

DISTRICT COURT OF PRISTINA

P Nr. 64/2005

30th November 2009

IN THE NAME OF THE PEOPLE

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

EULEX Judge, Mr. Francesco Florit, Presiding Judge,
Local Judge, Mrs. Marije Ademi,
EULEX Judge, Mr. Dragomir Yordanov,

Assisted by the court recorder Ms. Patricia Faltusova,

in the criminal case against:

1). **Avni OSMANI**, son of the Adem and Hase, maiden name Bërbatovci, born on the 24.05.1983, in the village of Sllatina e Madhe, Municipality of Fushë Kosovë, where he resides, Albanian from Kosovo, unemployed, accomplished secondary school, with the good economic conditions, in detention from 29th October 2004 charged with criminal offence of Aggravated Murder pursuant to article 147 paragraph 1 items 3, 7 and 8 in conjunction with article 23 of CCK.

2). **Fitim BREZNICA**, son of the Rexhep and Fatime, maiden name Bërbatovci, born on the 10.10.1979, in Prishtina, resides in the village Bardhë i Madh, Municipality of Fushë Kosovë, Albanian from Kosovo, unemployed, accomplished secondary school, with the average economic conditions, in detention from 30 April.2005 charged with criminal offence of Aggravated Murder pursuant to article 147 paragraph 1 items 3, 7 and 8 in conjunction with article 23 of CCK.

After having held trial on 4th, 22nd, 29th of June, 10th, 11th, 13th of August, 1st of September, 10th, 24th and 30th of November 2009, in the presence of the Public Prosecutor Mr. Osman Mehmeti, the Accused and their Defence Counsels Mr. Fadil Hoxha (for Mr. Avni Osmani) and Mr. Vahid Halili (for Mr. Fitim Breznica), publicly announces the following:

JUDGMENT

1) **Avni Osmani** is found guilty

of criminal offence of Aggravated Murder pursuant to article 147 paragraph 1, items 3 and 8 of CCK.

2) **Fitim Breznica** is found guilty

of criminal offence of Providing Assistance to Perpetrator After the Commission of Criminal Offence, pursuant to article 305, paragraph 3 of CCK.

Because:

1) **Avni Osmani**

On 28 October 2004 during the evening, Defendant Avni Osmani in the village Bardhe I Madh, Municipality of Fushe Kosove, at the location called "Te Kalaja" in the a cruel or deceitful way and with the purpose of concealing another criminal offence of fraud with revolver of undefined brand, of caliber 9x19mm, willingly deprived from life, now late Kastriot Zogiani 20 years of age, from the village of Halilaq, by shooting 12 times on his body, by which 10 of those were gunshot wounds and two other penetration wounds from a fire arm, aiming mainly on the spinal part of the body, in which the wounds caused the death of victim verified on the autopsy report dated 24th December 2004, from which wounds Kastriot Zogiani immediately died and the dead body was hidden in the hole with the size of 3.40m.x4.80m, filled with water and covered with plastic bag and ground.

2) **Fitim Breznica**

On 28 October 2004 during the evening, Defendant Fitim Breznica provided assistance to Defendant Avni Osmani, after the commission of the criminal offence described above, by aiding him to elude the discovery of the said crime by hiding the body of the late Kastriot Zogiani in the hole with the size of 3.40m.x4.80m, filled with water and covered with plastic bag and ground and by hiding the weapon with which the crime was committed throwing it in Drenica river.

SENTENCE

1.) **Avni Osmani**

Pursuant to article 37 of the Criminal Code of Kosovo and article 147, paragraph 1, items (3) and (8) is sentenced to imprisonment of 30 (Thirty) years;

The time spent in detention on remand from 29 October 2004 until the judgment becomes final will be counted as part of the imprisonment sentence pursuant to Article 73 of the CCK

2) **Fitim Breznica**

Pursuant to article 37 of the Criminal Code of Kosovo and article 305, paragraph 3 is sentenced to imprisonment of 4 (Four) years and 7 (Seven) months;

The time spent in detention on remand from 30 April 2005 until the judgment becomes final will be counted as part of the imprisonment sentence pursuant to Article 73 of the CCK

The panel orders detention on remand against the Defendant Avni Osmani until the judgment becomes final with immediate effect.

The panel orders detention on remand against Defendant Fitim Breznica to be terminated with immediate effect.

COSTS

Pursuant to Article 102, paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP) the convicted persons shall pay jointly the costs of the proceedings to the amount of 400 Euros.

REASONING

Procedural History

On 26 October 2005 the indictment against the accused was filed in Court.

The indictment was confirmed by the decision of judge Selman Bogiqi on 29 November 2005, after hearing the defence counsels of the accused in the course of the hearing of confirmation of the indictment.

The trial against the accused started on 20 March 2006 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 21 March, 27 April, 7 June, 17 July, 4 September, 9 October, 9 November, 13 November, 18 December 2006, 17 January 2007, 5 March, 23 April, 4 June, 25 June, 20 September, 22 October, 27 November, 17 December 2007, 6 March 2008, 7 April, 26 May, 24 June 2008.

For the unexpected unavailability of the Presiding Judge, the trial was not concluded and the case had to be restarted with a new Presiding Judge, Mrs. Marije Ademi.

On several occasions Avni Osmani requested that the trial be dealt with by International Judges. The requests, directed both to the Panel and to the UNMIK Chief International Judge, Vinood Bolell, never were admitted.

Finally, on 12 November 2008, before a new Panel, presided over by Mrs. Marije Ademi, the request was repeated. When the request was made by Avni Osmani, Fitim Bresniza and his defense Lawyer did not object the request while the presiding judge supported it.

Indeed, the President of the Panel, with letter dated 5 February 2009 forwarded the request to the President of the Court, who endorsed and directed it to the President of the Assembly of EULEX judges on 17 April 2009.

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 24 April 2009 assigning the case to a panel composed by a majority of EULEX Judges.

The trial re-commenced on 4 June 2009 at the presence of the Prosecutor, Mr. Osman Mehmeti, the two accused and their respective Defence Counsels (Miodrag Brkljac for Avni Osmani and Haki Lecaj and Vahid Halili for Fitim Breznica).

The Defence Counsels of Fitim Breznica filed a motion for the disqualification of the entire Panel. The motion was based not on specific reasons for the disqualification of one or more of the individual judges, *ex art.40 and 42 of the KCCP*, rather on a generic declaration of preference and trust in the local judiciary and on the consideration that with the presence of “internationals there would be complications due to translations and what is going into the minutes because we are receiving the translated minutes 10-20 days later and we face many other obstacles”¹.

The motion was rejected as inadmissible since the decision of the President of the Assembly of EULEX Judges to appoint EULEX Judges to a Panel is expressly qualified as final and not subject to any remedy by the Law on Jurisdiction of EULEX Judges nr. 03/L-053 (art.3.6, last part: “No appeal will be permitted against this ruling that will bind all authorities of Kosovo”). The same proceeding Panel took the decision, noting that the motion of the Defence Counsels was not directed to the disqualification of the judges for one of the reasons listed in art.40 KCCP and therefore the competence of the President of the District Court *ex. Art.43 KCCP* was not applicable.

After pronouncing its decision, the hearing continued with the other preliminary formalities foreseen by the law (identification of the accused, verification of the presence of the injured parties and witnesses, reading of the indictment, pleads of guilt). Then the examination of the first witness, Mehush Zogiani, followed.

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

On 22 June 2009 witnesses Mehush Zogiani again and Myrvete Breznica.

On 29 June 2009 witnesses Shefki Zogiani, Orhan Zogiani, Mynavere Gerguri and Lulzim Breznica.

On 10 August 2009 witnesses Hasime Osmani, Fatmir Godeni, Bekim Sllamniku and Shukri Sllamniku.

¹ Minutes of hearing 4 June 2009, pg.2.

On 11 August 2009 witnesses Bujar Gashi, Sinan Qeriqi, Flakron Bajgora and Naser Meziu.

On 13 August 2009 witnesses Shamsi Jashari, Azem Muzhaku and expert witness Dr. Tefik Gashi.

On 1 September 2009 expert witnesses Dr. Tefik Gashi and Hazir Kelmendi; then, after the administration of the material evidence, the examination of Fitim Breznica started.

On 10 November 2009 the examination of Avni Osmani took place.

The Court heard the final speeches of the Public Prosecutor, the Defence Counsels and the Accused on 24 November 2009.

Eventually, on 30 November 2009, the panel announced the judgment.

Legal and factual findings.

At the beginning of this part of the decision, it is important to recall some aspects of the trial, as emerged in the course of it, since they can contribute to shed a light on the case and can help to put the facts in a better perspective.

The first point is the abnormal length of the proceeding against the accused.

Avni Osmani and Fitim Breznica have waited in jail the completion of the trial against them for almost five years.

