

**IN THE NAME OF THE PEOPLE**

**BASIC COURT OF PRIZREN**

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

**Case: P. 372/13**

**Date: 21 April 2016**

**The Basic Court of Prizren** in the trial panel composed of EULEX presiding trial judge Piotr Bojarczuk and the panel members EULEX judge Jorge Martins Ribeiro and judge Artan Sejrani and by the court recorder Venera Hadri-Mollakuqe **in the criminal case against:**

**E.K.**

**D.K.**

**B.K.**

**A.K.**

**H.K.**

**Charged** pursuant to the Amended Indictment PPS no. 1/2011 dated 28 June 2011 and filed before the Basic Court of Prizren and issued on 5 February 2014, with the criminal offences as described in the Indictment as following;

**E.K. and D.K.** charged with;

**COUNT 1: Aggravated Murder**, under Article 147 paragraph 9 in conjunction with Article 23 of the Provisional Criminal Code of Kosovo (PCCK), punishable by imprisonment of at least ten years or long-term imprisonment.

**B.K. and E.K.** charged with;

**COUNT 2: Grievous Bodily Harm**, under Article 154 paragraph 2, sub-paragraph 4 read with paragraph 1, sub paragraph 2, in conjunction with Article 23 of the PCCK, punishable by imprisonment of six months to ten years.

**B.K.** charged with;

**COUNT 3: Grievous Bodily Harm**, under Article 154 paragraph 1, sub-paragraph 3 of the PCCK, punishable by imprisonment of six months to five years.

**A.K. and H.K.** charged with:

**COUNT 4: Assisting Aggravated Murder**, under Article 147 paragraph 1, sub-paragraph 9 in conjunction with Articles 25 and 65, paragraph 2, of the PCCK, punishable by imprisonment of no more than three-quarters of the maximum punishment prescribed for the criminal offense.

**D.K. and B.K.** charged with:

**COUNT 5: Unauthorized Ownership, Possession and Control of Firearms**, under Article 328 paragraph 2 of the PCCK, punishable by a fine of up to 7,500 euros or by imprisonment of one to eight years.

After having held the main trial sessions, in the presence of the prosecutor Blerim Isufaj, later replaced by prosecutor Elez Blakaj, the accused and their defense counsel Florin Vertopi, Shemsedin Piraj, Durmish Koçinaj, Rexhep Hasani, Myrvete Qollaku and Florije Drevinja, the

injured parties A., I. and M.L., represented by counsel Ethem Rugova, later replaced by Qazim Xharra;

On the following dates;

2014:

27 January, 5 and 6 February, 4, 11, 13, 18, and 20 March, 24 and 25 April, 15 and 16 May, 3, 7, 21 and 22 July, 4 and 22 September, 1, 20, 27 and 30 October, 11 and 20 November.

2015:

6, 8, 9, 13 and 14 January, 11, 12 and 27 February, 24 April, 8 July, 20 August, 3 September, 26 October, 25 November.

2016:

25, 27, 28 and 29 January, 1, 2 and 29 February, 1 and 22 March, 21 April.

after the trial panel's deliberation and voting held on 21 April 2016;

**PURSUANT** to Articles 385, 387, 388, 390, 391 and 392 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), on this 21st day of April 2016, the trial panel in open court and in the presence of the defendants, defence counsel and the prosecutor renders the following

\* \* \*

## **J U D G M E N T**

**On COUNT 1**, the defendant **E.K.** is found

**GUILTY**

**Because:** on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshtjella", after the defendant and co-defendants agreed and planned to take revenge and cause harm to the L. family at restaurant "Oda" in Malisheva in the afternoon, because of an altercation which had happened between B.L. and H.K. on 12 December 2010 during the parliamentary elections, the defendant together with at least co-defendants D., B. and H.K. in at least two motor vehicles, an Audi 6, property of co-defendant H.K. and a Volkswagen Passat, property of G.K., proceeded towards the restaurant Keshtjella, owned by the L. family. Co-defendant A. had informed the defendant of the presence of members of the L. family there. After parking their vehicles, the defendant while being armed with a metal bar, together with co-defendants D. and B.K. while being armed with automatic rifles, entered the premises of the restaurant. While the defendant and the co-defendants were yelling and cursing, shouting "where are you, sons of Gj.?", the defendant approached the table where S.L. was sitting and watching TV, surrounded by family and other children. With the intent to deprive S.L. of his life, he hit him several times with the metal bar, including on his head and arm. This hitting caused fatal injuries comprising of brain contusion and bleeding under the soft brain membranes. Although for a very short period, S.L. suffered extraordinary physical pain, hence the defendant, by hitting S.L. with the metal bar, acted ruthlessly and violently.

- Herewith he committed the criminal offence of Aggravated Murder under Article 147, paragraphs 5 and 9 of the PCCK. (Thus, re-qualifying the original charge of Aggravated Murder under Article 147 paragraph 9 in conjunction with Article 23 of the PCCK).

**On COUNT 1, the defendant D.K.,**

Pursuant to Article 390, paragraph 3 of the PCCK, is

**ACQUITTED**

**Because:** it has not been proven that the accused committed the criminal act with which he has been charged in the indictment, namely the criminal offence of Aggravated Murder under Article 147 paragraph 9 read with Article 23 of the PCCK.

**On COUNT 2,** the defendant **B.K.** is found

## **GUILTY**

**Because:** on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshjtjella", the defendant B.K., while being armed with an AK 47 type weapon, with the intent to cause bodily injuries, shot once in the direction of injured party A.L. and hit him in the right knee, causing injuries which permanently weakened the function of the calf muscle of the right leg and incapacity of dorsiflexion of the foot, and temporarily and substantially impaired the capacity of A.L. to work.

- Herewith he committed the criminal offence of Grievous Bodily Harm under Article 154 paragraph 1, subparagraphs 2 and 4 of the PCCK. (Thus, re-qualifying the original charge of Grievous Bodily Harm under Article 154 paragraph 2, subparagraph 4 read with paragraph 1, subparagraph 2, in conjunction with Article 23 of the PCCK).

**On COUNT 2,** the defendant **E.K.,**

Pursuant to Article 390, paragraph 3 of the PCPCK, is

## **ACQUITTED**

**Because:** it has not been proven that the accused committed the criminal act with which he has been charged in the indictment, namely the criminal offence of Grievous Bodily Harm under

Article 154 paragraph 2, subparagraph 4 read with paragraph 1, sub paragraph 2, in conjunction with Article 23 of the PCCK.

**On COUNT 3**, the defendant **B.K.** is found

### **GUILTY**

**Because:** on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshtjella", the defendant B.K., while being armed with an AK 47 type weapon, with the intent to cause bodily injuries, shot at the lower part of the body of injured party I.L. Although the defendant failed to hit the injured party, fragments of the bullet, after it hit the floor, hit the injured party Ilir on the ankles of both feet. These injuries have temporarily impaired the capacity of the injured party to work.

- Herewith he committed the criminal offence of Grievous Bodily Harm under Article 154 paragraph 1, subparagraph 4 of the PCCK. (Thus, re-qualifying the original charge of Grievous Bodily Harm under Article 154 paragraph 1, subparagraph 3 of the PCCK).

**On COUNT 4**, the defendant **H.K.** is found

### **GUILTY**

**Because:** on 1 January 2011 around 19:30 hours, in the village of Banja, Malisheva municipality, at restaurant "Keshtjella", he intentionally assisted co-defendant E. in the commission of the criminal offence of aggravated murder by participating in the meeting with co-defendants at restaurant "Oda" and in the planning to go to restaurant "Keshtjella" to cause harm to members of the L. family, and escorting co-defendant E.K. away from the crime-scene, in his vehicle Audi A6.

- Herewith, he committed a criminal offence of Assisting Aggravated Murder under Article 147 paragraph 1, subparagraph 9 in conjunction with Article 25 of the PCCK.

**On COUNT 4**, the defendant **A.K.**,

Pursuant to Article 390, paragraph 3 of the PCPCK, is

### **ACQUITTED**

**Because:** it has not been proven that the accused committed the criminal act with which he has been charged in the indictment namely the criminal offence of Assisting Aggravated Murder under Article 147 paragraph 1, subparagraph 9 in conjunction with Articles 25 and 27, paragraph 1, of the PCCK.

