

**DISTRICT COURT OF PRISHTINE/PRISTINA**

**P Nr. 570/07**

**Date 27 May 2009**

**IN THE NAME OF THE PEOPLE**

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

- 1) EULEX Judge, Mr. Andrea CRUCIANI, as Presiding Judge,
- 2) EULEX Judge, Mr. Francesco FLORIT, as panel member,
- 3) Local Judge, Mr. Ferid BISLIMI, as panel member,

assisted by court recorder Jacqueline Ryan,

in the criminal case against:

**Bekim RASHITI**, son of Salih and Fatime (Vllasa), born on 2 February 1974 in Peran Village, Municipality of Podujevo, unmarried, Albanian, citizen of the Republic of Kosovo;

**Visar AHMETI**, son of Avdi and Nefisa (Bunjaku), born on 8 May 1979 in Peran Village, Municipality of Podujevo, where he resides, unmarried, Albanian, citizen of the Republic of Kosovo;

**Valon VLLASA**, son of Isak and Xhezide (Gervalla), born on 20 August 1984 in Pristina, Vellezerit Fazliu street, where he resides, unmarried, Albanian, citizen of the Republic of Kosovo;

**V S ( Juvenile)**, son of Sh and H (), born on [REDACTED] in [REDACTED], [REDACTED] where he resides, unmarried, Albanian, citizen of the Republic of Kosovo;

all the defendants charged for the criminal act of **Kidnapping, in Co-perpetration, contrary to Articles 159, Paragraph 2, and 23 of the Criminal Code of Kosovo (CCK)**, because on the 10 December 2005, at around 00:30, in Pristina, Dardania district, the defendants, in co-perpetration, intentionally and pursuant to a prior agreement, kidnapped the victim D Sh, hiding him in the house of Shahin SFISHTA in Fitorja street in Podujevo, until they released him, on the 13 December 2005 at around 02:00, after the father Gani SHALA had paid, on a dirt road near Bradash village, the ransom of EURO 230.000,00;

after having held the main trial hearings in closed sessions on 1, 3, 27, 28, 29 April 2009, 26 May 2009, in the presence of the accused mentioned above, their defense counsels and the Public Prosecutor Raze LOSHAJ;

after the panel's deliberation held on 27 May 2009;

based on the Article 391 (1) of the Kosovo Code of Criminal Procedure (KCCP);

pronounced in public and in the presence of the accused, their defense lawyers and the Public Prosecutor the following:

### **VERDICT**

**The accused are found**

### **GUILTY**

**of the criminal act of "kidnapping" contrary to Article 159 (2) of the Criminal Code of Kosovo (CCK) in Co-perpetration as per Article 23 of the CCK;**

### **SENTENCE**

**Bekim RASHITI**

**Pursuant to Articles 38, 159 (2) and 23 of the CCK is sentenced to imprisonment of 5 years;**

**Pursuant to Article 277 (4) of the KCCP the bail imposed on the convicted person of EURO 30.000,00 is cancelled.**

**Pursuant to Article 494 of the KCCP the same amount of money of EURO 30.000,00 is confiscated and it is transferred to the injured parties (D Sh and Gani SHALA) as a partial compensation of the damages.**

**Visar AHMETI**

**Pursuant to Articles 38, 159 (2) and 23 of the CCK is sentenced to imprisonment of 3 years;**

**Valon VLLASA**

**Pursuant to Articles 38, 159 (2) and 23 of the CCK is sentenced to imprisonment of 4 years;**

**V S**

**Pursuant to Articles 38, 48 (2) and (3), 159 (2) and 23 of the CCK and Article 6 (5) of the Juvenile Justice Code of Kosovo is sentenced to a suspended sentence of 2 years of juvenile imprisonment.**

**Pursuant to Article 48 (2) of the CCK, the punishment shall not be executed if the convicted person does not commit another criminal offence for a period of 5 years from the date the judgment becomes final.**

**Pursuant to Article 48 (3) of the CCK, the punishment shall be executed if, within 1 year from the date the judgment becomes final, the convicted person does not compensate the injured parties (D Sh and Gani SHALA) with the sum of EURO 200.000,00.**

**For all the defendants, the time spent in detention on remand is included in the amount of the punishment imposed on them.**

### **PROPERTY CLAIM**

**The accused, cumulatively and jointly, shall compensate the injured parties (D Sh and Gani SHALA), for the damages caused which are determined, following the request, in EURO 230.000,00.**

### **COSTS**

**The accused must reimburse the costs of the criminal proceedings.**

**Since the data of the amount of the costs is lacking a separate ruling on the amount of the costs shall be rendered.**

### **REASONING**

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### ***PROCEDURAL HISTORY***

On the 31 October 2007, the Public Prosecutor has filed the indictment against the accused Bekim RASHITI, Arben SFISHTA, Visar AHMETI, Valon VLLASA, and a proposal for imprisonment for the minor V S, all charged for the criminal offence of kidnapping, contrary to Article 159 (2) of the CCK in Co-perpetration as per Article 23 of the CCK . On the 7 April 2008 and 14 April 2008 the Confirmation Judge issued two rulings confirming the indictment for the aforementioned defendants.

On the 1 April 2009, the main trial started in closed sessions, without the presence of the public, in accordance with Article 69 of the Juvenile Justice Code of Kosovo. Present were the Panel members as specified above and all the defendants and their defense counsels. Also present were the injured parties D SH and Gani SHALA.

The Presiding Judge confirmed that the trial panel had been constituted in accordance with the law. The jurisdiction of the EULEX Judges on this case is based on the provisions of Article 3 and 16 of the Law No. 03/L-053 on the Jurisdiction, Case

Selection and Case Allocation of EULEX Judges and Prosecutors. No objections were raised by the parties as to the composition of the Panel.

During the same session, after each count of the indictment was read by the Public Prosecutor, the defendants were asked to plead guilty or not guilty. All the accused pleaded not guilty on all counts.

On the issue, also raised by the defense counsels, of the failure to disclose the whole documentation by the Public Prosecutor, the exception was rejected as it was not raised at the hearing of the confirmation of the indictment and it falls that the parties were satisfied with the documentation which was provided by the Public Prosecutor at that time.

On the 3 April 2009, the witnesses D SH and Gani SHALA were examined.

On the 27 April 2009, one of the defendants, Arben SFISHTA, did not show up in Court and his defense lawyer claimed that he had undergone a medical eye-surgery in Norway and would have come back to Kosovo in two or three weeks time. The Court considered that neither the defendant neither his defense counsel submitted any documentation supporting the existence of an urgent medical operation to be undertaken in Norway, thus the absence of Arben SFISHTA was not justified. Therefore, the Court issued an order for the arrest of the said defendant, pursuant to Article 270 of the KCCP. The Court also issued, in accordance with Article 33 of the KCCP, a ruling of severance of the proceedings, in relation to the criminal proceeding against Arben SFISHTA, so that the present trial continued against the other defendants, namely V S, Visar AHMETI, Valon VLLASA and Bekim RASHITI.

The witness I V was called as a witness in Court. The witness, father of the defendant Valon VLLASA, choose to remain silent, in accordance with Article 160, Paragraph 1 (2), of the KCCP.

The witnesses F A and I L were examined.

The statements made by the F G at the police station on 31 March 2006 with the consent of all the parties were given as read and attached in the case file.

The witness S R was called as a witness in Court. The witness, father of the defendant Bekim RASHITI, choose to remain silent, in accordance with Article 160, Paragraph 1 (2), of the KCCP.

On the 28 April 2009, the witness Sh A was called as a witness in Court. The witness, close relative of the defendant Visar AHMETI, choose to remain silent, in accordance with Article 160, Paragraph 1 (2), of the KCCP.

The witness F K and N A were examined.

The Court then proceeded with the presentation of the material evidence:

- The report on the DNA number 2006/0211, dated 29 June 2006, issued by the Forensic Institute in Innsbruck, Austria;
- The opinion of the expert on the Forensic Analysis of DNA lab nr. 2006/0211, dated 30 June 2006;
- For the phone interceptions of 2005/0119 of 5 April 2005;
- The report provided by PTK from 10 December to 14 December 2005 from IMEI nr. 351114106207180;
- The report on 8 December 2005 until 12 December 2005 for number 044393739 and 044379774;
- The report on the telephone conversations from 12 December until 15 December 2005 through the cards with the number 044393739 and 044379774;
- The chain of custody of evidence number 05-239, dated 17 December 2005;
- The sketch of the place of the incident where the victim stayed, 239 B, dated 27 December 2005;
- The description and photos of the house of Bekim Rashiti and Shahin Sfishta and Visar Ahmeti, numbered 2005-0119, dated 21 December 2005;
- The record dated 21 April 2006 of the identification of the persons through a photo line up, during which the victim identified the photographs nr. 1 and 8;
- The record dated 21 April 2006 of the crime scene identification;
- The record of the identification of the place of the incident through the photograph number 005.04.2006;
- The examination of the phone by the forensics laboratory number 06-0211;
- The examination of the Mercedes with license plates 128-KS-476 and the photo documentation of the taxi;
- List number 1543, dated 16 December 2005, on the confiscation of the items of the defendant Arben Shfista;
- The receipt for the purchase of items from Albi Moni store dated 13 December 2005 with number 1250, 1251 and 1254;
- The certificate 1542 dated 16 December 2005 on the confiscation of the items of Bekim Rashiti;
- The certificate 2005/119, dated 16 December 2005, on temporary confiscation of the Visar Ahmeti, Salih Rashiti and Ismet Ahmeti;
- Certificate number 2005/01149, dated 20 December 2005, on the temporary confiscation of the items of Isak Vllasa;
- Certificate on the temporary confiscation of the items of Bajram Sfishta and Fatos Sfishta;
- The medical report number 43617, dated 13 December 2005, on the injuries suffered by D Sh;
- The description of the photos of the cars dated 18 December 2005.

