

DISTRICT COURT OF PRISTINA

P Nr. 459/2009

Pristina, 7 February 2011

IN THE NAME OF THE PEOPLE

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

EULEX Judge, Mr. Ferdinando Buatier de Mongeot	Presiding Judge
EULEX Judge, Mr. Arkadiusz Sedek	panel member
Kosovo Judge, Ms Hajrie Shala	panel member

Assisted by the court recorder Sonila Macneil, in the criminal case against:

- 1) **Besnik Hasani**, nickname "Firaja", son of Arif and Nazlije, DOB 20.10.1976, POB Ferizaj, residing in the village of Firaja, Kosovo Albanian, married, former KP officer, currently in detention on remand since 21.1.2008 with regard to another criminal proceeding
- 2) **Shpend Qerimi**, son of Mustaf and Shefkjije, DOB 18.9.1974, POB Ferizaj, residing in Ferizaj, Kosovo Albanian, married, former KP officer, currently in detention on remand since 21.1.2008 with regard to another criminal proceeding.
- 3) **Nysret Cena**, son of Isen and Merushe, DOB 1.1.1975, POB Doganaj, residing in Kaqanik, Kosovo Albanian, married, KPC member
- 4) **Avket Vishi**, son of Idriz and Nakshije, DOB 18.6.1966, POB Gorancë, residing in Gorancë, municipality of Hani I Elezit, married, engineer.

ACCUSED OF

Besnik Hasani, Shpend Qerimi and Nysret Cena:

Count I .

1. *Aggravated murder of Nesbat Baftiu, contrary to art. 147, para 1, sub 3, 8 and 9, art. 23 CCK*
2. *Aggravated murder of Urim and Sylejman Baftiu contrary to art. 147, para 1, sub para 3, related to art. 23 KCCP, and attempted aggravated murder of Sadik and Bujar Baftiu, contrary to art. 147 par. 1 sub par. 3 related to art. 20 and 23 KCC*

Besnik Hasani and Shpend Qerimi:

Count II.

Unauthorized possession, ownership, control and use of weapons, contrary to art. 328 para 2 CCK.

Avket Vishi

Count IV.

Unauthorized possession, ownership, control and use of weapons, contrary to art. 328 para 2 CCK.

After having held public hearings on 16, 17, 18 June 2010, 13, 14, 15 July 2010, 6, 14, 16, 29 September 2010, 21 October 2010, 5 and 9 November 2010, 31 January 2011, 1 February 2011, in the presence of the SPRK Prosecutor Mr. Reshat Millaku, of all the accused and their defense counsels Mahmut Halimi, Tahir Rrecaj, Avni Ibrahim, Azem Vllasi, and ex-officio defense lawyer Isak Hoxha, re-qualifying the facts described by the public prosecutor as in the below counts, publicly announces the following:

VERDICT

Pursuant to art. 37, 38, 39, 391, para 1 and 2, CPCCK,

a. Besnik Hasani and Shpend Qerimi are

FOUND GUILTY

Because between 00.10-00.15 of the night between 27 and 28 September 2007 they murdered Neshat, Urim and Sylejman Baftiu in a deceitful manner at the Lepenc Bridge (located on the road that from the Pristina-Skopje Highway leads to the village of Saponica). In particular, the defendants ambushed the car Golf 2 with license plates 469KS117 on which Neshat Baftiu, Urim, and Sylejman Baftiu (together with Bujar and Sadik Baftiu) were travelling towards the village of Dubravë. When the car reached the Lepenc bridge, Besnik Hasani and Shpend Qerimi (who were waiting on the right side of the road) opened fire against the car with two AK 47 automatic rifles. Neshat Baftiu was hit by many bullets on the right part of the body and one bullet hit him on the right part of the head, penetrating the brain and causing his death. Urim Baftiu died of damages caused to his heart, lungs and liver by the bullets and Sylejman Baftiu died as a result of injuries caused by the bullets to the right part of his head.

Thus Besnik Hasani and Shpend Qerimi jointly committed the criminal offence of Aggravated Murder, contrary to art. 23, 147, para 1, nn. 3 and 11, CCK.

b. Besnik Hasani and Shpend Qerimi are

FOUND GUILTY

Because between 00.10-00.15 of the night between 27 and 28 September 2007 they attempted to murder Bujar and Sadik Baftiu in a deceitful manner by the Lepenc Bridge (located on the road that from the Pristina-Skopje Highway leads to the village of Saponica). In particular, the defendants ambushed the car Golf 2 with license plates 469KS117 on which Bujar and Sadik Baftiu were travelling towards the village of Dubravë. When the car reached the Lepenc Bridge, Besnik Hasani and Shpend Qerimi (who were waiting on the right side of the road) opened fire against the car with two AK 47 automatic rifles. At least 40 shells of AK 47 cal. 7, 62 were fired against the car used by the victims. Bujar Baftiu was

hit by bullets at the head and at the right side of the abdomen, including the skin tissue, the cell tissue, the *colon ascendens*, which then perforated and whose content dispersed to the abdomen cavity and partially damaged the *omentum majus*. Despite the serious injuries sustained, Bujar Baftiu survived.

Sadik Baftiu was directly exposed to the raffles of bullets which caused the death and injuries of the other victims but remained miraculously unharmed.

By doing so Besnik Hasani and Shpend Qerimi intentionally took an immediate action toward the commission of the criminal offence of attempted aggravated murder, thus jointly committing the criminal offence described in art. 20, 23, 147, para 1, nn. 3 and 11, CCK.

c. Besnik Hasani and Shpend Qerimi are

FOUND GUILTY

Because in the circumstances described above sub count 1 and 2, they without authorization transported, were in possession of and used two automatic rifles model AK-47 Kalashnikov cal. 7,62, by which they committed the criminal offences described above sub a. and b.

Thus Besnik Hasani and Shpend Qerimi committed the criminal offence of unauthorized ownership, control, possession or use of weapons, contrary to art. 328, para 2, CCK

d. Avket Vishi is

FOUND GUILTY

Because in a non specified date in the month of September 2007 he received from Neshat Baftiu an automatic rifle AK-47 Kalashnikov, cal. 7,62. Avket Vishi tested such automatic weapon in the forest of Luboten. After the murder of Neshat Baftiu he asked and obtained from Bl.B., brother of Neshat Baftiu, the restitution of the said AK47 rifle, together with another AK47 rifle, which he took away with himself.

Thus he committed the criminal offence of unauthorized ownership, control, possession or use of weapons, contrary to art. 328, para 2, CCK.

Pursuant to art. 390, para 3, CPCK,

e. Nysret Cena is

ACQUITTED

because it was not proved that he committed the criminal offences he had been charged with.

THEREFORE

1. Besnik Hasani and Shpend Qerimi are sentenced

- a. to the punishment of long term imprisonment for the duration of thirty (33) years with regard to the criminal offence described in count a
- b. to the punishment of ten (10) years of imprisonment with regard to the criminal offence described in count b;
- c. to the punishment of two (2) years of imprisonment with regard to the criminal offence described in count c.

Pursuant to art 71, para 2, n. 1, CCK, the aggregated punishment of 33 years of long term imprisonment is imposed against Besnik Hasani and Shpend Qerimi

2. Avket Vishi is sentenced to the punishment of a fine of 5.000,00 Euros with regard to the criminal offence described in count d. The fine shall be paid by the defendant within three (3) months after the judgment has become final. In case the fine cannot be collected by compulsion, Avket Vishi shall be substituted with a day of imprisonment for each fifteen euro of the fine.

Pursuant to art. 112,2 and 392 CPCK, Besnik Hasani and Shpend Qerimi, cumulatively and jointly, are

CONDEMNED

To the payment of the sum of 25.000 Euros to each one of the injured parties Menduh Baftiu, Hasan Baftiu, Imer Baftiu, Bujar Baftiu, as a partial compensation for the moral damage suffered. The Court hereby instructs the injured parties (including Sadik Baftiu, who did not file a property claim during the present main trial) that they can pursue the rest of the property claim through civil litigation, since the data provided in the criminal proceedings does not afford a reliable basis for a complete award.

Pursuant to art. 102. para 1, of the KCCP, the defendants shall reimburse the costs of criminal proceedings with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the Court when such data are obtained pursuant to art. 100 para 2 KCCP.

REASONING

1. Procedural background – the Indictment

On 2 November 2009 the Special Prosecutor of the Republic of Kosovo filed with this Court the indictment number PPS 41/09, against the defendants Besnik Hasani, Shpend Qerimi, Nysret Cena, Z. B., V. R., and Avket Vishi, charging the defendants with aggravated murder, attempted aggravated murder (Besnik Hasani, Shpend Qerim, and Nysret Cena), criminal association (Avket Vishi, V. R. and Z. B.), and unauthorized ownership, control, possession and use of weapons (Besnik Hasani, Shpend Qerimi, Avket Vishi and V. R.).

After the confirmation hearing, only the charges listed above were confirmed, against the defendants Hasani, Qerimi, Cena and Vishi.

The main trial was held in public on 16, 17, 18 June 2010, 13, 14, 15 July 2010, 6 14, 16, 29 September 2010, 21 October 2010, 5 and 9 November 2010, 31 January 2011, 1 February

2011, in the presence of the SPRK Prosecutor Mr. Reshat Millaku, of all the accused and their defence counsels.

The following witnesses were examined during the main trial:

- M. B., H. B. B. B., I. B. (16 June)
- S. K., R. T. (17 June)
- R. M., N. A., (18 June)
- A. B., N. B. (23 June)
- B. B., B. B., V. B. (24 June)
- X. T., S. V. (13 July)
- A. B. (13 July and 14 July)
- I. D., A. K. (14 July)
- F. B., B. M. (15 July)
- F. N. (6 September)
- D. H., M. D., K. S. (14 September)
- A. A, F. V., I. M. (16 September)
- R. Q., M. G. (29 September)
- A. Z. (30 September)
- S. B. (21 October)
- B. R. (6 September)

After the presentation of material evidence, the defendants were examined.

Deliberation and voting took place on 4 February and 7 February 2011, and the verdict was publicly announced on 7 February 2011.

In accordance with Article 15 CPCK, international interpreters translated court proceedings and all court documents relevant to the trial into Albanian and English, as necessary.

1.1. Parties' motions

During the main trial the parties filed several motions for the admission of new evidence. The following evidence was acquired in addition to the documents already present in the case file:

- the ruling of initiation of investigation in the case in front of the MC Ferizaj against F. H. and statements made in that proceeding by witness R. T.
- the record of the radio communications of the night between 27 and 28 September 2007, with regard to the communications which happened between 24.00 of the 27 September and 1.00 of the 28 September (Kacanik Police station).
- Service minutes taken during the same night by the Kacanik Police Patrol n. 4 (head of patrol Officer R. M.).
- a list of all the car accidents which took place during the night of 27-28 September 2007 in the jurisdiction of Ferizaj, indicating the type of car involved in the accident and the driver.
- The meteorological institute of Kosovo provided the trial panel with a certification of the moon phase and of the meteorological conditions of the critical night;
- The telephone metering and the SMS messages related to the telephones of defendants Besnik Hasani and Shpend Qerimi (if not already acquired to the case file);
- the CD provided by witness F. N., which contains some conversation between the same and R. T.

- the transcript of the SMS messages exchanged between the telephones of F. N. and R. T. in the period between 1 October 2009 and the 30 April 2010;
- the metering of the phone calls made and received by M. and Ibrahim D. and A. A. in the period 25-29 September 2007;
- the SMS messages received by the witness F. V. in the period indicated in the order.
- the police reports that defendant Besnik Hasani made to his superiors on the facts which were being investigated;
- three aerial maps with metric scale attached, supporting the examination of Besnik Hasani;
- one sketch map (during the examination of witness R. M.).

Ex-officio, the panel requested from Pro-Credit to supply the Court with information regarding the bank account of Besnik Hasani, in particular with the following information:

- o the amount of money Besnik Hasani had in his bank account during the period of time 20 to 30 September 2007
- o the daily some of money Besnik Hasani was allowed to withdraw from his ban account with the ATM machine.

