

BASIC COURT OF PRISHTINË/PRIŠTINA

Sitting in the Appeals Court building in Prishtinë/Priština

Case number: **PKR 276/13**

Date: **19 July 2013**

The judgments published may not be final and may be subject to an appeal according to the applicable law.

IN THE NAME OF THE PEOPLE

BASIC COURT OF PRISHTINE/PRISTINA in the Trial Panel composed of EULEX Judge **Mariola Pasnik**, presiding, Republic of Kosovo Judge **Faik Hoxha**, and EULEX Judge **Franciska Fiser**, panel members, with the participation of EULEX Legal Officer Grzegorz Lewocki, as a recording officer, in the criminal case against:

N.B., nick names “Gj.” and “S.”, father’s name I., mother’s name N., born on x xx xxxx in xxxx, xxxxx Municipality, Kosovo Albanian, ID number xxxxxxxxxx, married, two children.

The Accused, N. B., charged according to the Indictment of the EULEX Special Prosecutor Maurizio Salustro of the Special Prosecution Office of the Republic of Kosovo (SPRK) PPS 460/09, dated 26 April 2013, and filed in the Court on the same day with the following criminal offence, prosecuted *ex officio*:

N.B. charged with the criminal offence of Aggravated Murder, under Article 30 paragraph 1 and paragraph 2 of the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK), in conjunction with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), currently criminalized under Articles 31 and Article 179 paragraph 1, subparagraph 1.4 of the CCK in co-perpetration with **S.A.**, **B.S.**, **Sh.U.** and **F.G.**, because he murdered **I.K.** by shooting him dead with several rounds of firearm. Specifically, on the night of the murder the group of co-perpetrators including N.B. approached the house of the victim, one of them knocked on the door and when the victim

came out N.B. shot him dead with at least 6 bullets fired by Scorpion pistol provided to him by one of the co-perpetrators. **In Pristina on 6 August 1999;**

AFTER having held the initial hearing closed to the public, except observer from Humanitarian Law Center Kosovo on 3 July 2013 during which defendant pleads guilty. After rendering the ruling accepting guilty plea of defendant on 3 July 2013 and after a main closed trial hearing to determine a matter relevant for sentencing on 15 July 2013, held in the presence of Accused N.B., Mr. O.H., his Defence Counsel and Mr. Maurizio Salustro, the EULEX Special Prosecutor of the SPRK and the injured party as well as observer from Humanitarian Law Center Kosovo.

AFTER the Trial Panel's deliberation and voting, held on 15 and 19 July 2013;

PURSUANT to the Article 3 paragraph 2 of the CCK, Article 30 paragraph 1 and paragraph 2 of the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK), in conjunction with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY) and the Article 22 paragraph 1, subparagraph 1.53, the Article 25 paragraph 3, the Article 248 paragraph 4, the Article 359 paragraph 1 and 2, the Article 365 paragraph 1, subparagraphs 1.1, 1.2, 1.3, 1.5 and 1.6 the Criminal Procedure Code (CPC) as promulgated in Law Criminal No. 04/L-123 on 13 December 2012, entering into force on 1 January 2013.

Additionally taking into consideration grounds from the Article 42 paragraph 2, and the Article 43 paragraph 1, subparagraph 1.1 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY)

on this day 19 July 2013, in open court and in the presence of the Accused and his Defence Counsel, EULEX Special Prosecutor and observer from Humanitarian Law Center Kosovo and injured party.

Renders the following:

JUDGMENT

I Pursuant to the Article 3 paragraph 2 of the CCK, the Article 30 paragraph 1 and paragraph 2 of the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK), in conjunction with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), N. B. with the personal details as above IS FOUND **GUILTY** of Aggravated Murder because in co-perpetration with S.A., B.S., Sh.U. and F. G. he murdered I. K. by shooting him dead with several rounds of firearm. Specifically, on the night of the murder the group of co-perpetrators including N.B. approached the house of the victim, one of them knocked on the door and when the victim came out N.B. shot him dead with at least 6 bullets fired by Scorpion pistol provided to him by one of the co-perpetrators. In Pristina on 6 August 1999;

THEREFORE:

II Based on the Article 3 par. 2 of the CCK, the Article 30 paragraph 1 and paragraph 2 of the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK), and the Article 42 paragraph 2, and the Article 43 paragraph 1, subparagraph 1.1 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), the defendant N. B. (with personal details as above), is sentenced to **four years (4) and six months (6)** of imprisonment.

