

**DISTRICT COURT OF PRISHTINE/PRISTINA**  
**Case nr. P. No. 429/07**

**IN THE NAME OF THE PEOPLE**

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

- 1) EULEX Judge, Mr. Francesco Florit, as presiding Judge,
- 2) Local Judge, Mr. Ferid Beslimi, as panel member,
- 3) EULEX Judge, Mr. Dragomir Yordanov, as panel member,

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

**Agron Haradinaj**, born on 17 July 1966 in Gllogjan/Glodane, Deçan/Decane

**Agim Hoti**, born on 31 October 1981 in Polac/Poljance, Skenderaj/Srbica,

**Mentor Qela**, born on 6 May 1979 in Jabllanicë/Jabllanica, Gjakovë/Dakovica,

**Driton Spahiu**, born on 27 December 1975 in Mitrovicë/Mitrovica,

**A N**, born on 10 June 1978 in Gjakovë/Dakovica,

After having held the main trial, in the presence of the Public Prosecutor, of the accused, and their defense counsels;

after the panel deliberation held on 20<sup>th</sup> November 2009, based on the Article 390 and 391 KCCP;

pronounces the following:

**ENACTING CLAUSE**

**Agim Hoti**, **Mentor Qela** and **Driton Spahiu** are found guilty for the criminal acts of attempted aggravated murder, contrary to article 147, para 1, n.4, and 20 CCK in co-perpetration ex article 23 CCK and for the crime of unauthorized ownership, control, possession and use of weapon, contrary to 328, para 2 CCK, to each of them respectively attributed;

Specifically, the accused are responsible for the following crimes:

**Agim Hoti and Mentor Qela**

1. On the 28<sup>th</sup> of February 2007, around 08:00 o'clock defendants Agim Hoti and Mentor Qela, armed with an automatic rifle and a TT handgun, went to village Gjergjice, municipality of Drenas, and after they noticed the Toyota Land Cruiser vehicle with license

plates 451 KS 443 approaching, in which Anton Berisha was traveling, with the intention of depriving him of life, initially the defendant Mentor fired seven times with the TT handgun in the direction of the vehicle of the injured party Anton Berisha; in the meantime the defendant Agim Hoti fired 12 times with the automatic rifle hitting the right back part of the vehicle with one bullet. On this occasion, the lives of Jeton Krasniqi, Monika Krasniqi and Jetmira Muriqi from Peja were also endangered, since they were travelling together with the injured party Anton Berisha. After the commission of this criminal act these defendants fled from the crime scene;

**Agim Hoti, Mentor Qela and Driton Spahiu:**

2. On 12<sup>th</sup> of April 2007, at around 16.15 o'clock the accused tried to deprive of life the injured party Anton Berisha and they also endangered the lives of Ilir Gashi, Fatos Sylaj, Azem Mjekiqi, Gezim Millaku and Driton Rugova, all of them KPS policemen from the Close Protection Unit in Pristina in the manner that, the defendants Agim Hoti and Mentor Qela also recruited the defendant Driton Spahiu and then the defendants Agim Hoti and Mentor Qela, equipped with "ZOLLA" type rocket launchers, and defendant Driton Spahiu equipped with hand grenades, positioned themselves on the side of the road in the village Gjergjice, Municipality of Drenas, on the Pristina-Peja main road and then the defendants Agim Hoti and Mentor Qela fired with "ZOLLA's", and the defendant Driton threw a hand grenade in the direction of the "KIA" police vehicle with license plates 093 KS 130, in which the injured party Anton Berisha was travelling, escorted by the above mentioned persons. On this occasion one of the shells from a ZOLLA pierced the front of the vehicle and caused bodily injuries to the KPS member, the injured party Ilir Gashi, who was driving the vehicle at that time. Fortunately, the same shell didn't explode whereas the hand grenade exploded between two vehicles on the road, causing considerable material damage to two police vehicles and afterwards the defendants Agim Hoti, Mentor Qela and Driton Spahiu fled the crime scene in the direction of the forest over the village Gjergjice, but after the intervention of the KPS members from Drenas police station they were caught and arrested.

Thus the defendants Agim Hoti and Mentor Qela committed two criminal acts of attempted aggravated murder contrary to article 147 para.1 items 4 and article 20 in co-perpetration, ex 23 of PCKK whereas the defendant Driton Spahiu committed one criminal act of attempted aggravated murder contrary to article 147 para.1 items 4, and article 20, in co-perpetration ex article 23 CCK;

Furthermore the accused **Agim Hoti, Mentor Qela and Driton Spahiu** are found guilty for the criminal acts of unauthorized ownership, control, possession and use of weapon, contrary to 328, para 2 or 3 CCK, to each of them respectively attributed;

Specifically, the accused are responsible for the following crimes:

**Agim Hoti**

At unknown time, and without authorization, he obtained and kept in possession and carried firearms, specifically and AK-47 automatic rifle and a "ZOLLA" type rocket

launcher with serial no. 91-14 1546-64 mm M 80 and he used those weapons in the time and place as under count 1, and 2 of the enacting clause of this indictment,

**Mentor Qela**

At an unknown time, without authorization has provided, possessed and carried fire arms, specifically two automatic guns AK-47, with serial number 1985 – M 76 and 3108 189, two bullets of 12 mm, a pistol TT, as well as a rocket launcher of type, “Zolla” with serial number 91-05 2376 64 mm M 80, where the pistol and the rocket launcher have been used at the time and place as under count 1, and 2 of the enacting clause of this indictment.

**Driton Spahiu**

At an unknown time, and without authorization, he obtained and kept in possession and carried firearms, specifically three hand grenades, made in Yugoslavia, and he used one of those in the time and place as under count 2 of the enacting clause of this indictment, whereas the other two were confiscated from him on that same day when he was captured and arrested by the KPS member in the forest in the village Gjergjice, Municipality of Drenas,

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Based on article 390, n.3 KCCP,

**Agron Haradinaj**

In relation to the same criminal acts listed above is found not guilty and is therefore acquitted.

