2011 until the judgment becomes final is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.*

*The time spent in house detention by Blerim Ademaj from 27.1.2011 until 16.6.2011 and in detention on remand from 17.6.2011 until the judgment becomes final is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.*

*The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP with the exception of the costs of interpretation and translation. The cost is determined in 70 Euros per hearing for a total amount of 1.330 Euros, including the cost of the covert measures issued during the investigation, plus 1000 Euros for the costs of the trips made, respectively from Germany and Slovenia, by the witnesses Avdurrahim Ademi and H C. Therefore the total amount is determined in 2.330 Euros. Since it is not possible specify what portion of the costs shall be paid by each defendant, the convicted persons shall be jointly and severally liable for the costs.*

## REASONING

## 1. PROCEDURAL BACKGROUND.

On 29 September 2010, the Special Prosecutor Besim Kelmendi filed the indictment against Shpejtim Ademaj, Avni Hajdari, Fatmir Pajaziti, Xhemajl Halilaj, Shaip Selmani, Ismail Krapu and Rabit Ajvazi for the charges of Organized crime and Smuggling of Migrants.

Afterwards, one of the other defendants of the investigation, Blerim Ademaj, who was residing in Switzerland, surrendered to the Kosovan Authorities.

After having interviewed Blerim Ademaj, the prosecutor filed on 21 January 2011 an indictment against him for the same charges as the above defendants.

The first indictment was confirmed by the Confirmation Judge with a ruling dated 20 October 2010, whereas the indictment filed against Blerim Ademaj was confirmed by the ruling dated 28 January 2011 issued by the Confirmation Judge (defendant and his defence counsel waived the right to have a confirmation hearing).

The first session of the main trial commenced on 20 January 2011 and it was postponed to 2 February 2011, upon the requests of all the parties to join the two proceedings based on the two indictments.

On the above date, the two proceedings were joined and, after the preliminary formalities were accomplished, the evidentiary stage started.

In the hearings listed below, the following witnesses and injured parties were examined:

On 2 February 2011, B Rand A A;

On 3 February 2011, SH A, B H, B M and B J;

On 9 February 2011, R K;

On 10 February 2011, SH K and M J;

On 21 February 2011, I K, A A and Z M K;

On 23 February 2011, I K;

On 24 February 2011, V J;

On 4 March 2011, G U and R Z;

On 7 April 2011, H C and D V;

On 14 April 2011, the material evidence was listed and the examination of the defendants started with Avni Hajdari;

In the hearings indicated below the following defendants were examined:

On 15 April 2011, Shpejtim Ademaj and Fatmir Pajaziti;

On 18 April 2011, Xhemajl Halilaj and Shaip Selmani;

On 12 May 2011, Ismail Krapu and Rabit Ajvazi;

On 13 May 2011, Blerim Ademaj.

On 24 May 2011, 9 and 10 of June the parties delivered the closing speeches and on 17 June 2011, after the renounce of the Prosecutor to respond to the defence, the Judgment was publicly announced.

**1.2. Statements, police reports, medical reports, expertise and documentary evidence acquired on the basis of the consent of the parties**

- Police reports dated 23 October 2009.
- Police reports dated 27 October 2009
- Police reports dated 31 October 2009
- Police reports dated 6 November 2009
- Police reports dated 13 November 2009
- Police reports dated 17 November 2009
- Police reports dated 18 November 2009
- Police reports dated 23 November 2009
- Report from tax administration dated 6 May 2010\
- Raiffeisen Bank dated 15 April 2010
- Pro Credit bank dated 12 April 2010
- Report from NLB dated 7 April 2010
- Further reports dated 13 April 2010
- Further reports dated 16 April 2010
- Further reports dated 28 April 2010
- Further reports dated 12 February 2010
- General police report on financial investigation dated 31 May 2010
- General police report dated 22 February 2010
- Further police report dated 12 March 2010
- Report of police dated 13 January 2010
- Summary report dated 6 December 2009
- Report on evidence of confiscation of items during the house search
- Initial information report dated 13 November 2009
- Report of metering phone calls dated 19 November 2009
- Report on listing of phone calls dated 2 and 3 December 2009 24 November 2009
- Final report with summary of calls dated 25 November 2009
- Reports from PTK with a CD containing metering of SMS messages
- Police report dated 18 November 2009
- Police report dated 21 October 2010
- Police report dated 21 January 2010
- Police report dated 20 November 2009
- Police report dated 18 August 2010
- Police report dated 26 November 2010\
- Police report dated 26 August 2010
- Police report dated 2 December 2009
- Police report dated 25 November 2009
- Police report dated 26 August 2010
- Police report dated 4 December 2009
- Police report 23 March 2010

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- Police reports 17 November 2009
- Five Police reports dated 16 December 2009 on the house searches
- photos of the victims who drowned in the river;
- discharge list dated 9 February 2009 relating to Shaip Selmani
- Medical certificate dated 27 July 2007 Xhemaji Halilaj
- Medical certificate of Rabbit Ajvazi dated 20 August 2008
- Medical document from Medicare relating to Avni Hajdari:
- Written declaration given by Kadrush Ajvazi
- Written declaration given by Lavdi Thaqi
- Written declaration given by A A

As to the statements given by M R, they were acquired without the consent of the parties pursuant to Article 368 par. 1, item 1 of the KCCP.<sup>1</sup>

## **2. FACTUAL RECONSTRUCTION OF THE EVENTS AND EVALUATION OF THE PRESENTED EVIDENCE.**

### **2.1. The tragic crossing by boat of the river Tisa on the night between 14 and 15 October 2009.**

In the night between 14 and 15 October 2009 a group of people was crossing the border between Serbia and Hungary with a boat through the river Tisza near Subotica (Serbia). However the boat capsized and the people who were on it fell into the water. This event, which has had an ample echo in the media, is undisputed and was not contested by the defence counsels or by the defendants.

The issue related to the people who were in the boat on that fatal night and to what their final fate was will be evaluated after the presentation of all the single episodes of smuggling indicated by the prosecutor in the indictment.

### **2.2. The single episodes of smuggling of migrants.**

#### **2.2.1. The smuggling of the family of B R.**

The testimony of B R clarified that he and his two little children (Erida Jaha and Rendi Jaha) were the only survivors of the tragic trip on the river Tisa which took place on the night of 14

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<sup>1</sup> Minutes of 14 April 2011, page 4:

*Presiding Judge: Since we already have one party that does not agree, it is not worth asking the other parties for their consent. The panel, after having heard the opinions of the parties, issues the following ruling; the statement given by M Ron the 14 May 2010 and on 10 November 2009 according to article 368 paragraph 1, item 1 are acquired and will replace the examination of the witness. Since it was not possible or it was difficult to make him appear before the court. In fact M R apparently resides illegally in Switzerland and does not have a known address.*

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October 2009, whereas his partner E J, who was also on the boat, drowned in the waters of the river.<sup>2</sup>

Therefore B R is the only eyewitness who could inform the court about the modalities of the trip from Kosovo until the river Tisa (which, as it is well known, marks the border between Serbia and Hungary in the area of Subotica).

The witness explained to the court how a person who introduced himself as Ismajl (and who was recognized in front of the court by the witness as the defendant Avni Hajdari)<sup>3</sup>, in exchange of the amount of 6.300 Euros, accepted to organize the illegal trip from Kosovo to Austria for B R, his partner E J and their two children.<sup>4</sup>

Most of money for the smuggling was supposed to be paid once the migrants had reached Austria.<sup>5</sup>

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<sup>2</sup> Minutes of 2 February 2011, page 19 and pages 36-37 :

*Public Prosecutor: Who was close to you?*

*B R: My daughter was in my arms and my wife and son next to me and everyone else was in the boat.*

*Public Prosecutor: You were in the front of the boat?*

*B R: Yes.*

*Public Prosecutor: What did you do when you started sinking?*

*B R: I gave up. Then I heard my wife calling my son and this made me grab my daughter whom I let go off. I returned to my wife. I grabbed my son who had been in my wife's arms the whole time, and I told my wife, 'continue on and I will take the kids'. And I continued swimming.*

...

*Presiding Judge: When did you see the dead body of your wife?*

*B R: Two weeks later.*

*Presiding Judge: But the following day you went back to the river, after the incident, looking for her?*

*B R: I am not sure if it was the following day or day after.*

*Presiding Judge: and you couldn't find her?*

*B R: No.*

*Presiding Judge: Was there anything on the shore, a bag or anything that you could link to her?*

*B R: No nothing, other than bag I have been carrying, my children's bag and the shoes of the kids that had come off*

*Presiding Judge: Who called you and told you that the corpse of your wife had been found?*

*B R: Hungarian police, I identified not only my wife but also others.*

<sup>3</sup> Minutes of 2 February 2011, page 22:

*Public Prosecutor: Did the police ever show you the photographs to ask you if the person who asked you for the money is on one of the photos?*

*B R: Yes.*

*Public Prosecutor: Did you recognize the person who got you out of Kosovo?*

*B R: Yes.*

*Public Prosecutor: When did you learn, if you did, that this person's name is not Ismail?*

*B R: On the day of...*

*Bajram Tmava: Objection, a leading question.*

*Presiding Judge: It is not that it is a leading question as they are allowed. But this goes beyond the leading question. You should ask if he knew the real name was not Ismail.*

*Public Prosecutor: Did you know that Ismail was not his real name?*

*B R: I did not know this until the day I was shown the photo.*

*Presiding Judge: We can ask the witness to recognize the person on the photo or if that person is present in the courtroom.*

*Public Prosecutor: Could you identify this person today?*

*B R: Yes.*

*Presiding Judge: Can you identify this person whom you contacted to leave Kosovo?*

*Initially, the witness identifies the defendant Avni Hajdari as the person whom he was in contact with in order to exit Kosovo and after the defendant stood up, the witness confirms his identification as the one of Avni Hajdari who was initially known to the witness as "Ismail".*

<sup>4</sup> Minutes of 2 February 2011, pag. 13.

<sup>5</sup> Minutes of 2 February 2011, pag. 22:

*Public Prosecutor: Regarding the payment of 6.300 Euro, how were you supposed to pay that money?*

*Presiding Judge: What was the agreement with Avni Hajdari or "Ismail"?*

*B R: What do you mean, how I would give him the money? We agreed I would give him 600 Euros during the trip and 5,700 Euro after I arrive in Austria.*

*Public Prosecutor: Did you give him 600 Euro?*

*B R: Yes.*

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B R added that there were several contacts via phone between him and Ismail/Avni Hajdari on the telephone number belonging to the latter.<sup>6</sup>

The day scheduled for the trip (actually 14 October 2009) B Rand his family met Ismail/Avni Hajdari and an unknown individual at Emshir, in the Pristina area. The latter drove the family to Gjilan where the migrants entered another car driven by a different person.<sup>7</sup> Then the trip went on:

*Public Prosecutor: After you got into another car in Gjilan, where did you go?*

*B R: To the Serbian border.*

*Public Prosecutor: Did you pass through the normal border crossing?*

*B R: Yes.*

*Public Prosecutor: How did you cross the border?*

*B R: I crossed the Kosovo border with my wife and two children on foot. Two vehicles picked us up in the zone between the two check points. I got into one car and my wife and kids into another car and we got to the border.*

...

*Public Prosecutor: Did you show your identification documents at the border crossing?*

*B R: Nobody asked us for documents.*

*Public Prosecutor: After you entered Serbia, which direction did you take?*

*B R: We went to a yard of a house, we got into a vehicle and then we drove for 15 minutes. Then we got into another vehicle and continued to Subotica in that other vehicle.*

...

*Presiding Judge: Which was the first and which was the second vehicle? Which was the type of the vehicle?*

*B R: The first one was Golf 2 from Prishtina to Gjilan and the second one was Opel Astra from Gjilan to the Serbian border.*

*Presiding Judge: After you crossed the border?*

*B R: I got into a Passat and my wife and children into a Nissan Micra.*

*Public Prosecutor: After you left and you got out of Passat and your family out of Nissan, you again exchanged vehicles, what was this other vehicle?*

*B R: It was Passat I had been riding in.*

*Public Prosecutor: Where did you go in this Passat?*

*B R: It was in that village. We drove for about 15 minutes and we met up with that other vehicle.*

...

*Public Prosecutor: How long did you ride in this Passat approximately?*

*B R: About 15 minutes.*

*Public Prosecutor: Then you got on to another vehicle, what kind was it?*

*B R: Ford Sierra.*

*Public Prosecutor: How long did you ride in Ford Sierra?*

*B R: All day long, maybe 4-5 hours, I do not remember.*

...

*Public Prosecutor: Where did you arrive after this segment of your trip?*

*B R: I think we arrived in Subotica.*

*Public Prosecutor: Where did you stop and what did you do?*

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*Public Prosecutor: Whom did you give 600 Euro to?*

*B R: To the Driver of the first Passat.*

<sup>6</sup> Minutes of 2 February 2011, pag. 32:

*Presiding Judge: On the question of Bajram Tmava relating to the phone number of the person Ismail that contacted you, you said that you did not remember the telephone number, in the statement that you gave to the police on the 29<sup>th</sup> October 2009, you said that the telephone number was 044 610 955, do you stand by your previous statement?*

*B R: Yes. At that time that I provided this telephone number, I also gave this number.*

<sup>7</sup> Minutes of 2 February 2011, pag. 14.

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*B R: We stopped at a village. It was like a cabin of a station. Then we got off. He told us to wait and that another car would come and pick us up. After a short time, a Passat came and picked us up.*

*Presiding Judge: A different Passat?*

*B R: Yes.*

*Public Prosecutor: Where did you go?*

*B R: We drove in that Passat to a house in Subotica.*

...

*Presiding Judge: Why do you think it was Subotica? What makes you think it was Subotica?*

*B R: I had never been there but it was mentioned we were going to Subotica.*

...

*Public Prosecutor: How much time did you spend in that house?*

*B R: We stayed there until late hours.*

*Public Prosecutor: Until when, what do you mean by late hours?*

*B R: I do not know exactly, it was either 9 or 11 when we left the house.*

*Public Prosecutor: Did you all leave the house?*

*B R: I have to mention that a family from Vushtrri also arrived after me. We all got onto a pick up.*

*Public Prosecutor: How long did you travel in that pick-up?*

*B R: About half an hour.*

*Public Prosecutor: What happened afterwards?*

*B R: We went close to a forest, we entered the forest and a jeep was waiting there and we all got onto the jeep.*

*Public Prosecutor: How long did you travel in the jeep?*

*B R: About half an hour.*

*Public Prosecutor: What happened after the jeep stopped?*

*B R: We got off in a different forest, and we started walking in that forest.*

*Public Prosecutor: You got out of the jeep and started walking?*

*B R: Yes.*

...

*B R: We walked for about 10-15 minutes.*

*Public Prosecutor: Where did you arrive?*

*B R: We arrived to the river. When I saw what was happening I was the last one in line. I had my daughter in my hand and I just saw that everyone had gotten onto a boat. We rode in that boat for about 10-15 minutes.*

...

*Public Prosecutor: How did you notice that the boat was sinking?*

*B R: We fell into the water. I was the first one to fall into the water.<sup>8</sup>*

A strong corroboration as to the credibility of the narration of the witness is given by the following exchange of text messages which took place between B R (using his mobile with number 044 264 655) and a friend (or relative) of his using a German telephone card, on 13.10.2009 and 14.10.2009 (the text message was recorded through the order for metering issued by the prosecutor).

In fact, on 13.10.2009, at 12.51 hrs B R sent to the person using the number +4915204556457 the following text: "I just spoke to him and he told me that until the Croat tells him to dispatch them I will not dispatch you and he said maybe these two days it will happen, he said he could dispatch me at once but then I would have to stay in Subotica".

On the same day, at 21.20, Blerim sent to the same person another text: "We are leaving tomorrow at 5 but Sinan has to give me 600 e and 5700 to leave to Tafa" and another one at 22.18 hrs: "The Croats have told him that tomorrow by dusk we have to be in Subotica 044 610 955 Ismail is his name".

<sup>8</sup> Minutes of 2 February 2011, pages 15 - 19.

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And finally on 14.10.2009 he sent the following text: “*We have entered in Presheve without any problem*”.

A further corroboration to the version of B R is given by the ten phone calls exchanged with Avni Hajdarj in the days of the tragedy (13 and 14 October 2009) as it results from the metering issued on the number utilized by the injured party (see the police report dated 21.01.2010).

The reliability of the narration of B R (and of the recognition of the defendant made by him) is strengthened by the statements of V J and M J, respectively father and sister of the late E J.

V J stated in front of the court that, two days after the tragedy, he managed to talk to his son in law B R who told him the following:

*Public Prosecutor: What did the son in law tell you?*

*V J: He told me, “I don't know what happened; we fell in the water. I managed to save myself and the children. I don't know what happened to my wife, I don't know whether she was saved”.*

*Public Prosecutor: During this conversation you had with your son in law, did he tell you who the persons who took them to that place were?*

*V J: Yes, I asked him who they were, and he told me that he had kept contact with Smajl Kacanolli.*

*Public Prosecutor: Could you explain what you mean by contact with Smajl Kacanolli?*

*V J: Meaning talks and the trip—he was the person who organised the trip, managed the whole trip and travelled with them.<sup>9</sup>*

V J stated that, after the funeral of his daughter, he had a meeting with the person he thought was called Smajl Kacanolli; on that occasion Vesel said that he considered Smajl responsible and the latter admitted he had organized the trip outside Kosovo for B R and his family<sup>10</sup>. Afterwards Smajl Kaqanolli/Avni Hajdari tried to obtain the forgiveness of Vesel by sending mediators according to the Albanian traditions.<sup>11</sup>

V J identified in front of the panel, with absolute certainty, the defendant Avni Hajdari as the person whom, when the above meeting took place, he thought was Smajl Kaqandolli.<sup>12</sup>

Finally, also the testimony of M J, even though she just reported circumstances and names heard by his father and by his brother in law, offers further confirmation, in terms of reliability, to the version of the events given by B R (in particular in reference to the modalities of the journey outside Kosovo and to the involvement of the person calling himself Smajl)<sup>13</sup> and by her father Vesel.<sup>14</sup>

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<sup>9</sup> Minutes of 24 February 2011, page 4.

<sup>10</sup> Minutes of 24 February 2011, page 7.

<sup>11</sup> Minutes of 24 February 2011, page 8:

*Public Prosecutor: Did he ask your forgiveness?*

*Vesel Jaha: Yes he did, based on our traditions.*

*Public Prosecutor: Can you please explain to the Trial Panel what you mean by “based on our traditions”?*

*Vesel Jaha: He sent people to me and he did ask for forgiveness through the people he sent.*

*Presiding Judge: People? Meaning his relatives?*

*Vesel Jaha: No he sent people whose reputation in our circle are people with a certain authority and relevance.*

<sup>12</sup> Minutes of 24 February 2011, page 6.

<sup>13</sup> Minutes of 10 February 2011 pages 12-13:

*Public Prosecutor: Did Blerim tell you who had picked up these people to send them in that direction?*

On the other hand, in order to counterbalance the consistent pieces of evidence presented by the prosecutor, the defence offered only the statement given by the defendant. In particular, Hajdari affirmed that he simply had given B R, after many repeated requests, the telephone number of a person in Gjilan who could help him to leave Kosovo. Apart from that, he was not at all involved in the trip.

Asked if there could be any reasons why B R would raise against him such false accusations, he was not able to give any explanation.

The defendant also denied that he had used the telephone number 044 610 955.

However, the mere denial of any involvement affirmed by the defendant can not counterbalance the solid and firm testimony of B R which is still further strengthened by the above corroborative elements.

Furthermore, the reliability of the defendant is powerfully infirmed by the fact that he denied knowing the other defendants Shpejtim Ademaj and Shaip Selmani,<sup>15</sup> whereas he had several telephone contacts with them (see on the point the part of the reasoning related to the covert measures).

The only possible way to discard the above testimonies would be to consider them as the outcome of a gigantic fabrication against the defendant. However not only the purpose of such a fabrication would remains unclear and inexplicable, but also not even a single circumstance which could suggest it has emerged throughout the entire main trial.

In conclusion, after the assessment of the above indicated pieces of evidence, the responsibility of the defendant Avni Hajdari as to the smuggling of B R, E J and their children E and R appears evident and undeniable.

### **2.2.2. The smuggling of the Ademi family.**

The circumstances of the journey outside Kosovo undertaken by Florim Ademi, his wife Elfete Ademi and their kids Albert and Florian Ademi have been clarified by the testimonies of B J, B H and A A.

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*M J: After these words that he told me, that he was split from his wife and that she went on to the boat, he said that he was not allowed to talk anymore and switched the phone off. Blerim's father called us and gave us two names, Smajl Kacanolli and another name Zeqa. He gave us two telephone numbers and we called Smajl. When we called him he said that he was not Smajl and that we had the wrong telephone number. Then we called Zeqa and told us that someone from Vushtrri caused problems and that they were caught.*

...