Witnesses A. Z., K. I. and A. Y. were admitted upon request of the parties. Being it impossible to summon A. Y. her previous statements were read out in the minutes of the trial.

Further motions of the parties were rejected by the trial panel.

The panel here confirms in their entirety the reasoned rulings issued during the main trial in order to reject the proposals of the parties to acquire evidence, for the same reasons expressed therein.

In particular:

- the examination as witnesses of F. V. and F. T.
- The confrontation between the witnesses R. T. and F. N., A. B. and A. B. was not admitted, being the slight discrepancies between the respective statements sufficiently clarified, also in view of the rest of the evidentiary framework.
- Other witnesses proposed by the defence during the same session (M. S. and R. H.) were not admitted because deemed irrelevant for the decision.
- The motion of the defence to obtain from KEK clarifications as to whether and when there were power cuts on 28-27 September 2008 was deemed superfluous in light of the already present evidence.
- The examination as witnesses of M. J., Y. M. and N. I. was not admitted because superfluous, in light of the already acquired pieces of evidence to the case, or irrelevant.

It must be repeated here that the requested reconstruction of crime scene cannot be fruitfully performed during the main trial, being it impossible to reproduce the same meteorological and light conditions of the critical night.

On the other hand, the inspection of the crime scene is confirmed to be superfluous, in consideration of the huge amount of evidentiary documents present in the case file (photographs, aerial photographs, sketch maps), which was also submitted to the witnesses during their examinations and are therefore by far sufficient in order to shed light on the factual and topographical issues connected to the case.

2. Competence of the Court

Pursuant to article 23 paragraph 1 CPCK, district courts have jurisdiction to adjudicate in at first instance criminal offences punishable by imprisonment of at least five years or by long – term imprisonment.

The aggravated murder and the attempted aggravated murder listed in the indictment both are punishable with long term imprisonment, thus the material competence lies with the district court.

According to the indictment, the criminal offences occurred on the road leading to Dubrava village in Kacanik Municipality. Thus, pursuant to article 27 para 1 CPCK, the district court of Pristina has the territorial competence to adjudicate this case.

Pursuant to article 3 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (hereinafter LoJ), EULEX Judges assigned to criminal proceedings will have the jurisdiction and competence over any case investigated or prosecuted by SPRK.

The present case was investigated and indicted by the SPRK Prosecutor; therefore, in accordance with article 4.7 of LoJ, the trial panel of the district court was composed of a mixed panel of two EULEX Judges and one local Judge.

None of the parties objected to the composition of the panel.

3. Factual and legal findings

The below list of facts, either not contested, or based on the pieces of evidence highlighted, provides the background of the events which are the object of the proceeding.

- a. In the night between 27 and 28 September 2007, at midnight, Neshat, Urim, Sulejman, Bujar and Sadik Baftiu left from Mani Restaurant (located on the Ferizaj-Kaqanik highway) heading to their village of Dubravë, some kilometres south¹. They were travelling on the red Golf II of Neshat Baftiu.
- b. After reaching the Martyrs' Cemetery, located on the highway a couple of kilometres south of Mani Restaurant², they took the junction to the left leading to the village of Dubravë. The highway until the cemetery and the road from the cemetery leading to the Dubravë runs between isolated fields and woods, with some scattered buildings.
- c. Around one kilometre and a half after the junction³, passing on the bridge over the Lepenc river (hereinafter: "Lepenc bridge"), the car was ambushed. A shower of bullets of automatic rifle AK47 type was shot on the car and on its occupants from the right side of the road⁴. Two automatic weapons were shooting at the same time,

¹ See statements of witnesses Bujar and Sadik Baftiu.

² See photographic maps # 1 and 2, acquired *ex officio* and attached to the case file, with numbers indicated by Besnik Hasani during the hearing of 5.11.2010. No party contested the accuracy of the said maps and of the metric scale present therein. The examination of both maps and of the distance scale included in the maps shows that the distance between Mani Restaurant and the junction of the Martyrs' Cemetery ("*Varrezat e Dëshmoreve*") is of around 2.400 meters.

³ Such approximate assessment derives from witness R. T. and from witness R. M.'s statements, trial minutes of 18.6.2010, pag. 16. The examination of the map maps # 1, acquired *ex officio* and attached to the case file, with numbers indicated by Besnik Hasani during the hearing of 5.11.2010, provides documentary confirm that the road distance between the cemetery and the crime scene (indicated by Besnik Hasani with n. 7) in the map, is of around one kilometre.

⁴ See the statements of the witnesses Bujar and Sadik Baftiu, together with the criminal report, with forensic assessment, dated 28.9.2007 and signed by police officer A. M. (binder 3 of the case file) containing drawings and sketches, photographic documentation of the incident and a ballistic report on the nature of the numerous caliber-7,62/39 spent cartridges found at the crime scene on the right side of the road.

according to the recollection of Bujar Baftiu and to the ballistic expertise attached to the case file.

- d. The shooting took place at around 00.10 of 28.9.2007⁵.
- e. As a consequence of the shooting, the car hit the right guardrail in the middle of the bridge, stopping there⁶.
- f. Neshat Baftiu, Sulejman Baftiu and Urim Baftiu died as a consequence of the shooting⁷; Bujar Baftiu, was seriously injured⁸ and Sadik Baftiu remained unharmed.
- g. The first person who passed by the crime scene after the shooting was N. B., a relative of Bujar Baftiu, who by chance travelled with his car on the bridge only some minutes after the event. He saw the victims car positioned on the bridge and did

⁵ Several testimonies collected during the main trial lead to this conclusion. Such testimonies are internally consistent, without contradictions, nor discrepancies. The panel does not find any reason to discharge any of them. The testimonies are the following:

- **Bujar Baftiu** in his testimony on 21 June 2010, where he explained that the shooting happened at about 00:12, by two shooters and a distance of arr. 1,5 to 2 m between them.

- **N. B.** stated that he left Kacanik I Vjeter at around midnight and when he heard the gunfire he had already been travelling some ten minutes. He reached the bridge only some minutes after hearing the gunshots (which in the beginning he mistook for a flat tire). This allows to place the time of the shooting – according to N. B.'s version, and in line with the above reconstruction - at around 00.10 or some minutes later

Bujar Baftiu confirmed that N.'s car passed by a very short period of time after the shooting.

- **S. K.** (the first police officer to arrive at the crime scene) reached the bridge at around 00:20, and saw the car and injured people, and asked for help. At "around 00:15", R. M. received via Radio the request for help from the crime scene, and some ten minutes later (00:30) he was at the crime scene. This recollection, being expressed with a certain degree of vagueness due to the time lapse, is compatible with the police reports received from Ferizaj Police Station (which affirm that at 00:20 an anonymous call informed Lima Kontroll about the shooting).

- **Sadik Baftiu** testified that he (together with the other victims) had left Mani restaurant at around midnight or 00:05. In consideration of the distance between the restaurant and the crime scene (of around 3,4 kilometres) it can be deemed that at a normal speed (i.e. around 60 / 70 km per hour in the highway and around 30/40 per hour on the curvy road after the junction at the Martyrs' cemetery) it could have taken not more than 5 minutes from the restaurant to the crime scene. Sadik Baftiu, in his statement give in front of the PP on 2 March 2009, mentioned that some 2 minutes after the shooting N. passed, and after other two minutes (approximately) the Police arrived. All in all, we can conclude that the time of the shooting could be individuated, according to his testimony, around 00:10.

- **F. B.** declared that he called Neshat at approx. 00:20 but nobody answered, thus it is probable that at that time the shooting had already happened.

- The **Police report** attached to Neshat's Baftiu's autopsy report certifies that the body was found at 00:20, which corroborate the conclusion that the shooting happened at around 00:10, since the eye witness Bujar Baftiu testified that some minutes passed until the fist Police Patrol arrived at the scene (S. K.).

In the above framework, the evidentiary elements allow to conclude that the most likely time of the commission of the crime is around 00:10.

⁶ See again the photographic documentation to the police report 28.9.2007, as well as the statements of the police officers who intervened at the crime scene immediately after the incident.

⁷ The circumstance is uncontested and is anyway clearly ascertained in the autopsy reports attached to binder 3 of the case file, dated 28/9/2007 (as to Neshat and Urim Baftiu) and 9/10/2007 (as to Sylejman Baftiu). In particular, the death of Neshat Baftiu was caused by a bullet which hit him at the skull; the death of Urim Baftiu was caused by a bullet which infiltrated inside the internal organs (spleen, lungs and spinal cord); Sylejman Baftiu's death was caused by a projectile hitting him at his head, above the ear.

⁸ See the statements of Bujar Baftiu at the hearing of 16.6.2010, along with the medical report contained in the case file. Bujar Baftiu stated as follows: "I was shot by several bullets, three on my head, 7-8 on the right abdomen and 3 on the left shoulder. I was admitted in the hospital for 12-13 days. One day after Sylejman died I was upset and could no longer stay in the hospital. I requested the doctor to release me and continue the treatment at home. The treatment continued for 3-4 months".

- not stop, not knowing what was going on. Bujar Baftiu was able, despite his wounds, to notice him and to phone to him in order to ask him to come back to the crime scene, where he returned 5-7 minutes later, together with others.
- h. Before he arrived, one police patrol led by Police Officer S. K. had meanwhile reached the crime scene⁹. The area was secured and the victims were carried away.
 - i. At about 12.20 the police patrol commanded by Officer R. M., which at that time was patrolling the village of Vataj, heard a service radio message calling for support at the Lepenc Bridge, where a murder had been committed. Therefore the police patrol started heading towards the crime scene. Approximately one minute after the radio call¹⁰ they came across, a VW Golf car coming from the direction of the Dalloshi neighbourhood¹¹. The interception took place at the junction with the Soponica Road. Besnik Hasani and Shpend Qerimi were inside such car. The police officers stopped the car and, as soon as they realized that the driver was a police officer, they let it go¹².
 - j. Some days after the event, rumours were spread in the village that two persons, R. T. and X. T. had witnessed the crime. Thus the families of the victims contacted them in order to obtain information about the events¹³.

The investigations, initially led by the KPS of Ferizaj, after some weeks was taken over by the UNMIK police.

The witnesses examined during the investigation provided the prosecutor with elements of guilt against Avkhet Vishi with regard to a criminal offence not directly linked with the murder at the Lepenc bridge.

In the following part of the reasoning the specific evidence relevant to each of the defendants and their role in the murder will be examined.

3.1. Shpend Qerimi and Besnik Hasani

⁹ Statements of N. B., trial minutes of 23.6.2010, page 33. Statements of S. K., trial minutes of 17 June 2010, according to which the police patrol at "about 12.20", travelling along the road of the Lepenc Bridge, came across the red Golf II of the victims stopped on the left side, with inside the five occupants. Nobody else was there until N. B. arrived there on his way back. This means that when the police patrol arrived at the crime scene, N. B. had already been there and had already proceeded on along the road, only to come back "5-7 minutes" after.

The joint analysis of the testimonies of S. K. and of N. B., previously summarized, shows that the two versions independently from each other concur in the chronology of the shooting.

¹⁰ This timing is easily obtained by the statement of R. M. in front of the trial panel, when he said that immediately after he received the radio call he started driving fast (i.e. around 80 km/h) towards the crime scene and that the place where he came across Besnik Hasani was at a distance of just one kilometre from the place where he had received the radio call. It can be concluded that in order to cover one km at 80 km/h of speed it cannot be needed more than one minute. The different timing guessed by the witness (about 10 minutes) is considered by the witness himself as not precise: the panel, anyway, deems that the reconstruction based on the space distance and on the vehicle's speed is more reliable, being based on facts which cannot be contested (i.e. the place where the police vehicle was at the time it started directing towards the crime scene, and the place where it encountered Besnik Hasani's car.

¹¹ The Dalloshi neighbourhood is marked with number 5 on the map # 1 acquired ex officio. The mark was inserted upon indication of Besnik Hasani during his examination. As it can be noted, the Dalloshi neighbourhood is located along the road coming from the crime scene towards the place where the police came across Besnik Hasani's car, at a distance of around one kilometre from such place.