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For the above mentioned reasons the Panel issues the following:

**SENTENCE**

**1. Agim Hoti**

Pursuant to articles 38, 20, 65(2), Article 147 paragraph 1, n. 4, and Article 23 of the Criminal Code of Kosovo (CCK) for the crime committed on 28<sup>th</sup> February 2007, the defendant Agim Hoti is sentenced to imprisonment of 12 years;

Pursuant to articles 38, 20, 65(2), 66, 147 paragraph 1, n. 4, and Article 23 of the Criminal Code of Kosovo (CCK), for the crime committed on 12<sup>th</sup> April 2007, the defendant is sentenced to imprisonment of 14 years;

Pursuant to article 328, paragraph 2 of the CCK the defendant is sentenced to imprisonment of 1 year and four months;

Pursuant to article 71 paragraph 1 and 2, n. 2 of the Criminal Code of Kosovo the defendant Agim Hoti, **shall serve a term of imprisonment of 16 years.**

## **2. Mentor Qela**

Pursuant to articles 38, 20, 65(2), Article 147 paragraph 1, n. 4, and Article 23 of the Criminal Code of Kosovo (CCK) for the crime committed on 28<sup>th</sup> February 2007, the defendant Mentor Qela is sentenced to imprisonment of 17 years;

Pursuant to articles 38, 20, 65(2), Article 147 paragraph 1, n. 4, and Article 23 of the Criminal Code of Kosovo (CCK) for the crime committed on 12<sup>th</sup> April 2007, the defendant is sentenced to imprisonment of 20 years;

Pursuant to article 328, paragraph 2 of the CCK the defendant is sentenced to imprisonment of 1 year and 4 months;

Pursuant to article 71 paragraph 1 and 2, n. 2 of the Criminal Code of Kosovo the defendant Mentor Qela, **shall serve a term of imprisonment of 20 years.**

## **3. Driton Spahiu**

Pursuant to articles 38, 20, 65(2), article 147 paragraph 1, n. 4, and Article 23 of the Criminal Code of Kosovo (CCK) for the crime committed on 12<sup>th</sup> April 2007, the defendant Driton Spahiu is sentenced to imprisonment of 15 years;

Pursuant to Article 328, paragraph 2 of the CCK the defendant is sentenced to imprisonment of 10 months;

Pursuant to article 71 paragraph 1 and 2, n. 2 of the Criminal Code of Kosovo the defendant Driton Spahiu, **shall serve a term of imprisonment of 15 years and 6 months.**

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The time the defendants Agim Hoti, Mentor Qela and Driton Spahiu spent in detention on remand from 12 April 2007 until the judgment becomes final will be counted as part of the imprisonment pursuant to Article 73 of the CCK.

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The trial panel,

noting that the prosecutor on the 11<sup>th</sup> November 2009 withdrew the charge against A N in relation to the last count of the indictment,

after reading article 389 of the KCCP,

### **REJECTS**

the charge against the accused.

### **PROPERTY CLAIM**

The accused Agim Hoti, Mentor Qela and Driton Spahiu, cumulatively and jointly, shall compensate the injured party Ilir Gashi for the damages caused. The data provided in the criminal proceedings does not afford a reliable basis for either a complete or partial award; the Court therefore instructs the injured party to file a civil suit for the entire claim pursuant to article 112 (2) of the KCCP.

### **COST**

Pursuant to Article 102 paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP) the convicted persons shall pay the costs of the proceedings which are cumulatively liquidated in Euro 350.

### **CONFISCATION**

Pursuant to article 60 of the KCCP, the confiscation of the weapon seized in the course of the investigation is hereby ordered.

### **REASONING**

#### **Procedural History**

On 31 July 2007 the indictment against the five accused was filed in Court.

The indictment was confirmed by the decision of judge Selman Bogiqi on 17 September 2007, after hearing the accused and their defence counsels in the course of the hearing of confirmation of the indictment.

The trial against the accused started on 22 April 2008 before a panel composed by local judges and lay judges. After the initial formalities and the reading of the indictment by the prosecutor, the examination of the witnesses started.

The trial was adjourned to 15 May 2008 and subsequently to 29 May, 24 June, 11 September, 8 October and 18 November 2008.

With letter dated 16.3.2009 the President of the Panel, judge Mehdi Dehari asked the President of the District Court of Pristina that the case be assigned to a Panel composed

of International Judges, based on the provision of the law on jurisdiction of EULEX judges (nr. 03/L-053).

Following the request of the President of the District Court and based on the provisions of articles 3.4, 3.6 and 4.3 of the Law on Jurisdiction, the President of the Assembly of EULEX Judges, Ms. Giuliana Civinini issued the decision dated 3 June 2009, assigning the case to a panel composed by EULEX judges Francesco Florit and Dragomir Yordanov. Judge Ferid Beslimi, as local judge, was later assigned to the case by the President of the Court, Mr. Anton Nokaj.

The trial re-commenced on 6 October 2009. After the preliminary formalities (including the communication of the composition of the Panel and the reading of the indictment) the witness Ilir Gashi was interrogated.

In the subsequent hearings, witnesses were heard in the following order:

On 26 October 2009 witnesses J K, G M and F S.

On 27 October 2009 witnesses A M, D R, S T, V V.

On 3 Novembre 2009 witnesses A B, B B and F H.

On 4 November 2009 the examination of the accused started with Agim Hoti and Mentor Qela.

On 11 November 2009, the examination of the accused continued with the remaining defendants.

The Court heard the final speeches of the Public Prosecutor, the Defence Counsels and the accused on the 19 November 2009.

Eventually, on 20 November 2009, the panel announced the judgment.

### **Legal and factual findings.**

At the end of the trial, the charges have found confirmation in relation to the accused Agim Hoti, Mentor Qela and Driton Spahiu while the charges against Agron Haradinaj and A N have been rejected, for different reasons.

The main charges against the defendants are the two counts for attempted murder of Anton Berisha and those travelling with him on the 28 February and on the 12 April 2007. The remaining counts relate to the detention of weapons used in the course of the assaults or discovered in the course of the searches of the house used by Mentor Qela and Agim Hoti.

On the two main counts of attempted murder the evidence collected against Agim Hoti, Mentor Qela and Driton Spahiu (charged only for the second episode) is colossal and incontrovertible. It consists of testimonial evidence, of police reports and technical expertise (fingerprint analysis; crime scene reports; ballistic expertise) with the corroboration of the confession given by the same accused Hoti, Qela and Spahiu.

The investigation against the accused both for the episode of 28 February 2007 and for the assault of 12 April 2007 started with the arrest of the three accused Hoti, Qela and Spahiu in the proximity of the crime scene of the second assault and unfolded with the verification of the presence of any of the arrested at the crime scene of the first attempted murder.

As a matter of fact, from the dossier of the case and from the examination of the witnesses in Court, it appears that the investigation for the assault of 28 February 2007 had not brought any significant result until when it was possible to show the pictures of the three arrested on 12 April 2007 to the witnesses and to the injured parties of the first assault. Before that opportunity arose, the investigation had not been fortunate and, despite a comprehensive investigative approach and a great amount of activity by the competent police unit, the investigation had not brought significant results.

So, for practical reasons, it is felt that the same order should be followed in writing this decision, since the most relevant evidentiary elements against the three mentioned accused (Hoti, Qela and Spahiu) come from the episode of 12 April 2007.

Let us consider the assault that took place in the afternoon of 12 April 2007 and ponder which facts have been proven in relation to it.