Upon request of the defense counsels, the Court spelled out in Court all the orders for the metering and the interception of the phone calls, as well as for the DNA analysis, finding that all the said investigative activities have taken place pursuant to orders of the Public Prosecutor and the Pre-trial Judge, thus all the results of the activities of metering

and interception of telecommunications and the DNA expert opinions and reports were considered as admissible evidence.

Deciding upon the request of the defence counsels regarding the admissibility of the previous statements at the police station of the witnesses I V, S R and Sh A, the court decided that given that although they were privileged witnesses at the time of the examination, in accordance with article 160, paragraph 1 item 2 of KCCP, they were not informed about their right to be exempted from giving testimony, therefore, their declarations were considered not admissible as evidence in this proceeding.

The defense counsel of the defendant Bekim RASHITI submitted some pictures which were admitted as evidence.

All the defendants decided not to be examined and to remain silent.

On the 26 of May 2009, the closing statements of the Public Prosecutor and the defense counsels of all the defendants were presented. The Court withdrew for deliberation.

On the 27 May 2009, after deliberation and voting, the Court has announced the above written enacting clause of this judgment.

### ***MERITS OF THE CASE***

#### ***1. The criminal responsibility of all the defendants for the crime of Kidnapping in Co-perpetration, contrary to Articles 159, Paragraph 2, and 23 of the CCK.***

After perusal of the case file, the Court has found that all the defendants are guilty beyond any reasonable doubt of the criminal offence for which they have been charged with in the confirmed indictments of the 7 April 2008 and 14 April 2008: Kidnapping, in Co-perpetration, contrary to Articles 159, Paragraph 2, and 23 of the CCK, because, on the 10 December 2005, at around 00:30, in Pristina, Dardania district, the defendants, in co-perpetration, intentionally and pursuant to a prior agreement, kidnapped the victim D SH, hiding him in the house of Shahin SFISHTA in Fitorja street in Podujevo, until they released him, on the 13 December 2005 at around 02:00, after the father Gani SHALA had paid, on a dirt road near Bradash village, the ransom of EURO 230.000,00.

The criminal responsibility of the defendants stems out from all the evidence collected in the main trial, namely from the intercepted telephone calls, the reports of the DNA analysis, the testimonies of the injured parties (D SH and Gani SHALA) and the material evidence seized in the apartments of the defendants.

Some general considerations are valid and common for all the defendants.

There is no doubt that on the 10 December 2005, at approximately 00:30, D SH was kidnapped in Pristina, Dardania district, and that he was forcibly kept in the uninhabited

house of Shahin SFISHTA, located in Fitorja street in Podujevo, until the defendants released him, on the 13 December 2005, at around 02:00, in the location of Llukar village, in "Arber" neighborhood, close to the main road Pristine-Llukar, after the father Gani SHALA had paid, near Bradash and Dobratin villages, at the place "Lugu I Kacakeve", the ransom of EURO 230.000,00.

The description of the events related to the kidnapping and the payment of the ransom has been provided in Court by the testimonies of the two injured parties, D SH and Gani SHALA.

Here follows an excerpt from the minutes of the examination of the witness D SH:

Public Prosecutor: On 10 December 2005 at around 00.45 hours you were kidnapped.

D Sh: Yes.

Public Prosecutor: My question is, in what place were you kidnapped?

Presiding Judge: I would invite you to put a question in a different way.

Public Prosecutor: Where were you kidnapped?

D Sh: Close to my house which is located close to a children's nursery.

Public Prosecutor: Which neighbourhood?

D Sh: Dardania.

Public Prosecutor: Where were you going at that time?

D Sh: I was going home.

Public Prosecutor: Whom did you meet that night or who met you that night?

D Sh: I was going home and I saw two people standing. Then, they walked in front of me. Do you want me to tell you everything?

Public Prosecutor: Yes.

D Sh: They told me they were from the police. They asked me about my ID card and I told them I had left it in the car because first of all, I park my car at the parking space and then go home. They got closer to me and then I asked them: "Could you please show me your ID cards because I do not know if you are from the police?" They told me there was no need for that and they got even closer. I then attempted to leave and I pushed one of them and the one who was in front of me, took his weapon out and I was really surprised and I put my hands up and the person who was behind me put my hands behind my back and handcuffed me. He put a hood over my head and then they forced me to enter a car.

Public Prosecutor: When you were entered the car, did you still have the hood on your head?

D Sh: Yes.

Public Prosecutor: If you can recall, can you please tell us the description of the car or may be the colour.

D Sh: I thought it was a Mercedes vehicle, black. This was my perception.

Public Prosecutor: Tell me, ... *(Public Prosecutor is interrupted)*

*Haxhi Millaku objects to the interpreter using the word "perception" since he believes that the word was "think".*

Haxhi Millaku: The witness says: "I 'think' that the car had that description", while the interpreter said: "My 'perception' was". The words "think" and "perception" are two different words. This was my reaction Honourable Judges and whether my interpretation is correct or not you are here to evaluate.

*Note for the record: The Albanian words to which Defence Counsel refer are: "mendoj" ("think" in English) and "perceptim" ("perception" in English).*

Presiding Judge: We understand.

Public Prosecutor: My question was, when they took you and put you in the vehicle, did they use force against you when they put you in the vehicle?

D Sh: They only took the weapon out when I pushed him and they handcuffed me.

Public Prosecutor: Can you recall your trip even though you still had the hood on your head?

D Sh: During my trip, I was able to notice the lights of the posts in the street because when you are travelling with the car these lights are interrupted every so often.

Public Prosecutor: Could you please describe to us this trip and where this car was travelling?

D Sh: Then they turned on the left and then they turned on the right, then they turned again on the left. They then turned on the right and then I heard a noise such as a speed bump.

Public Prosecutor: When you made that trip, did the people who kidnapped you talk amongst themselves?

D Sh: First of all, when they took me they asked where my brother was, Ilirjan is his name, and then they also asked me where I was keeping the drugs and they told me they were going to take me to the police station and talk a bit more.

Public Prosecutor: During this trip, did these people talk amongst themselves or with someone else?

D Sh: We must have travelled for one hour and a bit and then the car stopped, the driver got out of the car, he talked to somebody but I was not able to hear the conversation. Then, he got back into the car and put the car in the reverse position and whilst he reversed the car, it touched a stone and then he was swearing in Albanian.

Public Prosecutor: They sent you to a house, were you able to see anything at the gate of the courtyard of this house despite the fact that your hood was still on your head?

D Sh: Can I ask you something? Can I talk about the fact when I went in or taken out?

Public Prosecutor: Only when you went in.

D Sh: Before we entered the house, I walked on mud and then I climbed three stairs, then they asked me to take off my shoes and I put on a pair of slippers.

Public Prosecutor: When you entered the house, where did they send you?

D Sh: First of all, they led me on the right and then I climbed some stairs in the form of a circle, they sat me in a chair, they asked me a few questions and then they took me from that place. I was sent on the left-hand side, then, after I got out of the basement, I climbed a few stairs to go upstairs and then I entered into a room on the left side.

Public Prosecutor: Are you able to describe to us the room that you were put in?

D Sh: First of all, when I entered, there was no chandelier apart from an electrical wire hanging from the ceiling. You could open the door from the inside and it was wooden. Close to the door was a switch and the light switch was not placed, you could only see the wires. The position of the light was not high up the wall. (*Witness indicates around 1 metre high*). The tiles were white with a bit of grey. The wall was not completely white but it had scratches on it. This is all. There was no window in the room.

Public Prosecutor: Are you able to recall how big this room was?

D Sh: Roughly about 1.80 metres. May be that is not the correct width. I was not able to lie down.

Public Prosecutor: Were you body searched before you were put into that room?

D Sh: Yes, they searched me and took the key of my Opel Astra car which I had with me and then they asked me: "Why don't you have money with you?"

Public Prosecutor: During your stay in that room, did these people come to visit you often?

D Sh: There was one person who asked if I wanted to eat or drink something and the following day, a completely new person came and he asked if I wanted anything.

Public Prosecutor: Did they come with their faces covered or not?

D Sh: Yes, they always had these black masks on their faces.