True, the trial had started already once but it could not be brought to its natural end since the Presiding Judge Hoxha had to excuse himself from judicial activity for personal reasons.

The trial was started anew with a new panel of local professional and lay judges, presided over by Mrs. Marie Ademi but also then, after a single postponement of several months, it was suspended for the request of the accused to be tried by an EULEX panel.

It appears therefore that the decision of the President of the Assembly of EULEX judges, dated 24 April 2009 and motivated exactly with reference to the severe delays and the unbearable length of the pre-trial detention, was a well grounded and wise one.

It came then as a surprise that, at the very beginning of the hearing on 4 June 2009, the Defence Counsel of Fitim Breznica, Mr. Haki Lecaj, vehemently opposed the appointment of the EULEX judges on the assumption that the presence of international Judges would introduce "complications" and "many other obstacles" in the proceedings. And the perplexities arose when the subsidiary solution was suggested (in case the request of reappointment of a local Panel was rejected) that the international judges were appointed as panel members with a local judge retaining the function of President of the

Panel. Perplexities determined of course not by the fact that the position of Head of the Panel could be given to a local (such a solution would be contrary to the provision of article 3.7, first part, of the Law on Jurisdiction) but by the obvious observation that the presence of a local Judge as President would have not avoided the need of interpretation in Court and translation of the minutes.

On the point, it is appropriate to further detail that the behaviour of the defence lawyers in the course of the trial has never appeared to be concerned with the issue of the delays. In the entire folder, there is not a single motion or request, written or oral, which can be interpreted as a request to speed up the trial or a manifestation of disagreement for the manner in which the trial was being stretched beyond acceptable.

To add more, the same lawyers who complained on 4 June 2009 for the appointment of international members of the Panel, were present in the session of 12 November 2008.

On that day, the trial restarted with Mrs. Marije Ademi as Presiding Judge, after the retirement of the previous Presiding Judge, Mr. Hoxha. In that occasion, the defendant Avni Osmani asked that the case be referred to "international judges" and his Defence Counsel, the Court-appointed Mr. Ali Beka, supported his request. On this base, the Panel decided to suspend the case, pending a decision on the assignation of the case to international judges. Again, neither Mr. Lecaj nor Mr. Vahidi reacted against the request. They remained literally silent; and they did not express their contrariety either at a later stage.

What conclusion should be drawn then on the behaviour of the lawyers, who presented their motion for re-assignation of the case to local judges only at the beginning of the hearing 4 June 2009, after almost seven months of inactivity?

Can their preoccupation for a speedy trial and their quest for expeditiousness be taken as serious, then? Frankly, the Panel opines that it can not and that the motion filed at the beginning of the hearing 4 June 2009 for the substitution of all the Panel members was completely unfounded.

An attempt against the principle of the natural judge, predetermined by law; a case of *forum shopping* in criminal matter.

A second feature of the trial is the behaviour of Avni Osmani in Court and outside.

The Panel does not refer here to his repeated changes of versions, which will be examined later and that will expose one side of his character.

Reference is made here to the repeated changes of lawyers, in the course of the trial, to the lamented precarious psychological conditions, to the troubles caused in the detention centre, and, in sum, to that form of insuppressible tendency toward polemic, which led the same Presiding Judge, in some occasions, to invite the accused to behave properly.

Avni Osmani has changed several lawyers in the course of the trial.

Initially assisted by Mr. Tmava, he was then defended by a lawyer appointed by the Court, Mr. Ali Beka when Mr. Tmava renounced to his defence.

At the subsequent hearing Mr. Miodrag Brkljac represented the defence of Avni Osmani. It was a short appearance, though, since already in the following hearing Mr. Fadil Hoxha was replacing him. This last, however had his problems too, in his professional relation with his client, who for exuberance and lack of self-restraint continuously overstepped the Defence Counsel. It was so that it was necessary, for the Panel, to make recourse to article 76 KCCP and to appoint Mr. Visar Vehapi (hearing 11 August 2009). As last twist, also the officially appointed lawyer was replaced shortly after, when Mr. Fadil Hoxha returned to the defence of Avni Osmani.

Now, it is an obvious observation that an accused has the right to change as many Defence Counsels as he feels fit and that a judge does not have the possibility to prevent him from doing it.

However, it would be wrong to turn a blind eye on this fact and ignore it deliberately.

As a minimum, the Court should consider it as an indicator of the presence of a problem, for example of character of the accused or of a problematic defence.

This is evident in the behaviour of the accused in Court, who was repeatedly invited by the President to contain himself, to limit his verbal incontinence. On 11 August 2009 he refused to come to Court and had to be physically forced to come under order of the Presiding Judge to the Director of the detention center in Dubrava. Then, when brought to Court, he started interrupting and disrupting the trial²; he had to be removed from the Courtroom *ex art.336 KCCP*; he was readmitted to the Courtroom on the following hearing but he repeated his misbehaviour occasionally. In numerous other occasions he insisted in repeating motions that had already been ruled out by the Panel (on the substitution of the Public Prosecutor with an International Prosecutor). In many occasion he had to be invited to sit down and to calm down and to stop interrupting the course of the hearing.

The relation with the lawyers was not less problematic, as we have seen above and as it is testified also by the minutes of the hearing 11 August 2009 which quite clearly reveals the kind of relation Osmani intend to establish with his lawyers.³

² Page 2 of the minutes: "Presiding Judge, to the witness Bujar Gashi: "Now, answer the questions of the Public Prosecutor. *Wait, Avni Osmani, I told you that you do not have the right to speak now. We heard what you wanted to say yesterday. Now lower your hand and listen to the witness.*

Avni Osmani: I object to this and would like to make my request.

Presiding Judge: If you have a request you do it through your lawyer. This is not the moment for your request.

Avni Osmani: So this trial will take place by force, against me.

Presiding Judge: Of course.

Avni Osmani: I am not here to seek mercy, so I can be served justice

Presiding Judge: A trial is never done with the consent of the accused. We do not care if you consent or not to the trial. Otherwise there would not be any trial in the world. So having said that, lower your hand and you will listen to the witness.

Avni Osmani: Just one more thing...*(interrupted)*

Presiding Judge: I do not want to listen. You remain silent now.

³ Page 3 of the minutes: **Presiding Judge:** The trial panel, pursuant to Article 336, orders that Avni Osmani be removed from the court...

Avni Osmani: It is unacceptable. The defence counsel does not have the right to stay in the court without my authorization.

Presiding Judge: The defence counsel is aware that he has the duty to remain in the court until a new lawyer is appointed.

These signs of a 'boiling' personality emerge also by his record in the detention centre, where it is reported that he showed lack of respect and obedience to the rules and to the prison guards (see: 1. the disciplinary sanctions requested for this reason from the Director of the Detention Center of Pristina on 31 July 2006; 2. the disciplinary decision of the President of the trial Panel dated 12 April 2006; 3. the communication of the Kosovo correctional Service dated 7 August 2009 on the possession and the seizure from Osmani of a portable phone in Osmani's cell; 4. the communication dated 21 August 2009 for further violations).

The kind of personality of Avni Osmani is likewise illustrated by the insistence of the accused to be judged by international judge, with a myriad of letters (and with the start of a regime of hunger strike, see communications of the Kosovo Correctional Service dated 20 March 2008) sent to Mr. Vinod Boolel and to other UNMIK authorities in order to have an International Judge assigned to the case.

When his request was finally admitted, through the decision of Ms. Giuliana Civinini dated, the accused moved his focus, requesting the assignation of an EULEX prosecutor to the case.

In the same line, the relation in Court between the two accused was so evidently affected by the intellectual superiority of Avni Osmani and the slowness and easy influence of Fitim Breznica, that the word subjugation would not be used inappropriately. This sort of mental supremacy was so clearly established between the two relatives (the two accused are direct cousins, since their respective mothers are sisters) to induce the Prosecutor to ask the inversion of the order of the examination of the defendants in Court, in order to avoid unduly influence on Fitim Breznica's examination for the presence of Avni Osmani⁴.

To sum up, all these aspects of the accused Avni Osmani give an homogeneous picture of the personality of this man, which can be described as manipulative, indicating with this adjective the tendency to use others to his own interest. The psychological process may have different manifestations and involve different techniques but all include an intellectual element of representation of something unreal in order to convince or induce someone to do something or to believe in a certain version, which is in favour of the accused.