*M J: Blerim said that from the beginning he had to go with Smajl Kacanolli and Smajl told him that you would not go to cross any waters. Blerim said that "Smajl lied to me and I am telling now as I could not tell this before that they left us in the water and I don't know where my wife is."*

<sup>14</sup> Minutes of 10 February 2011, page 14:

*Public Prosecutor: Did your father tell you what he spoke to Smajl about?*

*M J: He said that after we spoke that he told him that if my daughter had drowned, you should be aware that you owe me 'one blood'. He said that she was not killed but that she was caught. After these words Smajl fell down to the ground.*

<sup>15</sup> Minutes of 14 April 2011, page 22.

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The witness B J stated that his cousin Florim agreed with a person named Ismet the price to be paid by Florim for the illegal trip of his family from Kosovo to Austria.<sup>16</sup>

On 14 October 2009 B J accompanied Florim Ademi and his family to the appointment they had with Ismet and another individual in order to leave Kosovo and, on that occasion, the witness overheard that this other individual was called Qaka.<sup>17</sup>

The witness was able to recognize in front of the court the defendant Avni Hajdari as the person bearing the nickname Qaka, who he could see together with Ismet for around 15 -20 minutes on the day the Ademi family left for its fatal journey.<sup>18</sup>

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<sup>16</sup> Minutes of 3 February 2011, page 39:

*B J: I was there with my cousin. He called Ismet to talk about going to another country and he promised.*

*Public Prosecutor: Your cousin Florim Ademi?*

*B J: Yes. They agreed that the destination would be Austria. From what I remember, they had to go to Vienna and there was another town, I don't remember which now. Ismet told him, 'I have also sent my son through the same route and I will provide the same for you. I will not give you any guarantee; if you are caught in Serbia do not ask for my help. If caught in Hungary you can seek asylum. You won't lose anything. The money will be paid after you reach Vienna.'*

*Public Prosecutor: Do you remember the date when Florim and the other left?*

*B J: I always think of 14<sup>th</sup> October 2009 if I have not forgotten the date.*

*Public Prosecutor: You mentioned the agreement. Was anything about the price mentioned?*

*B J: The price was 7,000. Finally, they reached the agreement for 6,900. He took 100 Euro out of 7,000 because he had a young child.*

*Public Prosecutor: Do you know how this money was to be given?*

*B J: The agreement was between Florim and the others who were here but Ismet said, 'I will give the money when you arrive there.' It was reached on Tuesday and he said, 'You will leave on Thursday'. When they could not leave, then he promised to leave on Sunday which did not happen either so he left some time one month after the agreement was reached.*

*Public Prosecutor: Did they agree on the time when the money was to be paid?*

*B J: The agreement to pay the money was when they arrive in Vienna and it was to be given to Ismet. Florim said he would solve this through Ismet but I know the agreement was for Ismet to take the money.*

<sup>17</sup> Minutes of 3 February 2011, pages 39-41:

*B J: That day in the morning, Florim called me telling me, 'I am planning to travel today, if you want to come to greet me and to take the key of the house as it would remain empty and to take some obligations regarding the house', and there they started the journey in the direction of the main road Prishtina-Mitrovica. He went on the highway. As far as I remember, he said, 'I have to take you further and drove fast to Millosheve', and until that location I was with them.*

*Public Prosecutor: Did you travel from Vushtrri to Millosheve in one car or in two cars?*

*B J: In one car.*

*Public Prosecutor: Who drove that car?*

*B J: Ismet.*

*Public Prosecutor: On which seat were you seated in the car?*

*B J: Florim was sitting with one child in front and I was sitting in the back with his wife.*

*Public Prosecutor: The place you call Millosheve, where is it?*

*B J: On the road from Mitrovica to Prishtina, there is a gas station. We stopped there. Two other vehicles came there. Ismet met with another person, the other vehicle took my cousin and his wife with two children.*

*Public Prosecutor: What make was this vehicle?*

*B J: It was Golf 2.*

*Public Prosecutor: Who remained in Millosheve?*

*B J: Ismet met with a person there whom I identified on the photo. I know nothing about the conversation between Ismet and him.*

*Public Prosecutor: How long did you stay there altogether?*

*B J: 10-15 minutes.*

...

*Public Prosecutor: You identified the person who stayed with you. When did this happen?*

*B J: It was afterwards, I don't know when.*

*Public Prosecutor: What do you mean by afterwards?*

*B J: One or two weeks after I gave my statement. I don't remember exactly.*

*Presiding Judge: You were shown the pictures on the statement, the second one you gave?*

*B J: Yes.*

*Public Prosecutor: Do you remember the name of the person who was together with Ismet?*

*B J: I don't remember his name. He had a nickname. Ismet used it when calling him but I don't remember. It was Qaka as I could hear it on the phone.*

*Presiding Judge: You don't remember or you don't know his name?*

*B J: I don't know and I don't remember. We had nothing to do with him. My cousin had no agreement with him but he had it with Ismet.*

*Public Prosecutor: The person you identified on the picture was Qaka?*

*B J: Yes.*

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It is worth mentioning that B R, the only adult survivor of the tragic trip on the boat, saw the members of the Ademi family arriving at the house in Subotica on the fatal day and afterwards he recognized them once the Hungarian authorities, shortly after the tragedy had occurred, showed him the pictures of their dead bodies.<sup>19</sup>

The agreement with Ismet Rama as to the smuggling and the circumstances of the trip is also confirmed by the testimony of A A, the father of the late Florim Ademi, who added that his son called him from Subotica asking him whether, once he had reached Austria, his father could go there and pick him up.<sup>20</sup>

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<sup>18</sup> Minutes of 3 February 2011, pages 47-48:

*Presiding Judge: Mr. B J, can you recognize in the courtroom whether the person with the nickname Qaka is present? Turn around to the public and look.*

*The witness turns around and looks around the courtroom.*

*B J: the one in the middle based on the photos.*

*The witness B J identifies Avni Hajdari*

*Presiding Judge: you said you saw him for 15 or 20 minutes once*

*B J: that is correct*

*Presiding Judge: is this person you saw with Ismet with the nickname Qaka?*

*B J: yes*

*Presiding Judge: can Avni Hajdari stand up?*

*Avni Hajdari stands up*

*B J: this person is the one I identified in the photograph.*

*Presiding Judge: my question is different I want to know if the person you indicated, that you pointed out in the courtroom, is the person you saw with Ismet and who had the nickname Qaka.*

*B J: yes that is correct.*

*Presiding Judge: are you sure as to this? Yes or no?*

*B J: I wasn't totally sure at the time of my statement but to my mind this was the person.*

<sup>19</sup> Minutes of 2 February 2011, pages 34 – 36:

*Presiding Judge: Do you remember if there was a specific family in this house?*

*B R: Yes.*

*Presiding Judge: Rahim Mirena his wife and three daughters?*

*B R: Yes and others.*

*Presiding Judge: A family from Vushtrri?*

*B R: That was the last family to arrive there, mother father and two boys*

*Presiding Judge: Then how many people were boarding in the pick-up, all the persons from the house?*

*B R: 18 of us plus the driver 19.*

...

*Presiding Judge: Who called you and told you that the corpse of your wife had been found?*

*B R: Hungarian police, I identified not only my wife but also others.*

*Presiding Judge: Were you shown pictures, I am sorry I know it is painful, but I have to ask or the bodies as well*

*B R: The pictures.*

*Presiding Judge: The picture of the wife, you did not see her corpse?*

*B R: I was just shown the photo, I saw her corpse only when she was returned to Kosovo.*

*The witness is shown the pictures in the Binder number 8 of the case file, some of the pictures depict dead bodies of the persons some others are pictures of person represented while they were alive*

*Presiding Judge: I know it is painful, but can you tell the panel if these are the photos that were shown to you when you were interviewed in Kosovo and if the same pictures were shown to you while interviewed by Hungarian authorities?*

*B R: Yes.*

*B R: I saw three of the remains, plus the one of my wife. I did not see the rest*

*Presiding Judge: Because in the statement given to the police it says that you were shown pictures of Ademi family, are these the photos that you were talking about?*

*B R: Yes.*

*Presiding Judge: and there were 4 people, father mother and two children?*

*B R: Yes.*

<sup>20</sup> Minutes of 21 February 2011.

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The existence of an agreement between Florim Ademi and Ismet Rama to smuggle the family of the former outside Kosovo is confirmed by the testimony of B H<sup>21</sup> who also identified through a picture Ismet Rama.<sup>22</sup>

In order to counterbalance the pieces of evidence presented by the prosecutor, the defence offered only the statement given by the defendant. In particular, Hajdari affirmed that he had nothing to do with the Ademi family and knew nothing as to their journey to leave Kosovo.

Again the mere denial of any involvement affirmed by the defendant can not overturn the solid and firm testimony of B J, who clearly identified Hajdari as the person called "Qaka" whom he handed over the Ademi family in order to start their tragic trip outside Kosovo. In addition, for the reasons already explained above, the general credibility of the defendant is severely infirmed.

Therefore the responsibility of the defendant Avni Hajdari (and of Ismet Rama) as to the smuggling of the four members of the Ademi family appears evident and undeniable.

### 2.2.3. The smuggling of Ilir Agushi.

The circumstances of the journey outside Kosovo undertaken by the late I A have been clarified by the testimonies of Agush and SH A, respectively father and brother of the victim and also by the statement given by Blerim Ademaj.

A A stated that he got the telephone number of Shpejtim Ademaj through Rabbit Ajvazi, who he knew had previously managed to send abroad his sister through Shpejtim Ademaj.<sup>23</sup>

The witness also stated that he spoke about the above trip with his son SH A, who was working and residing in Switzerland, and that the latter had informed him about the price for journey (3000 Euros). More specifically, 500 Euros had to be paid in Switzerland to Blerim, the brother of Shpejtim, and 2.500 Euros in Kosovo directly to Shpejtim Ademaj, after Ilir's had reached Switzerland<sup>24</sup> (in a part of the deposition the witness got confused and said that

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<sup>21</sup> Minutes of 3 February 2011, page 21:

*Public Prosecutor: You mentioned Ismet. Who is Ismet?*

*Besim Haxha: I knew him by face. He is from Mitrovica. I don't know anything more about him.*

*Public Prosecutor: You stated that you met him on the day when the agreement was done.*

*Besim Haxha: Yes, I was there on that day, like I have stated in the statement given.*

*Public Prosecutor: You mentioned an agreement. What agreement is in question?*

*Besim Haxha: To take him abroad.*

*Public Prosecutor: Where did this meeting happen, and where was this agreement done?*

*Besim Haxha: At a patisserie in my neighbourhood Tafnik.*

*Public Prosecutor: What did Florim and Ismet talk about?*

*Besim Haxha: They spoke about the issue of going abroad. He said that, "I can send you but I cannot guarantee if you will make it or not." He asked for 7000 Euros from the person, and they agreed to cut the deal for 6500 Euros and that the money would be paid upon arrival. He asked him about how he was going to escape and he said, "Am I going to walk for long?" He said, "Not more than two to three hours."*

<sup>22</sup> Minutes of 3 February 2011, pages 24 – 25.

<sup>23</sup> Minutes of 2 February 2011, page 42.

<sup>24</sup> Minutes of 2 February 2011, page 60:

*Presiding Judge: You added that your son SH got in touch with brother of Shpejtim, and agreed that 500 euros had to be handed to Shpejtim's brother?*

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2.500 Euros were supposed to be given to Shpejtim in Kosovo and 500 Euros to Shpejtim in Switzerland<sup>25</sup>: it is clear that he meant that the part to be paid in Switzerland by Shkelzen was to be given to somebody working for Shpejtim, since it is undisputed that the latter was located in Kosovo. It appears clearly that the person taking care of the interests of Shpejtim Ademaj and Anton Gecaj in Switzerland was Blerim Ademaj).

A A added that he had accompanied his son Ilir to the appointment with Shpejtim Ademaj for his fatal trip outside Kosovo.<sup>26</sup> Finally the witness recognised in front of the panel, with absolute certainty, the defendant Shpejtim Ademaj as the person who he had handed over his son.<sup>27</sup>

In the course of the main trial the defence counsel of Shpejtim Ademaj presented a statement, given in the office of the lawyer, in printed letters bearing the signature of A A and a stamp of an official person certifying the identity of the signer.

The statement, to be considered as a signed written declaration and therefore admissible evidence, mentioned that Agushi had never seen Blerim and Shpejtim Ademaj and had never given them any money in relation to the smuggling of migrants.

It is evident that, when the witness signed the above statement, could not understand what was written on it, as it results clearly from the minutes of his examination which are in utter contradiction with the content of the above statement. It appears as evident that the witness, quite aged, must have misunderstood what was typed on the declaration he signed:

*Witness A A reads the statement to himself*

*A A: Shpejtim's brother came to Gjilan, he called me on the phone and said 'can I come and express my condolences regarding your son?' I said no. he called 3-4 times.*

*Presiding Judge: What is the name of his brother?*

*A A: I do not know, I would recognise him if I saw him*

*Haxhi Millaku: Is he in this courtroom?*

*Presiding Judge: Let's clarify this first.*

*A A: I went to Gjilan and had a cup of coffee with him and told him 'my friend, I gave my son to your brother, I ask him for my son from you.' He kept saying Anton, Anton, I do not know his surname, we had these conversation.*

*Presiding Judge: And then?*

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*A A: Yes, like I said Shpejtim, his brother, the same.*

*Presiding Judge: That the amount of 2,500 euros was supposed to be given to Shpejtim when your son arrives in Switzerland? Is it true?*

*A A: Yes.*

*Presiding Judge: The money was to be given directly to Shpejtim?*

*A A: Yes.*

<sup>25</sup> Minutes of 2 February 2011, page 56:

*A A: SH was to give 500 Euro to Shpejtim once the boy reaches Switzerland.*

*Presiding Judge: Was there other money to be given to anybody else?*

*A A: Once the boy arrives in Switzerland SH was to give Shpejtim 500 euros and when I get a phone call that he arrived there I had to give 2,500 Euro to Shpejtim.*

*Presiding Judge: Through someone or directly to Shpejtim?*

*A A: Directly to Shpejtim.*

<sup>26</sup> Minutes of 2 February 2011, page 43:

*A A: At 08:55 I took him to the school and boarded him into Shpejtim car. Shpejtim asked me if he has 300 euros for food and things and I told him yes. He said take the phone and the clothes back, there was somebody sitting at the front of the car, Shpejtim said : "Get off the passengers seat, because I have to take him to his brother in Switzerland, I promise you this".*

<sup>27</sup> Minutes of 2 February 2011, pages 57-58.

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*A A: Then nothing.*

*Presiding Judge: To whom you gave this statement?*

*A A: At lawyers place.*

*Presiding Judge: You gave this statement in the office of the lawyer?*

*A A: Yes.*

*Presiding Judge: And then you signed it in front of someone that works in the municipal court of Gjilan?*

*A A: Yes.*

*Presiding Judge: And it's true that you have never seen Shpejtim Ademaj?*

*A A: I have never seen Shpejtim Ademaj, I saw him when I placed my son in his car.*

*Presiding Judge: So you saw him in the end?*

*A A: Yes.*

*Presiding Judge: because in this statement you are saying that you never saw Shpejtim Ademaj.*

*A A: Yes and I am still saying so.*

*Presiding Judge: You took your son and you saw Shpejtim Ademaj?*

*A A: Yes.*

*Presiding Judge: So how come you say you never seen him?*

*A A: I saw him when I placed my son in the car not before.*

*Presiding Judge: So you saw him when you placed your son in the car?*

*A A: When my son died his brother came and wanted to express his condolences.*

*Presiding Judge: Did you see Shpejtim Ademaj fro the first time when you sent your son and placed him in the car*

*A A: Yes.<sup>28</sup>*

A further indication of the untrustworthiness of the written statement is that the deposition given by the witness in front of the court is absolutely consistent with the version he gave to the police during the investigation.

The narration of A A is confirmed by the testimony given by his son SH A.

The latter reported that he had a meeting in Switzerland with the brother of Rabit Ajvazi, Kadrush Ajvazi, who told Shkelzen that he had sent his family members to Switzerland through Anton Gecaj and gave him the telephone number of the defendant Blerim Ademaj.<sup>29</sup>

Afterwards the witness had more than one meeting in Switzerland with Blerim and Kadrush; in these meetings the details of the trip were discussed and finally the day of the departure of I Awas arranged.<sup>30</sup>

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<sup>28</sup> Minutes of 2 February 2011, pages 48-50.

<sup>29</sup> Minutes of 3 February 2011, page 4.

<sup>30</sup> Minutes of 3 February 2011, pages 5-6:

*Public Prosecutor: You arranged the meeting; at which location did you agree to meet?*

*SH A: We met in Geneva.*

*Public Prosecutor: Which place?*

*SH A: "Paki."*

*Public Prosecutor: Was this meeting held in the street or a coffee bar?*

*SH A: In a coffee bar.*

*Public Prosecutor: What did you discuss in that meeting?*

*SH A: We talked about bringing them there.*

*Public Prosecutor: Bringing who?*

*SH A: Ilir.*

*Public Prosecutor: Can you tell the Court a bit more? Give details about your discussion.*

*SH A: I only discussed how to bring him to Switzerland.*

*Public Prosecutor: What did they say to you, Kadrush or Blerim?*

*SH A: Kadrush or Blerim? Kadrush told me, "I brought my family to Austria through Anton."*

*Presiding Judge: What is Anton's surname?*

*SH A: I do not know. I have written these things somewhere but I do not remember.*

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Actually Ilir departed on the scheduled day and informed his brother Shkelzen via phone that he had been driven by Shpejtim to the parking of the taxi in Gjilan.

After his departure from Gjilan, Ilir called again his brother and said to him the following: "This Anton is in charge and he will shortly come and take us."<sup>31</sup>

Finally Shkelzen confirmed the version of his father as to the fact that the price of the trip was 3.000 Euros and that 2.500 Euros were to be given in Kosovo and 500 Euros in Switzerland after the arrival of Ilir.

However, as to the person supposed to receive the money in Switzerland the witness gave two different versions:

*Presiding Judge: You said that during the phone call with the loudspeaker on that Anton said to Blerim you had to give the money to the taxi driver who was supposed to bring your brother. Is that correct?*

*SH A: Yes, 500 Euros.*

*Presiding Judge: Here, it is written in the statement you gave to the police on 30<sup>th</sup> October 2009. It is written, "Regarding the event that happened to my brother Ilir Agushi, the payment in the amount of 3000 Euros for the travel of my brother, I had to give Blerim in Switzerland. Then I had to give the money to the person called Anton together with the other person nicknamed Joca, were responsible for this trip." This is what you declared in front of the police, which is completely different to what you said now. How come there is this discrepancy?*

*SH A: At that time I was stressed out and under medication. I was taking medicine.*

*Presiding Judge: Which is the right version?*

*SH A: The right version is that my father had to give 2500 Euros and me 500 Euros.*

*Presiding Judge: To whom?*

*SH A: To the driver who would bring him.*

*Presiding Judge: Your explanation for the difference is that you were taking medicine and were under stress?*

*SH A: Yes.*<sup>32</sup>

From the above minutes, it appears bizarre and unlikely that during the investigation he accused Blerim of having received the money only because the witness was under stress when interviewed in front of the police.

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*Public Prosecutor: Did Kadrush say something else?*

*SH A: Kadrush told me that it's a long way and a hard journey, I brought my family there. Kadrush told me do not make the mistake to make him leave because it's not easy.*

*Public Prosecutor: What did Blerim tell you?*

*SH A: Blerim told me, "Don't hurry. Consider things." Then we decided my brother had taken the decision to come. I also told my father not to make him leave. There is no need for that. He replied that he won't stop. He has taken the decision to leave.*

*Public Prosecutor: Was it decided during that meeting that Ilir would come, or was the decision taken later on.*

*SH A: It was not decided right there.*

*Public Prosecutor: When was the decision taken?*

*SH A: The 10<sup>th</sup>, as far as I know. The 10<sup>th</sup> or the 11<sup>th</sup>, I do not remember precisely, but this was the day he decided to leave.*

*Public Prosecutor: Tell us more about this decision making process and how things unfolded.*

*SH A: I then met with Blerim and we discussed how he had no means to leave so Blerim sent Shpetim to take my brother.*

*Public Prosecutor: Can you repeat again the last sentence?*

*SH A: Shpetim took my brother to Gjilan. Then I do not know who took over.*

*Presiding Judge: Do you know the surname of Shpetim?*

*SH A: Ademi.*

<sup>31</sup> Minutes of 3 February 2011, pages 6-7.

<sup>32</sup> Minutes of 3 February 2011, page 16.

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On the contrary, it appears much more likely that, for reasons unknown to the Court, the witness decided voluntarily to change his version. Therefore the version given during the investigation must be considered as the reliable one.

Further elements of corroboration to the version given by the above witnesses come from the statement given by the defendant Blerim Ademaj.