¹² This circumstance is plainly admitted by the defendants.

¹³ See on this the statements of R. T. and of nearly all the witness of the Baftiu family who were summoned for the trial.

The evidentiary framework against Shpend Qerimi and Besnik Hasani is threefold. First, it is based on the statements of the witness R. T., who eventually identified the defendant Shpend Qerimi at the crime scene immediately before the murders. Second, a number of witnesses confirmed that R. T. told them that a man, subsequently recognized as Shpend Qerimi, was at the crime scene on the night of the murder. Third, strong circumstantial pieces of evidence were acquired, univocally converging towards the defendants, pointing at them as the persons who were at the crime scene on the critical night, armed with automatic weapons, immediately before the shooting took place. Preliminarily it has to be noted that several factual circumstances are either not contested by the defence, or arise plainly from the evidentiary proceeding. Reference is made to the circumstances of time and of location of the event, as described and reasoned above under letters "a" to "j".

3.1.1. R. T.'s statements

R. T. gave (first to the investigators and subsequently to the Court) four recounts of the events of 27/9/2007. They provide the same description of the events, but diverge because in the first and in the last examination R. T. stated that he was not able to recognize Shpend Qerimi as the person who was at the bridge.

During the trial examination he was heavily confronted with the previous statements (the one of 20.11.2007 and of 21.2.2008 and the one of March 2009 in front of the Public Prosecutor).

In front of the trial panel (at the hearing of 17.6.2010) he stated, in summary, the following.

- On the night of 27/9/2007 he was in Kaqanik together with his friend X. T.. At approximately 11.30 p.m. he left towards home by taxi. He got off the taxi when he reached the Martyr's Cemetery, located on the Ferizaj-Kaqanik highway. From there the road towards the village of Dubravë began¹⁴.
- He and X. T. started walking along such road towards his house, located in the Tusha neighbourhood of the village of Soponica. In order to reach his house he needed to pass the Lepenc Bridge.
- Approximately 200 meters before reaching the bridge, when walking in front of the Provaliu school, they were overtaken by an Audi car, new model A4 or A6, going towards the bridge of Lepenc. The colour of the car was metallic grey and it did not slow down while overtaking them¹⁵. R. T. did not recognize any of the passengers of the car while being overtaken, despite being able to notice them inside the car.

¹⁴ All the relevant places can be easily viewed on the maps ## 1 and 2 attached to the case file, acquired ex officio on the occasion of the examination of Besnik Hasani.

¹⁵ R. T.: *the taxi dropped us at the Martyrs Graveyard and we continued to our house. We came to the Provaliu School and at the time a vehicle came by.*

Public Prosecutor: Can you describe the vehicle?

R.T.: It was an Audi. I did not see any particulars of the vehicle since it was dark.

Public Prosecutor: Do you remember what you stated during the investigation about the type of the vehicle?

R.T.: I don't know the vehicles that well, I think A4, 6, I don't know them.

Public Prosecutor: did the car stop when it got close to you?

R.T.: The car stopped before going to the bridge.

Public Prosecutor: while you were walking near the school, did the car slow down or speeded up?

R.T.: it was driving at a normal speed.

- The visibility during that night was good and there was full moon. The grey Audi stopped approximately one hundred meters after overtaking the witness, immediately before the Lepenc Bridge. Two persons got off the car and remained on the spot, just a few meters before the bridge, whereas the Audi proceeded beyond the bridge, heading towards the Nikaj village.
- R.T. and X.T. proceeded on their walk towards the bridge, despite a feeling of fear caused by the presence of the two persons by the bridge: fear which induced R.T. to ask X.T. whether they should arm themselves with a stone¹⁶. Eventually, the T.s limited themselves to merely crossing the road towards its left side, in order to distance themselves from the two persons, who were standing on the right side of the road. Afterwards they continued their walk, reaching the bridge and passing by the two persons. One of them was at a distance of around 5-6 meters from them, just beside a small mound of sand lying on the side of the road, holding in his hands something like “*a weapon or wood*”, while the other one was standing by a wooden fence located some meters away, towards the field, at a distance of “*5-10 meters*” from R.T..
- The man carrying the “*weapon or wood*” was wearing a black jacket, he was blond and with short hair. R.T. stated in front of the trial panel that he did not know who the man was and the darkness of the place made it impossible “*to recognize persons from distance*”.
- After R.T. passed the bridge, he continued until home. While entering in it, some minutes later, he heard gunshots from the direction of the bridge.

As anticipated, the above is the version which R.T. gave at the main trial.

In consideration of the below highlighted discrepancies with the previous statements (made in front of the police on 20.11.2007 and on 21.2.2008 and in front of the public prosecutor on 4.3.2009), he was confronted on them by the parties and by the trial panel.

Indeed, in front of the police on 20.11.2007 he had stated:

- o that only one passenger (and not two, as it was subsequently steadily affirmed, also at the main trial) was left by the car at the crime scene;
- o that once the Audi had passed the bridge it was not possible for R.T. to see whether it turned left or whether it kept on going straight;
- o that the object which the person was holding in his hand was an automatic weapon similar to those used by the KFOR;
- o that he only saw the person at the bridge from the back and that he did not see his face and that if he should see him again he would not be able to recognize him.

The version given at this first police examination (in which he merely stated that the man at the bridge was blond and with short hair and that it was not possible to recognize him), was enriched with more details in the subsequent statements. Some of the additions contradict the previous statement.

¹⁶ R.T.: *The car passed us and it stopped by the bridge. 2 people exited the Audi while it was by the bridge increased speed and we could not see it anymore. It headed Nikaj village and we did not see the car anymore. We continued our way and went towards those people that came off the vehicle. I told X., my neighbour, ‘let’s get some rocks or a piece of wood as they might attacks us.’ He told me they have no business with us. We passed by these 2 people. We went home. There was some sort of shots. Then we went to bed and the following day we found out that some people were killed.*

In particular, R.T. added the following circumstances (all of them were made object of confrontation at the main trial):

- in January 2008 in the Balkan Petrol gas station of Ferizaj he saw again the blond person whom he had seen at the crime scene on 27.9.2007
- on the critical night, upon being overtaken by the Audi, he was able to see in the face the passenger sitting by the driver of the Audi.
- such vehicle was of the same kind of the one driven by Nysret Cena and that a person with his hair parted in the middle was driving it on the night of the murder;
- in the evening of 27/9/2007 it was possible to see a person from very far away, given the bright moonlight of that night;
- the person who was standing at the bridge on the side of the road was blond and in a black jacket.

More importantly, during the investigation R.T. (both during the statements he gave to the police in February 2008, and during the examination in front of the public prosecutor) added a circumstance of great significance: he stated that around “*one month or so*” after the murder, when he was at a City Bar in Ferizaj (formerly known as Hotel Luboten) in the company of B.B., he saw again the person who was at the bridge and informed of this B.B..

R.T. was informed on such occasion that the name of this person was Shpend Qerimi. Based on this recognition, he subsequently stated to the Prosecutor that he was “*500% sure that in the night when Neshat was murdered, Shpendi (Qerimi) was at the bridge with a long weapon*”.

The relevance of such recognition was evident to all the parties of the trial¹⁷.

It is of no wonder, therefore, that the radical recanting of R.T. on this specific issue during the main trial gave rise to an intense confrontation by the parties as to which was the true version and as to the reason for the abrupt change of statement.

Confronted with these discrepancies, R.T. explained to the trial panel:

- that it was not true that after seeing Shpend Qerimi at the bar in Ferizaj he recognized him as the man of the Llepenc bridge;
- that, on the contrary, “*the Dubravas*” (i.e. the members of the Baftiu family)¹⁸ pressured him to falsely declare to the police that the man they were showing him in the bar in Ferizaj (i.e. Shpend Qerimi) was the same man he had seen at the bridge and that the Audi which stopped at the bridge on the night of the murder was Nysret Cena’s car.
- That to this extent, initially R.T., in the late evening three days after the murder, was taken by A.B. by car to various places in order to try and find the Audi of the critical night. They allegedly ordered him to tell that the Audi of the critical night was similar to Nysret Cena’s. In order to threaten him, they allegedly took him to a carwash station, where he was left outside for one hour while Baftiu were chatting inside. Asked whether there were any worse threats addressed to him by Baftiu on this occasion, he answered: “*I don’t know maybe he would have killed me or beat me up severely, I don’t know what he would have done*”.
- That also on another occasion R.T. was taken by B.B. to a café in Ferizaj, where also Shpend Qerimi was present, together with a child. On that occasion, B.B. ordered

¹⁷ At the same time, it is clear that this specific circumstance could not have been referred to the police on the occasion of the first examination, because the examination took place in November 2007, before the meeting at the bar in Ferizaj took place (December).

¹⁸ R.T.: *Everything I stated back then it was under the pressure of threatening* (page 13 of the trial minutes of 17.6.2010).

him that, when examined by the investigators, he should say that Shpend Qerimi was the man who was at the bridge on the critical night¹⁹. Only on that occasion did R.T. learn the name "Shpend Qerimi". R.T. stated that he was threatened by B., but (specifically asked about the nature of the threats) he said that actually B.B. made no specific threats; he merely ordered him to state so to the investigators;

- No other forms of threat were reported by R.T. as having been made by the Baftius.

3.1.1.1. The defence's stance on R.T.'s statements

The defence counsels highlighted several aspects which allegedly made R.T.'s recognition of Shpend Qerimi unreliable.

1. First of all, during the main trial R.T. expressly recanted from his previous recognition.
2. Secondly, R.T. provided a reason for this recanting. He stated that he was forced by the Baftius to falsely recognize Shpend Qerimi as the person who was at the bridge on the critical night
3. Thirdly, on the occasion of the first examination of R.T.'s, i.e. the examination in front of the police on 20.11.2007, he stated that he did not see the face of the person at the bridge and that therefore he would not be able to recognize him.
4. Fourth, the conditions of visibility on the critical night would not allow recognition of a person: this would shed at least a reasonable doubt about the accuracy of the recognition of Shpend Qerimi as the man at the Llepenc Bridge.

On top of that, some additional elements must be carefully considered when assessing R.T.'s statements

- the fact that there is a progression throughout R.T.'s statements as to the recognition of Shpend Qerimi as the man of the bridge (with a final recanting in front of the trial panel).

19 *Public Prosecutor: Can I read the statement of the witness given before the Public Prosecutor on 4 March? You stated that the person who was carrying the weapon, whose name later on I learned was Shpend had blond hair. The back of his head was cut very short. On the upper part of his body he was wearing something black with a slid in the back like a man's jacket, correct?*

R.T.: I said about Shpend Qerimi that I came to know him after the night at the bar but I don't know who was standing at the bridge.

Presiding Judge: is it true that you have seen the person at the bridge?

R.T.: I know that he was wearing a black jacket.

Presiding Judge: What you stated to the Public Prosecutor is not correct?

R.T.: It is true what I told him, but I was told to tell him that.

Presiding Judge: In front of the Public Prosecutor you stated that you saw a blond man with short hair?

R.T.: yes.

Presiding Judge: Now us stated that you did not see him?

R.T.: I saw someone with blond hair, he did have a black jacket on but I don't know who that man was. B. brought me to this café and told me that it was Shpend Qerimi.

Presiding Judge: was his hair short?

R.T.: Yes.

Presiding Judge: Afterwards you said that it was Shpend Qerimi as Berat told you to do so?

R.T.: Yes of course as I did not know him before.

Public Prosecutor: Did B. tell you to say that he had short, blond hair?

R.T.: B. told me that this is the man that was by the bridge. This is Shpend Qerimi, the man that was at the bridge and when you go to give statement say that it was him.

- The fact that several members of the Baftiu family, who at the trial sought compensation from the defendants, had contacted several times R.T. in order to obtain information about the persons which had been seen at the bridge immediately before the murder.