Fadil Hoxha: I know that. I am well aware of it, but I would like to ask you if you can kindly get a new attorney and release me today because it is difficult for me to stay. *I ask to not stay in this court room a moment longer. I have great respect for you, the trial panel. I would not want for someone to be an attorney for someone who sees me as this [sic].*

⁴ Hearing 1 Sept 2009, pg.16: **Public Prosecutor:** If I may say something, I would like to propose that we question Fitim Breznica first, and then the accused Avni Osmani. Perhaps in his presence Fitim Breznica will not be able to express himself... *The trial panel discusses amongst themselves.*

Presiding Judge: Ok, on the request to listen to Fitim Breznica first, the trial panel approves this request. The order which is given in the indictment does not bind the trial panel; the code does not provide an order in the examinations of the accused. *A good reason was given by the Public Prosecutor for examining Fitim Breznica first; because it is clear during the course of the trial that Avni Osmani has a personality stronger than that of Fitim Breznica.* And for this reason we will listen to Fitim Breznica first and then Avni Osmani.

We shall leave this aspect now. But at a later stage, after the examination of the evidence, it will be necessary to come to it again, in order to draw some general conclusion on the trial and its development.

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We can now start with the examination of the available evidence, as it emerged from the witnesses' statements, from the documents in the *dossier* and from the descriptions of the facts by the same accused.

In order to do so, it is not necessary to broadly describe the facts in all their aspects, since most or great part of the events is not contested. Indeed, the reconstruction of the events has not brought much controversy in the course of the hearings, as it can be concluded by the limitation of the cross examination of the witnesses indicated by the Prosecutor and by the concentration of the said cross examination on aspects which were not directly aimed to bring direct contestation to the version of the witnesses.

At the end of the day, the only one who tried in one occasion to lead the cross examination into the heart of the matter, was the same accused Avni Osmani, in the course of the examination of the witness Shefki Zogiani, when he asked the witness the real reason of his (of Avni) visit to the witness's workshop⁵.

To a deeper scrutiny, it is easy to find the justification for the 'smooth' approach of the Defence Counsel towards the cross examination of the witnesses. '

It basically lays on the consideration that there is not direct evidence of the murder. Apart from Avni Osmani, who gave his own version of the facts, nobody was in the condition to refer the specific modalities of the murder because nobody (apart from Osmani) was present when the murder of Kastriot Zogiani was perpetrated. Actually, the same circumstance that Kastriot Zogiani was murdered and not simply disappeared for some other reason (voluntary absence, natural disgrace, car accident) was merely assumed and induced from different hints, but it was not a stated truth until the body of the victim was discovered, following the indication of Avni Osmani, in the course of his examination of 16 December 2004.

As a consequence, the greatest part of the facts on which the witnesses referred was not much contested since they were not a direct account of the murder itself. The witnesses testified on peripheral circumstances, on which the contestation was not relevant (*frustra probatur quod probatum non relevat*) or was not possible. In the Prosecutor's view however, the complex of these pieces of evidence, taken as a whole, indicates that the two accused have committed the murder of Kastriot Zogiani.

⁵ Hearing 29 June 2009, pg.15: Avni Osmani: The witness stated that I went to his workshop to make some parts for the door, to order some parts. Did I come for door parts or did I come to order some wood boxes to transport drugs?...

Shefki Zogiani: I have nothing to do with drugs. You are the only person who deals with drugs.

Avni Osmani: This is true, but he has also.... (*interrupted*).....

Avni Osmani: I just wanted to confront the witness so that he cannot be brought here for this case anymore. One more question, have we transported drugs on behalf of Lulzim Plana.

The case, quite obviously, is based on indirect or circumstantial evidence since there is no direct evidence available to the Court of the commission of the crime by the accused.

Of course, this does not infringe on the Prosecutor's theorem nor does it weaken the relevance of the testimonies given by the witnesses.

It is purely speculative to believe that a serious case can only be solved on the basis of direct evidence.

It may be a common place, not the vision of experienced lawyers, to think that the required standard of judgment expressed in the locution 'guilt beyond reasonable doubt' can be reached only, or more likely, on the condition that there is direct evidence of the commission of a crime.

Generally, criminal activity is not done in a manner which can provide direct evidence.

On the contrary, experience teaches that the vast majority of criminal cases, in any legal system and in all Countries, from the most primitive, to the most complex, is based on circumstantial evidence, where the facts charged in the indictment are proved indirectly and where it is required from the judge to make deductions from known facts to establish if the charge is grounded. At the end of the day, this mental process is a crucial part of the judicial activity in the criminal as well as in the civil area. The word 'jurisprudence' itself, when referred to the science of law put in practice, well indicates that 'prudence', i.e. the careful assessment of facts on the bases of rules of experience, is the essence of the duty of the judge. A duty that requires the same high scrupulosity when circumstantial evidence is involved and when direct evidence is in front of the judge.

The uncritical devaluation of circumstantial evidence, in the end, is a misconception which must be refused.

Subject to scrupulous scrutiny and with the respect of other rules of judgment elaborated by the jurisprudence worldwide as well as in Kosovo (e.g., taking the decision on circumstantial and not direct evidence, the Court must rule out other possible conclusions, *Supreme Court of Kosovo, decision 21st of July 2005, Latif Gashi and alia*) circumstantial evidence does have the same degree of reliability as direct evidence.

In the current case, circumstantial evidence is generated by a relevant number of circumstances that have been proven in the course of the trial and that are listed below in an order which does not purport to express their relative weigh in the decision, nor a logical order (which can not exist amongst facts which have different characteristics and may not have consequentiality amongst themselves). The order which will be followed is a practical one, in the attempt to put the facts in perspective.

In the course of the trial, of the murder of Kastriot Zogianj, two conflicting versions have been put forward.

The first one comes from the Prosecutor. Based on the testimonies, on phone metering and other evidence, it is said that the murder was committed by Avni Osmani (with some kind of participation of Fitim Breznica) in order to appropriate of the money that Kastriot Zogiani had received from some relatives and acquaintances of his, in exchange for the promise of an employment at the Pristina Airport. According to this version, Avni Osmani, who had been initially the mediator between the interested parties and the Administration of the Airport, had organized a fraud at the damage of Kastriot Zogjani and the rest of employment-seekers. A plot where the last scene was the death of Kastrioti in order to get the money and hide the role of Avni Osmani himself in the commission of the fraud. Fitim Breznica, in this picture, had an ancillary role, imposed on him by his quality of relative of the main responsible and by the destiny of human being subjugated by the will of the despotic cousin.

As it will be illustrated in the course of the motivation, the Prosecutor's reconstruction of the facts rests on the following circumstances:

- Avni Osmani's strong motive.

Involved as he was in the illegal recruitment of people in the administration of the airport of Pristina, he realized at a point that his plans and his dealings with others involved in the scheme were turning to shambles. With the elimination of the middle man in the mediation for the job, he would be in the condition to conceal the employment fraud.

- The fact that Avni Osmani had a meeting with Kastriot Zogiani at (or around) the time of the murder. The circumstance is confirmed, as it will be seen later, by the telephone metering of the phones of both of them and by the statements of witnesses.

- Immediately after the murder took place, Avni Osmani called his cousin Fitim Breznica for help, delivering him a pistol and a shirt stained with blood. Myrvete Breznica confirmed she was asked to wash the blood away from the shirt carefully and confirmed also giving the piece of cloth to Avni Osmani's mother some days later. The shirt was later seized by the police.

- According to Myrvete Bresnica's version, Avni Osmani was in a possession of the keys of the victim's car.

- It is plainly accepted, since it has been repeated by numerous witnesses, that in the course of the entire night of the 28 October 2006 the accused was in critical condition, on the verge of a nervous breakdown. This specific condition, it is alleged by the Prosecutor finds justification in the crime that Avni Osmani had just committed.

- Personal belongings of Kastriot Zogiani were found and sequestered by police in Avni Osmani's house next morning.

None of the elements described so far constitutes direct evidence of the commission of the murder by Avni Osmani, of course. However, if aggregated and taken in their entirety, they support the version of the Prosecutor and are incompatible with any different explanation of the murder (especially with the one of the accused, as it will be demonstrated below).

The second version of the facts comes directly from the defendant Avni Osmani who, more than one month and an half after the 28 October 2004 and after many different versions, admitted eventually his presence at the crime scene at the time of the murder, not as the murderer but in a position of victim, who luckily and narrowly escaped to the same fate of Kastrioti Zogiani. Specifically, after admitting to having being part, together with Kastriot Zogiani, of a network dealing with drugs throughout Europe, he said that the two of them, on the critical date, were jointly kidnapped by some members of the criminal group for absconding a relevant amount of drug (18 kilos of heroin!) that had been given to them. In that occasion, the main responsible for the subtraction of the drug, Kastriot Zogiani, was executed. In Avni's account, Fitim Breznica was present to the kidnapping and the killing of Kastriot Zogiani: he initially assisted the killers in holding over Avni and Kastrioti and then, after the murder of Kastrioti, accompanied Avni to his house.

From the statements of the witnesses, a clear description of the events that preceded the critical date of the 28 of October 2004 has emerged in the course of the hearings.