He spoke about a meeting in Switzerland among him, Kadrush Ajvazi and SH A, the brother of Ilir Agushi. In that meeting, Blerim called Anton Gecaj who assured him that he could organize the smuggling outside Kosovo of the brother of Shkelzen.<sup>33</sup>

Blerim also stated that he had not received any money as to the smuggling of Ilir and that he had not had any material benefit for his intervention with Anton;<sup>34</sup> Blerim also spoke about

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<sup>33</sup> Minutes of 13 May 2011, pages:

*Blerim Ademaj: Like I said, Kadrush is my friend and he used to come to my workplace very often. I work in a nightclub, and Kadrush came and we talked because before that occasion Kadrush had his family move to Switzerland with the help of Anton. And Kadrush no longer had Anton's phone number, and he came to me with SH and asked me if I had Anton's phone number and I said yes. And I said you can do what you want, you can call him and Kadrush wanted to call him with reference to SH and SH suggested I call him as I knew him better. Kadrush told me SH was a good boy and he would pay promptly when the job was done and asked me to tell Anton that he would get his money.*

*Public Prosecutor: In the minutes it was written he would give him the money.*

*Blerim Ademaj: I mean SH.*

*Public Prosecutor: What happened further?*

*Blerim Ademaj: I called Anton by phone and this was witnessed by SH and Kadrush and he asked who was going to give money.*

*Public Prosecutor: Anton asked this?*

*Blerim Ademaj: Yes, I asked Anton whether he was doing any work and he told me he did. I told him that a certain person wanted to bring his brother here and asked if he could bring him all the way to Geneva and he said he could. He said that when he came there he wanted his money on the spot and I told him it was not a problem. He also explained how he would carry out the journey. In Serbia and Hungary they would walk on foot for two hours and the rest by vehicle and the price for this was 3,000 Euros.*

*Public Prosecutor: When you told Anton money was not a problem did you say it because of Kadrush and SH ?*

*Blerim Ademaj: I said it because of Kadrush as I did not know SH. Kadrush had proven to Anton that he was good with his word.*

...

*Public Prosecutor: Do you know what happened to Ilir Agushi, did he leave to come abroad?*

*Blerim Ademaj: I don't know what happened further and only that I sent him the numbers and told him to get ready.*

*Public Prosecutor: Whose phone number did you send?*

*Blerim Ademaj: Ilir's.*

*Public Prosecutor: Who gave you it?*

*Blerim Ademaj: SH.*

<sup>34</sup> Minutes of 13 May 2011, pages 19-20:

*G K: I will start with the last question asked by the Public Prosecutor, and it was regarding the price for one's travel, did you know about these prices earlier or you found out about these prices exactly on that day?*

*Blerim Ademaj: It was then the first time I found out about the prices, I never talked to anyone about his before.*

*G K: For that reason you asked Anton about the price?*

*Blerim Ademaj: Yes.*

*G K: Have you ever been to Austria or Germany?*

*Blerim Ademaj: Never.*

*G K: All the time you have insisted that conversations you had on the phone were on behalf of your friends, SH and I, if they were not good friends of yours would you call Anton and talk about this issue with him?*

*Blerim Ademaj: No.*

*G K: After SH and I approached you; did you try to find out the address of Anton to find his whereabouts?*

*Blerim Ademaj: Yes.*

*G K: What action did you take in order to do this?*

*Blerim Ademaj: When Anton terminated all contacts with us and we understood what happened to them, SH and I asked me 'what can we do to find Anton?' I remember when in the proceedings of changing ownership of the vehicle they requested the copy of the passport and the sale contract, so we went to the driving school in Lausanne and I requested the sales contract of the vehicle X5 and they provided me a copy and that copy I passed to SH. So the photocopy of the passport contained name and surname, address and all details. So he took that copy and came to Kosovo.*

*G K: Does that mean that when you found out that you were deceived by Anton from the first day you tried to contribute to Anton being apprehended?*

*Blerim Ademaj: Yes.*

*G K: Do I understand it that you did this in order to prove that you are innocent and you have nothing to do with this incident?*

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the role of his brother Shpejtim in the episode, specifying that his brother just drove people to Gjilan, without knowing that actually they were migrants to be smuggled outside Kosovo.

Blerim also affirmed the money his brother usually received from Anton Gecaj for his services was around 200-300 hundred Euros for each trip<sup>35</sup> (this is also the role that Shpejtim Ademaj tailored for himself when he gave his version of the events).<sup>36</sup>

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*Blerim Ademaj: When I found out what happened I told SH , "I cannot come with you to find Anton because I didn't have documentation". So I gave him those documents and SH went to Hungary and he gave there in Hungary a statement regarding Anton. Then he came to Kosovo and started it here.*

*G K: You stated always that regarding SH and I you just tried to help them with no interest in that, but did you have any interest in gaining any benefit from Anton?*

*Blerim Ademaj: I did not have any interest neither from I nor SH , not even from Anton and when we called Anton he gave them the prices of 3,000 each. And they could not give me anything anyhow because that price they had to pay to Anton. I also told them that I don't need any money and I did not have any interest in that deal.*

<sup>35</sup> Minutes of 13 May 2011, pages 35-37:

*Presiding Judge: Was your brother doing any kind of job for Anton as far as you know?*

*Blerim Ademaj: I only overheard when he spoke on the phone as I only come to Kosovo once per year.*

*Presiding Judge: What did you hear?*

*Blerim Ademaj: He told me Anton had called and asked him to take some people from Gjilan.*

*Haxhi Millaku: Not some people, some one. Can you repeat please?*

*Presiding Judge: Let him finish first.*

*Blerim Ademaj: It could have been one or one hundred.*

*Presiding Judge: Was what Shpejtim Ademaj was saying related to one person or more than one?*

*Blerim Ademaj: I only overheard him speaking on the phone. He said he would give me 200 Euros. And for your information we don't need 200 Euros, or any other amount.*

*Presiding Judge: Gave who?*

*Blerim Ademaj: That he would give me 200 Euros, referring to later.*

*Presiding Judge: Anton will give to Shpejtim?*

*Blerim Ademaj: Yes.*

*Presiding Judge: Because when you were interviewed in front of the Public Prosecutor, you said the following, if there are issues on the translation Defense Counsels, let me finish first. 'When I asked Shpejtim about it, he told me he was helping some poor people, who were having hard times and was sending them to Gjilan'.*

*Blerim Ademaj: Yes.*

*Presiding Judge: It is like this?*

*Blerim Ademaj: Yes.*

*Presiding Judge: 'When Anton will tell me and Anton will give me 200 Euros'.*

*Blerim Ademaj: Referring to the future.*

*Presiding Judge: 'And Anton would give me 200 Euros for a group of them'.*

*Blerim Ademaj: Actually for a vehicle.*

*Presiding Judge: For a trip you mean?*

*Blerim Ademaj: For one journey.*

*Presiding Judge: In fact you specified it means he would get 200 Euros for one car ride to Gjilan.*

*Blerim Ademaj: Yes.*

*Presiding Judge: Was this happening once or more than once?*

*Blerim Ademaj: I cannot know this as I was not in Kosovo, I only overheard this on the phone.*

*Presiding Judge: So Shpejtim didn't specify if he was doing this job just once or more than once?*

*Blerim Ademaj: I don't know, I only told him that he didn't need this business, and he told me he was helping those in need as those who have everything stayed in Kosovo and not go to Switzerland.*

*Presiding Judge: About the brother of Ilir Agushi, do you know if Shpejtim picked up Ilir?*

*Blerim Ademaj: After the incident, or tragedy, Shpejtim told me that Anton had not told me he was going to call Shpejtim to do the job, but Shpejtim told me he had taken Ilir to Gjilan. I don't know from where though.*

<sup>36</sup> Minutes of 15 April 2011, page 8:

*Shpejtim Ademaj: I need just a moment to explain things further. During the trip to Gjilan, I and Lavdi called asking me whether I gave the wife €300. During the journey to Gjilan the woman that was sitting in the back told me you will pick up someone else who will travel with me together. She said that they will be travelling together. I don't remember whether I spoke to Lavdi or I again. That woman had the telephone number of that guy. We spoke to the young man that was going to travel together with that woman. He told me of his whereabouts. He told me "I am in a Zhekur village". There was a monument, we met there. The man was accompanied with someone else. He got in the front seat and I had no conversation with anyone at that moment. I remember he had a back pack. He asked me whether I should put the bag at the back of the vehicle. I said to him "do whatever you want". I made my way to Gjilan. As far as the person accompanying him, I didn't say a word to them. We did not even exchange a greeting.*

*Public Prosecutor: Given that you mention this young man. Do you remember whether anyone mentioned the name of this young man?*

*Shpejtim Ademaj: I's wife mentioned something about him, I don't know if she knew him or not. But those two told me that this young man will travel with the wife of I.*

*Public Prosecutor: Did anyone mention the names?*

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Actually the statements given by A and SH A clarify that the role of Shpejtim Ademaj was not the one indicated by the Ademaj brothers, since Shpejtim was supposed to receive 2.500 Euros in Kosovo by A, after Ilir had reached Switzerland.

Such an amount of money makes it clear what the purpose of the trip was and since it is undisputed that Anton Gecaj was the prominent person as to the smuggling of Ilir, it appears very likely that the money (or part of it) had finally to be given to Anton.

Also the role of Blerim appears to be different from what he stated as it results from the confrontation made by the panel of the witness SH A with the statement given by him during the investigation where it is clearly affirmed that Blerim was supposed to receive the part of the money to be paid in Switzerland.

Furthermore, besides the testimony of A A and the statement given to the police by SH A, it is the commonsense itself which suggests that it is absolutely unlikely that Blerim accepted to involve himself in an activity such as the smuggling of migrants, which he knew it was not legal, without having any material benefit.

It must therefore be inferred that Blerim, and not the unknown taxi driver described by Shkelzen in front of the court, was the person supposed to receive in Switzerland part of the price for the smuggling of I A and very likely to hand over the money (or part of it) to Anton.

In conclusion, from the above indicated pieces of evidence the responsibility of the defendants Shpetim and Blerim Ademaj (and of Anton Gecaj and of the person called Joca) as to the smuggling of I A appears evident and undeniable.

A criminal report will be filed against SH A as to the crime of False Statements contrary to Article 307 of the CCK.

### **2.2.4. The smuggling of Lindita Krasniqi, Agnesa Krasniqi and Anita Krasniqi.**

The circumstances of the journey outside Kosovo undertaken by the late Lindita Krasniqi, Agnesa Krasniqi and Anita Krasniqi (respectively wife and daughters of I K) have been clarified by the testimonies of I K, SH K and also by the statement given by Blerim Ademaj.

I K stated that he had contacted Blerim Ademaj through his friend Lavdim Thaqi and the three of them had a meeting in Geneva. In the above meeting I and Blerim agreed the fashion and the price (10.000 Swiss Francs) in order to smuggle to Switzerland the family of I K.<sup>37</sup>

The witness affirmed clearly that the money was supposed to be given to Blerim.<sup>38</sup>

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*Shpejtim Ademaj: After I read his name in the papers I realised his name was Ilir but at the concrete case I did not know who he was.*

*Public Prosecutor: So you took them in Gjilan, where in Gjilan?*

*Shpejtim Ademaj: At Shaqa taxi place, there is a petrol station there too.*

<sup>37</sup> Minutes of 23 February 2011, pages 2-3.

<sup>38</sup> Minutes of 23 February 2011, pages 16-17:

*Gëzim Kollçaku: The late members of your family were supposed to go to Switzerland. Who were you supposed to give the money to, Blerim, or some driver who would bring your relatives?*

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Blerim also informed I about the other individuals (Anton and Joca) involved in the various parts of the journey from Kosovo to Switzerland.<sup>39</sup>

The day of the departure from Kosovo of the family of I K was agreed between Blerim and Shpejtim Ademaj<sup>40</sup> and that day SH K (the brother of I ) accompanied his nieces and sister in law to the place of the appointment with Shpejtim Ademaj and handed them over to him.<sup>41</sup>

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*I K: I had no business with anyone else but Blerim.*

*Presiding Judge: So you were supposed to give the money to Blerim?*

*I K: Yes.*

<sup>39</sup> Minutes of 23 February 2011, pages 21-22:

*Presiding Judge: Did Blerim explain to you how the trip was supposed to be done, the part in Kosovo and the part in Serbia. Did he mention the names of the persons in charge for some portions of the trip?*

*I K: No.*

*Presiding Judge: Because in front of the police you said that after you learned that something wrong had happened, you went to Blerim, more specifically to his restaurant in Geneva, and you asked how the trip worked, and the answer of Blerim was as follows: "Shpejtim sends them to the border with Serbia, from Serbia it is Joca, whereas Anton takes them from Subotica to Hungary; from Hungary to Vienna I don't know who takes them. But I (Blerim) was supposed to go and pick them up in Vienna".*

*Hahi Millaku: In the Albanian version from a grammatical and logical sense it results that the part where it is stated "from Hungary to Vienna I don't know who is taking them—but I was supposed to go and pick them up in Vienna" this calls for a clarification. Is the witness speaking of himself as the person who is supposed to do the pick up in Vienna, or about Blerim?*

*I K: Blerim had to bring my children to Switzerland and take the money. He told me that from Vienna they would travel by train.*

*Presiding Judge: So you say that from Vienna they had to travel by train to Switzerland?*

*I K: Yes.*

*Presiding Judge: And once in Switzerland who was supposed to pick them up?*

*I K: Blerim would bring them to Lausanne.*

*Presiding Judge: You live in Lausanne, Blerim lives in Geneva and he was supposed to pick them up, since they were supposed to arrive in Lausanne?*

*I K: The important thing is he had to bring them to Lausanne.*

*Presiding Judge: You said that from Vienna to Switzerland they were supposed to travel by train.*

*I K: I don't know where in Switzerland they were supposed to arrive.*

*Presiding Judge: But the deal is they had to be delivered to you in Lausanne by Blerim?*

*I K: Yes.*

*Presiding Judge: What about these names you mentioned in your statement to the police? Shpejtim Ademaj sends them to the border of Serbia, from Serbia it is Joca and Anton takes them from Subotica to Hungary.*

*I K: This is what Blerim told me.*

*Presiding Judge: Are these the words Blerim used?*

*I K: Yes.*

<sup>40</sup> Minutes of 23 February 2011, page 4:

*Public Prosecutor: Did you agree on the date and when they were supposed to leave home and how?*

*I K: I talked to Blerim Ademaj on the phone and he informed me about the day that they would leave and then Blerim Ademaj discussed this with his brother Shpejtim Ademaj.*

*Public Prosecutor: Was it Blerim Ademaj who told you that he talked to his brother Shpejtim Ademaj, or did you hear him talking to his brother?*

*I K: Blerim Ademaj talked to his brother and they agreed on that.*

<sup>41</sup> Minutes of 23 February 2011, page 4:

*Public Prosecutor: Can you tell us how your wife and children left home that day?*

*I K: My brother took them with his car to Rahovec.*

*Public Prosecutor: Who told your brother to do so?*

*I K: Shpejtim Ademaj.*

*Public Prosecutor: How do you know that Shpejtim Ademaj told him to do so, did someone tell you about this?*

*I K: My brother told me that he handed over my wife and two children to him.*

*Presiding Judge: The name of your brother is?*

*I K: Shpejtim Krasniqi.*

*Public Prosecutor: Which means that your brother Shpejtim Krasniqi to Shpejtim Ademaj, correct?*

*I K: Yes.*

*Public Prosecutor: I just wanted to clarify since there are two Shpejtims. What happened after Shpejtim took them, were you in contact with them?*

*I K: Yes. I was in contact with Shpejtim Ademaj. I just spoke two words with him and he said that everything was alright and I had no further contact with him.*

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Soon after the tragedy, when the circumstances of it were still unclear, I was contacted by Blerim Ademaj who told him that in case something had gone wrong he would have borne full responsibility.

According to the witness, after some time a member of the Ademaj family offered I K money which he refused (even though it is unclear whether it was a sort of reimbursement for what had happened or an attempt to convince the witness not to accuse the members of the Ademaj family in front of the judicial authorities).<sup>42</sup>

The testimony of I is corroborated by the narration of his brother Shpejtim who recognized in front of the court Shpejtim Ademaj<sup>43</sup> and confirmed the circumstance of the handing over of the family of I to the above defendant, specifying that the meeting with Ademaj occurred in Malisheva where he saw Lendita, Agnesa and Anita boarding the car of the defendant.<sup>44</sup>

Further elements of corroboration to the version given by the above witnesses come from the statement given by Blerim Ademaj. He spoke about a meeting in Switzerland among him, Lavdi Thaqi and I K. In that meeting Blerim called Anton Gecaj who assured that he could organize the smuggling of the family of I. According to Blerim his intervention was limited merely to putting in contact I and Anton, without having any personal benefit.<sup>45</sup>

<sup>42</sup> Minutes of 23 February 2011, pages 5-6:

*I K: We had contact with Blerim Ademaj after the incident occurred. He called me at 7 in the morning, we had a coffee.*

*Public Prosecutor: So that means that you met?*

*I K: Yes. We had a coffee. We talked about it and he said: "In any case I am here and take responsibility for everything."*

*Presiding Judge: When you spoke to Blerim Ademaj did you already know that your wife and two children had drowned in the river?*

*I K: No I did not know, I only knew that her phone was not working anymore, and later on I learned about it.*

*Presiding Judge: So why was Blerim Ademaj taking responsibility for everything?*

*I K: He said that if something has happened he is there and would answer to it.*

*Public Prosecutor: What happened after this meeting with Blerim Ademaj, when did you learn about the incident?*

*I K: After this meeting I took a flight home and had no further contact with Blerim Ademaj.*

...

*I K: I have a question because the brother of Shpejtim Ademaj and Blerim Ademaj sent people to my house.*

*Presiding Judge: Who was this?*

*I K: I do not know his name.*

*I K: He sent people, he offered me money and offered to furnish and build my house.*

*Presiding Judge: In exchange of what, why did he offer you this money?*

*I K: Allegedly to help me in relation to this case.*

*Presiding Judge: Is this related to your testimony or is it related to what happened with your family?*

*I K: I do not know what his intention was, but I did not accept anything.*

<sup>43</sup> Minutes of 10 February 2011, pages 6-7:

*Public Prosecutor: Can you describe Shpejtim, you met him that day twice, in Rahovec near ETC and in Malisheva?*

*Shpejtim Krasniqi: He was smartly dressed.*

*Public Prosecutor: What colour hair did he have?*

*Shpejtim Krasniqi: Black.*

*Public Prosecutor: What was his height?*

*Shpejtim Krasniqi: Not very tall.*

*Public Prosecutor: Was he chubby, slim?*

*Shpejtim Krasniqi: Normal.*

*Public Prosecutor: If you are allowed to turn around and identify this person, would you be able to?*

*Shpejtim Krasniqi: I believe so.*

*Witness turns around and looks at the defendant.*

*Witness points to Shpejtim Ademaj*

*Presiding Judge: Shpejtim Ademaj please stand up. Is this the person?*

*Shpejtim Krasniqi: Yes.*

<sup>44</sup> Minutes of 10 February 2011, pages 3-6.

<sup>45</sup> Minutes of 13 May 2011, pages 12 – 14:

*Public Prosecutor: Can we refer to another person; I K, do you know him?*

*Blerim Ademaj: Yes.*

*Public Prosecutor: How do you know him?*

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In the course of the main trial, the defence counsel of Shpejtim Ademaj presented a statement signed by Lavdi Thaqi. The statement, to be considered as a signed written declaration and therefore admissible evidence, says that the money regarding the smuggling of the Krasniqi family was supposed to be given to Anton Gecaj and that Blerim had nothing to do with the reception of the above money.

The court could not summon Lavdi Thaqi, since his whereabouts in Switzerland were unknown. In any case, the credibility to be given to such a statement without the possibility to examine the witness and verify his reliability is obviously very little compared to the coherent and reliable deposition given by I K which is moreover utterly consistent with the statement he gave during the investigation.