Public Prosecutor: Were you able to identify any of them based on the voice despite the fact that they were wearing these black masks.

D Sh: I have identified them at the police station and I identified two of them based on the mouth and finger.

Public Prosecutor: These are the people you are saying visited you in the room.

D Sh: Yes, the person I identified from his mouth was the person who talked most to me and the person whom I identified because of the finger only came one day. On Monday.

Public Prosecutor: You are saying that you have identified him because of the finger, how could you do that?

D Sh: When they came to bring me food, I saw that on the left hand his finger was damaged as if he had been hit by a hammer. But, I think it was the bucket which they held for me to urinate and I was able to see the finger of the person holding this bucket.

Public Prosecutor: When they entered into the room, did you still have the hood on your head or not?

D Sh: No.

Public Prosecutor: What kind of assistance did you request from the people who came to visit you?

D Sh: First of all, they brought a carrier bag. I then asked them to bring me a bottle so I could urinate and they brought this later and I was therefore forced to urinate in the room. Then I asked them for cigarettes and I also asked them to contact my family using a telephone.

Public Prosecutor: Do you remember whom did you ask the cigarettes from or who brought the cigarettes to you and is there something specific that you can describe?

D Sh: The person who visited me mostly and this is the person I identified through the mouth, he brought me the cigarettes and cared about me mostly.

Public Prosecutor: Do you recall what kind of cigarettes they were?

D Sh: West.

Public Prosecutor: Did you smoke these cigarettes?

D Sh: Yes.

Public Prosecutor: What did you do with the butts after you had smoked them?

D Sh: I did not have any possibility but to put them out on the floor.

Public Prosecutor: Everyone you smoked?

D Sh: Yes.

Public Prosecutor: The people who entered the room where you were staying, you stated that they had masks on their head, were they also wearing gloves?

D Sh: Only the person I identified through the mouth was the only one wearing gloves and the person I identified through his finger was not wearing any gloves.

Public Prosecutor: Did these people offer you to inform your family about your whereabouts and what was happening to you?

D Sh: Yes, they entered into the room. He was a tall person. He was wearing a vest with many pockets and was carrying a Kalashnikov and he gave me a phone so that I could speak with my family. Afterwards, the person who I identified through his mouth also offered me the phone.

Public Prosecutor: Did they offer you the phone they seized from you or did they offer you their own phones?

D Sh: First of all, they offered me my own, a Samsung and then I used a Nokia one but I don't remember the models or types but I can find them on the Internet or if there are any pictures, I can tell you which ones I used.

Public Prosecutor: Whom did you call and what did you say to your family?

D Sh: First of all, I told these people when they gave me my phone that I had no credit. The mother of my girlfriend called on the phone. I forgot to mention earlier on, first of all, when I entered there, they asked me if I wanted to call home and I told them it was a bit late to call and would do so the next day. They then gave me back my phone and the mother of my girlfriend called me and I told her to tell my Dad to call me back. Then I talked to my father and I explained to him the event and what had taken place.

Public Prosecutor: Did you tell your father, that you were kidnapped?

D Sh: I told him I was well and that I was kidnapped.

Public Prosecutor: Did your conversation last a short or long time?

D Sh: It wasn't a short one but then it was not long and I was able to explain to him a little bit about the situation.

Public Prosecutor: During your stay in the room of this house, did you ever ask the people who came to visit you with regard to what place you were being held?

D Sh: I had the possibility to talk to the person whom I identified through his mouth and he told me that they were in Peja.

Public Prosecutor: He told you they were in the region of Peja?

D Sh: Yes.

Public Prosecutor: Did they tell you when they were going to release you?

D Sh: I asked this question every day and their reply was: "The sooner your father completes all this, you will be released."

Public Prosecutor: Whilst you were staying in the room, was there any light?

D Sh: The only light that entered was under the door.

Public Prosecutor: Were you able to see anything outside of that room based on that light?

D Sh: I was not able to see anything from that light but once when they opened the door, I saw a chest of drawers on the side of the door.

Public Prosecutor: Before the door of your room, were there any slippers?

D Sh: No, but all of them were wearing slippers.

Public Prosecutor: When you entered into the room were you wearing shoes or not?

D Sh: I took off my shoes and put on a pair of slippers.

Public Prosecutor: When you took off the shoes, were you still handcuffed?

D Sh: I was handcuffed behind my back.

Public Prosecutor: How come you took your shoes off?

D Sh: I used my feet to take off my shoes because they told me to take of my shoes.

Public Prosecutor: If we were to offer you a few pictures of the house you stayed, would you be able to identify the place?

Mahmut Halimi: In order to spare the time, these pictures are pictures that have already been explained and were taken according to the description of the witness.

Presiding Judge: I think the motion of the Public Prosecutor is relevant.

Public Prosecutor: You have the originals in the file and I have copies.

Presiding Judge: We will proceed with questions whilst the Legal Officer searches for the photographs.

.....(omissis).....

Public Prosecutor: Can you describe picture No. 1?

D Sh: In picture No. 1, after I went out of the house, I do not know how to describe it, there was a sort of iron thing that I touched with my hand because I was not handcuffed at that moment and was able to touch with my hands. Then they opened this one and got me inside the car.

Public Prosecutor: If you can recall, would you describe picture No. 3. Can you recognize something? Is this the thing you stated earlier on?

D Sh: These are the colours of the door and the tiles are the same with the ones that were in the rooms that I was being kept. I cannot describe this hall since I had the hood over my head.

Public Prosecutor: Would you please describe picture No. 6, meaning the bottle?

D Sh: This is the bottle I drank water from and used to urinate into.

Public Prosecutor: Picture No. 13.

D Sh: These are the tiles where I have stayed and these are the tiles that I have stubbed out the cigarettes on the floor.

Public Prosecutor: Picture No. 17.

D Sh: This is upstairs from the ceiling. It shows the wire coming out of the ceiling and all the walls of the room on my right and left-hand side had these scratches. This is a picture, which shows the ceiling.

Public Prosecutor: No. 26, could you please describe it?

D Sh: Yes, the door is open. This was the door and the door handle was the same colour as is shown in the picture.

.....(omissis).....

Public Prosecutor: The day before you were released, did they enter your room?

D Sh: Yes, the day before I was released, they told me that they would release me and then took my handcuffs off as my father had paid the money. They put a mask over my head and then I was escorted out.

Public Prosecutor: So when you were escorted out of the room, you had handcuffs?

D Sh: When out of room, I did not have handcuffs.

Public Prosecutor: Did you have a mask?

D Sh: Yes.

Public Prosecutor: Do you know what kind of a vehicle was used to transport you and where were you taken?

D Sh: I did not know what type of vehicle it was as I had a mask but I know that my head was leaning on some plastic and the inside smelled like vanilla. Two or three days after my release, I got into a vehicle of my friend, a Golf 3, and I had the same feeling as I had in the other vehicle.

Public Prosecutor: Where did they drop you off?

D Sh: When I was dropped off, I did not know where I was as it was dark but I asked for assistance. My uncle came to pick me up, and then I told the police that I threw the mask at that location and then when I went there during the day I found out what road it was.

Presiding Judge: Was the mask found?

D Sh: Yes.

Public Prosecutor: Do you remember, did you have a watch to see what time it was?

D Sh: It was night. I don't know but may be 3 or 4 o'clock.

Public Prosecutor: What did they say to you when you were released?

D Sh: They gave me a phone and I realized that it was my brother's. They told me the pin code was 0000, but I could not enter this pin code to call my father and then they told me not to turn around for about 10 minutes while they left. I had a mask but a few minutes later, I took it off and asked for help.

Public Prosecutor: You said that they gave you your brother's phone. Where did they get it from? Did they say something?

D Sh: They said my father gave them this phone.

The Court considers D Sh a totally reliable witness, taking into account that his story is internally consistent, plausible and very rich in details. The mere fact that he is also a victim does not affect his credibility, which is based on the mentioned elements. Most importantly, all the circumstances referred by the witness are confirmed by the other evidences present in the case file. The most important piece of evidence in that respect is the expert opinion on forensic DNA analysis issued by the DNA laboratory in Innsbruck (Austria), dated 30 June 2006, following orders for expert analysis of the Pre-trial Judge of the 3 February 2006, 14 February 2006, 15 February 2006, 15 February 2006 and 27 February 2006. The said expert opinion uncontrovertibly demonstrates that the urine samples found in the uninhabited house of Shahin SFISHTA presented the profiles of D Sh. In particular, the final result of the mentioned expert analysis is hereby quoted: "The DNA analyses of the possible urine sample, swab CS # 1.3, gave a male profile which is identical with the profile of SHALA D. Biostatistically there is no reasonable doubt that SHALA D is the biological source of the profile found on the swab CS # 1.3."

The victim D Sh has also recognized in Court the place where he has been kidnapped (pictures number 3, 13, 17 and 26) and the bottle in which he urinated (picture number 6). The pictures are attached to the forensic report of the Forensic Directorate - MHQ Pristina - which was compiled on the 17 December 2005.