III Pursuant to Article 365 paragraph 1, subparagraph 1.5 of the CPC the time spent in house detention since 30 November 2009 until 29 November 2010 shall be credited.

REASONING

I. Procedural history:

1. **26 April 2013** – The Special Prosecution Office of the Republic of Kosovo filed the indictment;
2. **28 April 2013** – EULEX Presiding Judge and EULEX panel member were assigned;

3. **14 May 2013** – Republic of Kosovo Judge was appointed by the President of the BC Prishtinë/Priština;
4. **16 May 2013, 24 May 2013** and **5 June 2013** – ex-officio defence counsels were appointed by did not accept to defend the defendant;
5. **11 June 2013** – the initial hearing (postponed due the absence of the defence counsel and the defendant);
6. **13 June 2013** – ex-officio defence counsel in the person of the President of Prishtinë/Priština Bar Association was appointed;
7. **3 July 2013** – the initial hearing;
8. **15 July 2013** – the main trial hearing determining a matters relevant for sentencing;
9. **19 July 2013** – the announcement of the verdict.

II. Motions of the prosecution:

Prosecutor requested that defendant should be found guilty according to the indictment: He also said that when the judgment would be rendered; should be taken into consideration that thanks to the defendant continued collaboration and based on his statements, two indictments were filed against a total of 7 defendants and two convictions have been issued by the Kosovo's court. The defendant has been declared as a cooperative witness twice and twice was found to be a reliable cooperative witness, defendant showed remorse for what he did and he entered a guilty plea in front of this court. Prosecution said that compelled conclusion in all have been that, if defendant was a collaborator of justice, he deserved to be granted mitigating circumstances, and to have his punishment reduced, if not to the minimum, close to it. Moreover Prosecutor said that the defendant N.B., who during last years waited patiently for his punishment and confirmed repeatedly his initial version of the facts and reiterated his confessions deserved for it.

III. The motion of the defendant:

During the initial hearing on 3 July 2013 the defendant confirmed the charge and pleaded guilty of murder of I.K. On main trial hearing determining matters relevant for sentencing on 15 July 2013 he once again confirmed his guilt. The defendant has been never denied involvement in the count described in the indictment.

IV. The motion of the defence counsel (1) and his short summary as presented in his closing arguments (2):

1. **The defence lawyer** asked the trial panel to take into account the mitigating circumstances which were present on the side of the accused, and upon determining the sentence, it should impose a punishment with imprisonment below the minimum foreseen by the law.

2. In his arguments the defence counsel said that following signing of the “Kumanovo Agreement” by which it was put at the end of the war in Kosovo, things happened to extent of unpredictable, because the situation was not yet under control. KFOR had not capacities to cover also the civilian parts; hence the masses of people were under huge euphoria, out of control, which continued for several months thereafter. He argued that for a part of the population at the time, employees and staff of the former communist system were undesired and hated persons. Under those circumstances, the murder of I.K. unfortunately occurred, who was a retired police inspector, who has, for a long time then dedicated to his civilian and family life. Under those circumstances, the defendant N.B., thought that he was doing a patriotic gesture the deceased I.K. The defendant reported the case by himself, respectively; by admitting to having committed the offence but also by admitting the guilt for the committed offence he has shown a high level of both moral and criminal responsibility, and a very deep repentance, respectively. He asked for deep apology from the injured family for the profound mistake he made. Given his deep repentance, his continuous sought of apology from the injured family, his cooperation with the police and in particular with the Prosecutor but also with the Court, given that he is a family man, married and a parent of three (3) children, this accused should have plenty of attenuating circumstances when a decision on the criminal sanction will be made. The defence counsel said that he was deeply convinced that Trial Panel should in particular took into account the mitigating circumstances which were presented on the side of the accused, and upon determining the sentence, it would impose a punishment with imprisonment below the minimum punishment foreseen by the law, as the law foresees such a possibility in such cases. Apart from that the time spent under house detention since 30 November 2009 until 30 November 2010 should be calculated in the imposed punishment should also be calculated the time after 30

November 2010 onwards, of his confinement under severe security measures of the EULEX police, which means even his complete isolation from civil and daily life, called under Close Protection, an agreement which was signed by the Head of EULEX Xavier De Marnac and the accused.