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*Blerim Ademaj: I knew him through Lavdi Thaqi.*

*Public Prosecutor: Who is that?*

*Blerim Ademaj: A friend of mine.*

*Public Prosecutor: A friend for how long?*

*Blerim Ademaj: A long time.*

*Public Prosecutor: What was the reason for you to meet I through Lavdi?*

*Blerim Ademaj: To give Anton's number to him and tell him of the route and find a solution to his problem.*

*Public Prosecutor: What problem did he have?*

*Blerim Ademaj: He wanted to bring his wife and children to Switzerland.*

*Public Prosecutor: Is this why he asked for Anton's number?*

*Blerim Ademaj: Yes.*

*Public Prosecutor: Could you tell us whether you gave him the number or contacted Anton regarding I's family?*

*Blerim Ademaj: I gave I the number and he told me to call him myself as he was my friend. I called Anton and told him that a wife of a friend of mine, along with two children, wants to come to Switzerland. He asked me who would pay for them and I told him that Lavdi was some sort of guarantor and if he did not pay you, he would. I asked him the route and he told me as always through Serbia, Hungary and Switzerland. He has if they could walk for two hours. In the presence of I I asked Anton if they could walk for two hours and he said yes. Anton asked in the presence of I if I wife and kids could walk for two hours and I said they could.*

*Public Prosecutor: Do you know when I's wife and kids departed?*

*Blerim Ademaj: No.*

*Public Prosecutor: Do you know when I departed?*

*Blerim Ademaj: No.*

*Public Prosecutor: Do you know what happened to these persons afterwards?*

*Blerim Ademaj: That night when it happened he called and said they were apprehended by police in Hungary.*

*Public Prosecutor: What happened that night?*

*Blerim Ademaj: The tragedy.*

*Presiding Judge: Who called?*

*Blerim Ademaj: Anton called me. I and Lavdi both had Anton's number but none of them called him, since I did.*

*Public Prosecutor: What did Anton tell you?*

*Blerim Ademaj: He asked me to tell them they were apprehended by Hungarian police and could be held there for a week.*

*Presiding Judge: There was no contact between I, Lavdi and Anton; you were the only contact?*

*Blerim Ademaj: Yes because he had no way to inform them of the apprehension.*

*Presiding Judge: But from the beginning you were the only person with contacts to Anton?*

*Blerim Ademaj: Yes.*

...

*Presiding Judge: But in any case the trip was arranged through you?*

*Blerim Ademaj: No, I was only there to tell them what he told me and then I gave Anton's number to him and I called Anton.*

...

*Public Prosecutor: You said that Anton called you after the tragedy and told you that they were apprehended?*

*Blerim Ademaj: Yes.*

*Public Prosecutor: Did you inform Kadrush and Lavdi of what had happened?*

*Blerim Ademaj: Yes, immediately.*

*Public Prosecutor: Did you meet Kadrush, I or Lavdi after the event?*

*Blerim Ademaj: I received the information at 3.00a.m. I called Lavdi and then he came to my workplace. At either 7.00a.m. or 8.00a.m we went to Lausanne.*

*Public Prosecutor: At 3.00a.m. you were at work?*

*Blerim Ademaj: Yes.*

*Presiding Judge: Who called you then?*

*Blerim Ademaj: Anton. We went to Lausanne and told I his family was apprehended in Hungary. I mean me and Lavdi together. We told him that he called us and said they were apprehended by the police. Then I informed Kadrush who came with SH and I told them they were apprehended by police.*

Also Shpejtim Ademaj gave his version of the episode saying that he drove to Gjilan the wife and the two children of I K just to do a favour to his friend Lavdi Thaqi, but without having any material benefit for his intervention.<sup>46</sup>

However the solid and coherent testimony of I K clarified what the role of the two brothers in the smuggling was (Blerim established the price, and the day of departure was scheduled by the two brothers). This makes clear that both of them were working for Anton, that they were perfectly aware of the smuggling and that they were gaining a material benefit from their activity).

Otherwise the sense of the frantic activity of Blerim as to the trip of the family of I K remains inexplicable.

From the above indicated pieces of evidence, the responsibility of the defendants Shpetim and Blerim Ademaj (and of Anton Gecaj and the person called Joca) as to the smuggling of Lindita Krasniqi, Agnesa Krasniqi and Anita Krasniqi appears evident and undeniable.

#### 2.2.5. The smuggling of Brahim Koci.

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<sup>46</sup> Minutes of 15 April 2011, pages 6-8:

*Public Prosecutor: Does the Krasniqi surname mean anything to you?*

*Shpejtim Ademaj: There are so many Krasniqis.*

*Public Prosecutor: I K?*

*Shpejtim Ademaj: Yes.*

*Public Prosecutor: Do you know this person?*

*Shpejtim Ademaj: During the conversation with Lavdije, he reminded me that we had got together in Switzerland and then I kind of knew who he was.*

*Presiding Judge: You mean Lavdi Thaqi?*

*Shpejtim Ademaj: Yes. He lives in Switzerland.*

*Public Prosecutor: Did you know the family of I K?*

*Shpejtim Ademaj: No.*

*Public Prosecutor: Did you ever have the chance to meet or see them?*

*Shpejtim Ademaj: Yes. I have seen them.*

*Public Prosecutor: Could you tell us in what circumstances you saw them?*

*Shpejtim Ademaj: Given that Lavdi and I had agreed with Anton that his wife will go to Austria or Switzerland. Lavdi and I called me. I am not certain if it was the night before or on that day and they told me can you give €300 to I's wife. Yes, it was agreed that I would give €300 to her.*

*Presiding Judge: I's wife was in Kosovo?*

*Shpejtim Ademaj: Yes. Correct.*

*Public Prosecutor: Did you ever meet I's wife?*

*Shpejtim Ademaj: Yes.*

*Public Prosecutor: When did you meet her?*

*Shpejtim Ademaj: I don't know the date, it was dark and raining.*

*Public Prosecutor: Where did you meet her?*

*Shpejtim Ademaj: I met her at the ETC in Rahovec, in the village Xerx. I did not discuss anything there with her. At home I had two workers and they were in the car with me and I arranged to meet in Malisheva. I got €300 from the cash machine. Then Lavdi called me and asked me to take them to Gjilan as the father and the brother could not as they had an old minivan. I met at Raffaisen Bank with I's brother whom I realised who he was when I saw him in this trial.*

*Public Prosecutor: What happened when you met?*

*Shpejtim Ademaj: His wife and the two children got on in Malisheva.*

*Public Prosecutor: Got on where?*

*Shpejtim Ademaj: In the car, in my car in Malisheva.*

*Public Prosecutor: Where did you take them?*

*Shpejtim Ademaj: In Gjilan.*

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The circumstances of the journey outside Kosovo undertaken by the late Brahim Koci have been clarified by the testimony of his brother R K:

*Public Prosecutor: The late Brahim was your brother?*

*R K: Yes.*

*Public Prosecutor: Where was the late Brahim going on the critical day?*

*R K: To Germany.*

*Public Prosecutor: When was this?*

*R K: 11 October 2009. October 2009.*

*Public Prosecutor: Tell us how your late brother Brahim left the house.*

*R K: By car, to Gjakova.*

*Public Prosecutor: Who drove the car?*

*R K: I did.*

*Public Prosecutor: Until where in town did you go together?*

*R K: From the village, to the town of Gjakova.*

*Public Prosecutor: At which location?*

*R K: Café called Roma, close to hotel Pashtrik.*

*Public Prosecutor: What was your intention, why did you go there?*

*R K: We were going to meet Shpejtim Ademaj.*

*Public Prosecutor: Why were you supposed to meet him?*

*R K: My brother wanted to go abroad and he came into contact with him.*

*Public Prosecutor: Did you meet Shpejtim?*

*R K: Yes.*

*Public Prosecutor: Can you describe the meeting?*

*R K: It was a 5-10 minute meeting.*

*Public Prosecutor: What did you talk about at that meeting?*

*R K: My brother said he wants to go abroad; Shpejtim told him "I will take you to Germany in 24 hrs."*

*Public Prosecutor: Did you talk about anything else?*

*R K: We talked about the fact that he had to walk for half an hour or an hour. We didn't talk about the river at all. He said "you will walk for 1 and half hour and there is no river anywhere"*

*Public Prosecutor: Did you talk about anything else?*

*R K: Then he took my brother and I didn't talk to Shpejtim anymore, only later. Once, when my brother reached Gjilan, he called me and told me that they exchanged cars. "They put us in a van," he told me.*

...

*Public Prosecutor: In the meeting with Shpejtim did you discuss money?*

*R K: Yes.*

*Public Prosecutor: What did you talk about in regards to money?*

*R K: 300-500 on him, the rest when he arrives would be given by my brother, or me here.*

*Public Prosecutor: What do you mean when you say on him?*

*R K: To have it on you, to have it for the road. To cross the border, I don't know what he needed it for.*

*Public Prosecutor: Who said to whom that you have to have the money on you?*

*R K: Shpejtim told my brother "you will need 300-500 for the road"*

*Presiding Judge: so your brother had to have the money?*

*R K: Yes.*

*Public Prosecutor: What was the other amount?*

*R K: 3000€.*

*Public Prosecutor: Who was supposed to pay the 3000€ and when?*

*R K: When my brother arrives there, I was supposed to give it to him here or send it to wherever he tells me.*

...

*Public Prosecutor: Since you spent 5-10 min with Shpejtim, would you be able to recognise him if you saw him?*

*R K: Yes.*

...

*Public Prosecutor: Please turn around and check whether you see the person here.*

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*The witness turns and points at the defendant Shpejtim Ademaj.*

*Presiding Judge: Was he the person you saw on the day you accompanied your brother in order to leave for Germany?*

*R K: Yes. I also spoke to him after the tragedy.<sup>47</sup>*

The testimony of R K undeniably points the finger at the involvement and the responsibility of Shpetim Ademaj as to the smuggling of the late Brahim Koci and clarifies that he was not an unaware driver working for Anton Gecaj without knowing the purposes of the trips of the people he drove to Gjilan (this version was repeated by Ademaj also as to his involvement in the trip of Koci).<sup>48</sup>

Also the witness G U spoke about the trip undertaken by the victim Brahim Koci, stating that the only intervention of the defendant Shpejtim Ademaj in the fatal trip of the victim was just a lift to Gjilan and that he had nothing to do as to the continuation of the trip.

However from the narration of the above witness himself, an intervention of Ademaj confined to a simple lift to Gjilan appears implausible, since he was contacted directly by G U in order to help Brahim Koci to leave Kosovo illegally. He surely had to know what the real purpose of the trip was.

Furthermore the real range of the intervention in the episode of Ademaj emerges from the very words of U when he states that Ademaj had already smuggled other migrants and that the day of the departure of Koci was communicated to U by Ademaj.

Really a little bit too much for an unaware driver.

*G U: the late Brahim. And then my sister in law said Shpejtim has some connections regarding this as he once brought a brother in law of mine into the country. And that's when I got his phone number and tried to contact him. I could not reach him for some two weeks. His phone number was not right. It was a coincidence that after some two weeks I called him up and he answered. I told him my maternal cousin was insisting I call him. The night I spoke to him he said, if he wants to go, then tonight. That night I called my maternal cousin and told him to go out because I will come out too and we can meet at Hotel Pashtrik in Gjakova.*

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<sup>47</sup> Minutes of 9 February 2011, pages 2-6.

<sup>48</sup> Minutes of 15 April 2011, page 9:

*Public Prosecutor: Do you remember a person called Brahim Koci?*

*Shpejtim Ademaj: Now yes.*

*Public Prosecutor: What do you recall about this person?*

*Shpejtim Ademaj: Now that I know his name I remember well, I also know Gezim Uka who is family friend for about 20 years. Gezim Uka's brother is married to the sister of Haxhi and Sejdi. Her name is Ajete who is married to her husband who is in Germany. Gezim knew well about the situation in relation how Sejdi and Haxh got through. They got in touch and communicated with cousin Ajete and asked for my number so he can find out how they managed to go abroad. He knew that I knew Anton. He called me often, and for instance he would like to go to Germany with my friend.*

*Public Prosecutor: Who is this friend of yours?*

*Shpejtim Ademaj: Anton.*

*Public Prosecutor: What happened after?*

*Shpejtim Ademaj: He called me several times and I said that when he comes here I will call you. But he insisted and called frequently as he wanted this to happen as soon as possible. I told him on the telephone that "I will let you know as soon as he comes". I spoke to Anton on the telephone and he told me he would come to Kosovo. I told Gezim that this would happen quickly. He told me that he was going to his brother in Germany. That evening Anton was in Kosovo. We met in Gjakova and told him that Gezim was a mate of mine and sort out and fix this job for him as he would give the money in Germany. I knew he would not lie to me as he was a friend of mine. He left on the same evening as I's wife left.*

*Public Prosecutor: When you say left, how and from where did she leave?*

*Shpejtim Ademaj: From Hotel Prashitka where café Roma is. We met there and I continued with my route to Gjilan.*

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*Presiding Judge: are you speaking about calling Shpejtim Ademaj?*

*G U: yes.<sup>49</sup>*

**2.2.6. The smuggling of the Mirena family.**

The circumstances of the journey outside Kosovo undertaken by Rrahim and Valbona Mirena and their daughters Doruntina, Dafina and Agnesa have been clarified by the testimonies of Z M K, sister of the late Rrahim, of H C, brother of the late Valbona, and by the statement of the defendant Xhemajl Halilaj.

The circumstances which preceded the journey outside Kosovo of the Mirena family have been clarified by the statement given by Xhemajl Halilaj.

He explained that he was contacted via phone by Rahim Mirena and, even though he did not know him, he agreed to meet him in Drenas at the restaurant 'Peshkopija'.

There Mirena exposed to the defendant that he intended to go abroad to be cured and asked Halilaj if he knew Fatmir Pajaziti and if he could talk to Pajaziti as to the possibility to leave Kosovo. Mirena also asked Halilaj if he could hold the money related to the price of the journey until the trip had been completed.

According to Halilaj, Mirena made him a further request:

*Xhemajl Halilaj: Later on. Request number two of Rahim was whether I could reduce the price, as he was very poor. I said to him that 'as long as I speak to Fatmir, I can't say anything because I can't say anything.' After two days, I met Fatmir Pajaziti, in Prishtina, and I told him all the messages of Rahim, to him. His answer that he was not the only one that was dealing with such business because he must see with the others what to do because now I quote what Fatmir told me: 'those mates want the money at the petrol station'.*

...

*Public Prosecutor: I meant what was the agreement as to the money?*

*Xhemajl Halilaj: Since Fatmir was a family friend, and I still consider him as such, he told me: 'since I believe you, Rahim can leave the money with you', because Fatmir told me that if Rahim succeeds to go to Vienna then I will have to find my money and to put money down myself. With full trust, I can say to the court here, that Fatmir Pajaziti was not able to depart all those people but I can't say anything in relation to this.*

*Presiding Judge: What do you mean with 'to put money down myself'?*

*Xhemajl Halilaj: Rahim does not find the money then I will have to put them down myself.*

*Presiding Judge: So, that money was kept as a guarantee?*

*Xhemajl Halilaj: Yes.*

*Public Prosecutor: Did you speak about the amount of money?*

*Xhemajl Halilaj: Can you be clearer?*

*Public Prosecutor: What was the money that was due to be given by Rahim?*

*Xhemajl Halilaj: The initial amount was €8000 with the promise that Fatmir Pajaziti told me that he wouldn't have a single benefit in all that, anyway the amount was €8000.*

*Public Prosecutor: Did you agree with Rahim that you would keep the money?*

*Xhemajl Halilaj: Yes.<sup>50</sup>*

Halilaj also stated that, on 12 October 2009, Mirena came to his place and gave him 8.000 Euros (this was the price for the smuggling of the entire family). Halilaj informed Mirena

<sup>49</sup> Minutes of 4 March 2011, page 3.

<sup>50</sup> Minutes of 18 April 2011, page 5.

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that the following day he and his family were supposed to be at the restaurant "Shaqa", in Gjillan to start the trip in order to leave Kosovo.

And actually the family indeed reached the indicated place:

*Xhemajl Halilaj: As I said, how Rahim Mirena went to Gjilan, I don't know. The purpose that I went to Gjilan was to tell Fatmir Pajaziti that the money was with me.*

*Public Prosecutor: Once you arrived in Gjilan, did you meet with Fatmir Pajaziti?*

*Xhemajl Halilaj: When I arrived in Gjilan, Fatmir Pajaziti was in a restaurant called 'Shaqa'. We had a coffee there and I still remember how he was dressed. While Rahim Mirena, his wife and his children, were in front of the restaurant, and I can't say that they were with Fatmir Pajaziti.*

*Presiding Judge: So, Fatmir Pajaziti was in the restaurant, and Rahim Mirena was outside the restaurant?*

*Xhemajl Halilaj: At the entrance.*

*Presiding Judge: Did you talk to Rahim Mirena?*

*Xhemajl Halilaj: Yes, and asked 'why don't you go inside' and he said that his children wouldn't get inside.*

*Presiding Judge: What were they doing outside?*

*Xhemajl Halilaj: Waiting.*

*Presiding Judge: For what?*

*Xhemajl Halilaj: To set off.*

*Presiding Judge: Where?*

*Xhemajl Halilaj: To go abroad.*

*Public Prosecutor: When you met Fatmir, what happened then, did you sit together? What happened?*

*Xhemajl Halilaj: Once I met Fatmir, I sat with him on the table and I ordered a coffee, and told him that Rahim Mirena with his wife and children were waiting outside, Fatmir told me 'now the car will come and pick them up'.*

*Public Prosecutor: On that occasion, did you speak again about the money?*

*Xhemajl Halilaj: I told him that the money was with me and I told him 'if you want come and see the money but I am not going to give the money to you as long as they don't arrive at the place, until Rahim gives me a call.'<sup>51</sup>*

After a few minutes a Golf II arrived and the family boarded the car<sup>52</sup>.

After they left, Halilaj contacted Mirena only once:

*Public Prosecutor: After that meeting with Rahim Mirena or after Rahim Mirena set off, did you have any other contacts with Rahim Mirena?*

*Xhemajl Halilaj: Yes, I did.*

*Public Prosecutor: When?*

*Xhemajl Halilaj: On the 14<sup>th</sup> October 2009, it was in the evening, I don't recall the exact time, it was from 19.30 or 20.00 hours. Rahim called me via telephone, the prefix of the telephone was 062, but I don't remember the rest of the numbers, those numbers should be in my phone, which police confiscated it.*

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<sup>51</sup> Minutes of 18 April 2011, page 7-8.

<sup>52</sup> Minutes of 18 April 2011, page 17:

*Xhemajl Halilaj: I went to my own car in the parking lot; from here I saw the car that picked up the family from the road a few metres along. Fatmir was also at the car.*

*Presiding Judge: What do you mean at the car?*

*Xhemajl Halilaj: Near the car, he spoke to the person, what they spoke about I don't know. Fatmir did not enter the car.*

*Presiding Judge: So you saw Fatmir talking to the driver of the Golf?*

*Xhemajl Halilaj: I wish this was not the truth but it is.*

*Presiding Judge: After or before you had the coffee?*

*Xhemajl Halilaj: After.*

*Presiding Judge: Did you see the family of Rrahim Mirena enter the car or not?*

*Xhemajl Halilaj: Yes. I greeted them at the parking lot.*

*Presiding Judge: Did you see them enter the car?*

*Xhemajl Halilaj: Yes.*

*Presiding Judge: And Fatmir Pajaziti, what was he doing while they were entering the car?*

*Xhemajl Halilaj: Fatmir Pajaziti was talking to the driver of the car.*

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*Public Prosecutor: He called you?*

*Xhemajl Halilaj: Yes, Rahim called me.*

*Public Prosecutor: What did he tell you?*

*Xhemajl Halilaj: Rahim told me: 'tonight we set off and arrived in Subotica very well.' I wished him nice journey. I didn't know what else to tell him.*

*Public Prosecutor: Was that the last time that you spoke to Rahim Mirena?*

*Xhemajl Halilaj: After that contact, I never contacted him again.<sup>53</sup>*

Halilaj also specified that Pajaziti seemed to be informed as to the details of the trip.<sup>54</sup> Once Halilaj knew about the tragedy, he decided to hand over the money to the police, since he considered himself just a depositary.

The version of the events given by the defendant is corroborated by the testimony of H C who stated that he was present when Rrahim Mirena had given to the accused Xhemajl Halilaj an amount of money varying from 8000 to 8500 Euros and that Rrahim had told him that he was giving that money to Halilaj, because he wanted to go to France with his family.

Finally Curri added other details which confirm the version given by Halilaj as to the role of Pajaziti in the smuggling of the Mirena family:

*Presiding Judge: You told us that it was your brother who told you that it was also Fatmir Pajazit was also involved in this smuggling of migrants, what was told exactly to you by Sylja?*

*H C: We spoke over the phone and I was in Slovenia that Xhemajl has to hand over Rrahim and his family to Fatmir Pajaziti!*

*Presiding Judge: Hand over where?*

*H C: Lipjan.*

*Presiding Judge: So Sylja told you that Xhemajl Halilaj handed over Rrahim's family to Fatmir Pajaziti?*

*H C: Yes. In Municipality of Lipjan.*

*Presiding Judge: Who told this to your brother?*

*H C: Xhemajl.*

...

*Presiding Judge: You told us that it was your brother who told you that it was also Fatmir Pajazit was also involved in this smuggling of migrants, what was told exactly to you by Sylja?*

*H C: We spoke over the phone and I was in Slovenia that Xhemajl has to hand over Rrahim and his family to Fatmir Pajaziti!*

*Presiding Judge: Hand over where?*

*H C: Lipjan.*

*Presiding Judge: So Sylja told you that Xhemajl Halilaj handed over Rrahim's family to Fatmir Pajaziti?*

*H C: Yes. In Municipality of Lipjan.*

*Presiding Judge: Who told this to your brother?*

*H C: Xhemajl.<sup>55</sup>*

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<sup>53</sup> Minutes of 18 April 2011, page 9.