Also the father of the victim, Gani SHALA, who had paid the ransom of EURO 230.000,00 has testified in Court.

These are the relevant passages from the minutes of his testimony:

Public Prosecutor: You are here as a witness and you are also the father of the victim. A few brief questions will be put to you today with regard to what has happened to you and your son. The question is do you remember when your son was kidnapped?

Gani Shala: It might have been a Friday or Saturday I cannot remember but I have already given a statement. I cannot remember for the time being whether it was Friday or Saturday since I have deleted this from my mind.

Public Prosecutor: When did you know that your son was kidnapped or who told you?

Gani Shala: I was at work in Miradia. A girlfriend of my son called me and at that moment, I dialled D's number. D answered the phone and he told me that he had been kidnapped.

Public Prosecutor: After your son informed you that he had been kidnapped what actions did you undertake?

Gani Shala: I left work and went home. I told my wife and the other two sons that D had been kidnapped.

Public Prosecutor: Do you remember whether D called you often on the phone?

Gani Shala: No. I had another call from him but not at that time but a bit later on.

Public Prosecutor: Did you report the case to the police or not?

Gani Shala: Yes.

Public Prosecutor: What happened afterwards, did someone call you later on?

Gani Shala: During the reporting of the case to the police at police station No. 2, when I told them my child had been kidnapped, I received another phone call.

Public Prosecutor: Can you remember who called you?

Gani Shala: The kidnappers called me.

Public Prosecutor: Were they calling you using D's number or another?

Gani Shala: I cannot remember

Public Prosecutor: You are saying that the kidnapper called you; do you recall what he said to you?

Gani Shala: The first time, when they called me they asked for €500,000 in exchange for the release of my son and the second time, they told me that you do not dare report the case to the police and if you do so, they were going to kill my son.

Public Prosecutor: Did they call again every so often or was there an interruption period between these calls?

Gani Shala: As far as I can remember, they did not call that night, but I am not sure.

Public Prosecutor: Did you try to call your son's telephone number?

Gani Shala: Yes. Every time I tried, the number was switched off.

Public Prosecutor: Do you remember any of the other numbers which were registered in your incoming calls apart from your son's telephone number?

Gani Shala: As far as I can remember, there was a No. 101 or 010 but a long time has gone by since then and I cannot remember.

Public Prosecutor: Did they threaten you via the phone that you had to collect the money as soon as possible.

Gani Shala: Yes.

Public Prosecutor: What did they say to you if you can remember?

Gani Shala: I remember them telling me to collect the money as soon as possible and hand it over. I told them that I did not have that amount of money and that there was no way for me to find that kind of money without selling the cars, the house, and the land or unless I borrowed money from friends because the amount was quite a large amount. It was not possible at all for me to find this €500,000. I remember it was a Saturday when they called me. I said that I cannot find all this money because the banks are not open and let us wait until Monday and see if I can get this money or not.

Public Prosecutor: Did they give you a deadline as to when you were to hand over the money to them?

Gani Shala: The main conversation was held on Monday and the meaning of their request was to hand over the money as quickly as possible. On Monday I collected the money from my friends and I managed to collect €160,000 and when they called me, but I cannot recall the time they called me, I told them I had managed to get €165,000 or €185,000. I cannot remember the exact amount since friends were helping me collect it. It was in the afternoon when I received the other call and when they called we agreed on €230,000 and they also told me this was their last call to me and I had to managed to get this amount which I managed to collect which of course I borrowed from my friends. I have already stated it in my statements as to where I got the money and the names of all friends where I got it.

Public Prosecutor: You stated that they asked for quite a large sum of money, €500,000. How come that you managed to agree to a lower sum of €230,000? Did you have any problems agreeing to this new amount?

Gani Shala: I told them there was no chance whatsoever for me to collect that kind of money even if they were going to kill my son. Whenever they called me, I told them I was not able to satisfy the original sum of money they were asking for.

Public Prosecutor: After you agreed on the other sum which was €230,000, what happened after this agreement was reached? What were the instructions given by them?

Gani Shala: When they called me towards the evening and they asked me whether I had managed to collect this money and my answer was yes and that I had collected €230,000, I told them I was ready to deliver the money at a place of their choice. The kidnappers told me to await further instructions. Would you like me to make a full statement or would you like me to answer questions put to me? How many times they called me, etc.

Public Prosecutor: Would it be easier for you to proceed without questions or via questions? What were their instructions with regard to the delivery of the money?

Gani Shala: I was supposed to go with my own BMW but at the very last moment they asked me to use D's car and was instructed not to have anyone else with me. No one was to follow me and I was instructed to take my passport with me.

Public Prosecutor: Did the kidnappers tell you to use only D' car?

Gani Shala: His car was mentioned but I am not sure since a long time has gone by. I know that D's car was mentioned. I think the model was mentioned, Opel Vectra. Opel Corsa was my car. I was to go and deliver the money in the BMW and afterwards they told me not to use that but to use D's car. Now I cannot remember whether the word "Opel" was used by them.

Public Prosecutor: Do you remember when you left your home in order to go and deliver the money, was it night or daytime?

Gani Shala: It was quite late but I cannot remember the exact time. It was beyond 8 p.m.

Public Prosecutor: Would you please describe to us the trip from your home to the place where you were to deliver the money?

Gani Shala: The last call I had they told me to receive my passport and to head towards Mitrovica and when I arrived in the town of Mitrovica, I was told to wait for further instructions and when I entered the town, I received another call from the kidnappers and they told me to take the road Shala Bajgora and drive until the asphalted road comes to an end and I started driving on that road and went uphill. It was night time. I did not see anyone and without asking anyone, I started driving on the dirt road. I continued driving on the dirt road in the hope that I was going to see them because I was afraid that other people were going to come out at the determined place. I drove through a village and I saw the mosque in that village and then I drove until I reached the asphalted road again and I remember the road was between Kerpimeh. When I reached the asphalted road, I received the phone call from the kidnappers and was asked where I was and I told them I was on the asphalted road and was asked why I was not waiting up hill and they asked me to go back using the same road. I took the wrong road. I went into a courtyard and at that road, a person, somebody, was there and I asked because it was night time for the road to Bajgora and he told me that the road was immediately behind his house and when I went to that road, the one I had used before, I drove past the mosque and after just passing the mosque by some kms, I don't know exactly, the road was muddy. There were many turns and on the second turn two people stopped me and they told me to switch off the engine and to get out of the car. I switched off the engine. One of these people was at my right-hand side and the other moved until he reached the backlights of the car. This person physically searched me. I had two telephones with me. One was my personal phone and the other belonged to my son Ilirjan. The kidnappers asked me about the money and I told them it was in the glove compartment of the car. The money was in a very small toiletries bag and the person who was wearing a mask and carrying an automatic weapon received the money whilst the person who was closer to me, he told me when we count the money, we will release your son. They told me that they were going to release him somewhere towards Klina in Peja. I got into the car but I could not drive up the hill and one of them who was standing close to me, he also tried to push the car because there was too much mud. I could not start the car and I told them I had to go back using the same dirt road from Podujeva to Pristina. At that moment I turned the vehicle and I headed towards my house.

.....(omissis).....

Nike Lumezi: I have short questions. Your Honour, were the police informed about his decision to go to the mentioned place and make the exchange?

Gani Shala: They were informed and they were applying interception measures.

Nike Lumezi: Did the witness asked the police to install in the vehicle any tracking devices?

Gani Shala: I was wired and other devices were installed in my BMW but at the last moment when I asked whether I should drive my BMW, they told me to get there driving the Opel Vectra. There were no devices in this car. Without the police having knowledge of this, when I passed the first turn to go up to Shala Bajgora, I threw my jacket away containing the devices I was wearing because I knew that the kidnappers were going to search me physically and I felt, for the sake of my child, I didn't want the worst to happen because based on the calls threats, if I told the police they would kill my son.

.....(omissis).....

Presiding Judge: When you were searched by the two persons who stopped you at the delivery of the ransom, did they take anything from you apart from the money?

Gani Shala: No, they took the phone of my son and said that this telephone would be given to my son when released and my son would call me using the telephone that they took from me.

.....(omissis).....

Also Gani SHALA shall be considered a totally reliable witness, taking into account that his story is internally consistent, plausible and very rich in details. Moreover, all the actions of Gani SHALA have been monitored by the police, from the moment of the report of the incident. His telephone was intercepted and the money was collected at the presence of the police.

The description of the events given by the witnesses D Sh and Gani SHALA is furthermore confirmed by a phone call received on Gani SHALA's phone number by his son on the 12 December 2005, at 18:42, just a few hours before the payment of the ransom:

D Sh: Hallo;  
Gani SHALA: Hallo D how are you?  
D Sh: I am very well father, don't worry just a bit more and I will leave;  
Gani SHALA: Ok are you far?  
D Sh: No I didn't leave yet but now I will leave;  
Gani SHALA: Ok;  
D Sh: Ok, don't worry, nobody because I am very good;  
Gani SHALA: Ok, bye;  
D Sh: Bye.