Finally, and most importantly, defendant Besnik Hasani and the defence counsels of Shpend Qerimi provided an alibi defence, alleging that at the time of the murder Hasani and Qerimi they were in the Dallosi neighbourhood, where Besnik Hasani was having a meeting with I. D. This alibi would also provide a sufficient explanation of the fact that Besnik Hasani and Shpend Qerimi had been seen by the police at the Slatina Bridge on the Tetovo road, coming from the direction of the crime scene.

More in detail, Besnik Hasani stated as follows:

- on the 27th September 2007 Shpend Qerimi had contacted him at about 18.00-20.00, asking for the surname and the telephone number of a girl named B. (who was involved in an investigation on which he was working);
- he sent the surname to Shpend Qerimi via SMS;
- Shpend Qerimi asked him to meet in that same evening and that they met in Ida Restaurant at 22.00;
- before meeting with Shpend Qerimi, at about 21.00 he tried (to no avail) to call I. D. (a.k.a. "Toger") in order to ask him the restitution of the sum of 1000 Euros, which I. owed to him;
- during their subsequent meeting, Shpend Qerimi asked to be borrowed 200 Euros for some refurbishment works;
- for this reason, some minutes before midnight they left from the restaurant and headed to I.D.'s in order to ask him for the money;
- at the restaurant they met A.D. and A. A.. Besnik Hasani asked A.D. whether I.D. was at home and whether A. would accompany them. A request which A. declined in reason of his personal relationship with I.D.²⁰;
- in order to reach I.D. they took the following road: *"As you leave Mani there is a road in the direction to Kaqanik and you make a turn right at the Reconciliation Field towards Brezovica. At the flag Junction the road separates, one leading towards Brezovica and the other leading towards Tetova. At the Flag Junction I turned left towards Tetova"*
- he was not sure about the time when he left from Mani Restaurant and reached I.'s house²¹;
- immediately after leaving Mani restaurant, Besnik Hasani and Shpend Qerimi headed towards I.D.'s home, located in the Dallosi neighbourhood. Such village is located on the road between the Lepenc bridge and the Slatina bridge.
- They followed the Ferizaj/Kaqanik road, then they turned right at the junction of the Silkapor factory and, once arrived at the so called Flag's Junction, they turned left

²⁰ In the course of the examination in the main trial (5.11.2010) Besnik Hasani was confronted with his statements made in front of the public prosecutor, where he omitted to state that when he was at Mani Restaurant he spoke with A.D. and Ali Aliu.

²¹ On the timing of Besnik Hasani's exit from the restaurant, Bujar Baftiu clearly stated that he and Shpend Qerimi left around 20 minutes before midnight, and it is not contested anyway that the defendant left the Mani Restaurant before the victims. At the same time, it is certain (on the basis of the statements of the witness R. M. and N. A.) that Besnik Hasani and Shpend Qerimi were intercepted by the police at the Slatina Bridge, on their way from the Soponica road, between 12.16 and 12.21 (i.e. around one minute after the police patrol had received the radio alarm).

taking the road leading to the Macedonian border and eventually to Tetovo. Once arrived by the Sllatina bridge, they took the left and travelled along the Soponica road until they reached the house of I.D. at the Dallosi neighbourhood;

- Once arrived at I.D.'s, Besnik Hasani exited the car while Shpend Qerimi remained in the car. He called I.D., who briefly came out, entered again to pick the money and then handed over to Besnik Hasani one banknote of 500 Euros;
- After that Besnik Hasani and Shpend Qerimi returned along the same road;
- After travelling one kilometre, at the Sllatina Bridge, Besnik Hasani was stopped by the police patrol of R. M. (as seen above, the exact time of the encounter between the defendants' car and R. M.'s is between 12.16 and 12.21.

3.1.1.2. The uncontested part of R.T.'s statements

What can be concluded from the statements of R.T.? Their evaluation must be made taking into account several criteria: the personal credibility of the witness (i.e. whether concrete elements arose during the trial indicating him as biased, or non reliable), the internal structure of the statements and the extrinsic elements of corroboration.

There is a core of R.T.'s statements which are uncontested by the parties, and in particular:

- R.T. some minutes after midnight was at the Lepenc Bridge together with X.T.;
- at the bridge he saw two persons, who had just got off a metallic grey Audi car (model A4 or A6). Such car had overtaken him about 100/200 meters before, in front of the Provaliu school;
- one of these persons was blond and with short hair and wearing a black jacket, and he was carrying a long object (subsequently identified as an automatic weapon). This first person was positioned by a sand mound lying by the right side of the road²². The witness during the hearing was able to indicate the position of this first person on the picture present in the binder n. 5 of the case file, picture attached to the police report of 28.9.2007, indicated with letter A; it can be noted that the sand pile is attached to the road on its right side and that the distance between such sand pile and the blond bystander is of around one meter (see the picture with the "A" mark and also the previous picture);
- the other person noticed by R.T. was at a greater distance, standing by a wooden fence positioned at the right end of the open space where the pile of sand was placed;
- a few minutes after R. and X. had passed the bridge, the shooting took place.

The trial panel is convinced that the above narration, for the most part coinciding with the statements of X.T., is reliable. More in general, the narration of R.T. of the events of 27.9.2007 is, throughout his examination, steady, apart from the specific discrepancies as to the recognition of Shpend Qerimi.

3.1.1.3. The credibility of R.T.'s statements

²² The width of the road amounts to twice the width of an average car. This is made clear by the examination of the several pictures attached to the case file (police reports on the crime scene). Such pictures also clearly show the sand mound to which R.T. referred to.

a. The personality of the witness.

R.T. is a man who was 20 years old at the time of the events. He has no significant level of education, but nonetheless he showed a good level of mental development, a good capability to understand the meaning and the consequences of his statements and the capacity to distinguish between what he perceived directly and what was only the fruit of assumption. This is further confirmed by how R.T. was able to recant from that part of his statements in which he recognized Shpend Qerimi. In so doing he showed significant logical and dialectic skills.

No elements were made evident during R.T.'s examination, suggesting any kind of defect in his memory or in his capability to remember things and to expose them.

It is true that the witness showed a great degree of stress during the trial. This, though, is to be attributed to the extremely high pressure the witness had been facing during the last year and a half, and to his position towards both the victims' families and the defendants' families (the latter having heavily threatened him, as it will be shown below).

b. The structure and the internal coherence of R.T.'s statements

The trial panel deems that the various statements of R.T. – apart from their parts related to the issue or the recognition of the killers, on which it will be reasoned below – are coherent and logic.

First, the existence of several uncontested aspects of the narration confirm a general credibility of the witness.

Second, the style of the narration and the presence of a number of vivid particulars, confirmed by other witnesses (the weather that night, the time of the shooting, the kind of weapons used), are a symptom of reliability. A false witness is, as a general rule, rather generic in his statements, in that details are subject to possible contestation and they might be forgotten and/or contradicted by the same witness in subsequent statements.

Third, R.T. was able to confirm steadily on five occasions the description of the events of the critical evening. It is worthy to note that the five examinations followed each other in a time span of more than three years.

As to the issue of the recognition of the Shpend Qerimi:

- in his first statement to the police (20.11.2007) he stated that he would not be able to recognize the person and that he could only see him from behind. He confirmed, though, that the person was blonde and with short hair.
- In the second and third statement (February 2008 and March 2009) and on the occasion of the main trial related to the Clinton Bombing (the verdict was acquired to the case file) R.T. stated that he was able to recognize Shpend Qerimi.
- Finally, at the present main trial he rebutted the recognition.

The panel notes:

- that apart from the issue related to the recognition of Shpend Qerimi, the statements show a great degree of reliability, and are substantially not contested by the parties or confirmed by other pieces of evidence;
- that there is a reasonable explanation of the fact that on the occasion of the first examination in front of the police R.T. stated that he would be unable to recognize the person at the bridge. Indeed:

- on 20.11.2007, on his way to the UNMIK police, he was warned by the uncle of X.T. (who was travelling with him) that he should be careful not to state against anybody, in order not to be in danger;
- the first examination of R.T. took place *before* the meeting at City Bar in Ferizaj, where he saw again Shpend Qerimi. The panel concurs that the fact of having seen again the person of the bridge was a significant boost to the memory mechanism on the occasion of the subsequent police examinations with photo line-ups.
- On the occasion of the first examination in front of the police on 20.11.2007 the witness was not shown any photo line-ups, also because the name of Shpend Qerimi as one possible suspect had not arisen yet;
- that there is also a reasonable explanation for R.T.'s subsequent recanting, to be identified in the serious threats received by the families of the defendants, as it will be better explained below.

c. The non existence of reasons for false accusations by R.T.

It is a rule of general experience that the more serious is the criminal offence, the harsher its punishment, the stronger must be the motives in order to falsely accuse a person of having committed it. This in consideration of the extremely hard consequences both for the accused persons and for the false witness (who would expose himself to retaliation from the defendants).

Now, the defence was unable to point out a sufficient reason for R.T. (who had no sort of relationship with the Baftiu family, nor with the deceased) to falsely testify against the defendants, thus putting his personal security and his family's at risk. R.T. himself was blatantly unable to point out a sufficient reason for falsely accusing Shpend Qerimi. This despite the fact that he had the highest interest, and was in the better position, to provide the trial panel with a convincing reason for his recanting from the original version (in which he accused Shpend Qerimi of being at the Lepenc bridge). No threatening significance can be attributed to the behaviours allegedly adopted by the victims' families in order to convince him to testify against the defendants. Indeed, no person of average (or even of weak) personality would be seriously threatened by the fact – alleged by R.T. – of somebody merely “ordering” him to falsely accuse others of murder; or by merely being “left out of the restaurant”. R.T. in his testimony in front of the trial panel, asked about the nature of the alleged threat, confusedly answered that he simply did not and could not know.

d. The threats of the defendants' families against R.T.

Whereas there is no evidence of threats or promises coming from the side of the victims' families, the case file contains ample evidence of the fact that R.T. was seriously threatened by (at least) the families of the defendants Cena and Hasani.

It is worthy to note that R.T. during his examination in the main trial was very keen on trying to reduce the extent of the threats received by the families of the defendants, by stating that he “*never felt threatened until he was pressed by the Baftiu family*”. He even said that he did not know F. H. (circumstance clearly countered by the statements of F.N. and A. B. and on which a criminal proceeding is pending against F. H. in the Court of Ferizaj).

Furthermore, it is not credible and over-exaggerated that “every time he came across the imam and the Dubravas (i.e. the Baftius) they gave him money” (also this circumstance was fabricated in his attempt to provide a credible justification for his statements against the defendants and for his subsequent recanting).

Finally, it is not credible that R.T. might have received threats by the Baftius in order to induce him to speak against Shpend Qerimi already three days after the murder, when the investigations were at such an early stage that Shpend Qerimi was still to be considered as a defendant.

Contrary to what stated by R.T. to this extent, the existence of threats against him from the defendants’ families is proved, beyond reasonable doubt, by the following witnesses:

A.B.²³.

M.G.: he was an international police officer, called to assist on the occasion of the testimony of R.T. during the trial for the so called “Clinton Bombing” against the same defendants. On 21 August 2009 he met R.T. in a restaurant in Kacanik Municipality. The location was decided by R.T., who was not comfortable to receive the police at his home. M.G. noted that R. was very worried, because he was constantly looking around. R. explained to M.G. that he was worried, due to the fact that he was receiving phone calls from an unknown number and because in the morning, just five hours earlier, he had received through his cousin a message from the father of one of the defendants, informing him that if he had appeared in court his house would have been set on fire. R. also spoke

²³ Trial statements of 13 July 2010: “R. told us that he had had a phone call from F.H. and to meet at Euromiti, I am referring at the words said by R. He told us that he did meet F., somewhere at this Euromiti, but when R. entered the place he didn't know F.m by face so he had to call him while being at Euromiti. According to his words, F. while R. was trying to call him approached him and told him I am F. and I wanted to meet you. Are you R.? R. answered yes. F. tells R. do you know what kind of statement you have given? R. said yes that I have seen two persons that they had excited Audi vehicle and F. said I know what you have said because I have your statement inside my vehicle but you have to withdraw the statement that you have given. R. had said that I have never known Besnik Hasani, F. said that I know why you have said this regarding Shpend but I know that my brother is in the same case and therefore you have to withdraw the statement. Nesbat's family withdrew statements, such as B. and A., what are you waiting for. Since that day on R. felt very bad but he did tell me that the fault of all this was the courts because they made him a public witness, he told me who is going to defend me now? I told him that the God is going to defend you, not I or the police can do this, you have seen something and you have said the truth only. The same day that he told me that he was threatened I told him that he should go and report these threats. He said that he will do so but he didn't have time, but when I saw him on the 28th of December he wanted me to go to the SPRK and report the threats. He told me that I can't go myself because I have lots of problems but he said that I should say what he had told me. On the 29th of December I went to the SPRK and gave the same statement as I gave here for you, and I swear on the blood of our sons that I am stating here word for word what R. told me.