V. Motions of the injured parties:

A.K. and **D.K.** were informed by court about all sessions in the case. **A.K.** was present on 3 July 2013 and did not file any motion. **D.K.** was absent all time. She did not send to court any motion.

VI. Evidence administered during the main trial:

1. During the course of the main trial, the trial panel, with the consent of the parties, considered as read the following statements:

- A. The defendant **N.B.**'s statement given on 30th November 2009;
- B. The defendant **N.B.**'s statement given on 3rd December 2009;
- C. The defendant **N.B.**'s statement given on 3rd July 2013¹.

2. Other evidence evaluated by the court:

- A. The district Court of Prishtinë/Priština judgement in case **S.A. et al** from 17 December 2012 (P 592/11);
- B. The minutes of main trial hearings in **S.A. et al** case (P 592/11) from 3 and 27 February 2012; 2, 8, 16, 20, 22, 29 March 2012; 12, 13, 25, 26 and 27 April 2012; 29, 30 and 31 May 2012; 6, 7, 11, 13, 14, 18, 20 June 2012; 25, 26 and 27 July 2012; 6, 7, 10, 12 and 20 September 2012; 15, 17, 18, 22, 23 and 31 October 2012; 5, 7, 14, 15, 19 and 22 November 2012 and 14 December 2012;
- C. The ballistics Report prepared by Forensic Laboratory (firearms and tools marks section) from 2 September 2010 Laboratory ref nr 2010-1576; PPS no 460/09;
- D. The district Court of Prishtinë/Priština judgement in **F. G.** case (P. no 371/10) from 23 November 2011;

¹ Main trial session on 15 July 2013 p. 4.

E. The witness statements:

- i. D.K. on 23 November 2009;
- ii. A.S. on 3 December 2009;
- iii. B.B. on 31 December 2009;
- iv. O.B. on 2 July 2010;
- v. G.G. on 28 November 2009;
- vi. G.G. on 13 September 2010;
- vii. G.G. on 28 April 2011;
- viii. K.G. on 7 June 2011.

F. Competence and Panel Composition of the Court:

Pursuant to the Article 20 paragraph 1, the Article 22 paragraph 1, subparagraph 1.53 and the Article 25 paragraph 3 of the CPC and Article 3 paragraph 1 and 2 of the Law on the Jurisdiction Case Selection, Case Allocation of the EULEX Judges and Prosecutors in Kosovo (Law No. 03/L-053) the panel of the Basic Court of Pristina has competent jurisdiction to adjudicate the case.

In the present case the charge against the defendant is the criminal offence of Aggravated Murder therefore, the Basic Court of Prishtinë/Priština has the subject-matter jurisdiction to adjudicate the case. The criminal offence, according to the indictment, was committed in Prishtinë/Priština, which is within the territory of the Basic Court of Prishtinë/Priština. Therefore, in accordance with the Article 20, par. 1 of CPC, the Basic Court of Prishtinë/Priština has the geographic jurisdiction to adjudicate the present case.

Since the present case was allocated to the competence of EULEX Judges by the decision of the Focal Point of EULEX Judges Mobile Unit dated 28 April 2013 (PKR nr 56/2013), the panel was composed of two EULEX Judges and one Kosovo Judge pursuant to Article 3.7 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

None of the parties objected to the panel composition.

G. The Main Trial Sessions:

The initial hearing closed to the public was held on 3 July 2013. The main trial hearing to determine a matter relevant for sentencing was held on 15 July 2013 and the announcement of the verdict took place on 19 July 2013 in the presence of the EULEX Prosecutor Maurizio Salustro, the accused N.B. and his defence counsel O.H. The injured party A.K. was present only on 3 July 2013, while D.K. was not present even though she was duly summoned.

