DISTRICT COURT OF PRISTINA

P. Nr. 488/08
22 September 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
EULEX Judge, Mr. Tron Gundersen, panel member
Local Judge, Ms. Zahide Gjonaj, panel member

assisted by the court recorder Nexhmije Mezini

In the criminal case against:

Besnik Hasani, born on 27 October 1976 in Firajë, Shtërpcë, Kosovo Albanian, father's name Arif, mother's name Nazlije, previous occupation police officer, completed secondary school, not married, no criminal background, in detention since 21 January 2008.

Shpend Qerimi, born on 18 September 1974 in Ferizaj, Kosovo Albanian, father's name Mustafë, mother's name Shefike, previous occupation police officer, completed secondary school, married, father of three children, no criminal background, in detention since 21 January 2008.

Nusret Cena, born on 1 January 1975 in Doganaj, Kaçanik, Kosovo Albanian, father's name Isen, mother's name Merushe, formal TMK member, completed secondary school, married, father of two children.

all of the defendants charged for the criminal acts of:

a). ***Aggravated Murder* in *Co-Perpetration,*** pursuant to Article 147, paragraphs 4, 9, and 11 and Article 23 of the CCK;

b). ***Grievous Bodily Harm* in *Co-Perpetration,*** pursuant to Article 154, paragraphs 1, n. 1 of the CCK; and

c). ***Causing General Danger* in *Co-Perpetration*** pursuant to Article 291, paragraphs 1 and 5 and Article 23 of the CCK.

After the trial sessions held on 5th, 12th, 14th, 19th, 20th, 25th, 28th of May; 2nd, 3rd, 8th, 9th, 16th, 30th of June; 1st, 2nd of July; 19th, 25th, 26th of August; and 2nd, 3rd of September 2009, in the presence of the EULEX SPRK Prosecutor Ms. Maria Bamieh, the accused mentioned above and their defense counsels ;

After the panel's deliberation held on 17 September 2009;

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

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

JUDGMENT

Besnik Hasani and **Shpend Qerimi** are found guilty for the criminal acts of:

a) aggravated murder, contrary to Article 147, paragraphs 4, 9, and 11 of the CCK,
b) grievous bodily harm , contrary to Article, 154, para 1, n.1 CCK
c) causing general danger contrary to Article 291, paragraphs 1 and 5 CCK

all the crimes being committed in co-perpetration, *ex* art. Article 23 of the CCK,

The accused **Besnik Hasani** and **Shpend Qerimi** have been found guilty for the acts described in counts 2, 3, and 4 of the original indictment with re-qualification of the facts of count 3 *ex* art.154, para 1, n.1 CCK (grievous bodily harm).

Specifically, Besnik Hasani and Shpend Qerimi,

Count 2 of the original indictment

On 24th September 2007, **Besnik Hasani** and **Shpend Qerimi** acting in co-perpetration with each other and with individuals whose identities are still unknown, deprived other persons of their lives because of unscrupulous revenge and other base motives, by placing and detonating an improvised explosive device on the ground floor of a building at Bill Clinton Avenue, Pristina, resulting in the death of Naim Murti and Pleurat Sllamniku, and in doing so they intentionally endangered the life of more persons;

> Thereby committing the criminal offence of ***Aggravated Murder***, contrary to **CCK Article 147, paragraphs 4, 9, and 11, in *Co-Perpetration*, CCK Article 23.**

Count 3 of the original indictment

On 24th September 2007 **Besnik Hasani** and **Shpend Qerimi**, acting in co-perpetration with each other and with individuals whose identities are still unknown, caused grievous bodily harm to Xhelal Sinani, Vigan Zeneli, Liridon Nishevci, Gezim Syla, Esat Hajdari, Naim Hyseni, Fadil Berisha, Luan Kadriu, and Shkelqim Syla, by placing and detonating an improvised explosive device on the ground floor of a building at Bill Clinton Avenue, Pristina;

> Thereby committing the criminal offence of ***Grievous bodily harm***, contrary to **CCK Article 154, para 1, n.1 CCK, in Co-Perpetration, CCK Article 23.**

Count 4 of the original indictment

On 24th September 2007 **Besnik Hasani** and **Shpend Qerimi** acting in co-perpetration with each other and with individuals whose identities are still unknown, by using explosives, namely an improvised explosive device placed and detonated on the ground floor of a building at Bill Clinton Avenue, Pristina, caused great danger to human life resulting in the deaths of two persons, namely Naim Murti and Pleurat Slammniku, and grievous bodily harm to nine persons, namely Xhelal Sinani, Vigan Zeneli, Liridon Nishevci, Gezim Syla, Esat Hajdari, Naim Hyseni, Fadil Berisha, Luan Kadriu, Shkelqim Syla, Milot Kadriu, and Teuta Kadriu, and substantial material damage to property, namely the premises of Ciko, Besa, Uran, Shped, Oslo, Pasazh, Noti, Kojota, Fitnsess Club and Sekiraqa;

Thereby committing the criminal offence of ***Causing General Danger,*** contrary to **CCK Article 291, paragraphs 1 and 5, in *Co-Perpetration*, CCK Article 23**.

Based on article 390, n.3 KCCP,

1. **Nusret Cena**

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

For the above mentioned reasons the Panel issues the following

SENTENCE

2. Besnik Hasani

Pursuant to article 37 of the Criminal Code of Kosovo and Article 147 paragraph 1, n. 4, 9 and 11 and Article 23, is sentenced to long-term imprisonment of 25 years;

Pursuant to Article 154, paragraph 1, n.1 and 23 of the CCK is sentenced to imprisonment of 3 years;

Pursuant to Article 291, paragraphs 1 and 5 and Article 23 of the CCK is sentence to imprisonment of 3 years.

Pursuant to Article 71 paragraph 1 and 2, n.1, 2 of the Criminal Code of Kosovo the defendant Besnik Hasani, **shall serve a long-term imprisonment of 25 years**.

3. Shpend Qerimi

Pursuant to article 37 of the Criminal Code of Kosovo and Article 147 paragraph 1, n.4, 9 and 11 and Article 23, is sentenced to long-term imprisonment of 25 years;

Pursuant to Article 154, paragraph 1, n.1, and 23 of the CCK is sentenced to imprisonment of 3 years;

Pursuant to Article 291, paragraphs 1 and 5 and Article 23 of the CCK is sentence to imprisonment of 3 years.

Pursuant to Article 71 paragraph 1 and 2, n.1, 2 of the Criminal Code of Kosovo the defendant Shpend Qerimi, **shall serve a long-term imprisonment of 25 years.**

PROPERTY CLAIM

The accused Besnik Hasani and Shpend Qerimi, cumulatively and jointly, shall compensate the injured parties Arife Murti, Zyhrije Murti, Guri Murti, Bardh Murti, Avni Murti and Fadil Murti, for the damages caused. The data provided in the criminal proceedings does not afford a reliable basis for either a complete or partial award; the Court therefore instructs the injured party to file a civil suit for the entire claim pursuant to article 112 (2) of the KCCP.

COST

Pursuant to Article 102 paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP) the convicted persons shall pay the costs of the proceedings. The provisions of Article 100 paragraph 2 of the KCCP shall be complied with and a separate ruling on the amount of the costs shall be issued.

REASONING

Procedural History

On 12 August 2008 the indictment against the three accused was filed in Court.

The case was subject to the jurisdiction of EULEX judges, following the decision of the President of EULEX Judges dated 5 January 2009, based on articles 3 and 16.2 of the Law 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, providing that "the criminal case.... shall remain under the authority of EULEX Judges in the District Court of Prishtina".

The confirmation hearing was held on the 2 February 2009.

The judge for the hearing on the confirmation of the indictment, with decision dated 2 February 2009, dismissed Count 1 of the indictment (Criminal Association, article 26.1 KCCP) and confirmed the remaining three Counts.

The panel for the trial was initially composed by Mr.Bashkim Latifi, Mr.Tron Gundersen and Mr.Francesco Florit.

The trial commenced on 5 May 2009 but was adjourned to the following week after the preliminary formalities (including the communication of the composition of the Panel and the verification of the summons to the injured parties and to the witnesses) for the

absence of the accused who had not been transported to the District Court in Pristina from their respective place of detention for alleged security reasons.
On request of the Commissioner of the Kosovo Correctional Service, the Head of Justice Component of EULEX, based on article 13 of the Law on Jurisdiction (mentioned above) took the decision to change the venue of the trial from Prisitna to Dubrava Detention Center (Istog) on 8 May 2009.

At the session of 12 May 2009, the accused were present; after reading the decision of the Head of Justice Component of EULEX to change the venue of the trial, the procedure followed its course, with the identification of the accused, the ritual warnings ex art. KCCP to the accused and the reading of the indictment. Then the examination of the witnesses started with Xh S, V Z and L N.

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

On 14 May 2009 in the Detention Centre of Dubrava, protected witnesses Delta and Epsilon and S K.

On 19 May 2009, protected witness One, A B and M J.

On 20 May 2009, witnesses G H and B R.

On 25 May 2009, witnesses M I and Z I and A A.

On 28 May 2009, protected witness Beta and A F.

On 2 June 2009, protected witness Gamma, E I and S D.

On 3 June 2009, D T.

On 8 June 2009, witnesses H M, I G, A J, F C and R B.

On 9 June 2009, witness F H.

On 16 June 2009, protected witness Zeta and F V.

On 30 June 2009, witnesses A A and M I were called again before the Panel in order to confront them with recordings of phone calls, while witness R B was called again to give some clarification to the Panel.

On 1 July 2009, witness A T.

On 2 July 2009, witnesses A G and R Sh.

On 17 August judge Bashkim Latifi communicated to the Presiding Judge his retirement and the consequent impossibility to be member of the panel. After request to the President of the District Court of Pristina, Ms.Zahide Gjonaj was appointed as panel member.

On 19 August 2009, the substitution of the local judge was communicated to the parties who did not objected to the application of the provision of article 345 KCCP. The minutes of the previous session were therefore read into the minutes. In the course of the same hearing, witness D T was called again to give some clarifications on the phone intercepts.

On 25 August 2009, witnesses R M and M A and protected witnesses Omega and Theta.

On 26 August 2009, no witness was heard; the Panel dealt with other motions of the parties.

On 2 September 2009, witnesses B Sh and S S; the examination of the accused started with Besnik Hasani.

On 3 September 2009, the examination of the accused continued with Shpend Qerimi and Nusret Cena.

the Court heard the final speeches from the Pubic prosecutor, the Defence Counsels and the accused on the 16 September 2009.

Eventually, on 22 September, the panel announced the judgment, extended the detention of Besnik Hasani and Shpend Qerimi and released Nusret Cenna.

Legal and factual findings.

Besnik Hasani and Shpend Qerimi have been found guilty at the end of a trial that, for the location where it was held, for the number of hearings and the number of witnesses, has requested a considerable organizational effort from all the actors involved.

In the course of the trial, all reasonable efforts have been made in order to provide the accused with the highest level of guarantee of a fair trial.

The examination of the witnesses has been exhaustive, with limited intervention of the panel on the selection of the questions asked by the parties. The minutes of the hearings, documents of many dozens of pages each, well document the approach taken by the panel, permitting questions almost unrestrictedly. Some crucial witnesses had to be heard a second time, to give a more detailed account of their testimonies or to confront them with the recordings of telephone calls. A number of witnesses gave testimonies in anonymous way, with the recourse to an interpreter to dissimulate their voice. The requests of witnesses from the Defense Counsels have been admitted almost integrally.

At the end of the trial, the Court found that there was sufficient evidence to establish the responsibility of two out of the three accused for the facts described in the indictment, after requalification of the third count as grievous bodily harm instead of attempted murder.

- - -

As it has been noticed by all parties in the course of the trial and in the final speeches, there is no direct evidence available to the Court of the commission of the crimes by the accused. It has been said by the Defense Counsels that 'only' circumstantial evidence has been gathered and is present in the file and in the records of the trial.

The Panel observes that circumstantial evidence as good evidence as direct evidence. And that the addition of the word 'only' does not do justice to the concept behind the words 'circumstantial evidence' that has the same dignity of 'direct evidence'.

To expect that a complex case or a case in which the charge consists of an activity participated by many individuals is solved on the basis of direct evidence is just naïve.
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.

With obvious exceptions represented by incompetent or mentally disturbed individuals, 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 directs 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, L G 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.

Before starting the examination of the circumstances relevant to the decision, it is necessary to spend few words on some aspects of the trial that can not pass unnoticed for their gravity and their consequences.

The panel refers to the change of venue and to the condition of the deposition of a great number of witnesses.

On the first issue, it must be recalled that following a decision of the Head of Justice Component of EULEX, Mr. Alberto Perduca, taken on 8 May 2009, pursuant to article 13 of the Law on the jurisdiction, case selection and case allocation of EULEX judges and EULEX prosecutor in Kosovo (Law on Jurisdiction), n. 03/L-053, the trial, after the initial two hearings of 5 and 12 May, was held for the remaining 20 sessions in the Detention Center of Dubrava (Istog).

This quite extraordinary occurrence (change of venue) was due to reasons of security, as it was affirmed in the decision of the Head of the Justice Component. The decision was preceded by a request of the Commissioner (Head) of the Correction Service of Kosovo in which concerns were expressed in relation to the risks connected to the transportation of the accused to Court and to the security in Court for their high profile as prisoners and for their possible connections in the working environment from which they come from. The Head of the Correction Service of EULEX supported the request of change of venue, finding the concerns credible.

Of course, the Panel does not have the intention or the competence to comment here on the decision and on the reasons that have been put at the basis of it, but it limits itself to observe that the mentioned circumstances have found substantial confirmation in some aspects of the deposition of the witnesses.

And we come here to the second point indicated above.

With few exceptions, every single witness showed or expressed his or her discomfort for giving testimony. Many of them were palpably frightened to speak, many denounced threats. For those witnesses who had been granted anonymity in the course of the investigation, it was not enough to keep them in a separate room and to keep their identity reserved: it was necessary to establish a system which prevented the public and the parties from hearing the voice of the witness.

In one occasion the witness was so frightened to speak (witness Zeta, who gave testimony on the arrival of two police cars at the crime scene) that he refused to speak on the day he was summoned and brought to Court (20th of May); his testimony had to be postponed to a successive date (16th of June) since he accepted to give testimony before the Court in anonymous way only when he was granted access to the witness protection scheme of EULEX.

In the same line, in a conspicuous number of occasions, witnesses showed reticence and reluctance to speak or inclination to give elusive or evasive answers. For this reason, they

had to be confronted (ex art.364 KCCP) with their previous declarations, given to the Prosecutor. It was a humiliating experience to see that this happened repeatedly also when those sitting in the witness box were police officers (M J, A J, I G *in primis*).

