

**IN THE BASIC COURT OF PEJË/PEĆ**

**Case P. Nr. 267/12**

**Date 3<sup>rd</sup> March 2015**

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**

The Basic Court of Pejë/Peć, in the trial panel composed of Eulex Judge Marie Tuma as Presiding Judge and Eulex Judge Arkadiusz Sedek and Kosovo Judge Arben Mustafa as panel members and Court Recorder Azem Havolli in the criminal case against:

**K.H.**, born on XXX, in Bajram Curri Albania, where he still resides, of Albanian nationality and citizenship

charged pursuant to the Indictment of the Special Prosecution Office of Kosovo (“SPRK”) PP. Number 387/2006 dated 26<sup>th</sup> March 2007 confirmed by ruling KAQ 133/07 dated 14<sup>th</sup> June 2007, as amended by an Amendment to the Indictment dated 27<sup>th</sup> May 2014 and filed with the Court in the main trial session on 27<sup>th</sup> May 2014<sup>1</sup> with the following offence:

**Count 2: Aggravated Murder contrary to Article 147 item (iv) of the Provisional Criminal Code of Kosovo (“PCCK”), and**

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<sup>1</sup> By this amendment the prosecutor withdrew Count 1 namely the charge of Criminal Association to commit the offence of Aggravated Murder contrary to Article 26 in conjunction with Article 23 and Article 147 item (ix) of the PCCK.

previously acquitted by the District Court of Pejë/Peć in Judgment P.no. 538/07 dated 18<sup>th</sup> December 2007 of the criminal offences of Aggravated Murder contrary to Article 147 item (iv) of the PCCK and Criminal Association to commit the offence of Aggravated Murder contrary to Article 26 in conjunction with Article 23 of the and Article 147 item (ix) of the PCCK.

after holding a public trial on 5<sup>th</sup>, 15<sup>th</sup>, 27<sup>th</sup> May, 11<sup>th</sup> and 25<sup>th</sup> June, 9<sup>th</sup> and 31<sup>st</sup> July, 1<sup>st</sup> August, 5<sup>th</sup>, 12<sup>th</sup><sup>2</sup> and 24<sup>th</sup> September and 24<sup>th</sup> October 2014<sup>3</sup>, 7<sup>th</sup> November, 9<sup>th</sup> December 2014, 12<sup>th</sup> and 19<sup>th</sup> January 2015, 5<sup>th</sup> February and 2<sup>nd</sup> and 3<sup>rd</sup> March 2015 at which Haxhi Sinani appeared for the Prosecution, the Injured Parties S.O., Sa.O., V.I. and A.B. were either present or summonsed, M.R. of counsel appeared for the defendant, K.H. and at which the defendant, K.H. himself was present throughout, after deliberation and voting on 5<sup>th</sup> February and 2<sup>nd</sup> and 3<sup>rd</sup> March 2015 announces in public the following:

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

### **The defendant, K.H.**

#### Under Count 2

Is,

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<sup>2</sup> This was for a site inspection.

<sup>3</sup> The trial panel also carried out a site inspection on 12<sup>th</sup> September 2014.

## **NOT GUILTY**

Because there are circumstances which exclude criminal liability and it has not been proven that he has committed the criminal offence of Aggravated Murder contrary to Article 147 item (iv) of the PCCK as charged in the indictment.

### **i. Competence of the Court and Panel Composition**

In accordance with Article 23 (1) of the KCCP, District Courts have jurisdiction to adjudicate at first-instance criminal offences punishable by imprisonment of at least five years or those offences punishable by Long-Term imprisonment. The District Court of Peja was replaced by the Basic Court of Peja by the Law on Courts<sup>4</sup>

In the present case the Defendant was charged with the offence of Aggravated Murder, an offence punishable by imprisonment of at least 10 years.

According to the Indictment the criminal offence was allegedly committed in Baicë, in the Municipality of Istog/Istok Peja, which is in the territory of the Basic Court of Peja.

No issue was raised by the parties regarding the jurisdiction of this Court.

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<sup>4</sup> Law No. 03/L-199

On 29<sup>th</sup> February 2012 the President of the Assembly of Eulex judges pursuant to Article 3 of the Law on Jurisdiction, Case Selection and Case Allocation of Eulex Judges and Prosecutors (Law nr. 03/L053) issued a Ruling for Eulex Judges to take over this case.

By reason thereof, the Trial Panel of the District Court of Peja/Peć was correctly composed of a mixed panel of two EULEX Judges and one Local Judge in accordance with Article 4.7 of the Law on Jurisdiction. No issue was raised by the parties regarding the composition of the panel.

## **ii. Procedural History**

Indictment PPHQ. Nr. 87/06 dated 26<sup>th</sup> March 2007 was originally filed against five defendants namely, K.H., A.K., S.K., Xh.K. and V.K.. The case was assigned the number P. nr. 538/07.

The indictment charged the defendants, with the offence of Criminal Association pursuant to Article 26 in conjunction with Article 23 of the PCCK in relation to the criminal offence of Aggravated Murder pursuant to Article 147 paragraph 1 item 9 of the PCCK. In addition, the defendant, K.H. alone was charged with the offence of Aggravated Murder pursuant to Article 147 paragraph 1 item 4 of the PCCK. The defendants, K.H., Xh.K. and A.K. were also charged with Unlawful Possession of Firearms contrary to Article 328 of the PCCK.

In essence, the alleged facts of this case were the defendant, S.K. solicited the defendants, K.H. and A.K. to commit a murder near the town of

Pejë/Peć in August 2006. The target was the injured party, V.I.. It was alleged the defendants, K.H. and A.K. were transported from Albania to S.K.'s house by a third party for this purpose. There they were given the victim's details by the defendants, S.K., Xh.K. and V.K. who then drove the defendants, K.H. and A.K. to identify the car they would ambush. All five defendants then returned to the house of the defendant, S.K. where the defendant, V.K. supplied the defendants K.H. and A.K. with firearms, mobile telephone SIM cards and money. The defendants, Xh.K. and V.K. then transported the defendants, K.H. and A.K. to the village of Baicë/Bajic where they would ambush the victim's car. While they waited, the defendants, K.H. and A.K. were approached by a number of local people, including the deceased, J.O. who wanted to know who they were and if they were in the vicinity to steal a motorbike. The defendants ran away in opposite directions. However, some hours later the defendant, K.H. who had returned, was again approached by the deceased, J.O.. This time shots were exchanged and J.O. sustained fatal injuries.

Following a main trial the then District Court of Peja acquitted all defendants of the first two above-mentioned offences by judgment dated 18<sup>th</sup> December 2007. However, the defendants, Xh.K., K.H. and A.K. were convicted of the offence of Unauthorised Possession of Firearms and sentenced to terms of one year and four months imprisonment which time had already been served in detention on remand. The prosecutor filed an appeal against the acquittals. By judgment dated 27<sup>th</sup> October 2011 the Supreme Court of Kosovo upheld the prosecutor's appeal, annulled the first instance judgment and referred the case for re-trial. The Supreme Court upheld the first-instance judgment in respect of the conviction for the

firearms offences.

When the case was returned for re-trial it was taken over by Eulex Judges and assigned the number P. nr. 542/11. The re-trial commenced on 7<sup>th</sup> May 2012. The defendants K.H. and A.K. were properly summoned but failed to appear. The then presiding Judge contacted the relevant authorities in the Republic of Albania who stated their belief the defendants were not within their jurisdiction. By order dated 27<sup>th</sup> June 2012 the then presiding Judge severed the case against K.H. and A.K. and issued national and international orders for their arrests. The case against the defendants, A.K. and K.H. was assigned the number P. nr. 267/12.

The remaining three co-defendants (S.K., Xh.K. and V.K.) were acquitted by a judgment of the District Court of Peja dated 24<sup>th</sup> July 2012 primarily because the defendants, K.H. and A.K. were not available for cross-examination therefore their testimonies could not be used against co-defendants. The prosecutor appealed these acquittals. However, by ruling PAKR. Nr. 1401/12 dated 9<sup>th</sup> December 2013 the Appeals Court rejected the appeal.

The defendant, K.H. was arrested in Sweden on 12<sup>th</sup> September 2013 and was placed in detention on remand pursuant to a remand order of the Basic Court of Hudiksvall dated 4<sup>th</sup> October 2014. On 20<sup>th</sup> December 2014 the Supreme Court of Sweden ruled there were no lawful impediment to granting the application for the extradition of the defendant, K.H. to Kosovo. On 20<sup>th</sup> March 2014 the government of Sweden granted the application of the Justice Ministry of Kosovo to extradite the defendant, K.H. to Kosovo.

K.H. did not consent to his extradition. The applicable Swedish law is The Law on Extradition in Criminal Matters, 1957:668. The defendant, K.H. arrived in Pristina on 13<sup>th</sup> April 2014. He appeared before the presiding Judge in the Basic Court of Peja on 14<sup>th</sup> April 2014 for a detention hearing and was remanded in custody where he remained throughout the main trial.

## **B. The main trial**

### **i. Amendment of the Indictment**

The Indictment was confirmed on 14<sup>th</sup> June 2007 in Ruling KAQ 133/07. On 27<sup>th</sup> May 2014 during the first session of the re-trial the prosecutor filed an amendment to the indictment with the trial panel wherein he withdraw Count 1 namely the charge of Criminal Association to commit the offence of Aggravated Murder contrary to Article 26 in conjunction with Article 23 and Article 147 item (ix) of the PCCK. The prosecutor also purported to amend the particulars of Count III namely the offence of Unauthorized Possession, Ownership, Control or Use of Weapons and Ammunition contrary to Article 328 paragraph 2 of the PCCK. However, the defendant was already convicted of this offence by judgment P.no. 538/07 of the District Court of Peja dated dated 18<sup>th</sup> December 2007. This verdict was upheld by judgment Ap. Nr. 267/2009 of the Supreme Court of Kosovo dated 27<sup>th</sup> October 2011.

In the same amendment to the indictment the prosecutor withdrew the charge of Criminal Assosciation to Commit the Offence of Aggravated

Murder against the defendant, A.K.. By ruling dated 26<sup>th</sup> September 2014<sup>5</sup> the presiding Judge separated the case against the defendant, A.K.. By ruling also of 26<sup>th</sup> September 2015 the presiding Judge rejected the charge against the defendant, A.K.. By letters also dated 26<sup>th</sup> September 2014 the presiding Judge requested the withdrawl of the domestic and international wanted notices previously issued for the defendant, A.K..

The trial panel pointed this out to the prosecutor during the main trial session on 1<sup>st</sup> March 2015 and offered him the opportunity to withdraw this count but he did not wish to avail of it. In circumstances where a final verdict was already reached in respect of this count the main trial panel took the view it was no longer before the court and issued no verdict in respect of it.

## **ii. Evidence administered during the main trial**

During the course of the main trial the following witnesses were heard and the following evidence was administered

### *i. Witness Statements*

The following witness statements were contained in the case files and were entered into evidence:

- (1) Kosovo Police interview with N.B. dated 26<sup>th</sup> September 2006;
- (2) Kosovo Police interview with A.O. dated 14<sup>th</sup> September 2006;

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<sup>5</sup> The delay was due to inadvertence.

- (3) Kosovo Police interview with G.B. dated 1<sup>st</sup> September 2006;
- (4) Kosovo Police interview with V.K. dated 22<sup>nd</sup> August 2006;
- (5) Kosovo Police interview with S.K. dated 22<sup>nd</sup> August 2006;
- (6) Kosovo Police interview with A.K. dated 20<sup>th</sup> August 2006;
- (7) Kosovo Police interview with K.H. dated 22<sup>nd</sup> August 2006;
- (8) Kosovo Police interview with K.H. dated 21<sup>st</sup> August 2006;
- (9) Kosovo Police interview with S.T. dated 21<sup>st</sup> August 2006;
- (10) Kosovo Police interview with V.I. dated 20<sup>th</sup> August 2006;
- (11) Kosovo Police interview with G.L. dated 20<sup>th</sup> August 2006;
- (12) Kosovo Police interview with A.B. dated 20<sup>th</sup> August 2006;
- (13) Prosecutor's interview with K.H. dated 1<sup>st</sup> November 2007;
- (14) Prosecutor's interview with A.K. dated 20<sup>th</sup> October 2006;
- (15) Prosecutor's interview with S.K. dated 16<sup>th</sup> March 2007;
- (16) Prosecutor's interview with V.K. dated 28<sup>th</sup> September 2007;
- (17) Prosecutor's interview with Xh.K. dated 16<sup>th</sup> March 2007;
- (18) Prosecutor's interview with Sa.O. dated 30<sup>th</sup> August 2006;
- (19) Prosecutor's interview with V.I. dated 24<sup>th</sup> August 2006;
- (20) Prosecutor's interview with A.B. dated 12<sup>th</sup> September 2006;
- (21) Prosecutor's interview with G.L. dated 12<sup>th</sup> September 2006;

*ii. Viva Voce Witnesses*

The Court heard the following witnesses:

Injured Party/Witness S.O.

Injured Party/Witness A.B.

Injured Party/Witness Sa.O.

Witness S.B.G.

Witness G.B.

Kosovo Police Officer Ç.H.

Kosovo Police Officer E.B.

Kosovo Police Officer A.B.

Dr. A.G.

*i.iii Documentary Evidence*

**iii. Undisputed Evidence**

There was no dispute that at approximately 05:45 on 20<sup>th</sup> August 2006 in the village of Baijcë/Bajic, in the Municipality of Istog/Istok, at the intersection of the Banje-Istog-Peja roads there was an exchange of gunfire between the defendant, K.H. and the victim, J.O.. As a result of this the victim, J.O. sustained fatal injuries and the injured party, A.B. also sustained an injury.

There was no dispute the victim, J.O. was first admitted to the Regional hospital in Peja before being transferred to the UCCK in Prishtina. From there he was taken to Geneva, Switzerland where he died on 22<sup>nd</sup> August 2006.

The defendant, K.H. admitted he fired the shot that killed, J.O. and injured A.B.. However, the defendant, K.H. argued he fired these shots in self-defence. He maintained the deceased victim, J.O. fired at him first and continued firing at him as he attempted to escape.

#### **iv. Witness testimony before this Court**

The wife of the deceased, J.O. the injured party, **S.O.** gave evidence during the main trial session on 27<sup>th</sup> May 2014. She stated that ordinarily she resided in Switzerland with her late husband but in August 2006 had come to their house in the village of Banjë/Banja with three of their four children for holidays.