In accordance with Article 14 of CPC, international interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary.

H. Finding of the Court:

Facts description:

After having monitored I. K. for some time in advance, the defendant N.B., who was together with the F.G., S.A. and Sh.U. in the evening of the 6th of August 1999 in Prishtina received a small firearm, type Scorpion, from a car in which amongst others A.S. was seated. The pistol was brought by F.G. to defendant. N.B. with four other persons (F.G., S.A., B.S. and Sh.U.) then drove by car to the premises of the deceased I.K. in the direction of Sunny Hill. Sh.U. instructed the others and remained in the car. N.B., F. G., S.A. and B.S. at about 9 p.m. walked to the fence around the house of I.K. Near the smaller gate at the entrance of the fence they positioned themselves on the street with S.A. on the right side of N.B., B.S. on the left side of N.B. and F.G. behind N.B. S.A. asked the wife of I.K., the witness and injured party D.K., to call her husband as they wanted to talk to him. When I.K. stepped outside the gate and into the street, N.B., after receiving confirmation from S.A. on the right identity, and using the pistol he had received, shot at least 6 bullets in directions of I. K. and thereby caused his death shortly afterwards. Immediately after the shots had been fired N.B. returned to the car where Sh.U. was waiting and together with others drove off. F. G., S.A. and Sh.U. carried weapons with them.

The defendant with S.A., Sh.U. and B.S. intentionally acted in co-perpetration and murdered I.K. as above described.

The defendant N.B. pleaded guilty during the initial hearing and several times before has freely admitted to the participation in the murder of I.K. and be a key “actor” of that fatal event. In the court’s opinion the defendant told the truth. It is confirmed by his statements regarding the circumstances of the case when he returned to Kosovo around 2009 and decided to go into the public with his accusations and revelations of the events he has claimed to have participated in during 1999-2000. The trial panel has found the following facts proven by the prosecution based on main trial records from 2012 main trial in S.A. et al (P. no 592/11) and testimony of witnesses beyond reasonable doubts.

Moreover all statements of the defendant collaborate on other evidence in the case, it means with statements of D.K. from 23 November 2009, A.S. from 3 December 2009, B.B. from 31 December 2009, O.B. from 2 July 2010 and G.G. from 28 November 2009, 13 September 2010 and 28 April 2011 as well as with K.G. from 7 June 2011. The statements of the defendant were always detailed, giving the clear picture of role/hierarchy of each of co-perpetrators and were not changeable in a substance. They include detailed description of behaviors of co-defendants and provide picture of fatal event step by step from beginning up to the end when they left the crime scene.

Legal qualification:

Based on the above the murder of I.K. was done with clear premeditation, in the presence of his wife who stood in the yard a few meters away from the smaller gate of the fence, by the defendant with a group and having prepared and planned well in advance for the murder. Moreover the attack was conducted at home of the victim where a person can feel safe. I.K. has not had any chance to protect himself. The defendant with other perpetrators has had plenty of time to consider and prepare for such the act. All moral or other objections have thus been put aside, the defendant acted without scruples.

These factors account for an aggravated murder.

Preparing and planning for the murder, as the court has found proven in this case, is by the court on this background considered an aggravated murder, clearly separated from a more simple murder (Article 30 paragraph 1 of the CLSAPK and Article 22 of the CCSFRY

currently criminalized under Articles 31 and Article 179 paragraph 1, subparagraph 1.4 of the CCK).

The general rule is that for conviction it is necessary that 1) the act performed was a criminal violation when it happened, and 2) continues to be a criminal violation at the present time.