**On COUNT 5**, the defendant **D.K.** is found

### **GUILTY**

**Because:** the defendant D.K., from an uncertain date up to 2 January 2011 in Malisheva municipality, had unauthorized ownership, possession, and control of a firearm type AK 47 caliber 7.62 x 39mm, with serial number 074949-89.

- Herewith, the defendant D.K. committed the offence of Unauthorized Ownership, Possession and Control of Firearms, under Article 374, paragraph 1 of the Criminal Code of Kosovo (CCK) (before: Article 328 paragraph 2 of the PCCK).

**On COUNT 5**, the defendant **B.K.** is found

### **GUILTY**

**Because:** the defendant B.K., from an uncertain date up to 2 January 2011 in Malisheva municipality, had unauthorized ownership, possession and control of a firearm type AK 47 caliber 7.62 x 39mm, with serial number 759933, whereby on 1 January 2011 he committed two criminal offences of grievous bodily harm with this weapon.

- Herewith, the defendant B.K. committed the offence of Unauthorized Ownership, Control, Possession or Use of Weapons under Article 328 paragraphs 1 and 2 of the PCCK.

\* \* \*

THEREFORE,

The defendant **E.K.** is

SENTENCED

For COUNT 1, pursuant to Article 147, paragraphs 5 and 9 of the PCCK, in conjunction with Articles 37 and 73 of the PCCK, to *Long-term imprisonment for the duration of 22 (twenty-two) years.*

The time spent in detention on remand shall be taken into account from 2 January 2011 until the Judgment becomes final pursuant to Article 391 paragraph 1 subparagraph 5 of the PCCK and Article 73 of the PCCK.

The defendant **B.K.** is

SENTENCED



For COUNT 2, pursuant to Article 154, paragraph 1 of the PCCK, in conjunction with Articles 38 and 73 of the PCCK, to *Imprisonment for the duration of 3 (three) years and 10 (ten) months.*

For COUNT 3, pursuant to Article 154, paragraph 1 of the PCCK, in conjunction with Articles 38 and 73 of the PCCK, to *Imprisonment for the duration of 3 (three) years and 9 (nine) months.*

For COUNT 5, pursuant to Article 374, paragraph 1 of the CCK, in conjunction with Articles 38 and 73 of the PCCK, to *Imprisonment for the duration of 1 (one) year.*

Pursuant to Article 71 paragraph 1 and paragraph 2 subparagraph 2 of the PCCK, the defendant **B.K.** is sentenced to an aggregate punishment comprising a term of imprisonment of *Imprisonment for the duration of 8 (eight) years.*

The time spent in detention on remand shall be taken into account from 2 January 2011 until 10 November 2015 and the the measure of house detention from 10 November 2015 until the Judgment becomes final pursuant to Article 391 paragraph 1 subparagraph 5 of the PCCK and Article 73 of the PCCK.

The defendant **H.K.**, is

SENTENCED

Pursuant to Article 147 paragraph 1, sub-paragraph 9, in conjunction with Articles 25, 37, 65, paragraph 2, and 73 of the PCCK;

For COUNT 4, to;

*Imprisonment for the duration of 5 (five) years.*

The time spent in detention on remand shall be taken into account from 2 January 2011 until 7 June 2012 and the the measure of house detention from 7 June 2012 until 10 August 2012 pursuant to Article 391 paragraph 1 subparagraph 5 of the PCPCK and Article 73 of the PCCK.

The defendant **D.K.**, is

SENTENCED

Pursuant to Article 374, paragraph 1 of the CCK, in conjunction with Articles 38 and 73 of the PCCK;

For COUNT 5, to;

*Imprisonment for the duration of 1 (one) year.*

The time spent in detention on remand shall be taken into account from 2 January 2011 until 10 August 2012 pursuant to Article 391 paragraph 1 subparagraph 5 of the PCPCK and Article 73 of the PCCK.

\* \* \*

Pursuant to Article 60, read with Article 54 paragraph 2 subparagraph 7 of the PCCK the Court imposes the accessory punishment of:

**CONFISCATION OF OBJECTS**

Pursuant to Article 328, paragraph 5, of the PCCK, the seized AK 47 caliber 7.62 x 39 mm, with serial number 074949-89, is hereby confiscated.

Pursuant to Article 328, paragraph 5, of the PCCK, the seized AK 47 caliber 7.62 x 39mm, with serial number 759933 is hereby confiscated.

Pursuant to Article 54 paragraph 2 subparagraph 7, the Audi A6 motor vehicle with registration number 610-KS-898 5, belonging to H.K., is hereby confiscated because it has been used for committing the above criminal offences .

The remaining seized vehicles shall be returned to their rightful owners.

\* \* \*

### **COSTS OF PROCEEDINGS**

Pursuant to Article 102 of the PCCK, the defendants whom are found guilty, shall jointly and severally be liable to pay the costs of these criminal proceedings.

The defendant D.K. shall pay an amount of € 300,- (three hundred euros), the defendant H.K. shall pay an amount of € 500,- (five hundred euros), the defendant B.K. shall pay an amount of € 800,- (eight hundred euros), the defendant E.K. shall pay an amount of € 1500,- (fifteen hundred euros).

\* \* \*

### **PROPERTY CLAIM**

The injured part may pursue a claim for compensation through the civil courts.

\* \* \*

### **REASONING**

## **I. Procedural Background**

### ***Indictment and re-trial***

1. The District Public prosecution in Prizren rendered a Ruling for initiation of investigations with number Hp. 1/2011 dated 3 January 2011 against the defendants E.K., S.K. , M.K. , H.K., D.K., SH.K., R.K., A.K. , I.K., B.K., D.K., I.B. and A.K.. On 5 January 2011, a Ruling for expansion of investigations with the same number was issued against the defendant SH.Z..
2. Subsequently, the case has been transferred to the Special Prosecution Office of the Republic of Kosova (SPRK), who filed the Amended Indictment PPS no. 1/2011 dated 28 June 2011 and filed with the Basic Court of Prizren, and re-issued it on 5 February 2014.
3. On 3 January 2011 the Pre-trial Judge of the District Court of Prizren ordered detention on remand against all the defendants. Detention on remand was subsequently extended for the defendants E.K., and B.K. from time to time until the imposition of penalty after the completion of the trial. On 6 June 2012 the trial panel terminated the detention on remand against A.K. and H.K. and substituted it with house detention. The detention on remand against the defendant D.K. has been terminated on 10 August 2012 and the house detention against A.K. and H.K. has been terminated on the same day by a separate ruling.
4. On 21 March 2011, the case against A. and M.K. was severed from the current case.<sup>1</sup>
5. The main trial was held before the then District Court of Prizren in the first half of 2012. The trial panel, consisting of two EULEX judges and one local judge, delivered the judgment on 10 August 2012, whereby the defendant E.K. was found guilty on Counts 1 and 2, the defendant B.K. was found guilty on Counts 1, 2 and 5, the defendant D.K. was found guilty on Count 5 and was acquitted on Count 1, and the defendants H. and A.K. were found guilty on Count 4. E.K.

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<sup>1</sup> Minutes of the first main trial, 21.03.2011, page 9.

was sentenced to a term of imprisonment of twenty three (23) years, B.K. was sentenced to an aggregate term of imprisonment of seven (7) years and five (5) months, D.K. was sentenced to a term of imprisonment of one (1) year, and H. and A.K. were both sentenced to a term of imprisonment of two (2) years.

6. The defendants herein appealed against the ruling of the District Court and in a Ruling delivered by the Court of Appeals in case number PAKR.nr. 275/13, and delivered on 14 October 2013, the Court of Appeals annulled the verdict of the District Court against all five defendants and ruled that the case be remitted to the now Basic Court in Prizren for re-trial.
7. In the same Ruling of 14 October 2013 the Court of Appeals ordered that the detention on remand against the accused E.K. and B.K. be extended.
8. The case was then remitted to the Basic Court in Prizren for re-trial and the Judge herein has been appointed as the Presiding Judge of the trial panel (hereinafter: the Panel). The composition of the Panel has not been contested by any of the parties. It is therefore presumed that they waived their right to challenge the composition.
9. Where only an appeal in favour of the accused has been filed, the judgment may not be modified to his detriment with respect to the legal classification and the criminal sanction. However, all parties in this case have filed an appeal, therefore the Panel is not limited to the prior judgment.
10. On 27 January 2014, the case was recommenced. On that date the Panel made an initial ruling that the evidence in the case was to be both video and audio recorded pursuant to Article 348 paragraphs 2 to 4 of the Provisional Criminal Procedure Code of Kosovo (hereinafter referred to as the "PCPCK").<sup>2</sup>

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<sup>2</sup> The Panel was however informed by the technical staff of the Basic Court of Prizren that due to unsolvable technical problems, the video- and audio recording of all sessions held after 25.11.15 has failed.