It is worth noticing that the depositions of the witnesses have not been contested, as said before. The Defence Counsels have occasionally made recourse to the mechanism foreseen by article 364 KCCP for refreshing the memory of the witness who departs from the declarations he/she had given to the investigator, but this practice has not been widespread in this trial and, when it has taken place, has not been directed to contest the general credibility of the witness or to disarticulate his/her entire deposition. It has rather been used for the purpose of inviting the witness to a greater precision or to solve some minor controversial issues.

This goes in favour of the credibility of the witnesses, of course and of their accounts of the events which have not been affected by the frequent pattern that repeatedly recurs in trials in Kosovo, whereby the witnesses in Court abjure the declarations previously given to the police or to the prosecutor in the course of the investigation and, with the excuse of psychological or physical pressure exerted on them, pretend to retract the statements that they already made.

In essence, the witnesses in the course of the trial have confirmed what they said in front of the investigators and of the prosecutor from the very first steps of the investigation. This circumstance obviously confirms their credibility and is in stark contrast with Avni Osmani's behaviours, consisting of numerous convoluted changes of version of the event.

On this point, and in order to put things in a better perspective, it is important to remind that the father and the uncle of the victim Kastriot Zogiani, Mehush and Shefki were heard just hours from the disappearance of Kastrioti. Mehush was heard, as it can be read in the statements collected in the second volume of the file, between 5.40 and 6.13 a.m. of the 29 October 2004. Shefki Zogiani was heard between 5.45 and 6.15 a.m. Other members of the Zogiani family were heard in the following hours of the same day. All of them gave consistent and corroborating declarations, which were confirmed later in the course of the investigation and at the trial, without substantial divergences. It is important to underline, likewise, that the early declarations of Mehush and Shefki as well as those of Agron and Kushtrim Zogiani were complete and exhaustive from the beginning, without any attempt or need to hide details or to try and build a fake version.

This can easily be explained, on the other hand, with the mental state in which the members of the Zogiani family were in the first hours of the 29 October: still hoping to find their relative alive, they had a cooperative approach, based on openness and disclosure of all details which could have helped the investigators in the search of Kastrioti.

Also Avni Osmani was heard in the first hours (starting at 6.00 a.m.) of the day following the disappearance of Kastrioti. But his version, consisting of little more than half a page, was later changed in several occasions by him.

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Let's see now what has been established through the declarations of the witnesses.

A first point is that at the beginning of October 2004 Avni Osmani offered an employment in the Airport Administration to Kastriot Zogiani.

On this, there are the testimonies of the father of the deceased, Mehush Zogiani (hearing 4 June 2009) of his uncle Shefki Zogiani (hearing 29 June 2009) and of his cousin Orhan Zogiani (hearing 29 June 2009).

Shefki, in particular, mentioned that, in one occasion, at the beginning of October 2004 he was working in his workshop in Sllatina (as a carpenter, specialized in doors) when Avni Osmani arrived, for his own personal reasons (repairs of a door in his house). Since the defendant was wearing a uniform, the conversation amongst them went on about Avni Osmani's occupation at the airbase and about occupation opportunities there⁶.

This aspect is substantially uncontested, since the same Osmani, replying to a question of the Prosecutor, confirmed his role of mediator in the recruitment of employees at the

⁶ Minutes, page 4: **Public Prosecutor:** Did you have any conversation about Kastriot Zogiani's employment at the airport?
Shefki Zogiani: He came at my workshop wearing the airport uniform. ... So I asked him when did he start working at the airport and he told me some months. He only mentioned that it would be good if Kastriot Zogiani could work at the airport as well. ... He just said it would be good if you could work also at the airport. I told him we do not know a lot of people in order for Kastriot to work at the airport. Avni Osmani told us that he does know some people, because some UNMIK members lived at his uncle's place. And then he left and we did not have any other conversation.

Airport if also in the same answer, he refused to acknowledge the names of Orhan Zogiani, Naser Meziu, Shukri and Besnik Sllamniku and Sinan Qeriqi as assisted by him to find a job⁷. Moreover, the circumstance finds confirmation in the testimony of Flakron Bajgora (hearing 11 August 2009, pg.20 of the minutes).

However, that the five mentioned names (Orhan Zogiani, Naser Meziu, Shukri and Besnik Sllamniku and Sinan Qeriqi) corresponded to individuals actually attracted by the promise of an employment at the Airport of Pristina, was confirmed orally by the said individuals who, as witnesses in Court, narrated with little difference in details amongst their versions, the way in which, between the beginning and the end of October 2004, they lost their moneys in what turned out to be a false promise of employment in the administration of the Airport of Pristina.

Of these facts there is abundant direct evidence, which can be found in the declarations of the witnesses both in Court and to the investigators, who narrated that they were approached by Kastriot Zogiani who informed them of the possibility of employment against the payment of 3.000,00 Euro.

That Kastriot Zogiani was not the end of the chain or, in other word, the main mediator in the recruitment procedure, it was clear to the witnesses, victims of the false promise. The detail emerged undisputedly from their testimonies if also only in the case of Ohran Zogiani there is the confirmation that the would-be-employee was aware that Avni Osmani was the originator of the offer (hearing 29 June 2009, pg.16 and 17). And it comes directly also from the declarations of Shefki Zogiani and Mehush Zogiani. Eventually, the circumstance that the entire initiative of recruitment was being promoted by Avni Osmani, is confirmed by the deposition of Flakron Bajgora who refers to "Zhuqa" (the nickname of Avni Osmani) as the person mentioned by Kastriot Zogiani as the mediator in the employment at the Airport.

In conclusion, the involvement of Avni Osmani in the recruitment of Orhan Zogiani, Naser Meziu, Shukri and Besnik Sllamniku and Sinan Qeriqi is quite obvious and it was obvious to Mehush, Shefki and Kastriot Zogiani because the same Avni Osmani had spoken to them of the issue (at least to Kastriot and Shefki) but had expressly warned Kastriot not to mention his name to those whom he would have contacted for the job.

On the other hand, Kastriot Zogiani (as well as Mehush and Shefki) did not have any interest in divulging to others the name of Avni Osmani, so to hide to Naser Meziu and the others that he was being recruited "with a discount" or with the promise of the recruitment also of his brother Kushtrim "free of charge", since he had found five other 'clients' for the mediator Osmani. And it is not a coincidence then that the only one to

⁷Hearing 29 November 2009, pg.4: **Public Prosecutor:** Did you intermedate to employ anyone at the airport?

Avni Osmani: I did, but the persons mentioned in the indictment I never saw or knew.

Public Prosecutor: Did you mediate for Kastriot Zogiani?

Avni Osmani: Yes.

Public Prosecutor: Do you remember how much you received from Kastriot Zogiani?

Avni Osmani: 2,500 Euros, which was returned to him on the 5th or 6th day, but I am not sure about it.

know the name of Avni Osmani at the time of the mediation was convinced that also Kastriot Zogiani was going to pay the full price of 3.000,00 euro in order to be recruited.

If also other names of individuals involved in the trading of jobs emerged in the first part of the investigation (namely Urim Zejnullahu and Krenar Zushi), it is clear that the personal participation of Avni Osmani can not be negate. And that he was not an accessory presence in the process is confirmed by the circumstance that he visited in more occasions the workshop of Shefki Zogiani and the house of Mehush Zogiani for the issue; furthermore, he was the one who signed the receipt found in Kastriot Zogiani's wallet, when he received the amount of 2.500,00 euro "for one person for the work in the airport"⁸. And he was the only point of contact between the clan Zogiani and the Airport Administration.

It is not necessary to waste time on the details of the recruitment process or the amounts that were paid in the process by the five. All these aspects have been told by the witnesses without provoking any substantial contestation or cross examination. Small divergences in the versions may not infringe the credibility of the witnesses nor obfuscate the general reconstruction of the events, with the attribution of the respective roles. At the end of the day, as noted by the Prosecutor, the trial is for aggravated murder and not for the fraud that was investigated in a different investigation. In the current trial, the fraud at the damage of the 6 (Kastrioti Zogiani, Orhan Zogiani, Naser Meziu, Shukri and Besnik Sllamniku and Sinan Qeriqi) is in the background, as a scenario, which only influences the motive of the crime of which Kastriot Zogiani was the victim. As such, it is enough for us to know what the role of Avni Osmani, and not of others, was in the fraud.

And from the various testimonies, it is clear that Avni Osmani had a central role in the plan.

It is established that an enrollment procedure was initiated or at least it was made to appear that it was initiated, with the request of documents like health and school certificates and the release of 'badges'. Behind the initiative, there could not be Kastriot Zogiani, of course, who had no link with the working environment of the airport and was extraneous to that world. Avni Osmani, on the contrary, admitted being involved in this sort of mediations (hearing 24 November 2009) and was well acquainted in the environment of the airport, for his working activity.