The law applicable at the time of the murder, Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK), deals with murder in Article 30, where in paragraph 1 murder is punished with at least 5 years imprisonment, and paragraph 2 prescribes at least 10 years of imprisonment regarding certain explicitly stated types of murders. Article 30, paragraph 1, subparagraph 1.1 deals with murder in a “brutal” or “insidious” manner, which in the present criminal code CCK (after 1 January 2013) in Article 179, paragraph 1, subparagraph 1.4 is qualified as “cruel” or “deceitful” way. Based on the facts described above, I.K., when he appeared in front of the defendant N.B. was murdered without pity. For that reason this murder should be classified according to Article 30 paragraph 2, subparagraph 1 in the CLSAPK or as Article 179, paragraph 1, subparagraph 1.4 CCK as the nature and manner of the committed murder is to be described as “insidious manner” as in CLSAPK and “deceitful way” according to CCK.

Article 22 of CCSFRY and Article 31 of CCK deals with co-perpetration in which the central element is that two or more persons jointly commit a criminal offence by participating in the commission of the offence or by substantially contributing to its commission in any other way. The defendant N.B. fired the shots at I.K. as above described and each of the co-perpetrators played their own role. S.A. and B.S. participated in the murder *inter alia* by giving their support to N.B. Sh.U. had given the orders for to murder I.K. and had designated the roles. He himself drove the car to the home of I.K. and waited in the car when the murder was executed. He then drove the defendants and N.B. away from the crime scene. The intent of co-perpetration is entirely fulfilled.

Analysis of the most favorable law: (term of imprisonment, mitigation of punishment and conditional release).

Pursuant to the Article 3 paragraph 2 of Criminal Code of the Republic of Kosovo Code No. 04/L-082 (CCK) which entered into force on 1 January 2013 in the event of a change in the law applicable to a given case prior to a final decision, the law most favorable to the perpetrator shall apply. Hence that the court must first establish which law is the most favorable to the defendant in the current case.

The defendant N.B. has been found guilty under the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK) [PS No. 011-25/77] adopted on 28 June 1977 and the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY) which were in the opinion of the panel more favorable to the defendant than current one.

Under the Article 30 paragraph 1 and paragraph 2, subparagraph 1 of the CLSAPK in conjunction with Article 22 (co-perpetration) of the CCSFRY, whoever takes another person's life shall be punished with at least five (5) years of imprisonment. The term of imprisonment of at least ten years (10) or a death penalty (the death penalty was abolished on 12 December 1999², without any replacement) shall be pronounced against a person who takes another person's life in a brutal or insidious manner. On 27 October 2000 the death penalty was replaced with forty years (40) of imprisonment.³

Currently aggravated murder in co-perpetration is criminalized under the Article 179 paragraph 1, subparagraph 1.4 and Article 31 of the CCK. According that Article punishment of imprisonment of not less than ten (10) years or of life long imprisonment shall be imposed on any person who deprives another person of his or her life in a cruel or deceitful way.

In regards to mitigation of punishment pursuant to the Article 75 paragraph 1, subparagraph 1.3 of the CCK the court may impose a punishment below the limits provided for by law or impose a lesser type of punishment in cases when the perpetrator pleads guilty or enters into a plea agreement. In such cases the court should take under consideration the opinion of the prosecutor, defense counsel and the injured party with regard to the mitigation of the

² UNMIK regulation 1999/24 art 1 (5);

³ UNMIK regulation 2000/59 art 1 (6);

punishment and it shall be advised but not constrained by the limits provided for in the Article 76 of CCK, which in paragraph 1, subparagraph 1.1 mitigate the punishment as follow *“if a period of at least ten (10) years is provided as the minimum term of imprisonment for a criminal offense, the punishment can be mitigated to imprisonment of up to five (5) years”*.

Pursuant to the Article 42 paragraph 2 of the CCSFRY the court may set the punishment below the limit prescribed by law, or impose a milder type of punishment when it determines that there are particular extenuating circumstances which indicate that the aims of punishment can be attained by a lesser punishment. Article 43 paragraph 1, point 1.1 of the CCSFRY says then *“when there are conditions for the reduction of punishment referred to in Article 42 of this law, the court shall reduce the punishment within the following limit: 1) if a period of three or more years’ imprisonment is prescribed as the lowest limit for the punishment for a criminal act, it may be reduced for a period up to one year of imprisonment”*.