She stated the house is a two-storey house and the family resided on both floors. She stated she shared a bedroom with her husband on the second floor and her sons and daughter also slept on the second floor. She confirmed the family had a car and a motorbike at the house. She stated her sister S. looked after the house when the family was in Switzerland.

S.O. stated that on the night of 19<sup>th</sup> August 2006 into the morning of 20<sup>th</sup> August 2006 she was at home with her children. Her husband the deceased, J.O. was playing chess at his brother's house. She stated "we" saw two or three people behind the house. She stated her son L. (O.) and nephew Sa. (O.), arrived at the house on motorbikes. At the back of the house they encountered the defendant K.H. and another male. She stated her nephew, Sa.O. asked them, '*What are you doing here by the house, by the windows?*' They replied, '*We came from Albania. We don't have anywhere to stay.*' Sa.O. asked them for an identity document which at first the defendant, K.H. did not want to give but later she said "*they showed him the documents*".

S.O. stated the defendant, K.H. then escaped and the male with him also escaped "*behind the haystacks*". She stated her son, L. called for his father,

the deceased, J.O. and while he was on the way to the house he apprehended the male who had attempted to escape and hide behind the haystacks and brought him to the house. The defendant, K.H. was not apprehended at this point.

S.O. stated that at the house her late husband, J.O. asked this male '*What do you want here?*' and he replied, '*We entered in order to see or look for the motorbikes.*' She stated J.O. then called the Istog police. S.O. stated the while they were waiting for the police to arrive J.O. again asked the male why he was there? She stated he replied '*We are S.K.'s associates.*' S.O. then said this male stated '*We are S.K.'s associates and we are here to kill V.I..*' She stated that after ten minutes the Istog police arrived and, took the man away to Istog and this was at about 3 a.m.

S.O. stated that after the police took this man away the family stayed at home. They stayed up until 5:45 when they heard "*a noise, a sound, a shot; I am not sure what it was outside*". S.O. then stated this noise was of "*someone banging the door*". She stated her husband, J.O. said, '*I am going outside quickly*' and this was ten minutes later at about 6 o'clock whereupon she fell asleep.

S.O. stated that ten minutes later she heard shots from handguns. She stated she called her sister and her brother-in-law and told them, '*I think they killed J.*'. S.O. was inside her house but she stated initially there were five shots and these continued until her husband reached the crossroads. She stated she knew this because she called her nephew and brother-in-law who both came to the scene quickly and they found her husband killed or injured there. She

stated her nephew Sa.O. took him from there to Peja for first aid.

S.O. stated she was in the room with her late husband immediately before they heard the noise and he went outside. She said he was wearing shorts, a t-shirt and a pair of simple slippers. She stated she did not see him holding anything when he went out.

S.O. stated there were no more than five minutes between the five shots she initially heard and the last shots. She stated all the shots she heard were fired after her husband went out. S.O. could not say if the sound of the shots were the same or different. She stated she went outside within five minutes of the shots stopping. She stated she called her husband's name but did not see him before her nephew took him to the hospital. She stated the place her husband was found was closer to her house than to Sa.O.'s house. She stated when she went out she saw a person at a walnut tree. She stated she knew the witness A.B. but did not see him on the morning. She stated she did not know G.L..

In response to a question from the Presiding Judge S.O. stated at first she heard five shots but later on there were another three shots and there were about three to five minutes between these bursts of gunfire.

S.O. stated after her husband left their house the next time she saw him was in the hospital in Prishtina before his insurance company from Switzerland came and they took him to Geneva where he died. S.O. stated her daughter was with him in Geneva.

S.O. stated the family was informed her husband was improving while he was in Prishtina but when they took him to Geneva they said that “*the bullet dispersed inside his head*” and “*his whole brain was damaged*” and he died.

In response to questions from defence counsel, S.O. stated the first she time she realised that a stranger was at her home was when her son (L.) and nephew (Sa.) arrived and they noticed that somebody was by the window. She stated this was at approximately half past eight in the evening.

S.O. stated when her husband apprehended the male on his way back from playing chess he took him back to the family home and asked him if he wanted something to drink? She said the male replied “*no*” before there was an exchange about the purpose of his presence there and his relationship with S.K.. She confirmed she was present at the time and heard this conversation.

S.O. stated she did not know V.I. but she heard the two males admit they were there to kill him. She repeated her earlier evidence in relation to the initial burst of five shots followed by three final shots some short time later.

S.O. stated she visited her husband in Prishtina but he was unconscious and she was not able to communicate with him.

In response to a question from the Presiding Judge S.O. admitted that during the first trial of this case she had stated her husband had left the house carrying a revolver but now she stated she could not be sure of this.

The injurd party **A.B.** gave evidence to the trial panel in the session on 11<sup>th</sup> June 2014.

Previously, on 12<sup>th</sup> September 2006 he gave a statement to the District Prosecutor in Peja during which he stated that on the morning of 20<sup>th</sup> August 2006 he was in the village of Baicë/Bajic where he worked as a security officer for a warehouse and a grocery store. He stated that while he was inside a kiosk in front of the grocery store, a man who he knew but only as being from Baicë/Bajic approached him and asked him if he had seen anything. A.B. replied he had not and returned to the warehouse to confirm everything as in order. While he was standing he saw the man he knew from Bajic again and this time he was talking to another person who was younger and they were walking towards Gurakoc. A.B. stated he could not hear what they were saying.

He stated that after two minutes he saw them again returning on the road to Peja and as they came closer to him the younger person told him not to move or he would kill him. A.B. stated he did not move but just listened. He stated the younger person was in front whereas the other person who he had seen before was standing behind him. A.B. stated that at a distance of around 35 meters he heard shots and after the third shot, he felt something burning his arm and he saw blood and realised he had sustained an injury. A.B. stated both men were carrying guns but he did not know what kind of guns. A.B. stated both men were shooting "*against each other*". He stated they were running one after the other and they had a distance between them of around 10 meters and that one of them was chasing the other.

In his testimony before the trial panel on 11<sup>th</sup> June 2014 A.B. confirmed that at the time he was working as a security guard of a building in Baicë/Bajic. He took up duties at 18:00 and would remain until the morning time. He worked alone.

A.B. stated that on the morning of 20<sup>th</sup> August 2006 at around 5:45 he went across the road on the other side to collect water. Upon his return to the warehouse he was responsible for guarding, he observed two people emerge from the road that lead to Kashticë/Kashtica. He stated they were approximately 50 metres away and the light was good. He stated he did not recognise either person.

A.B. stated these two people reached the man Peja - Gjurakvoc road they were together and probably talking to one another. They were approaching him and got as close as the width of the road to him.

A.B. described one of the men as being “*older*”. He stated the other one was “*younger*”. He stated the older one could have been between 40 – 45 years old while the younger one should have been between 20 – 25 years old. He stated the younger man’s hair was “*darkish, reddish*” and was long, down to his neck. A.B. stated when they were at a distance of 5-6 metres he became aware they were speaking to each other but he could not hear what they were saying. He stated that at this point the younger man broke away from the older man towards the petrol station.

A.B. stated he could not hear what these two men were saying but that at that moment the young man spilt from the older one making his way towards

the petrol station. A.B. said the younger man was running and when he came to where A.B. was standing he said “*don’t cross the road or I will kill you*”. A.B. could not say if the man had anything in his hand. However, the younger man continued running and he was chased by the older man. A.B. stated when the men were about 30 – 35 metres past him he heard shots. A.B. stated the older man was approximately 5/6 metres behind the younger one. He could not see if either man had anything in their hands. A.B. stated it seemed to him they both shot. A.B. stated that probably he was wounded by the younger man. He stated that whenever the younger man shot he had to turn around and shoot in the direction of the other, older man. He did not believe he was wounded by the older man as he was shooting in front of him. A.B. stated he sustained a wound to his right arm. A.B. repeated he did not see either man with a weapon as they were running away from him. However, he stated he knew the shot that hit him came from the younger man because “*in order to shoot in my direction [he] had to stop and shoot in the direction of the older guy*”.

A.B. stated the distance between the two men was 7-8 or 10 metres. He stated there were several shots-sometimes individual shots and sometimes a burst of two or three bullets. A.B. stated the shots came from small weapons and the first two shots came “*without interruption*”. He stated his belief the shots came from weapons of different calibres. He stated the sound of the weapon that was shooting in his direction was bigger and the sound of the weapon shooting in the other direction was smaller. He stated that at that time he did not think the younger man was able to aim at anything as he was running away.

The prosecutor put it to A.B. that in his statement to the police he said he saw the two people running away with weapons in their hands but now he stated he did not see any weapon. A.B. stated the incident occurred some eight years ago and both statements were correct. He stated his statement to the police in 2006 was true as the events were fresh in his mind at that time.

The prosecuor then put it to A.B. that in his evidence to the trial panel he stated he could not hear if the men were speaking to each other but on page 3 of his statement to the police he had stated, *"I noticed the young one running towards Banja, whereas the person from Banja was running behind him saying stop don't run away. The younger guy as soon as he got opposite me on the other side of the asphalt I said to him 'stop, what is going on between you two. He said don't move or I will kill you. He continued on his way without stopping running. The other person was running behind him and I noticed that he had a hand gun in his hand of black colour and as soon as they passed the house about 15 metres I heard the shots of the handgun where both were shooting at one another. When I heard the fourth or fifth shot my arm got hot and I immediately understood that I was wounded from the first person who was running away and the same according to his voice when he spoke to me was from Albania".*

A.B. confirmed he had stated this to the police in 2006. He stated he remembered giving the statement to the police and his memory was as fresh as if the incident happened that day.

A.B. stated he was taken to hospital by the boss at the petrol station, M.F.. A.B. stated, S.B. may have been present that night. A.B. stated after he

sustained his injury he did not see the young man and the older man chasing him.

The Prosecutor then put it to that in his statement to police shortly after the event A.B. had stated, *"I saw the seller that works at the Petrel Station whose name is S.B. or G. and he is from Sudenica Village. I told S. did you see what happened, he said yes in this turn one of them is dead. I saw that the person from Banja running after the one from Albanian was lying on his back and his legs in the direction of the Banja road and his head in the direction of the window warehouse. I said S. are you safe and alive and he said yes because I hide behind the concrete pillars. S. further told me that the other person has run away towards the corn in the direction of Banja over the road"*. A.B. confirmed this was correct and accurate.

A.B. stated he did not know the victim J.O. but he did know S.B..

A.B. stated he could point out the place at the scene where he was injured even though the place has now changed a bit as the road has been repaired with new asphalt and things like that.

A.B. stated he could also point out where the younger and older men were when he was wounded but he could not say how many metres away that was.

A.B. stated he knew Sa.O. from Baicë/Bajic village. He said he spoke to him on the morning of 20<sup>th</sup> August 2006 and Sa.O. stated he heard shots fired.

A.B. stated he knew G.L. but did not have frequent contact with him. He

stated he saw him that night but could not say if he was also present when the shooting took place. A.B. stated that apart from Sa.O. and G.L. there could have been other people present but he could not be sure however, he did say it was morning time and people were going to work.

In response to questions from defence counsel A.B. stated it was possible the same person he saw chasing the younger person was the same person who had earlier asked him if he had seen anything unusual.

Defence counsel then put it to A.B. that in his statement to Kosovo police on 12<sup>th</sup> September 2006 he said "*I have to add when they passed by me running one after the other both persons had weapons in their hands*" and asked if he had seen the weapons.

A.B. stated that if he stated then that they had weapons then this was correct. He stated he did not know if the older man had said anything to him but he was sure the younger one said, "*Don't cross on this side or I will kill you*".

A.B. was asked if the second person had said "*Stop him!*" and had sworn at the younger person and he replied he did not remember but he may have. He stated the younger person said "*Stop there, don't cross the road or I will kill you*".

Defence counsel asked A.B. if he knew if there was a family relationship between Sa.O. and the second, older person that was chasing and he said at that moment he did not know the family relationship but later on coming back from the hospital he heard people speaking about it and got to know

that he was Sa.O.'s uncle.

A.B. could not say how long after the shooting stopped Sa.O. appeared or if the shooting had stopped or not as there were a lot of people around and running away. A.B. stated his belief G.L. may have worked in the shop just past the petrol station selling windows.

The prosecutor asked A.B. why somebody he did not know would say something like "*Stop there, don't cross the road or I will kill you*" to him? Did A.B. want to go in front of him and grab hold of him or did someone ask him to go and grab him?

A.B. stated that until that moment he did not know there was going to be a conflict between the men. He stated his only intention at that point was to cross the road.

In response to a question from the defendant, K.H. A.B. stated the name of the building he worked in was "*Ditori*". He also confirmed where this was in the village. A.B. also stated the older man came from right in front of the supermarket on the road to Kashice and the defendant would have known this as he was being pursued by him.

In response to a question from the presiding Judge A.B. stated he had a weapon for 35 years and he confirmed there were different sounds from a smaller and a bigger weapon. He stated the weapon having a bigger sound would be of a bigger calibre. However, he stated he could not say what was the calibre of the weapon which fired the shot that injured him.

A.B. could not say which of the two men running shot first. However, he stated he saw that the younger man had to stop and turn around to shoot and he held the weapon in his right hand in the direction of the second man.

A.B. confirmed he did not see all of the shooting but he was certain he did see some of it. He stated everything was developing very fast and there were moments and points when the younger man would turn around and fire and these were quick movements. A.B. stated "*no one*" could have seen if this man was aiming but he did not think he was aiming at anything as he was running away.

A.B. stated he saw him the older man shooting two or three times in front of him in the direction of the first, younger man. A.B. stated the two or three shots fired by the older man towards the young man were fired immediately when they started shooting at each other. He stated the younger man's hair was long and tied at the back. His face was long. His nose was long and it seemed like it had a crook at the bottom. His clothing was sporty and light. A.B. stated he did not pick this man out in any form of identity parade but he recognised him straightway now. A.B. then pointed to the defendant, K.H. and said he was sure this was the younger man at the incident.

A.B. stated he was not sure if the two men exchanged words as they approached him that morning. He said there was noise from a vehicle which would have drowned this out. He stated when he was picked up to go to hospital in Peja as he passed by he saw a crowd of people and a person lying down on the asphalt. He stated while the two men were shooting at each

other he did not see anyone fall down.

A.B. then stated there were other shots fired before the two to three shots fired by the older man towards the younger man. However, he stated he did not observe if either of the two men was more active in the shooting than the other.