11. The trial was primarily held in open court. The injured parties M.L. , I.L. and A.L. on 5 and 6 February and 4, 11 and 13 March 2014 were heard in closed sessions at their request.<sup>3</sup>

### *Admissibility of evidence*

12. On 12 August 2011, the Indictment filed by the SPRK was confirmed by the then District Court in Prizren.<sup>4</sup> The Court ruled all evidence in the case-file admissible.

13. Florin Vertopi, defence counsel for E.K., filed a motion on 27 January 2014. He sought the declaration of inadmissibility of evidence in relation to the following: - the statement of co-defendant A.K. before the police dated 2 January 2011 - the reports by T.G. and H.K. - the reports of the crime scene examinations on 1 January 2011 and 19 January 2011 and the report of a reconstruction conducted on 5 June 2012. By its ruling of 5 February 2014, the undersigned Presiding Judge ruled that the aforementioned statement of A.K. is inadmissible and is excluded from the case-file and the Court's consideration, as this evidence was collected in breach of Article 73 of the PCPCK. The Presiding Judge ruled that the other pieces of evidence are admissible.

14. Further, the Court has issued another ruling on the admissibility of the expertise given by T. G. in its ruling of 25 January 2016, in which it stated that T. G. 's expertise specifically on the issue of the cause of death of S.L. is admissible evidence.

15. On 21 April 2016, Florin Vertopi, defense counsel for E.K., requested for the criminal proceedings to be reopened in order to administer 5 photos of restaurant 'Keshtjella' before the incident occurred, as evidence. The Panel denied the request, because the source of the photos was unclear, and the restaurant (crime-scene) had already been photographed multiple times. These photos are part of the case-file. Finally, the Panel ruled that it is unclear why the defense submitted the photographs this late in the proceedings.<sup>5</sup>

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<sup>3</sup> Minutes of the main trial, 05.02.2014, pages 5 and 6.

<sup>4</sup> Confirmation ruling, District Court of Prizren, Ka.no. 133/2011, binder 8, tab 9.

<sup>5</sup> Minutes of the main trial, 21.04.2016, pages 2-4.

16. The final collection of evidentiary material consists of the exhibits listed in Annex 1 and the content of the binders of the case-file, listed in Annex 3. Further, the following witnesses and expert witnesses have been heard during the main trial (see Annex 2):

M.L.	5 February 2014
I.L.	6 February and 4 March 2014
A.L.	11 and 13 March 2014
V.L.	18 March 2014
R.B.	20 March 2014
A.V.	24 April 2014
R.M.	24 April 2014
H.H.	25 April 2014
A.H.	15 May 2014
M.L.	16 May 2014
B.L.	3, 7, 21 and 22 July 2014
V.SH.	4 September 2014
I.H.	22 September 2014
A.SH.	27 October 2014
F.M.	30 October 2014
Xh.K.	11 November 2014
F.B.	20 November 2014, 8 January 2015, 3 September 2015 (Site visit), 25 November 2015
T.G.	8, 9, 13, 14 January 2014, 27 February 2015
H.K.	11 and 12 February 2015, 3 September 2015 (site visit), 25 November 2015
M.G.	20 August 2015

17. The defendants were heard on 27, 28 and 29 January 2016 and on 1 and 2 February 2016. The Panel has taken into account and evaluated all points presented by the defense and the prosecution during the main trial. The Prosecutor has argued that all five defendants ought to be

convicted for the crimes they are charged with. The defendants, represented by their defense counsel, have pleaded not guilty for the charges except for the unauthorized possession and use of weapons by B.and D.K..<sup>6</sup>

### ***Applicable law***

18. The Court notes the provisions of Article 544 of the Criminal Procedure Code of the republic of Kosovo, (“the CPCK”), Criminal Law No. L04/123, which came into force on 01 January 2013, and in particular Article 544 of the CPCK, which states under the heading ‘application of law upon rehearing’: “after entry into force of the present Code, if on the occasion of an appeal or an extraordinary legal remedy the judgment is annulled, the main trial shall be conducted *mutatis mutandis* under the previous code”. The Court is satisfied that accordingly, the PCPCK is the applicable law in terms of the application herein.

### **II. Statement of facts**

19. The Panel reviewed all evidences set out in the Annexes and the case-file. Where the evidence was of particular assistance to the Panel in determining the issues before it, this is referred to in below reasoning. All references to page-numbers relate to the English version of the document.

20. The Court derives the following facts from the case-file and the proceedings during the main trial.

21. The Defendants E.K., D.K., B.K., A.K. and H.K. met on 1 January 2011 in restaurant “Oda” in Malisheva at around 15:00 hrs.<sup>7</sup>

22. That same evening, the L. family had a family celebration in their restaurant ‘Keshtjella’ in Banja, Malisheva municipality. Children of the L. family were also inside the restaurant.<sup>8</sup>

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<sup>6</sup> Minutes of the main trial, 05.02.14.

<sup>7</sup> Minutes of the main trial, 24.04.14, statement of R.M., owner of Oda restaurant. Defendants E., H., D. and B. have all confirmed that they were in Oda restaurant prior to the critical event. They have also stated that A. dropped by to take 10 euros from E.



23. R.B. , waiter at Keshtjella restaurant, started his work at 15:30 hrs that day. There were some guests, including A. , V. , I. and A.SH. . At around 19:00 hrs, one person, who was later identified as defendant A.K., was sitting in the middle of the restaurant eating pizza.<sup>9</sup> A. was seen moving in and out a lot, while talking on the phone.<sup>10</sup> At multiple times he had contact with defendant E.K. by mobile phone.<sup>11</sup>
24. At around 19:30 hrs, E. , B.and D.K. arrived at the restaurant by at least two vehicles, one of which was the Audi A6 motor vehicle with registration number starting with XXXX belonging to H.K..<sup>12</sup> Although it remains unclear how H. got to the restaurant, it is proven that he did enter the restaurant, at least for a short time.<sup>13</sup>
25. One of the guests, V.SH., who was outside, witnessed four or five persons entering the restaurant.<sup>14</sup> He was then called on the telephone by A.SH., who was still in the restaurant, and told him not to go back inside because there was shooting going on.<sup>15</sup> While V.SH. was in the parking lot, he noticed a vehicle with running engine.<sup>16</sup>
26. E., B., D. and H.K. entered the premise through the main entrance at EV4, passing by EV5, and entered the space of EV6.<sup>17</sup> D. and B.K. were armed with automatic rifles, whereas E. had a

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<sup>8</sup> The presence of children was confirmed by several witnesses. For examples, see minutes of the main trial 05.04.14, statement of I.L. ; minutes of the main trial, 20.03.14, statement of R.B. , page 12.

<sup>9</sup> Minutes of the main trial, 16.05.14, statement of M.L. , page 37; minutes of the main trial, testimony of I.L. , page 31. Minutes of the main trial, 22.07.14, statement of V.SH. , page 17.

<sup>10</sup> Minutes of the main trial 03.07.14, statement of B.L. , page 12. “He was constantly moving, inside outside, on the telephone”; minutes of the main trial 05.02.14, statement of I.L. . A. also confirmed he was in the restaurant.

<sup>11</sup> Exhibit 25 (separate binder), PTK Report for 45282353 incoming SMS – E.K.

<sup>12</sup> Minutes of the main trial 18.03.14, statement of V.L. . V.L. saw that H.K. was driving the vehicle away from the restaurant right after the events took place. See under paragraph 31. The ownership of the vehicle is not contested.

<sup>13</sup> He was noticed by several witnesses to be present in the restaurant during the critical event. There is insufficient evidence to establish that he arrived together with the other defendants. Witnesses have elaborated about H. partaking in the hostilities, but as he is not charged with those acts in the indictment, the Court refrains from assessing those statements.

<sup>14</sup> Minutes of the main trial, 22.07.14, statement of V.SH., page 21.

<sup>15</sup> Ibid, page 22.

<sup>16</sup> Ibid, page 28.