The Panel believes that it is not necessary to give a broad description of the facts which happened that afternoon, since they are for the most uncontroverted. It would be therefore confusing, and maybe misleading, to spend pages for a reconstruction of facts that would not add much. Better it is then to concentrate on the most controverted aspects and on the discrepancies between the prosecutor's version and the defense counsels' versions.

The assault that took place on the 12 April 2007 on the motorway between Prishtina and Peja, in the village of Gergjice, municipality of Drenas, has been described in details by the obvious target of the attack (Mr. A B) and by the members of the close protection unit who escorted him at the time (Irir Gashi, Gezim Millaku, Fatos Sylai, Azem Mjekiqi and Driton Rugova). Their accounts permit a complete reconstruction of the event. The attack to the convoy of two cars was carried out from a location which was placed above the road on which the vehicles were running. In the course of the attack one hand grenade was thrown, which did not hit any car but caused a crater in the road and lifted the first of the two vehicles (into which Mr. Berisha was being transported). In close succession, two rockets were launched from the same position, one of which hit the first vehicle of the convoy and perforated the bonnet, ending its trajectory between the car engine and the driver's leg, causing the injuries described in the medical report in the dossier. Neither of the two rockets exploded.

Further evidence is furnished by the report of the forensic and investigative activity done at the crime scene on the day of the event and on the following day. The investigators were able to find the exact location from which the attackers launched the missiles and the hand grenade, described them carefully, found the rocket launchers used in the course of the attack, carefully described the crater created by the explosion of the hand grenade and located the projectile that had hit the asphalt and had bounced away.

All this activity carried out by the investigators is in the report filed in the dossier available to the Court, accompanied by a great number of pictures of excellent quality on the crime scene, represented in every possible detail.

This technical activity matches in its entirety with the description of the facts given by the witnesses, so that it is hardly conceivable that any contestation on the modality of the assault can ever be raised.

It is true that neither Mr. B nor any of the police officers who were escorting him have identified any of the attackers of that day. For the position of the perpetrators at the moment of the attack and for the compelling circumstances in which they found themselves, the witnesses were not in the condition to notice any movement.

However, the identity of the assailants was discovered shortly after the attack.

The hunt triggered by the criminal action was immediately fruitful and the three accused Mentor Qela, Agim Hoti and Driton Spahiu were found in brief.

What does link the three to the attack? Which evidence does the Panel have that the three at the time of their arrest were escaping from the crime scene and not, for example, simply going around for a walk?

The following arguments answer to the questions above and, in the opinion of the Panel, indisputably justify the criminal responsibility of the three accused Mentor Qela, Agim Hoti and Driton Spahiu for the assault on A B and the members of his escort unit on 12 April 2007.

The arguments are not meant to be in order of relevance not in a logical or chronological order (parameters which can not exist amongst heterogeneous arguments).

1) The confessions of Agim Hoti and of the other two accused.

As known, in the course of the trial Agim Hoti has confessed the commission of the assault on A B on 12 April 2007.

This is well documented by the minutes of the hearing held on July 2009 (for the assessment of the compatibility of Hoti's health conditions with the detention) when the accused admitted his guilt.

Agim Hoti then pleaded partially guilty on 6 October 2009 in the course of the first hearing.<sup>1</sup>

In the course of his examination, on 4 November 2009, the accused further confirmed his responsibility for the assault committed on 12 April 2007. He admitted he shot against the vehicle of A B out of resentment and bitterness for his alleged misappropriation of public money.

Eventually, the accused Hoti repeated the same admission of responsibility in the course of the hearing 19.11.2009, at the end of the closing statement.

These reiterated confessions of launching the rockets against A B's convoy on 12 April 2007 have been always associated, in the various versions given in the course of the trial, to the exclusion of the responsibility of Mentor Qela and Driton Spahiu.

When he admitted his guilt before the judges, Agim Hoti spoke for himself and himself alone.<sup>2</sup>

Not only that. Agim Hoti contested also any claim of his responsibility for the detention of the weapons used in the course of the attack, stating that he had found them by chance, one week before the attack, when he had to go 'into the wood' (expression used in the course of the hearing 4.11.09) while travelling from Peja to Pristina, for a comfort rest.

The Panel does not think it is necessary to spend much time to explain the absurdity of the version told by the accused. The multiple contradictions, the inherent incongruence are obvious: they do not even deserve an explanation because they are evident.

To expect to be believed when one say that he found the weapons by chance and that he decided to use them because he saw by chance the car of Mr. B passing on the main road, it is just an indicator of the absence of any other meaningful justification.

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<sup>1</sup> Minutes of the hearing 6.10.09:

**Presiding Judge to the defendant:** Agim Hoti, do you understand the indictment?

**Agim Hoti:** Yes

**Presiding Judge:** How do you plead?

**Agim Hoti:** I am partially guilty.

**Presiding Judge:** Three charges have been read in relation to you. Two in relation to the two episodes of attempted murder and one in relation to the detention of unauthorized possession of a firearm and also the rocket. About which do you declare to be guilty?

**Agim Hoti:** I plead guilty for what happened on 12 April but not possessing weapons, I found them there.

**Presiding Judge:** So you do not plead guilty for the episode of the beginning of February 2007?

**Agim Hoti:** Absolutely innocent.

<sup>2</sup> Minutes of the hearing 4.11.09:

**Public Prosecutor:** You say that you shot; with which weapon?

**Agim Hoti:** Zolla.

**Public Prosecutor:** Who were you with at this moment?

**Agim Hoti:** I am Agim, I was with myself.

In the course of the investigation, the same accused had given a more understandable and credible version on the episode of 12 April 2007. Leaving aside for now the declarations given to the police (later denounced by the accused as extorted), we concentrate on the statement given to the Prosecutor on 4 May 2007, used by the Prosecutor in the course of the examination of Agim Hoti in Court, on 4.11.09 for contestations ex art.372.2 KCCP.

In that statement, the accused had mentioned the participation of Mentor Qela and Driton Spahiu in the assault on A B and the men escorting him on 12 April 2007.

In that statement, Hoti had admitted using the rocket launcher, adding that Mentor Qela had shot the other rocket immediately afterwards, while Driton Spahiu had thrown a hand grenade. In the course of the hearing 4.11.2009, faced with the contradictions, the accused Agim Hoti tried to justify them alleging *"If I said so before the Public Prosecutor then it is possible that it is true. I want to remind the Public Prosecutor that I was not feeling well back then either and had psychological issues and a month later when I took off my clothes I was covered in bruises and had a bump on my head, so it is possible that what I said was the truth"*

Now, what should be the credible version and what use of the previous declarations should be made by the Court in assessing the evidence? Is it enough to say that only the declarations made in Court, being made in front of the Panel and being the last one, may be relied upon, despite their conflict with logic?