For that reasons based on it what was said and Article 42 paragraph 2 and Article 43 paragraph 1, point 1.1 of the CCSFRY imprisonment may be reduced for a period up to one year of imprisonment, which is the most lenient for defendant and the punishment of the imprisonment might be imposed from 1 year to 9 years and 11 months.

In regards to conditional release pursuant to Article 9 paragraph 2 of the Criminal Law of the Socialist Autonomous Province of Kosovo the convict who served a **one third (1/3)** of his term may be exceptionally released from prison if the conditions from paragraph 1 of this Article are met and if special circumstances pertaining to the convict’s personality obviously indicate that the objective of the punishment has been achieved.

Pursuant to Article 166 paragraph 3 of the Law on Execution of Penal Sanctions enter into force on 1 July 1977 in extraordinary cases, release on parole may be also pronounced to the convicted person who has served **one of the third (1/3)** of the prison sentence if conditions from paragraph 2 of this article exist and if the specific conditions, that have to do with his personality, affirm that the purpose of the sentence is achieved.

Pursuant to Article 94, paragraph 2 Criminal Code of the Republic of Kosovo Code No. 04/L-082 (CCK) a person convicted of a criminal offence for which a punishment of at least five (5) years imprisonment has been provided, may be granted conditional release after serving two-thirds (2/3) of the imposed sentence. For other criminal offences, the convicted person may be granted conditional release after having served **half (1/2)** of the imposed sentence.

Based on all above-mentioned the Criminal Law of the Socialist Autonomous Province of Kosovo (CLSAPK) and the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY) are the most favorable laws for defendant in regard to term of imprisonment, the mitigation of punishment and the conditional release and pursuant to the Article 3 paragraph 2 of Criminal Code of the Republic of Kosovo Code No. 04/L-082 (CCK) which entered into force on 1 January 2013 should be applicable for the defendant N.B.

Evidence presented and evaluated:

The defendant N.B. stood by his statements given on 30th of November 2009, 3rd of December 2009 and 3rd of July 2013 where he described in detail how he was picked up by a car with F. G. and S.A. and then the three of them drove to Victory Hotel in Pristina where they met with Sh.U., D.H. and B.S. and what happened latter. From another car where A.S. was sitting with his driver, F.G. received a Scorpion pistol with a silencer and brought it over to N.B. Afterwards the group without D.H. drove to the house of I.K. During the drive, Sh.U. gave his instructions that I.K. was to be killed. N.B., the Scorpion pistol in his hand, answered in the affirmative. The car was parked 50-100 m away from the house of I.K. Sh.U. remained in the car while S.A. B.S., F. G. and N. B. walked by foot to the house. All four were carrying weapons. At the gate the four positioned themselves with S.A. on the right side of N.B., B.S. on the left side and F.G. behind N.B. When a woman answered their call, they asked for I.K. as they wanted to talk about a passport. When I.K. appeared just outside the gate in the street, his identity was confirmed by S.A. Then N.B. using the pistol he had received fired several shots, between 5 and 11, into the body of I.K. Then the group returned to the car where Sh.U. was sitting and drove off towards restaurant “Quafa” where they all had dinner.

Moreover the defendant N.B. gave his statements before two main trial panels in the cases of the District Court of Prishtinë/Priština 1. F. G. (P. no 371/10) and 2) S.A. et al (P. no.

592/11). In both mentioned cases his statements were assessed by Panels as trustful and complex and two convicted judgments were issued.

Corroborating evidence:

The injured party and the witness D.K. testified before the panel in the case S.A. et al (P. no. 592/11) on the 2 of March.⁴ (She explained *inter alia* that her husband I.K. before he retired was employed by the state intelligence service.⁵ On the 6th of August 1999 four persons⁶ called at the gate of the fence surrounding their home in xxxx Street no xx and called for her late husband as they wanted to discuss the sale of a Zastava bus.⁷ The one who spoke was a bit shorter and with short hair.⁸ She then went inside and fetched her husband and he stepped just outside the gate. Shortly afterwards, herself being positioned about 5 meters away⁹ addressing her brother in law, she heard a shot and didn't remember anything more until being at KFOR.)¹⁰

Forensic laboratory tested and analyzed 6 shells found at crime scene and one shell submitted by N.B. This analysis concludes that the 6 shells were used by caliber 7.65 x 17 mm type Scorpion and the 1 shell submitted by N.B. was from a different 7.65 x 17 mm type Scorpion.