<sup>54</sup> Minutes of 18 April 2011, page 17:

*Xhemajl Halilaj: No details were discussed in terms of that with Rrahim Mirena. I have not spoken of any details with Rrahim Mirena.*

*Presiding Judge: What about with Fatmir Pajaziti?*

*Xhemajl Halilaj: Yes. Fatmir told me that Rrahim would be picked up within 30 hours.....*

*Presiding Judge: Who told you that Rrahim Mirena would be picked up?*

*Xhemajl Halilaj: Fatmir Pajaziti told me that the car would pick up in Gjilan and within 30 hours would be in Vienna.*

*Presiding Judge: The car with the family of Rrahim Mirena?*

*Xhemajl Halilaj: Yes.*

<sup>55</sup> Minutes of 18 April 2011, pages 7 and 14.

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On the other hand, the defendant Fatmir Pajaziti simply denied any involvement in the episode and affirmed that he had never known the Mirena family and had never dealt with the smuggling of these people outside Kosovo.<sup>56</sup>

Basically the evidence against Pajaziti is based only on the declaration of Halilaj.

The testimony of Curri is consistent with the one of Halilaj, but as to the involvement of Pajaziti Curri could state only what was said to him by Halilaj. The only direct knowledge that Curri had of the episode is related to the hand over of the money to Halilaj by Mirena.

The phone contacts and text messages recorded on the telephone numbers 044 278 144 and 044 249 952 do not have any relevance against Pajaziti, since it was not possible to link the above numbers to the defendant.

In fact he denied being the user of those numbers and the police linked the numbers to him only on the basis of intelligence given by informants whose name was not disclosed to the Court.<sup>57</sup>

Confronting and comparing the two versions of the same episode given by Halilaj and by Pajaziti, the first one appears reliable, logical and credible.

In fact from the other testimonies of the cast it appears that the money for the smuggling was usually paid only after the migrants had reached their destination. Therefore it makes perfectly sense that the money was given by Mirena to a third person (*id est* Halilaj) in order to pay the price of the smuggling, only after the successful completion of the journey.

Also the behaviour of Halilaj, who after the tragedy handed over the money to the police in order to be given back to the relatives of Mirena, confirms what his role in the episode was.

Furthermore, in order to evaluate positively the narration of Halilaj, it must be taken in consideration that with his deposition he accused not only Pajaziti, but also himself and this is an additional element of credibility (it is also worth underlining that without such a deposition the people involved in the smuggling of the Mirena family and the details of the journey would have remained completely unknown).

Moreover an additional element of credibility of the version given by Halilaj is its absolute consistency with the statement given during the investigation.

The only possibility to reckon as untrue the deposition of Halilaj is that the defendant, from the very beginning of the investigation, basically invented the accusation against Pajaziti and

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<sup>56</sup> Minutes of 15 April 2011, page 27:

*Public Prosecutor: Did you ever know somebody named Mirena or Rahim Mirena?*

*Fatmir Pajaziti: I don't know such person. I have never heard about him.*

*Public Prosecutor: Did you ever speak with Xhemajl Halilaj, with other person that intended to go abroad?*

*Fatmir Pajaziti: I didn't speak about this matter because I had no time to talk regarding these issues. Since 2006 I worked with an association and I am its chairman. I saw my statement given to the police; I noticed that the police they have written in that statement as they wished.*

*Presiding Judge: There was your Defense Counsel also present and you signed it also because you have to be careful as you are accusing a police officer to have committed a crime. You can say anything but if you falsely accuse anyone committing a crime, then you are committing a crime also.*

*Fatmir Pajaziti: This is based on facts. My agency was established in 2003, registered in Prishtina. My agency is not recognised with MD Raisen but BF Commerce and registered under this name since 2003, as written agency is registered in Dardania, before ElectroKosova premises, during that year Xhemajl Halilaj was a worker there.*

<sup>57</sup> Minutes of 7 April 2011, page 17.

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then stubbornly stood by his initial (false) version throughout the entire duration of the proceedings. However there is no element (not even Pajaziti could indicate a mere hint in this sense) which can lead to such a conclusion.

It is undisputable that if a defendant accuses another defendant, the verification of the reliability of the deposition must be even more thorough and accurate than the one to be made for the declaration of the witness, since the position of the spreader is not neutral.

On the other hand the KCCP, unlike other procedural codes, does not require that the accusations made by a co-defendant against another defendant are corroborated by external elements of confirmation which lead directly to the person object of the accusation.

Therefore the assessment of reliability and credibility above made as to the statement given by Halilaj is enough to found beyond any reasonable doubt the responsibility of Pajaziti (and of Halilaj) in relation to the smuggling of the Mirena family.

### 2.3. The position of Rabbit Ajvazi.

In relation to the position of Rabbit Ajavazi the only piece of evidence of the prosecutor was the statement given by A A according to which the money for the trip of his son I was to be given to Shpejtim Ademaj through Rabbit Ajvazi.

However such a version was not confirmed by the witness during the main trial. Confronted both by the defence and by the panel in relation to the discrepancies with his previous statement, Agushi affirmed firmly that the money was supposed to be given directly to Shpejtim Ademaj and that Ajvazi had nothing to do with the journey abroad of his son Ilir.<sup>58</sup>

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<sup>58</sup> Minutes of 2 February 2011, pages 55, 56 and:

*A A: Rabbit said: "Do not let the Elmi Qerimi: When you came in contact with Rabbit, what did you ask him?"*

*A A: I asked him how you got your sister out of Kosovo. Who did you do it with and how did it go?*

*Elmi Qerimi: During the conversation with Rabbit, did you hear any names or you came to learn them later on?*

*A A: I did not hear any names.*

*Elmi Qerimi: I know and you said before that your other son SH works in Switzerland. Did Rabbit or you, did he act as any type of mediator regarding your son?*

*A A: No.*

*Elmi Qerimi: Did Rabbit ask any money from you?*

*A A: No.*

*Elmi Qerimi: Did Rabbit say that if any type of service is undertaken and you do not pay the money, Rabbit will do that?*

*A A: No.*

...

*Elmi Qerimi: Since we come from the same village I know exactly what a level of his language is and it is very poor and rural and he does not know the meaning of a word mediator. Page 3 of the statement given to the police, what was the value of the means you went to give him and his answer was '3,000 Euro once Ilir is in Switzerland I had to give to Rabbit'. The question is: Is this sentence true?*

*A A: I do not remember having said that.*

*Presiding Judge: You did not say that the agreement was to give 3,000 Euro to Shpejtim through Rabbit once Ilir has arrived in Switzerland?*

*A A: No.*

*Presiding Judge: So what was the agreement?*

*A A: SH was to give 500 Euro to Shpejtim once the boy reaches Switzerland.*

*Presiding Judge: Was there other money to be given to anybody else?*

*A A: Once the boy arrives in Switzerland SH was to give Shpejtim 500 euros and when I get a phone call that he arrived there I had to give 2,500 Euro to Shpejtim.*

*Presiding Judge: Through someone or directly to Shpejtim?*

*A A: Directly to Shpejtim.*

*Elmi Qerimi: Did you speak about this issue with Rabbit?*

*A A: No.*

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Owing to the advanced age of the witness, it is possible that during the investigation, when he was examined by the police, a misunderstanding occurred and the name of Rabit Ajvazi was wrongly indicated as the individual who was supposed to receive the money on behalf of Shpejtim.

This conclusion is strengthened by the tenor of the entire deposition of Agushi who affirmed that Ajvazi had been involved only in the smuggling of a family member of his and had even advised Agushi not to contact Shpejtim Ademaj in order to send abroad his son Ilir, since the latter was not reliable at all.

For the above reasons the responsibility of Ajvazi as to the smuggling of I Acan not be considered as demonstrated beyond any reasonable doubt and therefore the defendant must be acquitted since it was not proven that he committed the criminal act he was charged with.

No evidence has been given by the prosecutor that Ajvazi committed the criminal offence of Organized Crime and therefore he must be acquitted in relation to the above count.

**2.4. The people who were actually present on the boat which capsized and their final fate.**

After the examination of the single episodes of smuggling some considerations can be made as to the migrants who were present on the boat which capsized on the fatal night of 14 October 2009 and as to their final fate.

B R clarified in his testimony that he was on the boat with his partner E J and their children when the boat capsized and that, after they all fell in the water, he lost contact with Elvira and he did not see her alive any more.

Rama identified her dead body only two weeks later when he was called by the police.

The witness also spoke about the presence on the boat of other migrants:

*Presiding Judge: Because in the statement given to the police it says that you were shown pictures of Ademi family, are these the photos that you were talking about?*

*B R: Yes.*

*Presiding Judge: and there were 4 people, father mother and two children?*

*B R: Yes.*

*Presiding Judge: You were also shown the picture of Brahim Koci, was this person on the boat?*

*B R: Yes.*

*Presiding Judge: Also the picture of Ilir Agushi, was this person on the boat?*

*B R: Yes.*

*Presiding Judge: Were you shown the pictures of Mirena family?*

*B R: Not there.*

*Presiding Judge: Where?*

*B R: Here.*

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*Elmi Qerimi: What did Rabit say when you spoke with him about his family? What were his exact words?  
A A: Rabit said: "Do not let the boy go with him because he is a liar."*

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*Presiding Judge: Where?*

*B R: In Kosovo, while interviewed by the police.*

*Presiding Judge: Were these people in the boat?*

*B R: Yes.*

*Presiding Judge: Father, mother and three daughters?*

*B R: Yes.*<sup>59</sup>

Therefore from the testimony of Rama, which is not contradicted by any other element, it can be affirmed that B R, Elvira Jaha, Erida Jaha, Rendi Jaha, Ilir Agushi, Brahim Koci, Florim Ademi, Elfete Ademi, Albert Ademi, Florian Ademi, Rrahim Mirena, Valbona Mirena, Doruntina Mirena, Dafina Mirena and Agnesa Mirena were surely on the boat which capsized in the river Tisa on the night between 14 and 15 October 2009.

Even though B R did not speak about the family of I K, he added that other people were on the boat (18 persons - 9 adults and 9 children - plus the pilot of the boat) and from the narration of I K and of Blerim Ademaj (both of them already reported) it results undoubtedly that the other people on the boat were Lendita Krasniqi, Agnesa Krasniqi and Anita Krasniqi.

All the corpses but four were retrieved and, even though there is no autopsy, some considerations can be made as to the cause of the death.

Firstly: nobody has ever seen those people alive after they fell in the water of the river Tisa. The above river is certainly not a small stream and it is notoriously considered as dangerous to cross (in fact most of the migrants and especially their relatives wanted to be sure, before the trip that no river would be crossed by boat). It is therefore very likely that the people who fell in the water and were never seen alive again died in the river out of drowning.

Secondly: in the case file there are pictures depicting some of the dead bodies retrieved.

The police report dated 2.11.2009 (acquired on the basis of the consent of the parties) states that Fadil Mirena and Sami Mirena, relatives of Rrahim Mirena, recognised in the pictures attached to the report and shown to them the dead corpse of the latter. Even though the report does not say anything as to the cause of death and as to the place of retrieval of the body, the conditions of the corpse suggest that Mirena died out of drowning (the body is swollen and covered with mud).

Another police report dated 2.11.2009 (acquired on the basis of the consent of the parties) states that Sylë Curri and Naxhije Curri could recognize in the pictures attached to the report and shown to them the dead body of Valbona Mirena. The conditions of the body are very similar to the ones of the corpse of Rrahim Mirena.

In addition there is a picture of the dead body floating on the water of what appears to be a river or a lake.

Another police report dated 2.11.2009 (acquired on the basis of the consent of the parties) states that Fakete Asllani, a relative of Elfete Ademi, could recognize in the pictures attached

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<sup>59</sup> Minutes of 2 February 2011, pages 37 - 38.

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to the above report Florian Ademi, the son of Florin and Elfete Ademi. The conditions of the small corpse are similar to the ones described above.

The police report dated 31.1.2009 (acquired on the basis of the consent of the parties) states that Shpejtim Krasniqi, the brother of I K, could recognize in the pictures attached to the above report Lendita Krasniqi (Morina was her the maiden name) and Agnesa Krasniqi. The conditions of the bodies are similar to the ones described above.

The above elements lead to the conclusion, to be considered as proven beyond any reasonable doubt, that apart from B Rand his children, all the migrants who were on the boat drowned in the river Tiza the night between 14 and 15 October 2009.

It is worth mentioning that the prosecutor tried to present as evidence some autopsies of unidentified bodies. The autopsies were performed in Serbia and therefore the presentation of such pieces of evidence had to comply with the requirements foreseen in Article 507 of the KCCP.

The prosecutor alleged that the pieces of evidence were obtained from Serbia on the basis of reciprocity and therefore in compliance with Article 507, par. 3 of the KCCP.

However the existence of a condition of factual reciprocity appears to be highly disputable in relation to two countries which do not recognize each other.

In any case the autopsies offered by the prosecutor do not even have a cover letter showing that there was a formal delivery of the autopsy reports from the Serbian authorities to the Eulex police.

Therefore it was impossible for the panel to evaluate which authority delivered to the police the autopsy reports; the above absolute lack of formalities could not allow the panel to evaluate the possible existence of a condition of reciprocity (there is no formal delivery of the reports and therefore it was not possible to assess how they came in the hands of the prosecutor). Thus the proposed pieces of evidence could not be accepted (furthermore the parties did not give the consent in order to acquire the autopsies on the basis of Art. 368 of the KCCP).

Only one of the above autopsies was related to an identified body (the body of Valbona Mirena) and in relation this autopsy the consent as to the acquiring of the autopsy report was given by the defence of Fatmir Pajaziti (and therefore the autopsy report can be taken in consideration only in relation to the position of the above defendant).

The conclusions of the above report indicate that suffocation/drowning was the cause of the death, confirming the assessment already made in the present reasoning that Valbona Mirena was on the boat and that she drowned in the accident.

### **2.5. The existence of an organized group dealing with the smuggling of migrants.**

The evidence presented by the prosecutor throughout the main trial allowed the panel to affirm beyond any reasonable doubt the existence of a structured and organized criminal

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group dealing with the smuggling of migrants from Kosovo to some countries of the European Union (mainly France, Germany, Austria) and to Switzerland.

This organized criminal group could count on a solid structure based mainly in Kosovo and in Serbia (but not only in these two countries) which for the correspondent of an amount of money varying from 3000 to 1500 Euros per migrant, collected and transported the migrants from Kosovo to Serbia, then through Serbia to Hungary and then from there to the above indicated countries.

The pieces of evidence which demonstrate the existence of the above organized criminal group are numerous and come from different sources.

- **Testimonial evidence.**

The above reported testimony of B R pointed out clearly that, in order to reach the Tisa river, the family boarded several vehicles (a Golf from Pristina to Gjilan, then an Opel from there to the border with Serbia, then a Passat once they crossed the border and for around 15 minutes, then a Ford until Subotica, then a different Passat in the town of Subotica until they reached a house, then from that place a pick up and finally a jeep until they reach a forest and finally the boat).

Seven different cars (actually eight, since for a portion of the trip the family was split and E Jand the children were transported in a Nissan Micra) were utilized in order to transport the migrants from Pristina until the river.

All the drivers (each car had a different driver) knew exactly what to do and there was no need for the migrants to give any explanations or indications about where to go.

On the contrary, most of the drivers told the migrants what to do and which car they were supposed to board after each portion of the trip was over.<sup>60</sup>

Furthermore Rama stated that the migrants were placed for several hours in a house: it is evident that they were not hosted, but that also the stop at the house had been planned in advance and was one of the scheduled phases of the trip organized to smuggle the migrants outside Kosovo.

It is therefore apparent that the trip of B Rand his family was carefully planned and organized in advance and that several individuals placed in Kosovo and Serbia cooperated to it.

It must also be assumed that once the migrants had reached the Hungarian banks of the river Tisa, other people were supposed to pick them up in order to make them reach the agreed destination.

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<sup>60</sup> Minutes of 2 February 2011, pages 33 - 34.

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In fact all the testimonies above reported are in the sense that the migrants had to be taken to the country of their final destination (where also part of the money of the smuggling was supposed to be paid) and that somebody had to pick them up once they had reached Hungary.

The narration made by Rama shows the existence of an organized structure with numerous people enrolled both in Kosovo and in Serbia and in Hungary. In fact it is simply unthinkable that Avni Hajdari, the person who made the deal with Rama as to the illegal trip, could have built up such a structure only for the fatal trip of 14 October.

So it must be assumed that the above structure was already functional and operative at the time the trip for Rama and his family was organized.

A further hint which emerges from the above testimony and that shows how Avni Hajdari was surely utilizing a well oiled, structured and already existing mechanism is the fact that Rama and his family were not controlled at all the border between Kosovo and Serbia (a border where the controls, for obvious reason, are always severe and particularly accurate).

And the same organization surely handled the smuggling of the Ademi family: the migrants reached the deal with Ismet Rama and Avni Hajdari, followed the same route as Rama and finally reached Subotica and were on the same boat.

Also the testimonies given by Agush and SH A as to the smuggling of their relative Ilir and by I K and SH K as to the smuggling of the Krasniqi family confirm the existence of an organized group dealing with the smuggling of migrants and that Anton Gecaj and the person called Joca were the prominent people in the organization and that there was an undeniable link between these two people and the two brothers Ademaj.

- **The statement given by Blerim Ademaj.**

Additional hints as to the existence of a structured group involving some of the defendants and which had the aim to smuggle migrants from Kosovo to the countries of Western Europe were given by the declaration given in front of the panel by Blerim Ademaj.

The most relevant parts of his statement are hereby reported:

*Public Prosecutor: Do you know what Anton Gecaj was doing for a living?*

*Blerim Ademaj: He was involved in smuggling human beings to Europe, as he told us.*

*Public Prosecutor: Do you know, and I am asking if you know this, if Anton Gecaj smuggled anyone from your family to Europe?*

*Blerim Ademaj: Yes, some time ago, long before we sold the vehicle to him, he had smuggled two paternal cousins of mine.*

*Presiding Judge: Their names?*

*Blerim Ademaj: Haxhi Ademaj and Sejdi Ademaj.*

...

*Public Prosecutor: Can you tell us which route they followed, meaning Sejdi and Haxhi?*

...

*Presiding Judge: And when did this happen?*

*Blerim Ademaj: I don't remember when this took place, but I only know that this took place a lot longer before.*

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*Presiding Judge: A rough assessment?*

*Blerim Ademaj: 2006 or 2007.*

*Public Prosecutor: Which route did they follow?*

*Blerim Ademaj: Serbia, Hungary, Austria, Switzerland.*

*Public Prosecutor: Since you mentioned Serbia and Hungary, did your cousins mention eventually any other people's names apart from Anton Gecaj who may have helped him?*

*Blerim Ademaj: Yes, before they went to a hotel in Subotica they were told to tell a receptionist they belonged to Anton Gecaj and Joca.*

*Public Prosecutor: This name of Joca, apart from discussing it with your uncle's sons, did you ever discuss this name with anyone else?*

*Blerim Ademaj: With Anton.*

...

*Public Prosecutor: On page 7, paragraph 5 to my question if anyone else had mentioned Joca, your answer was as follows: 'the name of Joca was also mentioned by Caka who told me that he was going to go to Serbia in order to meet Joca after the event took place.' Do you remember this statement given to me?*

*Blerim Ademaj: Actually I was talking about in the very beginning, before the event took place.*

*Public Prosecutor: Have I understood correctly, what I just read was said after the event took place?*

*Blerim Ademaj: Yes.*

*Presiding Judge: Meaning the tragedy?*

*Blerim Ademaj: Yes.*

...

*Blerim Ademaj: When Anton switched off his phone for 2 days and didn't respond to any calls, and before he switched off his phone he gave me two numbers. One was Serbian and the other was a Kosovo number.*

*Public Prosecutor: Did you call these 2 numbers?*

*Blerim Ademaj: I called only one.*

*Public Prosecutor: Which one?*

*Blerim Ademaj: The Serbian one.*

...

*Blerim Ademaj: Anton gave me the phone numbers and told me to call that number and Caka would answer in Serbia.*

*Presiding Judge: Caka was the owner of both numbers, or just of the Serbian number?*

*Blerim Ademaj: Just the Serbian number.<sup>61</sup>*

\* \* \*

*Presiding Judge: To the Public Prosecutor you said Anton told you one of the numbers belonged to Caka. Was it Anton that told you one of the numbers belonged to a person named Caka?*

*Blerim Ademaj: Yes.*

*Presiding Judge: On the same occasion did he add anything else about another person called Joca?*

*Blerim Ademaj: Yes.*

*Presiding Judge: What did he say?*

*Blerim Ademaj: Anton told me was continuously in contact with Joca who was not telling Anton about anything which had happened and he only told him they were apprehended by the police.*

*Presiding Judge: Did he say anything about what Joca was doing?*

*Blerim Ademaj: He told me that he passed the people onto him. Meaning Anton passed them to Joca.*

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<sup>61</sup> Minutes of 13 May 2011, pages 7-10.