There is no reason which supports this conclusion. The statement given to the Prosecutor in the course of the investigation by Agim Hoti has been used in order to refresh the memory of the accused, in the terms foreseen by article 372.2 KCCP. As a consequence, that statement can now be used in evidence, since it is considered by the Panel more congruent and reliable than the declarations given in Court by the same examined. At the end of the day, the same accused Hoti, in the course of the hearing 4 November 2009, commenting on his previous statement to the Prosecutor concluded, as seen before: *"If I said so before the Public Prosecutor then it is possible that it is true"*.

As shown by the police report on to the examination of the crime scene and by the description of the assault done by the witnesses, the assault was not the action of a single individual. Three projectiles (a hand grenade and two rockets) were launched at short distance and the terrain had been prepared beforehand. Given the speed of the cars at the moment of the attack and the short time available to launch the attack, it is unavoidable to conclude that the three accused had to plan the attack in advance and to carefully coordinate the execution of the plan amongst them. Moreover, the three accused have been found together, one of them still in the possession of two hand grenades.

All this brings to the only possible conclusion that the three accomplices were acting together, as a single, well coordinate group, under the direction of a single individual. The version initially given by Agim Hoti in Court, of an individual action prompted by the desperation of the moment against Mr. B, does not find any confirmation in the facts of the case and must therefore be disregarded as false, as a late and pathetic attempt to concentrate on himself, and only on himself, the responsibility for the attempted crime.

On the reasons behind such behavior, it will be necessary to come back at a later stage. For now, it is sufficient to notice that the obvious consideration that the accused is permitted to say whatever he or she thinks it appropriate for his/her defense, no matter how unbelievable, does not automatically mean that he or she will be believed. On the contrary, the pertinacity of the accused Hoti in the assertion of a fantastic version does not weigh in his favor nor allows him to take full advantage of his partial confession.

In the course of the trial, the other two accused Mentor Qela and Driton Spahiu have refused to acknowledge any responsibility for the assault on B's convoy on 12 April 2007. Also in front of the Prosecutor, when interrogated on 25 and on 4 May respectively, they gave a version of the events of that day which is incompatible with Agim Hoti's version.

In the course of the investigation, before the Prosecutor Mentor Qela confirmed that the three of them on 12 April 2007 took the bus for Peja but then decided to get out before reaching the town of Peja; he confirmed 'entering the wood' and walking through the hills flanking the main road Pristina-Peja. But he rejected the accusation of participating in the shooting and then fleeing the crime scene; he admitted that Hoti mentioned the presence of weapons in the area but contested the statement of Hoti on the point, i.e. that they had spoken of the discovery of weapons in the forest one week before the attack and that they had actually planned the attack.

Driton Spahiu, in the course of the examination in Court as well as before the Prosecutor, rejected any involvement in the crime, stating that he had simply accompanied Qela and Hoti on the way to Peja, without asking much; he said he waited for his two companions on the main road and that he was later arrested shortly after he had initiated to enter into the forest.

The two accused Qela and Spahiu did not attempt to justify the version of Hoti, when read to them in the course of their respective examination, both in Court and before the Prosecutor; nor did they try to say why they started a walk through the hills when they had initially planned to reach Peja. Their version, of being in a place for no specific reason, is meaningless and is not satisfactory.

Mentor Qela, Agim Hoti and Driton Spahiu gave their statement also before the police. The statements of the three accused Agim Hoti, Mentor Qela and Driton Spahiu given to the police on the day following their arrest at the presence of their defense counsels can be found in the dossier.

These declarations are self-accusatory; they give a comprehensive account of the assault at the damage of A B and the men of his escort happened on 12 April 2007 as well on the assault carried out on 28 February 2007.

As known, the defense counsels of all the accused (including Mr. Millaku, defence counsel of Agron Haradinaj) have contested the admissibility of such statements, on the bases that the declarations of Hoti, Qela and Spahiu of 13 April 2007 were extorted after severe and prolonged beatings of the three suspects.

Of these allegations there is no confirmation in the file. For the sake of completeness, the Court has ordered the acquisition of the entry documents of the accused Agim Hoti in the first detention center in which he was brought after the arrest (Prizren) but the medical report of the admission visit does not confirm at all the presence of widespread signs of beatings, as alleged in the course of the trial by the accused himself.

On the other hand, the trial Panel has ruled out, at the end of the hearing 3 November 2009 the possibility to hear as witnesses Ms. Fikrije Krasniqi and Femije Gashi-Bytyqi, defense counsels of Qela and Hoti respectively, at the time of the interrogation, on the modalities of the interrogation.

The factual and legal basis of that decision is confirmed herewith.

It is hardly deniable that detailed self-accusatory declarations represent a strong element of accusation towards the individuals who have given those declarations.

They can not be simply dismissed based on the unproven argument that they were extorted.

The extortion of a declaration by force is an infamous act, amounting to something very close to torture on the part of the officer who commits it. It should be proven, not only alleged.

How is it possible that the alleged violations committed by the police at the time of the arrest of Qela, Hoti and Spahiu are not mentioned in the statements signed by the accused and by their defense counsels or in the minutes of the hearing held on 15 April 2007 before the pre-trial judge Bedri Krasniqi?

The participants to the hearing before the pre-trial judge on 15 April 2007 (three days after the arrest) had the possibility to speak without restriction; all the comments and the answers given by the parties are reported in the minutes. The only passage that alludes to the issue currently at stake can be found in Mentor Qela's interventions. The accused, asked if he confirmed the declaration previously given, refused to do so, because, he said, they had been given under pressure ('nen presion', in the original). None of the others present to the hearing had similar preoccupations, either amongst the accused or amongst the defense Counsels. On the opposite, both Agim Hoti and Driton Spahiu confirmed the declarations given two days before if also they wanted to specify that not everything was accurate (Agim Hoti: *"I accept the entire statement given to the prosecuting authority but not everything"*; Driton Spahiu: *"It's true what I declared to the prosecuting authorities but some information are untrue"*); anyway, they did not mention violence or pressure on them.

Why not to mention, at least to the lawyer, the violence allegedly suffered? Why not defend themselves if they had been extorted? Why to confirm, at the presence of the lawyer and of the judge, the declarations given before?

The defense of the accused Qela, Spahiu and Hoti, that they were maltreated and that they confessed under duress comes late and is not corroborated by any other significant element. To give credibility to the late defence of Qela and Spahiu, against the same words of the co-accused Hoti (who has maintained the confession), would be a mistake.

The Panel, in conclusion, finds that the declarations given by the accused on the 13 April 2007 are admissible into evidence.

The confessions of the accused are reliable and can hardly be disputed. The versions given by the three accused in relation to the second episode match so well amongst themselves and with the facts emerging from the crime scene report and the witnesses' testimonies that it is unthinkable that they came out from and were suggested by the imagination of the police officers who were interrogating the suspects.