The witness **S.B.G.** gave evidence before the main trial panel on 9<sup>th</sup> July 2014.

In his evidence before the trial panel the witness S.B.G. stated he worked as a petrol pump attendant at the MTF gas station in Baicë/Bajic. He stated the fuel station is on the Banje-Istog road on the left hand side as one goes towards Istog.

S.B.G. stated that on the night of 19<sup>th</sup> August 2006 he finished work at midnight and was due to report for duty again at 07:00 therefore he slept inside the station that night. He stated there was nobody else there.

That morning he stated he heard a noise but he did not go outside immediately but instead waited until things had "*calmed down*". He stated he believed this was 06:30. S.B.G. stated it was his responsibility to hand the shift over at 09:00 and he did so but he could not remember to whom.

S.B.G. stated that later on the same day he heard a person had been wounded and his name was J.O.. However, he stated he did not know under what

circumstances he had been wounded.

S.B.G. stated the fuel station he worked in was on the main road. He admitted he heard shots that morning but could not say how many. He stated he knew A.B. and had seen him that night but only before midnight and not after. S.B.G. stated he only left the fuel station to go to the toilet and he was not his job to provide security.

S.B.G. stated he knew J.O. as a customer.

In response to questions from defence counsel S.B.G. stated he did not see the deceased J.O. during the day or early the following morning. He stated he did not know who provided first aid or took him to the hospital.

S.B.G. stated that when things calmed down and he went out, he heard noise and that noise was gunshots. However, he stated he could not say from where the shots came. He stated he went out as it was time to start work. He stated he heard more than three or four shots.

S.B.G. stated that when he heard these 3 or 4 shots he thought that usually at that time people would shoot dogs as this was usual in the area.

The witness **G.B.** gave evidence before the main trial panel on 1<sup>st</sup> August 2014. Previously, he gave a statement to Kosovo police on 1<sup>st</sup> September 2006.

In his statement to Kosovo police, the witness G.B. stated on 20<sup>th</sup> August 2006 at around 05:30 he was leaving his house with his sister E. driving a red Pegout 106 with Italian registration plates. He was driving to Peja to take his sister to work. G.B. stated that at approximately 05:50 while driving along the main Istog –Peja road, by the house of J.O., he noticed two people running along the main road one after another towards the junction of Banjë in the direction of Peja.

G.B. stated he did not know who these people were, but he stated the first one who seemed to be escaping was about 20 and his hair was shoulder-length while the other one was behind him and seemed like he was chasing the first man. G.B. stated the second man was wearing knee-length shorts. G.B. stated he did not know either man. He stated the distance between them was about 10 – 15 meters, whereas he was some 10-15 meters again from them.

G.B. stated that as he was passing by the house of J.O., he saw another person who was sitting on a walnut tree branch 2-3 meters off the ground observing events. He stated he did not pay this man much attention and could not describe or recognise him now. He did not know if he has anything in his hand either.

G.B. stated once he reached the road to Kashicë village he saw the first man with a short pistol in his right hand, aiming at the second man “uncontrollably because he was running”. He stated that suddenly he heard a gunshot but he did not know who was shooting. After two or three seconds he heard another shot but still don’t know who was shooting because he

could not see whether the second person was holding something in his hands or not. He stated that as these two men kept running shots kept being fired.

G.B. did not know exactly how many shots were fired but he knew there were multiple shots and he was scared and frightened as his sister was also with him. He recalled an Audi 80 vehicle behind him which was heavy grey in colour but he could not recall its registration number. He stated this vehicle overtook him at normal speed travelling in the direction of Peja.

G.B. stated that when the shooting started he managed to overtake the two people in a few seconds and as the shots continued he was not sure who was actually shooting as he was afraid to turn back. He could not say if the second man had something in his hand or not. He stated by the time he got to the petrol station at the junction, these two people were already behind him. He stated he drove to the side to the petrol station parking lot as he was afraid of being shot accidentally as the two men were just in the middle of the main road. He stated his sister told him to leave that place immediately so he kept going towards Peja at high speed.

He stated he continued to observe both men through his rear-view mirror until the view was lost. He stated they were running and shots kept being fired and once he drove over the hill he realized that the shooting stopped. G.B. stated he did not recall anything else about the incident but he tried to call 112 (the Police emergency line) but he failed to get through. He stated that once he got to “*Drini*” petrol station he met the first police car and informed them about the case. He stated he knew the deceased, J.O. only to see him and he knew where his house was located.

G.B. stated that due to the fear he had at the time of the incident, the fact it lasted around three or four minutes and during the entire time there was shooting he could not say for sure if J.O. was one of the people running or if it was someone else. He stated that even now if he saw these two people and the third one sitting on the tree he did not think he would know them.

G.B. confirmed he gave a statement to Kosovo police on 1st September 2006. He agreed he had signed the statement but in the meantime he stated he had "*forgotten everything*".

G.B. stated the two people he saw at the junction of the road from Kashtice and the main Peja-Istog road were running in the middle of the road along the white line, the distance between them was about thirty metres but he did not see much more because he left the road and stopped the car.

G.B. stated both men had weapons in their hands but he could not say if these weapons were long or short. He stated both were shooting at each other.

G.B. could not describe either person. He stated he did not recognise either of them nor could he say which of them shot first. He stated that once he had stopped his car he stayed there until the the people went towards Banje but he did not see where they went after that. He could not recall seeing any other people in the vicinity.

G.B. stated "*the first person*" was shooting and running at the same time

with his head turned back but he could not say if the shots he fired were a burst of fire or one after another nor could he say how many shots the first person fired.

G.B. stated the second was also running and he was shooting in the direction of the first person but he could not recall the position of the weapon the first person was holding nor could he remember how many times this person shot.

G.B. stated he did not know J.O.. He stated he heard later that day a person was shot and who it was but he still did not know him.

The prosecutor put it to G.B. that he stated to the police that he knew J.O. to see him but G.B. stated he did not know him and he did not remember saying he used to know him.

The prosecutor also put it to G.B. that he stated to the police the first person had long hair down to the neck but G.B. stated he did not remember saying this. When pressed by the presiding Judge he admitted he had said this.

G.B. then stated he was 60-70 metres away from the two people who were chasing each other. However, he admitted he told the police he was 10-15 metres away. He stated he could not remember how long he stayed in his car once he stopped but he stated he left the moment the people went towards the Banje road. G.B. stated he did notice these two people again but just drove the car off and continued on his way to Peja.

The prosecutor put it to G.B. that he had informed the police, “*after few seconds, I managed to overtake these people with my car and the shots continued, but I am not sure who was shooting at whom because I was scared to look, therefore, regarding the second one, I am not even sure if he had anything in his hand or not. Then when I got near the patrol station by the junction, the people in question were now some distance behind. Then I stopped again with my car in the patrol station car-park because I was scared that I would get caught by a bullet, because the two people that were running were right in the middle of the highway.*” G.B. stated this was true.

G.B. stated he did not remember if he had noticed anybody under the walnut tree opposite the fuel station. The Prosecutor put it to him that in his statement to the police he said he had noticed a person that had climbed up on the walnut tree and G.B. agreed this was correct.

The Prosecutor also put it to G.B. that in his statement to police he said, “*I noticed two people running on the highway, one after the other, towards Banje junction direction, in peja direction, I did not know who these people were, but I remember that the first person which seemed to be running away was about 20 years old and his hair was long to his shoulders, whereas the second person that was behind appeared to be chasing the first person and I remember he was wearing short clothes up to his knees; short trousers. And the distance between the first and the second was 10-15 metres*”. G.B. agreed this was correct.

In response to questions from defence counsel, G.B. agreed that on the relevant morning he had noticed both men were carrying weapons. Defence

counsel then put it to him that in his statement to the police he said he did not remember if the second person that was chasing the first person had anything in his hand. G.B. replied he did not remember what he stated in his first statement. He also stated he could not explain why he referred to J.O.'s house in his statement to the police because at the time he did not know who J.O. was and he did not know where his house was.

Defence counsel also put it to G.B. that in his evidence to the trial panel he stated the distance between the two persons was 30 metres whereas in his statement he said this was approximately 10-15 metres. G.B. stated the more accurate version was what he said back when he gave the statement. He stated this distance was true in relation to him and the persons who were chasing after each other.

In response to the Presiding Judge, G.B. stated he could not remember if it was the same distance between the first and the second man when they were running after each other and shooting. He also stated he could not remember who had shot first.

The Presiding Judge then put the following passage in his statement to the police to the witness, G.B.: *"I passed by J.O.'s house being about 10-15 from the second person who was running. Once I reached to the road of Kashice village, I saw the first man with the short pistol in his right hand aiming at the second man, in an uncontrolled way, because he was running. Suddenly, I heard a gunshot".* G.B. agreed he had said this but stated he could not say for sure now if the first man had a short pistol.

The Presiding Judge then put it to G.B. that he also specifically said in his statement that he saw that the first man was aiming at the second man and then he heard a second shot. Defence counsel intervened at this point and stated there was a discrepancy in the translated statement and the original did not use the Albanian word for “*aim*” but rather said “*the right hand was pointed towards the second person in an uncontrolled manner*”. Counsel submitted the difference was significant.

With the agreement of defence counsel, the Presiding Judge had the relevant portion of the statement read out and translated by the court interpreter whereupon the Prosecutor agreed with what Defence Counsel had submitted. The Presiding Judge asked G.B. if when he said he remembered that he observed that the first man pointed or aimed or directed fire at the second man, could he remember today any gunshot before the movement of the right hand of the first man but G.B. said he could not.

The Presiding Judge also put it to G.B. that he had stated to the police, “*I further add that when the shooting started, I have managed to overtake these people in a few seconds; shootings kept being fired*” and asked him if he remembered today overtaking these two people but G.B. stated he could not remember it today. G.B. stated his sister did not see anything on the morning in question because he placed his hand over her head and made her bow.

G.B. stated he did not remember if the movement of the first man was the same the whole time or did he change his behaviour during the shooting while he had the pistol in his hand.

G.B. stated he could not identify the man sitting on the walnut tree by name. He confirmed the signature at the end of the statement to police dated 1<sup>st</sup> September 2006 was his and overall his recollection was better then than now.

G.B. stated the sketch attached to his statement was drawn by the police officer but he had talked with the police officer about the incident and he drew the sketch and it was used as orientation for their discussion.

The defendant, K.H. asked if it were possible that the police officer who had drawn the sketch also told the witness, G.B. the location of J.O.'s house but G.B. denied this.

G.B. stated that if one were travelling from Peja to Istog J.O.'s house would be on the left. He stated he could not remember the distance between J.O.'s house and the main road.

G.B. stated the police did not offer him a set of photographs for the purposes of identification.

At the request of the presiding Judge the witness, G.B. then (somewhat reluctantly) looked at 16 photographs taken by the police but he stated he could not identify any of them. The witness was then shown a more detailed sketch of the scene and asked to highlight where he saw the men running but he said he could not do this except to say they were running on the main street.

The Injured Party/Witness **Sa.O.** gave evidence before the trial panel on 24<sup>th</sup> September 2014. He had also given a statement to the prosecution on 30<sup>th</sup> August 2006.

He stated that on the night before the morning the incident occurred he was in Zllakuqan having dinner with the late J.O. After dinner they went to his (Sa.'s) house where they remained until approximately midnight when, together with L.O., the son of Jakup, he went to J.O.'s house by motorcycle. J.O. remained in Sa.O.'s house.

Sa.O. stated before they got there they met "*criminals from Albania*".

He stated they were approximately 20 meters away from J.O.'s house behind the house. He stated there were two and they were crawling on the ground like rabbits.

Sa.O. stated he and L.O. approached these males and spoke to them. L.O. asked '*did you come here to steal are you thieves*'.

Sa.O. stated the males replied they said they were "*S.' workers*" and "*we didn't know where to go, we came here for shelter*".

Sa.O. stated he understood this as a reference to S.K.. He stated the males also said they were brought here by a van. Sa.O. stated the males then began walking on the road to get to the front of the house. He stated he and he and L.O. were walking next to them and asking why they were there.

Sa.O. stated they asked them where they were from and they replied they were from Albania. He stated K.H. then took out his passport and showed it.

Sa.O. stated A.K. started running away. He stated he knew this male was A.K. because A.K. was surrendered to the police that night and he had been speaking to K.H., A. was not speaking.

Sa.O. stated K.H. also ran away and it was at this point he telephoned J.O. and told him that there were people from Albania behind his house.

Sa.O. stated approximately ten minutes later J.O. came over with A.K. who he had managed to apprehend en route.

Sa.O. stated J. then called the police who arrived approximately thirty minutes later. In the interim, he stated somebody raised the possibility of contacting S.K. to confirm the identity of the two males but this did not happen.

Sa.O. stated he did not remember seeing these males in possession of any weapons. He stated that when the police came they apprehended A.K.. He said S.O. and L.O. were also present.

Sa.O. said he gave a statement to the police at the police station in Istog/Istok. He said he did not return home but spent the night in J.O.'s house instead. He stated he did not know where the defendant, K.H. was at this time.

Sa.O. stated himself, S.O. and the now late, J.O. stayed in the house together until approximately 05:45. He stated he had only been asleep when S.O. woke him up. She informed him she had heard shots from outside and “*that someone killed J.*”.

Sa.O. stated that on hearing this he went to the street to see what had happened. He stated he was alone. He said it was now morning, it was bright and he could see clearly.

Sa.O. stated he went in the direction of Peja. When he got to the Kashica road, he could see that a person had fallen down there and he went directly there. He stated he found J.O. unconscious. He said there were some cars travelling on the road.

Sa.O. stated he went on to the road and forced a driver to let him in his car and then he took J.O. to the hospital in Peja. He stated he was alone.

Sa.O. stated when he initially encountered him, K.H. had a black and white scarf tied around his head and he had long hair. He said K.H. was visibly younger than A.K..

Sa.O. stated he had returned from the police station in Istok/Istog with J.O.. They had discussed that they believed A.K. and K.H. had come there to steal motorbikes.

Sa.O. stated that as far as he knew J.O. had two hunting guns in his house and he held a licence for both. He stated he did not know if he held an

unlicensed weapon.

In response to questions from defence counsel, M.R., Sa.O. confirmed he arrived at J.O.'s house at midnight and J.O. remained there.

Sa.O. stated he had heard the name, S.K. but he never had direct contact with him.