In another occasion, the witness (A B) came to Court pretending to answer only to questions related to 'his' case, meaning the investigation in the case of the murder of his three relatives, linked to but distinct from the present case, as it will be said later. [1]

In the same line, it must be added that the distrust in the role, function and duties of the witnesses, appear to have influenced sometime the same Defense Counsels when, faced with depositions which were not favorable to their clients, and in the absence of any other argument to contest the testimony or the credibility of the witness, resorted to questions about the reasons of the witness for giving his testimony and about who and for which reason had summoned them.[2]

Eventually, one witness, a pretended popular singer in Kosovo, A I, refused to come to Court to give her testimony, with the false justification of prevailing commitments abroad. In the attempt to have her deposition in Court, it was necessary not only to summon her in different places of residence, but to contact her on her mobile phone. To the Legal Officer who spoke to her and to her mother, the promise was made of her presence to Court. She never came to give her testimony and her deposition, given to the Prosecutor and to the investigators in the course of the investigation was read into the minutes ex art.368, para 1, number 1[3].

---

[1] Minutes hearing 19.5.09, pg.12
A B: I don't understand why I am here.
Presiding Judge: A witness is a person who may know some facts which are relevant to the Court... Do you understand why you take the oath?
A B: **I have a case where my three brothers were murdered; am I here for that?**
Presiding Judge: No, it is another case.... .Now you answer to the questions of the Public Prosecutor.
....
A B: Before he died he (, i.e. *his relative Neshat Baftiu, killed on the 27th of September 2009*) said lots of stuff and what he said about the case he said not only to me, but publicly. **I thought that I was called here to talk about my case and for that I will talk, but for the case of other people, I have nothing to say.**
Presiding Judge: You have to answer, it is your responsibility and a witness cannot say if they answer or not.
A B: Again, **I am saying in regard to my people I could answer**, but how many people are being killed around I cannot answer.
Presiding Judge: If you know you say, and if not you don't say. Listen to the question and then speak.
Public Prosecutor: What did Neshat Baftiu tell you about the bombing in Bill Clinton Boulevard?
A B: That person is not alive so the statement is not alive and you cannot prove... .....*(Presiding Judge interrupts)*
Presiding Judge: We don't ask you to prove, only to refer to what was said.
A B: **I understand you, but you don't understand me, I have nothing to say about this case.**
Public Prosecutor: I will ask you again. You told the police what was said to you by your cousin before he died and I am asking you to tell the Court what Neshat Baftiu said to you about the bombing?
A B: I have nothing to say today. **I said to the police that I will give my statement in only my case.**
...**A B**: I told you, don't ask me about the explosion, as **I will say nothing about that.**
Finally, **A B** says: "I will be accountable for my words, **it they are related to the case of my family**"... "**I have no answer regarding the explosion**".

[2] Examination witnesses Omega and Theta, minutes hearing 25 August 2009, afternoon session.
[3] Decision of the Panel, hearing 26 August 2009, pg.4 of the minutes.

This kind of behaviors by the witnesses as well as the witnesses' denunciation of fear or threats, have been endemic in the course of the trial.

The reasons?

Sometimes is 'a culture of fear amongst the witnesses' as correctly said by the Prosecutor[1] and this clearly applies to those witnesses who were given protection (witnesses of the crime scene, witnesses Omega and Theta, M I).

But sometimes it was a conspiracy of silence (like in the Italian word: *omerta'*) by those who belong to the same circle or are linked to the accused for work (F C, police officers) or family (F C and S S) relations; or have an interest which is anyway conflicting with their duty to say the truth (A B, A I).

Sometimes was pure disrespect and distrust in the role of the Courts of Kosovo.

These situations must be signaled, because they affected the ongoing of the entire trial to an extent that had not been experienced before in Kosovo or abroad by the members of the Panel.

People, belonging to different sectors of the society, not linked amongst themselves, who had not direct relation to the accused, denunciated real or perceived threats or risks to their personal integrity for the fact of being indicated as witnesses of this trial.

The pattern was so blatant and repeated that it constitute, in itself a parameter for the assessment of the testimonies of the witnesses, as it will be later specified.

- - -

We can now concentrate on the facts that constitute the circumstantial evidence of the case.

In the examination of the facts, the Panel thinks that it is not necessary to illustrate at the beginning and in detail the broad scenario about the events that preceded the facts described in the indictment and that, in the perspective of the Prosecutor, constitute the motive that triggered the criminal action of the 24th of September 2007. For reasons of brevity and in order to make this decision easier to read, we opine that starting *in media res* is a better approach.

The circumstantial evidence of the trial can be summarized in the following way.

1. Evidence of the bombing and surrounding circumstances;
2. information coming form M I (pg.15);
3. information related to the death of N B and two others (pg.21);
4. telephone intercepts and other technical evidence (pg.31);

[1] Prosecutor final speech, written document, page 1.

5. alibi of the accused (pg.40).

- - -

1. Evidence of the bombing and surrounding circumstances.

Several witnesses were heard by the Panel on the explosion that caused the death of Naim Murti and Pleurat Sllamniku, severe injuries to Xhelal Sinani, Vigan Zeneli, Liridon Nishevci, Gezim Syla, Esat Hajdari, Naim Hyseni, Fadil Berisha, Luan Kadriu, Shkelqim Syla and vast material damage.

The witnesses were clients (Xh S, V Z, L N, Witnesses Beta, Delta, Epsilon and Gamma) of the bar 'Passage', located in the same building where the explosion took place and devastated by the explosion, or people present in the proximity of the crime scene for their work (witnesses E H, Witnesses One, Gamma and Zeta).

Their statements in Court give a homogeneous description of the events with very limited divergences.

They substantially describe the arrival of a group of people apparently belonging to police forces, dressed in special police uniforms and flak jackets and wearing balaclavas. Details repeated in different testimonies refers to the bearing of a specific type of weapon by some members of the group (variously referred to as an MP5, a Scorpion or an UZI, i.e. a short and compact machine gun) and of a pair of red pliers, 70 cm. to 1 m. long.

Different witnesses described in similar ways the kind and number of cars which arrived at the crime scene, the time of the arrival, the number of the members of the group and their movements in front of the bar Passage and from the parking lot behind the building where the bar and the crime scene are located.

It is felt by the Panel that, given the homogeneity of the declarations on the modalities of the actions and the number of converging testimonies on the point, a detailed description of the facts in not necessary. The same Defense Counsels did not substantially contest the credibility of the witnesses in the course of the hearings or at the stage of the closing speeches. It is true that the Defense Counsels, in the course of the first hearings in which the witnesses of the crime scene were heard, attempted to challenge their depositions asking, for example, which were the conditions of visibility at the time of the event (around 2 o'clock at night) or the condition of illumination in the point where the witnesses were, when they saw the group of men; but these attempt were short-lived and not insisted, really, since it became soon evident, from the context not less than from the number of details given and from their recurrence in the different depositions, that the witnesses had a clear vision of what had happened. It was evident that the presence and the movements of a group of well coordinated individuals moving and acting as trained police officers in action, had attracted the attention of the witnesses and had shocked and scared them, contributing to consolidate a vivid memory of the events. It was so that, after a short while, comments or objections to the testimonies from the Defense Counsels or from the accused themselves to this group of witnesses were drop. Also the initial interest to cross-examine the witnesses faded away, becoming apparent that such attempts

were vain, against the solidity of the depositions. In some rare occasions, however, the cross-examination of this group of witnesses did go so far to test the credibility of the witnesses or their capacity to remember correctly. But with scarce result and with the consequence to diminish the credibility of the contestation, not of the deposition.
For example, witnesses were initially requested to describe in details the conditions of visibility and the distance from the group of men in special police uniform; they were asked to specify if there was a television in the bar Passage and to say how it was possible to have a clear vision on the movement of the group if the television was turned on; it was contested to the witnesses that, given their position into the bar, it was not possible to see outside; it was asked to a witness if his recollection of police cars in the parking lot behind the building before the explosion may have been a confusion with the presence of the police cars which arrived to the crime scene after the explosion... In reality, to all these objections the various witnesses answered pertinently, without hesitation or uncertainty; they never showed confusion; on the opposite sometimes they showed surprise or even irritation to such questions.

For what said before, it is understood by the Court that it is not necessary to report analytically the depositions of the eleven witnesses of the crime scene. A brief account appears to be sufficient.

From the different testimonies it emerged that on the night of the events, and more specifically in the first hours (about 2 a.m.) of the 24th of September 2007, two police cars entered the parking lot behind the building where the explosion took place; a group of five people dressed in special police and one individual wearing a red sweatshirt (six men altogether) got out of the cars and moved from the parking lot through the corridor that leads to Bill Clinton Avenue, passing in front of the bar Passage; the group returned to the parking lot after a little while and some ten minutes later the explosion occurred.

What can be concluded from the information given by the witnesses?

a) that members of the police forces were involved and committed the criminal act.

In the course of the examination of some witnesses, the defense counsel initially tried to argue that the testimony giver had seen people dressed in police uniform, not policemen[1] and cars identical to those used by the police, not necessarily police cars. This was done in order to suggest that the whole action could have been staged by a group of mobsters who wanted the police to be blamed for their (i.e., of the mobsters') misdeed. This 'complotto' theory, good maybe for the plot of a movie, is not convincing. Not only because it would require an exceptional organizational effort that cold have hardly been concealed in the criminal environment from which originated, but simply because it makes little sense. Why to blame the police, when one is planning such a devastating action? On the contrary, the use of easily identifiable cars and of special force uniforms is like the signature, the *imprimatur* for an action that, for its characteristics (destruction of the restaurant Sekiraqa) was a warning, a signal to the victim – 'we can hit you anytime'.

[1] E.g. Avv.Avni Ibrahimi, minutes deposition witness V Z, 12.5.09, pg.11.

The witnesses accurately described aspects of the cars (colours, type, 'Police' signs, protective grills on the lights, alarm lights on roof of vehicles) and of the members of the group (including weapons and cloths) which weigh in favour of their genuineness and originality.

In conclusion, the suggestion that someone, not belonging to the police forces, may have organized the attack to the restaurant Sekiraqa does not make any sense and must be disregarded as a simple defensive assumption, void of any base.
It is worth to notice that this argument was not raised by the Defense Counsels in the course of their closing speeches.

Those who planned and executed the criminal action against E S and his property were police officers. For the modalities which were adopted, it is not sufficient to say that they did not care to be identified in the course of the action. It is more correct to say that they did want to be identified as police officers. To reach their aim, i.e. to send a clear message of intimidation, they had to be recognized and identified as police officers. The action for its characteristics, is not an act of revenge (or not only revenge), is an act of intimidation. A revenge (for the murder of T R by order of E S, as assumed by the Prosecutor) would have been more direct and executed in a more focused manner. The target would have been E S himself or one of his close relatives. The execution of the revenge, in these condition, would have not be done *en plein air* but with more circumspection. It wouldn't have been meaningful to put an explosive device out of the door of an empty restaurant, in order to take revenge for the murder of a colleague. The detonation of the bomb was rather an act of intimidation, a signal that could be understood easily by E S who, assumed on flight, should have perceived also from his hiding place the risk of coming back to Pristina or to Ferizaj.
Revenge looks to the past; it is a punishment for a (mis)deed. It closes the circle, it purports to re-establish order and 'justice'. On the contrary, intimidation looks to the future, is done to induce future behaviors, it purports to establish a new set of rules, or new roles, that the intimidator expects the victim to respect. From this it derives that the one who makes the intimidation has the interest that his/her victim understands the origin of the intimidation. This justifies the display of police cars and the use of police cloths. This explains why the group passed careless in front of the clients of the bar Passage (the alley from the parking lot behind the building and the front, where the staircase leads to the restaurant Sekiraqa, is just few meters wide).
There is another conclusion that can be drawn from the modalities of the action. If intimidation is the key to the motive of the criminal action, those who planned it knew that their victim (E S) would have understood from which entity or group within the police of Kosovo the menace was originated. There would not have been space for equivoque. Only a limited number of people would be suspected by S.

b) that the pool of possible suspects is restricted.

This is quite obvious. Out of the thousands of Kosovo Policewomen and Policemen, decent police officers who deserve the highest respect for their daily activity and for the risks and difficulties that they face, only few people are responsible for the action in Boulevard Clinton. Where to direct the investigation, then? Is it reasonable to make a screening of each police officer, for example from Prizren or Peja? Is it reasonable to

investigate all the possible relations of E S (his property and his person were the obvious target of the criminal action), in order to discover eventual reasons for revenge against him, despite the fact that the action had been originated from some deviated police group? It has been remarked several times by the Defense Counsels, sometimes with animosity, challenging the Prosecutor's liberty from prejudgment[1] and some witnesses' credibility[2], that the investigation was immediately directed towards the accused and not open to other possible suspects. This has been indicated as one of the main failings of the investigation.

On the point, the Panel observes that there is no wrongdoing or negligence in the investigation, for two reasons.

First, it would have been wrong, from an investigative view point, to waste resources and waste time, starting blind investigations, i.e. investigations without a clear direction. In the presence of macroscopic indicators that police officers were involved, it would have amounted to negligence not to concentrate the effort on the available traces.

Second, the evidence made available to the Court must be assessed for what it is. If it is enough to ground a conviction of guilt, the circumstance that there may have been other directions of the investigations is irrelevant, since those possible directions, good in theory *ex ante*, become just wrong speculations *ex post*. It is a duty and a responsibility of the Prosecutor to make choices in order to direct the investigations in a fruitful direction. The duty of the Prosecutor to investigate circumstances in favor as well as circumstances against the accused (another point that has been raised by the Defense Counsels at some stage of the trial) is a different and distinct duty (art 7 KCCP) which can only arise once the direction to the investigation is established. And it is a duty that is subordinate to the occurrence that facts in favor do exist or can be reasonably assumed. If they do not exist or are not brought to the attention of the investigator, how can they be investigated?

It becomes evident, then, that the pool of the potential candidates to the role of suspects has to be further circumscribed to those police officers who may have had a reason of hatred against the target and victim of the crime, E S.

c) that the action was not directed to the murder of E S

The perpetrators could not ignore that E S was not in his restaurant on the night of the 24th of September and that the restaurant was closed. The circumstance that S was in hiding after the murder of T R because he was wanted by the Kosovo Police Forces was known to everybody[3].

d) that the action of the group of police officers was planned well in advance.