...

Public Prosecutor: Can you tell us what kind of threats R. had received, can you tell us more details what kind of threats?

A.B.: He told him withdraw your statement because it is going to cost you. Even if SPRK or police send you abroad I will find you wherever you are.

Presiding Judge: anything else that was used as a threat against R.?

A.B.: These things.

Public Prosecutor: May I remind him?

Presiding Judge: yes.

...

Public Prosecutor: even if the court protects you, if they manage to bring you abroad as a protected witness I have a residence permit in Germany and I will find you wherever in the world, even if I don't find you I will find your family”.

about the threats he was receiving by phone, which had started a long time earlier. During this meeting another person, a “*man of religion*”²⁴, was present as well.

The statements of witness G. are reliable. An international police officer, he had no connection whatsoever with any of the parties. He was not involved in the investigation, and he merely operated in support/protection of R.T. when he was called to testify.

F.N.: The amount of information provided by this witness is very significant. N. is the *imam* of the mosque of Dubravë, and also a friend and confidant of R.T.. His knowledge of the facts derives from a regular frequentation with R.T. and from the fact that he ended up listening several times to his concerns connected to the ongoing investigation. In June 2009, before the threats against R.T. started, the latter told N. that he had been witness to some of the events of 27 September 2007. He provided F.N. with a thorough description of the events, as follows.

- As to the threats received, F.N. stated that on several occasions R.T. told him that he was receiving serious threats from the families of the defendants, in order to convince him not to testify against them. In particular, R.T. mentioned that F.H., the brother of Besnik Hasani, seriously threatened him. After his family was put under pressure by the defendants’ families, R.T. decided to meet F.H., who had asked to meet him at Euromiti Petrol Station. F.H. was using kind words and started encouraging R.T. for his life and then he told him: *‘My brother Besnik Hasani is serving 25 yrs of imprisonment because of your words. You are young and you don’t need to deal with these things. If you change your statement which would mean that my brother would be released and nobody would ask any responsibility from you’*. F.H. told R.T. not to “*take someone’s else responsibility on his shoulders?*” and not to “*take someone else’s troubles?*”. F.H. tried to lure R.T. by offering him the possibility to have free fuel refills at the petrol Station of Lutfi Zharku. Finally, H. started to threaten R.T., by telling him that if he had not complied with his requests he would have found him whenever he would go. F.N. stated that he advised R.T. to always say the truth to the prosecutor and to report the received threats. He arranged a meeting between T. and the prosecutor, to which eventually R.T. decided not to attend. F.N. corroborated this by showing the trial panel a SMS received by him from R.T. on 16 January 2010 at 11:25. The SMS was shown to the trial panel and was as follows: *“Hoxh, I am telling you swearing to God that I can not say as you are telling me to do but tell also them that I can not put my life at risk”*.
- Eventually the prosecutor arranged a sort of protection of the witness by sending to him a police patrol. The panel notes that the mere fact that protection was organized for R.T. by the police is *per se* of corroboration to the existence of serious threats against R.T..
- F.N. also witnessed a frantic meeting between R.T. and two members of the Baftiu family (the meeting was confirmed also by A. and N. B.). In this meeting, held in a car by the Martyr’s cemetery and not in a bar, in order not to be seen by the defendants’ families, R.T. spoke very emotionally with the Baftius, saying that he had received a telephone call from F.H. who asked to meet him. He also said he and his family had been receiving strong pressures from the defendants’ families in order to change his statements.

²⁴ To be identified with F.N.: see below.

- F.N. was told by R.T. that he was approached (sometime in July 2009) by F. O., sent from the Cena family, and taken to Prishtina, at a lawyer's office. There he met Nysret Cena, F.H. and two other persons. R.T. was shocked. The lawyer asked him to tell what he had stated at the Special Prosecutor's office and told him not to testify against the defendants, and that she would tell him what to state.
- F.N. also provided full confirm to the statements of witness M.G., having been present at his meeting with R.T. in August 2009.

The panel deems that the statements of F.N. are reliable.

They are consistent, provided with several vivid details, based on a steady frequentation of R.T.

The relationship between the R.T. and F.N. was based on friendship, but also on the fact that F.N. was a man of religion and, as such, it is well credible that he might have received the confidences of R.T.

Despite the serious confrontation from the defence counsels, who questioned him at length, he fell in no contradiction and was able to give proper and detailed answers.

No fact which, from a personal point of view, could significantly undermine the credibility of F.N. was put forward by the parties. In particular, he is not family related to any of the parties and his previous acquaintance with R.T. cannot per se be regarded as a symptom of unreliability, in the absence of specific indexes thereof.

He was able to corroborate his testimony with documentary evidence: he provided the trial panel with the SMS of R.T. (above recalled) in which the latter was manifesting worries about his personal safety due to the pressures of the defendants' families.

He also provided the trial panel with a CD ROM which contained a recording of a telephone conversation between himself and R.T., in which allegedly R.T. was telling him about the received threats. The quality of the recording, though, does not allow a sufficient understanding of the contents of the conversation.

e. The witnesses' corroboration to R.T.'s statements.

As it will be noted below, before being examined by the police R.T. had told several persons about the events of the Lepenc bridge. He also told them about the person that he saw at the bridge and about his capability to recognize such person.

The panel is of the opinion that the fact that R.T., before being approached by the police, had already given a description of the facts in line with the recount subsequently made to the investigators indicates that what he then told the investigators is reliable. More in particular:

i. **X. T.** confirmed most of the narration of R.T. about the events of 27.9.2007. In particular, that he and R.T. at around midnight of that night walked from the Martyr's Cemetery until the Lepenc Bridge and that there they saw two persons waiting, after they had got off a car Audi, A4 or A6. X.T. said that he was not able to recognize the persons at the bridge, but that one of them had short blond hair and was wearing a black jacket.

ii. Several witnesses (**A., I., H., M. B.**, all relatives of the victims) stated that already before the suspects were made targets of the investigation, they were told by R.T. about the events of 27.9.2007 (and, in particular, that R. had been at the bridge, that the visibility was very good due to the moon, that he had seen two persons at the bridge, one of whom in the face,

and that he would be able to recognize this person, though he did not know the name of this person at that time²⁵).

Despite the fact that the injured parties affirmed during the trial their conviction of the defendants' guilt, the panel deems that these statements, considered together with the rest of the evidentiary framework, are reliable.

iii. Another episode, confirmed by witnesses **K. S. and B.B.**, proves the truthfulness of R.T.'s recognition of Shpend Qerimi.

B.B. stated that he had heard from the police that Shpend Qerimi was suspected of having participated in the murder. Therefore in the month of December 2007, when he arrived from Germany, he arranged a meeting with R.T., in order to enable him to see in person Shpend Qerimi and thus to assess whether he was the person he had seen at the Lepenc bridge on the critical night.

K.S. (who was acquainted with Shpend Qerimi) helped him arrange the meeting on a December afternoon at the Bar Luboten (a.k.a. City Bar) in Ferizaj, where Berat took R.T.. Shpend Qerimi showed up and while he had a drink standing at the bar, R.T. (who was sitting at a nearby table with B.B.) could look at him. As soon as Qerimi left the bar, T. told B.B. that he was the man whom he had seen at the Lepenc Bridge.

K.S. provided full confirm of the above. He was examined at the hearing of 14.9.2010 and was heavily confronted by the defence counsels and by the defendants themselves. He stated:

- that sometime in December 2007 B.B. contacted him, asking to arrange a meeting with Shpend Qerimi (whom B. did not know);
- that the meeting was organized at City Bar in Ferizaj, where Shpend Qerimi arrived later than K.S., B.B. and another person²⁶ whom he did not know;
- that B.B. and this other person sat at a table in the bar, whereas he and Shpend Qerimi stood in front of the bar and there drank a coffee, remaining in the bar for a short time (5-6 minutes);
- that after Shpend Qerimi had left, K.S. sat with B. and this other person. S., speaking in a low voice only to B., confirmed to him that the person who had just left was Shpend Qerimi.

As it can be noticed, the statements of B.B. and of K.S. converge wholly as to K.'s meeting with Shpend Qerimi in the presence of R.T. and as to the fact that immediately after he was asked by B.B. whether that person was Shpend Qerimi.

It is important to note that the attendance at such meeting was confirmed also by R.T. himself during the main trial.

Of course R.T., in his attempt to recant from the previous statements, tried to allege:

- that it was not true that he told B.B. that the person in City Bar (Shpend Qerimi) was the same person who was at the bridge

²⁵The old father of one of the victims wrongly affirmed that R.T. during the condolences or immediately after told him that Shpend Qerimi was the man of the bridge. This single circumstance, which is clearly wrong, in light of the fact that only three months after the events did R.T. learn the name of Shpend Qerimi, cannot be overestimated and must be regarded as a mismatch of the witness' memory (who evidently referred to a prior time a recognition which R.T. referred only later on).

²⁶ To be identified with R.T., on the basis of the parallel statements of B.B. and on the basis of the fact that K.S. provided the panel with a physical description of such person which is compatible with that of R.T.

- that, on the contrary, it was B.B. who *ordered* him to tell (if examined by the police) *that* Shpend Qerimi was the person who was at the bridge of Lepenc on the critical night.

The panel concurs that this explanation cannot be believed, both in the light of the already examined statements of the above mentioned witnesses and also bearing in mind that if it had really been the intention of the victims' families (and in particular of B.B.) to fabricate evidence against the defendants, there would have been no need to arrange repeated "fishing expeditions" by taking R.T. around the restaurants of the neighbourhood, hoping that he might recognize the car of the murderers or the murderer himself.

Such way of behaving would have been needless and would also have exposed the witness or possibly raised suspicions in the defendants.

On the contrary, such way of behaving is better understandable by admitting the explanation provided by the Baftiu witnesses.

It is reasonable (according to a rule of general experience, most notably in the Kosovo society where traditionally the family plays a great role in addressing serious offences suffered by members of the group) that they would ask the only available witness to help them discover the killers.

Shpend Qerimi tried to allege that K.S. testified falsely against him because he wanted to take revenge against him, by whom some years earlier he had been investigated for drug related offences, being eventually convicted to five years of jail.

The allegation is devoid of relevance. Firstly, it is not credible that there was deep hatred between the two, because the facts show that on the contrary the relationship between the two was normal (to the point that K.S. had the telephone number of Shpend Qerimi and the latter accepted an invitation for a coffee by the former). Secondly, K.S. is a relative of Besnik Hasani and he does not know Nysret Cena. Thus a fabrication against them would not be understandable.

iv. Also F.N. received from R.T. a detailed description of the events of 27.9.2007 which is in line with the version given to the prosecutor²⁷.