<sup>17</sup> Exhibit 13.1, sketches of restaurant ‘Keshtjella’. E. and H. were recognized by I.L. , minutes of the main trial 05.02.14. D. was recognized by B.L., see minutes of the main trial 21.07.14. Further, see minutes of the main trial, statement of A.L. 13.03.14, pages 16-17.

metal bar.<sup>18</sup> They slammed the door and yelled and cursed, shouting “where are you, sons of Gj”.<sup>19</sup> They started shooting after entering the restaurant.<sup>20</sup>

27. S.L. was sitting at EV7, watching TV with the children.<sup>21</sup> The defendant E. approached the table in front of the TV.<sup>22</sup> S. saw E. with the metal bar, tried to stand up and raised his arm to defend himself.<sup>23</sup> With the metal bar, E. hit S.s arm and then hit him in the head.<sup>24</sup> This hit caused fatal, massive injuries of the brain tissue and bleeding under the soft brain tegument by breaking the skull bones.<sup>25</sup> S. fell down on wooden floor.<sup>26</sup> He landed on his back.<sup>27</sup>

28. The defendant D.K., with his firearm shot from a position near pillar 6 with this AK 47. A shell was found later that evening (EV11).<sup>28</sup>

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<sup>18</sup> Minutes of the main trial, 13.03.14, statement of A.L., page 10; minutes of the main trial, 03.07.14, statement of B.L., page 16; minutes of the main trial, 04.09.14, statement of V.SH., page 15: “E. had a metal bar”. Both D.B. Krasniqi have confessed to the possession and use of automatic rifles, respectively a firearm type AK 47 caliber 7.62 x 39mm, with serial number 074949-89 and a firearm type AK 47 caliber 7.62 x 39mm, with serial number 759933.

<sup>19</sup> Minutes of the main trial, 16.04.14 statement of M.L. page 10; minutes of the main trial, 27.10.14, statement of A.SH. page 15; minutes of the main trial, 03.07.14, statement of B.L., page 17: “Gj. was a Serb who lived in Banje village. They said this to offend us”; minutes of the main trial 27.10.14, statement of A.SH., page 15.

<sup>20</sup> Minutes of the main trial, 16.05.14, statement of M.L. page 27.

<sup>21</sup> Ibid.

<sup>22</sup> Minutes of the main trial, 20.03.14, statement of R.B.

<sup>23</sup> Exhibit 1.4: Report by T.G. and F.B. minutes of the main trial, 16.05.14, statement of M.L., page 11. Minutes of the main trial 14.01.15, statement of T.G., page 38. Pre-trial statement of R.B., page 3.

<sup>24</sup> Minutes of the main trial, 27.01.16, page 13, statement of defendant E.K.: “Prosecutor: You stated the following: After the hit he fell on the floor of that restaurant. You continued: “*When he fell I know that the bar fell from the hand, I took the bar and I hit another person who was coming in my direction*”. You stated today you didn’t use that bar. Now I ask the question: did you use the bar or not? E.K.: This was on the 14.01.2011, is this correct? Prosecutor: Yes. E.K.: My memory was fresher at that time, this should be the case.”; minutes of the main trial, 03.07.14, statement of B.L., page 18; minutes of the main trial, 22.07.14, statement of B.L., page 4; minutes of the main trial, 20.03.14, statement of R.B., page 41; minutes of the main trial 04.03.14, statement of I.L., page 6. Exhibit 1.2, autopsy report.

<sup>25</sup> Exhibit 1.2, Autopsy report; minutes of the main trial 20.11.14, 08.01.15, 09.01.15, 13.01.15, 14.01.15, 11.02.15, 12.02.15, 27.02.15, 20.08.15 – statements of expert witnesses F.B., T.G., H.K. and M.G..

<sup>26</sup> Minutes of the main trial, 20.03.14, statement of R.B., page 16; minutes of the main trial, 03.07.14, statement of B.L., page 22.

<sup>27</sup> Minutes of the main trial 15.05.14, statement of A.H. ; minutes of the main trial, 16.05.14, statement of M.L., page 29; minutes of the main trial 22.09.14, statement of I.H. , page 9.

<sup>28</sup> Exhibit 1.4, General expert information report by T.G. and H.K., office of medical legal expertise MONKON, 13.06.11, page 27.

29. The defendant B.K. shot with his firearm from near EV10 in the direction of the injured I.L. who was near the bar.<sup>29</sup> The bullet hit the ground made of stone, jumping from it, it hit the injured party Ilir on his foot, causing a wound which damaged the skin, skin tissues, the talus bone of the right foot, breaking it in many pieces going through the skin and entering into the inner part of the right foot. The back of his left foot and under the left knee was injured by the bullet, one of the bullet parts broke the bone and entered into the medulla.<sup>30</sup>
30. B. also shot from a point near EV14 with his rifle in the direction of PR6 where A. had run to in order to help S..<sup>31</sup> The bullet hit him on the upper part of his right knee, causing a wound harming the skin, under the skin tissue, the head of fibula and the tibia, totally cutting the right peroneus nerve.<sup>32</sup>
31. The defendants left the scene after 5-15 minutes. H.K. escorted at least E. in the aforementioned grey Audi A-6.<sup>33</sup> A.I. H.H. , V.L. and the police came to the restaurant and A., Ilir and S. were taken to hospital.
32. On 2 January 2011 at around 19:00 hrs, the police arrived at the Krasniqi family house and arrested E., D. and B.K.. D. and B. informed the police where the weapons were. They were

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<sup>29</sup> Minutes of the main trial 05.02.14 and 04.03.14, statement of I.L.; Shell found at EV-10 traceable to Berats weapon, see Exhibit 1.4, General expert information report by T.G. and H.K., office of medical legal expertise MONKON, 13.06.11, page 27.

<sup>30</sup> Exhibit 1.4, General expert information report by T.G. and H.K., office of medical legal expertise MONKON, 13.06.11.

<sup>31</sup> Minutes of the main trial, statement of A.L., page 18: “B. loaded the weapon (...) then he hit me in the leg and I fell down”. Shell found at EV10 traceable to B. weapon, see Exhibit 1.4, General expert information report by T.G. and H.K., office of medical legal expertise MONKON, 13.06.11, page 27.

<sup>32</sup> Exhibit 1.4, General expert information report by T.G. and H.K., office of the medical legal expertise MONKON, 13.06.11.

<sup>33</sup> Minutes of the main trial 18.03.14, statement of V.L., page 5-6. Statement V.L. at the Malisheve Police station, 02.01.2011, 00:35hrs. V.L. was approaching the restaurant on the narrow street leading to the parking place, because I.H. had called him for help. He had to pass H. vehicle very closely in that street and could recognize H. calling with a mobile phone while driving very slowly.

around 40 meters away from the Oda restaurant and they were hidden in the bushes.<sup>34</sup> H. and A.K. were also arrested.

### **III. Additional considerations regarding the evaluation of the evidence**

#### *Credibility of the witnesses*

33. The Panel has carefully assessed the statements of the witnesses and concludes that they are generally reliable and consistent. Crucial contradictions with previous statements have not been found, other than minor changes which are to be expected considering the long time lapse between the event and the first statements, and the statements given in court. It is a general observation of the Court that eye-witnesses do not always give a correct statement in every detail, especially in the case where one is focused to save his or her own life in a life threatening situation.
34. The Panel has assessed the maps and the area of the restaurant during the site-visit on 3 September 2015.<sup>35</sup> Together with the statements of the witnesses and the expert witnesses, the Panel found that the eye-witnesses were in positions from which they could have witnessed the events they described. Moreover, they have also clearly stated in which cases they were unable to see certain events.
35. Generally speaking, the Panel considers the testimonies of the L. families with some reservation. Especially the statements of B. , A. and I.L., that it was a very large group of persons which entered the restaurant and attacked them, is found to be exaggerated. Those are completely inconsistent with other witness statements which speak of a group of 3 to 6 men. Although it cannot be excluded, the Panel has not found conclusive evidence that the defendants were accompanied by more people.

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<sup>34</sup> Minutes of the main trial 24.04.14, statement of A.K.

<sup>35</sup> Minutes of the main trial, site visit, 03.09.15.