Sa.O. stated then he was woken up, went outside and went to the intersection of the Peja/Kasctice road where he saw persons on the road going to work. He did not notice anyone specifically. He denied recalling if the witness, G.L. was present.

Defence counsel, M.R. then put it to the witness that on page 11 of his statement before the trial panel of the then District Court of Peja on 15<sup>th</sup> October 2007 he had said "*When I went out there I saw from a distance at the petrol station a person, he is G.L., and he waved at me, and I continued and noticed my uncle down laying on his back.*" Sa.O. stated the incident had taken place eight years ago and he did not remember now.

Defence counsel, M.R. then put it to the witness that in his statement to the prosecutor on 30<sup>th</sup> August 2006 he said that when he approached J.O.'s house on a motorbike with L.O. he noticed shadows at a distance of 200 meters.

In reply Sa.O. stated this was not true and was in fact impossible from a moving vehicle at that distance especially in the dark. He stated he had

thought he had seen rabbits.

In response to a further question from the prosecutor the witness repeated he could not remember if he had seen the witness, G.L.. However, he stated he knew him prior to the events of the morning in question.

Sa.O. stated he asked him if he had seen anything that morning but G.L. stated when “*we*” heard the shots “*we*” got under the vehicle.

Sa.O. stated G.L. had not said who had fired the shots. In response to a question from Judge Arben Mustafa, Sa.O. stated he did not remember who called the police that night. He confirmed his earlier testimony that A.K. was taken from the yard.

Sa.O. also stated that when he reached the fallen J.O. there was a gun near him but he did not know if it was a long barrelled or short barreled weapon.

At this point, defence counsel M.R. pointed out that in his evidence to the main trial of the then District Court of Peja on 15<sup>th</sup> October 2007, on page 11, the witness had stated “*at the crime scene near the right hand of my uncle, I noticed a weapon that was a revolver.*”

Sa.O. stated he had said this at the crime scene and now he wanted to state the weapon was by the hand of the body. He stated he saw the weapon there but he did not touch it. He stated the body was on the ground with the right hand stretched out and the weapon was about half a meter away from the hand behind the head.

Sa.O. stated he had not been in the military and did not know the difference between a long-barrelled and a short-barrelled weapon. However, he stated he saw a wound on the body, “*on the forehead between the eyes*”.

In response to questions from the defendant, K.H., Sa.O. stated he was with the A.K. and K.H. until they ran away. He stated he was present with J.O., his son L. and other members of the O. family.

Initially, the expert witness **Ç.H.** gave evidence to the main trial panel on 31<sup>st</sup> July 2014. On 7<sup>th</sup> November 2014 he was recalled to clarify aspects of his testimony.

In his testimony on 31<sup>st</sup> July 2014 the expert witness Ç.H. stated he received the case on 26<sup>th</sup> November 2006.

He stated the referral was given the ID No. 2006-DI352 and the request of the District Court was labelled request No. PPQ No. 83/06. He stated his Unit received 7 exhibits in total.

He stated the first exhibit was an AK-47 automatic weapon of calibre 7.62 mm, bearing serial number 14189429 and which was made in China.

He stated the second exhibit related to two magazines of the first exhibit, both of calibre 7.62x39 mm together with 59 bullets of the same calibre. He stated 29 bullets had a sign or were signed with PPY in Cyrillic letters, and 24 bullets had the numbers 10-99 and 3 bullets had the sign 31-67.

He stated the third exhibit was a “*Crvena Zastava*” pistol of model 57 of calibre 7.62x25 mm bearing the serial number F-203418 and which was made in Yugoslavia.

He stated the fourth exhibit related to a magazine for the 3<sup>rd</sup> exhibit and 8 bullets of the calibre 7.62x25 mm.

He stated the fifth exhibit, was a “*Sig Sauer*” pistol model P201, 9.19 mm with serial number 193540 and one magazine for this pistol. The weapon was made in Switzerland.

He stated the sixth exhibit was a Glock pistol, model 19, calibre 9.19 mm, serial no. CNB 406 and one magazine for this weapon. This weapon was made in Austria.

He stated the seventh exhibit was 19 cartridge cases, of calibre 9.19 mm, 12 cartridges, 5 bullets GFM Luger, and 2 bullets RWS- 9 mm-Luger.

The expert witness, Ç.H. stated the weapons (AK-47, Crvena Zastava (CZ) M57 pistol and Sig Sauer B210 and the Glock model 19 were tested and were functional. He stated the samples of the weapons were compared or matched to the shell casings that he received. He stated the results of the tests were the shell casings were fired from the two weapons, 12 shell casings were fired by exhibit No. 6 and 7 bullets were fired from exhibit No. 5.

He stated he consulted his unit’s databases to ascertain if these weapons

were used in the other cases, but no matches were found.

In response to questions from the presiding Judge the expert witness Ç.H. stated he was a trained ballistics expert and tested the weapons in this case himself. He described the standard tests carried out by his unit when they receive a firearm. He stated that in this case all the parts were original and no parts had been changed.

The expert witness Ç.H. stated KP officers collect and transport the exhibits to his laboratory. He stated crime scene experts have a list on which they record items of evidence, the place it was recovered from, how they were moved etc.

The expert witness stated that in this case he was merely informed of the full names of the persons who were the victim and the suspect but no other details.

Defence counsel, M.R. asked why the weapons were received on 22<sup>nd</sup> of September 2006 whereas the examination did not occur until 20<sup>th</sup> of November 2006 (i.e. a delay of two months)? The expert witness Ç.H. replied his unit is very busy and it also takes some time to perform the standard and particular tests on all of the weapons they receive. However, the witness stated such delays would not affect the trace evidence that could be recovered from the weapons.

The expert witness, Ç.H. stated he did not recover any fingerprint evidence from the weapons. He stated M.A. did this.

The expert witness C.H. stated the magazine of the Glock pistol can contain fifteen (15) bullets, whereas the Sig Sauer could hold eight (8). He stated these two weapons had empty magazines when his unit received them.

The expert witness, C.H. stated the Glock and Sig Sauer pistols were both of the same calibre i.e. 9x19mm.

The prosecutor then asked the witness what method was applied to establish that 12 shell casings were fired from the Glock and 7 shell casings were fired from the Sig Sauer? The expert witness stated first the calibres are compared (both of which were 9x19mm) before general features are compared. He stated that in the case of the majority of weapons there are five (5) general features namely, the firing pin, the ejector, the extractor, the breach face and chamber marks. He stated each weapon contains each of these characteristic but in no weapon are all of these characteristics the same.

In response to a question from the prosecutor the witness confirmed that based on a comparison of these five (5) features he came to the conclusion that the twelve (12) shell casings belonged to bullets fired from the “Glock” and seven (7) were fired from the “Sig Sauer”. He stated he was in no doubt about this.

The expert witness, C.H. was subsequently recalled on 7<sup>th</sup> November 2014 to clarify certain aspects of his evidence.

During this subsequent examination counsel for the defendant, K.H. the

lawyer, M.R. put it to the expert witness, C.H. that the evidence of the expert witness, Dr. A.G. was that the victim sustained the first wound while in a standing position whereas he sustained a second wound while he was bent over which was proven by the trajectory of the bullet and these two conclusions lead him to believe the shots were fired from a distance of more than one (1) metre. Counsel asked the expert witness, C.H. if he could agree with this? However, the witness stated it was not within the scope of his expertise to offer an opinion on this.

In response to questions from the trial panel the expert witness, C.H. stated the pistol Sig Sauer pistol could hold eight (8) cartridges whereas the Glock model 19 could hold fifteen (15).

The presiding Judge asked the expert witness if he could recall when he examined both of these weapons and if there were any bullets left or not in the magazines at that time?

The expert witness, C.H. stated he could not remember when he carried out the examination other than it was in 2006. However, from his notes and those of the officer who sent the weapons to his unit for examination he could infer the magazines had already been removed and were empty when they were received.

The expert witness, C.H. stated the “*Glock*” pistol was a Glock 19 and not a Glock 17.

The expert witness, C.H. stated the most important differentiating factor

with regard to any weapon was its serial number. He stated every weapon has a different serial number.

The expert witness C.H. confirmed evidence exhibit no. 6 was the “*Glock*” pistol. He stated it should be assigned the same exhibit number as it was assigned when collected at the crime scene. However, he could not say if this would have happened in 2006. He stated it would have depended on the region and on the unit.

The trial panel then asked the expert witness, C.H. about a weapon that was found after the incident and at the direction of the defendant, K.H.. The witness stated this had also been retained.

The expert witness, C.H. stated nineteen (19) casings were compared with the aim of ascertaining whether they were discharged from the same weapon. He stated it was discovered that twelve (12) shells were discharged by one gun, whereas seven (7) came from another gun. He stated the twelve (12) casings were discharged by the “*Glock*” model 19, whereas seven (7) other shells were shot from the “*Sig Sauer*”. He stated this was done by comparing the casings under a microscope and comparing their characteristics. He later described these characteristics in general terms.

The presiding Judge then put it to the expert witness in the crime scene report repeated reference was made to a “*Glock*” 17. The witness, C.H. stated the author of this report was in the best position to explain this. He confirmed the “*Glock*” model 19 and the “*Sig Sauer*” had the same calibre.

The expert witness, Ç.H. stated as far as he knew the weapons were examined for fingerprints but by a different section of his unit but he is very rarely involved in that process.

In response to a question from defence counsel M.R. the expert witness, Ç.H. stated no bullets that were retrieved from the body of the victim were subsequently sent to him.

Initially, the expert witness **Dr. A.G.** gave evidence to the main trial panel on 1<sup>st</sup> August 2014. On 24<sup>th</sup> October and 9<sup>th</sup> December 2014 he was recalled to clarify aspects of his testimony.

The expert witness Dr. A.G. outlined his educational background and stated that since 1995 he was an assistant to a professor in the field of medical forensics and since 1999, he was head of the former Institute of Medical Forensics and now he is the Head of the Department of Medical Forensics in Prishtina.

At the outset, the expert witness, Dr. A.G. stated his opinion in this case could only be based only on the discharge letter provided by the University Hospital in Prishtina and did not take account of the treatment the deceased man, J.O. received in Switzerland. He stated a discharge letter was not a medical report and would not contain all of the necessary elements for him to provide an opinion and he would need to have sight of the autopsy report. The presiding judge explained efforts were in train to obtain this from the Swiss authorities.

The expert witness, **Dr. A.G.** appeared again before the main trial panel to give evidence on 24<sup>th</sup> October 2014. Before the commencement of the session he was furnished with the autopsy report on the deceased, J.O. as received from the Swiss authorities.

On the basis of the discharge letter from the University Hospital in Prishtina and the autopsy report the expert witness, Dr. A.G. stated the deceased Mr. J.O. was admitted to the University Hospital in Prishtina on 20<sup>th</sup> August 2006 and was discharged on 21<sup>st</sup> August 2006. During this time he underwent surgery to his head to treat a wound caused by a firearm. Small pieces of metal were removed from his head. It was also recorded that J.O. had sustained another wound to his left shoulder. He was discharged from the University Hospital in Prishtina on 21<sup>st</sup> August 2006 and transferred to a hospital in Lausanne in Switzerland.

The expert witness Dr. A.G. stated the autopsy report indicated J.O. had sustained a wound to the right side of his head 10cm from the right eyebrow and until 12cm away from the level of the right ear. This had been sutured with surgical thread. He stated one part of the skull bone was missing which he stated was consistent with surgical intervention.

The expert witness, Dr. A.G. stated the autopsy recorded a part of the brain mass was missing and there was a region containing blood. In the damaged brain mass, two metal small pieces were found and these were particles of a damaged bullet.

The expert witness Dr. A.G. stated that due to the impact on the bone, the

bullet fragmented in small pieces and became lodged in the right brain mass. As a result there was no exit hole. This means that we do not have an exit hole. He stated this was consistent with the surgery performed in Prishtina University Hospital where some small metallic pieces were removed, but two remained because the surgeons were not able to go deeper into the brain.

The expert witness, Dr. A.G. stated the doctor who performed the autopsy in Switzerland could not identify any gunshot residue on the body of the deceased (there was no typical “tattoo” pattern) therefore it was impossible to say what distance either shot was fired from.

The expert witness, Dr. A.G. stated the autopsy report described a second wound to the victim’s shoulder which had broken the humerus and damaged regional muscles. However, he stated this wound damaged non-vital organs therefore it was not lethal. In contrast, this wound had an entry and an exit point.

The expert witness, Dr. A.G. stated he could assert with “*high reliability*” that the nature of the entry and exit wounds indicated the victim was in a bending position, when this second wound was sustained. The witness stated there were no traces of alcohol in the toxicological analysis.

The expert witness, Dr. A.G. stated the wound to the head was inflicted from the front and from the right side, while the wound to the shoulder came from the front left to the back and down.

The expert witness, Dr. A.G. stated the injury to the head was the one which

ultimately caused death as the brain is a vital organ which in this case was attacked.

The expert witness, Dr. A.G. stated the gunshot wound to the head would have incapacitated the deceased and he could not have continued running after sustaining it.

The expert witness, Dr. A.G. stated the deceased was in a comatose state when he was discharged from the University Hospital in Prishtina.

The expert witness, Dr. A.G. stated from the nature of the injury he could not say the distance from which the victim was shot.

In response to questions from defence counsel, M.R. the expert witness, Dr. A.G. confirmed the deceased was 185cm in height. He stated he could not state if the person who shot at him was taller than him.

The expert witness, Dr. A.G. repeated that the surgery performed in Prishtina resulted in the removal of some metallic pieces from the victim's brain but other pieces were lodged so deeply the surgeons in Switzerland could not remove them.

Defence counsel then attempted to put questions to the expert witness based on the content of other witness statements but the trial panel ruled this could only take place if the expert witness was allowed to first consider a number of witness statements rather than just one.

The expert witness, Dr. A.G. stated it was likely the shots were fired in a row and the wound to the head was inflicted first followed by the wound to the shoulder.

The witness, **Dr. A.G.** appeared again before the main trial panel to give evidence on 9<sup>th</sup> December 2014. The expert witness answered questions he had received in writing from the trial panel and from defence counsel prior to the session. The expert witness was also provided with copies of the main witness statements in the case. The prosecutor was also given an opportunity to review these questions before they were submitted to the doctor but he declined. The trial panel also offered the prosecutor the opportunity to put written questions to the expert witness but he did not wish to do so.