²⁷ In particular N. stated that T. told him:

- That as he was coming down the road from Martyrs Cemetery, before reaching to Lepenc bridge, an Audi car arrived and overtook them and stopped at the Lepenc Bridge. The car was coming from the direction of the Martyrs Cemetery.
- That it was late night and R.T. reported being a bit scared. It was a clear night and he focused and saw the driver while the car was overtaking. He had parted hair on both sides.
- That two persons with long weapons got out from the car when it stopped. He said that he was scared when the car stopped. R.T. even remembered that he wanted to pick up a stone to be safer. F.N. did not remember whether eventually R.T. took the stone or not.
- That R.T. said that the car left before he approached it, going towards Nikaj village.
- That he looked at the two people who were left on the spot with curiosity, that was the first time he saw them.
- That R.T. clearly explained to F.N. how he came to discover the name of the person whom he had seen at the bridge on the night of the murder. He said that when he saw them on the critical night he did not know them. Then he met a second and a third time one of them and on the third occasion he was told that his name was Shpend Qerimi. On the occasion of the second meeting (by the post office of Ferizaj) he went away from him as he remembered seeing him on the critical night. The third time R.T. said that he saw the same person when he (R.) was sitting in Ferizaj together with a Baftiu family member and another person. R.T. confirmed that in the beginning he did not know the name of Shpend Qerimi: he only recognised his face, which he had seen on the critical night. This conversation between him and R.T. occurred before the threats against R.T. started.

Importantly, the recount made by R.T. to F.N. (and reported by N. to the trial panel) matches neatly with the description provided by B.B. (as to the recognition of Shpend Qerimi on the occasion of the meeting at the City Bar in Ferizaj).

f. Conclusions

The panel deems that the specific discrepancies in the statements of R.T. which are referable to the recognition of the defendants (including his final recanting from the recognition) find a reasonable explanation in the circumstances explained above *sub a-e*.

This must be read in conjunction with the fact that R.T. himself provided the prosecutor, on the occasion of the examination of March 2009²⁸, with a convincing explanation as to his initial reticence (on the occasion of the examination of 20.11.2007) about his capacity to recognize the man of the Lepenc bridge²⁹.

Since the threats from the defendants' families started only in 2009, it is also well understandable that in the months subsequent to the first statement of 20.11.2007 R.T. became more confident and relaxed, in that also helped by the contacts with the victims' families.

It is worthy to note that the first examination of 20.11.2007 took place when R.T. had not yet had the opportunity to see again twice and recognize Shpend Qerimi in Ferizaj (once alone and once in the company of B.B.):

3.1.2. The circumstantial evidence against the defendants

The statements of R.T. are not the only ground for the conviction of the defendants. Significant factual elements have been acquired during the main trial. In the opinion of the panel, they provide powerful corroboration to the testimonial evidence.

3.1.2.1. The visibility on the night of the murder and the distance between R.T. and the persons at the Lepenc Bridge

It is proved that the visibility on the critical night was very good despite the darkness.

It is as well proved that R.T. saw the person at the bridge from close up.

This bears relevance as to the reliability of the recognition made by R.T.

Indeed, on the basis of the statement of R.T. and of the photographic documentation (see binder n. 5 attached to the case file) it must be concluded that the distance between him and the blond person at the bridge could not have amounted to more than the width of the road (R.T. was walking on the left side of the road) **plus** an additional three/four meters (i.e. the distance which separated the right edge of the road from the spot where the blond man was seen³⁰). It is easy to note that this visual reconstruction matches perfectly with the

²⁸ Such statement was not repeated by the witness during the main trial, but he was confronted with it. It provides a credible and reasonable explanation of the climate the witnesses were faced with and of the fact that on the occasion of the first examination he might have chosen to turn a blind eye on that very specific part of the statements concerning the possibility to recognize the defendants.

²⁹ I.e. the pressing warning received by I. T. on that very same day not to expose himself and to tell that they had not seen anything

³⁰ Indicated as "A" in the picture attached to the police report dated 28.9.2007, attached to binder 5 of the case file.

assessment of R.T. according to which the blond man was at a distance of "5-6/10 meters" from him.

The fact that the visibility in the night between the 27 and the 28 September 2007 was good, with no clouds or fog, was confirmed by practically all witnesses. The full moon was shining, as confirmed officially by the Meteorological Institute of Kosovo upon request of the trial panel³¹.

Understandably, the witness could not provide unanimous assessment as to the precise distance from which it would have been possible to recognize somebody during that night.

Nonetheless, the joint evaluation of their statements is conclusive as to the fact that the conditions of visibility were by far sufficient in order to allow a reliable recognition.

As already noted, R.T. during the investigation, after having stated in front of the prosecutor that it was possible to recognize with total security a person during that night, in front of the trial panel recanted from this version.

This affirmation of R.T., apart from being in contrast with his previous statements, is implicitly, but clearly, countered also by other circumstances, never withdrawn, such as for instance the fact that he stated that he could distinguish, from a distance of 100/200 metres, the driver of the Audi who, after dropping the murderers at the bridge, *stood out of the vehicle and gave a quick look around*³².

Witness F.V., who attended the crime scene after the murder took place, stated that the distance from which it would have been possible to see somebody was twenty meters³³.

³¹See trial minutes of the hearing of 23.6.2010, witness N.B.: "*Avni Ibrahim: What was the visibility like during that evening?*

Presiding Judge: Were there clouds, moon?

N.B.: I think that the moon was shining, there was visibility". Witness B. R. confirms further that the weather was fine, despite being dark in consideration of the late hour. Only witness N. A. affirmed that there was no moon, but this affirmation is clearly, in the light of all other witness statements and of the confirm from the Meteorological Institute

See minutes of the hearing of 17.6.2011, witness R.T.:

"Presiding Judge: how was the visibility that night?

R.T.: it was good weather, there was the moon light as well but it was dark night time. You could see close but not far distance.

Presiding Judge: was it full moon, or half?

R.T.: I don't know, the moon was not bright.

Presiding Judge: Was it full moon or half or quarter moon?

R.T.: I did not look above to notice the moon.

Public Prosecutor: Can I remind you of your statement, on 2nd page, given to the Public Prosecutor, you stated that that night the visibility was good almost as it was daytime. There was no rain and one could see a person from the distance. Is this version correct?

R.T.: yes, it is correct that it was nigh time. I cannot make that daytime.

Public Prosecutor: is this correct, did you say so or not?

R.T.: I could not recognize anyone from the distance.

Presiding Judge: the Public Prosecutor is telling you this, in front of him on 4 March 2009 you told that it was very bright evening just as it was day, no clouds and you could see a person from far away. Is this true? This is what you said to Public Prosecutor 1 year ago".

Witness X.T. stated that there was no fog and confirmed that there was moonshine.

³² This circumstance is affirmed in the first statement made by R.T. on 20.11.2007, statement which the defendants themselves deem to be the most accurate one.

In the opinion of the Panel, the fact that R.T. from such a relevant distance could notice such movements and behaviours of the driver is meaningful of the fact that from a much shorter distance (around ten metres) he was able to distinguish the facial features of the person who remained on the side of the road at the bridge.

³³See trial minutes of 23.6.2010, page 11:

"Tahir Rrecaj: Do you remember the conditions, visibility at that time?

Witness N. A. stated that there was fog (circumstance, though, overwhelmingly denied by all the other witnesses). Both these witnesses, though, are police officers who arrived at the crime scene after the murder took place: what is most important, they came driving on a car and on top of it, when they operated in the crime scene for sure artificial illumination was on (be it the beams of the cars or flashlights).

This entails that their vision was most surely not acquainted to darkness.

On the contrary, R.T. had been walking in the darkness for several minutes and thus his eyes were accustomed to obscurity. X.T.'s statement, despite its brevity and the "reluctant" attitude of the witness, contains the significant affirmation according to which on the critical night one could have seen a person from a distance of up to 15 meters (which is compatible with the sighting of the persons at the bridge passing on the opposite side of the road).

Finally, the panel notes that witnesses R. and X.T. had the defendants in their visual field for a significant period of time that is for all the time necessary to approach them walking from a distance of 100-200 metres.

3.1.2.2. The location of Shpend Qerimi and Besnik Hasani immediately before and after the murder

It is uncontested that on the night of the murder, before it was committed, Besnik Hasani and Shpend Qerimi were at Mani restaurant when also the victims were there.

Besnik Hasani during his examination admitted that he left Mani Restaurant *before midnight*.

Witnesses M. D. and A. A. also confirm the circumstance.

On the basis of the testimony of Bujar Baftiu it is possible to locate more precisely the exit time of Besnik Hasani. In fact, he stated that they arrived to Mani Restaurant twenty minutes after him and left Mani Restaurant at about 23.40.

Therefore it can be concluded:

F.V.: *It was night time, I can not state the distance of visibility but one could not clearly identify a person from a long distance*

Tabir Rrecaj: *what would this identification distance be?*

F.V.: *I might be wrong but I don't believe that the distance was more then 20 meters in order to clearly identify someone.*

Tabir Rrecaj: *You are saying to see a person at 20 meters or to identify his precise features?*

Public Prosecutor: *The witness stated to clearly identify the person.*

Presiding Judge: *Can you specify what you were meaning by saying that you could clearly identify a person from 20 meters?*

F.V.: *I believe that form 20 meters you could distinguish a human figure. However this distance does not apply when coming to identifying peoples features. The reason for this is that immediately upon arrival of the crime scene you start to collect evidence which could not be found or distinguished from 2 meters*

Presiding Judge: *Let us try to be precise. It is one thing if you are working in the night with artificial light, it is another thing if you had previously been staying in a dark environment without artificial light for a long time, because in this case you eyes adjust to obscurity, these are physiological reactions of human eyes. We are interested to know what would have been in that specific night the human capability to recognise other persons after having been in the dark without artificial light for a long time. Had you been that night in such conditions or were you always with artificial lights on?*

F.V.: *Thank you your honour. I reply to the question bearing in mind the conditions of natural of night with no influence of artificial light referring...*

Presiding Judge: *But one minute ago you told us that you had come to that conclusion only because you had been looking for evidence on the ground: this makes me think that you were using some kind of artificial light, therefore I am a bit surprised by your statement*

F.V.: *I do not look for evidence at the crime scene and I did not use the lights. My police officer used it. What I stated is that not under the influence of artificial light but normal like my opinion is that at that distance a person could identify a person*

Presiding Judge: *Was there moonlight?*

F.V.: *I can not remember but it was dark".*

- that on the critical night the defendants were at a distance of around three kilometres and a half from the crime scene, until around half an hour before the murder took place.
- That afterwards they moved out heading southwards (i.e. in the same direction of the Lepenc Bridge).

It is also admitted by the defendants, and confirmed by the testimony of the police officers, that Besnik Hasani and Shpend Qerimi immediately after the murder (i.e. at around 24.20) were spotted by the police while driving *away from* the direction of the crime scene, at a distance from it of around 2,2-2,4 kilometres, driving along the only road which led away from there.

The two above circumstances are meaningful. The defendants half an hour before the ambush (therefore, with sufficient anticipation in order to organize it) were in the vicinity of the crime scene and drove in that direction and, immediately after the murder, were stopped by the police moving from that direction. On top of that, it must be noted that the area around the Lepenc bridge was an isolated one and that nobody was seen by the witnesses travelling around due to the late hour in the night (this last circumstance has been confirmed by the witness N. B.).

3.1.2.3. The falsity of the alibi provided by Besnik Hasani

At the main trial Shpend Qerimi decided to defend himself by remaining silent. Besnik Hasani on the contrary reiterated the alibi defence which he had already stated during the investigation.

The details of such defence were given above.

In order to support his alibi defence, the witnesses A. A., M. D. and I.D. were requested by the defence and examined at the main trial.

The panel deems that not only the alibi was not proved, but it turned out to be false, for the following reasons:

- I.D. was unable to confirm the alibi, neither as to the time, nor as to the day of his alleged meeting with Besnik Hasani. The latter, in fact, though admitting that he knew Besnik Hasani and that there had been on some occasions reciprocal debts, was only able to affirm that on an undefined evening, at an uncertain time, Besnik Hasani came to his house and asked him 500 EUR. The panel notes that it is extremely unlikely that the events of that night did not stick in the memory of I.D., since that evening was a unique one. Indeed, at about the time when he was allegedly meeting Besnik Hasani, and at a short distance, two Kalashnikovs were showering of bullets the car of the victims. In addition, the following morning houses of his neighbourhood were searched by the Police in the course of the investigations.
- I.D. and Besnik Hasani gave diverging version as to the payment method. The defendant insisted that the banknotes he received from I.D. were *several and of a small amount*, whereas I.D. stated that he gave to Besnik Hasani only *one single banknote* of 500 EUR.
- The versions of Besnik Hasani and of I.D. also differ as to the cause of the debt: the defendant stated that the debt derived from a loan he had made to D., whereas the latter stated that his debt derived from a purchase of bricks

he bought from Besnik Hasani. On top of it, Besnik Hasani could not be precise as to when the alleged loan had been made to Ibrahim.