36. However, the descriptions as presented by the L. witnesses do give a general idea of the invasion of the defendants into the restaurant. They have stated that E., D., B. and H. were in the restaurant at the time of the crimes, that E. hit S.L. with a metal bar and that D. and B. used an AK47. Most importantly, these statements were confirmed by the reports of T.G., H. K. and F.B., regarding the wounds of the injured parties and the ballistic evidence. The testimonies of the waiters who were present during the critical time, describe the event most reliably. They stated who was in the restaurant, what the actions of each person was and that children were present.
37. More specifically, I.L.'s testimony is in consistency with the statements of other eye witnesses in key issues. From his position Ilir could observe the criminal acts and the perpetrators quite well, especially when they entered the restaurant. He recognized the defendants E. and H..
38. A.L. stated that on the critical evening he was in Keshtjella restaurant sitting at the table near the window and the bar with M. L. and his two cousins. He stated that he knew all of them, he knew E. and H.K. particularly well because together with G.K. (E.s father, the former mayor of Malisheva, of whom H. was the driver) they had been regular clients in the restaurant. Further, he knew the son of I., B.K.. The court finds A.'s testimony in general credible. It is in consistency with the statements of other eye witnesses in key issues.
39. B. L.'s statements are mostly in consistency with the statements of I. and A. and other eye witnesses. He stated that when the crimes started, he was sitting at table 19, then moved to the pillar between table 17 and 19 near the chimney to hide and after that he went under these tables near EV12 to hide. From his first positions he had an excellent view at the perpetrators when they entered the premises. He confirmed the statements of A. and Ilir who saw H., and who saw E. hitting S. with a metal bar and B. shooting with AK 47 at Ilir and A.. It is credible that he could recognize them because he knew them well, especially H. and E..
40. R.B. has stated who were in the restaurant at the moment the defendants entered. He also gave a detailed account of A. and his activities with the telephone. The Panel finds this testimony credible and very relevant. It is in consistency with the statements of other eye witnesses on key issues.

41. A.SH. recognized A. because he worked for his uncle in Malisheva making doors and windows and saw him every week. A. was able to observe that S. was hit with metal bars because his table was near to S.'s. But he could not see on which part of the body they hit S. because there was a concrete pillar in the way.
42. V.SH. confirmed parts of the statement of his cousin A.. He also stated that A. went to the toilet and came back, and that 10 or 15 minutes after A. disappeared, the crimes took place. However, the part where he describes that the perpetrators came back to the restaurant and fired again some shots, is not plausible.<sup>36</sup> He is the only witness who stated that they returned. The court does not base its findings on his statement except the parts that are in consistency with the statements of other witnesses.
43. The statements of H., A. and I.H. are convincing, logical and in the large part in consistency with each other.
44. V.L.'s statements are found credible. The Panel is convinced that despite the darkness and fog, he was able to identify H. as the driver of the grey Audi given the proximity between the two vehicles and especially since he knew H. for years as the driver of the mayor. The Panel knows from the site visit that the small road leading to the parking place of the restaurant - where the vehicles met - is very narrow. Two cars can pass each other but there is not much more space. The lights of his vehicle enabled V. to see part of the registration number, the brand and color of the vehicle, and H. as a driver. For the same reasons the Court finds it credible that V.L. saw the barrels of the weapons inside the car between the driver and the passenger's seat.
45. The Panel finds that H. K. and T.G. gave credible and well-grounded statements as mentioned above. Moreover, the Panel finds sufficient grounds to rely on their reports. With regard to the discussion about whether these experts are sufficiently qualified, it is referred to the paragraphs covering the admissibility of evidence above.

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<sup>36</sup> Minutes of the main trial, 22.07.14, statement of V.SH., page 26.

Planned character

46. The Panel finds that from the circumstances of the meeting at Oda restaurant and the following events, it can be derived that they made the plan to go to the Restaurant ‘Keshtjella’ - property of the injured L. family - the same evening, to cause harm to one or more members of this family.
47. In that regard, the Panel finds relevant that during the time that A. was in restaurant ‘Keshtjella’, he was witnessed moving in and out a lot, and the following SMS’s were sent to his telephone from E.s telephone. (It is not contested that these numbers belonged to and were used by E. and A.K. at the critical time.)<sup>37</sup>

01.01.2011, 17:52hrs, SMS sent from E. to A.: “Did you go in there, is there something there.”

01.01.2011, 18:14hrs, SMS sent from E. to A.: “Don’t lie. Who is there, tell me.”

01.01.2011, 18:15hrs, SMS sent from E. to A.: “Do you have money. If you don’t tell me because they are coming now.”

01.01.2011, 18:45hrs, SMS sent from E. to A.: “Has some new guests come”.

Motive: unscrupulous revenge

48. When considering the circumstances of the event, the Panel finds that there are grounds to conclude that the motive of the criminal offenses of this case lies in the aftermath of a dispute which took place during the elections on 12 December 2011 and ultimately led to the Judgment of the District Court Prizren of 16 March 2012.<sup>38</sup> On that day, a quarrel between the people from Banje and the people from Carralluka erupted at the elementary school in Banje which served as a voting location that day. B. L., member of the L. family, was subsequently found guilty of unauthorized possession or use of a weapon, and V.K. (not a relative from the defendants) was found guilty of punching H.K. – defendant in this case – while he was in his vehicle during the altercation. H.K. and B.L.. both gave detailed statements about the incident during the main

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<sup>37</sup> Exhibit 25 (separate binder), PTK Report for 45282353 incoming SMS – E.K.

<sup>38</sup> Exhibit 11.1, District Court of Prizren, P. No. 44/2011, 16.02.2012.

trial.<sup>39</sup> Although the complete (political) background of the dispute between the two families as expounded by B.L.. on 3 and 7, 21 July 2014<sup>40</sup>, remains unconfirmed, the content of the Judgment of District Court Prizren of 16 March 2012, which was upheld by the Supreme Court, clearly shows a quarrel at least existed between H.K. and B.L...<sup>41</sup>

49. The Panel comes to the conclusion that the motive behind the killing of S. was ‘unscrupulous revenge’, as provided by paragraph 9 of Article 147 of the PCCK and as referred to in the closing statement of the Prosecutor. The defendants wanted to inflict harm on the L. family for the wrong that – in their eyes – was committed by L. family members to H.K. during the elections held on 12 December 2010 in Banje. The revenge was ‘unscrupulous’ due to the abrupt, unconscionable behavior by which the defendant E.K. attacked the unsuspecting S. L., who was surrounded by children.

Cause of death S. L.

50. F.B. is the Forensic Pathologist who conducted the autopsy of S. L.’s body on 03 January 2011 and compiled the autopsy report.<sup>42</sup> M.G. monitored the autopsy and was present in the morgue but did not add anything to the report himself. He was heard by the Panel and the parties through a videolink with Poland, at the request of the defense. He explained the procedure of the autopsy and stated that he supports the autopsy report compiled by B.<sup>43</sup>
51. The autopsy report mentions the following death cause: “Pervasive wounds in the pelvis area caused by a dynamic action of a projectile fired from a firearm; Brain injury (contusion cerebri) and bleeding under soft brain membranes.”

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<sup>39</sup> Minutes of the main trial 02.02.16, statement of defendant H.K., page 23; minutes of the main trial, 21.07.14, statement of B.L..

<sup>40</sup> Minutes of the main trial, 03.07.14, statement of B.L., page 7 onwards, “I was supposed to be killed, not S. ”.

<sup>41</sup> Exhibit 11.1, District Court of Prizren, P. No. 44/2011, 16.02.2012; Exhibit 11.2, Supreme Court of Kosovo, Ap. No. 258/2012, 17.10.2012

<sup>42</sup> Exhibit 1.2, Autopsy report, MA 11-001, Dr. F.B., 03.01.11.

<sup>43</sup> Minutes of the main trial, 20.08.15, statement of M.G.



52. In addition, H. K. and T.G. together delivered a written report from ballistic and medical insight.

It states that:

“Death is violent and comes as a result of massive bruises of brain tissue and bleedings under the soft brain membranes, from fractures of lobe bones, as a consequence of mechanical banging / “beating” actions of a strong and furious weapon – as concluded by the pathologist / and assisted also by tearing the abdominal body parts / colon and gut/ and pouring their content into the abdominal cavity, and also the “profuse” bleeding, as a result of the dynamic action of a projectile fired from a firearm.”

53. In court, both expert witnesses F.B. and T.G. have stated that more than 50 % of the death cause is brain contusion. G. additionally said that the bullet which was shot by AK47, did not damage any vital organs and that it is likely that he would have survived without the brain damage. He also stated that the shot injury would only be fatal if left untreated. The Panel finds no reason not to follow this conclusion, and sees no contradiction with the statement of F.B. and the conclusion in the autopsy report. This conclusion is merely specified by the statement of T.G..