Assessment of evidence:

N.B.'s statements from 2009 as well as from pre-trial stage in current case are corroborated with the testimonies of the D.K. on essential points. There is contradiction between what was said that the group outside the gate wanted to talk to I.K. about. N.B. testified it was about passports, whereas D.K. testifies about the sale of a Zastava bus. This was the first murder to be committed by N.B. His concentration would normally and naturally be focused on the essential part of what was to happen, namely the firing of the shots at the victim. Other more minor elements would therefore not be so much in focus. The defendant stood by those statements during the main trial stage.

⁴ Minutes 15 July 2013 (from Minutes 2 March 2012 pp 8 ff);

⁵ Minutes 15 July 2013 (from Minutes 2 March 2012 p 10);

⁶ Minutes 15 July 2013 (from Minutes 2 March 2012 p 11 and p 16);

⁷ Minutes 15 July 2013 (from Minutes 2 March 2012 p 11 and p 17);

⁸ Minutes 15 July 2013 (from Minutes 2 March 2012 p 12 and p 18);

⁹ Minutes 15 July 2013 (from Minutes 2 March 2012 p 33);

¹⁰ Minutes 15 July 2013 (from Minutes 2 March 2012 p 11 and p 33);

The forensic analysis concluded that the found shells were from 2 different Scorpion pistols. The six shells and the fragment of one bullet were from one weapon, whereas the shell submitted by N.B. is from a different weapon. This is easily explained by the fact that the shell submitted by N.B. must be from a different Scorpion than the one that he used when killing I.K. That N.B. did not seem to have the intimate knowledge of small fire arms as D.H. seemed to have, it was demonstrated when N.B. was cross-examined by D.¹¹ The forensic analysis corroborates the testimony of N.B. in that a Scorpion was used and that he fired between 5 and 11 shots at I.K..

There is no doubt that I.K. died shortly afterwards as a result of the shots being fired at him in the evening of 6th of August 1999 and no one has disputed this fact.

The court finds that the statements of N.B. as described above in relation to murder of I.K. are credible and plausible. Additionally as it was mentioned already more than once he has given testimonies on several occasions on this incident, testimonies which are detailed and consistent. It is logical and without any substantive contradictions. The court finds no reason why N.B. should incriminate himself in this way.

The statements of N.B. in current case overlap on the essential parts of what happened with stories of D.K. including that four persons asking for I.K. at the gate with the smaller door of the house of I.K., at about 9 o'clock in the evening of 6th August 1999, and the quick execution type killing of I.K., followed by a speedy flight from the crime scene of the perpetrators. Only N.B. identifies the perpetrators.

On this background and the evidence considered in its entirety the court has confidence in the statements of N.B. on this account. Moreover taking into account the corroborating evidence as mentioned above, court finds the event described by N.B. as proven beyond reasonable doubt.

Sentencing considerations:

When considering below the appropriate punishment for defendant, the court takes into consideration the issues contained in Article 3 of the CCK and that the criminal offence was committed when all well organized and supported by a resourceful group having *inter alia*

¹¹ Minutes 15 July 2013 (from Minutes 31 October 2012 p 33);

adequate time, weapons and cars available to monitor the injured parties well in advance, to prepare and plan for the crimes and organizational capabilities to execute them speedily.

Defendant belonged to clearly defined group, consisting of the 5 defendant and including F.G. with a well-defined hierarchy and leadership and receiving orders or clearance from A.S. The defendants were all carrying weapons with them during the events described.

The role and punishment of the defendant:

The court has found proven that N.B. to fire the shots at I.K. and killed in co-perpetration I.K. as above described. Furthermore he participated knowingly and willingly and thus acted with the necessary direct intent on this occasion.