- The timing of the events contained in the alibi defence provided by Besnik Hasani is incompatible with the chronology of the events which was ascertained through the evidentiary proceeding. Indeed:
 - Besnik Hasani alleged that immediately after he and Shpend Qerimi had left Mani Restaurant (as seen above, at 23.40 of 27.9.2007) they headed to the village of I.D. taking the Brezovica road ³⁴ and then taking the Tetovo road at the Flag's Junction³⁵. He alleged *never having stopped* on the way. The scales present on the maps acquired to the case file make it clear that the distance of Dalloshi village from Mani restaurant is, following the defendants' route, of roughly 6 kilometres. It is a good asphalted road, at least until one kilometre before D.'s house. Besnik Hasani admittedly stayed at D.'s only a few minutes (2 to 5), the time strictly needed for him to call Ibrahim and for Ibrahim to give him the money. Shpend Qerimi did not even get off the car. Prudentially, interpreting the evidence in favour of the defendants, the duration of the stay at D.'s can be deemed to have been of 5 minutes. After that, they left immediately and travelled back along the same road they had covered to reach there. The police saw them at the junction between the Soponica road (on which they were travelling) and the Tetovo road³⁶, only one kilometre after they had left from D.'s. Therefore, the overall distance covered by the defendants was of 6 kms (from Mani Restaurant until D.'s) plus one additional kilometre (from D.'s back to the Tetovo road where the police stopped them). Even assuming (unrealistically, in consideration of the good quality of the road and of the total absence of traffic at night time) the average speed to be of 50 km/h, it would ensue, through a simple mathematic operation, that the time needed to cover such distance was of around 8 minutes. Adding to this the time spent at D.'s house (maximum 5 minutes) and remembering that Besnik Hasani left the restaurant at 23.40, it would follow that if his recount were true, the Police should have stopped him latest at 23.55 . This is in clear contradiction with the statements of the members of the police patrol, which make it clear that the car of Besnik Hasani was stopped between 00.16 and 00.21. There is, in other words, a time gap of 20/25 minutes which makes the alibi provided for by Besnik Hasani incompatible with the facts ascertained in the evidentiary framework.
- Besnik Hasani admittedly had not informed in advance I.D. of his visit. The panel deems that it would be utterly naive to believe that the defendant showed up without notice at D.'s place, because:
 - It was midnight. This per se bears relevance, most of all in consideration of the fact that D. had a family with several children;

³⁴ They took the Brezovica road at the junction marked with the number 2 on the map # 2.

³⁵ The Flag's junction is marked with "3" on the map # 2 attached to the case file.

³⁶ Such junction was indicated by Besnik Hasani on the map # 1 with the number "4".

- There was no situation of emergency justifying such disturbance: it was neither alleged, nor proved, that the debt of Shpend Qerimi for the payment of his construction works was of such an urgency that it was not possible to wait until the following day(s).
- It was proved that Besnik Hasani had an open account with Pro Credit bank and that in such bank account he had money which would have been sufficient for the alleged loan to Shpend Qerimi. Not only: the bank informed the trial panel that Besnik Hasani was provided with a debit card which had a withdrawal limit on that day of up to 500 EUR³⁷. So why should Besnik Hasani have decided to travel in the night to the Dalloshi neighbourhood (where he did not even have the certainty to find I.D., who had not been informed in advance, and anyway it was not at all granted that he was in the possession of 500 EUR), when he could easily have withdrawn the cash from any of the several cash dispensers available, according to the bank's statement, in the area?
- The statements of A. A. and M. D. (who said that leaving Mani Restaurant Besnik Hasani told them that he was heading to I.D.'s) are not sufficient in order to confirm to the alibi, for at least the following three reasons:
 - A close friendship relationship between Besnik Hasani, M. D. and A. A. was proved, this making it likely that the latter two might have made an acquiescent statement;
 - Even admitting that the defendants told D. and A. that they were heading to I.D.'s, this might well have been in order to fabricate an alibi defence.
 - Finally, even admitting that on the critical night the defendants had visited I.D., this could still be chronologically compatible with their committing the crime. In other words, it is possible that Besnik Hasani and Shpend Qerimi, before or after shooting at the Lepenc Bridge, might have stopped over at I.D.'s in order to fabricate an alibi defence.

3.1.2.4. The motives

The prosecution alleges that the murders were committed by the defendants because Neshat Baftiu was telling around that Besnik Hasani was guilty of the bombing of the Sekiraqa Bar on Bill Clinton Boulevard, which took place on 23.9.2007.

In fact, the evidentiary proceeding confirmed that Neshat Baftiu, in the days immediately following the bombing told several of his family members (who were examined during the evidentiary proceeding) that Besnik Hasani (and "his group") were the authors of the bombing.

It is well likely that in a parochial environment such as the one of Dubravë and surrounding villages such news were likely to spread outside the family circle, and to reach the ears of the defendants (who, it is useful to remember, were police officers, one of them serving in Ferizaj).

³⁷ The circumstance is made clear by the bank statements acquired following the order of the trial panel issued in the final stages of the main trial.

Thus the explanation alleged by the prosecution is, in the opinion of the panel, the most credible one.

However, the prosecution failed to submit sufficient evidence of the fact that the defendants actually were informed of these behaviours of Neshat Baftiu.

The panel notes, anyway, that the absence of full proof on the motives of the crime is not of any obstacle to the affirmation of criminal responsibility against the defendants, because the remaining part of the evidentiary framework is solid and conclusive.

In order to refute the alleged motives, the defences tried to allege that several other people might have had a motive to kill Neshat Baftiu.

Thus they indicated (through the witness D.-H.) a certain Q. (who allegedly told him having killed N.), or some Police officers (who apparently threatened Neshat Baftiu some weeks prior to his death) or some company owners which Neshat Baftiu was allegedly blackmailing, or persons (not specifically identified by the defences) who variously opposed Neshat Baftiu during fights.

The panel notes:

- that it is not in doubt that Neshat Baftiu was a troublesome person, who was several times engaged in brawls, thus possibly having some enemies;
- that the defence, by the simple fact of indicating someone having possible reasons of hatred against Neshat Baftiu, showed no concrete and specific element of guilt as to the murder for which it is being proceeded;
- that none of the persons indicated by the defences as possible alternative culprits was seen at the crime scene on the critical night.

Special attention must be driven to witness D. H.'s statements. During the hearing of 14.9.2010 he told the trial panel that he had known from the wife of Neshat Baftiu that it had been Q. (a.k.a. Kobra), an Albanian national, to kill Neshat.

The Panel deems that D. H.'s testimony is not reliable, because:

- his statements are in various parts contradicting his previous declarations. Discrepancies which he was unable to explain, if not recurring to risible justifications.
- The information about Q.'s guilt for Neshat's death was learnt by H. only by hearsay from Neshat's wife. The trial panel is in the possession of the statements of the latter, who said she had no clue about the authors of Neshat's murder (contrary to what was stated by H.).
- It is proved that H. was requested for a meeting by Besnik Hasani one month prior to being examined as a witness. The meeting took place in Dubrava prison, by the prison's school.

3.1.5. Conclusions

a. Shpend Qerimi was at the bridge of Lepenc on the critical night at the time of the murder. The panel concurs that the evidentiary framework univocally points at Shpend Qerimi as the man seen by R.T. at the Lepenc Bridge immediately before the murder, carrying a long weapon.

First, R.T., in his statements of February 2008 and March 2009, was able to recognize (on the basis of the photo line-up) Shpend Qerimi as the man who was at the Lepenc bridge.

The above is supported by the following factual findings:

- the sighting by R.T. of a blond, short haired man present at the crime scene immediately before the murder, at around midnight of the critical night, together with another man standing on the side of the road armed with long weapons. No other person was present there, and the T.s were clear in stating that no more than two persons got off the Audi car. Subsequently the man was recognized by R.T. as Shpend Qerimi;
- the fact that in that night there was particularly good visibility, with full moon and with the possibility for R.T. to see the persons for a long while, while he was walking towards them from distance;
- the fact that the place was isolated.
- the fact that around 30 minutes before the murder Besnik Hasani and Shpend Qerimi admitted having left Mani Restaurant heading southwards (i.e. in the direction of the crime scene);
- the fact that immediately after the shooting (5-10 minutes after) they were stopped by the police at a distance of three kilometres, coming from the direction of the crime scene;
- the fact that Besnik Hasani provided an alibi defence which is false, for the reasons explained above;
- the fact that the defendants had enough time in order to reach the crime scene, to ambush the victims and to escape from there.

Any other conclusion cannot be logically accepted. It would be a merely hypothetical one, in contrast with the real picture arising from the factual evidence presented above.

b. Besnik Hasani is the person who was with Shpend Qerimi at the bridge. Indeed:

- it is proved that two persons were seen by R. and X.T. at the bridge, after the Audi car had left;
- Besnik Hasani and Shpend Qerimi spent together the evening of 27.9.2007. In fact, they were seen together immediately before the shooting, as well as immediately after. On top of that, Besnik Hasani admitted that he and Shpend Qerimi had *always* been together during that night from 10 PM onwards and, in particular, since when they left Mani Restaurant, until when they were stopped by the police patrol after the shooting.
- it is proved that the murder was committed using at the same time two AK47.

From the above facts, the conclusion that Besnik Hasani was the second man at the bridge stems out logically and, again, it would be a mere theoretical exercise to imagine that someone else different from Besnik Hasani was the other shooter.

c. Besnik Hasani and Shpend Qerimi shot against Neshat, Urim, Sylejman, Bujar and Sadik Baftiu at the Lepenc bridge.

This in light of the following elements, which arise from the evidentiary proceeding:

- Shpend Qerimi and Besnik Hasani were together at the crime scene;
- The eye witnesses stated that only two persons were present at the crime scene immediately before the shooting and that nobody else was seen in the vicinity;
- Shpend Qerimi was seen holding an automatic weapon in his hand, whereas the accomplice was standing further from the road;
- two automatic weapons were fired at the same time (statements of Sadik and Bujar Baftiu and forensic report attached to the case file);

- the behaviour of the defendants prior to the shooting was typical of a violent ambush (they were transported and dropped at the crime scene in the dead of night, armed with long weapons, just 10 minutes before the shooting, in an isolated place);
- it is not reasonable, unless formulating mere theories, to deem that the defendants might have left the place and that subsequently some other armed people might have appeared at the crime scene and committed the murder.

The only possible logical inference is that Besnik Hasani and Shpend Qerimi were the shooters.

Thus it must be concluded that all the elements of the *actus reus* are present (action, causal link, consequences).

As to the circumstances and to the qualification of the criminal offences, it is clear that the facts described above amount to unlawful possession and use of weapons (two Kalashnikov automatic weapons) and to aggravated murder (of Neshat, Sylejman and Urim Baftiu).

In particular, the trial panel concurs that the murder was committed in a deceitful way, in consideration of the fact that the defendants ambushed the car of the victims at night time, from the side of the road, surprising the victims who could not even try to organize a reaction.

It is clear that also the circumstance of art. 147 n. 11 is present, in that three persons were killed simultaneously by the actions of the defendants, who both in equal parts concurred to the commission of the criminal offence (thus integrating also the provision of art. 23 KCCP).

Thus by killing Neshat, Urim and Sylejman Baftiu the defendant committed the single criminal offence of multiple murder (this being the preferable interpretation of art. 147 n 1 CCK, in line with the jurisprudence of the Supreme Court of Kosovo).

The panel concurs, at the same time, that the circumstance of art. 147 n. 8 (alleged by the prosecutor in the indictment) was not proved, in that there is no full evidence that the murder was committed in order for the defendants to conceal the previous commission of the Clinton Boulevard bombing.