It is fundamental to stress once more that as soon as Gani SHALA was first contacted by the kidnapers, he reported the incident to the police. The investigators reacted immediately and following provisional orders of the Public Prosecutor and subsequent orders of the Pre-trial judge his telephone number (044120210) and his wife's telephone number (044610005) were intercepted. By doing that it was found out that the calls were originated by mobile phones identified by the IMEI numbers 351114106207180, belonging to Bekim RASHITI and 350985102955720, belonging to Arben SFISHTA. These phones were later on intercepted and the results of the said interception undoubtedly demonstrate the involvement of the defendants in the criminal activities for which they have been charged with. The investigators also proceeded with other investigative activities, such as the searches of the houses of Shahin SFISHTA (where D Sh was kept) and of the defendants; the surveillance during the night of the collection of the ransom and the DNA analysis on the traces found in the house of Shahin SFISHTA.

## ***2. The criminal responsibility of Bekim RASHITI.***

The defendant Bekim RASHITI, together with the defendant at large Arben SFISHTA, bears the greatest responsibility in the kidnapping of D Sh. He has been the one to organize the kidnapping and to direct the criminal activities from the very beginning until the conclusion.

His criminal responsibility stems out from a wide range of uncontrovertible evidences.

First of all and most importantly, the results of the telephone interceptions shall be considered. Following provisional orders of the Public Prosecutor and subsequent orders of the Pre-trial judge Gani SHALA's telephone number (044120210) and his wife's telephone number (044610005) were intercepted. By doing that it was found out that the calls were originated by mobile phones identified by the IMEI numbers 351114106207180, belonging to Bekim RASHITI (see chain of custody of the 15 December 2005) and 350985102955720, belonging to Arben SFISHTA. In particular, the SIM card bearing number 063752650 was used on the telephone Nokia 7210, grey and blue in colour, identified by the IMEI number 351114106207180 to contact Gani

SHALA during the critical dates. The cover of the SIM card number 063752650 was later recovered in the apartment of Bekim RASHITI, following a house search on the 16 December 2005 (search order Pre-trial Judge, SEK 187/05 of the 15 December 2005). The phone calls between Bekim RASHITI (IMEI 351114106207180) and Gani SHALA (044120210), are self-explanatory. They took place on the date of the payment of the ransom, exactly on the 12 December 2005 at 21:13, 21:17, 21:23, 22:07, 22:21, 22:29. During these telephone conversations Bekim RASHITI gave detailed directions to Gani SHALA as to how to reach the place where the ransom had to be paid. When Gani SHALA reached the area of the payment, Bekim RASHITI finally ordered him to step out of the car and continue on foot bringing the money.

Here is the telephone conversation between Bekim RASHITI and Gani SHALA of the 12 December 2005 at 22:29:

Bekim RASHITI: Halo;

Gani SHALA: Halo, it's me Gani, here is the road up the hill and I damaged the car and I can't climb, I'll try once more. I might be late for five minutes because of the mud and I damaged the door;

Bekim RASHITI: Listen;

Gani SHALA: Yes;

Bekim RASHITI: You can't come by car, leave the car, take the money and come up;

Gani SHALA: Ok, I'll try once more;

Bekim RASHITI: Take the money with you and come up.

Other crucial calls are those between Bekim RASHITI and the other defendants. In particular, a pivotal phone call is the one between Bekim RASHITI and Valon VLLASA on the 12 December 2005 at 17:47. During that call the defendants were obviously very careful not to use names and to mention the criminal activities they were involved in. They discussed and complained about Arben SFISHTA, who acted without previous consultation with them and who decided to include in the kidnapping also his brother, V SH, and other people different from the original group, which was consisting of Bekim RASHITI, Valon VLLASA and Arben SFISHTA. Bekim RASHITI also reassured Valon VLLASA that even if the ransom was not paid the former would have given the latter some money:

Bekim RASHITI: what's up;

Valon VLLASA: here, what's up;

Bekim RASHITI: I couldn't meet them, now I'm on the way;

Valon VLLASA: Aaaa;

Bekim RASHITI: Hey man even if nothing happens I'll give you some don't worry;

Valon VLLASA: no uncle but I'm feeling bad about you fuck them, I fuck his monkey mother, he's fucking monkey;

Bekim RASHITI: don't you worry;

Valon VLLASA: he's no good, if some things were in their places I would give him without being;

Bekim RASHITI: no he just asked a painter, another one and he told like that do you get me, I didn't want to mix with him do you get me, I said it's better to leave man, for that he had it, for that I said to you fuck his mother;

Valon VLLASA: from the beginning he started to mix things, and now he plays balls that's not right;

Bekim RASHITI: ok, I told you, I told you something;

Valon VLLASA: you tell him that, tell him, and tell him that's little, you tell him that and don't be ashamed at all;

Bekim RASHITI: ok, ok don't you worry, we'll be heard;

Valon VLLASA: I'll tell him also when I see him;  
Bekim RASHITI: ok;  
Valon VLLASA: ok then;  
Bekim RASHITI: never mind, fuck his mother, for little thing why to;  
Valon VLLASA: o no Beke but I'm irritated uncle fuck his mother, that brother there, stupid, without speaking to anyone like I'm doing something, I'm doing this and that;  
Bekim RASHITI: for that I didn't want to take any painter, for that I didn't like;  
Valon VLLASA: he after, since just me and you and him were, now he put 6 or 7 like I'm doing something;  
Bekim RASHITI: hey, we'll meet each other;  
Valon VLLASA: ok;

Also the telephone conversations between Bekim RASHITI, Valon VLLASA and Visar AHMETI in which the former ask the other two co-perpetrators to come and pick him up after the ransom had been collected are very clear. The full transcript of those conversations is reported integrally later on in this judgment when the position of Visar AHMETI is analyzed.

Another important piece of evidence is the black mask which has been recovered in the apartment of Bekim RASHITI, following a house search. The report of the police was compiled on the 18 December 2008, while the search of the house took place on the 15 December 2005 at 22:45 hrs. The police found the black mask that the perpetrator had used during the kidnapping, the pieces of fabric resulting from the cut of the eyes of the said mask and the cover of the cover of the Mob Tel SIM card bearing number 063-7452650. From the mentioned report: "The sleeping room was located in the southwest side of the corridor and there was one wardrobe, one sleeping bed and also one dressing table, in the wardrobe in the clothes hanging part it was the mask made by wool hat in black color, and in one of the hanged suits it was the mobile phone recharge card and a wool hat black in color was on the bed near the pillow, whereas in the bathroom's trashcan it was the part of wool, which is thought to be the part of the mask." The pictures of the black mask (pictures 12-16), of the pieces of fabric cut out of the mask (pictures 21-24) and of the cover of the Mob Tel SIM card bearing number 063-7452650 (pictures 19-20) are attached to the above mentioned police report.

Furthermore, on the 12 December 2005, at 23:18, a white taxi MERCEDES, plate number 128-KS-476, property of I V, father of Valon VLLASA, was spotted by the Surveillance Team of the DOC- Directorate of Organized Crime entering the road to Dobratin village, which is the road where the money was exchanged, with a high speed. Later on during the same night, on the 13 December 2005, at 00:31, the Surveillance Team observed a green AUDI, plate number 146-KS-345, of Bekim RASHITI, stopping beside the above mentioned mentioned MERCEDES and one person coming out of the AUDI and approaching the MERCEDES. It shall be added that the police officers (report of the 27 December 2005, reference number 2005-0119), on the 16 December 2005, at 18:30, while visiting the house of Salih RASHITI, father of Bekim RASHITI, noticed that parked in the courtyard of the house there were, among others, also the green AUDI, plate number 146-KS-345, and the white taxi MERCEDES, plate number 128-KS-476.

### ***3. The criminal responsibility of Visar AHMETI.***

The defendant Visar AHMETI is the one who shared the least part of responsibility in the kidnapping. Nevertheless, his contribution has also been fundamental in the criminal activity, as he had picked up Bekim RASHITI from the place where the ransom had been collected and he also kept contacts with an unknown person who borrowed the weapons used during the criminal activities.

The criminal responsibility of Visar AHMETI stems out from the intercepted telephone calls between him (044142332) and the co-defendants Bekim RASHITI and Valon VLLASA. In particular, in the telephone conversation of the 12-December 2005, at 23:11, Bekim RASHITI asked Visar AHMETI, who was together with Valon VLLASA, to come and pick him up, as the ransom had been paid:

Bekim RASHITI: Halo;  
Visar AHMETI: What are you doing?  
Bekim RASHITI: Here, what about you?  
Visar AHMETI: What's up;  
Bekim RASHITI: Alive;  
Visar AHMETI: Are you busy?  
Bekim RASHITI: No, I am together with uncle, making round;  
Visar AHMETI: Can you come and pick me up; I am not far from the road;  
Bekim RASHITI: What?  
Visar AHMETI: Can you come and pick me up?  
Bekim RASHITI: Where is this around;  
Visar AHMETI: Yes;  
Bekim RASHITI: Ok, we are coming this way;  
Visar AHMETI: Ok, I am not far from, just come this way.