Many relevant circumstances could not be known to the investigators at the time of the interrogation.

For example, the description of the launch of the projectiles and the hand grenade. Or the circumstances surrounding the escape from the crime scene. Or when it comes to the fingerprint of Spahiu found on one of the rocket launchers, which confirm that the accused handled the weapon, if also only for cleaning it, before the attack took place, as Spahiu refers in his initial statement.

These parts of the confessions cannot be cancelled only by force of an unfounded allegation of beatings or for the change of the version by the accused. To top it all, the allegation of the accused Mentor Qela and Agim Hoti that the name of Agron Haradinaj would have been 'suggested' by the same police officers in the course of the beatings, it is ridiculous: how could the police officers know at the time of their arrest that Agron Haradinaj was a friend of the three suspects? Why should have the police made the name of Agron Haradinaj, an ordinary man without criminal record? When they had three suspects, why risking to taint and stain the investigation, inventing the name of Haradinaj?

However, the statements of Mentor Qela and Agim Hoti are not sufficient to establish the criminal liability of Agron Haradinaj. No matter how precise and converging on his role were the declarations given by Agim Hoti and (mainly) Mentor Qela, it is a fact that the criminal responsibility of the accused can not be based exclusively on them.

The only element of corroboration of the accuse against Agron Haradinaj is offered by the SMS exchanged between the phone 044 586 596 (Qela's phone) and the phone of Agron Haradinaj 044 115 765 on 6 April 2007 at 5.33 p.m.: the context of the message, and apology of Qela towards his friend Haradinaj, is too generic and vague to be referred to the failed attack of 28 February 2007. In addition, it is not clear why the apology should have been sent over a month after the failed attempt.

It is frankly too little, in the absence of anything else. The trial has not permitted the discovery of other facts indicating a relation between the crime and the accused Haradinaj.

In light of this, the provision of article 157.2 KCCP is to be applied. The Court can not base its findings of guilt of an accused exclusively or prevailingly on declarations given by an accused before the investigating authorities. The norm testifies a sort of mistrust of

the legislator for statements given to the police and the prosecutor, despite the presence of the defence counsels. The provision requires that the main evidence against one accused must come from sources other than that furnished by the defendant him/herself. And the rule applies also in case of two or more converging declarations, from more than one defendant.

No doubt that in the current case, in relation to Agron Haradinaj, the required standard is not met. The only external element of confirmation of the accusatory declarations of Mentor Qela and Agim Hoti is represented by an SMS exchanged between Qela and Haradinaj some day before the second episode. Clearly not enough.

2) The presence of Agim Hoti, Mentor Qela and Driton Spahiu close to the crime scene;

The circumstance that the three accused were moving away from the crime scene and were caught at a certain distance from each other confirms that they were escaping from the crime scene. There is coincidence between the distance from the crime scene (approx. 4 km)<sup>3</sup> and the time of their arrest (40-50 minutes later).

The justification given by the three accused on their presence on the place are various. Agim Hoti, who confirmed the commission of the crime, said that after shooting with one of the rocket launcher, he reached the two friends who were waiting for him on the top of the hill.

In the course of his examination, Mentor Qela while rejecting any responsibility for the commission of the crime said that: *"Somewhere along the road this plan [to go to Peja by bus- note by the writer] changed and we continued going somewhere else. I remember stopping by a village which had pine trees on the right hand side and then we simply continued through the mountainous road... on foot along mountains and village road.*

**Public Prosecutor:** *What for?*

**Mentor Qela:** *To go to Agim's house. The decision was not very defined, but we decided there to go to his house; either to go to Pristina or to go to Agim's house. We kept walking, I am not familiar with the territory, until we came across persons who said they were police officer.*

No specific motivation was given either for the trip to Peja, nor for the diversion. No justification of the contradiction between his version and Hoti's words.

Driton Spahiu, in turn told he was just joining for fun, if also the original reason for meeting the others was his need for job and for money. He remembers: *"We went to Peja for a coffee, in the beginning I refused to go as I wanted to go for a walk, I had no money for a coffee but I went with them and we took the bus near the bridge to Mitrovica. On the way to Peja they said stop at some place, I don't know the name of the place. We got off the bus there. There was a car wash and other business premises there, the other 2 took a road and told me to wait for them there".*

Is it credible that Spahiu is invited to go to Peja for a coffee and then is left alone on the road? Is it credible that Agim Hoti and Qela ask the friend to accompany them and then they ask him to wait while they go to commit an assault with rocket launchers and hand

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<sup>3</sup> The circumstance is confirmed both by Driton Spahiu in his examination and by witnesses Bytyqi and Vezel Vezeli.

grenade? How is this version compatible with the presence of Spahiu's fingerprints on the weapon used to shoot on the car of Anton Berisha?

The impossibility to find a logic answer to all these questions shows that the narration of the facts made by Spahiu is not reliable and is a simple product of the imagination of the accused.

On the contrary, as said before, the modality of the hunt and the discovery of the three accused some kilometers away from the crime scene less than an hour after the crime took place, is compatible with the presence of the accused at the crime scene.

3) The detention of the hand grenade at the time of the arrest and the fingerprint of Spahiu on the rocket launcher.

Driton Spahiu has been found in the possession of two hand grenades (one on him and the other one on the ground close to him) at the moment of his arrest.

The forensic report has concluded for the presence of a fingerprint of Driton Spahiu on one of the rocket launcher seized at the crime scene. Specifically, on this point, the criminology examination report prepared by the expert Ganimete Osmani after the examination of the weapons held on 9 May 2007 verified that one of the shoulder rocket launchers (identified as EX#3) was bearing a trace of papillary lines that matched with those of the middle finger of the right hand of Driton Spahiu. The results of the computer analysis done by the AFIS System (a standard system utilized in all developed Countries) were subsequently verified with the traditional direct comparison done by the operator that confirmed the positive result.

This proves that Driton Spahiu handled the weapon used in the attack.

Of both circumstances Driton Spahiu was not able to give a justification.

What else should be added?

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As said, the evidence described so far is sufficient to establish the criminal responsibility of the three accused for the second episode, i.e. the assault to the car of Anton Berisha and of the men escorting him while they were travelling on the road from Peja to Pristina in the afternoon of 12 April 2007, but it is not enough to establish the criminal liability of Agron Haradinaj for the same episode.

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Let us turn now to the examination of the first episode, consequent to the assault suffered by A B at the end of February. For it, Agim Hoti and Mentor Qela are accused together with Agron Haradinaj.

To start with, in relation to the episode of 28 February 2007, the position of Agron Haradinaj is even more advantageous, since there is no element beyond the words of Agim Hoti and Mentor Qela in their statements of 13.4.07.