54. The Panel does not follow the suggestion of the defense that S. L.’s head injury was caused by falling on the ground. T.G. named typical fractures sustained by a blunt object and stated that the fracture is not consistent with a fall but with a hit by a blunt object. As stated by multiple witnesses, the place where he was sitting and where he fell, had a wooden floor. Further, expert witnesses have stated that if he was to get killed by falling on his head, he would have had to fall head down, feet up. M.G. even stated that he would have had to fall from at least one meter high.<sup>44</sup> This is unlikely considering the position (sitting, then standing up) he was in.

55. Considering the content of the autopsy report, the report of B. and G. , and the statements of the expert witnesses in Court, the Panel finds sufficient grounds to conclude that the cause of death was the hit on the head with a (blunt) object, in this case the metal bar.

#### **IV. Considerations regarding narrative proffered by defense**

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<sup>44</sup> Ibid, page 11.

56. The defendants and their counsel have proffered the alternative explanation that they were first attacked by the L. family, and subsequently acted in self-defense. D.K. stated: “When we went to that restaurant, we entered inside and we saw E. lying down on the floor. There were some men there, who had hit E. and who shot at us by weapons. We got outside and we picked up the weapons we used to shoot for the New Year’s Eve and we went back inside and we picked up these weapons for self-defence, not to attack anyone. When I saw E. in that condition and those men with weapons, (...) they started shooting and for self-defence I shot only on the ground three or four times, I do not remember exactly and then we took E. and pulled him out.”<sup>45</sup>
57. After careful assessment of the case-file, exhibits and witness statements, the Panel finds this version incredible and unsupported by the facts. The weapons were not only used by the defendants to shoot at the floor and defend themselves. Additionally, the Panel deems it relevant to mention that several witnesses have testified consistently that the persons entering the restaurant yelled “Where are you sons of Gj.?”. The Panel rules out the possibility that all these witnesses coincidentally stated the exact same words. Subsequently, considering that this is in fact what was yelled after entering, the Panel finds that it corroborates the narrative that the persons entering were not attacked, but were the ones who initiated the violence.
58. Further, the Panel finds it relevant to mention that even if D. and B. indeed went back to their vehicle to pick up weapons and defend E., they could have, and should have, taken the opportunity to re-evaluate the situation and choose an alternative approach, namely to call the police to rescue E..
59. The Panel further does not find it credible that the defendants were attacked, because they simply went home afterwards without involving the authorities, even while E. injured. The AK-47s were subsequently hidden in the bushes. This adds to the implausibility of the events as alleged by the defendants.
60. B.K.’s explanation of his presence at the crime scene by stating that he followed E., who was going to pick up A., is not credible. According to the defendant he together with D. drove after

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<sup>45</sup> Minutes of the main trial, 28.01.16, statement of D.K., page 7.

E. because they were afraid he could cause an accident as he was drunk. They decided to go after him several minutes after they saw him pass by the restaurant. It remains unaccounted for why they went after him only after he was already driving for a few minutes, since they knew he was drunk when he left the Oda. Given the fact that they did not know where he was going and the foggy weather, it is unlikely that they were able to get up, go into the vehicle and follow him to restaurant 'Keshtjella', all the while when E. continued driving and was unaware he was followed.

61. Several witnesses have stated that there are no regular music nights at 'Keshtjella', only for wedding parties or other festivities.<sup>46</sup> There is no evidence that music was going to be played on the critical evening. Therefore, the statement of A.K. that he went to 'Kestjella' for live music, cannot be followed.

62. There is no evidence that the crime scene, including the location where the shells and cases were found, was touched or contaminated as suggested by the defense. This was already concluded by the Court of Appeals in its ruling of 14 October 2013. The Panel further refers to the statements of the police officers describing the way that the crime scene was secured,<sup>47</sup> and the site inspection report.

63. For the aforementioned reasons, the Panel finds the narrative as described under 'statement of facts' more plausible than the one pictured by the defendants.

## **V. Acquittals**

### **D.K. for Count 1**

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<sup>46</sup> For example: minutes of the main trial 25.04.14, statement H.H., page 29.

<sup>47</sup> Minutes of the main trial 30.10.14 and 11.11.14, statements by F.M. and XH.K..

64. D. is acquitted because the bullet found in S.s body is not retraceable to the weapon in possession of D.. The Panel refers to the report compiled by T.G. and F.B..<sup>48</sup> It states that:

“Close to the counter, on its right side, at the IV-the pole, was fired also from another automatic weapon AK-47, stockless, 7,62 x 39 mm cal., with serial no. 074949-89, Albanian make, inside of which remained a shell, registered as: EV#11. This person also, in order to position the shell in that position, should have fired in the direction of damaged chairs, in the left side of the hall. In the medical papers in the case files, it is concluded that in the body of the now late S. L., a projectile was found, marked as evidence: D#1, which belongs to caliber: 7,62 x 39 mm and has the characteristics of a class with projectiles of the automatic gun: AK-47, with no. 074949-89, however this projectile, does not have sufficient individual characteristics, to conclude whether it was fired from this automatic gun or not.(...) This weapon was collected from the accused, D.K.”<sup>49</sup>

65. The expert witness H. K. has further elaborated that it could not be established that it was a bullet from D.’s weapon. According to the expert, the characteristics of the bullet found in S.’s body are related to an AK47 as used by D.; however he could not state with certainty that this bullet belonged to the AK47 of D..<sup>50</sup> The projectile was so damaged, that it was deprived of individual features:

“This projectile has classic characteristics of the weapons that have been examined and submitted from D.K. and B.K.. however, this projectile has no individual characteristics to identify the barrel from which this bullet was fired from. This includes both weapons from D. and B.K.. (...) The jacket which covers the bullet, had been removed from the projectile. This projectile, the barrel of the weapon has four rifling grooves which spin the projectile from going from the barrel and this rifling grooves will be shown in the jacket. However, weapons having no jacket, so the bullet or the projectile will never be identified.”<sup>51</sup>

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<sup>48</sup> Exhibit 1.4, General expert information report by T.G., forensic expert, and H.K., criminal ballistic expert, office of medical legal expertise MONKON about injuries of A. and I.L. and autopsy report of S.L., 13.06.11.

<sup>49</sup> Ibid, page 24.

<sup>50</sup> Minutes of the main trial 12.02.15.

<sup>51</sup> Ibid, pages 5-6

“It is difficult to straighten the jacket because it is strong and grooves will be damaged, and they were pushed, they were damaged and if we try to straighten it will be damaged even more, is difficult that someone could clarify. In Kosovo we had a lot to deal with weapons, projectiles, for other countries these are not interesting. (...) If I could see that damaged projectile, I would be able to provide more certain answer, but the labs don’t fix the damaged jackets, and to compare them and in order to provide exact answer.”<sup>52</sup>

66. Based on the above, the Panel has not been able to establish beyond a reasonable doubt that D. shot the bullet which was found in S.S. body.

67. Further, the Panel deems it relevant to note that no witness has testified that D. shot S..

68. Consequently, it has not been proven beyond a reasonable doubt that the accused has committed the act with which he is indicted. Therefore, he shall be acquitted of this charge.

#### E.K. for Count 2

69. A.L. does not remember who hit him with an iron bar.<sup>53</sup> Further, there is no other witness who states that E. was involved in the beating of A. with a metal bar. Thus, it has not been proven beyond a reasonable doubt that the accused has committed the act with which he is indicted. Therefore, he shall be acquitted of this charge.

#### A.K. for Count 4

70. Pursuant to Articles 25 and 27 of the PCCK, criminal liability should be limited to ‘intent’. The Panel considers that it has not been established, that A. was aware of what the others did, or that the others had explained to him what they were going to do. He committed acts without knowing it was going to end up in aggravated murder. Through the SMS contact with E. (“tell me who is there, do not lie”), he could expect they were going to ‘sort them out’, but it is the Panel’s

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<sup>52</sup> Ibid, pages 14-15

<sup>53</sup> Minutes of the main trial, 13.03.14, statement of A.L., page 18.

opinion that it ending up in a person getting killed was not something he reasonably should have taken into account.

71. The Panel deems it relevant to note that A. is an employee of E.S. company and it can therefore not be excluded that his position did not allow him to refuse any task E. bestowed upon him. In the absence of intent, it has not been proven beyond a reasonable doubt that the accused has committed the act with which he is indicted. Therefore, he shall be acquitted of this charge.