In response to the first question posed by defence counsel namely, “*Is it possible that the defendant has injured the victim during his running away from the victim, who was shooting after him in his direction?*” the expert witness, Dr. A.G. replied, Yes but it was also possible the defendant shot the victim while facing him directly.

In response to the second question namely, “*How does the expert evaluate, in what time distance should have been these two shootings from which the deceased has suffered the injuries and which one of them was fatal?*” the expert witness stated the time interval between the shots was short and the first shot was the fatal shot.

Counsel for the defendant, K.H. the lawyer, M.R. asked if there were other shots between the shots that inflicted the fatal head wound and then the

shoulder wound?

The expert witness, Dr. A.G. stated this question would be better addressed to a ballistics expert and he could neither exclude nor confirm this.

In response to the trial panel's question if the victim was moving when the shots that hit him were fired the expert witness, Dr. A.G. stated neither scenario could be excluded. He stated that at the moment when vital organs are injured in this way, the first effect is disorientation and loss of consciousness and this meant the victim could have also been standing for some time but would not have been consciousness.

In response to the trial panel's question if the body of the victim was moving when the second shot hit the body the expert witness, Dr. A.G. stated it would have been falling due essentially to the force generated by the first shot.

In response to questions from the prosecutor the expert witness, Dr. A.G. stated the fatal shot was fired from a distance of more than one (1) metre but he could not say exactly how many.

The witness, Kosovo police officer **A.B.** of the Regional Forensics Unit of Kosovo Police in Peja gave evidence to the main trial panel during the session on 5<sup>th</sup> September 2014. He was questioned in respect of the crime scene report No. 26/352 dated 20<sup>th</sup> August 2006.

Officer A.B. stated he compiled the report in collaboration with officers E.N. and B.I.. He stated together with these two officers he performed the crime scene inspection on 19<sup>th</sup> August 2006 after J.O. and A.B. had been shot. He stated the contents of the report were correct.

Officer A.B. began his evidence by confirming neither E.N. nor B.I. were still in the employ of Kosovo Police.

Officer A.B. stated nineteen (19) casings of calibre 9 millimetres were found at the crime scene. He stated there was a distance of two hundred and fifty two metres (252m) between the first and the last shell casings. In the sketch of the scene generated by the Regional Forensics Unit the first casing found was assigned number one (1) and the last was assigned number twenty three (23). Officer A.B. confirmed all shell casings were of the same calibre.

Officer A.B. stated a Sig-Sauer pistol also of calibre 9 millimetres was recovered at the scene of the incident. It was assigned number eight (8).

Officer A.B. stated there were buildings on both sides of the road and one (a *qebaptore*) was hit by bullets during the exchange of gunfire. He stated the *qebaptore* is no longer there.

Officer A.B. stated that another weapon was found, not at that crime scene but at the time when the suspect was arrested. The suspect stated that he had thrown the weapon in a sort of creek of water. This weapon was also a *Glock* make. However, Officer A.B. did not know how far from the scene of the incident this second *Glock* was recovered.

Officer A.B. confirmed all of the casings recovered at the scene were from 9mm bullets. However, he stated he did not know anything about gunshot residue samples taken from the hands of the defendant, K.H.. He stated this was a matter for the forensic laboratory. He also stated he could not say which casings belonged to the bullets from which weapon. However, he stated the ballistics experts could state this.

Officer A.B. stated that when he arrived at the scene J.O. had already been removed.

In response to a question from the trial panel Officer A.B. the magazine of the *Sig-Sauer* pistol was empty when it was recovered. He also confirmed from the report there were three bullets in the magazine of the *Glock* weapon which was recovered away from the scene at the direction of the defendant, K.H..

The witness, Kosovo police officer **A.B.** was subsequently recalled on 9<sup>th</sup> December 2014 to clarify aspects of his testimony.

Officer A.B. stated the items of evidences listed from numbers 1 to 27 matched the report of the crime scene inspection and also the report from the laboratory. However, he could not gainsay the prosecutor when he pointed out there were some errors in relation to the numbers assigned to some specific items.

Counsel for the defendant, K.H. the lawyer M.R. stated the defendant himself showed the police where he threw the pistol and the pistol was

indeed found there. He also stated ballistics test showed the defendant shot from that weapon and he never denied this.

The witness Officer A.B. stated his function at the crime scene was limited to tasks as menial as holding the measuring tape and his colleagues Officers E.N. and B.I. were in charge.

In response to the Presiding Judge pointing out the crime scene report referred to a *Glock* model 17 pistol whereas the ballistics report referred to a *Glock* model 19 the witness stated this apparent contradiction could easily be resolved.

Officer A.B. stated in theory the numbering system used by the police officers at the crime scene should have been followed by their colleagues in the forensics laboratory but the ballistics officers could explain any discrepancies.

Officer A.B. stated the forensic officer E.N. and an officer from the investigators, together with the defendant found the *Glock* weapon which was recovered away from the scene. He stated he could not say how many bullets were left in the magazine or why any bullets that were left in the magazine were not there when the weapon was received in the forensics laboratory.

On 24<sup>th</sup> October 2014 the trial panel heard evidence from Kosovo police officer **E.B..**

Officer E.B. stated the defendant and his weapon were apprehended at a remove from the crime scene. The suspect, K.H. was apprehended by the police on the main road from Peja to Rozhaje in the village of Novosellë/Novosello.

Officer E.B. stated that upon his arrest the defendant, K.H. was taken to the Regional Police in Peja where he admitted he had been in Banje, that he was involved in the shooting incident and that he hid the weapon somewhere in a village nearby and not far from where he was arrested. The defendant, K.H. subsequently took officers to the village of Radavc/Radavč where he showed them to a black *Glock* pistol which was in a canal under a bridge. The defendant, K.H. admitted he had used the weapon.

Officer E.B. stated the defendant, K.H. stated “*when I shot at him I saw him falling on the ground*” but officers did not ask him who fired the last shot.

Officer E.B. stated he had seen the evidence located at the crime scence but the forensics unit was responsible for taking photographs and the documenting and collecting of evidence.

Officer E.B. confirmed the findings of the forensics unit namely that nineteen shells belonging to bullets of 9 mm were found. He also confirmed the finding of the ballistics laboratory in Prishtina namely that 12 of those shells were fired by a *Glock* weapon *Glock* and 7 came from a *Sig Sauer*.

Officer E.B. confirmed that when an item of evidence was assigned a number and then handed over to the ballistics unit it would retain this same

number.

In response to questions from counsel for the defendant, K.H. the lawyer M.R., Officer E.B. stated the then suspect, K.H. was arrested approximately four hours after the incident but he could not say if he had resisted arrest. He was taken to the regional directorate in Peja where he was cooperative to the extent that he later accompanied officers to where the weapons were recovered under the bridge.

In response to questions from counsel for the defendant, K.H. the lawyer M.R. Officer E.B. stated the defendant stated in his statement “*quite a lot*”, how he “*met with a person, he was hired to commit a murder, that he was with some friends and that a person showed up there, they had some trouble with him and they shot at each other and he shot at him*”. Officer E.B. could not remember if the defendant had stated who had shot first.

Officer E.B. stated the *Sig Sauer* weapon that was found at the scene should have been found with an open slide meaning the magazine was totally empty but he could not be sure.

Officer E.B. also stated that further down the road from the police station in Istog, an AK 47 and one TT pistol were found but it was confirmed they had not been fired.

## **Other Evidence**

At the conclusion of the evidentiary proceedings during the main trial session on 19<sup>th</sup> January 2015 the parties agreed that all statements and reports contained in the case files were to be admitted as evidence and considered as read. These included three (3) case files in Case P. nr. 542/11 against the defendants Xh.K., S.K. and V.K.. Originally, this case had included the defendants, K.H. and A.K. before the case against them was severed by ruling of the presiding Judge of the then District Court of Peja dated 29<sup>th</sup> June 2012. The “new” case was assigned the number P. Nr. 267/12. Following the filing of the amended indictment which withdrew the charge of Criminal Association to commit the offence of Aggravated Murder against the defendant, A.K. he was acquitted by ruling dated 26<sup>th</sup> September 2014. The case against him was then severed by ruling also dated 26<sup>th</sup> September 2014. This “new” case was assigned the number P. nr. 224/14.

### **iii. Evidence of G.L.**

All of the parties agreed the testimony of the witness, **G.L.** was relevant. He gave statements to Kosovo police on 20<sup>th</sup> August 2006 and to the prosecutor on 12<sup>th</sup> September 2006.

In his statement to Kosovo police on 20<sup>th</sup> August 2006 the witness G.L. stated at 05:45hrs that morning, after locking the door of his business, a premises named “DINO KOM” located at the junction of the road Pejë-Istog-Banjë, “*in a moment*” he heard three to four shots from fire arms. He

stated he immediately turned and stared towards the shots and at a distance of approximately 15 up to 20 meters he noticed two persons who were running from the direction of Istog to Peja, along the main Istog- Peja road. He stated both of them were carrying pistols in their hands and the distance between them was 10 up to 15 meters. He stated he knew the person who was further away since his house was not far from his place of work and he knew his name was J.. G.L. stated he saw J. shooting towards the person who was running in the direction of Peja. He stated he has never seen this person before and J. was demanding that he stop. He stated the person who was running away replied by shooting in the direction of J. and at the same time he was running in order to flee. The witness stated when they reached the junction of the road Pejë-Istog-Banjë he noticed "*when the person who was running away shot twice or three times with the weapon and at that moment J. fell down*". He stated the person who shot in the direction of J. passed the main Pejë/Banjë road and he ran into a field and escaped.

G.L. stated J.'s nephew arrived and asked him to help him place J. in the vehicle. G.L. stated when he got close to J. he saw the pistol which was in J.'s hand and "*the head of the pistol has remained open.*" He stated together with J.'s nephew and S.B.G., who works at the gas station, he placed J. in an Opel Vectra and brought him to the regional hospital in Peja. He then gave a detailed description of the the person who fired at J. and this matched that of the defendant, K.H..

The witness, **G.L.** was interviewed by the prosecutor on 12<sup>th</sup> September 2006 during which he again have a description of the person who shot at the victim J.O.. This description matched that of the defendant, K.H.. He also

stated that when he approached the stricken J.O. he was lying on the ground on his back, his hands were down but he was still alive, he could not talk, he could hear him breathing, his gun was next to his hand and he had a wound to his head and he had another wound to his left shoulder.

The only other document of significance generated during the course of the re-trial of the defendant, K.H. was the report of the autopsy<sup>6</sup> performed on the victim at the University Hospital of Geneva and dated 19<sup>th</sup> September 2006. This was forwarded by the Swiss authorites at the request of the presiding Judge and was not put before the first trial panel of the then District Court of Peja in 2007.

#### *iv. Defendant*

The defendant, **K.H.** gave his first statement to Kosovo police on 21<sup>st</sup> August 2006.

Before making the statement he confirmed he had been advised of his legal rights that he understood these rights and that his counsel assigned by the police was present.

The suspect, K.H. stated that on 19<sup>th</sup> August 2006 at approximately 15:00-15:30 he met with A.D. from Bega-Albania and A.K. from Dojan village, Albania at Bajram Curr, Albania. He stated he was asked to carry out a murder in Kosovo. He agreed to do it. He went home to get his passport and change his clothes. Later he stated he left for Kosovo in a green

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<sup>6</sup> Volume 1 at Tab 10

Mercedes-Benz 240 bearing registration plates from the Tirana region of Albania. He stated there were no weapons in the car because A.D. stated they would be given weapons in Kosovo. He stated he did not know who he had to kill but that the killing was to take place due to blood feud and he would be informed in Kosova who he had to kill. Eventually they arrived in Peja.

K.H. stated A.D. parked the car at the bus station. A.D. instructed K.H. and A.K. to wait in the car and then to follow him as he was going to talk to "*him*". After approximately 15 minutes K.H. stated he and A.K. left the car and followed A.D. to a white three or four storey house with a small terrace and two cars in the yard. A.D. was talking to a person who introduced himself as S.. K.H. stated he knew this man to see and he identified him through a photo presented by the police. He stated A.K. and S. knew each other.

K.H. stated the group sat and engaged in small talk but no "business" was discussed. A.D. stated his intention to return to Albania that night and S. told K.H. and A.K. to go to a café next door for coffee.

K.H. stated that after half an hour S. came and told them A.D. had left. S. brought cigarettes for K.H. and A.K.. He stayed for thirty (30) minutes.

K.H. stated he and A.K. agreed to accept one hundred Euros each and the pistols from S.. Some time later they returned to S.'s house and he stated he would take them to see the car of the person he wanted them to kill.

K.H. stated they went to this person's house where they were met by three youths who took them to a disco where he was informed this person would be. A person who he described identified a car for them and they returned to S.'s house. K.H. stated the car was a grey BMW car with foreign registration plates. He stated the front plate was yellow and rear plate was white.

K.H. stated they were then taken to see the road where the target person would come along and where they were informed would be the most suitable place for the assassination. He stated they then returned to S.'s house where they were given weapons – A.K. took a *TT* pistol and he a *Glock*. S. asked them if they wanted one or two Kalashnikovs and they decided to take only one. During this time other people were present and they were taking instructions by telephone in relation to the whereabouts of the target person.

K.H. stated he was also given a Nokia telephone with a Vala SIM card and told the number was brand new and he would be called on it when the target person was approximately 5 minutes away. K.H. stated he and A.K. were taken to the place they had been earlier and where they would commit the murder.

He stated it was approximately 00:00 or 01:00 and they agreed to hide the Kalashnikov and leave. They hid the Kalashnikov and turned on to an asphalt road where they saw a house and in its vicinity there were 10 or 15 motorbikes. K.H. stated they sat in a squatting position near this house and discussed whether to sleep there or go back to Peja. He stated that while

they were talking a motorbike with two people came towards them. They hid their guns. The people on the motorbike asked them what they were doing there? They replied they came from Albania and simply wanted to sleep. They were asked if they had seen any rabbits around to which they “no”.

K.H. stated the two people then left on the motorbike towards the house where all the motorbikes were whereas he and A.K. continued towards the asphalt road. K.H. stated that as they were heading towards the asphalt road they noticed the same motorbike chasing them. The same two people stopped K.H. and A.K. and asked for identification cards. K.H. stated he showed them their passports but did not give them the passports. The two people asked K.H. and A.K. to stay there as they wanted to inform the police. K.H. stated he explained to them they came from Albania and were not there to steal and asked them to leave them alone.