On this last point, it must be pointed out that in the end it has been clarified that Avni Osmani was not employed in the airport. The information available in the dossier (official report dated 2 November 2004) indicates that the uniform seized at Osmani's house did not belong to the airport's staff; on the same line, Avni Osmani, in his examination, has rejected the allegation of employment in that administration and, when asked by the investigators, always qualified himself as 'unemployed'.

On the other side, it is undisputed that he portrayed himself and his activity, when he had an interest, as a worker in the airport⁹, if also carefully asking not to inform anyone of his

⁸ Document in dossier, volume 2.

⁹Hearing 29 June 2009: Public Prosecutor: What did Avni Osmani do for work?

job¹⁰, and that he showed himself dressed in uniform, when he wanted (see testimony of Shefki Zogiani and of his fiancée Mynavere Gerguri). Which weigh should be given to the appearance of Avni Osmani dressed in a uniform that was not original? Is it just the vainglorious exhibition of a man who wants to impress the fiancée? Of course not: by showing his pretended role in the administration of the airport, he could raise credit on his capacity to mediate and to procure employment to others. In a word, it was part of the machination at the damage of Kastriot Zogiani and the other five.

It is established that the payments were made by the five (Orhan Zogiani, Naser Meziu, Shukri and Besnik Sllamniku and Sinan Qeriqi) to Kastriot Zogiani if also it has been never mentioned by the five when the moneys were passed to the alleged final receiver, Avni Osmani. However, this was a common conclusion to which all the members of the Zogiani family had come, based on the role and the behaviour of Avni Osmani.

Until the end, nobody amongst the abovementioned five ever complained or suspected anything or feared to lose both money and job. On the contrary, they were confident to be recruited and trusted their 'contact' Kastrioti to the point of entrusting to him the entire sum of 3.000,00 euro each without requesting any document or guarantee in exchange. On the other hand, Kastrot was not alone in it: his father Mehush and, more, his uncle Shefki, with their presence in the background, played a role that, given the traditional Albanian cultural codes, could only be understood as a guarantee of seriousness of the proposal. Also Mehush and Shefki were cheated.

On this premise, we can now move to consider the development of the events of the critical day.

Apart from the one who took the life of Kastriot Zogiani, the last individuals to see him alive are Flakron Bajgora and Mehush Zogiani.

The first one, an old schoolmate of the victim, spent part of the afternoon of the 28 October with him.

In the course of the hearing held on 11 August 2009, the witness explained that on the critical day he met Kastriot Zogiani twice, the first time at noon, for about an hour, in Fushe Kosove and the second time in the middle of the afternoon, in Pristina, "at Santea, near Agora...behind Electra Kosovo, between Bill Clinton Boulevard and Electra Kosova".

Mynavere Gerguri: I knew he was working at the airport, I didn't know exactly what he was doing; according to me it was something with cameras.

Public Prosecutor: Did you ever see him wearing the airport uniform?

Mynavere Gerguri: I saw him in the uniform.

Public Prosecutor: Did Avni Osmani ever tell you not to tell anyone he was working at the airport?

Mynavere Gerguri: In the beginning yes. He was afraid to lose his job, so he asked me not to say anything about this.

¹⁰ Apart from one (Orhan Zogiani), the other four (Naser Meziu, Shukri and Besnik Sllamniku and Sinan Qeriqi) confirmed that Kastriot Zogiani did not disclose the name of the mediator (Avni Osmani) to them, because this was the request of the mediator himself. To a question of the judge, they replied that the word of Kastrioti was enough for them.

On the time of the second appointment the witness initially gave an indication that, after confrontations with his previous declarations¹¹, turned out to be wrong. He initially stated 4.00 – 4.20 p.m., corrected in 5.20 after his declaration of 25 January 2005 was read to him ex art.364 KCCP from the lawyer Wahid Halili. The justification given for the correction is plausible and credible as time reference¹². By this way, also the witness' declaration to the police, given on the 29 October 2009 at 12.10 is confirmed (the appointment took place between 17.20 and 17.40, in that statement).

In Court, the witness also remembered what happened during the meeting and the reasons for Kastriot Zogiani to end it quite briskly, compelled to go by a phone call he received, as referred to his company of the moment, by "Zhuqa". That "Zhuqa" was the surname of Avni Osmani was obvious to the witness from the first moment; to him it was obvious as well, as he confirmed at the end of his declaration in Court and in the statements to the investigators, that the only reason for Kastriot to leave the café bar and to accompany Flakron on the way home, was the urgency to meet Avni Osmani, to whom he had to deliver some badges¹³.

Evidence of the phone calls between the phone number of Avni Osmani (044 405851) and of Kastrioti (044 404233) can be found at pg.13 of the list produced by the Vala Operator on request of the Prosecutor. In the list, between 17.25 and 17.56, five calls are registered, all from Avni's to Kastriot's phone.

As said above, the second person to see Kastriot alive for the last time was his father Mehush, who mentioned the circumstance in his declaration in Court, dated 4 June 2009.

While speaking about the events of the late afternoon of 28 October 2004, he stated: "*On that day we were working at our place and Kushtrim was with me and when Kastriot was about to leave, Kushtrim told him to wait because he was going with him. Kastriot told him that there was no need to go with him because Avni Osmani had said that only he had to go there*" (pg.15 of the minutes).

It is so confirmed that before going to the appointment with Anvi Osmani, Kastriot briefly went home, after leaving Flakron Bajgora in Pristina. For which reason? Quite probably to collect the documents he was supposed to bring to Avni Osmani for the double stamping.

From another source (Agron Zogiani) we are further informed that Kastriot was aware that he had to meet with Avni Osmani at about 6.00 pm, for the same reason, since 14.30 (in the witness's presence, Kastriot received several calls from "Zhuqa").

¹¹ To the investigators on 29 November 2004 and to the Prosecutor on 25 January 2005.

¹² Minutes hearing 11 August 2009, pg.21: Flakron Bajgora: Regarding the time, yes it is true and I now remember it was 5.20pm as it was Ramadan and it was just before Iftar. I now that Iftar was around 6.10 pm and this is how I remember the time being around 5.20 pm.

¹³ Minutes hearing 11 August 2009, pg.21: Public Prosecutor: After the conversation between Kastriot Zogiani and Avni Osmani you left; did Kastriot Zogiani say, "I have to go?". Flakron Bajgora: Yes because we left so soon from there. Statement 29 November 2004. (this passage was read in Court to refresh the memory of the witness ex art.364 KCCP and confirmed by he witness): "At about 17.35 someone phoned him (Kastrioti) and told him 'are you coming in Slatina to bring the badges and the invitations to put the stamps'. Kastrioti said 'I come immediately'. I asked who phoned and he said 'Zhuqa da Slatina'".

From all the above it is established that Kastriot Zogiani was going to meet with Avni Osmani on the 28 October 2004 at 18.00 somewhere in Sllatina. It is easy to see that the two who were going to meet had a different understanding of the purpose of the meeting. For Kastriot, the issue on the agenda was a formality to be carried out in order to give validity to the documentation needed for the employment at the airport on the following days (the prospected employees and Kastriot himself had been phoned to present themselves at the administration office 2 of the Pristina International Airport on the following day and in the days immediately after – on this detail, see the converging testimonies of Orhan Zogiani, Naser Meziu, Shukri and Besnik Sllamniku and Sinan Qeriqi); for Avni Osmani, that could not be the case, since he was aware that the process of recruitment was only a scam and that it was not going to go anywhere.

What happened then?

Of course, this is the domain of suppositions, since no source of evidence is obviously available in the file.

What we know (from Shefki Zogiani in Court, from Kustrim Zogiani –whose statements were read in Court after the witness was notified repeatedly but to no avail- and from the list of phone metering) is that Kustrim called his brother Kastriot with Shefki's phone (044 137437) seven times from 18.59 to 19.05. The third of this list of calls (registered by the system as done at 19.00:05) was answered; the voice of Kastriot was heard by Shefki and Kushtrim, with the background of music playing, invoking someone to let him answer the family calling.¹⁴

And we know also what happened afterwards.

From the statement of Myrvete Breznica (sister of the accused Fitim) and from the phone metering, we learn that Avni Osmani phoned the land line of Breznica's house (+381 638 580 978) three times, at 18.41 -10 seconds-, at 18.56 -15 seconds- and at 19.07 -25 seconds. We can suppose that the third call –the only one of a reasonable duration- is the one to which Myrvete refers in her deposition when she recollects that Avni Osmani called after Iftar (the dinner during time of Ramadan¹⁵) in order to instruct Fitim Breznica to come to the railway to meet him.

This last phone call follows by seven minutes the call of Kushtrim to Kastriot's phone, when the voice of the deceased was heard, determining in this way the two terms of the time span into which the murder of Kastriot Zogiani was perpetrated (between 19.00 and 19.07).