After the considerations illustrated above on the insufficiency of those declarations to establish a criminal responsibility for anybody but the same who made the confessions, it is clear that Haradinaj's liability must be ruled out unhesitatingly.

On the contrary, the responsibility of Mentor Qela and Agim Hoti also for the first assault is based on the following evidence.

1) The confessions of the two accused.

As seen before, the declarations given by the accused Mentor Qela and Agim Hoti to the police on the 13 April 2007 can not be struck off simplistically on the base of an unproven and only alleged physical and psychological pressure tardy denounced to the prosecuting authorities.

From those declarations, if also contested and rejected at a later stage, the confession emerges clearly.

The circumstance that Agim Hoti has confirmed the commission of the second episode but has recanted the confession of the first one, does not imply that only his last version must be believed.

Indeed, for reasons unknown to us, Agim Hoti has chosen to confirm the admission of guilt for the second assault, instead of negating also the most compelling evidence (the detention of the hand grenade, the fingerprint on the rocket launcher, the confession of the co-perpetrator) as done by Mentor Qela and Driton Spahiu. Did he confirm the confession out of genuine contrition or simply for a strategy, aimed to earn a better treatment, if found guilty?

Probably the second option is the correct answer. Had the motivator of his confession been a psychological state of repentance, he would have described the entire action with all circumstances and participants to the event and he would have not restricted his responsibility to an occasional act, happened out of the emotion of the moment<sup>4</sup> and caused by the casual discovery of the weapons<sup>5</sup>.

Hoti's decision to admit his responsibility for the crime is a calculation: he understands that, given the evidence against the accused in relation to the second assault, there is no real chance for him to get away with an acquittal. Therefore, it is better to admit the guilt for the second episode, to get a more lenient punishment. But he does admit the minimum, i.e. what he can not negate, excluding the involvement of anybody else and blaming an occasional discovery for the detention of the weapons.

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<sup>4</sup> Minutes of examination, 4 Nov 2009: *"I had no control over myself"*.

<sup>5</sup> Minutes of hearing 4 Nov 2009: *"I am just simply a victim of the weapons I found"*.

If this is the reason that induced Hoti to confirm the (circumscribed) confession of guilt for the second assault, it is not a surprise that Hoti has not confirmed the initial confession of guilt in relation to the first episode: in that case the evidentiary material was not all against the accused.

2) The testimonies of the injured parties and of J M.

J K identified Mentor Qela and Agim Hoti as the author of the assault which took place on 28 February 2007 on the road Peja – Prishtina at the damage of the car that he was driving and on which Berisha was being transported.

The identification took place in the course of the interrogation of the witnesses by the Prosecutor and was repeated in Court.

The witness described the episode with acute memory and great sense for the details. His account was clear, logic and reliable; the fact that it was repeated in the same way at the distance of some years is an element that contributes to the credibility of the declarations given.

In the first interrogation, immediately after the episode of 28.2.2007, the witness did not have the possibility to identify the accused, for the quite obvious reason that he was not shown pictures reproducing them, since the investigation had not had the possibility to identify any suspect.

But once the three suspects Hoti, Qela and Spahiu were arrested, at the middle of April 2007, pictures of them were shown to B and K and an identification of Qela and Hoti was actually made at that time.

In the course of the hearing 26.10.09 J K has identified the two defendants again. On request the presiding judge, if he was sure or not of the identification, the witness replied: *"I said at the beginning that I am not sure but I think it is them"*.

Requested by the prosecutor what was the specific role of each of the defendant that he had just identified, J K replied: *"I think the one sitting close to me is the one with revolver (Mentor Qela) and the one at the back had the automatic weapon, I think"*.

Again, requested by the Prosecutor: *"During the identification in front of the prosecutor ... were you sure or did you have some doubts?"* J K unhesitatingly replied: *"At that time I was very sure"*.

The identification done in Court by J K was contested in Court, because not in accordance with the provision of article 225 KCCP, which requires a description of the suspect and some other formalities, including the presence of other individuals for the comparison.

This point has already been decided by the Panel in the course of the same hearing (pg.13/14 of the minutes of the hearings); there is no need to repeat here what has been said then. There's only to remark that the principle of freedom of the forms of evidence allows the (contested) procedure. As established in article 152.2 KCCP, the evidence which can be brought before a Court is not limited to the forms foreseen by the Code. On

the opposite, the Court “may admit and consider any admissible evidence that ... is relevant and has probative value and shall have the authority to assess freely all evidence submitted in order to assess its relevance or admissibility”. With such a wide recognition of the discretion of the Court in the assessment of the evidence, there is no reason to believe that evidence is only the result of the few mechanisms foreseen by the Code for its production. Unless strictly forbidden or expressly inadmissible (art.153 KCCP) any useful element which can bring the Court closer to the truth is permitted.

Then, why to exclude or to limit (with the quite surprising request, done by the lawyer, that the defendants be mingled with the public: pg.14 of the minutes) the possibility for the judge to have an immediate impression of the capacity of the witness to identify, with greater or smaller easiness, the person whom he had seen at the time of the attack?

And since we are now discussing about the identification made by J K in the course of the trial and of the investigation, the Panel can not escape from mentioning the request of the Counsels of the defendant who have been identified, that an ophthalmologist be appointed as an expert witness and be called to testify on the possibility for an individual who travels on a car going at 120 km/h, to see the face of a man standing on the side of the road.

Such an expertise is not needed. The Panel, composed of experienced individuals, is in the condition to assess this kind of facts and deems it surely possible that the image of the face of an aggressor remains impressed in the memory of the driver and the passenger of a car running at the indicated speed. It corresponds to common experience that in less than second, vivid images may be formed in the eye and in the brain of the watcher, especially if associated with dramatic circumstances.

In the course of the cross-examination of J K, the defense counsels Bekim Veliqi, Isa Osdautaj and Haxhi Millaku asked a great number of questions in order to test the credibility of the witness and in the attempt to find possible contradictions in his account of the facts. These attempts were short-lived and did not bring the fruits expected by the defense counsel. The narration of the witness J K was simple but clear; he did not deflected substantially from the statements given to the police and to the Prosecutor. The identification of the accused Qela and Hoti before the Prosecutor was done in line with the provision of the code of procedure (art.255 KCCP) and the result was positive. The perplexities expressed by the defense counsels Millaku on the rituality of the identification vanished when it was confirmed in Court that the defense counsel of the accused were present to the examination of the witness and that no suggestion was given to the witness.

The witnesses A B and J M also partially identified the accused Hoti and Qela.

Witness M could not come to Court to confirm her previous statements, due to her poor health condition, which imposed on her a period of recovery and treatment abroad. Justifying documentation was handed over to the Panel in the Course of the hearing on 26 October by J K, who happen to be the brother of J M.