To gather a number of six individuals, to convince them of the necessity to hit the designed victim, to devise the kind of message or response to send to him, committing a crime in such a bombastic manner, to find the explosive and study the modalities of the

[1] Hearing 14 May 2009, comments of Mr. Durak Jashari, pg.25 and page 31, amongst numerous passages.
[2] Examination of witnesses A F and S D, hearing 28 May and 2 June 2009
[3] Witness E H, minutes hearing 12 May 2009, pg.21; witness S K, hearing 14 May 2009, pg.29.

action, takes time. It requires a detailed survey of the places and of the timing of the action. For example, the circumstance that a pair of pliers was brought indicates that they knew they had to force the resistance of a gate which was closed[1]. The perpetrators, with the degree of experience implicit in their police function, were not naïve or inept; it's obvious to conclude that they must have considered all aspects and options of their action.

Only the resistance opposed by the iron gate which the perpetrators did not manage to force, induced them to change their plan and to place the explosive device under the staircase[2], to avoid that the power of the explosion was diminished by the openness of the entrance of the restaurant.

- - -

2. Information coming from M I.

Let us turn now to the circumstantial evidence coming from the declarations of M I and from the evidence furnished by her in the course of the investigation.

The witness came to Court on 25 May 2009 as protected witness X. At the beginning of her examination, however, she renounced to the anonymity and to the faculty to answer from a separate room and with dissimulated voice. In a move that was preannounced by one of the lawyer in Court, Ms. M I refused the protection previously enjoyed and came before the Panel in open Courtroom.

Her testimony was much contrasted. She showed her disappointment to speak, contesting the most obvious circumstances, confuting what the Prosecutor was asking and submitting to her from previous statements given in the course of the investigation. Renouncing to anonymity, she blamed the press and the (UNMIK) International Prosecutor[3] for making public her statement to the investigator. She appeared to be clearly disturbed by the presence of the accused, to whom she referred repeatedly as 'bal' (villagers, peasants). She contested radically her previous declarations, affirming that (i) she did now know/understand anything, (ii) there was a problem of translation/she was extremely tired/pressurized when she was interviewed and she did not read the statements she signed, (iii) her only intention 'was to get rid of these people' since 'after the murder of the police officer my life became hell, and I didn't want these villagers ("bal") to come to my house' (hearing 25 May 2009, pg.7).

The Panel noticed, in the course of her examination, that the decision of the witness to renounce to the protection previously accorded by the Court, was quite extraordinary (pg.6).

---

[1] The gate can be seen in pictures n.139 and 166 in vol.11.

[2] KFOR report from crime scene visit dated 24.9.07, vol. 8, pg. 2184; witness F, 28 May 2009, pg.17. Pictures n.145 and following of vol.11.

[3] On the point the EULEX prosecutor replied that, on the contrary, the International Prosecutor had asked protective measures for her (pg. 6).

Later on (pg.13), for the many discrepancies between the version given in Court and the statement given to the Prosecutor on 14 December 2007, the presiding judge had to confront the witness ex art.364 KCCP, reading to her the relevant passages of her previous statement.

Ms. M I affirmed that contrary to her previous statements, she had never received threats by anybody. She recalled the presence of Besnik Hasani, Shpend Qerimi and Nusret Cena in her apartment a couple of days before the explosion but contested that the conversation was about E S. She contested sending sms to F Sh on the critical night but admitted that the nickname she and F Sh used to refer to Besnik Hasani was 'The Brother' or 'B.H.' or Besnik Firaja (from the village of origin of Besnik Hasani). She confirmed her discontent for the visits of the three accused to her apartment and for the relations established by one of her daughters (A) with Besnik Hasani. When her statement of 14 December 2007 given to the Prosecutor was read to her, she contested what she had said, with the justification: "I only wanted to get rid of these people (hearing 25 May 2009, pg.14).

In order to asses the credibility of the testimony of the witness given in Court, and to compare it to the statements she gave previously to the Prosecutor (most importantly, the one dated 14 December 2007), her behavior in Court must first be considered.

The motivations given by M I for her change of statement, listed above, are contradictory and not credible. The first two (she did not know anything - she was under pressure and confused in the course of the interrogation by the Prosecutor) are the traditional excuses that witnesses give in the courtroom when they want to get away from their duty to give testimony in front of the public. Whatever the reason (threat, shame, change of conditions, promise of a benefit) blaming the investigators or the Prosecutors (or the translators assisting them) for wrongdoings in the course of interrogation it's a recurrent escape valve. The same excuse has been used by other witnesses of this trial (G H, A B, M J, to name a few).

It takes little to confute the arguments expressed by the witness.

That M I knew little, as she claimed, is not true: she was able to give specific accounts, on details that the same Prosecutors could not have known about the events. For example, she explained the meaning of the expression 'exterminate even the mice in the attic', suggesting that she had heard it form the three accused, in the course of a visit to her daughter. Moreover, she indicated to the Prosecutor the presence of the three in her house a couple of days before the explosion, a circumstance unknown to the investigators but later confirmed by the same Besnik Hasani in the course of his examination before the Prosecutor[1]. Lastly, she identified the three accused and contributed to discover the identity of Nusret Cena (in the course of a visit to the Restaurant Europa '92, and in cooperation with her daughter A I, who was with her in that occasion).

[1] The circumstance is indisputably confirmed by the messages sent by M I to F Sh and to Besnik Hasani on 23 Sept 2007 at 1.55 a.m. and at 10.15 respectively and by the phone mapping of 044-538000, belonging to Besnik Hasani, that locates the accused at 2.39.58" a.m. through the GSM cell 'Victoria_1', covering the area of Dardania where M I lives.

That she gave her statement to the Prosecutor only to get rid of the three accused is not true, either.

Let us consider the messages exchanged with F Sh (the fiancée of M's daughter[1], Z I – and an acolyte of E S) on the night of 24 September 2007 in the first hours of the day, approximately 20 minutes after the explosion had taken place in Bill Clinton Avenue.

The content of the chain of messages results from the record of the phone metering[2].
In the first message, sent from M to F at 2.39 a.m. of the 24 September 2007, we read "the brother along with his friends threw the dynamite, oh God, oh God"[3].
The reply, sent at the distance of few seconds, reads: "Who told you? Ah ah ah".
Again, Ms. replies, at 2.42 a.m.: "I heard them last night when they were saying that they would exterminate even the mice in the attic!".

Pondering the text of the two messages, it is evident that the exchange did not have, as stated by Mona in the course of her deposition of 25 May 2009, the aim to get rid of the three accused who, in her version, were molesting her and her daughters. It is untenable that after only 20 minutes from the event, which evidently the witness had understood in its gravity without even the need to visit the crime scene or knowing what had really happened, she thought to take that opportunity to blame three innocent people for an act of such magnitude. The idea that the messages were a fabrication directed against the accused is ridiculous, since M I could not have been aware nor could have guessed that the phone of F Sh was being intercepted and metered due to his assumed involvement in another case (the murder of T R).
And also if she knew, it is not clear why only after hearing the explosion she took the initiative to get rid of the three accused. There is no trace in the binders that before the night of 24 September 2007 she tried to put discredit or to do anything in order to prevent the alleged intrusion of the three accused in her and her daughters' life. On the contrary, only after the event, she had CCTV applied outside her house[4].

Furthermore, through the messages sent on the night of the explosion, it is demonstrated that the witness knew a circumstance (the planning of the bombing by Besnik Hasani and his associates) that she confirmed in the course of her statement of 14 December 2007. She gave more details on the episode (saying that it took place in her home, that A invited her to assist to the visit of Besnik Hasani and of the other two accused, that she heard the expression 'exterminate even the mice in the attic, and so on) but, in essence, what she knew was already said in the message sent to Faton Shoshi on the 24 September 2007 at 2.39 and at 2.42 a.m..

What M I heard from the accused on that night, in her apartment, must be carefully understood.

The declarations of the accused of their intention to take revenge do not amount to a confession (which can take place only after the commission of a crime). But they can not

---

[1] Testimony of M I, pg.8.
[2] Vol. 14, pg. 3993.
[3] In the original Albanian: "i vellai me shoke e kane vu dinamitin, o Zot o Zot"
[4] Hearing 25 May 2009, pg.18.

be considered as simple expressions of frustration for the murder of their colleague T R and for the incapacity of the Police to arrest the alleged murderer (state of mind which could well be reflected in sentences like "If I had him here, I would kill him!" or "I would kill him with my own hands"). Frustration and discontent could have been expressed one day or one week after the death of T R, as confirmed from the words of the same M I[1] ("At the time when T R died, *the day he died* in the hospital, the whole KPS and all Albanian people were very irritate, whoever could lay hands on E S would have killed him"). But almost one month after the murder of T R, this psychological state of mind had transformed; from a generic expression of hatred and frustration into a specific will, in a defined plan of action against S. The detail given in the message ('even the mice in the attic will be exterminated') indicates two things. First, that who proffered that sentence was aware of the extraordinary destructive potential of the explosive device. Second, at the time when it was heard (two days before the bombing), the words were not generic and futile expressions of vainglory; rather, they were reflecting a decision already taken (to place a bomb; to threaten S). A collective decision (the plural is constantly used by the witness) which Besnik Hasani and Shpend Qerimi communicated to A I at the presence of M I. The will of the group had already been formed by then and had therefore acquired the irrevocability that collective decisions usually have (contributing to the formation of a collective will, the single participant consolidates and reinforces a psychological state of mind that can not be revoked easily and that is less subject to reconsideration than individual deliberations). The same word used in the text message "I heard" ("ndegjova" in the original Albanian) indicates that what Mona heard was not a vague possibility, a speculation or a mere wish by the accused, for which other expression would have been more appropriate in the message.

A final point on the sequence of messages exchanged between M I and F Sh on the critical night. Unquestionably, the most impressive message, the one which has attracted the greatest attention in the course of the investigation and in the course of the trial is the first one: 'The Brother with his friends have thrown the dynamite, oh God oh God'. But it is the second message sent by M I to F Sh which is more relevant. In fact, it is only from the second message that we know that the first one is not just M I's guess. Only because M writes in the second message to have heard Besnik Hasani and his friend speaking of their plans, we can state that the first message is an expression of actual knowledge and not a mere speculation of an imaginative lady. If this is so, then M I's version to the Court, that the messages were a preordination in order 'to get rid of the villagers', falls. The first message alone would have never helped M I to get rid of the villagers. When she sent the first message to Sh, she could not know that Sh would reply asking how she knew about the responsibility of the Brother and his friends. If the real intention of the witness was to get rid of the accused, she would have put the information in the first message and not in the second, as she did.

The considerations which precede confirm that the messages sent to F Sh on the critical night were genuine expressions of knowledge by M and that what she had heard from the accused corresponded to their real determination which was executed just two days later. They indicate that M I's version in Court, that she only wanted to get rid of the accused

[1] Statement to the Prosecutor 14.12.2007, read in Court, hearing 25 May 2009.

who were molesting her and her daughters is just an attempt to shield herself and her daughters from retaliation for her testimony.

A fear for retaliation which is justified and that is confirmed in the testimony of a witness in Court. In his testimony[1], witness A F mentioned that in one occasion the witness visited his office spontaneously and that "M I was very scared because she told us that while going home one evening, from the parking lot close to her accommodation, four individuals approached her and told her literally, 'if you don't withdraw your charges against Hasani, you will die within a week'.... She also mentioned that some of the Hasani family members were calling M I's brother, where at the time the daughter A was staying". And to the Court (pg.12, hearing 25.5.07) M I confirmed that the publication on newspapers of extracts from her statement had caused her insecurity and fear.

Before the Court, her declaration was contradictory and unreliable.

Contradictory, since the justifications given were heterogeneous and not compatible with each other. On one side she said she lied to the Prosecutor because she was under pressure; on the other side she said she wanted to involve the three accused.
Of the two versions, which is the true one?

Unreliable, since her testimony in Court is extremely confused and vague. The answers she gave were not complete, her speech often interrupted, her replies not always relate to the answer. This condition of her deposition was not due to the circumstance, highlighted in the course of the deposition of her daughter E[2], that M is psychologically instable and that she 'takes pills', but by the fact that M tried unsuccessfully to fabricate a new version of the facts. In fact, when she gave her statement before the Prosecutor, on the 14 December 2007, her deposition was congruent, coherent and clear.

In conclusion, it is established that M I lied in front of the Panel when she said that her previous statements to the Prosecutor were false and were a fabrication.

On the contrary, the Panel is of the opinion that the statement given by the witness in the course of the investigation (14.12.2007) is genuine and reliable. Not only for the presence of details that, as said before, the same investigators ignored at the time, but also because the narration made by the witness in that statement is a logical, coherent account of plausible circumstances.

In her statement, M I clearly states facts and names; she recalls episodes and circumstances with precision; she puts things in a contest, giving reasons and justifications to her words. Few months after the events (the murder of her daughter's fiancée and the bombing), she was still full of disdain and dismay for what had happened; the sentiments for the perpetration of such heinous crimes were still prevailing on other considerations and were prompting her to speak and to say the truth[3]. In her spontaneity,

---

[1] Hearing 28 May 2009, pg.22.
[2] Hearing 2 June 2009, pg.29.
[3] Statement 14.12.2007 to the Prosecutor: "I was irritated with what I heard them saying, like they're going to take revenge, and how they're going to do that. I don't like these things, and I strongly believe it should be the law taking care of these things".

M I at the time of her deposition before the Prosecutor, felt genuinely the need to speak and to refer to the investigators circumstances which she understood were relevant to the investigation. One year and an half later, at the trial, other opportunities have emerged and tended to prevail. The fear for possible reaction, the need to protect her daughters, the desire to leave these bad experiences in the back and to move on in her life induced her to come to Court and to change her version. This new mindset is well represented by her decision to renounce to anonymity and to the possibility to give testimony separately, which finds in the new psychological condition its justification[1].

M I's second statement to the prosecutor must therefore be taken as a genuine declaration of the witness. As said, on the base of article 364 KCCP, it has been read in Court in the course of the hearing 25 May 2007 and it can now be taken as a reliable account of facts by the Panel.

E I depicted her mother as instable and psychological weak, adding that her words should not be relied upon and that she takes pills (hearing 2 June, pg.29). This comment is not credible and it must be understood, in the panel's opinion, as a simple attempt to protect the mother and herself from the consequences for the declarations that M I had given to the Prosecutor. E I had not mentioned her mother's alleged conditions before; in addition, her statement was in its entirety affected by a shameless attempt to conceal also the most evident circumstances; confronted by the precise and specific questioning of the Prosecutor, she constantly tried to evade the questions, provoking the repeated remarks by the Presiding judge, who invited her to answer to the questions and remembered her that she was just a witness who was not supposed to behave like a 'diva' in Court. With this last expression, the Presiding judge referred to the evident theatrical attitude of E, who came to Court like an actress to an interview. Her reliability was assessed very low by the Panel for the repeated denials, the monosyllabic answers, the provocative approach of the witness overall, which clearly emerges from the minutes. To base on E I's assessment of her mother's credibility a final conclusion on the capacity and reliability of the words of M I would be wrong. In no part of her deposition before the judges in Dubrava M I gave the impression to be mentally instable or incapable to recollect or to put episodes happened in the past in the right perspective. On the contrary, as noted by the Presiding Judge when he invited her to justify her decision to give her testimony in public, she appeared to be quite an intelligent woman, well aware of the surrounding environment and of the consequences of her words. In sum, a person with a normal intellectual performance who has shown no psychic deficiencies or mental flaws. The idea that she may have invented circumstances, or misinterpreted them is therefore non existent and the denigration to which she is subject by her own daughter is a confirmation of the scarce sense of responsibility of the witness E I.