Ten minutes after, at 23:23, Bekim RASHITI called Valon VLLASA and they managed to meet each other:

Bekim RASHITI: Have you passed?  
Valon VLLASA: Halo;  
Bekim RASHITI: Have you passed?  
Valon VLLASA: Yes, yes;  
Bekim RASHITI: Turn, turn down;  
Valon VLLASA: Ah, now.

Another important call is the one between Arben SFISHTA and Visar AHMETI which took place on the 13 December 2005, at 19:31, the day after the payment of the ransom. One of the weapons used during the kidnapping and the collection of the ransom somehow got lost and the person from whom they had borrowed it was making pressure on Arben SFISHTA to give it back soon. Arben SFISHTA and Visar AHMETI in the said telephone call were trying to find a solution and they were planning to buy another weapon to replace the one they had borrowed:

Arben SFISHTA: What to do with him if I can not find, what to do, what to do man;  
Visar AHMETI: Send him that one that he had;  
Arben SFISHTA: Is it fine;  
Visar AHMETI: Yes, send him that that he had, or ask him, or we will find a solution after;

Arben SFISHTA: I am asking man, I will ask him, if you can find look for it, if you can not find just call me and I will bring you the money and;

Visar AHMETI: Aha;

...(omissis)...

Arben SFISHTA: and uncle I'll look tonight again if I can, I sent that again and take other;

Visar AHMETI: No don't go tonight to take it, tell him man keep this don't stay without anything and tell him lets find a solution, but tell that we're looking for something better;

....(omissis)...

Visar AHMETI: To buy it, look if you can find you know about what I told that like;

Arben SFISHTA: Yes, eight ha;

Visar AHMETI: Fifteen;

On the telephone conversation of the 15 December 2005, at 20:37, the two of them called each other once again and Arben SFISHTA informed Visar AHMETI that he had visited the person from whom they had borrowed the weapon:

Arben SFISHTA: I was at that uncle;

Visar AHMETI: Yes;

Arben SFISHTA: So I...how was it;

Visar AHMETI: Yes, yes;

Arben SFISHTA: I send him one like that, he said just so and so, said where is Visar, I said he got nervous, he said tell Visar that I can't stay, and can I buy foot here and there;

Furthermore, it shall be emphasized that Visar AHMETI and Bekim RASHITI had been in contact several times during the critical dates and times. In particular, from the metering of the phone calls it results that on the 10 December 2005, Bekim RASHITI had contacted twice Visar AHMETI, at 01:19 and at 01:20 - just fifty minutes after the kidnapping of D Sh had taken place. Similarly, on 12 December 2005, the day that the ransom was paid, Bekim RASHITI contacted four times Visar AHMETI at 13:27, 17:53, 20:28 and 23:16. Moreover, from 28 November 2005 until 15 December 2005, Visar AHMETI and Arben SFISHTA contacted each other with 11 calls and 36 attempted calls. Now, it has been already demonstrated beyond any reasonable doubt that Bekim RASHITI has played the role of the main organizer, together with Arben SFISHTA, of the kidnapping and that on the 12 December 2005 he was surely involved in the collection of the ransom. It would than be not reasonable and not realistic that Bekim RASHITI, who at that time was involved in a risky criminal activity, would call and receive several calls from Visar AHMETI during the critical time of the incident if it was not for something related to the kidnapping. It is noteworthy that they did not make any explicit reference to any other reason for the mentioned calls, such as to meet up for a drink in a bar or similar but they were always very careful not to mention the reasons why they had to see each other so urgently that night. It shall also be noticed that the defendant Visar AHMETI, like all the other defendants, did not propose any possible alternative explanation of the said phone calls, as he decided to remain silent in Court.

#### ***4. The criminal responsibility of Valon VLLASA.***

Even against the defendant Valon VLLASA the main sources of evidence are the intercepted telephone calls between him and the co-defendants Bekim RASHITI and

Arben SFISHTA. In particular, from the 12 December 2005 until the 15 December 2005, Valon VLLASA (044393739) had two conversations with Arben SFISHTA and thirteen conversations with Bekim RASHITI.

It is worthy to integrally report once again the phone call between Bekim RASHITI and Valon VLLASA on the 12 December 2005 at 17:47. During that call the defendants were obviously very careful not to use names and to mention the criminal activities they were involved in. They discussed and complained about Arben SFISHTA, who acted without previous consultation with them and who decided to include in the kidnapping also his brother, V SH, and other people different from the original group, which was consisting of Bekim RASHITI, Valon VLLASA and Arben SFISHTA. Bekim RASHITI also reassured Valon VLLASA that even if the ransom was not paid the former would have given the latter some money:

Bekim RASHITI: what's up;

Valon VLLASA: here, what's up;

Bekim RASHITI: I couldn't meet them, now I'm on the way;

Valon VLLASA: Aaaa;

Bekim RASHITI: Hey man even if nothing happens I'll give you some don't worry;

Valon VLLASA: no uncle but I'm feeling bad about you fuck them, I fuck his monkey mother, he's fucking monkey;

Bekim RASHITI: don't you worry;

Valon VLLASA: he's no good, if some things were in their places I would give him without being;

Bekim RASHITI: no he just asked a painter, another one and he told like that do you get me, I didn't want to mix with him do you get me, I said it's better to leave man, for that he had it, for that I said to you fuck his mother;

Valon VLLASA: from the beginning he started to mix things, and now he plays balls that's not right;

Bekim RASHITI: ok, I told you, I told you something;

Valon VLLASA: you tell him that, tell him, and tell him that's little, you tell him that and don't be ashamed at all;

Bekim RASHITI: ok, ok don't you worry, we'll be heard;

Valon VLLASA: I'll tell him also when I see him; ,

Bekim RASHITI: ok;

Valon VLLASA: ok then;

Bekim RASHITI: never mind, fuck his mother, for little thing why to;

Valon VLLASA: o no Beke but I'm irritated uncle fuck his mother, that brother there, stupid, without speaking to anyone like I'm doing something, I'm doing this and that;

Bekim RASHITI: for that I didn't want to take any painter, for that I didn't like;

Valon VLLASA: he after, since just me and you and him were, now he put 6 or 7 like I'm doing something;

Bekim RASHITI: hey, we'll meet each other;

Valon VLLASA: ok;

In the already mentioned telephone conversation of the 12 December 2005, at 23:11, Bekim RASHITI asked Visar AHMETI, who was together with Valon VLLASA, to come and pick him up, as the ransom had been paid:

Bekim RASHITI: Halo;

Visar AHMETI: What are you doing?

Bekim RASHITI: Here, what about you?

Visar AHMETI: What's up;

Bekim RASHITI: Alive;

Visar AHMETI: Are you busy?  
Bekim RASHITI: No, I am together with uncle, making round;  
Visar AHMETI: Can you come and pick me up; I am not far from the road;  
Bekim RASHITI: What?  
Visar AHMETI: Can you come and pick me up?  
Bekim RASHITI: Where is this around;  
Visar AHMETI: Yes;  
Bekim RASHITI: Ok, we are coming this way;  
Visar AHMETI: Ok, I am not far from, just come this way.

Ten minutes after, at 23:23, Bekim RASHITI called Valon VLLASA and they managed to meet each other:

Bekim RASHITI: Have you passed?  
Valon VLLASA: Halo;  
Bekim RASHITI: Have you passed?  
Valon VLLASA: Yes, yes;  
Bekim RASHITI: Turn, turn down;  
Valon VLLASA: Ah, now.

Another crucial conversation took place on the 12 December 2005, at 21:34, between Valon VLLASA and Bekim RASHITI. Valon VLLASA who was monitoring the movements of Gani SHALA referred to Bekim RASHITI that Gani SHALA was alone. They obviously used a coded language, in which Gani SHALA is called "girl":

Valon VLLASA: I saw that girl, she was alone, I didn't talk to her at all, I only saw her there.

Moreover, a great deal of evidentiary weight is to be attributed to the results of the surveillance activities. As it has already been mentioned, on the 12 December 2005, at 23:18, a white taxi MERCEDES, plate number 128-KS-476, property of Isak VLLASA, father of Valon VLLASA, was spotted by the Surveillance Team of the DOC- Directorate of Organized Crime entering the road to Dobratin village, which is the road where the money was exchanged, with a high speed. Later on during the same night, on the 13 December 2005, at 00:31, the Surveillance Team observed a green AUDI, plate number 146-KS-345, of Bekim RASHITI, stopping beside the above mentioned MERCEDES and one person coming out of the AUDI and approaching the MERCEDES. It shall be added that the police officers (report of the 27 December 2005, reference number 2005-0119), on the 16 December 2005, at 18:30, while visiting the house of Salih RASHITI, father of Bekim RASHITI, noticed that parked in the courtyard of the house there were, among others, also the green AUDI, plate number 146-KS-345, and the white taxi MERCEDES, plate number 128-KS-476.