K.H. stated at this point A.K. had already escaped and he did not see him again. K.H. stated he kept walking towards the asphalt road for one kilometer until he saw a field of corn and he stated he stayed there until morning. He stated he took out his phone and switched it on, but he was requested to enter a PIN number which he did not possess and he lost the SIM card.

K.H. stated that at dawn he walked towards the asphalt road and approximately fifteen (15) meters from the asphalt he met a man whom he could not describe but who was wearing slippers, said “good morning”,

grabbed his hand and asked him where his “scarf”<sup>7</sup> was. K.H. stated he told him he had no “scarf” but this man kept holding his hand and asking for his passport. K.H. stated he told this man his passport was in his pocket and he would not give it to him. He stated this person grabbed him by the neck-chain and tore it off. However, he released the neck-chain after K.H. told him he would not flee.

K.H. stated the man said “*you can't flee and if you do it I will tear you apart*”. He stated they both kept going along the asphalt road side by side in the opposite direction to Peja. K.H. stated the man told him he wanted to inform the police. K.H. stated he turned back towards Peja and began to run away. He stated he noticed this man taking off his slippers and drawing his gun. He stated he began to chase him with the pistol in his hand.

K.H. stated that when he has been running for 50m he heard the man who was chasing him asking another man on the other side of the road to stop him. K.H. stated this second (older) man tried to stop him but he told him to keep his distance or he would kill him. He stated that as he was trying to stop him he drew his gun and threatened him.

K.H. stated it was at this point the first person who was chasing him cocked his weapon and shot once. K.H. stated after that shooting he cocked and loaded his weapon as well before the first person shot again at which point K.H. stated he shot above his head to intimidate him. K.H.

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<sup>7</sup> Translator's note: In Albanian “shami” means scarf or headscarves and most probably it was meant “shtepi” which in English means “a house”.

stated “such shootings kept going for some 20-30m” and as all these shots were fired he was still being pursued by the man.

K.H. stated this man ceased fire for some moments and as he was running he turned his head back and the man fired once more and he fired back for the last time and heard his pursuer screaming and saw him falling to the ground.

K.H. stated he jumped over a fence nearby and ran away through meadows and woods. He stated he continued until the police stopped him. He stated that while fleeing he hid his weapon in a water channel in Radavc village. He stated he was arrested by police on the road Radavc to Peje.

K.H. stated before these events he had been to Peja several times. He had also been to Gjakova. However, he stated he did not meet or hear of S. before. He stated he heard A.K. say he had been to Peja several times in relation to this case but he had not completed it and always when going to Peja he would take 100 Euros. He stated A.K. did not tell him who he has met with on these previous occasions or who hired him.

In relation to A.D., K.H. stated he did not know his past but since he knew a shortcut to Peja, this lead him to believe he had been in Kosova or Peja many times.

K.H. stated the vehicle he and A.K. had to shoot at was a grey BMW with foreign registration plates. Its rear plate was yellow whereas the front one

was white. He stated that as far as he could remember the plate number was no.1578, but he could not remember the other letter and numbers.

K.H. stated in relation to the person whom he shot at he saw him for the first time when he was stopped by him and he could not describe him.

K.H. concluded by stating he and Ardian were promised 5000 Euros each by A.D. to carry out the murder 5000 Euros and they would be given the money when it had been carried out and they were back in Albania.

On 22<sup>nd</sup> August 2006 the defendant, **K.H.** gave a short statement to Kosovo police in which he stated despite his statement provided to the police on 21<sup>st</sup> August 2006 he was the following day presented with two photograph in which he could identify the house and the premises where on “10<sup>th</sup> (*sic*) August 2006” he drank beer and coca cola together with A.K. and these beverages were paid for by S.K.. He also identified a gate with ironwork covered with plastic which looked like glass. K.H. also stated in the photo he could identify a house with three floors or four including the roof. He could also identify another single-storey house where three vehicles were parked and where he “got equipped with arms by the mentioned persons on 19<sup>th</sup> August 2006”.

The defendant, **K.H.** was examined by the prosecutor on 12<sup>th</sup> September 2006, 28<sup>th</sup> September 2006 and on 1<sup>st</sup> November 2007. In addition, and it his own request he gave a statement to the prosecutor on 24<sup>th</sup> April 2009 while in detention in Peja.

In his examination on 12<sup>th</sup> September 2006 the defendant, K.H. gave broadly similar evidence in relation to how he came to be in Peja on 19<sup>th</sup> August 2006. He repeated how he went to the house of S.K. with A.K. and how A.D. subsequently left and returned to Albania. However, K.H. stated that when A.K. informed him of the proposed killing and the subjects of money and weapons were broached they hatched a plan to take the money and the weapons and immediately depart for Albania. At this point the defendant, K.H. became unwell and the interview was terminated.

In the event, the defendant, **K.H.** was not examined by the prosecutor again until 28<sup>th</sup> September 2006.

He stated he met with A.K. at a carwash in Albania on 19<sup>th</sup> August 2006. He was with A.D.. They invited the defendant, K.H. to go to Kosovo to do “some work”. He stated he went to Kosovo with A.K. and A.D., in A.D.’s car a grey “Benz 240” with TR license plates. K.H. stated A.D. told him in Kosovo his nickname would be “Caf” and A.D. informed him that in Kosovo they will commit an assassination for €5000.

A.D. stated A.K. would receive the same as well as some money for expenses and guns but he did not say from whom. K.H. stated A.K. knew from whom they would get the guns because he stated he was in Kosovo before as well to commit murders, but he said he did not commit the murders but took the money and fled to Albanian again.

K.H. stated he recalled arriving in Peja at 17:00 or 18:00 hours. He stated A.D. told them to wait in the car and he would go to the person whom they came to meet. K.H. stated they were eventually summoned to a house

opposite the bus station with a bar close by. In the house A.D. was with a man called S.. K.H. stated they stayed there about 5 minutes and A.D. proposed to S. that K.H. and A.K. leave the house and go and have a coffee. They did so.

K.H. stated shortly after S. arrived and gave them each a pack of cigarettes and told them A.D. had left. He stated S. left and they left and walked around the city before S. again met them in an SUV vehicle and they all went back to the coffee-bar where they were before and they went inside and had a coffee. After some minutes they went to S.'s where S. told them they would be taken to see the car they would shoot at. He stated they went to a place where there were shops, disco-clubs and in front of a disco-club a person with them pointed to the car they were to shoot at. K.H. stated the car did not have RKS plates. It was a grey BMW. They returned to their car and were asked if they wanted to be taken to the road where the ambus would take place. K.H. stated he and A.K. agreed to this. He stated they were transferred to another (different) BMW vehicle with RKS plates and were taken there.

K.H. interrupted his testimony to state that at the beginning, before going into S.'s house he and A.K. agreed to take €100 each to commit the murder and the pistols but then escape to Albania.

K.H. stated when they arrived at the place where the ambush would take place there was some dispute over the bext place to carry out the assassination. Eventually, he and A.K. they agreed on an unpaved village road.

K.H. stated everybody then returned to S.'s house where a younger male who was there brought them two "Glock" pistols. He stated they were similar to those of the police and they were "Glock 17", but one of them did not have ammunition and another young male who was there got out and took another pistol, a model TT, and brought it to them. K.H. stated he took the "Glock" pistol and A.K. took the "TT". They were also offered "*one Kalashnikov or two*" and they took just one. They were then taken to the village road they previously visited and agreed on in an "Audi" vehicle.

K.H. stated they were not given the money they were promised but they were given a phone at S.'s house. However, he stated once deposited at the scene he switched off the phone because he wanted to abscond as earlier agreed with A.K..

K.H. stated that while they were waiting a car arrived and they thought it was a police car and he put the Kalashnikov in a bush but after the car passed away they realised it was not a police car so he took the Kalashnikov again and they walked for about 100 m. and threw the Kalashnikov into a meadow at some other bushes but while walking with A.K. on the way to the asphalt road in order to escape a police car passed by. He stated this was at around midnight.

K.H. stated at this point they noticed a house that had some motorcycles and there was an abandoned house beside it. He stated they passed those houses and were in another meadow and while walking they turned back. He stated he proposed to A.K. they should sleep in the meadow but while they were in the meadow, a motorcycle with two persons arrived so they threw the pistols into a bush.

K.H. stated the people on the motorcycle stopped and asked who they were and what they were doing here. They asked for their passports which he stated they both produced. He stated one of the people on the motorcycle was older and asked if they saw rabbits. K.H. stated these people then left and he and A.K. recovered the pistols and carried on walking but the people on the motorcycles returned and again requested their passports which they showed. K.H. states at this point A.K. ran away and he did not know where he went and did not see him again.

K.H. stated that he tried to leave too. He stated he got to a cornfield and stayed there until daylight at which point he proceeded towards the asphalt road so that he could go back to Albania. However, he stated he met a person, who grabbed him by the shoulder and told him to come with him to the police. He stated this man grabbed him by the throat and wanted to punch him. He told him not to. He stated the man then tried to grab him by a neck-chain but he broke free whereupon the man tried to punch him again. K.H. stated the man grabbed him by the shoulder and asked for his passport but he would not give it to him.

K.H. stated at this point they were both moving towards the asphalt road but in the opposite direction. K.H. stated the man let go and told him "*you cannot run or I will burn you out*". K.H. stated at this moment he continued for two or three steps parallel with this man but then turned fast and started running towards Peja. He heard the man shout at a security guard that was there to "*Stop him!*" and he heard the man load the pistol so he reacted by drawing his pistol. He stated he told the guard "*Don't stop me because I'll kill you!*" and the guard did not react.

K.H. stated at that moment the man shot at him twice and after the second shot he also shot back with the intention of scaring him but he continued to fire at K.H. so he fired back in order to repel him but he did not stop but was saying "*Hey stop, stop!*". He stated that for a moment the victim stopped shooting and he also stopped shooting but then the man again continued to shoot so he also shot while running so he did not know at what distance they were from each other.

K.H. stated after the shooting he crossed some obstacles, passed by a car and until 14:00 hours just wandered through the forest and did not know where he was going until he was captured by the police on the asphalt road while walking towards Peja. He stated he still believed he could be killed.

In response to questions from the prosecutor the defendant, K.H. admitted there were some small discrepancies between what he stated previously and what he was stating now especially in relation to how he came to be in Peja. The defendant, K.H. admitted this. He stated he was supposed to receive a payment of €5,000 once the murder was committed and he was back in Bajram Curri.

He stated he knew A.D. and A.K. from before, they were locals, but he did not have any friendship with them because they were older.

The prosecutor then put it to the defendant there was a contradiction between what he stated now and what he stated previously insofar as previously he stated during the exchange of gunfire between him and the victim he saw the victim falling to the ground whereas he did not state that now. The defendant denied he ever stated this but in any event he stated what he was stating now was the truth.

The prosecutor also asked the defendant, K.H. if he knew the other persons who had been at S.'s house that night. He stated he did not but he thought one of them was named V. or V.. He stated the police showed him pictures and he was able to identify two persons. The prosecutor then showed him some pictures and he identified the persons at nos. 2 and 5 but he could not be sure as he saw them in the dark. However, in response to a question from the defence counsel of the defendant, V.K. the defendant replied he did not know if these were different people at all.

In response to a question from counsel for the then defendant, S.K., the defendant, K.H. stated then when they took the weapons in S.'s yard there were three or four other males.

The defendant concluded by repeating his earlier assertion he had reached an agreement with A.K. not to carry out the murder but rather to take the money and abscond back to Albania.

Subsequently, on 6<sup>th</sup> April 2007 the defendant, **K.H.** was in detention in the detention centre in Peja when he wrote to the prosecutor asking to see him about an important matter. The prosecutor attended on 24<sup>th</sup> April 2007 when the defendant, K.H. gave a statement in which he said approximately three weeks or one month previously on a Wednesday at around 12:30hrs a prisoner A.R. threatened him and told him to change his statement that he gave at the prosecution saying to me that if he did not he would "*rip you with Gillette*". The defendant, K.H. stated he suspected that S.K. had put A.R. up to this. He also stated he had pressure from A.K.<sup>8</sup> to change his statement in return for 5.000 euros which offer was communicated through a

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<sup>8</sup> The translator's note states Ardian's surname is illegible.

prisoner M.Xh. from Drenica region. K.H. stated he was to say he was taken from Albania to Kosovo by A.D. and not A.K..

The defendant, **K.H.** gave his final statement to the prosecutor on 1<sup>st</sup> November 2007. In it he repeated his earlir allegation about altering his statements and again implicated A.R. and M.Xh.. K.H. stated he informed a prison official called R.. He also stated he would not change his statement for €10,000 not only the €5,000 he alleges he was offered.

Finally, the defendant, **K.H.** gave evidence in his defence during the main trial session in the Basic Court of Peja on 19<sup>th</sup> January 2015.

K.H. began by stating the statement he gave to Kosovo police on 20<sup>th</sup> August 2006 was extracted from him by physical and psychological force exerted by the police. He stated the police wrote what they wanted and forced him to sign. He stated his defene counsel was not present at the time only a defence counsel chosen by the police attended when he signed the fabricated statement.

K.H. repeated his earlier evidence A.D. offered him a job in Kosovo where he had been, and even worked, many times previously.

K.H. stated he initially understood this work was to be manual labour and he went to Kosovo with A.D. and A.K. in his Mercedes-Benz 240. He stated they entered at the *Qafa e Morinës* border crossing which is near Gjakovë/Đakovica before eventually arriving in Peja near the bus station.

K.H. stated he and A.K. stayed in the car while A.D. went to talk about the furniture or clothing that he had to buy but after about 5 or 10 minutes both he and A.K. left the car and crossed the road and A.K. entered a house which had a big gate. He stated that once inside they were offered coffee by S.K.. K.H. stated they entered a coffee shop attached to this house which was within the fence of the house and not far from the main entrance door.

K.H. stated at this point A.K. told him they were there to commit a murder and not to perform any kind of work. He stated his initial reaction was to get up and walk away but A.K. persuaded him to stay saying that if they tried to leave now they would never get away alive.

At this point, K.H. stated he returned to the main house where S.K. was with two other males who he presumed were his sons.

K.H. stated A.K. had a conversation with the K.s about the murder. He stated S.K.'s sons took them outside and explained what kind of car the victim would be driving. He stated as he recalled it was a metallic BMW. He stated he later saw it parked somewhere in Peja but he could not remember where. He stated he and A.K. were subsequently taken to a location to ambush the owner of this vehicle. They then returned to S.K.'s house and gave them two pistols one of which was a "TT". They were also given a telephone with a SIM card to remain in contact and to be informed when the intended target was approaching.