- - -

3. Information related to the death of N B and two others.

Another fundamental part of circumstantial evidence in the assessment of the charges against Besnik Hasani, Shpend Qerimi and Nusret Cena for their alleged participation in

[1] Hearing 25.5.07, pg.7: *I had no need for protection. But the newspaper is why I chose to testify openly.*

the bombing in Bill Clinton Avenue in the night of 24 September 2007 comes from the witnesses A B, A T, R M, M A and from the anonymous witness Omega and Theta.

The mentioned witnesses came to Court in order to be interrogated on circumstances related to the murder of N B, assassinated on the night of 27 September 2007 together with two others of his close relatives while returning home after a night out. In the event, two other young family members of N B were severely injured.

What was the relevance of the murders and of the evidence related to them in the present case, one may argue.

N B was a young man who, in the allegation of the prosecutor, knew the members (at least some of them) of the group who placed the bomb at the restaurant Sekiraqa and was informed about the planning of the bombing since had been offered to be part of the plot. In the allegation of the prosecutor, he was the target (the only target) of the attack which took place three days after the explosion; the motivation of the attack was that N B, in the few days between the explosion and his death was imprudently speaking around about what he knew of the bombing.

Before examining the statements of the witnesses, it must be underlined that out of the six mentioned above (A B, A T, R M, M A, Omega and Theta) only the first, A B, brother of N B and close relative of other victims of the attack of 27 September 2007 was included in the list of witnesses of the indictment. The witness was heard in the course of the fourth hearing of the trial, held on 19 May in Dubrava Detention Center.

The others were called to Court to give their testimony at a much later stage, when the totality of the witnesses listed in the indictment had already been heard. The testimony of A T was requested by the prosecutor on the 9 June and admitted by the Court with decision issued orally at the beginning of the following hearing (16 June 2007); the remaining four witnesses (R M, M A, Omega and Theta) were called by autonomous decision of the trial Panel, taken in the course of the hearing 19 August 2009.

The two decisions of the Panel to admit the witnesses provoked a strong reaction by the Defence Counsels of the accused, it must be recalled.

Especially in the second occasion, when the Panel took the initiative to hear the witnesses that A T had mentioned in the course of his examination, the Defense Counsels opposed the ruling of the trial Panel with a virulence that is only partially reflected in the minutes of the hearing.

The comments of the Lawyers (two full pages of the minutes) qualified the decision of the Panel as 'unlawful, unjust, outside the boundaries of the trial'. One lawyer expressed his concern for the way the trial was being conducted and 'by this way of you as Presiding Judge communicating with the Public Prosecutor' finally considering 'the action taken ... as direct prejudice from the panel towards the defense"; another Lawyer admitted to be 'deeply horrified by this proposal'.

Again, when the witnesses finally came, on the following session (25 August 2009), a Defense Counsel vibrantly opposed the examination of the first of them, in a manner that can be easily described as obstructive, with repeated interruptions, denouncing that an intolerable violation was being done and announcing that in 'response to such actions undertaken by you, although against my will, I will be forced to turn to the EULEX office and request the assembly of judges to review your actions undertaken in this trial'.

The reaction to the decision of the Panel can be described as an overreaction to a judicial decision. The decision may be wrong (there are ways and means to correct the mistakes done by judges) but it is not a legal argument to blame the Presiding Judge for non ritual communications with the Public Prosecutor (an accuse that was unproven and, of course, unfounded). The excessiveness of the Lawyers' reaction gave the impression that they were not against *the manner in which* the evidence was brought into the trial, but against *the content* of the evidence.

Besides the different words used by the Defence Counsels, the core of the recrimination by all of them was the same: they claimed that by calling to testify before this Court in the current trial witnesses relevant to another investigation, the Court was 'expanding' or 'amending' or 'changing' (these are the expressions used) the indictment against Besnik Hasani, Shpend Qerimi and Nusret Cena. It was said[1] that it constituted 'a violation of Articles 5 or 6.2 ECHR which established a trial according to the standards' and that the Panel should have followed the procedure foreseen in article 376 KCCP. Lawyer Asem Vllasi observed that article 222 KCCP establishes that the investigation can only take place regarding the criminal case which is established by the ruling to initiate the investigation. Eventually, the lawyers expressed their surprise for such decision being taken when the end of the trial was approaching.

The answer to the objections will not be long, since the main points have already been illustrated in the course of the hearing.

In the opinion of the Panel (the decision taken on 19 August, like that of 16 June, was not taken by the Presiding Judge alone[2]) the provisions of article 7, 152.2, 333.2 and 360.5 KCCP are sufficient to justify the ruling: in these articles it is clearly expressed the duty of the Court not only to assess thoroughly the facts brought to his attention, but also "to *truthfully* and *completely* establish the facts which are important to rendering a lawful decision". To perform his duty, the Panel can not restrict himself to a passive role if a grey area is left in the evidence, which can still be clarified. The Trial Panel can take autonomous initiative if it thinks it appropriate: article 360.5 KCCP dictates exactly that "in addition to the evidence proposed by the parties... the trial panel shall have the authority to collect evidence that it considers necessary for the fair and complete determination of the case". An initiative that can be taken until the very last stage of the trial, as specified by art. 383 KCCP, "if after the closing speeches of the parties, the trial panel ... find(s) a need for ... further evidence".

Has the decision to admit the witnesses infringed any right of the accused? Should the indictment have been amended?

---

[1] Ms. Vahide Braha 19 August 2009, pg.9.

[2] Hearing 19.8.09, pg.8: "*the panel has decided* to take an ... initiative...".

The answer to the questions is obviously not.

Article 5 and 6.2 of the European Convention on Human Rights do not matter here: the first provision dictates the minimum standards for a lawful arrest and does not deal with the trial; the second provision mentioned by Lawyer Vahide Braha relates to the presumption of innocence, which is clearly not relevant in the subject matter.

On the amendment of the indictment, the panel observes that by the decision of hearing the witnesses A T, R M, M A, Omega and Theta, there has been no change of the charges against the accused, who are still accused for the crimes listed and described in the three remaining counts of the original indictment.

The fact that the panel thinks it appropriate to clarify some circumstances that are also investigated in distinct proceedings has not changed or expanded the content of the indictment: a fact (e.g., the murder of three young men and the eventual presence of the accused at the crime scene at the moment when the murder took place) can be the object of an investigation and can at the same time be a circumstance of evidentiary value in another, where the charges are different. This occurrence is not uncommon in any legal system, when for example a forgery or falsification of documents is instrumental to a tax evasion and for some reason the two crimes are tried independently.

After this clarification, we can concentrate on the content of the witnesses' statements.

A B gave his testimony on 19 May 2009. He was listed as a witness in this trial for his assumed knowledge of the reasons of the murder of his cousin, N B.

Despite the reticence and the reluctance of the witness to speak[1], in the course of the testimony it emerged that the reason for the multiple murders lays in the behavior of N B after the bombing and in the manner in which he spoke to a plurality of persons about his knowledge of the circumstances surrounding the bombing.

Relevant to the case, there is the following passage (pg.15/16):

Public Prosecutor: The question was, when your brother said it was done by the special unit, did he say that to you?
A B: He did not say it to me; he said it to all of us, a group of people.
Public Prosecutor: Did he, when mentioning the explosion Sekiraqa, mention Besnik Hasani at all?
A B: Yes, and when I asked him how he knew that he said he just assumed so.
Public Prosecutor: Can I refresh your memory to what you told police. In your first statement that you made on 31 March 2008, you said that when you asked how he knew that, he answered, "Come on, I hope you don't have to deal with them, they are able to do anything."
A B: I did not say this.

[1] See above, note 1 to page 9.

Public Prosecutor: In your second statement, dated 27 March 2008, the police at the end of the statement asked you: "Do you wish to add something?", and you voluntarily answered: "N told me that the group of Besnik Hasani want me to join them, but he refused, because he is not willing to do what they are doing. In my opinion, this group eliminated him because he knew almost everything about this group including the bomb case. When the bomb attack happened he told me they are the prime suspects in this case and he was able to revenge T R's death without reward, I know that N was in close relations with Besnik Hasani." This was a voluntary addition to your statement; do you agree you said it?
A B: Some are true and some not.
Public Prosecutor: Which is which?
A B: I don't know exactly where he was and where he went and with whom and what he did. The murder of T R we got as a shock and I know that N was able to do everything. Did you say because he was so upset or because he wanted to make his good friend Besnik more glorious or valuable.
Public Prosecutor: I did not ask what he meant; I asked if he said this?
A B: Yes, I said those because we were afraid that something might leak from our side and I have the right to be suspicious of every person.
....
Public Prosecutor: I think the last question I asked you was if you had indirectly heard that Shpend Qerimi and Nusret Cena were mentioned in committing the bombing. Did N B mention them directly?
A B: Indirectly he mentioned it, but I don't think he said it with one hundred percent assurance and now he is dead.

The relevance of the statement of A B lies in the connection that can be established between the knowledge that N B had about the organization of the bombing and his (and his relatives') death. This connection is sufficiently justified by the proximity between the two events (the bombing and the murders) and the behavior of the same N B in that time span.

The reckless openness with which he spoke of the bombing just happened (*A B: He (N) did not say it to me; he said it to all of us, a group of people*) and of the involvement of Besnik Hasani in it (*statement dated 27 March 2008: "N told me that the group of Besnik Hasani want me* –i.e. N- *to join them, but he refused, because he is not willing to do what they are doing... I know that N was in close relations with Besnik Hasani."*) is logically linked to the subsequent murder, given the brutality of the attack against the members of the B family, for whom it is not reported an history of violence or controversies which could otherwise justify the attack[1].

In this background, the testimony of the other witnesses on the murders of the 28 September 2007 near the bridge of Lepenc is now examined.

A T, the police officer in charge of the investigation of the triple murder, gave a general reconstruction of the events and of the subsequent investigation, as emerging from the witnesses' statement collected so far. He recalled that some statements indicated the

[1] Witness T mentions that N B had a medium-level criminal record and had a land dispute. (hearing 1 June 2009, pg.17)

presence of Shpend Qerimi and of another individual at the crime scene few minutes before the murders actually happened. He mentioned the circumstance that a police patrol, directed to the crime scene for the first help, stopped and controlled a white Volkswagen Golf with Besnik Hasani and Shpend Qerimi onboard, coming from the direction of the crime scene and entering the main road few minutes after the crime had occurred. Further, he summarized the testimony given by another relative of N B, B, who had survived the attack, who said that the murder of N B was organized by Besnik Hasani, Shpend Qerimi, Nusret Cena and others (Fikri Hasani, Xhabir Zharku and Afet Dalloshi).

The deposition of A T is second-hand information based on his reading and examination of the binders of another case. However, it is relevant (because it permits to have an overview of the case and a general comprehension of the manner in which the investigation unfolded) and admissible. Furthermore, it is not the intellectual product of a simple reader but it is based on his experience as police officer, specifically charged with the task of reviewing the case file for its finalization and eventual presentation to the Court.

Put in the picture described by witness T, the accounts of the events of the night between 27 and 28 September 2007 by the witnesses heard on the 25 August 2009, were immediately clear.
R M and M A are the police officers, members of the patrol unit who was serving in the area of Dubrava village and that was called by the headquarters and directed to the crime scene.

Their narration concentrated on the halt they gave to a vehicle entering the main road from a side road. The side road leads, in few kilometers, to the crime scene (M: *"The same road brings you to the crime scene, although there are a few kilometers in question"* pg.6; Ajeti: *It was coming from the direction where the incident had taken place"* pg.17). Both witnesses, the first with initial reluctance, admitted that their decision to stop the vehicle was determined by the suspect that the vehicle and its passengers had a connection with the murders just happened (*M A: As soon as we saw the car, and because the car was coming from the direction of the crime scene, we stopped the car*). The examination of the map[1] provided by Lawyer Mahmut Halimi supports the conclusion: the distance between the bridge of Lepenc (crime scene) and the "flag square" near to the bridge of Slatina is few kilometers, less than the 6-7 guessed by the first witness R M (pg.9), compatible with the time the same witness estimated necessary to reach the crime scene (10 minutes, included the stop of Hasani's car – first line of pg.10) and absolutely not compatible with the indication given by Besnik Hasani in the course of the cross examination of the witness (over 22 km! –pg. 10, towards the end).

Besnik Hasani contested to the first witness that he was driving an official car, a Volkswagen Golf "*with KS licence plates*" (Hasani, hearing 25 August 2009, pg.12). On the point, the accused has stated "*This entire thing has been woven by the police.* They kept saying that I was in another car, but my car had KS licence plates".

[1] Attached to the minutes of the hearing 25 August 2009.

The Panel thinks that the detail of the model of the car is not relevant. Anyway, the contestation is not credible. Both witnesses (R M and M A remember a white Golf (if also there is uncertainty as of the model, 2 or 3), a civil car, which is obviously different from an official car. Furthermore, the witnesses said that the reason to stop the car, after overtaking it, was the suspect that there was a connection with the triple murder just happened, suspect that would not have arisen in case of official car[1]. As said, Besnik Hasani interpreted the apparent exchange of model of car as an indicator that the Police (UNMIK civil police or Kosovo Police Forces?) have "woven the entire thing". Of this assertion, which reiterates the allegation that the entire investigation would be a fabrication orchestrated by someone at his and his colleague's damage, no rationale is given. Nor it is easy for the Panel to understand the possible reason for the victimization of two police officers by national or international colleagues.

Witness Omega and witness Theta described what they saw in the proximity of the crime scene of the multiple murders just few minutes before the attack actually occurred. They were walking on the road, returning home after an evening out in Kacanik; they saw a car (described as an Audi A4 or A6) that overtook them, they observed someone getting out of the car; they passed along; they hurried out of there and, few minutes later, when they reached home, they heard the gunshots. There were some discrepancies amongst the two witnesses. One was more detailed (*Omega, interrogated for two hours and an half*): he remembered the presence of two individuals, giving a good description of the hairdo of one of them; he noticed that this person had an automatic gun in his hands; remembered the sense of fear provoked by the vision of two men in the middle of the night and in the middle of nowhere. The other (*interrogated for less than half an hour*) remembered only one person, he did not see his face; he did not mention weapons.