The further circumstance of art. 147,9 is referred exclusively to defendant Nysret Cena and therefore it will not be discussed here.

As to the offences of attempted murder, the panel concurs that the acts of Besnik Hasani and Shpend Qerimi were univocally aimed at the murder of *all* the passengers of the Golf 2 vehicle.

Indeed, there is no doubt that showering a car with two Kalashnikov automatic guns, from a short distance and with the car travelling at a slow speed, can mean nothing else than the intention of the shooters to kill all the passengers of the car.

Therefore it is correct to declare them guilty also of the attempted aggravated murder of Sadik and Bujar Baftiu.

As to the requisite of the *mens rea*, the intention of the perpetrator of a criminal offence, in the absence of a confession or of oral evidence, must be inferred from the objectivity of the acts.

In the instant case there can be no doubts, in consideration of:

- the modality of commission of the crime (shooting with an automatic weapon) cannot be explained otherwise than assuming the existence of the will to kill;
- the organization of the ambush, with the involvement of several persons, implies necessarily the conscious willingness to commit the criminal offence.

In other words, the panel deems that not only was there the will to kill, but also the premeditation to do so.

In conclusion, Besnik Hasani and Shpend Qerimi must, therefore, be held liable for the murder of Neshat, Urim and Sylejman Baftiu and for the attempted aggravated murder of Sadik and Bujar Baftiu.

3.2. Nusret Cena

Nusret Cena is accused of having committed the criminal offence of aggravated murder contrary to Article 147 par 1 sub-par 3, 8 and 9 related to Article 23 of the CCK; two counts of criminal offence of aggravated murder as per Article 147 par 1 sub-par 3 related to Article 23 of the CCK; two counts of criminal offence of attempted murder as per Article 147 par 1 sub-par 3 related to Article s 20 and 23 of the CCK, to the detriment of Bujar and Sadik Baftiu.

However, after considering the evidence presented during the main trial, the trial panel deems that it is not sufficiently proved that he committed the alleged offences.

During the main trial, the Public Prosecutor presented the following evidence:

1. witness statement of R.T. acquired by the panel by direct interrogation of the witness during the main trial session held on 18 June 2010;
2. diary of the hotel Europa;
3. metering of the phone of Nusret Cena.

Previously, in front of the public prosecutor, he stated that the vehicle which dropped the defendants at the crime scene *“was Audi type and such a vehicle was driven by Nysret Cena. On the critical night the driver of the Audi vehicle had parted his hair in the middle just like Nysret Cena but I’m not sure whether it was Nysret or not”*.

This is not sufficient to prove that Nusret Cena was driving the car which dropped Besnik Hasani and Shpend Qerimi at the crime scene.

Indeed, it is clear from the statements of T. (and it was never rebutted) that he did not know Nysret Cena before the shooting and that he had never seen his car. Specifically for this reason did the Baftiu Family, in the days after the shooting, need to take him around the villages in order to see whether he could recognize a car similar to the one he had seen at the bridge.

This makes it clear that the sole possible interpretation of R.T.’s sentence *“such a vehicle was driven by Nysret Cena”* is that *such a kind* of vehicle was driven by Nysret Cena. In other words, after coming to know (in the days after the murder) that Nysret Cena owned a similar car, he was in a position to affirm to the prosecutor that Nysret Cena drove such a vehicle.

R.T. at the same time was very clear in affirming that he had not recognized Nysret Cena in the car.

This makes it impossible, for yet another reason, to conclude that Nysret Cena was the person driving the car on the critical night, even assuming that his car was the one seen by R.T.

In addition to the above, the prosecution did not provide the trial panel with any information about the whereabouts of Cena after 22:35. It is only known that until 22:35 he was in a hotel room. This lack of evidence has to be interpreted in the defendant’s favour.

Finally, from the metering of the phone conversation it can be noted that Nusret Cena at 23:59:55 received an SMS, and the cell ID shows that at that time he was within the area covered by the telephonic cell Nikaj 1, which is covering the area including the crime scene.

This evidence is not deemed to be crucial. In fact, in his statement in front of the panel the defendant admitted that at around midnight he headed home, as he did not want to be late that night due to an important business meeting he would have next day.

Now, from the map acquired as evidence by the panel (nr #2) it can be seen that in order to reach the village of Doganaj (the place of residence of the defendant) from Hotel Europa, one possible road is the one going through Gabernice e Eperme, which is covered by the same cell id as the crime scene, Nikaj 1. This entails that there is a likely alternative explanation of Cena's phone was within this area covered by the same telephonic cell, a few minutes before the murder happened. It has to be added that the area covered by the cell is quite significant, and that it is impossible therefore to know precisely where, in this area, Nysret Cena was.

In light of the above, the panel concludes that the evidence presented by the Prosecution to establish his responsibility, are not sufficient to actually establish that Nusret Cena was part in the commission of the criminal offences as described in the indictment.

3.3. Avket Vishi

Avket Vishi is accused of unlawful possession of weapons contrary to article 328 paragraph 2 CCK.

The witness statements presented by the Prosecutor are those of: M. B., H. B., Bujar Baftiu, I. B., A.B., Bl.B., V.B., and F.B..

M., H., I. and F.B. testified that Avket had a close relationship with Neshat Baftiu, during the period immediately prior to Neshat's killing.

The most important testimonies are those of Bujar, A., and Bl.B., who saw Avket together with Neshat, with two Kalashnikov automatic weapons.

In particular:

3.3.1. In his statement in front of the panel, Bujar Baftiu said that some days before the murder he met Neshat, who asked him to go to Luboten Mountain in order to try two Kalashnikov. Bujar agreed and waited for Neshat to call him, to no avail. The next day in the afternoon, Bujar saw Neshat coming back from Luboten Mountain. Neshat was with Avket and they had the two Kalashnikov with them.

3.3.2. A.B., in his statement before the panel said that some days before Neshat's death, Neshat borrowed the car from him in order to go to Pristina. When Neshat returned the car to A., A. saw the two Kalashnikov, and he just put the weapons in Neshat's car. Avket was also present. Neshat told A. that such weapons were for them (meaning himself and Avket)

3.3.3. Bl.B. (brother of Neshat Baftiu, living in the same house) testified in front of the Court that some days after the murder, Avket came to his house and told him that some weapons were in the stable. He asked Blerim to give them to him. Significantly, Bl. went to the stable and found two Kalashnikov where Avket indicated him, in a bag, and hand them over to Avket.

3.3.4. V.B. told the panel that a common friend – his and Avket's – told him that the situation of Avket was becoming complicated because of those weapons. Veton replied that unfortunately there is nothing he could do about it. He learnt the story of the weapons from his brother Blerim.

In light of the above outlined testimonies, the panel concurs that Avket Vishi was in the possession of two Kalashnikov, together with Neshat Baftiu before his death and also when, after Neshat's death, he took the weapons back from Neshat's brother.

All testimonies acquired by the panel are in the opinion of the panel trustworthy.

Firstly, they are internally consistent, with no logical gaps or inconsistencies. The narration is detailed and one of them in particular (Bl.B.'s) depicts Avket Vishi's relationship with particular intensity, in that it shows that Avket Vishi was able to indicate to Bl.B. where the weapons were hidden inside the stable of Bl.B. himself, without the latter being even aware of that.

The statements of the witnesses are reciprocally consistent, in that they corroborate each other on two very specific aspects of the detention of the weapons by Avket Vishi: a first episode before the murder of Neshat Baftiu (when he and Avket tested the weapons) and a second episode after the murder (when Avket obtained the restitution of the same weapons from Neshat's family).

The evidentiary proceeding highlighted no reason whatsoever why the Baftius should have falsely accused Avket Vishi. On the contrary, there is clear evidence that Avket was in very good terms with Neshat Baftiu before the murder and that he participated in the condolences of the victims of the murder.

The conduct described by the witnesses (possessing – in co-perpetration with Neshat Baftiu – two Kalashnikov automatic rifles; transporting them from Neshat Baftiu's place to another unknown place) plainly integrates the provision of art. 328 para 2 CCK under the point of view of the *actus reus*.

It is uncontested that Avket Vishi did not have any sort of authorization for the handling of these dangerous weapons.

There can be no doubt as to the existence of the *mens rea* requirement. It is proved, in fact, that the possession was wilful. There is also grounded suspicion that the possession was aimed at the execution of revenge, but the prosecution was unable to provide full proof of this.

Thus Avket Vishi has to be declared guilty of the criminal offence he was charged with.

4. Sentencing policy

4.1. Besnik Hasani and Shpend Qerimi

When deciding on the penalty the court must consider the modalities of the commission of the crime and the personality of the defendant. The punishment must also be a proper deterrent against further crimes and a proportionate sanction for the offence which was committed.

The Panel considers as particularly relevant the following aspects:

- three young persons were murdered, another was seriously injured.
- two aggravating circumstances were ascertained;
- the facts of the case show that the murder was accurately premeditated: it is clear that it required planning and observation in order for the defendants to know where the victims would pass.
- The evidentiary proceeding shows that the defendants accurately chose the circumstances of place and time in order to better reach their deadly aims. Indeed, it was ascertained that immediately before the Lepenc bridge it was necessary for cars

to reduce the speed, in consideration of the bad quality of the asphalt, thus making it easier for the ambushers to hit their target.

- the defendant acted in co-perpetration between them, thus showing a high degree of determination and the willingness to firmly pursue the criminal intent, being in the position to overcome possible defensive reactions of the victims;
- the victims were ambushed and executed in a brutal way, being showered with bullets from two different automatic weapons, without any possibility for them to flee or defend.

It has to be added that both Besnik Hasani and Shpend Qerimi were, at the time of the crime, police officers.

This adds, under a subjective point of view, to the gravity of their conduct. As public officials they had a more intense duty of compliance with the laws in general.

Taking in consideration all elements, and bearing in mind that for one single aggravated murder the law provides a punishment between a minimum of ten years and a maximum of forty years, the Panel deems it appropriate to impose a punishment of thirty-three (33) years for the criminal offence of aggravated murder and of ten (10) years for the criminal offence of attempted aggravated murder. The panel deems that the fair penalty for the criminal offence of unlawful possession of weapons is of two years. This considering the fact that the possession was of a particularly qualified nature, since the defendants planned the use of the weapons and efficiently fulfilled their planned actions.

The aggregated punishment for the three criminal offences is of thirty-three (33) years.

4.2. Avket Vishi

The following elements must be considered.

First, the defendant has no previous criminal record.

The intensity and duration of the detention of the weapons is of no particular relevance.

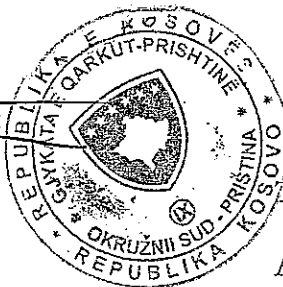
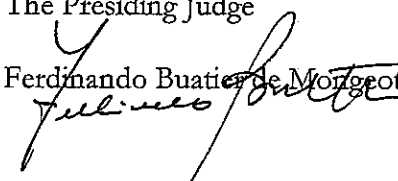
The attitude of the defendant throughout the criminal proceeding was correct and proper, raising no issues of discipline during the hearings.

The trial panel therefore deems that a monetary sanction (though of significant level) can be sufficient in order to meet the needs connected to the imposition of punishment.


Therefore the monetary fine of 5.000 EUR will be imposed on Avket Vishi, with payment to be executed within 3 months after the verdict becomes final and substitution into the corresponding imprisonment in case the payment does not follow timely.

The Presiding Judge

Ferdinando Buatic de Morgeot



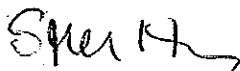
The Panel Members

Arkadiusz Sedek 

Hajrie Shala



The Court Recorder



Sonila Macneil

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 to them, pursuant to Article 398 Paragraph 1 of the Kosovo Criminal Procedure Code (CPC). The appeal shall be filed, through the District Court of Pristina, to the Supreme Court of Kosovo.

The appeal must be announced within eight days from the date of the verdict.