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*Presiding Judge: To do what?*

*Blerim Ademaj: To take them to Austria.*

*Presiding Judge: Through Hungary?*

*Blerim Ademaj: Yes.*

*Presiding Judge: Did he say anything else as to the role in terms of importance to Joca?*

*Blerim Ademaj: He was telling me he had passed the people to Joca and Joca was to take them to Austria and hand them over to Anton. Anton Gecaj used to live in Slovakia.*

*Presiding Judge: Did Anton say anything about a relationship between Joca and Caka?*

*Blerim Ademaj: No.*

...

*Presiding Judge: if I understood correctly you said earlier that you called the Serbian number and a person called Caka responded; could you tell the panel the content of the conversation between you and Caka?*

*Blerim Ademaj: It was if there was anything knew and we both asked each other.*

*Public Prosecutor: Did this person tell you he was going to meet Joca?*

*Blerim Ademaj: Yes.*

*Public Prosecutor: Why?*

*Blerim Ademaj: To talk probably as I could not understand him as Anton had given me the number of a person in Serbia and said it was Caka and he told me he was going to meet Joca in Macedonia while Joca was in Serbia. I understood Anton gave me the number to avoid any responsibility.*

*Presiding Judge: Why did Caka want to go to Macedonia to meet Joca?*

*Blerim Ademaj: I don't know.*

*Presiding Judge: Bajram Tmava, I invite you to stay silent.<sup>62</sup>*

\* \* \*

*Presiding Judge: But in the minutes, there is something more, 'I talked to this guy Caka, and he told me that he had also these people that Anton had sent and that he had planned to go to Macedonia to meet a person names Joca.' What do you mean he had also these people that Anton had sent?*

*Blerim Ademaj: I don't know what he meant by that, if he gave him his people or not. I just wanted to know about the family of Shkelzen.*

*Presiding Judge: Yes, but you are reporting the words of Caka, are these his words or did you change something?*

*Blerim Ademaj: Yes, he stated this.*

...

*Presiding Judge: This sentence leads to the following one, which says that he had the plan to go to Macedonia to meet with Joca who clearly was dealing with smuggling of migrants. Without any suggestions of the Defence Counsels, did he tell you why he wanted to go to Macedonia to met Joca?*

*Blerim Ademaj: Yes, because we didn't know yet what happened to them? Anton was saying they were only detained.*

...

*Presiding Judge: What was the reason fro Caka to go to Macedonia? To ask for information on your behalf or what was the reason?*

*Blerim Ademaj: To ask for information regarding his travellers, those people that were going to be transported.*

*Presiding Judge: Why was he going to do this for you? You didn't know each other.*

*Blerim Ademaj: Not for me, but for Anton. I didn't know the relation.*

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<sup>62</sup> Minutes of 13 May 2011, pages 17-19.

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*Presiding Judge: You say he was doing this for Anton, did he tell you this or not?*

*Blerim Ademaj: No, he didn't tell me but Anton gave me his number. Then Anton called me and turned on his phone and then I talked to Anton and didn't talk again to Caka.*

...

*Blerim Ademaj: Then two days later Anton turned his phone on and then I had a contact with Anton. Anton told me he deposited 30,000 or 20,000 for the bail in order for them to be released. And that day Anton told me 'I am going now to meet Joca'. Then I took Shkelzen and sent him to the airport because Anton was still saying he didn't know anything that happened.*

*Presiding Judge: Did you ask Caka if he was going to Macedonia or he told you this himself?*

*Blerim Ademaj: I did not ask.*

*Presiding Judge: So he said, 'I am going to Macedonia'?*

*Blerim Ademaj: Yes. He said 'I intend to go to Macedonia.'*

*Presiding Judge: After this contact, in which you exchanged this information and Caka told you that he was going to Macedonia, did you have other contacts with Caka?*

*Blerim Ademaj: No.*

*Presiding Judge: Because again in the minutes you said, after this discussion, 'We have called each other constantly asking if there was something new'.*

*Blerim Ademaj: Yes.*

*Presiding Judge: You had contacts by phone with Caka?*

*Blerim Ademaj: Yes, during that period.*

*Presiding Judge: And what were these contacts about?*

*Blerim Ademaj: We were interested to know if he knows anything about what happened.*

*Presiding Judge: Did he go to Macedonia to talk to Joca?*

*Blerim Ademaj: I don't know because Anton in the meantime switched his phone on and then I didn't contact him any longer.*

...

*Presiding Judge: When Anton told you he was going to surrender himself, did he say he wanted to tell the police about the VIJ?*

*Blerim Ademaj: Yes.*

*Presiding Judge: What is VIJ?*

*Blerim Ademaj: When he told me he was following the V it means a certain road. This is the place the people were supposed to cross.*

*Presiding Judge: He said to you according to you, 'then he told me I will go to the police to tell them about the VIJ because they are accusing me for the VIJ.' Then there is also your answer, when the Public Prosecutor asked what you meant by VIJ and you said you thought it was the network of people bringing these people from Kosovo to Europe.*

*Blerim Ademaj: He called it V.*

*Presiding Judge: First you said it was the route and when I confronted you, you said it was the name of the network.*

*Blerim Ademaj: I told you exactly what he told me.*

*Presiding Judge: You said to the Public Prosecutor: that you thought it was the network of people bringing the persons from Kosovo to Europe, so you were talking about the organised people doing this; these were your words.<sup>63</sup>*

From the statement given by Blerim Ademaj some factual elements emerge evidently and undeniably.

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<sup>63</sup> Minutes of 13 May 2011, pages 26-34

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Firstly, his statement proves the existence of an organized criminal structure which smuggled migrants from Kosovo to the countries of the Western part of Europe. The number of the migrants smuggled by the criminal organization (and therefore the size and the level of development of its structure) was so huge that one of the most prominent members of the criminal organization, Anton Gecaj could earn around 50.000 Euros per week out of the smuggling.<sup>64</sup>

The above figures are shocking and give an idea of the dimension of the smuggling, if we think that the prize per migrant smuggled was 3000 Euros for each adult and 1.500 for each child minor than 12.<sup>65</sup>

Furthermore it must be noted that if Anton Gecaj estimated the money earned by him at 50.000 Euros per week, actually the money obtained by the organization had to be much more, since every trip entailed the participation of several people (collectors of migrants in Kosovo, drivers in Kosovo, Serbia and Hungary, people who provided logistic help in Serbia and Hungary) as it can be undeniably inferred from the narration of B R. These people were surely paid by the organization for their services.

Secondly, Anton Gecaj and the person called Joca were among the prominent members of this organization. Blerim Ademaj stated firmly that the job of these two individuals was the smuggling of migrants, meaning that they did it on a regular basis.

From the declarations of Blerim the roles of these two individuals in the organization appear to be clear: Anton was in charge for the activity of the organization in Kosovo and, even though not directly, but through other people (this can be inferred from the fact that all the migrants were not contacted directly by Anton and from the fact that Anton, at the time, was living in Slovenia) collected the migrants in Kosovo; Joca (and the people working for him) was in charge for the activity of the organization in Serbia whereas after the crossing of the border Serbia/Hungary it appears that Anton was in charge again (since the money for the smuggling had to be given to him).<sup>66</sup>

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<sup>64</sup> Minutes of 13 May 2011 page 32:

*Presiding Judge: Did Anton tell you how much money he was earning by the business of smuggling people?*

*Blerim Ademaj: During the last call while I was going back to go to my work he called me and we talked for some 40 minutes. In a way he was just complaining, telling me it was not his meaning for anything bad to happen although we had not discussed the tragedy yet, because I have gained a lot and could not with any other business.*

*Presiding Judge: Did he mention amounts of money?*

*Blerim Ademaj: Yes. He said he made a lot of profit and spoke of 30,000 to 40,000.*

*Presiding Judge: He said he was not interested to lose a business that was earning 50,000 per week.*

*Blerim Ademaj: He mentioned a large sum.*

*Presiding Judge: Are you confirming he spoke of 50,000 Euros per week?*

*Blerim Ademaj: Yes he earned up to that much a week.*

<sup>65</sup> Minutes of 13 May 2011 page 19:

*Public Prosecutor: Do you know what the price was or did Anton tell you what the price was for one person to be smuggled out of Kosovo?*

*Blerim Ademaj: When I called him regarding I K and his family and told him he intended to have his wife and children brought and he said from 12 years upwards it was 3000 per person and under the age of 12 years was 1,500 Euros.*

<sup>66</sup> Minutes of 13 May 2011, page 34.

*Presiding Judge: What did Anton say to you about Joca?*

*Blerim Ademaj: He told me that he gave the people to him, meaning Anton to Joca and further Joca was supposed to give them to Anton to bring them to Switzerland, according to Anton.*

*Presiding Judge: It is more or less the same as you said to the Public Prosecutor, but you added, 'I know that Anton told me continuously that he handed over people to Joca.'; is that true?*

*Blerim Ademaj: Yes.*

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A third person who appears to be involved in the above organisation is the individual having the nickname Caka/Qaka (*id est* Avni Hajdari).

In order to understand his position in the hierarchy of the organisation, it is of great significance that Anton Gecaj, when he had decided to surrender to the police, indicated Caka as the person who could give Blerim information as to the fate of the migrants, as if he were a sort of deputy of Anton or in any case a person fully aware of the operations of smuggling (in other words not a soldier in the trench, but one of the commanders of the army).<sup>67</sup>

It is noteworthy that Blerim added that Caka himself, replying to his request for information, had told him that he “also had people”.

Even though Blerim was elusive as to the meaning of these words, from the context it appears evident that the person called Caka/Qaka had directly collected migrants who were involved in the tragedy.

The above interpretation, which is the only meaningful, is also confirmed by the following words of Blerim who stated that also a person from Mitrovica had said to him that “he had given people to Caka”. Again the only possible meaning is that these persons “given” were migrants to be smuggled through the intervention of Caka.<sup>68</sup>

Another hint as to the relevance of the role of Caka/Qaka/Hajdari is given by the fact that he knew Joca, was aware of his role in the smuggling of migrants and was able to get in touch with him and to know where he could find him.

From all these circumstances it can be inferred that Caka/Hajdari had a role of relevance in the organization led by Anton Gecaj and Joca (as to the role of Caka, other pieces of evidence will be examined in the part related to the covert measures).

Thirdly, from the statements reported so far, the massive involvement of Shpetim Ademaj in the activity of smuggling of migrants can be easily understood. His brother Blerim specified that Shpetim transported people to Gjilan on behalf of Anton receiving 200 hundred Euros for each trip.<sup>69</sup>

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...  
*Presiding Judge: Was it you that mentioned Joca to Caka or vice versa?*

*Blerim Ademaj: Caka mentioned it to me*

<sup>67</sup> Minutes of 13 May 2011, page 17.

<sup>68</sup> Minutes of 13 May 2011, page 30.

*Presiding Judge: Did this person in Mitrovica tell you anything in particular; what was the conversation with this person?*

*Blerim Ademaj: I have only spoken with him once.*

*Presiding Judge: Did he say anything else as to Caka?*

*Blerim Ademaj: He told me he had given the people to him.*

*Presiding Judge: What does this mean?*

*Blerim Ademaj: I don't know what he meant.*

<sup>69</sup> Minutes of 13 May 2011, pages 35-37:

*Presiding Judge: Was your brother doing any kind of job for Anton as far as you know?*

*Blerim Ademaj: I only overheard when he spoke on the phone as I only come to Kosovo once per year.*

*Presiding Judge: What did you hear?*

*Blerim Ademaj: He told me Anton had called and asked him to take some people from Gjilan.*

*Haxhi Millaku: Not some people, some one. Can you repeat please?*

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Even though Blerim could not (or did not want to) indicate how many trips Shpetim performed on behalf of Anton, from the huge amount of people smuggled by the latter it can be inferred that the trips made by Shpetim were numerous.

In fact Anton told Blerim that his brother “was doing very well in Kosovo” and that, after he had been arrested, Anton was ready to pay a big amount of money to help Shpetim (who knows in which manner), showing a close link between the two of them which can not be justified just by a few trips made by Shpetim on behalf of Anton.

The declaration of Blerim gives strong hints in the sense that Shpetim was one of the main persons working in Kosovo for Anton (other decisive hints will be given by the examination of the covert measures).

And that Shpetim was one of the “men” of Anton in Kosovo is involuntarily confirmed by the declaration of Shpetim himself when he admitted that he was giving the migrants information received by Anton as to the prices of the various trips.<sup>70</sup>

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*Presiding Judge: Let him finish first.*

*Blerim Ademaj: It could have been one or one hundred.*

*Presiding Judge: Was what Shpetim Ademaj was saying related to one person or more than one?*

*Blerim Ademaj: I only overheard him speaking on the phone. He said he would give me 200 Euros. And for your information we don't need 200 Euros, or any other amount.*

*Presiding Judge: Gave who?*

*Blerim Ademaj: That he would give me 200 Euros, referring to later.*

*Presiding Judge: Anton will give to Shpetim?*

*Blerim Ademaj: Yes.*

*Presiding Judge: Because when you were interviewed in front of the Public Prosecutor, you said the following, if there are issues on the translation Defense Counsels, let me finish first. 'When I asked Shpetim about it, he told me he was helping some poor people, who were having hard times and was sending them to Gjilan'.*

...

*Presiding Judge: 'When Anton will tell me and Anton will give me 200 Euros'.*

*Blerim Ademaj: Referring to the future.*

*Presiding Judge: 'And Anton would give me 200 Euros for a group of them'.*

*Blerim Ademaj: Actually for a vehicle.*

*Presiding Judge: For a trip you mean?*

*Blerim Ademaj: For one journey.*

*Presiding Judge: In fact you specified it means he would get 200 Euros for one car ride to Gjilan.*

*Blerim Ademaj: Yes*

<sup>70</sup> Minutes of 15 April 2011, pages 18 – 20:

*Presiding Judge: How come that you replied '4,500'. It seems like you were informed as to the prices to smuggle people abroad.*

*Shpetim Ademaj: When I hear the word 'hey', it may refer to a relative of mine; a relative of mine could have used that word 'hey'. I told you that I had served Anton, then I answered in a way he addressed me.*

*Presiding Judge: How come that you know what the prices are?*

*Shpetim Ademaj: He is the one who told that.*

*Presiding Judge: So, you knew about these prices because Anton told you?*

*Shpetim Ademaj: Yes.*

*Presiding Judge: How come Anton was aware of the prices to send the persons abroad, was this his job/occupation?*

*Shpetim Ademaj: I told you he was the one who did that, and who sent my paternal uncles' sons.*

...

*Presiding Judge: What about an SMS sent from 044 960 912, there is first SMS on the 30<sup>th</sup> August 2009, sent to your mobile phone: 'there is nothing for tomorrow, how about drivers in Gjilan to take us to Subotica, are they available'. And on 31<sup>st</sup> August 2009 from the same number to your number: 'We are in Fushe Kosovo we will be in Gjilan for about number will you send me driver's number'. Then there is a reply from your number, '00381 6554 598156'. Then this person writes again to you and asks you: 'what is his name Shpet, is it 150 from Gjilan to Subotica?' And then there is a reply from you: 'Yes. And the name is Meti.' What is your explanation of these SMS exchanges?*

*Shpetim Ademaj: I don't know, I don't remember this number. It is possible that he might have spoken to Anton, or I might have spoken to him, meaning to Anton and to the other person.*

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- **The results of the covert measures issued against the defendants**

During the investigation the following telephone numbers were object of the covert measure of interception of telecommunication issued by the Pre Trial Judge upon a request of the Prosecutor:

044 610 955, 044 260 626, 044 117 924, 044 278 144, 044 249 952 044 574 980.

As to the following telephone numbers the prosecutor issued the covert measure of metering of telephone calls:

044 661 892, 044 264 655.

The text messages and the telephone calls exchanged on some of the above numbers give a strong corroboration as to the existence of an organized structured group dealing with the smuggling of migrants, allow to outline more precisely the role of some of the members of the criminal organization (namely Caka/Hajdari and Shpetim Ademaj) and describe the role and the involvement in the criminal group of other individuals (namely Shaip Selmani and Ismail Krapci) who had not been mentioned in any statement either during the investigation or in the course of the main trial.

*The text messages sent and received by Shpetim Ademaj.*

Shpetim Ademaj admitted in front of the trial panel that he was the user of the telephone number 044 661 892.<sup>71</sup>

On the above number several relevant text messages were recorded. It is worth reporting some of them.

- Text messages exchanged with an unidentified person using the number 044 420 310:

on 12/09/2009, the following text message was sent from the above number to the number utilized by Shpejtim: *“Hey, don’t be late because they both have the money for tomorrow, they are ready for tomorrow, tell me when you will come”*;

on 13/09/2009 the following text message was sent from the above number to the number utilized by Shpejtim: *“Hey people are waiting for you, Shpetim what do you want us to tell them; they are for tomorrow, come on 5 minutes”* and on the same day Shpejtim replied: *“I will set them off tomorrow”*.

- Text messages exchanged with an unidentified person using the number 044 665 674:

on 23/08/2009, the following text message was sent from the above number to the number utilized by Shpejtim: *“3 adults and 2 children to Viena, how much should I tell them”*.

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<sup>71</sup> Minutes of 15 April 2011, page 9.

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- Text messages exchanged with an unidentified person called Muharrem using the number 044 927 759:

on 6/08/2009, the following text message was sent from the above number to the number utilized by Shpejtim: *"Muharrem 044 927 759, have you set them off"* and on the same day Shpejtim replied: *"Yes"*;

on the same day again Muharrem wrote to Shpejtim: *"OK, I just arrived, tell me when they will set off from Subotica because he will give 1700 here"* and Shpejtim replied: *"Yes and tell him to activate the Swiss number"*.

- Text messages exchanged with an unidentified person using the number 044 805 279:

on 25/08/2009, the following text message was sent from the above number to the number utilized by Shpejtim: *"Hey how much to Switzerland for a three-month old child and a woman"* and on the same day Shpejtim replied: *"4500"*;

on the same day the same person asked via text message: *"How much is it to France"* and the reply of the defendant was *"3"*.

- Text messages exchanged with an unidentified person using the number 044 960 912:

on 30/08/2009, the following text message was sent from the above number to the number utilized by Shpejtim: *"There is nothing for tomorrow, how about drivers in Gjilan to take us to Subotica, are they available"*;

on 31/08/2009, the same person sent the following text to Shpejtim: *"Now we are in Fushe Kosova, we will be in Gjilan in about more than 1 hour, will you send me the drivers' number"* and Shpejtim replied: *"003816554598156"*; then the unknown person sent a further text: *"what is his name shpet, is it 150 from Gjilan to Subotica"* and Shpejtim replied: *"Yes and the name is Meti"*.

- Text message sent to an unidentified person using the number 41767009984:

on 12.8.2009, the following text messages were sent to above number by Shpejtim: *"These will come in Lozana 0762334925, Kemail will give you 3000 euro"* and later on *"At lagar will come his father and will pick them up"*.

The messages are self evident and speak for themselves, without the need to elaborate that much as to their meaning. The text messages show the involvement of the defendant in a massive activity of smuggling, which for its dimensions entails undoubtedly a stable and well rooted organization with a clear and settled definition of the roles among the various participants (as it was already evident from the narration of B Rin reference to the various phases of the journey outside Kosovo).

Furthermore the above text shows that the role of Ademaj was an important one and that he was not, as he tried to demonstrate during his examination, a mere driver working for Anton Gecaj absolutely unaware of the reasons why he was transporting these people to Gjilan.

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On the contrary, from the above messages it appears clearly that the defendant was dealing with the price for the smuggling, with the drivers transporting the migrants from Gjilan to the border and was even deciding the date of the departure of the migrants.

In other words it is self evident from the text messages, from the testimonies related to the specific episodes of smuggling and from the narration of his brother Blerim that Shpejtim was one of the men working in Kosovo for Anton and for the criminal organization led by him which arranged and controlled the smuggling of migrants outside Kosovo.

And it is just the case to add that the above text messages offer also a powerful and undeniable corroboration of the reliability of the statements given by testimonies as to the involvement of Ademaj in relation to the singles episodes of smuggling.

The defendant was thoroughly confronted during the main trial with the content of most the text messages above indicated, but he could not give any plausible explanation for almost all of them: sometimes he alleged that he had just received the message but he did not know why such a message had been sent to him, some other times he alleged that he simply could not remember, some other times that he was simply giving information to people, but without being involved in any form of smuggling.

Therefore the lack of any plausible alternative explanation given by the defendants strengthens the conclusion about the existence of an organized and structured criminal group which, at least throughout 2009 (but from the testimonies it can be inferred that at least Anton was in charge for the smuggling of migrants long time before), smuggled a massive number of migrants outside Kosovo to the countries of Western Europe and about the participation of Shpejtim Ademaj in the above criminal group.