K.H. stated he and A.K. were eventually dropped at Kashticë/a by the side of the road. He stated the road was not asphalted. He stated he hid an AK-47

assault rifle they had also been given in some bushes there. He stated he turned off the mobile telephone they had been given and took out the SIM card. He stated A.K. complained to him about this and realized it was not his intention to commit the murder from the previous discussion they had in the coffee shop.

K.H. stated A.K. calmed down and agreed they should abandon their task and simply run away. They walked towards the main road. He stated a police car passed by and this increased their determination to escape. He stated they went into a field where there were signs that vehicles, motorbikes and animals had been through and they eventually came up to some bushes in the middle of this meadow. They sat down and stayed there until two persons came there on a motorbike.

K.H. stated they stopped and asked “*what are you doing here, are you trying to steal?*” to which he replied, “*No, we are from Albania, we don't have money and we have no place where to sleep*”. K.H. stated these people left but after about one or two minutes one of them came back on foot and he asked both K.H. and A.K. to show him their passports. K.H. stated he did so and both were asked if they had seen any rabbits.

K.H. stated he thought this was an odd question and he asked “*If we don't disturb you we can stay or we can also leave*” and the man replied, “*No, no*” and then he left himself. K.H. stated he then said to A.K., “*We cannot stay here because nobody wants us to be here. We have to leave this place*”.

K.H. stated they went towards the the main road but just before that the two

persons on the motorbikes showed up again and one asked again to see their passport. He stated at this time A.K. had left but he had not seen that. He stated a mild altercation ensued over the production of his passport and he was grabbed by the arm. He stated he decided he had to run away. He tried to do so and immediately encountered an older person and he asked him if he had seen A. and he said ‘yes’ pointing to his right. K.H. stated he too walked in this direction but could not find A. so he turned back until he came to a two or three-storey house. He stated he continued that way looking for an escape route.

K.H. stated he came to a corn field where he stayed until morning. He stated in the morning he moved from there on an asphalt road until a person came to him and grabbed him by the throat and asked if he was the person from last night and he wanted to punch him.

K.H. stated as soon as he realised this man wanted to punch him he told him not to as this would cost him. He stated this man released his throat and grabbed him by the left arm with his right arm and said “*come with me*”. K.H. stated this man was wearing civilian clothes and shorts and did not seem to be a police officer.

K.H. stated he told this man released his arm which he did but then grabbed his throat and wanted to punch him again. He stated he told him not to or he would regret it at which point he released his throat but grabbed a piece of wood on a necklace around his neck and it was broken whereupon he quickly grabbed his arm again. K.H. stated the man was very aggressive and this scared him.

K.H. stated they walked together and were soon on the main road. He stated he was walking against his will as the man had hold of his arm. He stated the man exchanged greetings with an older man they encountered. He stated when they came to the Kashticë/a road they turned to the right. He stated he told the man several times to release his arm but instead he grabbed it and pushed him harder. K.H. stated the man said “*you cannot run away because I will burn you*”.

K.H. stated he was scared but managed to break free of the man’s grip and run in the direction of Peja. He stated as he was running away he could hear a weapon being loaded. He stated he asked the man not to shoot. He stated he heard him shouting to another person, “*stop that mother fucker!*”. He said a person was in his way and opened his arms to stop. He stated he drew his pistol and told him “*get out of my way or I will kill you. Don’t stop me, I will kill you!*”

K.H. stated he could not stop because the person who had just loaded the weapon could have killed him. He stated after that moment, he did not know how much later, he heard shooting. He stated he loaded his pistol, on the second shot, and this was very close to him and he ducked then touched his head to see whether the bullet had hit him but he did not see any blood. He said he turned his hand and raised it behind and tried to shoot in order to intimidate the person trying to shoot at him. He stated there was an exchange of fire. He stated sometimes he was running straight and sometimes moving to the left and the right side to save his life. He stated somebody was shooting from behind in his direction but he also shot “*from behind.*”

K.H. stated that when the shooting stopped he did not shoot. He said he left the main road and walked on the right side. He stated he walked through the fields and through the mountains. He stated he also heard people talking, perhaps in Serbian, and he was scared because he thought he might be in Serbia but he saw cars with Kosovo licence plates and he realized he was in Kosovo.

K.H. stated he crossed the main street to what appeared to him to be an irrigation canal. He stated he was very tired and could not run away anymore. He stated he took out his pistol which was empty because the bullet was "*out of the hole*", put the bullet in the magazine, put the magazine in the pistol and threw the weapon in the canal. He stated he did this because he was scared he might have another conflict with someone. He stated it was better for him to be killed by someone than to kill someone.

K.H. stated then he went to the main asphalt road where he saw a police car. He stated he waved at him and they stopped. They asked if he saw a man from Albania who was here. He stated he replied "*if you are looking for a person whom people have shot in his direction and he shot back, that is me*".

K.H. stated they handcuffed and started to torture him. They grabbed his hands and hair and threw his head on bonnet of the car. He stated they put him in the car and on the way to the police station they beat him in the car. He stated he was not able to make a statement. He stated he told them he lost his weapon and they told him to take them to the place where this happened. He said he took them there the following day and recovered the weapon for them.

In response to a question from the presiding Judge the defendant, K.H. stated at the moment when the deceased person took him by the arm and by the neck he did not notice if that person was carrying any weapon.

In response to questions from the Prosecutor the defendant, K.H. stated he heard the weapon loading, he said “*Don’t shoot!*”, his assailant said to another person “*Stop that motherfucker!*”. He repeated the older man tried to stop him by opening his arms and he said “*Don’t stop me otherwise I will kill you!*” and then when he ran away the shooting continued.

The Prosecutor asked from the first shot he heard, could he know how far away was he from the person who shot? The defendant, K.H. stated he did not know the distance with the person behind him but in his opinion it was a short distance in the beginning. When pressed by the trial panel he stated it was about 5 or 6 meters.

K.H. stated his pursuer initially fired two shots before he returned fire. He stated after the second shot he knew the shots were in his direction. He stated the exchange of gunfire continued but from memory he could not say how many more shots were fired although he knew from the evidence adduced in the subsequent criminal cases. He stated it was a question of life or death at the time and he was not counting the shots.

K.H. stated that when referred to “loading” a weapon he meant loading the weapon by putting the bullet in the chamber of the weapon not inserting the magazine.

K.H. then demonstrated the position he was in when firing his weapon.

K.H. stated he was running away, his hand was behind his back and pointed upwards. He stated when the shooting continued, he did not have control of his arm anymore and he was afraid for his life. He stated as he was running he veered to the left and to the right and not always straight. He stated at this point he could not see the person who was shooting at him. He stated when he could not hear any more shooting he also stopped shooting.

K.H. stated before he discarded his pistol into the canal he removed the magazine. He stated a bullet came out of the pistol and he took this bullet, put it in the magazine and put the magazine in the pistol and threw it into the water. He believed there were two bullets in the weapon at that time.

In response to questions from his own defence counsel the defendant, K.H. repeated his earlier allegation the police had beaten him and concocted his statement. He also stated after he fired his first shot he continued running from right to left and did not return or turn around at any point to see where his assailant was. When pressed by the trial panel he stated he did not turn his head back, pointing and shooting, trying to make sure he hit the victim. When asked to explain how such aimless shooting could have resulted in a "head shot" the defendant, K.H. repeated he did not aim before he fired. He stated he did not have control of his hand or his arm. K.H. stated he kept his weapon concealed in the front of his jeans. He stated he loaded it after the first shot was fired at him and he returned fire after the second shot.

In response to a question from the trial panel the defendant, K.H. stated he

could not say the distance between himself and his pursuer. He stated he was not trained in the use of weapons but he had handled and used weapons before as in 1997 law and order had broken down in Albania and weapons depots were raided and as a result almost everybody had access to weapons.

K.H. stated he was in a poor mental condition on the day. He stated he was tired. He stated he was not calm and he was afraid. He stated that in hindsight he would not have reacted as late as he did to the actions of the man who accosted him. He stated if he knew this man was armed he would not have run away and turned his back. He stated he would have pulled out his pistol and asked him to draw his before asking a citizen to call the police to solve the problem with them. He stated he did not see any weapon in this man's possession initially. He stated the man behaved very badly towards him, he was aggressive and wanted to take him away against his will. He stated he did not believe the man's intention was to take him to the police.

K.H. stated that when the shooting started he felt his life was in danger. However, he stated when he fired back his intention was not to kill anybody but rather to avert the attack on him. He stated he tried to escape but the man continued to shoot at him and if he had not returned fire he would not be alive today.

K.H. repeated his earlier statement that at no time during the exchange of fire did he turn around and shoot towards the victim face to face. He stated he looked in all directions but this was with the aim of finding an escape route. He stated the only viable escape route was the one he took.

K.H. stated that when the shooting stopped he did not shoot any more and he just ran away. He did not see the victim at this point. He stated he did not look around to see what had happened. He stated he just continued and escaped. He stated the last time he saw the deceased man was when he released his arm and said "*you cannot run away because I will burn you*" because then he walked two to three steps and then he turned around he did not see him again.

K.H. stated before he discarded his weapon he took out the magazine. He stated he took the bullet and put it in the magazine, he put the magazine in the pistol and then threw the pistol under that concrete block at the canal. He stated the magazine had bullets in it plus another one he took out from the chamber so at least two bullets, if not more, were in the magazine after the shooting.

K.H. stated he surrendered himself to the police because he did not know what happened and to protect himself. He stated he did not know he had killed the injured party.

K.H. concluded by stating he told the police where he had discarded his weapon because he wanted to be realistic and tell the truth as he had nothing to hide. K.H. stated he threw the weapon away and did not hide it.

#### **v. Crime Scene Inspection**

The trial panel decided to inspect the crime scene. The inspection took place on 12<sup>th</sup> September 2014. The defendant, K.H. was present together with his

defence counsel. The injured parties were also informed. The witness/injured party, Sa.O. who had heretofore been residing in Germany and was the subject of a request for International Legal Assistance to obtain his testimony also attended. This request was subsequently cancelled.

At the outset counsel for the defendant, the lawyer M.R. stated the *locus* had changed considerably since the incident. Officer E.B. of Kosovo Police was the chief investigating officer and he stated the victim's garden at that time was full of motorcycles for sale and they believed the defendants were present to steal from them. He then recounted what other parties had stated about how the altercation between the defendant, K.H. and the victim unfolded and how the injured party A.B. heard the shots and was wounded. He stated K.H. and A.K. were hired by the K.s to kill the injured party, V.I. who lived in the village of Kashticë/a .

Officer E.B. then took the trial panel through the police forensic map of the scene and stated which number (1-23) corresponded to which item of evidence. He stated the location where the defendant, K.H. discarded his pistol under a bridge was approximately three villages away.

The injured party **Sa.O.** was present. He gave his personal details and was asked to attend court on 24<sup>th</sup> September 2014 at 10:00 to give evidence formally and he agreed to do so.

He showed the trial panel where he had first encountered the defendants on the night of 19<sup>th</sup> August and into the morning of 20<sup>th</sup> August 2006. He confirmed he was on a motorcycle with L.O. at the time. He recounted the

conversation they had in relation to the reason fro their presence their.

The defendant K.H. was taken through the *locus* and he explained what he and A.K. did when they arrived. He explained how the area had changed a lot since 2006.

K.H. described how he came into contact with Sa.O. and L.O., how A.K. had fled and how he took refuge in a corn field until morning. He then described how he came into contact with the deceased, J.O. and how there was an altercation between them and shots were fired and the victim and A.B. were hit. He stated he shot backwards and upwards, into the air and could not have control of his hand while firing backwards. He stated the exact location where the victim fell had changed.

Sa.O. then returned and showed the trial panel where he found the deceased. He stated he was lying on his back and still breathing.

### **C. Evaluation of the evidence**

#### **Factual Conclusions**

This case had a long and sometimes complex procedural history.

The defendant, K.H. was originally charged with three alleged offences in indictment PP. nr. 387/06 namely:

Count 1:

Criminal Association as co-perpetrator (*together with A.K., S.K., Xh.K. and V.K.*) contrary to Article 26 in conjunction with Article 23 of the PCCK to commit the criminal offence of Aggravated Murder contrary to Article 147 paragraph 1 item 9 of the PCCK.

Count 2:

Aggravated Murder contrary to Article 147 paragraph 1 item 4 of the PCCK.

Count 3:

Unauthorized Possession, Ownership, Control or Use of Weapons and Ammunition contrary to Article 328 paragraph 2 of the PCCK.

Following the main trial in case P. nr. 538/07 the then District Court of Peja acquitted all defendants of the first two above-mentioned offences by judgment dated 18<sup>th</sup> December 2007. However, the defendants, Xh.K., K.H. and A.K. were convicted of the offence of Unauthorised Possession of Firearms and sentenced to terms of one year and four months imprisonment which time had already been served in detention on remand. The prosecutor filed an appeal against the acquittals. By judgment Ap. Nr. 267/09 dated 27<sup>th</sup> October 2011 the Supreme Court of Kosovo upheld the prosecutor's appeal, annulled the first instance judgment and referred the case for re-trial but only in respect of Counts 1 and 2. The Supreme Court upheld the first-instance judgment in respect of the conviction for Count 3 (i.e. the firearms offences).

When the case was returned for re-trial it was taken over by Eulex Judges

and assigned the number P. nr. 542/11. The re-trial commenced on 7<sup>th</sup> May 2012. The defendants K.H. and A.K. were properly summoned but failed to appear. The then presiding Judge contacted the relevant authorities in the Republic of Albania who stated their belief the defendants, although citizens of Albania, were not within their jurisdiction. By order dated 27<sup>th</sup> June 2012 the then presiding Judge severed the case against K.H. and A.K. and issued national and international orders for their arrests. The case against the defendants, A.K. and K.H. was assigned the number P. nr. 267/12.

The remaining three co-defendants (S.K., Xh.K. and V.K.) were acquitted by a judgment of the District Court of Peja dated 24<sup>th</sup> July 2012 primarily because the defendants, K.H. and A.K. were not available for cross-examination therefore their testimonies could not be used against co-defendants. The prosecutor appealed these acquittals. However, by ruling PAKR. Nr. 1401/12 dated 9<sup>th</sup> December 2013 the Appeals Court rejected the appeal.