## **VI. Criminal Liability and Legal Classification**

### **COUNT 1 (E.K.)**

72. By hitting S.L.in the head with a metal bar, the Panel finds that E.K. has shown the intent to deprive S. of his life. There is a high likeliness that death will be the consequence of the impact of the hitting of such a hard and heavy object on such a vulnerable part of the body, which E. should have considered.

73. The Panel finds that E.K. acted in an extremely violent and aggressive way by beating S.L.with a metal bar. Not only can the act of hitting S. on his head with the bar be defined as ‘ruthless’, he also showed no compassion to especially his children who were watching TV with S. at the same table and became eye witnesses to the murder of their father. The victim did not expect any attack and had no chance to defend himself.

74. Further, expert witnesses T.G. and to F.B. both have stated that S., albeit for a very short time, suffered extraordinary pain.

75. Therefore, the Panel finds that this murder was aggravated pursuant to paragraph 5 of Article 147 of the PCCK.

76. Further, as already expounded before, the Panel considers that the motive for the murder can be found in the judgment of District Court of Prizren, by which V.K. and B.L.. were convicted and

which establishes that a conflict existed between the L. family and the K. family, of which S.L. was an unfortunate victim.

77. Therefore, in addition to paragraph 5 of Article 147 of the PCCK, the Panel finds that this murder was also aggravated because it was committed because of unscrupulous revenge, pursuant to paragraph 9 of the same provision.

78. The Panel dismisses the reference made by the defense to the intoxicated state of E. that evening. However the level of alcohol in his blood was at the time of the commission of the act, E. knowingly and willingly brought himself in that state and can therefore (*culpa in causa*) be held criminally responsible for acts that he commits under that influence.

COUNT 2 (B.K.)

79. By shooting in the direction of the injured A.L. and hitting him in the upper part of his right knee, causing a wound which harmed the skin, under the skin tissue, the head of fibula and the tibia, which cut the right peroneus nerve, the Panel finds that the assault with an AK47 was committed with the intent to cause grievous bodily injuries.

80. Further, the Court has assessed the seriousness of the injuries and the impact they have on A.s daily life.

81. Following the Court's instructions, both A. and I.L. were subjected to an additional medical exam in order to establish the effect of their injuries on their daily life. On 23 October 2015, both were examined at the Department of Forensic Medicine in Pristina by forensic doctor F.B..<sup>54</sup>

82. With regard to the injuries of A.L., doctor F.B. has considered the following:

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<sup>54</sup> Exhibit 26: Expertise by forensic doctor F.B., Department of Forensic Medicine Pristina, 25 October 2015.

“Injuries described under Findings - Conclusion present: Penetrating wound inflicted by a firearm on the external side of region of the right knee. Multi fragmentary fracture of head of fibula and upper part of tibia. Damage of right peroneal nerve inflicted by dynamic action of projectile fired by a firearm, which is included in grievous bodily injury, which injuries did not endanger the life of the person at the time of infliction.

(Reasoning: The injuries did not endanger life of the person at the time of infliction because vital body organs were not affected and large blood vessels were not damaged that would lead to a haemorrhagic shock).

These injuries inflicted permanent impairment and weakening of function of the calf muscle of right leg and incapacity of dorsiflexion of the foot.

(Reasoning: The impairment and weakening is of permanent nature as the consequence of the damage of peroneal nerve of right leg despite the corrective plastic surgery intervention of suralis nerve).

These injuries inflicted the temporary impairment and weakening of function of the right calf muscle which had impact on the moving (walking) process.

(Reasoning: Temporary impairment and weakening of walking is of the result of impairing peroneal nerve of the right leg and fracture of calf bones until the full consolidation of bones and reaching the muscle strength (that took approximately one year and two years for the recuperation of peroneus nerve).

These injuries inflicted partial and permanent impairment of nerve conductivity of peroneal nerve.

(Reasoning: This injury of peroneal nerve is associated with diminishing the life activity for 20% degree and is associated with limited movements of ankle of the right foot).

The injuries inflicted permanent diminishing of capacity to work for 30% degree of overall capacity to work.



(Reasoning: Diminishing the overall capacity to work for 30% degree presents a moderate limitation of overall capacities to work because it is considered that body of a healthy person manages to compensate this diminishing of the capacity to work with additional bodily efforts).

These injuries did not inflict permanent and serious impairment of health.

(Reasoning: These injuries were not associated with loss of any vital organ or loss of any bodily parts or limbs, permanent loss of capacity to work, over 30% degree).

These injuries did not inflict defacement of the injured party but inflicted disfiguring of a medium scale.

(Reasoning: Defacement presents spoiling of the face portrait of the injured party or spoiling of the body figure as a consequence of various amputations (loss of limbs). In this particular case, we have to deal with body disfigure (in aesthetical aspect) of a medium scale which is manifested with scars on the right calf muscle associated with a light limping).

#### CONCLUSION:

The medical treatment of the injured A.L. is already concluded. Nevertheless, proper orthopedic and surgical-neurologic treatment, bodily injuries inflicted in the critical event (01.01.11) are associated with permanent consequences for health, as described above.”

83. Therefore, and in the absence of a substantiated opposition to these findings, the Panel concludes that the injuries of A.L. reach the threshold of Grievous Bodily Harm under Article 154 paragraph 1, subparagraphs 2 and 4 of the PCCK. Pursuant to Article 360 Paragraphs 2 of the CPCRK the legal classification of charges presented by the Prosecutor is not binding for the court.

84. As E. is acquitted of Count 2, B.K. will not be convicted for committing this offense in co-perpetration.

COUNT 3 (B.K.)

85. By shooting in the direction of the lower part of the body of the injured I.L., after which the bullet hit the ground made of stone and ricocheted on the right module of his foot, causing a wound which damaged the skin, skin tissues, the talus bone of the right foot, and breaking into many pieces and entering the inner part of the right foot, while bullet parts also injured the back of his left foot and under the left knee, broke the bone and entered into the medulla, the Panel finds that the assault with an AK47 by B.K. was committed with the intent to cause grievous bodily injuries.

86. With regard to the injuries of I.L., doctor F.B. has considered the following:

“The injuries described in findings-conclusion present: Wound from the firearm, in the region of both ankles (art T/C). Fracture of bone of the right thallus (in the foot). Partial fracture of the left tibiae bone, sustained from a dynamic action of metallic pieces (fragments) of the projectile jacket fired by a firearm (few fragments were taken out surgically and few are still remaining), which as such constitute Heavily Body Injury, which injuries were not dangerous for life at the moment of the injury.

(Justification: They were not dangerous for life at the moment of the injury, because vital body organs were not affected and large blood vessels were not damaged that would lead to haemorrhagic shock).

These injuries did not cause permanent impairment and weakening of the feet function.

(Justification: We are convinced that the injury and weakness is not permanent, because even though for the moment the dorsiflexion of the right foot and fingers’ is incomplete, with the help of the physiotherapist this restriction can be overtaken).

These injuries have caused a temporary impairment and weakening of right foot and fingers’ function, associated with obstacles in walking (moving).

(Justification: Temporary impairment and weakening of walking is as a consequence of fracture of right foot thallus and partial fracture of left tibia, until full osseous consolidation and until reaching the muscular strength (that lasted approximately 1 year).

These injuries did not cause permanent impairment of any vital organ or any vital part of the body.

(Justification: The above-described damages have affected only temporarily in reducing the overall life activities (around 1 year).

These injuries did not cause the permanent reduction of ability to work, but only a temporary impairment (around 1 year).

(Justification: For the reason that 1 year after the critical event, the injured party was able to work).

These injuries did not cause serious permanent damage to health.

(Justification: These damages are not associated with a loss of any vital organ or with a loss of any part or body extremities, with a consequence of permanent loss of ability to work).

These injuries did not cause a transfiguration of the injured party but caused a body deformation, of a low scale.

(Justification: Transfiguration presents the defacement of the face portrait to the injured party or defacement of body figure as a consequence of various amputations (loss of extremities). In our case we have to deal with body deformation (in aesthetical aspect) of low scale that is manifested with cicatrix in the right and left femur and in the feet).

**CONCLUSION:**

To the injured party, I.L., the treatment is not yet over, because in the feet there are still metallic fragment pieces, which as recommended by orthopaedic doctor in the future depending from the clinical status, can undergo to another surgical intervention.