From the amount of element so gathered, some conclusion can be drawn already.

¹⁴ Statement of Kustrim Zogiani 29 October 2004, at 5.50 am: "Leshonem, leshonem vec te foli". Minutes of the hearing 29 June 2009, pg.6: Shefki Zogiani: "...He was, as I said, at my house because Kushtrim did not have a phone so he used mine. So, Kushtrim called and Kastriot answered. I was seated in front of Kushtrim and I could hear when someone answered the phone, I heard Kastriot saying "Just let me speak". At that moment I heard a voice and some music, but I could not believe that something like that was happening.

¹⁵ As seen before, Flakron Bajgora mentioned that Iftar was at 6.10 pm.

First, Fitim Breznica was not present at the crime scene at the time of the commission of the crime. Otherwise, what the reason to call the land line of Breznica family before and after the murder?

Second, the appointment at 6.00 pm o'clock was given to Kastriot Zogiani well in advance (hours before: Agron Zogiani was aware of the appointment and of its justification since the early hours of the afternoon, as explained before). It was not something planned in a hurry; no sign of rush or of compelling request made by someone else and imposed on Avni Osmani or Kastriot Zogiani at gun point. This dispels definitely the version given by Avni Osmani, of the band of drug dealers headed by Lulzim Plana and of curious composition (two young ladies, a toll masked man, a man with moustaches, a Kosovo police officer).

But speaking of the final version of the facts given by Avni Osmani, let us spend some words to see how the defence of the accused Avni Osmani developed.

We can count the following versions.

The first one was furnished by Avni Osmani in the middle of the night between 28 and 29 October 2004, few hours after the search of Kastriot Zogiani was started by the family members of the deceased. Mehush Zogiani, in his statement given in the police station starting at 5.40 in the morning of 29 October 2004 mentions that, in the past hours, during night time, he, together with some of his relatives, interrogated Avni Osmani on the whereabouts of Kastriot. Avni Osmani replied that they had gone "with two Golf III until the village of Bardh i Madh but then we (Kastriot and Avni) separated and in the other Golf (not Avni's Golf) there was a lady that according to him (Kastriot, it is understood) was going out with Enver Sekiraqa and also two other young men were in that car and where they went, I (Avni) do not know". That Avni actually gave this disarticulated and confused version was confirmed by Shefki Zogiani in his deposition in Court.

A second version was given by Avni Osmani himself to the police officer at 6.00 in the morning of the 29 November 2004. He initially said that he saw Kastriot Zogiani in the afternoon at 16.00 at the Faculty of Economics in Pristina but they then just exchanged few ritual sentences (how are you, how are you doing). He (Avni) then went to pick up his fiancée at work at the Ministry of Work and Social Welfare to bring her home. On the way home his vehicle was overtaken by Kastriot's car who challenged him (whose car was fastest). But in Bardh i Madh, another Golf arrived, driven by a lady and with two ladies and a young man inside. Kastriot was made to enter into the car and then they left the place. In which direction and for which reason, Avni was not able to say.

Heard few hours later (at 12.00 on the same day), Avni Osmani repeated substantially the same version. He referred of his participation in the negotiation for the employment of Kastriot Zogiani admitting to having had numerous occasions to meet him in the past, but in the recent days he had only had the opportunity to take a coffee with Kastriot.

A third version was given the following day, on 30 October at 15.30. Avni said of being contacted by Kastriot in the early hours of the afternoon of 28 October. Kastriot was asking him if there were developments in his employment procedure. They met at the faculty of Economics in Pristina, each of the men accompanied by a lady (Mynavere Gerguri, on Avni's side). Avni promised that he would take information about the job at the airport and then would call Kastriot. Avni then continued his version repeating the same story told in his previous statement (of the day before, at 6.00) only with more details.

On the 3 of November, there is a fourth version, a colossal change of perspective. The accused tells that at 17.30 of the critical day someone came at his house. Went to the gate of the garden, to see who was, he met Lulzim Pllana, who immediately forced him to enter one of the two cars which had arrived. Pulled out a gun and pointed it to the head of Avni, Lulzim got hold of Avni's phone and made a phone call to someone repeating him that they (Lulzim and the person at the other side of the phone) had to meet in Bardh i Madh in five minutes. He was then released by Lulzim and left to go back home. When the two cars left, he checked the call list and discovered that Lulzim had phoned Kastriot. Called Kastriot again, to know the reason of what had happened, Avni was reassured by Kastriot.

The next statement, the first at the presence of a Lawyer (Mr. Bajram Tmava) and of the Prosecutor (Shamsi Haidini), was given on the 10th November.

In the course of it, the accused basically merged the two versions given before. In substance, he initially recounted the story of the meeting with Kastriot at the Faculty of Economics, at the presence of their respective girl-friends, then of the race on the way to Fushe e Kosove, and of the presence of the Golf III with two other ladies and a young man in the Golf in which Kastriot entered.

To this initial part, Avni added that later in the afternoon, at 17.30, when he was in his house, two Opel cars, one Ascona and a Senator arrived. He went out to see who had arrived but was immediately confronted by Lulzim Pllana, who forced him into one of the cars and grabbed Avni's phone. We know then how the story unfolded afterwards.

Eventually, the last version of the events was given on 16 December 2004, at the presence of the Defence Counsel (Bajram Tmava).

As known, in this account of the facts the perspective radically changes again. This time, in Avni's words, he was present to the crime, but, as said before, only because Lulzim Pllana kidnapped him in order to get to Kastriot. This time, Fitim Breznica was present at the crime scene (but masked) on the side of the assailants. This time, the story of the money given and taken for the job at the airport, which had been mentioned in the previous statements and that had until then been behind the motive of the possible kidnapping of Kastriot, becomes irrelevant and Avni admit to having being part, with Kastriot and Fitim, of a criminal circle involved in drug dealing.

We have referred above the rest of the story and there is no reason to repeat it now. Suffice it to say that the accused, later heard on 13 May 2005 alone and subsequently in a confrontation with Lulzim Pllana (and, eventually, in the course of the examination in Court) has not changed his account of the events anymore, at least in substantial terms.

What to say of the behaviour of the accused, who changed his version six times? Also considering that the initial examinations by the police were done without the presence of the Defence Counsel while the accused was in detention on remand (so, a case of mandatory defence), the last changes of versions leave the reader perplexed.

But let us assume for a while that Avni, surprised to be accused, was confused and in a state of commotion and shock and was unable to remember well. Let us imagine that his memory re-surfaced only after a month or so after the facts, and that at that point (16 December) he gave the genuine statement.

The fact is that the version of 16 December is not corroborated by anything and on the contrary, suffers a number of contradictions.

Let's see what they consist of, point by point.

First point. Kastriot Zogiani was called and asked by Avni Osmani to bring him the badges hours in advance, as confirmed by Agron Zogiani and Flakron Bajgora; he was not called by Lulzim Pllana just few minutes before being killed, as stated in the most recent version. The appointment where Kastriot met his death was arranged by Zhuqa (Avni Osmani) hours in advance and not by Pllana few moments before it took place.

Second point. Fitim Breznica was not present at the crime scene, as proven before (pg.18). What is the reason to put in the picture Fitim Breznica (whose modest determination, lack of spirit of initiative and inclination to influence was well evident in the course of the entire trial) as the exactor (!?) of the criminal group? Quite obviously, after one month from the event, Avni Osmani had understood that sooner or later, Fitim Breznica would have returned from Albania and would have told his own version; then the location of the dead body of Kastriot would have been discovered and the credibility of Avni Osmani destroyed. Better then to create a scheme including Fitim on the side of the bad guys and Avni on the side of the victims. But unfortunately, as said, Fitim was at home at the time....

Third point. The testimony of Myrvete Breznica clarified that it was Avni to give Fitim Breznica the shirt stained with blood.

Now, one could think, Myrvete simply wanted to protect his brother when interrogated by the police; so, she fabricated a version where the contribution of Fitim, if any, was diminished.

To this consideration, we reply as follows.

First, when interrogated, Myrvete was not in the condition to coordinate a version with her brother, who was being held in detention in Albania.

Second, the circumstance that the shirt was washed and then passed to the mother of Avni Osmani, Hasime Osmani, who is the sister of the mother of the witness, was confirmed by Hasime Osmani as well.

Third, the phone calls to from Avni to Fitim (to order him to come to the railways) and of Mynavere Gerguri to Avni's phone (left in the possession of Myrvete by Avni himself) are confirmed by the phone metering and by Mynavere herself in her deposition.

And fourth, Myrvete's credibility was evident in Court: she appeared as a very simple mind, scared to come to Court and never trying to evade her duty to testify the truth. She gave simple explanations and, when in difficulty, she never attempted to come out with some invented story (of which, she would not have been capable). But, in her naivety, she appeared genuine and trustworthy. If she made mistakes and if she departed sometimes from her precedent statement, this was out of the difficulty to remember the original depositions, not for the intention to lie.