*The text messages sent and received by Shaip Selmani.*

Shaip Selmani admitted that the number 044 260 626 was his telephone number<sup>72</sup> and that, even though his mobile was also available during the working hours for the employees of the company he ran together with Ismail Krapic,<sup>73</sup> the above telephone number was utilized mostly by him.<sup>74</sup>

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<sup>72</sup> Minutes of 18 April 2011, page 23:

*Public Prosecutor: Can you tell the court what is your telephone number that you were in possession of?*

*Shaip Selmani: 044 260 626. This was my personal number and the number of the company which was run by us.*

*Public Prosecutor: Did you get hold of the report of the covert measure?*

*Shaip Selmani: Yes.*

*Presiding Judge: Can you be more precise with the answer you gave above related to the number, what was the company, and what do you mean by 'us'?*

*Shaip Selmani: The name of the company was called Migros, butchery. It was also a combination of a market and it was in two business were run: the butchery and fruit and vegetables and registered under the same business number.*

*Presiding Judge: What do you mean by us?*

*Shaip Selmani: I and Ismail Krapic run the company.*

<sup>73</sup> Minutes of 18 April 2011, page 23:

*Presiding Judge: Yes, but who was utilising the number 044 260 626 number?*

*Shaip Selmani: I used this number and my employees in the company.*

*Presiding Judge: What about Ismail Krapic?*

*Shaip Selmani: Ismail Krapic used his own number. The employees would use Ismail Krapic's number. These two numbers were used by all of us.*

*Presiding Judge: So also 044 260 626 number was used by Ismail Krapic and other employees.*

*Shaip Selmani: It was me who used it, and by the employees.*

*Presiding Judge: Did Ismail Krapic use this number?*

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And that Shaip Selmani was the person utilizing the above number most of the time is also proved by the fact that in some messages he is called by name (Shaip); furthermore it is worth noticing that many of the messages were exchanged late in the evening, after the working hours, and therefore when the employees of the companies could not use the mobile.

Once that it has been clarified that Shaip Selmani was the user of the above number, the text messages exchanged on his number can be examined.

- Text messages exchanged with Shpejtim Ademaj using the number 044 661 892:

on 24.08.2009 Shpejtim sent to Shaip the following text: "00436508707725";

on 25.08.2009 at 10.46, Shaip sent to Shpejtim the following text: "Mate, when you think you will finish that pal"; then at 13.16 he sent another text: "Mate, at what time you plan to dispatch them"; and finally at 20.59 he sent a further text: "Is there any possibility for that to happen soon mate";

on 14/09/2009, the following text was sent by Shaip to the above number: "0654698254 could you please refill me this number";

on 25/09/2009, the following text was sent by Shaip to Shpejtim: "has the buss set off" and Shpejtim replied: "Yes";

on 01.10.2009 Shpejtim sent Shaip the following text: "1506001001977575 shpejtim ademaj" (it is worth noticing that the above number is the number of the bank account of the defendant Shpejtim Ademaj, as it results form the police report dated 22 February 2010, reference number DOC-FIU 041/2010).

Furthermore, despite the fact that Shpejtim Ademaj and Shaip Selmani denied knowing each other, they exchanged 53 phone calls as it results form the police report signed by R Z DOC, dated 25 November 2009, reference number of the police document 2099 DKKO 034.

- Text messages sent to an unidentified person, called Ismet, using the number +41767391766 (the prosecutor alleged that the above number belonged to Ismet Rama, but actually no evidence was offered to the court of the link between Rama and the above number):

on 31.08.2009, at 11.47, Shaip sent the following text: "Ismet, call me" and then at 23.59 hrs he sent the following text: "Tell me what are you doing tomorrow";

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*Shaip Selmani: When I was not in the butchery, Ismail would use it as well.*

*Presiding Judge: Who was the holder of the telephone with this telephone number?*

*Shaip Selmani: You are referring to 626 number?*

*Presiding Judge: Yes.*

*Shaip Selmani: It was me who held that telephone, but if I left the business premises I would leave it there.*

<sup>74</sup> Minutes of 18 April 2011, page 25:

*Presiding Judge: So from June to October 2009, it was just you that was using the telephone number?*

*Shaip Selmani: Usually it was me who used that telephone number but it can happen that others can use.*

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on 03.09.2009 at 10.44 hrs Shaip sent the following text: *“Ismet, have you managed to contact Ardian because I cannot reach him and if I knew that he does this to me, I would have not taken him, I arranged everything for him”*.

- Text messages exchanged with Ismail Krapic, who was using the telephone number 044 117 924 (as it will be demonstrated in the part of the reasoning related to the latter):

on 15.07.2009 at 11.04 hrs Ismail sent to Shaip the following text: *“we are nearby the water”* and Shaip replied: *“Okay”*;

on 30.07.2009 Shaip sent to Ismail the following text: *“Buc, take this number 129830, he will be waiting for you at Dardania café, he is from Vushtrri, tell him that you are Shaip because he does not know me, his number is 044, I have no credit at my mobile, I cannot come there where we agreed yesterday”*;

on 09.08.2009 Shaip sent to Ismail the following text: *“Have they already left”*, and Ismail replied: *“Yes, yes, they have again returned to the apartment”*;

on 02.09.2009 Shaip sent to Ismail the following text: *“Buc, have the sheep left”* and Ismail replied: *“yes, yes, long time ago”*;

on 11.09.2009 Shaip sent to Ismail the following text: *“did he take them”* and Ismail replied: *“yes, yes, he took them but he also took them lots of money”*.

- Text message sent to an unidentified person, called Afrim, using the number +31644493317:

on 11.09.2009 Shaip sent the following text: *“Afrim, can you finish something with that fast connection as you did before, to take them directly to France because gaka is saying he will take them but only for 1600 each to Wien”*.

- Text messages received by an unidentified person, using the number 044 956 023:

On 27.09.2009 at 14.32 Shaip received from the above number the following text: *“Shaip, we have been stuck for quite a long time here in the forest in the Serbia border, that boy left us here and never came back, listen, try to contact him because we are stuck here in the forest”*.

- Text messages sent to an unidentified person, called Enver, using the number +41794756200:

on 16.08.2009 at 11.35 hrs, Shaip sent the following text: *“Lel, how do you find your time in the ship, was it good, where are you now”* and at 20.32 hrs he sent a further text: *“pal, did you get there yet”*;

on 30.09.2009, Shaip sent the following text: *“Enver, don’t go because he will take them to vester”*

- Text messages exchanged with an unidentified person, called Smajl, using the number 044 303 873:

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on 18.06.2009 at 22.08 hrs, Smajl sent the following text to Shaip: *“a van, they cannot survive for long, maybe you know that Skenda has metal parts in his heart, we should not pass through water, tell me when you have thought of something”*;

on 20.06.2009 at 23.03 hrs Shaip sent the following text to Smajl: *“Smajl, they have arrived at the apartment, tonight they will sleep here, they haven’t given money anywhere like you were exaggerating”*;

on 21.06.2009 at 21.20 hrs Smajl sent the following text to Shaip: *“hey, maybe you do something tonight because he said that there it is more difficult than in a prison, they are locked inside, and he is buying the food for them, 40 e for last night and 40 for today”* and at 21.28 hrs Shaip replied: *“Smajl man, no one locks them in, of course they are not allowed to go out in the town and with regards to your claim that it is bad, no one has complained to me so far because they have it as in their own home”*;

on 25.06.2009 at 12.04 hrs Smajl sent the following text to Shaip: *“hey, I talked to Skenda, he said that a taxi is coming to collect us but they would pass through Germany rather than Switzerland”*.

- Text messages sent to an unidentified person, called Sheremet, using the number 393200305183:

on 06.09.2009 Shaip sent the following text: *“Sheremet, what shall we do with these guys, they are saying that the money for both of them are there at you, and why are telling me that they need to send 5400 for both and they are saying that today they intend to leave.”*

- Text messages sent to an unidentified person, called Naser, using the number 393284191917:

on 24.08.2009 at 18.50 hrs Shaip sent the following text: *“He will leave tomorrow afternoon, today cannot do, he will have a good time like in his own house, don’t worry”* and at 20.59 hrs a further one: *“Naser, I will bring him to you in a car my friend, and should you want to take him personally in Wien, I will deduct 500 euro”*.

Again the above messages are self evident and speak for themselves, without the need to elaborate that much as to their meaning.

For instance, in relation to messages exchanged with the unidentified person called Ismail from 18 to 25 of June 2009, it is a possible to have a clear picture of all the phases of the process of the smuggling (the trip by van, the fear that the person will have to cross the river, the arrival at the house, the harsh conditions of the migrants in the house in Subotica where the migrants were somehow in detention and could not leave it<sup>75</sup>, the arrangements to reach the final destination).

The text messages show the involvement of the defendant in a massive activity of smuggling of migrants and his participation in the criminal organization led by Anton Gecaj and which

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<sup>75</sup> On this specific point, see the statements of Muharem Ramadani dated 10 November 2009 and 10 May 2010 and acquired pursuant to Art. 368, par. 1, item 1 of the KCCP.

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counted surely Avnj Hajdari (alias Qaka/Caka) and Shpejtim Ademaj among the prominent members.

Furthermore the messages exchanged with the latter make it clear that Shaip was closely collaborating with Ademaj in the smuggling of migrants and therefore that they were participating in the same organization.

From the requests sent to Ademaj by Shaip to refill his telephone cards and from the content of the text themselves it appears that Selmani (and also his partner Krapı) were in charge for the contacts with the migrants (before and during the trip) and for the collection of money from them (money to be given afterwards to Ademaj), therefore holding a position less important than Ademaj's one who had direct contact with the leaders of the organization (and in particular with Anton Gecaj).

The message sent to the unidentified person called Afrim offers a powerful and solid corroboration of the conclusions already exposed as to the role of Qaka/Caka in the criminal organization dealing with the smuggling of migrants. Qaka was not only a member of that organization, but his role was a prominent one, since he was able to establish the price and to decide if and when a person could be smuggled.

The above message also shows the link between Selmani and Hajdari (alias Caka/Qaka), making it clear that both of them, together with Shpejtim Ademaj worked for the same criminal organization lead by Anton and Joca.

The defendant was thoroughly confronted during the main trial with the content of most the text messages above indicated, but he could not give any plausible explanation for almost all of them: sometimes he alleged that he had just received the message, but he did not know why such a message had been sent to him, some other times he alleged that he simply could not remember, some other times that the message had been sent not by him, but by other people.

The lack of any plausible alternative explanation given by the defendant strengthens the conclusion about the existence of an organized group which, at least throughout 2009 (but from the testimonies it can be inferred that at least Anton was in charge for the smuggling of migrants long time before), smuggled a massive number of migrants outside Kosovo to the countries of Western Europe and about the participation of Shaip Selmani in the above criminal group.

*The text messages sent and received by Ismail Krapı.*

Ismail Krapı admitted that the number 044 117 924 was his telephone number,<sup>76</sup> even though he alleged that also the people working in the company he ran used to utilize it, since he used to leave the mobile in the premises of his company.<sup>77</sup>

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<sup>76</sup> Minutes of 12 May 2011, page 3.

<sup>77</sup> Minutes of 12 May 2011, page 5:

*Presiding Judge: What about the mobile where the card carrying this number was put was it yours or the company's?*

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It is worth noticing that the above version given by Ismail appears implausible and not reliable. In fact, since he was an entrepreneur he obviously needed to be reachable (he did not have another number): it is therefore highly unlikely that, apart from some rare occasions, he did not take the mobile with himself when he left his working place.

Furthermore many of the text messages were sent or received late at night or, in any case, outside the working hours which makes implausible that the mobile was used, in that specific moment, by the employees of the company.

Sometimes in the content of the text messages the nickname of the defendant (Buc)<sup>78</sup> and some other times the shortened name (Is for Ismail) were mentioned.

Another corroboration to this reconstruction is given by the fact that, when the mobile was utilized by other people (it happened just twice, once with his business partner Shaip and the second with a person called Milaim), the name of the sender was indicated in the text, thus underlining that the sender was not Ismail as usual, but a different person.

All this considerations lead to the conclusion that the above telephone number was utilized almost exclusively by Ismail Krapic.

Once that it has been clarified that Ismail Krapic was the user of the above number, the text messages exchanged on his number can be examined.

- o Text messages exchanged with Shpejtim Ademaj using the telephone number 044 661 892:

on 9/08/2009, the following text was sent by Krapic to Shpejtim: "*Refill this number by credit one more time 0656331837*";

on 11/08/2009, the following text was sent to Shpejtim from the above number: "*Can you get 200 din credit to this number 0655008531*";

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*Ismail Krapic: I am the owner of the company, therefore it is mine.*

*Presiding Judge: What other people were using the mobile, if you know?*

*Ismail Krapic: When I say there were 22 people employed there that means that they made calls. The company needed to make calls regarding various orders and the telephone was on the table, a special table.*

*Presiding Judge: Where in your office?*

*Ismail Krapic: It was not an office; it was by the service close to the bar.*

*Presiding Judge: So you left this mobile there?*

*Ismail Krapic: Yes.*

*Presiding Judge: After working hours who was holding the mobile?*

*Ismail Krapic: It is possible that three or four days went by and I did not take the telephone, I left it in the company and there was always a guard there.*

*Presiding Judge: Did you usually take the phone with you?*

*Ismail Krapic: When I was there in the evening the bar was open till midnight, if I was there when the bar closed I took it with me, if I was not there when the bar closed I left it there because I needed it.*

*Presiding Judge: did you have other numbers or not?*

*Ismail Krapic: No.*

<sup>78</sup> Minutes of 12 May 2011, page 16:

*Ismail Krapic: I told you that I don't know this telephone number and it is true that I don't recognise this number; I have a pseudonym that I use Buci and no one has ever called me by this pseudonym Ise.*

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on 24/08/2009, the following text was sent to Shpejtim from the above number: "0654193926"; on the same day another text was sent to Shpejtim from the same number: "0656331837, get them both full of credit, Shaip"; (in this case Shaip Selmani, the business partner of Ismail Krapic was utilizing the mobile);

on 26/08/2009, the following text was sent to Shpejtim from the above number: "Buddy, in about an hour the guy from yesterday will reach the certain place" and Shpejtim replied: "You should take him to the apartment for about three hours, then you give him the number 0656331837 and write that your are left without credit for this number";

on 27/08/2009, the following text was sent to Shpejtim from the above number: "send me Meti's Serbian number" and Shpejtim replies; "0628368439";

on 02/09/2009, the following text was sent to Shpejtim from the above number: "Hopefully tonight we will have the work done" and Shpejtim replied: "OK, boss, we'll do it for sure";

on 25/09/2009, the following text was sent to Shpejtim from the above number: "What time should I be in Gjilan?";

on 28/09/2009, the following text was sent to Shpejtim from the above number: "Buddy, telephones have been closed yesterday in order to pillage the first ones, Anton's taxi took them 300 euro, I don't know whether your are aware of it" and Shpejtim replied: "Yes".

Furthermore, despite the fact that Shpejtim Ademaj and Ismail Krapic denied knowing each other, they exchanged 279 phone calls as it results form the police report signed by R Z DOC, dated 25 November 2009, reference number of the police document 2099 DKKO 034.

- o Text messages sent to an unidentified person, called Ship, using the number 044 245 250:

on 23.07.2009 Ship sent the following text to Ismail: "Is, tell me what is going on, that woman called me and said that she has prepared herself, and is it certain that she is leaving on Monday" and Ismail replied: "Ship, I want that when she once leaves she doesn't stop and get delayed anywhere, it's better for her to wait at her home because as you know I want everything to go well, talk to you tomorrow";

on 27.07.2009 Ship sent the following text to Ismail: "I'll call you tomorrow, it will be done in 2 days";

on 29.08.2009 Ship sent the following text to Ismail: "Is, how much to Miluz, only husband and wife without children, tell me also when they can leave";

on 30.08.2009 Ship sent the following text to Ismail: "Is, we left it for day after tomorrow, ok, only to have them enter France, ok" and on 31.08.2009 Ismail replied: "Tomorrow, 10.30 hrs in Pristina, give them a telephone with them, you know";

on 01.09.2009 at 08.45 hrs Ship sent the following text to Ismail: "Are you taking them at 10 o'clock because I have to take my son to school, today he starts the first grade, ok", and Ismail replied: "You leave them at the Maxi Restaurant and I will go and take them from there" and Ship replied again: "No, we cannot leave them because they would think something is wrong, but can you take them at 10.30 hrs" and Ismail replied "Yes";

on 08.09.2009 Ship sent the following text to Ismail: "are you taking those two persons, is he taking the money, take my share and yours too, about the money you personally will have to

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*make a deal with them, both of them have the money, with all the persons that I bring to you, you personally deal with them”;*

on 11.09.2009 Ismail sent the following text to Ship: *“tell them that now he will come and take you and send you to sleep until morning, tell them”* and Ship replied: *“they are saying that they have been abandoned by him on the road”;*

on 08.10.2009 Ismail sent the following text to Ship: *“do you agree with 1.8 until A”*, and Ship replied: *“yes, yes, we will do that but we have to wait until they are prepared and then you take them , ok”*, and then Ismail replied further: *“don’t you go above 2”* and Ship replied: *“ok”*.

- Text messages sent to an unidentified person, called Bajram, using the numbers +41765147224 and 33667216958:

On 24.09.2009 a person called Milaim sent the following text to the first of the above numbers: *“Uncle Bajram how much you’re taking me from Subotica to France for 1 person to take him directly, tell me, It’s me Milaim”;*

On 29.09.2009 Ismail sent the following text to the second of the above numbers: *“Uncle Bajr, if you accept, when you get to France I’ll send you 7 thousand Euro, tell me”*.

- Text messages sent to an unidentified person, using the number 385955364220:

on 30.08.2009 Ismail sent the following text: *“1800 from Subotica to Wien, I was just informed by Ship that he is in Subotica”* and then he sent a further one: *“1500 is for me but I can make it a bit cheaper for you, 1700, do you want that Mil”*.

- Text messages exchanged with an unidentified person, using the number 044 924 016:

on 25.08.2009 the person using this number sent the following text to Ismail: *“buc, has he dispatched them”*, and Ismail replied: *“no, he did not, he is saying that he will dispatch them at 10 o’clock PM, and you have a nice time”;*

on 26.08.2009 at 10.35 hrs Ismail sent the following text: *“The one from Gjilan that left yesterday today is finished and the other one is still in Wien, today it will be finished, bye, bye”* and at 17.29 hrs Ismail sent a further text: *“I’m dispatching a girl, we are leaving the money at Agushi, there where we have taken the slave and his wife, can we leave it at Agushi”*, and the unidentified person replied: *“yes, you can leave it there without any problem”*.

Again the above messages are self evident and speak for themselves, without the need to elaborate that much as to their meaning.

Most of the considerations already made for Shaip Selmani are also valid for Ismail Krapu. The relationship with Shpejtim Ademaj is even stronger and stricter and the two of them even mentioned openly the smuggling of migrants (see for instance the texts exchanged on 26 August).

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In the text sent on 28 August 2009 Ismail mentions Anton, making it clear once again that the criminal group Krapu was participating in was the one led by Anton Gecaj.

The picture which emerges from the above messages shows how massive the activity of smuggling of migrants was and how deep and established was the involvement of Krapu and what his role in the organization was.

The same as Selmani, the role of Krapu was less important than Shpejtim's one, as it appears from the requests to the latter to refill the telephone cards and from the fact that Krapu was clearly receiving instructions by Ademaj.

Krapu (the same as Selmani) appears to be in charge for the contacts with the migrants (before and during the trip), for giving information to the migrants as to the prices for the various destinations and also for the collection of the money (see the texts exchanged with an unidentified person on 26 August 2009).

The defendant was thoroughly confronted during the main trial with the content of most of the text messages above indicated, but he could not give any plausible explanation for almost all of them: sometimes he stated that he had just received the message, but he had never seen it, some other times he stated that he could not remember the circumstances which made him send a specific message or that the message has not been sent by him.

The lack of any alternative explanation given by the defendant strengthens the conclusion about the existence of an organized group which at least throughout 2009 smuggled a massive number of migrants outside Kosovo to the countries of Western Europe and about the participation of Ismail Krapu in the above criminal group.

### *Telephone contacts related to the defendant Avni Hajdari.*

Even though Hajdari denied having utilized the telephone number 044 610 955, the testimony of B R has clarified undoubtedly that the defendant was utilizing the above number.

The results of the metering have shown that the defendant exchanged with Shpejtim Ademaj, after 14.10.2009, 23 telephone calls, even though during the examination they denied knowing each other.

Moreover the outcome of the metering has shown telephone contacts also between Shaip Selmani and Avni Hajdari notwithstanding the two defendants denied knowing each other (see the police report dated 18/08/2010, reference number 2099 DKKO 034).