Currently his health condition is stable and we are convinced that he will not have health consequences.”

87. Therefore, and in the absence of a substantiated opposition to these findings, the Panel concludes that the injuries of I.L. reach the threshold of Grievous Bodily Harm under Article 154 paragraph 1, subparagraph 4 of the PCCK. Pursuant to Article 360 Paragraphs 2 of the CPCRK the legal classification of charges presented by the prosecutor is not binding for the Court.

COUNT 4 (H.K.)

88. The Panel finds that H. intentionally assisted E. in the very serious crime of committing aggravated murder. By providing the vehicle and escorting E. from the scene of the crime, he delivered crucial support, and without this assistance the commission of the crime would have been significantly more difficult.

89. Therefore, the Panel finds that H.’s contribution meets the threshold of Article 25 of the PCCK, and H. can be held criminally liable.

COUNT 5 (B.and D.K.)

90. During the main trial on 5 February 2014, both B.and D.K. have admitted to the unauthorized possession of respectively a firearm type AK 47 caliber 7.62 x 39mm, with serial number 759933, and a firearm type AK 47 caliber 7.62 x 39mm, with serial number 074949-89.

91. After the commission of the crimes, they hid these weapons in the bushes. On 2 January 2011, they handed over these weapons to the police.<sup>55</sup> The use of the weapon by B.is evidenced by his conviction for intentionally causing grievous bodily harm to A. and I.L..

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<sup>55</sup> Minutes of the main trial, 24.04.14, statement of A.K.

92. The use of an unauthorized firearm by D.K. is not sufficiently supported. Therefore, the Court has applied the more favourable Article 374, paragraph 1 of the Criminal Code of Kosovo (CCK).

## **VII. Sentencing**

93. The Panel underlines that, pursuant to Article 64, paragraph 1 of CCK, in the determination of the sentences, it has taken into account the purpose of the sentence, the level of the criminal liability, the motives by which the criminal offence was committed, the intensity of danger and damage of protected value, the circumstances on which the crime was committed, the previous conduct of the defendants, the acceptance of guilt and in this case there is no acceptance of guilt, their personal circumstances and their conduct after the commission of the criminal offence.

### Mitigating circumstances

94. The Panel has considered the following circumstances in favor of the defendants E., B, D. and H.K..

95. The defendants do not have any previous criminal records.

96. Except B. , all defendants are married, have children and are the only providers of income for their family.

97. Further, D. and B.K. have told the police where they had hid their weapons and pleaded guilty for the criminal offence of unauthorized use and/or possession of weapons.

### Aggravating circumstances

98. On the other hand there are many aggravating circumstances for the defendants.

99. Throughout the whole trial, the defendants have not shown any remorse towards the victims and surviving relatives. The killing of S.L. left two children and his widow, M.L., struggling to care for them without their father. The impact his loss has on their lives, was illustrated by the statement M.L. gave in court.<sup>56</sup>
100. The Panel holds the defendants liable for acting this violently and ruthlessly in front of children. The two children of the late S.L. became traumatized and they suffer from nightmares since the killing of their father in front of their eyes took place. M.L. stated that when she arrived at the crime-scene, she saw her children screaming.<sup>57</sup> Furthermore, the violent acts committed by the defendants caused a terrifying and dangerous situation for everyone present in the restaurant.
101. A. and I.L. needed extensive treatment for their injuries and will continue to do so for a long time in the future. Both cannot walk properly. They are both still suffering pain from their injuries. There are not only the injuries on their feet and legs but also a psychological trauma, which disturbs their lives since this event. This counts for not just the injured parties but all eye witnesses.
102. More specifically, the Panel weighs in detriment of defendants E., B. and D. that they did not surrender to the police the same night or the following morning, even after police officer and relative A.K. had asked B. brother were they were. The family knew since the evening of 1 January 2011 that something extraordinary had happened. They had gathered after the event and discussed it. Only after G.K. ordered them to surrender on 2 January 2011, they did so when the police arrived.
103. Concerning the criminal offences of unauthorized ownership of weapons the Panel takes into consideration that the danger to society of this criminal act is especially high. As other criminal cases in the region and all over Kosovo show, there is an unfortunate tendency in this society to solve problems with weapons that are so easy at hand. The fact that these weapons are

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<sup>56</sup> Minutes of the main trial 05.02.14, statement of M.L.

<sup>57</sup> Ibid.

souvenirs from the war, and/or represent memories of relatives who fought in the war, does not make the seriousness of the risk they bring, any less.

104. Based on above and below mentioned considerations the Panel decides that the defendants shall be punished to the following sentences:

E.K.

105. Violation of Article 147 of the PCCK is punishable with imprisonment of at least 10 years or long- term imprisonment, which means 21-40 years. If the Court pronounces a punishment of long term imprisonment for one criminal offence it shall impose this punishment only.

106. When imposing a criminal sanction the court has to bear in mind both – the general purpose of the punishment – that is to suppress socially dangerous activities by deterring others from committing similar criminal acts and the specific purpose, to prevent the offender from re-offending.

107. In the present case it is the first murder E. is sentenced for, but on the other hand only a punishment of long term imprisonment is appropriate because of the gravity of the offence, and the circumstances under which the act was committed as mentioned above.

108. Taking into consideration all elements mentioned above the court finds that a punishment of twenty two (22) years of long-term imprisonment is not disproportionate and reflects an appropriate sentence to this perpetrator and this crime.

D.K.

109. Violation of Article 374, paragraph 1 of the CCK, in conjunction with Articles 38 and 73 of the PCCK, is punishable with a fine of up to 7500 euros or 5 years imprisonment. The Panel considers the above mentioned circumstances and the aggravating fact that D. had this weapon

without authorization for a long time since the end of the war a term of one (1) year of imprisonment is necessary and sufficient to fulfill the purposes of punishment and to do justice to the offence.

B.K.

110. Violation of Article 154 of the CCK is punishable with imprisonment of six months to five years. Violation of Article 328 of the PCCK, is punishable with a fine of up to 7500 euros or 8 years imprisonment.

111. Pursuant to Article 71 paragraph 1 and paragraph 2 subparagraph 2 of the PCCK, the Panel will aggregate the sentence which B.K. receives for each offense. The aggregate punishment must be higher than each individual punishment, but not as high as the sum of the prescribed punishments.

112. Considering the seriousness of the injuries of the victims, the Panel finds that for the assault on A.L., the defendant should be sentenced with imprisonment for the duration of 3 (three) years and 10 (ten) months, and for the assault on I.L., he should receive a sentence of 3 (three) years and 9 (nine) months imprisonment.

113. Further, similarly to the sentence of D.K., the Panel will sentence B.K. to imprisonment for the duration of 1 (one) year for unauthorized ownership and use of weapons.

114. Pursuant to Article 71 paragraph 1 and paragraph 2 subparagraph 2 of the PCCK, the Panel concludes that the defendant B.K. is sentenced to an aggregate punishment comprising a term of imprisonment of imprisonment for the duration of 8 (eight) years.

H.K.



115. Violation of Article 147, in conjunction with Article 25, of the PCCK is punishable with up to three quarters of the maximum punishment prescribed for the criminal offence of aggravated murder.

116. As expounded above, the Panel finds that H. played a crucial role in the commission of the crimes. Not only did he provide essential assistance, he played a role in the lead-up to the events and the motive of the acts with had the ultimate dramatic outcome of a person losing his life. Together with all above mentioned elements, the Panel finds that H.K. should be punished with a prison sentence of 5 (five) years.

### **VIII. Final Considerations**

117. The Panel finds that by the grounds stated in this judgment, it has sufficiently satisfied the instructions given by the Court of Appeals in its ruling of 14 October 2013.

118. The Panel sees no necessity to announce the judgment in the press as mentioned in Article 391, paragraph 1.6 of the PCPCK.

119. In the light of the above, the Basic Court of Prizren has decided as in the enacting clause of this judgment.

**P. nr. 372/13**

**Dated 21 April 2016**

**Recording Officer**

**Presiding Judge**

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**Venera Hadri-Mollakuqe**

**Piotr Bojarczuk**

**LEGAL REMEDY:**

The parties have the right to file an appeal against the judgment within fifteen (15) days of the day the copy of the judgment has been served to the Court of Appeals through the Basic Court of Prizren pursuant to Article 398 paragraph 1 of the PCPCK.