Forth point. The notebook of Kastriot Zogiani and other personal documents of the deceased were sequestered in Avni Osmani's house, not in Fitim Breznica's possession. How can this be explained? The only reply, by Avni Osmani, in his final examination, expressed with a mix of surprise, embarrassment and hesitation, was that Fitim, when they both came home from the place where the execution of Kastriot Zogiani had taken place, threw them from the garden into the "attic of the stable"...adding "but I do not know what it was".

Fifth point. Against Lulzim Pllana not a single crumb of evidence was found. In the entire file, there is nothing against him, apart from the word of Avni Osmani. Lulzim Pllana asked repeatedly (as Fitim Breznica did) to have the possibility to confront his accuser, for the astonishment and incredulity of the accusatory version.

For what it was possible, the Prosecutor tried to verify the alibi furnished by Lulzim Pllana, if also it must be admitted that the two testimonies in the dossier (of Beqir Pllana and Azem Pllana on 9 January 2005) are not conclusive, in favour of Lulzim Pllana.

Sixth point. The statement of Fitim Breznica to the investigators, at the presence of his Defence Lawyer given on the 30.4.2005, the same day of his extradition from Albania, when the accused was held in detention initially for the possession and use of false documents while attempting to enter Italy and then on the base of an international warrant of arrest issued in relation to his alleged participation in the kidnapping and murder of Kastriot Zogiani.

The examination of the accused started at 22.00 hours, and this indicates the urgency and the scruple of the investigators to receive the declaration of Fitim Breznica before any possible contamination of his version could occur. At that time, the accused could not have had contacts with family members or with anybody. So, any risk of influence or coordination of versions was prevented.

So being, his account of the facts can be regarded as genuine and if not completely reliable (some mistakes and incompleteness may have been and indeed were present), it is substantially valid and trustworthy. Indeed, the accused was not, then, in the condition to know what other witnesses (for example, his sister Myrvete or Avni's fiancée, Mynavere) and the other suspects had told to the investigators.

On this premise, it is noteworthy that the description of the facts by Fitim Breznica substantially coincides and overlaps with the account of her sister Myrvete, especially on the details related to the phone call of Avni Osmani after Iftar and on the hand over by the accused of the shirt stained with blood and of other items. On the crucial detail represented by the delivery of the shirt to Fitim Breznica, with the request to have it cleaned by Myrvete, it is noticeable that the suspect, for a good part of the interrogation, did not mention it and that only a question of the Prosecutor permitted the suspect to focus on the detail and to elaborate on it. It is obvious to consider that, if the declaration of the suspect had be fictitious and coordinated with the sister, the indication of such a factual element, fundamental for the identification of the criminal responsibility of the one who had handed over the shirt and requested to wash it, would have been put at the beginning of the story and would not have been forgotten.

On the same line of thought, the evident misplacement of the succession of events in the account of Fitim, is an indicator of a wrong recollection of the events rather than a proof of the preordination of the version and coordination with someone else's version. Indeed, when Fitim Breznica states that, after meeting Avni Osmani and receiving the shirt and the pistol, he returned back home while Avni Osmani went away and did not return to the house of Fitim before a couple of hours had passed, he commits an obvious juxtaposition of events, which are in direct contradiction with the version given by his sister Myrvete. Here as well, this is an indicator of the absence of coordination of the versions between the brother and the sister, and so of genuineness.

Seventh point. In the entire file, there is not a single element that confirms or at least suggests that there was any sort of relation between Fitim Breznica and Kastriot Zogiani, for their alleged membership in a group of criminals involved in drug dealing, as declared by Avni Osmani, in which Avni and Kastriot (and Shefki Zogiani, as Avni Osmani tried to state in the course of the cross examination of Shefki himself¹⁶) would be transporters of drug and Fitim Breznica the exactor. Starting from Fitim Breznica himself and coming to the various members of the Zogiani family and to Mynavere Gerguri, it is by all excluded that such a relation of acquaintance ever existed. The two (Fitim and Kastriot) were simply extraneous to each-other and didn't have anything to do with each-other.

The accusation of Avni at the damage of his cousin Fitim (they are sons of two sisters) is just an indicator of the cynicism and desperation of Avni Osmani, who does not hesitate to accuse the close relative rather than taking on himself his own responsibility.

The same incredulity is for the allegations of the participation of Kastriot Zogiani to a criminal group. The victim has been described by all family member as an honest young man, a good member of the family. All the five who had given him money in order to be recruited at the Airport confirmed that they did so because they trusted him and, when asked what they knew about the working conditions at the Airport (salary, function,

¹⁶ Hearing 29 June 2009, pg.15: Avni Osmani: The witness stated that I went to his workshop to make some parts for the door, to order some parts. Did I come for door parts or did I come to order some wood boxes to transport drugs?...

Shefki Zogiani: I have nothing to do with drugs. You are the only person who deals with drugs.

Avni Osmani: This is true, but he has also.... (interrupted).....

Avni Osmani: I just wanted to confront the witness so that he cannot be brought here for this case anymore. One more question, have we transported drugs on behalf of Lulzim Plana.

working hours), they replied that this was not important because they trusted Kastriot and that the word of the young Zogiani was enough for them. On the other hand, the same circumstance that the members of the Zogiani family were worried and that they started the search of Kastriot before 7.00 pm of the 28 October because it was not usual for him to stay away so much (in reality, it was just one hour since he had left home) and not to come back for the dinner (especially at Ramadan time), is a clear indicator of the family control on Kastriot and on his habits, which makes truly incredible that he could be a narco trafficker.

Other elements could be taken in consideration and weighed in the assessment of the entire evidence of the case. We refer here to the testimony of Mynavere Gerguri or to the question related to why the Zogiani family had immediately identified Avni as the perpetrator of what they had already understood to be a case of murder and not just a kidnap or a voluntary disappearance of the victim. Or to the reason why Avni Osmani appeared to everybody extremely stressed and nervous, like in a state of hallucination, from the evening of 28 October to the following day.

But bringing the analysis to these areas is superfluous since the elements against Avni Osmani for the perpetration of the murder of Kastriot Zogiani are already established. So, for example, the analysis of the deposition of Mynavere Gerguri, which confutes the words of Avni Osmani for many aspects (the wearing of the uniform and the employment in the airport; the detention and the exhibition of the weapon by Avni; the meeting with Kastriot Zogiani and the car race on the way to Fushe Kosove, which Mynavere excludes and Avni affirms; the crave of Avni for money) becomes not necessary.

We can rather return to a point that was touched upon before.

At page 20, in order to introduce the confutation of the last version given by Avni Osmani, we introduced the issue on the base of an assumption.

We wrote: *"But let us assume for a while that Avni, surprised to be accused, was confused and in a state of commotion and shock and was unable to remember well. Let us imagine that his memory re-surfaced only after a month or so after the facts, and that at that point (16 December) he gave the genuine statement"*.

This is a big assumption in favour of the accused and it is now time to verify if it makes sense at all.

Is it credible that such a psychological state existed in the mind of Avni Osmani in the hours immediately following the murder of Kastriot, that induced a loss of conscience and a perturbation of the faculty of the accused to remember, so to put his mind in the condition of confusion and obfuscation, rendering him unable to furnish a reliable account to those who interrogated him and in particular to the members of the Zogiani family and to the police officers? And is it credible that this terrible state of perturbation lasted for days and for more than a month and evaporated only in the middle of

December, when eventually Anvi Osmani re-become *compos sui* and was able to state the truth?

It is not necessary to hold a master degree in Psychology nor does it take a great intellectual sophistication to understand that the different versions given by Anvi Osmani are not the consequence of a peculiar mental state but rather of the voluntary attempt to deceive the investigations and dispel the suspicions against him.

If he had been victim of the kidnapping and had assisted to the execution of the friend Kastriot, why should he have been prevented from saying the truth? He surely would have been in a state of shock (passing through such a mentally draining experience) but the first reaction should have been to distance himself from that repugnant murder. Not to come out with a version which alluded to the presence of friends of Enver Sekiraqa (a notorious criminal at the time in Kosovo, later become infamous for his participation in the killing of an esteemed police officer, Triunf Riza)? If he had accused the real perpetrators immediately, he would have been credible now.