The court finds further proven that N.B. was not a dominant or leading figure. He participated in the activities of the group.

Determination of Punishment:

Within this frame the panel evaluated all relevant aspects to the favour and to the disfavour of the accused.

a) Mitigating factors:

Pursuant to Article 42 paragraph 2 and Article 43 paragraph 1, point 1.1 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY) as applicable to the defendant and the panel considered as a mitigating factor were the behavior of defendant and his family situation (event took place 14 years ago - 3 kids 8, 10 and 12 years old, wife, married); his time (one year) in house detention and facts that since 2010 he has been closely protected. He confessed to have committed the killing and he entered a guilty plea in front of this court, he showed remorse for what he did and he expressed to feel sorry for the victim's family. Moreover N.B. all these years waited patiently for his punishment and confirmed repeatedly his initial version of the facts and reiterated his confession from the beginning to the end in his case.

As a further mitigating factor, should be considered the complicity and changelessness of defendant's statements from first interrogation during the investigation stage and at the court stage in regards to I.K.'s murder. He pinpointed all co-perpetrators, described his and other rules. He underlined who gave the order, and he has not changed his statements. In 2011 and 2012 based on his testimonies which have been given in two cases six co-perpetrators were

sentenced to the punishment of the imprisonment. Due to the defendant's attitude the victim's family, justice and also society has been able to know the truth.

Therefore, all above-mentioned circumstances were taken as the main mitigating factor which resulted in a lower punishment against the defendant.

b) Aggravating factors:

Under the Article 30 paragraph 1 and paragraph 2, subparagraph 1 CLSAPK in conjunction with Article 22 CCSFRY, whoever takes another person's life shall be punished with at least 5 years of imprisonment. The term of imprisonment of at least 10 years up to 40 years of imprisonment (replaced death penalty) shall be pronounced against a person who takes another person's life in a brutal or insidious manner. The aggravated circumstances of defendant act are clearly visible in his way of action and lead to the outcome that the legal qualification made by the prosecutor (an aggravated murder no simple one) already reflected it.

After considering all these factors the trial panel imposed the punishment of 4 years and 6 months of imprisonment.

Time in house detention:

The defendant N.B. had spent a period of 12 months from 30 November 2009 up to 29 November 2010 in house detention. Pursuant to Article 365 paragraph 1, subparagraph 1.5 of the CPC the time spent in house detention shall be credited. The time after 29 November 2010 up to 19 July 2013 when he was at the special security measures and was closely protected is a natural consequence of his cooperation with the Justice and based on any legal provisions can not be counted as a measure of house detention. The court must stress that the defendant voluntarily agreed to cooperate so the conditions of his protection were only basic consequences of his action. According to Criminal Procedure Code only time in house detention can be credited and any other. Defence counsel of defendant filed on 26 July 2013 motion to court to count the period in special security measures before sentencing as a house detention

As it was mentioned below Pursuant to Article 9 paragraph 2 of the Criminal Law of the Socialist Autonomous Province of Kosovo the convict who served a one third (1/3) of

sentence can filed motion for conditional release. Defended was sentenced for 4 years and 6 months of imprisonment. One year of house detention (2009-2010) will be credited. Currently the defendant is again under house detention and he will have right to request for parole on 20 January 2014.

Property claim:

No property claims was filed.

Costs of criminal proceeding:

Pursuant to Article 453, paragraph 4 of the CPC, the court relieves the defendant of a duty to reimburse entirely the costs of criminal proceedings as provided for in Article 450, paragraph 2, subparagraphs 2.1 through 2.6 and the costs of the criminal proceedings shall be paid from the budgetary resources.

Done in English, authorised language.

PRESIDING JUDGE:

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EULEX Judge
Mariola Pasnik

RECORDING CLERK

Reasoned Judgment completed and signed on 7 October 2013.

Legal Remedy:

Pursuant to Articles 380 and Article 381 of the CPC, the authorised persons have the right to file an appeal against the present Judgement within 15 days of the day the copy of the Judgement has been served. Appeal shall be filed with the Basic Court of Prishtinë/Priština.