Based on the documentation, the Panel has decided at the end of the trial, on the Prosecutor's request, to introduce the statements of the witness into evidence, based on article 368 KCCP. The decision was taken in the Course of the hearing 3 November 2009 (pg. 26 of the minutes).

A B's statement in Court was substantially of little help. Apart from the description of the assault, he remembered that at the time of the examination by the prosecutor, pictures were shown to him and that he was in the condition to identify an individual resembling one of the assailants. His conclusion was based on impression, he said, more that on a determined recollection of facts.

Also J M's identification can be seen as an element of corroboration of the bulk of evidence against Mentor Qela and Agim Hoti in relation to the first episode. It can't escape that its face value is modest and that, taken alone, the element would not be enough to justify a declaration of guilt. However, the statement of J is not isolated and matches with other fragments of evidence, without substantial contradictions.

3) The evidence coming from the report of the police patrol.

A document of the file testifies indisputably the passage of Mentor Qela on the road between Peja and Pristina, some kilometers from the place where the first episode took place, little more than an hour before the assault to the car of Anton Berisha took place.

The document is a report dated 28.2.2007, done by the police officers who were patrolling the road at Lollizc and that controlled the Volkswagen Passat of the accused Mentor Qela in the morning of the critical day, by mere coincidence.

Mentor Qela has not contested his presence at the time and place indicated by the document.

However, he explained, he was driving in the direction of Pristina because he was going to meet a friend (Petrit Nimani) with whom he had to settle an issue related to an immovable property. For this reason he had to be in the Capital city early in the morning, since they had to collect a document at the Municipal Court of Pristina. When asked to tell if he had managed to get the certification in Court on that day, he replied that when he arrived to the municipal court it was already too late, since there was a long queue of people already waiting outside the Court and the court staff refused him entry. He did not say that he tried again in another occasion, on another day.

Of these circumstances, he has not furnished any evidence, nor has asked to do it. No request to call someone as witness, no piece of paper to justify it.

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The arguments illustrated until here elucidate indisputably the criminal responsibility of the accused Agim Hoti, Mentor Qela and Driton Spahiu for the commission of the criminal acts for which they are charged under count 1.

But they also document, beyond any reasonable doubt, that the three are responsible for the possession, the detention or the simple utilization of weapons for which they did not held a lawful authorization.

For this reason also counts 2, 3 and 4 are proven, without the need of a specific illustration of the details of the charges, which are self evident: if the assaults were committed by the accused with automatic weapons, hand grenades, rocket launchers, and if the accused did not have licenses for the possession of such weapons, it's quite obvious they committed the crime foreseen by article 328 CCK.

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Established the facts, few considerations on the legal qualification of the crimes are necessary.

The first crime listed in the indictment is attempted aggravated murder in co-perpetration, contrary to Article 147 and Article 23 of the CCK.

The Panel understands that the will of the perpetrators was directed to the murder of Anton Berisha both in the first and in the second attempt.

When Agim Hoti and Mentor Qela placed themselves on the side of the road (on 28 February 2007) where the car driven by J K was passing, they shot at short range with a pistol and an automatic weapon, an AK 47 whose deadly potential is well known. Were it not for fortunate circumstances, they could have easily reached their target killing or seriously wounding all the four passengers of the car.

Similarly, on 12 April 2007, it was only by coincidence that A B and the men escorting him escaped the death.

In this case, the explosion of the rockets did not take place for reasons which have not been explained in the course of the trial but which are not connected with the efficiency of the weaponry, as explained in the ballistic report (possibly, the target was too close so that the rocket did not reach the speed needed to activate the detonator).

In both episodes, the will to take the life is evident. The excuse put forward by Hoti in the course of his examination, that his intention was only to scare, is obviously untenable and naïve, considering that even a child understand that hitting a car, if also an armored one, with a rocket, has potentially deadly consequences.

The attackers, in the first as well as in the second occasion, accepted the devastating and deadly consequences of their actions. The *mens rea* of the action (i.e. the will, the intention of the action), in other words, embraced all possible consequences of the action and accepted them as collateral damage. In these terms, the will of Hoti, Qela (and Spahiu, for the second episode) can be described as a specific state of mind where there is the prevision of a number of options as the possible outcome of the criminal act,

including casualties who are not the direct target of the action (J K, J M and their relative, in the first occasion; the men escorting B, in the second). The 'secondary' victims (in comparison with B, who was the 'primary') may not be the direct aim of the action but were nonetheless considered unavoidable and accepted for the achievement of the objective. The will of the perpetrator(s), by not renouncing to the foreseeable and foreseen deadly consequences, demonstrate the prevalence of the criminal determination on other interests (protection of life, body integrity, or property) which are therefore degraded and annihilated.

In conclusion, in relation to the assaults on A B and those accompanying him, the qualification of the facts as attempted murders is correct. And this qualification is aggravated by the presence of the circumstances listed in number of article 147 CCK. All the three circumstance can be easily identified in relation to the number of lives put at risk, for the meanness of the reasons, and for the number of the victims provoked by the act. All these circumstances, being self-evident in the opinion of the Panel, do not require specific illustration.

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At the conclusion of the judgment, some general consideration on the trial and on the three accused Hoti, Qela and Spahiu.

The motives of the crime and its intentionality have been illustrated above. We have seen that there was agreement and coordination amongst the defendants so that the will that characterized the action was a collective one. Now we can add that it was a psychological condition that, once established, binds reciprocally the members of the group who participate in the crime. It's a volition that explicitly (for words said or requests advanced by someone in the group) or implicitly (for the code of honour between individuals of the same *milieu*) includes a rule of silence which forbids to the single participant, if discovered and arrested, to disclose to the investigators or to the judges the identity of the other participants in the action.

This is quite evident in the present case.

Agim Hoti, against all evidence that speaks of a collective action, reiterated that '*I am Agim, I was with myself*', clearly indicating that he does not want to involve others in his confession.

Of course this is a free choice, in which the trial panel can not interfere, since it would be a violation of the rule *nemo tenetur se detegere* (nobody has a duty to self-accuse). But the trial panel observes that the behaviour of the accused is the consequence of the rule of silence mentioned before, which forbids the indication of the co-participants, because it would be seen as a betrayal and would be punished (by the co-perpetrators) as such. As known, in criminal circles as well as in old cultural context, the sense of loyalty is uncontestable, even if it violates the duties towards the democratic society. The violation of such code of honour would bring wrath and shame on the 'traitor'. This means that the *mens rea* originally established to commit the crimes is still alive and vivid and binding

on the three accused, for this aspect. And it constitutes an insurmountable obstacle, for them, to become cooperative witnesses of the Prosecutor. Instead of choosing a more convenient trial option (becoming cooperative witnesses, they could have made recourse to article 298 KCCP and bargained an agreement with the Prosecutor or plead guilty, earning a considerable reduction of the term of imprisonment) they preferred to face the trial and receive the punishment in its entirety. For their adherence to the original criminal will and to this outdated, old-fashioned code of honour, there is no possibility to recognize a diminishment of the punishment.