The witnesses, who, upon request of the defense counsel, were examined in court, could not demonstrate any valid alibi for the defendant.

In particular, the witness F K, who is the owner of a gym centre, where also Valon VLLASA regularly trains, was only able to state that Valon VLLASA most probably had trained also in the day of the 12 December 2005, from approximately 18:00 until 20:00. This circumstance does not constitute any alibi for the defendant. The above mentioned

intercepted phone calls between him and the co-defendant Bekim RASHITI took place before (17:47) or after (23:11, onwards) the gym training session. So, Valon VLLASA could well first attend the gym and later be involved in the kidnapping, by picking up Bekim RASHITI after the payment of the ransom.

This is an excerpt from the minutes of the examination of the witness F K:

.....(omissis).....

Haxhi Millaku: Can you tell us when did Valon Vllasa come to train at your place, day, time?

F K: Yes. Valon trained for quite a while and during the training we got along quite well and we used to train together. Usually it was starting at 6p.m. onwards, this was not strict but it was usually like this because this kind of this sport that we used to do; we needed a partner, so we were partners as well.

Haxhi Millaku: For this kind of exercises, that you did together, how long you did this for?

F K: It was 2 hours or 2 and a half.

....(omissis).....

Haxhi Millaku: Do you know on the 12/12/2005 when Valon came to the gym?

Presiding Judge: I am going to rephrase this question because it implies already an answer. Did Mr. Valon Vllasa come to the gym on 12<sup>th</sup> of December 2005?

F K: I do not remember dates but he was very keen on this and he came by every day as he took this very seriously.

Presiding Judge: So in period of December 2005 he came every day?

F K: Yes because December for us was very busy month, I mean for exercising.

Similarly, the witness F K, who is the owner of an internet café, referred in Court that Valon VLLASA had been most probably in his shop on the 12 December 2005, from around 21:00 and for some time. The witness referred that Valon VLLASA stayed there perhaps 3 or 4 hours but he was not sure about the exact length of his stay ("I do not know, perhaps 3-4 hours"). The court believes that he stayed at the internet café' less than 3 or 4 hours, maybe 1 or 2 hours, as the intercepted phone calls uncontrovertibly demonstrate the involvement of the defendant in the criminal activities starting from around 23:00. Thus, once again, even this testimony does not constitute any alibi for the defendant. The intercepted phone calls between him and the co-defendant Bekim RASHITI took place later on in the evening starting from 23:11 onwards. So, Valon VLLASA could well first attend the gym from around 18:00 to around 20:30, then the internet café from around 21:00 until he got involved in the criminal activities, at around 23:00, by picking up Bekim RASHITI after the payment of the ransom.

On the opposite, the testimony of N A resulted to represent a further important element against the defendant. Indeed, F K referred that the evening of the 12 December 2005 the defendant was not behaving as usual, as he was not concentrated in the games and he was going in and out from the café. This unusual behaviour of Valon VLLASA shall be assessed in the light of the events. During that same evening, Valon VLLASA was involved in the kidnapping as he was supposed to go and pick up Bekim RASHITI as soon as the ransom was paid. That is the reason why he was nervous and he had other thoughts in his mind than the Counter Strike game.

These are relevant passages of the examination of the witness F K:

Haxhi Millaku: Did Valon come to your internet café?

F K: Yes.

Haxhi Millaku: Did he come regularly?

F K: I can not say that he was a regular client but he did come there.

Haxhi Millaku: Which were the working hours of this internet café?

F K: Opened sometimes around 9 and we worked up to 2-3 a.m. next day, depending on how many customers we had.

Haxhi Millaku: Do you remember at what time of the day did Valon Vllasa come to your internet café?

F K: He usually came in when we played Counter Strike.

Presiding Judge: Counter Strike?

F K: It's a video game. There are young people and they gather together to play this game.

Haxhi Millaku: At what time approximately he came to your internet café to play this game?

F K: The serious games start when it gets dark.

Haxhi Millaku: Do you know when it gets dark in December?

F K: 4.30 or 5 the best games would be played in the evening.

.....(omissis).....

Haxhi Millaku: On 12/12/2005, was Valon Vllasa in your internet café?

F K: When they first came to take my statement the person who questioned me was named Derk and this was short period of time after whatever happened so I could remember clearly. Sometimes I worked in the afternoon, and sometimes my brother did. I know very well that that day was Monday because my brother had worked the previous week and I started on Monday. To tell you the truth, I would have not remembered that but now I felt obliged to know this because I am aware what it means to give a correct or incorrect statement. I am a family man.

Haxhi Millaku: Is this correct to what you said to this investigator, do you remember until what time did Valon Vllasa stay in your internet café?

F K: I do not know how long he stayed for, I know that the internet café was full; I think I do not know exactly, he came at about 9 o'clock. He was playing at the computer number 9 which was kind of opposite from me and sometimes he would go out and then come back and I joked with him and told him either play or leave.

Haxhi Millaku: How long did he stay since you said that he came at 9?

F K: I do not know, perhaps 3-4 hours. I remember that he would get in and out of café, you have to be concentrated playing counter Strike and he was not doing that.

.....(omissis).....

Francesco Florit: In your previous declaration you described the behaviour of the accused, of Mr. Valon Vllasa, in a specific way saying that he behaved strangely and he was nervous, what can you tell us about this?

F K: I told you that he was leaving the café and coming back inside. He was not causing a problem but it was not his usual behaviour, that's why I was bothered. He would usually come to the store, get a drink and not speak but that day he came in and out, that's why it bothered me in a way.

##### ***5. The criminal responsibility of V S.***

No doubt whatsoever can be raised regarding the criminal responsibility of the defendant V SH. Indeed, the number and range of evidences against him are outstanding.

In the first place, there is the expert opinion on forensic DNA analysis issued by the DNA laboratory in Innsbruck (Austria), dated 30 June 2006, following orders for expert analysis of the Pre-trial Judge of the 3 February 2006, 14 February 2006, 15 February 2006, 15 February 2006 and 27 February 2006. The said expert opinion uncontrovertibly demonstrates that the hat that was recovered by the investigators presented mixed profiles of V SH and D Sh. In particular the final result of the mentioned expert analysis is hereby quoted: "The DNA analyses of the hat #13 gave a mixture profile. This mixture represents the profiles of D SH and V S. Biostatistically there is no reasonable doubt that the victim D SH and the suspect V S contributed to the mixture." This can only mean that

the same hat had been used by both of them. No other possible explanation can be given to that circumstance than that V S's hat had been put in the head of the victim D Sh to cover his face during his kidnapping. It is just the case to mention that the defendant choose to remain silent, thus not offering to the Court any other possible and credible explanation of this outstanding circumstance.

In the second place, the victim D Sh stated that one of the perpetrators had a black nail in his left hand thumb.

Here follows an extract from the minutes of the examination of D Sh:

Public Prosecutor: Were you able to identify any of them based on the voice despite the fact that they were wearing these black masks.

D Sh: I have identified them at the police station and I identified two of them based on the mouth and finger.

Public Prosecutor: These are the people you are saying visited you in the room.

D Sh: Yes, the person I identified from his mouth was the person who talked most to me and the person whom I identified because of the finger only came one day. On Monday.

Public Prosecutor: You are saying that you have identified him because of the finger, how could you do that?

D Sh: When they came to bring me food, I saw that on the left hand his finger was damaged as if he had been hit by a hammer. But, I think it was the bucket which they held for me to urinate and I was able to see the finger of the person holding this bucket.

Public Prosecutor: When they entered into the room, did you still have the hood on your head or not?

D Sh: No.

.....(omissis).....

D Sh: I was at the police station and they only showed me a picture of the finger and asked me if this was the finger I saw and I answered yes.

Vahide Braja: How can you say it is the same finger?

D Sh: The left hand thumb there were the same injures I saw in the photo and for this reason I identified the finger.

Vahide Braja: You said that it was a dark room and could only see light from underneath the door, so how could you identify the injury?

D Sh: I asked for a bucket either to urinate in it or throw up in and when they brought it, it was daylight and when the door opened I was able to see.

Indeed, when the police interviewed V S on the 2 January 2006 he still had a black nail on his left hand thumb and this is confirmed by both the pictures of the defendants with the black nail taken by the police which are in the case file and by the declarations of the defendant in front of the Public Prosecutor, at the presence of his defense council, on the 28 May 2008:

Public Prosecutor: Did you have at that time your left thumb hurt or sprained?

Defendant: Yes, I hurt it while I was orking.

Public Prosecutor: Do you remember that from the 10.12.2005 your left thumb was bruised?

Defendant: Yes, and I hurt it working.

Finally, there is a very clear and relevant telephone conversation of the 12 December 2005, at 14:21, between Arben SFISHTA and his then girlfriend Sh A which was intercepted and in which Arben SFISHTA told his girlfriend that V S was going to bring her some money once the ransom had been paid:

Arben SFISHTA: V will bring you some money later on and he will leave them to the flat;

Sh A: Which V;

Arben SFISHTA: V, my brother;

Sh A: Why?