On some relevant circumstances, however, their accounts match or are very close: the visibility, despite the night hours 'was still fine' (Theta), "it was night, it was dark ...but it was a clear sky, you could see well' (Omega, pg.11); the make and model of the car which passed them; the minimum distance between the witnesses and the person(s) they noticed (5/6 meters for Omega, 15 for Theta), the dark dress of the person who entered into the field on the side of the road, the time distance between the encounter and the shots.

A first point in the evaluation of the witnesses' statements is the obvious observation that they did not agree upon the versions to give to the investigators or to the judges; the detail, of absolute centrality, of the number of individuals exiting the Audi, would have otherwise emerged and a common version would have been created. This means that the theory of fabrication of the accuse (put forward by the same accused, as seen in page 24) at the damage of Besnik Hasani, Sphend Qerimi and Nusret Cena is unfounded and used as a misleading allegation by the three. On the contrary, this macroscopic discrepancy between the two versions testifies of their integrity. The circumstance also tells that the two witnesses must neither have spoken amongst them about the episode after its occurrence; otherwise, they would have clarified or would have known of the two

[1] R M: At the moment I stopped the car, I saw that a colleague of ours was sitting inside. It was Besnik Hasani ...Public Prosecutor: Why did you change your mind about searching the car?
R M: Since Besnik Hasani was a policeman who fights crime; I didn't think there was a reason to search his car.

different versions. And this would have emerged in the course of their examination, in Court or in the course of the investigation. The circumstance that none of them mentioned the version of the other witness, nor appeared to have known it, confirms the veracity of the declaration of witness Omega on the point (pg.17: *I never had a chance to talk with him. I had my own business and he had his, so I didn't have any chance to talk with him....I am not interested in this. I do not have these kinds of problems. I have my own problems*) lending further credibility to the words of the witness (*standard of subjective credibility*).

The minutes of the hearing show that the Defence Counsels repeatedly questioned the witnesses about the circumstances that brought them to give their testimony before the investigators, assuming that their versions may have been stimulated by someone in some way interested to find two witnesses. This is particularly evident in the cross examination of witness Omega by the defence counsels of Besnik Hasani and Shpend Qerimi when they want to know when the witness gave the statement, why, on request of whom, in which capacity, and so on so forth. The incredulity of the Defence Counsels for a witness giving testimony on circumstances that he knows, simply for his sense of duty towards the society, is significant. It does not detract the credibility of the witness in question, who came to Court despite receiving threats[1].

The account of witness Omega is logic, plain and trustful, because partially confirmed by the declarations of witness Theta and because is genuine and not biased by personal interest. The divergence on the number of individuals getting out of the Audi must not be emphasized and may simply be justified with the unusual occurrence that the two witnesses were living at the moment.

The modalities of the identification of Shpend Qerimi, as well, do not leave perplexity and do not induce the Panel to give credit to the possibility that the identification was influenced.

It is true that Omega did not know Shpend Qerimi before the episode and that he had never seen him before; however, despite the numerous cautions taken by the witness in his account, and a possible confusion in the sequence of the facts when he came to learn the name of Shpend Qerimi, it is clear from his words his conviction and sincerity about such identification.

The cautions he takes ("It might have been this person or someone else, but I believe it was this person"; "the person I saw, resembled Shpend... it might not have been Shpend. I cannot say that this person was Shpend"; "I am still 500% sure that the person who was there that very night resembled Shpend; whether it was him or not, I am not sure".) in the course of the hearing were not present in the statement given to the Prosecutor where he expressed a high level of certainty ("I am 500% sure", pg. 9); they significantly reflect the atmosphere in which the session was held and the tensions to which the witnesses were subjected despite giving their testimony behind a protective glass.

[1] Cfr. memo where it is referred that few days before his examination in Dubrava, the witness was 'visited' by Cena's relatives.

The witness has partially shown confusion in the recollection of the episode in the course of which he came to know the name and identity of the accused Shpend Qerimi. Initially he stated that in a coffee bar in Ferizaj, while taking a coffee with A B, he saw Shpend Qerimi entering the bar and immediately recognized in him the person he had seen at the crime scene. Later, in the examination, he said that it was B to tell him that the person who had just entered the bar was called Shpend Qerimi and that he was the one involved in the murder of his relatives.

It is not contested that Omega did not know the identity of Shpend Qerimi before A B told it to him (otherwise he would have simply witnessed that he saw Qerimi at the crime scene). It is not disputed as well that Omega learnt the identity of Qerimi occasionally, for the appearance of Qerimi into the coffee bar where Omega was drinking a coffee with B.

It is claimed that the identification has been influenced by the indication given by B on the identity of the man entering the coffee bar and on his participation to the murder of his relatives.

The Panel observes that the claim is ungrounded.

Since B had an interest in discovering the identity of the murderers of his relatives in order to bring them to justice (as he has indicated in the course of his testimony), then why to leave to the chance the identification of Shpend Qerimi, about whom he suspected? Knowing that Omega had been present to the crime scene, there is no reason to believe that B would have waited one month if he had the intention to 'suggest' the name of Qerimi to witness Omega. The way things developed indicates that there was no fabrication or inducement of the witness, who gave his statement to the Police only when he occasionally came to know the identity of the person he had seen on the 28 September at the crime scene.

In sum, all indicators point towards the reliability of the declarations of witnesses Omega and Theta, as well as M and A; the declarations of B gives a motive and a rationale to the entire story.

The picture in which the various testimonies are merged is homogeneous and congruous. It represent the commission of the multiple murders on the 28 September 2007 in Lepenc by the two accused Shpend Qerimi and Besnik Hasani, in order to eliminate a possible informant of the bombing in Pristina which had happened few days before.

On the other hand, the justifications offered to the Court by the accused on their presence in the proximity to the crime scene immediately after its happening, are not credible.

Shpend Qerimi explained that he was investigating a case; for this reason he had the urgency to contact Besnik Hasani late at night in order to ask the name and the phone number of a woman "who had contacts with organized crime, possession, distribution of narcotics" [1]. It goes without saying, this point of contact is identified only as 'X'. After

[1] Hearing 3 Sept 2009, pg.17.

receiving the requested information by Besnik Hasani via sms[1], the two met and the urgency of the investigation, so pressing that had to be done in the middle of the night, disappeared. There was a more pressing issue, apparently, the need to find money for Shpend Qerimi, who "doesn't have a good situation" and "was decorating a bathroom" (Besnik Hasani, pg.34). And, luckily for Qerimi, the place where they met was close to the house of a debtor of Besnik Hasani and since "It was not late to go and see him" (Besnik Hasani), they visited this person (whose name is left unknown, Qerimi mentioned his nickname, 'Bager').

To the perplexities of the presiding judge about the odd circumstances for collecting investigative information and for collecting money, there is the following answer (pg.18):

Shpend Qerimi: *I don't have a prescheduled time to receive information, it comes when it comes, and with regard to our going to this person at night it is very true that for Internationals...(interrupted)*
Presiding Judge: *... This justification comes out every time you need an excuse for something.*
Shpend Qerimi: *I did not say you do not know. I was about to say that in your culture at night before going to someone's house you inform them. At my place, when someone I call a friend comes to my place at three in the morning, it happens.*

Let's ponder a moment this exchange.

a) To the perplexities of the Presiding judge about the time for investigation, Qerimi replies that there is not a schedule 'to receive information' and that 'it comes when it comes'. Plausible?

In a previous answer Qerimi had said that he was in search of the details of a woman with connection with organized crime. So, the sentence 'it comes when it comes' is misleading, because it gives the (wrong) impression that it was impellent on him while it had not 'come to him'. In other words, it was an ordinary investigation. For which, there was no real need to act in the middle of the night.

b) This last conclusion is confirmed by the behavior of Qerimi afterwards. Instead of pursuing the investigation, he then goes together with Hasani to collect money and then goes home[2]. And the investigation, which was so urgent?

c) On the collection of money, why was it so urgent to ask the money at midnight? Could not Qerimi wait the morning of the following day? And more, how is it credible that in a rural society like Kosovo (especially in the area where these facts happened) it is normal to pay a visit and to collect money from a debtor, past midnight? Qerimi explains (pg.18)

---

[1] Qerimi: "Besnik Hasani replied to my messages but since this was confidential I asked to meet him and we exchanged information". Pg 17.
Hasani: "I met Shpend Qerimi late he sent me a message asking about a female. I sent the names and surnames in message. He said come and meet me". Hearing 2 Sept 2009, pg.33.
[2] Hearing 2 Sept 2009, pg33: Hasani: ...We went to collect the debt in a Golf driven by Shpend Qerimi. We went to restaurant Mondi and continued further on. I took 500€, ***Shpend Qerimi left me then went to his house.***

that: *"At my place, when someone I call a friend comes to my place at three in the morning, it happens"*. This sentence, hardly credible in itself, shows the fragility of the justification put forward by the accused. Indeed, the person whom they were visiting was not a friend, was unknown to Qerimi and was just a debtor for Hasani (who has never used the word friend). In addition to this, the ritual recourse to the cultural difference between so called "internationals" and "locals" to justify behaviors which otherwise are inexplicable is, as in other occasions[1], weak and senseless. The Panel members are experienced judges, local and international; they lived in Kosovo and in other Countries for years; they are aware of cultural differences and keen to pay attention to them and to respect them; and they are sufficiently experienced to know that one does not go to collect money at midnight in a remote and rural village in the heart of Kosovo. The attempt to accredit this version is just the evidence of absence of better arguments.

In the end, in the opinion of the Panel, the justifications offered by the two accused about their presence at the place in the night of the multiple murders, are just inventions void of credibility.

The obvious reconstruction of the events of that night brings to the conclusion of the presence of Besnik Hasani and Shpend Qerimi on the night of the multiple murders at the crime scene and of the commission of the murders by them. They had a motive (eliminate N B, who was speaking of the participation of Besnik Hasani in the bombing in Bill Clinton Avenue); they were seen few minutes after the event coming out in a suspicious way from a side road leading to the crime scene; Shpend Qerimi was seen by a witness at the crime scene and later identified.

The conclusion that precedes (the multiple murders were committed by Besnik Hasani and Shpend Qerimi) is a substantial part of the circumstantial evidence in our trial.

If they took the decision to kill the three, what was the reason? Besnik Hasani was a friend or at least an acquaintance of N B[2]. In the absence of a history of hatred between the two accused and any of the victims of the massacre in Lepenc, the only logical explanation of the brutal murders has been offered by the Prosecutor.

She underlined the link between the crime of 24 September in Pristina and the crime of 28 September in Lepenc because one of the victims of the second crime (N B) knew information about the first crime and was telling it around.

- - -

4. Telephone intercepts and other technical evidence.

Telephone intercepts and other technical evidence furnished further elements of evaluation.

---

[1] See, for example, the explanations given by the accused on the rite of the condolences to justify their presence in A I's flat in the middle of the night one month after the death of T R.

[2] Witness A B, hearing 19.5.09, pg.16.

In this trial, telephone intercepts are useful, in the first place, to put various facts in a kind of scenario and, secondly, to verify some allegations of the defendants; third, they permit to assess the credibility of some witnesses, showing their real attitude toward the court proceeding.

Starting from this last point, the content of the sms and of the telephone calls amongst the members of the I's family shows the openness and the directness of the conversations amongst the four women and constitute the most striking confutation of the trustworthiness of the statements given by E and Z in Court. Indeed, they prove that the level of confidence amongst the mother on one side and the daughters on the other side was high. Those intercepts render it impossible to believe that issues so relevant as (i) the bombing, (ii) the participation in it of the three individuals who were visiting the family at the time, (iii) the nature of the relationship between A and Besnik Hasani, (iv) the relation with E S and many other were not discussed in the family. The fact that E and Z refused constantly to admit such circumstance and were reticent in the entire course of their examinations, sheds a clear light on the scarce credibility of their testimony. In such a small environment[1], with a mother over-worried for her daughters[2], trying to control their life[3], affected by a sort of compulsion to phone and to speak, it is simply untenable that those issues were not discussed in house. Their attempt to conceal what would be obvious matter of conversation in any family environment (for example, the nature of the relation of the sister A with the colleague of the ex fiancée who had been murdered just few weeks before; or the possible connection between the murder and the attack to the restaurant of the major suspect of the murder) is significant of their will to have nothing to do with the trial and with the accused, to distance themselves from the accused, to attenuate the force of their mother's declarations and her role in the proceedings.

On the other hand the telephone calls are a good parameter to asses the veracity of the declarations of the same accused and particularly of Besnik Hasani.

It emerges, in this way, that Besnik Hasani had a love affair with A I. This is undisputable and it is simply not understandable why the accused so vigorously opposed the plain truth. The long list of phone intercepts and sms exchanged between A I and Besnik Hasani can be found attached to the report at page 2810 of volume 9. The multiple declarations of love by A to Besnik, the fear to be pregnant (pg.2814), the nicknames used ('may I kiss the lips of the wolf" –sms at pg.2815) make it explicit the nature of the relation between the two.

The intensity of the relation between Besnik Hasani, A and, in general, with the other members of the I's family is well documented by the high number of sms and phone calls

---

[1] **Presiding Judge**: Can you give a rough description of your house? How many rooms? So, you have a room of your own? ... And A I has her own room?
E I: No, A I stayed in the same room as me. ... We have three rooms but we don't use one. It is too small...Z I and my mother sleep in the living room.

[2] M I, pg.8: "...I live with three daughters at my house, no man at my household." Amongst other similar passages.

[3] E I, pg.27, last part.

exchanged between Hasani, A, M and E in the months of September, October and November.

What kind of relation was this? As suggested by the Prosecutor, was it simple exploitation of a lady in a moment of weakness, in order to gather information about her previous lover (E S)?

In principle, the question may have relevance, since a positive answer could shed a light on the justification of the behaviour of Besnik Hasani and could help put the mosaic of the events in the right place.

However, the Panel is of the opinion that if also affirmed positively that Besnik Hasani was dating A I for his own extra-sentimental purpose, this would not substantially add much to the picture.

It is probably true what the accused himself said in the course of his examination in front of the Prosecutor[1]: "I have a lot of girlfriend but K *S* I love". From many sources[2] in the course of the trial this profile of Hasani's life has clearly emerged, i.e. his capacity to play on different fields' and to maintain different relationships. He admits it and he is proud of it, as a sign of his virility.