It was clear to the judges that the three accused Hoti, Qela and Spahiu, if also surely responsible for the assaults they committed, were not those who inspired them. They were just mercenaries.

Which personal interest could they have to kill A B , which motive?

Should the Panel believe to the words of Agim Hoti, who claimed that he shot the rocket launcher out of anger for the assumed misdeed of A B in the administration of the Authority for the regulation of the telecommunications?

And is it such a feeble motive enough to suggest the 'trio' of criminals (Hoti, Qela, Spahiu) to arrange rocket launchers and hand grenades?

But against these objections, the three defendants opposed a wall of silence, well conscious that speaking and accusing their instigator would be more dangerous than spend years in jail.

Choosing the silence, the three defendants made it impossible for the investigators, to follow the chain of responsibility and to reach the name of the individual who asked them to commit the crimes.

By doing so, the three defendants fostered and reinforced the criminal agreement amongst themselves and with the real promoter of the criminal activity (remained unknown) and, so to speak, showed their loyalty to whom that mandated them.

The severity of the punishment in the case is justified by the number of possible victims of the attempted murders and the degree of disrespect for human life shown by the authors of the crimes, who were ready to cause a large number of casualties for the completion of their plan to kill A B. Hoti, Qela and Spahiu did not hesitate to launch grenades and rockets against the members of the escort of A B who were seen just as 'collateral damages' and whose life, of course, must not have had much value, in the defendants' opinion.

In the determination of the measure of the punishment for each defendant and in relation to the two major charges (attempted murders), the Panel thinks it appropriate to consider the following factors:

The second episode (of 12 April 2007) is undoubtedly more severe for the number of possible victims, for the potential of the weapons used and because it shows the

pertinacity, the obstinate determination to persecute the commission of the attack also if a first attempt had failed once month and an half before. This insistence well illustrates the criminal determination of Qela and Hoti who have not shown any sense of remorse or of re-thinking between the first and the second attack.

Had the attack been successful and the defendants achieved their target, the punishment could not have been lower than thirty years in jail.

The diminishment for the attempt brings the punishment to twenty years of imprisonment. This will be the sanction for Qela.

For Agim Hoti and Driton Spahiu, there are reasons of further moderation of the sanction. Agim Hoti has partially confessed his crime. If also the admission of guilt was not complete and has not spared in any way the judicial activity or the time of the Court, it has none the less contributed to the factual reconstruction of the events and the consequent determination of the responsibility of the defendants. For this reason, in relation to Hoti, the sanction for the second episode is limited to 14 years of imprisonment, with a reduction of approximately one third of the treatment accorded to Qela.

As for Driton Spahiu, the reason for the moderation of the sanction upon him imposed derives by his occasional involvement. If it is undisputed that he participated to the criminal action (his fingerprint was found on the rocket launcher; at the moment of the arrest he was in the possession of two hand grenades), it has clearly emerged that his contribution was not central and that he joined the other two who had already planned the execution of the crime and procured the weapons. However, the circumstance that he has refused to acknowledge his participation despite the available evidence (fingerprint and detention of grenades) prevents the Panel to give this defendant the same favourable treatment granted to Hoti. For Spahiu the sanction of imprisonment is 15 years.

The first episode, happened on 28 February 2007, has equally put the life of four persons at risk. However, for the kind of weapon used, it may be considered somewhat lighter. This is reflected in the sanction imposed on the suspected (Qela and Hoti) who are given 7 and 12 years of imprisonment respectively. Need not to say, the better treatment for Hoti is justified by his admission of guilt.

Qela, Hoti and Spahiu are also responsible for the detention of the weapons used to commit the crimes.

For this charge, the first two (Qela and Hoti) are given an additional year and four months of imprisonment while Spahiu is given only ten months, since he is charged for the unlawful detention only in one occasion, i.e. the execution of the second assault.

In application of the discipline on the punishment of concurrent criminal offences, based on article 71, para 1 and 2, n.2 CCK, the imprisonment of the defendant is finally determined in 16 years for Hoti, 20 years for Qela and 15 years and six months for Spahiu.

The time the defendants Agim Hoti, Mentor Qela and Driton Spahiu spent in detention on remand from 12 April 2007 until the judgment becomes final will be counted as part of the imprisonment pursuant to Article 73 of the CCK.

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At the conclusion of the examination of the defendants, on 11 November 2009, the Prosecutor withdrew the charge against the A N, in relation to the last count of the indictment.

Consequently, the trial Panel, based on article 389 KCCP, rejects the charge against the accused.

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The assault on the vehicle driven by Ilir Gashi on 12 April 2007 resulted in the injuries to the leg of Ilir Gashi. The circumstance is confirmed by the statements of the same victim and of his colleagues and by the medical documentation filed in the *dossier* of the case.

The accused Agim Hoti, Mentor Qela and Driton Spahiu, cumulatively and jointly, shall therefore compensate the injured party Ilir Gashi for the damages caused.

However, the data provided in the criminal proceedings does not afford a reliable basis for either a complete or partial award since a great amount of information is missing (both in term of economic loss/minor earnings and in term of long lasting deficiency caused by the injury; no information is available on alternative compensation already received by the victim, if any); the Court therefore instructs the injured party to file a civil suit for the entire claim pursuant to article 112 (2) of the KCCP.

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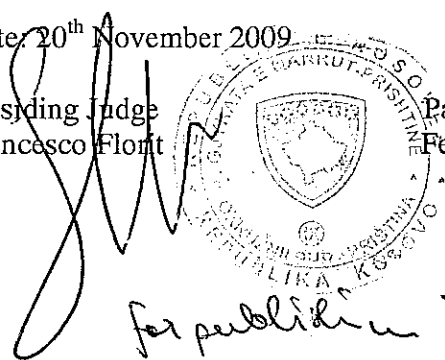
Pursuant to Article 102 paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP) the convicted persons shall pay the costs of the proceedings which are cumulatively liquidated in Euro 350.

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Pursuant to article 60 of the KCCP, the confiscation of the weapon seized in the course of the investigation is hereby ordered.

Date: 20<sup>th</sup> November 2009.

Presiding Judge  
Francesco Florit



Panel Member  
Ferid Beslimi

Panel Member  
Dragomir Yordanov

for publication in EULEX website.

### Legal remedy

Pursuant to article 400 (1) KCCP, an appeal must be announced within 8 days from the announcement of this verdict and, according to article 398(1) KCCP, the appeal shall be filed with this Court within 15 days from the date the copy of the judgment has been served to the parties.