Arben SFISHTA: Because of that he will bring there and will leave the money, I will go there and he will bring.

## ***6. The material element (actus rei) and psychological element (mens rea) and the legal qualification.***

All the said pieces of evidence and considerations demonstrate beyond any reasonable doubt the involvement of the defendants in the kidnapping. The defendants have previously agreed to commit a criminal act, which shall be rightly qualified as kidnapping, in Co-perpetration, contrary to Articles 159, Paragraph 2, and 23 of the CCK, by fulfilling both the material element (*actus rei*) and psychological element (*dolus*) of such crime. In particular, all the defendants have contributed to the criminal activity, because, on the 10 December 2005, at around 00:30, in Pristina, Dardania district, in co-perpetration, intentionally and pursuant to a prior agreement, they kidnapped the victim D Sh, hiding him in the house of Shahin SFISHTA, in Fitorja street in Podujevo, until they released him, on the 13 December 2005 at around 02:00, after the father Gani SHALA had paid, on a dirt road near Bradash village, the ransom of EURO 230.000,00. Given the already demonstrated circumstance that the kidnapping was performed by the perpetrators as members of a group and with threats for the life of the kidnapped, the relevant applicable provision is Article 159, Paragraph 2, of the CCK, punishable with imprisonment of one to ten years.

## ***7. The sentencing***

### ***7.1. The sentence for Bekim RASHITI.***

As to what concerns the sentence imposed on the defendant Bekim RASHITI, the Court has taken into due consideration the circumstances mentioned in Article 64 of the CCK and specifically the high degree of criminal responsibility, emerging from his outstanding and pivotal role in the kidnapping. He has been the one, together with the defendant at large Arben SFISHTA, that has provided directions to all the other defendants and that has collected the ransom from Gani SHALA.

The defendant never admitted the criminal responsibility at any stage of the criminal proceeding and never showed any sign of regret for the crime committed.

On the other hand, the Court has also taken into due account the circumstance that the victim D Sh, while forcibly kept in the house of Shahin SFISHTA, had always been treated with humanity and he had not been mistreated in any way. He was offered food and all other vital basic assistance. This is demonstrated by the report of the medical visit of D Sh just after his release by the Clinical University Center of Pristina of the 13 December 2005: "Anamnsies: patient was brought to Emergency Centre escorted by local

and international police in order to check his health condition. In admission he is oriented, conscious, communicative, rhythmic heartbeat, clear tones, normal respiration, and stabile psychophysic state. He complaints only about the slight pain in wrist joint that hurts since he was handcuffed for three days. Person was kidnapped and kept in cold room he denies to be maltrated.”

Therefore, considered Article 159, Paragraph 2, of the CCK, which punishes the aggravated kidnapping with imprisonment of one to ten years and pursuant to Article 38 of the CCK, the punishment shall be equitably determined in imprisonment of five (5) years.

The time spent by the accused in detention on remand shall be included in the amount of the punishment.

### *7.2. The sentence for Visar AHMETI.*

As for the accused Visar AHMETI, the Court has taken into consideration all the circumstances mentioned in Article 64 of the CCK and in particular the fact that, notwithstanding his quite modest role in the overall organization of the kidnapping, his support was also essential to proceed in the kidnapping, as he offered to pick up Bekim RASHITI from the place where the ransom had been paid and to contact the person from whom they borrowed the weapon. He decided to join the co-perpetrators for a very serious criminal activity and he was obviously fully aware of the direct consequences of the kidnapping on the injured parties and of the risks connected with such criminal activity.

The defendant never admitted the criminal responsibility at any stage of the criminal proceeding and never showed any sign of regret for the crime committed.

Therefore, considered Article 159, Paragraph 2, of the CCK, which punishes the aggravated kidnapping with imprisonment of one to ten years and pursuant to Article 38 of the CCK, the punishment shall be equitably determined in imprisonment of three (3) years.

The time spent by the accused in detention on remand shall be included in the amount of the punishment.

### *7.3. The sentence for Valon VLLASA.*

Concerning the position of the accused Valon VLLASA, the Court has taken into due consideration all the circumstances mentioned in Article 64 of the CCK, with particular reference to the active overall support given at all times by the defendant to Bekim RASHITI and the other co-perpetrators.

The defendant never admitted the criminal responsibility at any stage of the criminal proceeding and never showed any sign of regret for the crime committed.

Therefore, considered Article 159, Paragraph 2, of the CCK, which punishes the aggravated kidnapping with imprisonment of one to ten years and pursuant to Article 38 of the CCK, the punishment shall be equitably determined in imprisonment of four (4) years.

The time spent by the accused in detention on remand shall be included in the amount of the punishment.

#### *7.4. The sentence for V S.*

Concerning the position of the accused V S, the co-perpetrator Arben SFISHTA, he might have been influenced by the latter to cooperate in the kidnapping. On the other hand, the Court has also assessed that V S was seventeen years old (almost adult) at the time of the event and that he choose to get deeply involved in a very serious crime such as kidnapping of which he surely understood the gravity, especially as he was in close contact with the victim being his guardian.

The court has considered that under these circumstances and Pursuant to Articles 38, 48 (2) and (3), 159 (2) and 23 of the CCK and Article 6 (5) of the Juvenile Justice Code of Kosovo, after having read the written recommendation of the Probation Service, it is appropriate to grant to the defendant a suspended sentence of two (2) years of juvenile imprisonment.

Pursuant to Article 48 (2) of the CCK, the punishment shall not be executed if the convicted person does not commit another criminal offence for a period of five (5) years from the date the judgment becomes final.

Given that the defendant has never admitted the criminal responsibility at any stage of the criminal proceeding and never showed any sign of regret for the crime committed, the Court has decided that, pursuant to Article 48 (3) of the CCK, the punishment shall be executed if, within one (1) year from the date the judgment becomes final, the convicted person does not compensate the injured parties (D Sh and Gani SHALA) with the sum of EURO 200.000,00. This sum is the result of the total damages caused to the injured parties (EURO 230.000,00), detracted the confiscated bail paid by Bekim RASHITI which shall also be transferred to the injured parties (EURO 30.000,00).

#### *8. Property Claim*

The accused, cumulatively and jointly, shall compensate the injured parties (D Sh and Gani SHALA), for the damages caused which are determined, following the request, in EURO 230.000,00.

The injured party Gani SHALA confirmed in Court that the final total amount of money paid as ransom to the perpetrators was of EURO 230.000,00, money which he was able to collect by borrowing them from his friends. It is just the case to note that the said amount of money was collected at the presence of the police.

Hereby follows an excerpt from the minutes of the testimony of Gani SHALA:

Vahide Braja: I have one question, which is, given the fact that the police were informed that the person was in danger and money was needed, was Gani offered any money from the police? It is strange.

Gani Shala: I gave my statement and I did not ask money from the police. My friends gave me money and all of the money that was given to me was given in the presence of the police.

Francesco Florit: Two questions that may sound odd but I have to ask. Have received your money back?

Gani Shala: No.

Francesco Florit: Have you paid back what you took from your friends?

Gani Shala: Yes, I sold my land and I have documents to prove that and credits, money borrowed from banks and I am still paying those monthly rates.

Presiding Judge: Yes Mr. Shala, you have to indicate in detail how much of the ransom was money borrowed from your friends and how much was from your own finances?

Gani Shala: I paid €230,000 and all of which was gathered and collected from my friends. At that moment I did not have any financial resources only about 5 or 6,000 at my disposal. Before the kidnapping I underwent surgery and bought a car.

#### ***9. Confiscation of the bail paid by Bekim RASHITI.***

Pursuant to Article 277 (4) of the KCCP, the bail which imposed on the convicted person of EURO 30.000,00, following a ruling of the Pre-trial Judge dated 14 June 2006, is hereby cancelled.

Pursuant to Article 494 of the KCCP the same amount of money of EURO 30.000,00 is confiscated and it is transferred to the injured parties (D Sh and Gani SHALA) as a partial compensation of the damages.

#### ***10. The costs of the criminal proceeding.***

Pursuant to Articles 102, Paragraphs 1 and 3, and 391, Paragraph 1 item 6), of the KCCP, all the defendants are jointly and severally liable for the costs of the criminal proceeding and must reimburse them according to a list of the costs which will be determined in due time.

Pursuant to Article 100, Paragraph 2, of the KCCP, since the data of the amount of the costs is lacking a separate ruling on the amount of the costs shall be rendered.

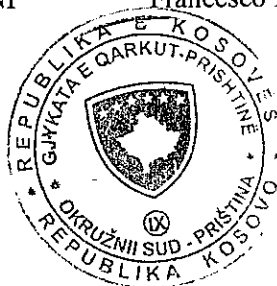
27<sup>th</sup> of May 2009

Presiding Judge  
Andrea CRUCIANI

Panel Member  
Francesco FLORIT

Panel Member  
Ferid BISLIMI

Recording Clerk  
Jacqueline Ryan



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OK for publication  
SLM

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.