This certainly shows a side of his character, exposing the ambiguity of his behavior. An ambiguity that is his *leitmotif* and his characteristic and that explains his tendency to find excuses and to lie[3]. A side of his character which has a bearing in the consideration of his alibi, as it will be explained later.

On the other hand, the circumstance that the accused listed amongst his girlfriends two of E S's former girlfriends can not be taken as a curious coincidence. It is rather an indicator of the interest of the accused to have an insight of the environment surrounding E S. And this conclusion does not change whatever the nature of the relationship between A A and E S was (hearing 25.5.09, pg.28: A A: "I was in a relationship *(with S)*, but against my will."). Despite his refusal to admit, his engagement with A A started by his initiative at the time of the trial in which E S was accused of extortion against A A[4]. And his relationship with A started only few weeks after the death of T R, despite the contrasts surrounding this relation, for the obvious discredit of having a relation with a lady (a known figure, in addition) so shortly after the murder of his boyfriend (a popular and appreciated policeman). The contrasts are well documented in M I deposition (who speaks of the comments in the neighborhood), in the statement of F H dated 11.4.08 (volume 6, pg.1821: I advised him not to go out with her *(A I)* anymore"... "I also advised him at the time that if he will hang around with A I, he won't be my friend, so

---

[1] 12 Feb.2008, pg10, vol.6, pg.1881.

[2] Witness R B, hearing 30 June 2009, pg.17:" Sometime he came with one girl for a break and another for the whole night".
Statement of F H, admitted as evidence ex art.368 KCCP, Vol.6, pg.1920.

[3] Cfr. examination of Besnik Hasani in Court, 2 Sept.2009, pg.25.

[4] Hearing 25.5.09, pg.30: **A A:** ...it is true that I did not know Besnik Hasani before that date. And after the trial started I became to know the police officers and after I started socialising with him. Then some time after we started a relationship. **Public Prosecutor:** So you started liaising with him then?
A A: No I didn't say that; ***he started to make advances***, I came to know him."

that is why the relationship cooled down a little bit and we did not have frequent relations like normal") and is confirmed by the decision of A, at that time, to change her place of residence, going to live in her uncle's house. Besnik Hasani himself was aware of the comments (interrogation of prosecutor, pg.1878).

To this, Besnik Hasani replies that his interest towards A had two different reasons. First, to express condolences[1] to the fiancée of a valorous colleague, who it was believed had been victim of a gangster. Second, because he had known her since before and he had an interest in relation to A's profession as a singer.

Both justifications are not credible.

In Kosovo, like elsewhere, condolences are expresses not long after the death of the relative. The panel members are aware of the local costumes in relation to the ritual tribute of respect and of solidarity to the family of the dead person. It is not unusual to see, in Pristina or in other localities in Kosovo, a chair covered by a white towel, placed outside the house of the dead. The possibility of the mourners to pay a visit lasts a week, according to the tradition. It is not true, as stated by Shpend Qerimi[2], that the visit may be paid at a later stage or may be repeated[3]. It's not true that a visit for condolences can be done late in the evening, unless you are a close friend or a relative, (as affirmed in relation to the visit of 22 September 2007), especially if this means going to the house of four women. As already noted (pg.30), the Panel confirms its impression that traditions and cultural differences are mentioned in the absence of better arguments, in the conviction that judges should accept the most incredible arguments.

In another occasion, while interrogated by the Prosecutor on 12 February 2008 Besnik Hasani explained that his visits to A I's house had another justification. In fact, to the request of the Prosecutor: "Since you told me that you were not a close friend *(of A)*, why did you go to A's place to express condolence?", the accused replied: "Because of a cousin of mine, I knew A's mother and my brother played music in Germany and I contacted A's mother so that A would go and sing to Germany". Now, in the entire bulk of the telephone transcripts and sms texts there is not a single passage that may confirm the version of Besnik Hasani. Nowhere is it mentioned that A may have had professional contacts with a relative of Besnik Hasani in Germany or elsewhere. This was just an invention of Besnik Hasani, completely baseless.
On the other hand, it is difficult to believe that, visiting the house of the fiancée of a deceased colleague to express condolences, one starts speaking of opportunities of professional engagements in Germany.

With the same technique, the accused has attempted to rebut the prosecutor's allegation of his animosity and rivalry with Enver Sekiraqa.

---

[1]Hearing 2 Sept 2009, pg.33: **Vahide Braha:** When you said you went to see M I its better to say you went to see A I. How long were you there? **Besnik Hasani:** Not long ***just for condolences***, a lot of the police of KPS were there along with judges and KPS.
[2] Hearing 3 Sept 2007, pg.11.
[3] On the repetition of the visit, Qerimi notes: "We went two three or four times to offer condolences, as the Muslim faith says that as many times as you go to offer condolences, it is a good thing for your soul."

The allegation is based on several facts which have found substantial confirmation in the trial.

First, the statement of M I to the Prosecutor, read in Court ex art.364 KCCP given the reticence of the witness. In that statement, M I mentioned an episode when she assisted to the beatings of two nurses by Besnik Hasani and his brother. The reason for the beating was the proximity of the nurses to the family or to the environment of E S. [1]

Second, in the first part of the deposition of A A (circumstances of the arrest of E S by Besnik Hasani and other members of ROSU of Ferizaj in 2006).

Third, through the admission of Besnik Hasani in his statement to the Prosecutor and in Court.
In his deposition of 12 February 2008, he reckoned he was aware of the intention of S to kill him if also he attributed it to his frequentation of A I's house after the death of T R (the threats however precede the frequentation, it is observed); in Court, he denied any contrast with S stating that it would have been incompatible with the ethics of a policeman.

Four, the widely documented threats against Besnik Hasani from the associates and acolytes of E S.
Pg.2670 of Volume 9 reports a phone call of H K to Besnik Hasani on 7 May 2007, where threats and the possibility of a fight between members of S's group, on one side and K and others, on the other side, are mentioned.
Shpend Qerimi confirmed in Court that he personally informed Besnik Hasani about the risk of an attack on his life, originating from E S.
Finally, even before the death of T R, Besnik Hasani reported threats from B A, an associate of Enver Sekiraqa[2].

Fifth, the message of 'congratulation' sent by S K to the phone of Besnik Hasani on the evening of 24 September 2007 at 19.36 and the declaration of the same police officer, colleague of Besnik Hasani, to the investigators on 3 March 2008 (Volume 5, pg.1553) and to the Court on 14 May 2009 (pg.24). Now, based on the text sent by Kamishi to Hasani and on the reply received from Cena two minutes later ('do not write on this phone anymore, Cena'), it can not be established for sure that K was aware of specific

[1] "I saw Besnik Hasani first time in my life when he kicked a nurse very violently and T's brother going for the throat of the other nurse, Besnik Hasani and his police friends took the phone off from these nurses. I never saw such violence in my life. This was after T body was brought to the hospital." Prosecutor "What was the reason for this violence?" M: "I didn't hear Besnik say anything, but I heard T's brother say "you S's whores, I saw then Besnik kicking one of the nurses with such hatred that I know he hated E S so much."... "Anytime Besnik Hasani came to our house, he'd say how he kicked the shit out of E S, and how he made a recording of E S distorted face after he kicked him with his boots, and these scenes were disseminated to different people by phone. After the death of T R, Besnik Hasani and his friends went to Vranjevc, the neighbourhood where Enver Sekiraqa lives, and beat the old people, women and children, and Besnik Hasani was bragging about this."

[2] Prosecutor's interrogation, 12 February 2007: "He threatened me as well and he said to me how are you Besnik –because he is known for different things like shooting- and then he approached me and said I know why you are not talking to me, and I asked him why and he said you are a friend of T and I am a friend with E. Then, he called me on the phone and called me bad names".

intention or plan about the bombing; but this message is a direct evidence that the hostility of Besnik Hasani toward E S and his environment was known amongst the police officers of the region of Ferizaj and Hani e Elezit. It is not credible that the message was directed to another police officer because "we (*police officers*) hate him, all KPS hate him because he is a criminal in Pristina" (statement 3 March 2008). The ambiguous and evasive testimony of S K both in Court and before the investigator (the statement was read in Court ex art.364 KCCP, to refresh the memory of the witness, who was clearly trying not to answer) can not conceal his admission of the enduring contrasts between Hasani and S. The witness knew of them, knew the reasons of them, and linked them to the explosion.

All these facts converge towards the conclusion that in the months between May 2006 (arrest of Sekiraqa) and September 2007 there have been a raising tension between Besnik Hasani (and possibly other police officers from Ferizaj), on one side, and E S and his circle, on the other side. To this tension Besnik Hasani further contributed when he engaged first with A A and then with A I, both of whom had had a relationship with E S.

'Stealing' the fiancée must have been perceived as a provocation. If done twice, it is an insult, an act of arrogance, a defiance. In a small environment like Ferizaj, it could not pass unnoticed. The circumstance that it was done by a police officer made the challenge intolerable.

In conclusion, competition for the control of the territory and competition for women is at the bases of the confrontation between Besnik Hasani and E S.

With a bit of piquancy, it may be added that it is common knowledge and is noticed by many, that the two even resemble physically and in the way in which they behave.

Short but fit and strong, they express a model of masculinity that is based more on vigor and dynamism than on reflection and intellectual sophistication. In them, further identical features can be found: the exhibition of self-confidence (in Court, Besnik Hasani dominated on the other two accused and, at times, also on his lawyers; he smiled with pride when his sexual relations were mentioned), the attraction for military prowess[1], a dress style made of smart ties and snow-white or matching shirts worn under shining grey or striped suits; the same hairdo, black short hair pulled back and greased. They even drive the same type of car (black Mercedes, need not to say).

All these characteristic emerge easily (for Besnik Hasani, in Court; for E S, he is a widely known figure in Kosovo and picture of him can be easily found in the internet, for example) because they are exhibited by the two, in the same manner. They want to convey the same idea of man of power, in control of the situation. An alpha male, attracting attention and respect for his dominating role.
It's obvious that in the same territory (Ferizaj), two of the same kind can not coexist.

Great manipulators of subordinates, who have a tendency to emulate their superior (as Shpend Qerimi appeared in Court), they tend to create illusions to gather consensus or to

[1] See pictures of Besnik Hasani holding an MP5 automatic gun, Volume 9, pg.2704-6

justify their behaviours (Hasani lied repeatedly to the Court, even against all evidence). Generous and magnanimous in some respect[1], they try to embody models of popular culture that they have learned in movies more than in books (the De Niro-style police officer, the 'gangsta' of the Thirties). Models which are nowadays obsolete and ridiculous in the rest of Europe but that are still attracting in the Balkans.

As their heroes, they are able of any action, glorious or heinous; to get what they perceive can consolidate their power. They can kill the rival (T R) or they can place a bomb at the risk to kill others.

- - -

The analysis of the movements of the accused in the night of 23/24 September 2007 through the data of the phone metering (and the location of the GSM cells), has not given conclusive evidence.

In the course of three hearings witness D T and two PTK technicians called on request of the Defense Counsels (A G and R Sh), have answered an avalanche of questions from the Parties and the Panel, explaining the modalities of the investigation as well as all sorts of technical aspects. The examination of these witnesses has taken several hours, in the attempt to clarify even the most obvious aspects ("Can a telephone be located by the system, if it is switched off" it was asked repeatedly).

The examination of witness D T was essential to understand the reports on the phone calls and to put them in the right context; his examination also permitted to the Panel the verification of the correctness of the procedures employed. However, in relation to the position of the accused in the critical night, the only relevant circumstance which were exposed was the (abnormal?) number of phone calls and sms message exchanged by the accused and (in favour of the accused Cena, as it will be said later) a phone call made by the phone of Nusret Cena at 1.26 a.m. of 24 September and registered by the phone cell located in Bregaca_2.

Nothing more can be added. There is no cell registration which permits to locate any of the accused in the proximity of the crime scene at the time of the events.

- - -

Also the analysis of the trip ticket of the official vehicles of the police unit to which Besnik Hasani belonged and of the documentation related to his presence on the days of the end of September 2007 has not given conclusive evidence. The trip ticket of the vehicle 093 KS 073 appeared to simple examination altered and with incongruous indications. Despite what referred by police officers charged with the duty to control the documentation (transport officer and administrative police officer), it is clear that the possibility to manipulate the documentation if some intended to do so was unrestricted. The evasive and elusive depositions of all police officers heard on these aspects and the

[1] Hasani is always ready to lend money to Qerimi; he understands the need of the friend who 'doesn't have a good situation' and 'is always in need of money'.

circumstance that some of them may well have had a role in the events, renders any reconstruction done on that documentation a futile exercise.

The data retrieved from the trip ticket and from the duty schedule/roster (Vol.8, pg.2364) can not be used in prejudice of the accused, in order to establish his responsibility for the participation in the bombing in Bill Clinton Avenue. But they can not be used in favour of the accused either, saying for example that since Besnik Hasani was on sick leave, or because it is documented that the car used by him (093 KS 073) didn't drive more than a few kilometers that day, it is proved that the accused did not participate in the group who placed the bomb.

- - -

The intercepts of two phone calls of Besnik Hasani are of great relevance, in the opinion of the Panel.

We refer to the calls that the accused did to M and A I in occasion of their respective examination by the Prosecutor.

When interrogated in the course of the investigation, the two women received the call of Besnik Hasani. M I was contacted the day before the interrogation while A was called the following day.

Both phone calls show the obsessive interest of Besnik Hasani for what the witnesses could say (M) or had said (A). They document the will of the accused to interfere with the investigation (trying to influence the witness M) and to know the stage of it (A). Both action, from a policeman, are illicit and suspect.

Illicit, because a police officer should not invite a witness (M) not to answer. A police officer should not interfere with an ongoing investigation asking the witness (A) about her deposition, insulting international colleagues, lamenting that the witness (who has the quality of witness until the end of the trial) has spoken too much and has revealed names that she should have not mentioned.

Suspect, since if Hasani had been indifferent to the investigation, there was no reason for him to call the two women and to bring one of them (A) to the point of crying on the phone for what she had said to the investigators. Besnik Hasani told the Court that he did not know in relation to which investigation M and A had been called by the investigators. He added he though that the two I were being interrogated in relation to the murder of T R.

Credible? This justification may work in principle in relation to Mona, called before the interrogation, but for, who had already been interrogated? And in relation to Mona, then, why to discourage a witness to testify in relation to the murder of a police officer, the fiancée of the witness's daughter, an act that had raised a wave of execration in the population in Kosovo?

- - -

In the course of the search of the house of Shpend Qerimi a special unit uniform was found. This is a uniform identical to those used by the group of policemen who placed the bomb on the 24 Sepember 2007. The possession of the piece of cloth was justified in Court by the same accused and by another witness (if was a donation or better a left-over from the American police who had trained the unit to which Shpend Qerimi belonged). Of course this is not an indictor of the participation to the bombing.