As to the role of Qaka/Caka in the organization, it is worth reporting again (the content of the message has already been analyzed) the following text messages recorded on the number used by Shaip Selmani and sent by him on 11.09.2009 to an unidentified person, called Afrim, using the number +31644493317:

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*“Afrim, can you finish something with that fast connection as you did before, to take them directly to France because gaka is saying he will take them but only for 1600 each to Wien”.*

- **The roles of the defendants in the organized criminal group.**

After having assessed the existence of an organized criminal group dealing with the smuggling of migrants, the roles of the members of the organization who have been identified can be delineate.

Anton Gecaj: he was undoubtedly the leader, or at least one of the leaders, of the criminal group and had several people working for him in Kosovo (one of the most active was Shpejtim Ademaj). He established the price of the smuggling and gave instructions to the subordinates involved in the various phases of the journeys to be made to smuggle the migrants outside of Kosovo.

The huge amount of money gained through the smuggling makes it clear that Anton Gecaj was one the main beneficiaries of the immense amount of money collected by the organization out of its criminal activity

Joca (identified by the prosecutor as Josip Gjurashëviq, even though no evidence has been offered as to the above identification): he was the person in charge for the handling of the migrants in relation to the part of the journey in Serbia, once they had crossed the border of Kosovo. His position in the organization was prominent and he seemed to have a role comparable to the one of Anton.

Avni Hajdari, Ismet Rama, Shpejtim Ademaj, Ismail Krapo and Shaip Selmani: all of them had a role less important than the two described above; they were all in charge with the collection of the migrants and with the keeping of the contacts with them (especially Krapo, Selmani and Ademaj) and also with the transport of the migrants (especially Ademaj).

Hajdari (alias Qaka/Caka) appears to be the most prominent among this group of people, since he was indicated by Anton Gecaj as the person who could give information as to the tragedy, once Gecaj had decided to surrender to the police.

It is obvious that the organization counted several other members not identified (mainly drivers for the transportation of the migrants and other people providing for the accommodation for the migrants once they had reached Subotica).

As to Blerim Ademaj, his participation in the criminal group appears to be not completely proven. In fact the prosecutor just offered evidence of the involvement of Blerim in two episodes of smuggling (occurred on the same occasion, the fatal trip of 14 October 2009) which is insufficient to found his participation in the criminal group, since the participation in a criminal organization entails a certain stability and duration which has not been proven by the prosecutor.

There is surely a grounded suspicion that Blerim was one of the men working in Switzerland for Anton (in fact Blerim was living there and was only involved in episodes of smuggling of migrants to Switzerland), but this suspicion does not reach the rank of full evidence and

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therefore, in compliance with the rule envisaged in Art. 3, par. 2 of the KCCP, the defendant can not be considered as a member of the criminal organization.

The above conclusion is *a fortiori* valid for Fatmir Pajaziti and Xhemail Halilaj who have been charged in relation to a single episode of smuggling, without any further evidence as to their participation in the criminal organized group dealing with the smuggling of migrants.

### 3. LEGAL QUALIFICATION.

After having reconstructed the events and having evaluated the presented evidence, the legal qualification of the facts can be finally assessed.

As to the single episodes of smuggling, the qualification made by the prosecutor, who charged the defendants with the criminal offence of Smuggling of Migrants, contrary to Art. 138 paragraphs 1 and 6 of the CCK, appears to be correct.

In fact, Art. 138, par. 7 item 1 of the CCK clarifies that the term smuggling of migrants means the procurement of the illegal entry of a person into a country as to which such a person is not a national or permanent resident. The procurement of the illegal entry must be made in order to obtain a financial or material benefit.

The item 2 of the same paragraph specifies that the term illegal entry means crossing a border of Kosovo or/and crossing the borders of another state, without respecting the necessary requirements for legal entry into such a state.

After the evaluation of the evidence, it can be surely affirmed that the migrants could not enter Hungary legally (otherwise the payment of such a big amount of money would have been meaningless) and that the boat capsized while they were crossing the border between Hungary and Serbia (which is marked by the river Tisa).

It is worth noticing that the word "crossing" does not necessary entail that the migrant enters country where he/she could not legally enter; in fact, in order to consider the crime as completed, it is enough that the migrant passes the border, even though without reaching the other country.

And this is what actually happened, since the migrants crossed the border of Serbia, even though most of them could not reach Hungary, but died in the waters of the river Tisa.

It has also been widely proven that the illegal entry was procured by the defendants in order to obtain a material benefit.

All the witnesses specified that there was a price to be paid for the smuggling and it is simply unconceivable that each of the persons involved in the smuggling did not have a material benefit for their intervention. Most of the money was surely to be given to the leaders of the organization (Anton and Joca), but of course it goes against the common sense that the

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people involved in the smuggling were not earning anything for their services (which entailed a certain amount of risk, since they were involved in a criminal activity).

As to the position of Xhemajl Halilaj, even assuming that he did not have any material benefit in the smuggling of the Mirena family, in any case he gave a causal contribution to the commission of the crime by putting in contact Mirena with Pajaziti, by keeping the money for the smuggling as if he were a sort of depositary (in order to deliver it Pajaziti once the trip had been completed) and by informing Mirena as to the date and place of departure, being perfectly aware that Pajaziti was gaining a material benefit.

It is a general principle that, even though the crime requires a special intent (*dolus specialis*), and the crime foreseen by Art. 138 of the CCK requires the special intent of smuggling migrants in order to obtain a material benefit (therefore a specific goal that goes beyond the result of the conduct of the agent), it is enough that at least one of the participants in the criminal offence (if of course the crime was committed in co-perpetration) has the required special intent, whereas the others can only have the generic intent to give their mindful contribution to the commission of the crime.

In the present case Pajaziti had surely that special intent and Halilaj was certainly aware of that; even so, he willfully accepted to play an active role in the smuggling, being aware that the migrants would be sent outside Kosovo illegally.

Therefore, Halilaj surely gave a mindful contribution to the commission of the crime and this founds his responsibility.

It is just the case to add that the same conclusion would be also valid for the other defendants (Shaip Selmani, Ismail Krapu, Blerim Ademaj), in the (frankly implausible) case that somebody might consider not proven beyond any reasonable doubt that they had a material benefit. In fact, the undeniable circumstance that they were aware of cooperating in a criminal activity, which was surely making other people gain a material benefit, establishes firmly their culpability on the basis of the principle above explained.

Therefore after the evaluation of the presented evidence and the assessment as to the legal qualification, it can be affirmed that, as to the criminal offence of Smuggling of Migrants, the existence both of the *actus reus* and of the *mens rea* has been proven in relation to all the defendants who have been convicted.

Also the qualification made by the prosecutor of the group of people dealing with the smuggling as an organized criminal group is deemed correct by the panel.

In fact, as to the defendants Avni Hajdari, Shpejtim Ademaj, Ismail Krapu and Shaip Selmani, it has been proven beyond any reasonable doubt their participation in an organized criminal group (and in the activities of the above group) lead by Anton Gecaj and an individual called Joca, which was structured with a partition of the roles among the members, had existed for a certain period of time (the covert measures give evidence of such existence since June 2009, but the testimonies have proved that the illegal activity of the organization, and in particular of Anton, had commenced long before) and acted in concert with the aim of

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smuggling outside Kosovo a massive number of migrants. The material benefits gained out of this activity were enormous.

Such conducts are completely contained in the provision envisaged by Article 274, par. 2, of the CCK which the above defendants have been charged with.

Moreover, it is undisputed (because fatally demonstrated by the tragedy) that the smuggling of the migrants was undertaken by the organization in a manner that had endangered their lives and safety and therefore the classification made by the prosecutor, who charged the defendants also with Art. 274 paragraphs 4 of the CCK, appears to be correct, even though not for all the defendants.

In fact, only as to the defendants Avni Hajdari and Shpejtim Ademaj, it can be considered as proven that, when the tragedy occurred, they were still within the criminal organization and participating in its activities. In fact, as it has been shown above, they were directly involved in the smuggling of some of the migrants who died in the tragedy occurred in the river Tisa.

From the wording of the provision, it appears that the aggravation of punishment is applied even though the death is in mere causal connection with the activity of the organization. In other words, even though Avni Hajdari and Shpejtim Ademaj had excluded the possibility that the arranged trip could entail the risk of the death of some migrants, the mere fact that the activity of smuggling actually resulted in the death of the migrants entails, *per se*, that the criminal offence envisaged by Article 274, par. 4 was committed by the two defendants in reference both to the *actus reus* and the *mens rea*.

In any case, it appears obvious that the two defendants were well aware of the dangerousness of the trip (both of them were not just members of the organization, but prominent ones) and that they surely foresaw and accepted the risk that such tragedy could occur (recklessness or *dolus eventualis*, Art. 15, paragraph 3 of the CCK).

On the contrary, the same can not be said for Ismail Krapic and Shaip Selmani.

There is no evidence that the above defendants were involved in the smuggling of the migrants who were on the boat crossing the river Tisa the night of 14 October 2009. The last relevant text messages as to their involvement in the smuggling of migrants date back to the end of September.

Therefore, pursuant to Art. 3, par. 2 of the KCCP, it can not be considered as proven beyond any reasonable doubt that the above defendants were still actively participating in the activities of the organization when the tragedy occurred and that they were involved in activities which led to the death of migrants.

Thus, as to Ismail Krapic and Shaip Selmani, the classification made by the prosecutor does not appear to be correct and the criminal charge must be reclassified from Art. 274, par. 4 of the CCK to Art. 274, par. 2 of the CCK.

Once reclassified the charge, the evidence presented against the above two defendant's shows undeniably the existence of the *actus reus* and of the *mens rea* in relation to the above criminal offence.

#### 4. MOTIONS OF THE PARTIES

The parties have raised some issues in the course of the main trial.

Some of the witnesses have been asked in front of the panel to recognize the defendants. Since the witnesses made the recognition without a previous physical description of the person to be recognized, some of the defence counsel claimed that such a fashion of proceeding was in violation of the rule envisaged in Art. 255 of the KCCP.

The above objections have been reckoned erroneous by the trial panel: in fact Art. 255 of the KCCP is related to the mere identification of persons or of objects; the identification, as it results clearly by the location of the provision, is an investigative action.

On the contrary, the recognition of a person in front of the court must be considered as a part of the testimony and therefore it is not subjected to the rules envisaged for the identification.

Furthermore the defense counsels requested more than once that some statements given by witnesses were ruled out, because the defense counsels of the defendants had not been invited to assist the examination.

The above interpretation is again worthless, as it results from the ruling issued in the hearing of 9 February 2011.<sup>79</sup>

Besides, the defense counsel of Avni Hajdari asked the court to file a request with the Serbian Authorities in order to know whether or not the autopsies of the dead people had been performed and how many people were on the boat which capsized.

The above requests were deemed unnecessary by the panel, as it results from the ruling issued in the hearing of 14 April 2011.<sup>80</sup>

The same defense counsel objected that the police reports based on the text messages acquired through the orders of covert measures had to be declared inadmissible evidence, since they were related to text messages sent and received before the issuance of the order.

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<sup>79</sup> Minutes of 9 February 2011, page 10:

*As to the first objection raised by the Defense Counsel regarding the statement the witness gave to the Public Prosecutor, the panel issues the following ruling: the objection is ungrounded and therefore rejected. In fact it is clearly written in Article 237 of CCP that the Public Prosecutor may decide to invite a Defense Counsel during the examination of a witness. The verb 'may' makes it clear that the Public Prosecutor is not obliged to invite the Defense Counsel during the examination of the witness.*

<sup>80</sup> Minutes of 14 April, page 2:

*As to the request for evidence presented by Bajram Tmava, dated 4 March 2011, the panel issues the following ruling: the request for new pieces of evidence from Serbia is rejected; in fact as to the information in order to verify whether or not an autopsy happened in Serbia, the request is superfluous since from the evidence present in the case file and also from the evidence acquired in the main trial the cause of death of the victims appears to be clear and evident. As to the request to verify the exact number of people on the boat, the above circumstance has been clarified by the witness B R and therefore there is no need for clarification. The circumstance about who was the owner of the boat and who was steering the boat do not bare relevance since B R clarified that the boat was clearly overloaded and did not speak about any mistake by the driver. As to the request to ask the Serbian authorities to ask for clarification in relation to the roles of the accused, the above circumstance could be clarified through the evidence in the case file and be acquired during the main trial.*

In other words the defence counsel claimed the unlawfulness of the covert measure of telephone interception in relation to the text messages exchanged before the issuance of the order for interception.

The panel reckoned the objection worthless, because the covert measure of interception of telecommunication foreseen by Article 258 of the KCCP does not make any difference between the telecommunications which are ongoing (such as the conversations via phone) and the telecommunications which already took place (such as the text messages), but simply makes reference to telecommunications.

And, since it is undisputed that the covert measure of interception of telecommunications allows intercepting the ongoing text messages, in the lack of a specific prohibition in the law, there is no logical or juridical reason why the text messages already exchanged should not be intercepted through the same covert measures.

Therefore the covert measure of interception of telecommunication can be considered absolutely legitimate in order to acquire the text messages exchanged before the issuance of the order for interception (in fact the semantic of the word interception - from the Latin verb *capere*, which means to take - recalls an hidden activity of taking, but does not mean that the taking must be related only to the ongoing conversations).

Furthermore, the prosecutor presented on two occasions the statement given by Enver Neziri to the Hungarian authorities: on the first occasion the piece of evidence was declared as not admissible, since it had not been acquired in compliance with Article 507 of the KCCP;<sup>81</sup> afterwards the prosecutor showed that he had complied with the requirements envisaged in Art. 507 par. 3 of the KCCP, but the piece of evidence was deemed unnecessary by the panel.<sup>82</sup>

## 5. DETERMINATION OF PUNISHMENT.

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

In the present case the Panel came to the conclusion that, the criminal offences which the defendants were found guilty of were extremely serious criminal acts, committed intentionally and with the intent to gain material benefit.

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<sup>81</sup> Minutes of 14 April 2001, page 4

<sup>82</sup> Minutes of 24 May 2011, page 4:

*The statement of Enver Nesiri pursuant to Article 152 paragraph 3 item 1 the panel deems that the taking of such evidence is unnecessary and in fact as to the statement it has two relevant points, firstly the identification of the witness of Avni Adiri the person nick named Joca as to this point other witnesses in the present trial have already given their statement and therefore to examine Enver Nisiri is unnecessary. The other point of relevance is the alleged co-operation by Joca to Anton Gecaj but the witness in the statement reported that he just heard the circumstances from another person and therefore the examination of the witness would not be important and necessary as to the above point and the statement to be given back to the Public Prosecutor.*

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As to the positions of Shpejtim Ademaj, Avni Hajdari, Ismail Krapic, Shaip Selmani and Fatmir Pajaziti, it also must be added that they blatantly lied in the course of the criminal proceedings, denying circumstances which were undeniably proven by the interception activity and thus showing no sign of repentance, notwithstanding the terrible tragedy which occurred.

As to the defendant Blerim Ademaj his deposition, even though not completely sincere in relation to his role and his brother's, in any case shed some light on the structure and on the roles of the organization which smuggled people outside Kosovo and therefore this circumstance (and the fact that he spontaneously surrendered to the police and waived his right to the confirmation hearing) must be taken in consideration when determining the punishment against him.

Also the fact the defendants Shpejtim Ademaj, Blerim Ademaj, Avni Hajdari, Ismail Krapic, Shaip Selmani and Xhemal Halilaj did not have any previous convictions has to be taken in consideration as to the determination of the punishment.

As to Fatmir Pajaziti, he was previously convicted to one year of imprisonment for the criminal offence of Endangering the Public Traffic, contrary to art. 165 of the Criminal Law of Kosovo.

As to Xhemal Halilaj the court finds that there are particular mitigating circumstances which indicate that the purpose of the punishment can be achieved by imposing a lesser punishment (Art. 66, par. 1, item 2 of the KCCP). In fact he openly and sincerely described the events in which he was involved, shedding light on the deeds (which otherwise would have remained blurred) undertaken by him and by Fatmir Pajaziti in relation to the smuggling of the Mirena family.

Furthermore his sincere behaviour held throughout the entire trial and the low degree of his criminal liability led to the conclusion to impose against him a suspended sentence.

Therefore the panel, after having taken in consideration all the criteria envisaged in Articles 64, 65 and 66 of the KCCP determines the punishment as follows:

as to Shpejtim ADEMAJ the Court deems that the fair punishment shall be the following:

14 years of imprisonment and 200.000 Euros of fine as to the criminal offence of Organized Crime, contrary to Article 274, paragraph 4 of the CCK;  
2 years of imprisonment for each migrant smuggled as to the criminal offences of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed five criminal offences contrary to Art. 138, 6 of the CCK);  
the aggregated punishment, pursuant to Article 71, paragraphs 1 and 2 of the CCK, is determined in 17 years of imprisonment and 200.000 Euros of fine;

As to Avni HAJDARI the Court deems that the fair punishment shall be the following:

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16 years of imprisonment and 250.000 Euros of fine as to the criminal offence of Organized Crime, contrary to Article 274, paragraph 4 of the CCK;

2 years of imprisonment for each migrant smuggled as to the criminal offences of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed eight criminal offences contrary to Art. 138, 6 of the CCK);

the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 19 years of imprisonment and 250.000 Euros of fine;

In relation to the punishment of 250.000 Euros of fine against Hajdari and Ademaj it is noteworthy the following:

Art. 71 par. 4 and 5 of the KCCP, which foresee the case of the aggregated punishment when the punishments to be aggregated are not homogeneous (fine and imprisonment), envisages a maximum fine of 50.000 Euros.

It is clear that the above figure must be considered as a clerical mistake (50.000 Euros instead of 500.000 Euros), since there are single criminal offences, such as Organized Crime (art. 274, par. 4 of the CCK) which can be punished with a fine up to 500.000 Euros.

Otherwise, the outcome of not considering the above limit as a clerical mistake would be that in regards to a person convicted in the same proceedings for two criminal offences of Organized Crime, contrary to Article 274, par. 4 of the CCK, the maximum fine issuable would be 50.000 Euros, whereas the maximum fine issuable for each criminal offence of Organized Crime would be 500.000 Euros (which goes against logic and common sense and therefore leads to the conclusion that the maximum of 50.000 indicated for the aggregated punishment is a clerical mistake).

As to Ismail KRAPI and Shaip SELMANI the Court deems that the fair punishment shall be the following:

8 years of imprisonment each for the criminal offence of Organized Crime, contrary to Article 274, paragraph 2 of the CCK.

As to Fatmir PAJAZITI the Court deems that the fair punishment shall be the following:

2 years of imprisonment for each migrant smuggled as to the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed five criminal offences contrary to Art. 138, 6 of the CCK);

the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 7 years of imprisonment.

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As to Xhemajl HALILAJ the Court deems that the fair punishment shall be the following:

1 year and 6 months of imprisonment for each migrant smuggled as to the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed five criminal offences contrary to Art. 138, 6 of the CCK);

the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 2 years of imprisonment.

Pursuant to Articles 41, 42, 43 and 44 of the CCK the sentence against Xhemajl HALILAJ is suspended and therefore the punishment shall not be executed if the convicted person does not commit another criminal offence for a period of 3 years.

As to Blerim ADEMAJ the Court deems that the fair punishment shall be the following:

2 years of imprisonment for each migrant smuggled as to the criminal offence of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138 paragraph 6 of the CCK, therefore the above defendant has committed four criminal offences contrary to Art. 138, 6 of the CCK);

the aggregated punishment, pursuant to Article 71 paragraphs 1 and 2 of the CCK, is determined in 5 years of imprisonment.

The time spent in detention on remand by Fatmir Pajaziti, Avni Hajdari and Shpejtim Ademaj from 16.12.2009 until the judgment becomes final is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.

The time spent in house detention by Xhemajl Halilaj from 16.12.2009 until 14.09.2010 is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.

The time spent in detention on remand by Shaip Selmani and Ismail Krapu from 16.12.2009 until 17.12.2009 and from 17.6.2011 until the judgment becomes final is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.

The time spent in house detention by Blerim Ademaj from 27.1.2011 until 16.6.2011 and in detention on remand from 17.6.2011 until the judgment becomes final is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.

**6. COSTS**

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The accused pronounced guilty have to reimburse the cost of criminal proceedings with the exception of interpretation (KCCP, Article 102, Paragraph 1).

The cost is determined in 70 Euros per hearing for a total amount of 1.330 Euros, including the cost of the covert measures issued during the investigation, plus 1000 Euros for the costs of the trips made, respectively from Germany and Slovenia, by the witnesses A A and H C. Therefore the total amount is determined in 2.330 Euros. Since it is not possible to specify what portion of the costs shall be paid by each defendant, the convicted persons shall be jointly and severally liable for the costs.

**7. 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 no property claim was filed with the court.

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

**8. LEGAL REMEDY**

Legal remedy: pursuant to art. 400 KCCP, an appeal must be announced within 8 days from the announcement of this verdict.

Pursuant to Article 407 of the KCCP, the appeal shall be filed through the District Court of Prishtina to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.

Recording Officer

\_\_\_\_\_  
Vlora Johnston



Presiding Judge

\_\_\_\_\_  
Gianfranco Gallo