It is really unknown and it contradicts the most basic experience, that a state of mental perturbation can reach the point to induce the sufferer to invent a version, to lie. Lies consist of untrue or deceptive statements deliberately used to deceive. There is an essential element of intentionality in the lie that can not find justification if a mental state of shock is assumed. In other word, Avni Osmani could still have been credible if he had remained silent or if he had purported not to be in the condition to remember, if he had said to have a blank in the memory to the effect that no memory of the events was registered in his mind. Such condition is a known psychological effect that occurs quite frequently in case of car accidents or similar events. It does actually happen that the survivor often tells that he/she is not in the condition to remember the last moments preceding the impact. It's a mental mechanism which produces the elision of the short term memory in the attempt (it is commonly justified by experts of the field) to spare to the victim the ultra-aggravating burden to remember the otherwise horrifying moment that caused the wounds. It's a self defense of the mind, a soother that prevents the possible discovery of unbearable truths.

But in the case of Avni Osmani we have the presentation of a series of progressively more elaborate versions which aim to create a screen to his participation to the facts. He initially refuted to have had a meeting with Kastriot, alleging that Kastriot had gone somewhere in a Golf with three other individuals (two ladies and a young men); then Avni Osmani comes out with the version of Lulzim Pllana coming to his home and, under the threat of a gun, stealing his phone (of Anvi) just to make a phone call to Kastriot. Then, the last version, which involves Fitim Breznica as well.

But why all these changes? Quite evidently because Avni, with the time passing, realized that the progression of the investigation would have demolished the fragility of the initial versions. When he understood that the metering of phone calls would have disclosed the level of phone calls exchange between his phone and Kastriot's phone, it become impellent for him to put into the picture also someone (Lulzim Pllana) who, grabbed with

force his (Avni's) phone to call Kastriot and invite him to the deadly meeting. And this he did at the cost to say something ridiculous beyond decency, because it can not be accepted that there is one single reason for which Lulzim Pllana should have gone to Avni's house just to make a phone call to Kastriot, so risking to disclose his plan to kill Kastriot before executing it. It is known that in Kosovo SIM cards can be bought at the corner of the road so Lulzim Pllana would have not had any difficulty to buy one if he wanted to make an untraceable call to Kastriot.

And then, when Avni realized that the return of Fitim Breznica from Albania would have torn his story apart, he sorted out the final version, with the participation of Fitim Breznica to the kidnap and to the murder of Kastriot. With the unavoidable consequence, at that point, that he had to disclose the place where the murder had taken place.

Put in this perspective, it becomes clear that the mental process of Anvi was not a progressive reacquisition of memory or of conscience. It was not a sort of purification through which the mind purges itself and is freed of the committed guilt.

It was the contrary, another step in the moral descent of the individual where, lost for lost, there is no limit to impudence and everything can be sold in the desperate attempt to save oneself from criminal liability.

No resentment, no contrition, no passage to a new stage of admission of one's guilt, but rather furthering of the initial criminal deliberation.

This is the reason why there is no space to admit any diminishing circumstance in the determination of the measure of the punishment.

The modalities of the murder were deceitful. For the manner in which the victim was attracted to the crime scene (with the excuse to put another stamp on the documentation for the employment) in order to be brutally killed, the aggravating circumstance foreseen by article 147, paragraph 1, n.3 CCK is present.

As said before, the murder itself was committed in the attempt to hide the perpetration of the crime of fraud at the damage of the acquaintances of Kastriot Zogiani. In Avni Osmani's perception, the suppression of Kastriot would have prevented the victim of the fraud from discovering his participation (of Avni) to the scam.

Also the condition foreseen by article 147, paragraph 1, n.8 CCK is therefore present.

On the opposite, the practical impossibility to know where the money given to Kastriot ended (even if the obvious conclusion is that it arrived, in whole or in part to Avni Osmani), makes it difficult the configuration of the aggravating circumstance foreseen by number 3 of the first paragraph of article 147 CCK.

It's time now to come back to an issue which was introduced at the beginning of the motivation, and that relates to the kind of personality which Avni Osmani represents.

He is an intelligent man, but with a tendency to manipulation and an intolerance for limits and rules that the situation, as well as the law and the society imposes on the individual.

Now we can conclude that the motivation has confirmed the initial impression. The trial and the evidence brought before the Court, as illustrated up to this point, show beyond any reasonable doubt, in the opinion of the Panel, the criminal liability of Avni Osmani for the murder he is charged for. Yet, in the course of the trial, with the technique of the change of versions, with the request of the change of the judges and, when that was granted, with the request of change of the prosecutor and eventually, with the never ending molesting of the proceeding, he has tried to manipulate the outcome of the trial, in order to avoid the affirmation of his criminal responsibility.

The same kind of ambiguous behaviour the accused has shown in his relation with the police: police officers Shamshi Jashari and Bujar Gashi well have documented, in their respective deposition, the kind of relation that Avny Osmani tented to establish with the police officers: a mix of flattery, request of protection, arrogance (when, for example, he expects to be brought to the Galaxy clinic), aggressiveness and, above all, molestation.

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Before passing to the examination of Fitim Breznica's case, another point is worth mentioning.

In the course of the investigation, once the crime scene was indicated by the accused Avni Osmani and the body of Kastriot Zogiani was found, two different technical examinations were carried out, by two different experts appointed, on request of the Prosecutor.

A *post mortem* and a ballistic expertise have been filed at various time in the course of the investigations.

The two documents (and their respective additions), if also professionally appreciable, have their limits, since they can not contribute significantly to the reconstruction of the facts.

If also they may indicate some interesting aspects (for the autopsy report, the number of wounds and a rough indication of the trajectory of entrance of the bullets: for the ballistic report only a description of the bullets found in the two locations where Kastriot Zogiani was shot and dragged), the two documents are not conclusive or decisive in determining the modalities of the shooting or the number of people contributing to the commission of the murder.

As affirmed by the same experts Tafik Gashi in the course of his examination, the practical possibility to find any meaningful element for the investigation was excluded by the condition of degradation of the body, which had remained in water and exposed to the elements for over a month and a half.

Also for the ballistic report, the fact that the weapon used to shoot was never found and that the crime scene offered generic indications, compatible with a plurality of reconstructions, implies practically that the technical contribution is limited, if any, and not conclusive.

For these reasons the Panel opines that the extensive examination of the two reports is not necessary.

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In conclusion, the case of Fitim Breznica.

As seen, the evidence of his participation to the murder of Kastriot Zogiani is inexistent. Apart from the words of Avni Osmani, who reserved for him the role of the masked man silently present to the assassination of Kastriot Zogiani, not a single grain of evidence can establish a link between the murder and Fitim Breznica.

Completely extraneous to the relations between the Zogiani family and Avni Osmani, as well as to the negotiations for the employment of people to the airport, it is not explicable why he should have participated in the murder of someone whom he did not know.

His participation to the events of the night is limited to the concealment of the body of Kastriot Zogiani after the murder had taken place.

The only source of information about it is the testimony of the same Fitim Breznica, which finds partial confirmations in the deposition of his sister Myrvete.

The depositions of Fitim Breznica and of Myrvete Breznica have been held reliable because the sister and brother have appeared credible in the course of the trial, though in the different roles played by the two. They appeared two simple individuals, naïve and unassuming, never really trying to escape their responsibility.

Based on this, the only criminal responsibility that can be established towards Fitim Breznica consists in the violation of article 305, para 3 of the CCK, for providing assistance to Avni Osmani, after the commission of the murder of Kastriot Zogiani. Assistance provided with the concealment of the corpse of the victim and the disposal of the weapon used by Avni Osmani in order to kill Kastriot Zogiani.

The modification of the charge, from aggravated murder (147 CCK) to assistance to the perpetrator after the commission of the crime (art.305 CCK) is permitted, in this case, by the law. Article 386 KCCP foresees the possibility provided that the act that is charged anew, is contained in the description of the previous charge, i.e. is not a surprise for the accused.

The Panel believes that the last words of the original charge, with the description of the act of hiding the dead body, in a hole, with description of dimension and modalities of coverage, is sufficient to satisfy the legal provision.

Coming to the determination of the punishment, in relation to Avni Osmani and based on the considerations expressed above on the heinous nature of the crime and on the odious behaviour of the accused after its commission and in the course of the investigation (with the involvement of innocent people and with the attribution of the responsibility to his close relative) the Panel determines that pursuant to article 37 of the Criminal Code of Kosovo and article 147, paragraph 1, items (3) and (8) the accused Avni Osmani is sentenced to imprisonment of thirty years;

For Fitim Breznica, given his modest role in the facts and his subjugation to the will of the cousin, the imprisonment can be limited to four years and seven months;

The time spent in detention by the accused will be counted as part of the imprisonment sentence pursuant to Article 73 of the CCK

Costs of the proceedings

Pursuant to Article 102, paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP) the convicted persons shall pay jointly the costs of the proceedings to the amount of 400 Euros.

Date: 30th November 2009

Presiding Judge
Francesco Tomi

Panel Member
Marije Ademi

Panel Member
Dragomir Yordanov

The court recorder
Ms. Patricia Faltusova

14-Dec-2009
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