More interesting, in relation to the use of cloth in official Police cars, is the sms sent from F S to B M in the morning following the bombing, where the first police officer asks the second (they work in the same police unit) "hey friend, please take some civilian cloth, I left it in Shpend's car. I will take them when I come to pick you up. Bye".

The message indicate that S left civil cloths in Shpend Qerimi's car, the day before the bombing (as clear form the context) which he wanted to recuperate in the evening of the 24 September since they (S and M) were going to have a night shift between 24 and 25 September 2007.

On this episode, recalled by the Prosecutor in the course of the examination of the accused[1], the reply was not matching the question, really. Shpend Qerimi may have not understood the question or was referring to a different episode.

***Public Prosecutor**: There was a telephone call made from S to Mi regarding some clothes left in his car. Do you remember that?... Were clothes and uniforms left in your car?*
***Shpend Qerimi**: This Sediku works in ROSU. During the training we had as police officers in the room of the police station in Ferizaj I didn't have the sports wear with me, and I borrowed the sports wear. Since Ferizaj ROSU keep it in the police station, as they train every day, and I borrowed this for three hours for some technical training we had. I don't know, maybe that message only deals with the fact that I borrowed that, but it was not the first time I did that.*
***Public Prosecutor**: The clothes left in the car, did they belong to you?*
***Shpend Qerimi**: The sports wear I borrowed for training, the training we do once a year, I gave back those clothes. I don't know that he left the clothes in the car.*

From the message, however, it is clear the cloths were not Qerimi's. So the answer is not congruent and may be the consequence of an equivoque.

However, the meaning of the text is clear and it weights against the accused, since it confutes his version that he was at a football tournament the night before and suggests that he was in company of F S who changed his civil cloths. Why? To participate to the football tournament? Had F S been present and had he participated to the tournament, Qerimi wouldn't have surely forgotten to mention him in his alibi.

- - -

[1] Hearing 3 September 2009, pg.14.

Relevant evidence comes also from the examination of the samples taken in the police car used by Besnik Hasani at the time of the event.

As known, the results sent by the requested institution in Germany, confirmed the presence of traces of explosive in the police vehicle 093 KS 073.

It is known as well that the samples were taken few months after the bombing and that a first examination, made by another institution in a different Country, had been negative.

The results of the technical verification have been contested by the Defense Counsels with a motion filed on 10 July 2009 for some profiles which can be summarized in this way: (i) admissibility of the examination without an order of the pre-trial judge; (ii) reliability of the result.

The Panel, with decision dated 23 August, read to the Parties in the course of the hearing 26 August 2009, rejected the objections of the Defense Counsels noting on the issue of admissibility *"that article 153 KCCP states, in the clearest and plainest manner, that "Evidence obtained in violation of the provision of criminal procedure shall be inadmissible when the present code or other provisions of the law expressly so prescribe". In the case denounced by the defence Counsels, an expertise obtained without previous authorization of the pre-trial judge, assumed necessary, there is no provision, in the procedural code or elsewhere, which sanctions the assumed violation with inadmissibility. In other words, inadmissibility is only foreseen in specific cases.*

In addition to that, the Panel also observed that in the system of the procedural code of Kosovo, a preliminary authorization of the pre-trial judge is not necessary, in general, for the prosecutor, to call an expert witness or to request an expertise.

Indeed, the preliminary authorization of the pre-trail judge may be requested when some specific examinations are involved, like *post mortem*, physical examination, DNA analysis or molecular examination (art.237.2 KCCP). For the potential intrusion in the privacy of the subject to be examined or for other reasons of opportunity, in these cases the intervention of a judge is requested, to assess the necessity and the limits in which the intrusion in the sphere of one individual's privacy is compatible with the exigencies of justice. But also in these case, as established in the last part of the provision, when the need of careful balance between conflicting exigencies does not exists, because the injured party or the suspect gives his/her consent, the intervention of the pre-trial judge is not requested by the law.

In our case, where the samples have been taken from the seats of the cars, there was no intrusion in the privacy of anybody; there was no body examination to be carried out. So, no need to ask the pre-trail judge to order the expert analysis.

On the other hand, it is common experience in the Courts of Kosovo, to accept into evidence expertise coming from laboratories abroad. In a small Country, with newly established institutions, availability of costly technical equipment and of experienced professional personnel is limited. DNA analysis, drug tests (on the quality of the substance), advanced blood analysis, computer analysis and other kinds of forensic job

are routinely done abroad because there is not yet in Kosovo the expertise and the apparels which could permit an affordable result. The result is routinely admitted in Court as evidence.

On the other exception (samples taken months after the bombing), the Panel does not have anything to add to the considerations already expressed in the decision of 23 August 2009, which are confirmed here:

...the defence Counsels contest the timeliness of the taking of samples from the suspected vehicles, happened, it has been said, months after the alleged commission of the facts. They say that such procedure is highly inappropriate and that the result of this procedure (examination report) is consequently highly unreliable.

The point raised by the lawyer is pertinent but it relates to the merit of the evidence collected. There is not, in the procedure law, a time limit within which a sample must be taken or a piece of evidence collected. Experience teaches that, of course, the collection of sample should be done immediately after the events, the sooner the better. But when this is not possible for a number of reasons, there is no legal limitation to take samples for forensic analysis also at a later stage of the investigation, or also in the course of the trial.

The result of such examination will be unreliable? This is not necessary so, but in any case such kind of contestation should be reserved for the final speeches (fjala perfundimtare) since they do not impinge on the legality or the admissibility of the examination.

In other words, it's only a matter of 'credibility', 'reliability' of the evidence and not of its admissibility.

Samples of explosive taken months after the assumed transportation of the material with a vehicle can be contaminated, as it was claimed by the Defense Counsels? A police car is not a medical clinic or a blood analysis lab, where the risk of contamination of the samples of blood may be a consequence of the ordinary activity and procedures are therefore in place in order to prevent exchange of samples or taint of them. On the contrary, in the police vehicle a contamination may have taken place if it is admitted that the Police car from which the contested samples were taken may have transported the same kind of explosive sometimes before the day when the samples were taken. Or if it is admitted that police officers using the car used clothes on which traces of the same explosive may have been deposited. From this promiscuity a possible contamination can have derived, not from the normal use of a patrol car, which can be dusty, can have traces of many substances of metallic or organic nature (the gunpowder of the official weapons, the sweat of the body of the officers, to mention a few) but not of that specific explosive used in the bombing.
We have heard from the competent source (A J) that police cars do not transport explosive (which, in Kosovo, like elsewhere is not police equipment) and that the kind of explosive found in traces in the car 093 KS 073 is not used in Kosovo[1] and can not be

[1] Witness A F, hearing 28.5.09, pg.22. Communication of Sven Ischen on meeting with Bekim Elezaj, senior inspector for Mines and Explosives, volume 9, pg. 2845.

found in the Country, even for civil uses for which other kind of explosives are employed. Nitropenta (PTN) can be found in Kosovo only in detonation cords.

On the base of this information, the possibility of a contamination does not exist, rationally. And the only logical conclusion is that those traces were left by the amount of explosive used for the bombing, handled during the transportation to the place of its use.

The circumstance that they were found some months after the assumed transportation to the crime scene as well as the fact that an initial examination did not bring any result, does not affect this conclusion.

Once the possibility of contamination is excluded, the presence of the traces at the distance of months only testifies of the accuracy of the sample taking, of the professionalism of the laboratories and of the pertinacity of the substance; if the traces were not found a first time, it may depend on the wrong application of a technical procedure or simply on the fact that the specific substance was not looked for and that the search was directed towards more common explosive substances.

- - -

5. Alibi of the accused.

In the course of the trial the accused indicated that they could not be the authors of the bombing because they where somewhere else when it happened.

They offered the following alibi:

1. Besnik Hasani: he said he spent the greatest part of the night between 23 and 24 September 2007 in the company of one of his girlfriends, A A; he specified that before midnight he visited the sheep stable run together with Nusret Cena, in the municipality of Kacanik; he then went to the Motel Europa 92, which is on the road from Pristina to Skopje and close to the stable, where he spent few hours with A; then, they went together to Hane i Elezit, with the purpose to meet Burhan Shkreta in his pastry shop, to collect some money sent through him from his relatives living and working in Germany; eventually, he said, he returned, together with his girlfriend to the Motel Europa 92 where they drunk a coffee and finally he brought her company at home in Ferizaj before returning home.

The entire alibi is based on the declarations of A A, F C, R B, B Sh and S S, indicated as witnesses by Besnik Hasani and heard on 25 May (A), 8 June (F C and R B), 30 June (A and R B) and 2 September (B Sh and S S).

The deposition of Fehmi Cena, who works as guard and breeder in the sheep/goat stable owned by Besnik Hasani, Nusret Cena and others, confirmed apparently the version of Besnik Hasani, that together with A A he visited the stable (which is located close to the Motel Europa '92) to verify the spread of a disease amongst the animals and the high mortality that it had caused. However, the deposition gave the clear impression to the Panel that the witness was prepared and that he referred circumstances that he was asked

to repeat. In fact, his capacity to understand and to remember immediately appeared very low, as his intellectual skills. He referred circumstances in a very generic manner but was extraordinarily precise to link, nobody knows why, the visit of Besnik Hasani to the bombing in Bill Clinton Avenue! What was the relation between the two facts? What was the significance of such an odd relation between two facts which do not have, in the eye of the witness, any relation amongst them? To verify the capacity of the witness to remember, it was sufficient, by the Presiding Judge, to ask him the date of the Declaration of Independence of Kosovo (a date that, it is believed, any citizen of Kosovo can hardly forget). The hesitating answer was 17 September.... And, as noted in the minutes, only once the correct answer came to him from the public present at the hearing and from the Defense Counsel, he was able to correct himself.
This episode confirmed what was evident from the beginning to experienced judges, i.e. that the witness was not credible and that his deposition was not genuine.

A A, who should be the cornerstone of the alibi, has changed her versions in the course of the investigation and in the course of the trial. Initially, she tried to avoid her duty to testify, adducing the sensitiveness of the issues asked to her[1].
Then, in the course of the examination, her previous statements were repeatedly used to refresh her memory and to confront her with what she had said to the investigators.

Her version, to have spent the night between the 23 and 24 September 2007 from 9.30/10.00 p.m. until the first hours of the morning together with Besnik Hasani, has been challenged by the Prosecutor on the consideration that in the course of that night a number of phone calls were registered between her phone (044 868 368) and Besnik Hasani's phone and that the two phones, on the base of the cell site evidence, resulted collocated in different localities. This proved, it was the conclusion of the Prosecutor, that A A and Besnik Hasani were not together on the critical night and that the alibi was false. A A's phone was traced in Ferizaj, where she lives, while Hasani's phone was found in different localities of Kosovo, from Pristina, in the early evening, to the area of Kacanik.

As underlined by the Prosecutor in her final submission (written document, pg.31) the declaration of A A changed in the course of time. She initially refused to admit the use of a mobile telephone that, she said in the course of the interview dated 26.6.08 (volume 6), she did not have at the time of the events. When the registrations of communications done with the phone 044 8686 368 to the phone of Besnik Hasani (044 538 000) were played to her, during the second interview[2], on 20 February 2008, she refused to admit that the female voice being heard was her. The same registrations were heard in Court, in Dubrava (the witness was recalled for this purpose on 30 June 2009). The result of the listening was obvious for the Panel: in the various conversations, the two voices were only Besnik Hasani's and A A's voices. The pretence that the phone 044 868 368 was used by Besnik Hasani's aunt was simply a lie. It does not take an expert to discern

[1] A A (25 May 2009, pg.26): "I do not want to comment on that. ... I will not hide anything but I ask to exclude the public if you are going to ask me this kind of questions....I could not say that my life is in danger; it is embarrassing for me as I am an Albanian, and according to our traditions we have to be more intimate, I can say so in front of the court but it is difficult in front of the public."

[2] Cfr. Office report, Volume 9, pg.2676 and attached documents.

between the voice of a young lady and the voice of a woman in her sixties. It does not take much to identify A A's distinct voice in the calls. It is simply unthinkable to negate that the kind of discourses heard in Court belonged to lovers and not to an aunt and a nephew. The same A A was conscious of that and despite the void attempt to resist (with limited admissions) to identify her voice in the taped conversations, it was evident, from her embarrassment (duly mentioned by the Presiding Judge in the minutes, hearing 30 June 2009, end of page 5) that she clearly identified the voices, as anybody else in good faith in the Court room.

That the phone was not A's property but was just lent to her by the aunt of Besnik Hasani is not tenable. No matter how much confidence there may have been amongst Ardiana and S S (if also A A did not mentioned the presence of the auntie and the promiscuous use of the phone before the failure of her first version of the alibi...) it is simply illogical and not credible that the old woman gave the phone to A A, at every hours of the day and of the night, considering that A A had her own life and her own work and that, on the other hand S S had seven sons and daughters living abroad who may have contacted her on the phone. But no phone call from or to abroad results on the phone 044 868 368. And the explanation given (the phone would be used by the aunt only to call the nephew and not other relatives) is just baseless.

S S was called to confirm that the phone number 044 868 368 was used by her (an not by A) and that she used to lend her mobile phone, with that SIM, to A A, in this confirming the version of Hasani's girlfriend.

Completely unable to remember even significant things (on the date of Independence Day, she only knew it had happened one year before; on her capacity to read and write, she said she forgot everything from school time; about her phone number, she only remembers, and in the wrong order, the last three figures), she showed extreme precision on the night that preceded the bombing at the point to remember (with great surprise of the Presiding Judge, who confessed he is not able to remember a phone call from one day to the following one) a phone call she made to his nephew Besnik on the critical night and the exact circumstances of A going out with Besnik Hasani on that night. She stuffed her deposition with incredible, absurd explanations, in the attempt to match with the version of A A. Reading her deposition it is easy to notice the perplexities expressed by the members of the Panel in the course of her examination.

R B is the owner of the Motel Europa '92.

He testified about the presence of Besnik Hasani on the critical night, at the relevant time, in his motel, where he rent a room to 'rest' with A A. To confirm his version, the witness showed an agenda, used as a register, where the name of Besnik was reported on the night between 23 and 24 September (2007, assumedly).

The agenda can not give any guarantee of genuineness, as evident. Nor can the witness.

He also gifted by a miraculous memory, which allows him to remember the presence of clients at distance of two years, he specified to remember the exact date for its connection with the bombing, heard on the television at the distance of few hours from the visit of

Besnik Hasani. This connection, repeated by different witnesses, between Besnik Hasani and the news about the bombing, is at the same time suspect and eloquent. Suspect, since one does not understand why an usual customer as Besnik Hasani was, should be remembered in connection to the bombing. Eloquent, since its recurrence in different testimonies (F C, S S) indicates that it has been suggested to the witnesses.

Finally, in B Sh's deposition it is not possible to find any substantial confirmation of the alibi put forward by Besnik Hasani. It is true that the witness confirmed that at the time he was mandated by his father living and working in Germany together with Besnik Hasani's brothers, to transfer to the accused Hasani the amount of euro 3,000.00 on behalf of Besnik Hasani's relative. But on the time and day and circumstance of the payment there is no coincidence that may corroborate the alibi. In fact, the witness has only referred of a visit of Besnik Hasani to his pastry shop in the afternoon that preceded the bombing (at 6.00 p.m., as referred to the witness by his cousin Sh). The visit paid by the accused to collect money was unsuccessful because the witness was absent from the pastry shop at the moment of the visit.

In essence, the witness has no weigh in favour or against the alibi furnished by Besnik Hasani and must be treated as irrelevant in any direction.

In conclusion, the alibi of Besnik Hasani is unfounded because based on unreliable and false statements of witnesses (A A, R B, F C and S S) who came to Court simply to give fabricated depositions. This is not a surprise, in a trial affected from the beginning by the virus of mendacious depositions as indicated above (pg. 8 – 10). In this case, however, the consequence is quite severe: an alibi that is not proved may be irrelevant to assess the responsibility of the accused; but an alibi that turns out to be false, is a direct confirmation of the intention to cover one's responsibility and must therefore be taken, together with other elements pointing toward the accused, as a demonstration of his responsibility. As a minimum, it must be underlined that the manipulation of the witnesses of the alibi confirms the tendency of Besnik Hasani to lie, to fabricate false circumstances, to influence the witnesses and to invent a justification that has been stigmatized in several passages of this decision.

2. Shpend Qerimi

He said he went to a memorial football tournament on the night before the bombing. He offered witnesses to confirm it.

The Panel thinks that, if also the alibi is proved, it is of little significance.

Frustra probatur quod probatum non relevat. The circumstance that the accused was present to the tournament before midnight outside Pristina, does not exclude that he may have reached Pristina few hours later.

3. Nusret Cena

In the closing speeches, his Defence Counsel pointed out that from the reports of the phone metering[1] it results that from the phone of Nusret Cena (044 326006) a phone call reached the number 044 281164 at 1.26 a.m., i.e. approximately 40 minutes before the bombing took place (at around 2.10). The cell mapping of the phone indicates that the phone call was channeled though the GSM cell Bregaca-2, in the same locality, south of Ferizaj. The locality is over 50 kilometers outside Pristina, in the direction to the border with FYROM.

Of course this element weighs in favour of the accused since it makes it very unlikely that Cena was in the condition to stay on the phone in Bregaca and then to reach Boulevard Bill Clinton in such a short span.

Naturally, one may argue that someone else may have been on the phone at that time, while Cena may have been on his way to Pristina. It could be added that this was a preordination for an alibi. On this last consideration, it can be rebutted that if it was a planned alibi, it would have certainly been done in a better way, calling Cena's phone at a time closer to the explosion. On the other hand, it is not clear why only Cena, surely not the most directly interested to revenge Triunf Riza or to scare Sekiraqa, and a side figure all in all, would have thought in advance to create such an alibi for himself, without coordinating with the others.

- - -

Conclusions

The amount of circumstantial evidence collected in the course of the trial and exposed above, allows the Panel to establish the responsibility of Besnik Hasani and Shpend Qerimi as participants in the bombing.

From the illustration of the different aspects of the evidence, it can be concluded that they are coherent and that they provide mutual confirmation.

The possibility of different explanation of the mosaic created by the different pieces of evidence has been ruled out.

Both Besnik Hasani and Shpend Qerimi have strong evidence against them.

It is felt by the Panel that this point needs a further specification in relation to Shpend Qerimi, in order to avoid the impression that his conviction is only a reflection of the conviction of Besnik Hasani. It is not.

The responsibility of Shpend Qerimi derives from the pieces of evidence against him and namely his participation in the murder of N B and in his constant presence at the side of Besnik Hasani in the unfolding of the events and in his (of Hasani) contention with E S. Eventualy, the argument confuting his alibi (see above, pg.38) is a further element.

[1] Cfr. report of D T, dated 25 July 2008, Volume 9, pg.2852, mentioned by Lawyer Azem Vllasi in his closing speech, written version, pg.3.

The ascertained presence of Shpend Qerimi on the night of 27/28 September at the crime scene of the triple murder and the role taken by him in the triple murder can only be explained as an assumption of responsibility for the elimination of a possible witness of circumstances relevant to the bombing case. To think that he participated in the triple murder only because he wanted to do a favour to his friend or because he was requested to do so by Besnik Hasani, without any connection with the case that had taken place three days before in Pristina, would be just naïve and unprofessional. His closeness to Besnik Hasani is well testified by the number of phone calls amongst the two, by their common professional background, by the continued loans granted by Hasani to Qerimi, by the patronage exerted by the first towards the second[1]. All these considerations indicate a common interest, defining the common destiny of the two policemen. Therefore it must be concluded that they had the same level of involvement in the organization of the attack to the restaurant Sekraqa, if also Besnik Hasani for his personality has taken a leading role.

Similar consideration may not be done in relation to Nusret Cena, who appeared, in the course of the entire trial, as a secondary figure. Linked to Besnik Hasani from long established friendship and from common business interest (in the sheep farm), he is not a policeman and has not therefore developed that sense of hatred and opposition to the group of Sekiraqa which has emerged in the course of the trial and that is it understood as the great motivator behind the crime. To think to his participation in the bombing only for his closeness to Besnik Hasani or for the visit he paid to the house of M I, is excessive. In addition, his extraneousness to the circle of police officers who orchestrated and executed the bombing would have implied a great risk of leaking of information, as happened for N B. On his presence at the crime scene of the triple murder, this Panel is of the opinion that the identification of a car similar to his is not a conclusive element. It may have other explanation or it may imply a *quantum* of participation in the crime that does not necessarily indicate his responsibility also for the crime in Bill Clinton Boulevard. On this issue, this Panel does not want to add more, leaving to the natural judge of the triple murder case the determination of the various responsibilities.

All these considerations, combined with the alibi examined before, at page 44 of this decision, bring to the conclusion that Nusret Cena is not responsible for the crimes listed in the indictment.

- - -

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

The first crime listed in the indictment is aggravated murder in co-perpetration, contrary to Article 147, paragraphs 4, 9, and 11 and Article 23 of the CCK.

The Panel understands that the will of the perpetrators was not directed to the murder of Naim Murti and Pleurat Sllamniku.

---

[1] Cfr. phone call between M I and Besnik Hasani on the 'short dirty guy', i.e. Qerimi on 18.10.07 at 18.17

When the accused placed the explosive under the staircase of the Restaurant Sekiraqa, their intention was to blow the building up, in order to damage and threaten the owner of the Restaurant. However, the perpetrators were aware of the potential of the explosive device at their disposal. Experienced police officers do have a sufficient knowledge to understand that the detonating potential of 7/8 kilos of Nitropenta[1] or a similar synthetic explosive as used in the occasion has catastrophic consequences. This does not require explanation. It should be clear to any individual of common sense and good judgment.

The deadly consequences, as illustrated in the report and emerging clearly from the pictures taken at the crime scene, were connected to the modalities of construction of the building.
This does not excuse the perpetrators, who bear the consequences of their action. Placing the bomb, they foresaw its destructive effects on the building. That it took place with different modalities than expected (not upwards but sideward) does not change the *mens rea* of the crime.

The presence of the customers of the bar Prestige was known to the perpetrators, who had passed through the alley where the bar is located in order to reach the front of the building and the entrance to the restaurant Sekiraqa.

They accepted the devastating and deadly consequences of the explosion. The intentionality of the action, in other words, embraced the possible consequences of the action and accepted them as collateral damage. In these terms, a *dolus eventualis* (which is a form of *dolus indirectus*) describes best the will of the perpetrator. A specific state of mind where there is the prevision of a number of options as the possible outcome of the criminal act, including casualties. The most severe consequences may not be the direct aim of the action but are nonetheless considered unavoidable and accepted for the achievement of the objective. The will of the perpetrator(s), by not renouncing to the foreseeable and foreseen deadly consequences, demonstrate the prevalence of the criminal determination on other interests (protection of life, body integrity, or property) which are therefore degraded and annihilated.

In conclusion, in relation to the homicides of Naim Murti and Pleurat Sllamniku, the qualification of the facts as murder is correct. And this qualification is aggravated by the presence of the circumstances listed in number 4, 9 and 11 of article 147 CCK. All the three circumstance can be easily identified in relation to the number of lives put at risk, for the meanness of the reasons, and for the number of the victims provoked by the act. All these circumstances, being self-evident in the opinion of the Panel, do not require specific illustration.

The facts described in the second count must be re-qualified since the initial qualification as attempted murder does not appear to be correct.

For the body harm caused by the explosion to numerous victims, the qualification as attempted murders appears to be excessive. The intentionality which is implicit in the

[1] KFOR report from crime scene visit dated 24.9.07, vol. 8, pg. 2184.

attempt to commit a crime is somehow incompatible with the *mens rea* outlined above, i.e. *dolus eventualis.*

Article 154 para 1, number 1 CCK better describes the facts of the count since the body harm caused to some (if not all) of the injured parties was severe enough to endanger their life. This reconstruction has the benefit to qualify both crimes as accomplished.

On the other hand, the endangering of lives of more persons is included also in the aggravating circumstance n.4 of article 147 CCK.

A last point.

At the close of her closing speech, the Prosecutor has suggested that if the Panel had not found sufficient elements to establish the criminal responsibility of Nusret Cena for the facts described in the charges, it would have had anyway the power to consider the facts proved in the course of the trial and re-qualify them in relation to Cena as failure to report preparation of criminal offences and/or failure to report criminal offences or perpetrators (articles 303/304 CCK), since it had emerged clearly and it must be concluded therefore that Cena had knowledge of the attack and of the participants.

The Panel can not share this viewpoint.

The elements of the crimes listed in the indictment and those of the crime indicated lastly are radically different. They can not be changed at the end of the trial because the accused Cena has never had the possibility to defend himself form the charge of failure to report.

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

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

This is quite evident in the present case. Besnik Hasani and Shpend Qerimi are two out of six police officers who took part to the bombing. Where are the others? They are still serving the uniform, despite what they did. And this because the two accused did not take on themselves, not even at the end of the trial, the responsibility for they action. Of course this is a free choice, in which the trial panel can not interfere, since it would be a violation of the rule *nemo tenetur se detegere* (nobody has a duty to self-accuse). But the trial panel observes that the behaviour of the accused is the reflection of the rule of silence indicated before, which forbids the indication of the co-participants, because it

would be seen as a betrayal and would be punished as such. As known, in criminal circles as well as in old cultural context, the sense of loyalty is uncontestable, even if it violates the duties towards the democratic society. The violation of such code of honour would bring wrath and shame on the 'delator'. It means that the will originally established to commit the bombing is still alive and vivid and binding on the two accused, for this aspect. And it constitute an insurmountable obstacle, for them, to become cooperative witnesses of the Prosecutor. Instead of choosing a more convenient trial option (becoming cooperative witnesses, they could have made recourse to article 298 KCCP and bargained an agreement with the Prosecutor or plead guilty, earning a considerable reduction of the term of imprisonment) they preferred to face the trial and receive the punishment in its entirety. For their adherence to the original criminal will and to this outdated, out-fashioned code of honor, there is no possibility to recognize a diminishment of the punishment.

The severity of the punishment in the case is justified by two factors: on one side, by the deadly consequences of the crime; on the other side, by the official function of the accused. In the opinion of the panel, what makes the crime extraordinary wicked and horrific is the circumstance that it was committed by a circle of police officers. It must be underlined and remembered that this group of six do not represent the Kosovo police, of which they constitute a deviated branch. We think, we want to believe that the antibodies of the institution are sufficient to prevent the spread of the infection. Nonetheless, the fact that it has actually happened, in a small society, in a Country of new establishment, gives to the population distrust in the institution, sense of betrayal, of helplessness and abandonment. In one expression, the sense of loss of innocence and illusion by the society in its own moral integrity.

Like the last words spoken by the adventurer Kurtz on point of death (*'The horror! The horror!'*), in Joseph Conrad's *The Heart of Darkness*, the repeated exclamation in the message of M I 'the brother ... threw the dynamite, *oh God, oh God*', is the most direct illustration of this sense of disgust and horror.

The Panel considers that for the murders of the two victims, the long-term imprisonment of 25 years is the adequate sanction. Quite close to the minimum for long-term imprisonment (which ranges from 21 to 40 years in jail, *ex art.*37 KCCP), the sentencing however reflects that the intention of the perpetrator was not directed to the murders, which was rather the consequence of the conjure of negative factors.

To this long-term sentence, 3 years of imprisonment shall be added for the crime ex art. 154 CCK and further 3 years of imprisonment for the violation of article 291, paragraphs 1 and 5 CCK.

Based in the provision on the punishment of concurrent criminal offences, article 71 paragraph 1 and 2, n.1, 2 of the Criminal Code of Kosovo the Accused Besnik Hasani and Shpend Qerimi shall serve a long-term imprisonment of 25 years.

Property claim

The claims filed by the injured parties finds wide confirmation in the statements given by the witnesses and in the documents of the dossier. The nature and severity of the injuries are confirmed as well.

Therefore, the accused Besnik Hasani and Shpend Qerimi, cumulatively and jointly, shall compensate the injured parties Arife Murti, Zyhrije Murti, Guri Murti, Bardh Murti, Avni Murti and Fadil Murti, for the damages caused.

However, the data provided in the criminal proceedings does not afford a reliable basis for either a complete or partial award.

As foreseen in article 112 (2) of the KCCP, the parties will have to file a civil claim in order to have a final assessment of the amount of the damages.

Costs of the criminal proceedings

Pursuant to Articles 102, Paragraphs 1 and 3, and 391, Paragraph 1 item 6), of the KCCP, the defendants are jointly 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.

26th of September 2009

Presiding Judge, reporting — Recording Clerk

Francesco Florit — Nexhmije Mezini

LEGAL REMEDY:
The parties have the right to appeal this verdict within fifteen (15) days of the day the copy of the judgment has been served pursuant to Article 398 Paragraph 1 of the Kosovo Criminal Procedure Code (KCPC) to the Supreme Court of Kosovo through the District Court of Pristina.

OK for publication!