The defendant, K.H. was arrested in Sweden on 12<sup>th</sup> September 2013 and was placed in detention on remand pursuant to a remand order of the Basic Court of Hudiksvall dated 4<sup>th</sup> October 2014. On 20<sup>th</sup> December 2014 the Supreme Court of Sweden ruled there were no lawful impediment to granting the application for the extradition of the defendant, K.H. to Kosovo. On 20<sup>th</sup> March 2014 the government of Sweden granted the application of the Justice Ministry of Kosovo to extradite the defendant, K.H. to Kosovo. K.H. did not consent to his extradition. The applicable Swedish law is The Law on Extradition in Criminal Matters, 1957:668. The defendant, K.H. arrived in Pristina on 13<sup>th</sup> April 2014. He appeared before the presiding

Judge in the Basic Court of Peja at 1100 on 14<sup>th</sup> April 2014 for a detention hearing and was remanded in custody where he remained throughout the main trial.

On 27<sup>th</sup> May 2014 the prosecutor filed an amendment to the indictment in which he withdrew the offence at Count 1 against the defendants, K.H. and A.K.. By the same amendment the prosecutor purported to amend Count 3 but he could not do this as this in its judgment dated 27<sup>th</sup> October 2011 the Supreme Court of Kosovo had upheld the judgment of the then District Court of Peja convicting the defendants of this offence. This verdict was final and could not be disturbed.

Ultimately the defendant, K.H. was re-tried in respect of one alleged offence only i.e. Aggravated Murder or Count 2 on the indictment.

On consideration of the case files in case P. nr. 538/07, the trial panel came to the conclusion the minutes were remarkably brief and of limited assistance overall in the instant case. Indeed this view was re-inforced on the trial panel's consideration of the Supreme Court of Kosovo's judgment Ap. nr. 267/2009 dated 27<sup>th</sup> October 2009 in which it noted the then District Court of Peja had failed to carry out a sufficiently detailed consideration of all of the evidence particularly in respect of the critical exchange of gunfire between the defendant, K.H. and the deceased man, J.O..

The trial panel also noted with concern the trial panel of the then District Court of Peja had failed to obtain an autopsy report in respect of the deceased man, J.O.. On commencement of the re-trial the main trial panel

immediately sought this report from the Swiss authorities and it was furnished under cover of letter dated 1<sup>st</sup> September 2014<sup>9</sup>.

In considering the evidence in this case the trial panel agreed it was important to consider the evidence in the round, including events prior to the fatal altercation between the defendant, K.H. and the deceased, J.O. at the junction of the Peja/Banje/Istog road in the early morning hours of 20<sup>th</sup> August 2006.

The trial panel considered the closing statement of the defendant, K.H. in which he stated he had come to Peja with A.K. and A.D. to undertake some work related to wood or furniture. While there was no legal duty on the defendant to tell the truth at this point the trial panel could not but be struck by the fact this was the first time he has mentioned this reason. Previously he had stated<sup>10</sup> the true purpose of their visit had been disclosed to him by A.K. before they left Albania on 19<sup>th</sup> August 2006. This purpose was to commit a murder for financial reward, i.e. carry out a contract killing. The trial panel finds as a matter of fact the defendant, K.H. was informed of the true purpose of his trip to Kosovo before he left Albania and was aware he was required to carry out an assassination.

S.K. gave a statement to the Kosovo police on 22<sup>nd</sup> August 2006 in which he denied having met with the defendant, K.H., A.K. and A.D. in Peja on 19<sup>th</sup> August 2006. He also denied any knowledge of the fatal events at the junction of the Istog/Banje/Peja roads in the early morning of 20<sup>th</sup> August

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<sup>9</sup> Main trial binder Volume X at tab Y

<sup>10</sup> Statement to Kosovo Police on 19<sup>th</sup> August 2006 and Minutes of examination by the prosecutor on 28<sup>th</sup> September 2006.

2006. He stated the first he knew of them was when the police came to arrest him and his sons, Xh. and V. the following day. He even denied knowing anybody from Albania or having contacts with anybody in Albania. The trial panel finds this is so unlikely as to offend common sense.

V.K. gave a statement to Kosovo police on 22<sup>nd</sup> August 2006 in which he also denied meeting with the defendant, K.H., A.K. and A.D. in Peja on 19<sup>th</sup> August 2006. He also denied all knowledge of or involvement in the fatal events at the junction of the Istog/Banje/Peja roads in the early morning of 20<sup>th</sup> August 2006.

The trial panel finds as a matter of fact S.K., or persons acting on his behalf solicited the defendant, K.H., A.K. and A.D. to travel to Kosovo and kill the injured party V.I. for financial reward and the defendant, K.H. accepted this offer. Whether the defendant, K.H. was solicited directly or by A.K. is a matter of speculation and there is insufficient evidence to find the defendant, K.H. was solicited directly.

Once the defendant, K.H. arrived in Peja the trial panel accepts his version of events that he was taken to S.K.'s house where the murder was discussed and he was taken by Xh.K., V.K. (and possibly others) to view the car the intended victim would be travelling in. He was also taken to the *locus* before returning to S.K.'s house where he and A.K. were given weapons, a telephone and some money. Eventually they were taken back to the *locus* arriving around midnight on 19<sup>th</sup> August 2006.

The panel also accepts that at some point the defendant, K.H. and A.K.

discussed dis-obeying their instructions, abandoning the murder, taking the money and going back to Albania. It is not clear whether this was agreed at the outset in Albania, which is possible but unlikely, or, more likely, it was discussed when they found themselves deposited at the side of the road near the village of Banjë/Banja close to midnight.

The evidence of the injured party, Sa.O. is important at this point. The trial panel found him an honest and reliable witness. He stated that at a certain point around midnight the defendant, K.H. and A.K. were in or around the curtilage of the O. family home and attracted the attention of Sa.O. and his cousin L.O. who were riding a motorcycle there. Not unreasonably, Sa.O. believed the defendant, K.H. and A.K. were up to no good and asked them to explain who they were and what business they had there.

The trial panel accepts Sa.O.'s evidence K.H. did all the talking and informed him they were from Albania, they had been sent there by S.K. and he displayed his passport. The trial panel also accepts the evidence of Sa.O. that at this point A.K. ran away and the defendant, K.H. followed not long after. Sa.O. stated it was at this point he telephoned his uncle J.O. and told him there were people from Albania behind his house.

At this point the evidence of the injured party S.O., the wife of the late J.O. becomes relevant. She stated her son, L. called the late J.O. who was playing chess at his brother's house close by and on his return to his own home he encountered A.K. and brought him back to his house from where he called the police who came from Istog/Istok to bring A.K. into custody.

It seems that when the police departed with A.K., Sa.O. and J.O. both also travelled to the police station in Istog/Istok to give statements to the police before returning to J.O.'s house where they would both spend the remainder of the night. At this point the whereabouts of the defendant, K.H. are not verified but by his own account he was hiding in a corn field.

It seems that there was then a period of calm and inactivity in the area until approximately 05:45 when the wife of the deceased, S.O. stated she heard a noise outside that woke her and her husband. Her husband the now late, J.O. went outside to investigate. The trial panel finds as a matter of fact that he armed himself with a Sig Sauer pistol. After no more than ten to fifteen minutes he came across the defendant, K.H.. J.O. took hold of the defendant, K.H. and effectively frog-marched him back towards his house from where he probably intended to call the police just as he had done when he apprehended A.K. earlier.

At this point, the only two detailed accounts of what occurred are those of the defendant, K.H. and the witness A.B.. The trial panel found A.B. an impressive and reliable witness. Where he could remember something he was detailed and effusive in his description. However, when he could not remember something he simply said this.

From an in-depth consideration of the evidence of the witness, A.B. and the defendant, K.H. it seems at a certain point as they approached the main Peja/Istok road the defendant, K.H. attempted to break away from J.O.. He knew he was being taken to the police and at the very least he would be investigated for Unlawful Possession of Weapons and probably his

association with the K. family. Having been accosted by J.O. and grabbed by the arm and throat K.H. broke away and ran and as he was younger and fitter than J.O. he made ground more quickly leading J.O. to believe he would not be able to re-capture him.

At this point there is no reliable evidence to contradict the assertion of the defendant, K.H. that J.O. fired the first shot and probably a second shot too. Similarly there is no reliable evidence to contradict the subsequent testimony of the defendant, K.H. that J.O. continued firing at him and he returned fire in self-defence and without stopping, turning and aiming but rather all the while running away, zig-zagging from left to right, facing the opposite direction and having no real control over the trajectory his bullets were travelling in behind him.

The trial panel considers it apposite to point out there were other witnesses present at the scene at the time but none could offer a clear and detailed account of what transpired between the defendant, K.H. and J.O.. The trial panel made contact with the witness G.L. in Switzerland and made every effort to secure his testimony in the main trial but he made it clear he had no desire to return to Kosovo for this purpose and eventually he stopped answering the trial panel's telephone calls and emails.

From the autopsy report it is clear the deceased man, J.O. sustained a gunshot wound to the right side of the head and this proved to be fatal. He also sustained a wound to his left shoulder but this was not fatal. The injured party A.B. received what, by his own admission, was a light, superficial wound to his arm. The expert witness Dr. A.G. could only state the fatal shot

was fired from a distance of more than one metre.

In essence, the prosecution case was that while there was no one piece of evidence to prove beyond reasonable doubt the defendant, K.H. murdered the injured party, J.O., as opposed to killing him in self-defence, there was sufficient circumstantial evidence to infer that he did.

Firstly, the prosecution pointed out the defendant, K.H. was, by his own admission, in the area to commit a murder. He was not randomly chosen for this but rather because he had expertise in this regard and it is therefore logical that he did, in fact, commit murder albeit not of the person he was contracted to kill. However, the trial panel takes the view that while this is evidence the defendant, K.H. was a man with few scruples when it came to the taking of human life it is not proof he intentionally took the life of the deceased, J.O. during the exchange of fire that took place between them.

Secondly, the prosecution asserted the fact the deceased received a fatal wound to the head is consistent with the allegation of a targeted shot from an assailant who had experience in this regard. The prosecution contends the alternative version of events i.e. the defendant, K.H. did not aim and the fact he hit the victim in the head by accident is simply not credible. However, the trial panel takes the view that while evidence of two “hits” including one “head shot” is *prima facie* evidence of shots that were aimed it is also true the defendant, K.H. fired a total of twelve shots meaning ten shots did not hit the deceased, J.O. and while one did hit the injured party, A.B. (causing a superficial wound) nine bullets (or 75% of those fired) were off target and this is consistent with the evidence of the defendant, K.H. i.e. that he was

firing without aiming or even looking in the same direction.

The prosecution also argued the fact that as he made his escape from J.O. the defendant, K.H. threatened to kill the injured party, A.B. is also relevant evidence of intent. Again the trial panel finds that while this is evidence consistent with its impression of the defendant, K.H. it is not decisive evidence adduced by the prosecutor, on whom the burden of proof rests at all times, that he deliberately killed the deceased, J.O. during the exchange of fire that took place between them.

Finally, the prosecution contended the evidence of the defendant, K.H. that he discarded his weapon was consistent with a man who knew he had committed a criminal offence and wanted to dispose of the evidence. It certainly was not consistent with the defendant's evidence he was a frightened stranger in a strange land who did not know he had killed or even injured J.O. and, as far as he knew, was still being stalked as he made his escape across the fields towards Peja. While the trial panel considered this a good piece of circumstantial evidence again it was not decisive, positive evidence the defendant, K.H. deliberately killed the deceased man, J.O. during the exchange of gunfire that took place between them.

Ultimately, the only detailed evidence of what happened during the exchange of gunfire between the defendant, K.H. and the deceased man, J.O. came from K.H. himself. There was no other, reliable witness who could testify that at a certain point they saw the defendant, K.H. turn around, aim and, whether moving or stationary, take aim and fire even one shot at the deceased man, J.O.. As a result, the trial panel could not discount the

possibility the defendant, K.H. had fired in necessary self-defence being exposed to a life-threatening situation and had not aimed but rather fired backwards in the general direction of J.O. while looking the other way and while running away and two of the twelve bullets he fired hit the deceased, one in the head proving fatal. In essence, the defendant's version of events raised a genuine, reasonable doubt in the mind of the trial panel which the prosecution evidence simply did not dispell and in law, the trial panel was bound to give the benefit of that doubt to the defendant no matter how otherwise disreputable or distasteful it considered his conduct.

## **Relevant Law**

Article 8 of the CCK provides that an act committed in necessary defence is not a criminal offence (paragraph 1). An act is committed in necessary defence when a person commits the act to avert an unlawful, real and imminent attack upon himself, herself or another person and the nature of the act is proportionate to the degree of danger posed by the attack (paragraph 2). An act which is disproportionate to the degree of danger posed by an attack exceeds the limits of necessary defence (paragraph 3). When the perpetrator exceeds the limits of necessary defence, the punishment may be reduced. When the perpetrator exceeds the limits by reason of strong trauma or fear caused by the attack, the punishment may be waived (paragraph 4). The Court finds that reference to “strong trauma *or* fear” while written disjunctively may be applied and interpreted conjunctively.

## **Conclusion**

The central issue of the Court to assess is whether the defendant, K.H. was attacked unlawfully, if the attack was real and imminent and if K.H.'s actions in response were proportionate to the danger posed by the actions of the victim J.O..

From the foregoing the trial panel has drawn the following conclusions. The defendant, K.H. perceived he was under a real, unlawful and imminent attack from the time he was grabbed by the arm by J.O. and throughout the shooting at him. The Court takes the same view. To be held and threatened for no justifiable reason and then repeatedly shot at is undoubtedly an unlawful, real and imminent attack.

The trial panel then turned to ask if the actions of the defendant, K.H. were disproportionate to the degree of danger posed by the attack of J.O..

The defendant averred that at all relevant times he was acting in lawful necessary self-defence. When deciding this issue the Court must have regard to the fact that (i) a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action and (ii) evidence of a person having only done what that person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose. The Court may take into account other matters when determining whether the force used was, in the circumstances, reasonable.

The Court is required to exercise a judgement whether the force used was reasonable in the circumstances - including the nature of the danger faced - as the defendant understood it to be.

Whether the degree of force used by the defendant, K.H. was reasonable in the circumstances is to be decided by reference to the circumstances as he believed them to be. The reasonableness or otherwise of that belief is relevant to the question whether he genuinely held it. The degree of force used by the defendant, K.H. has to be regarded as having been reasonable in the circumstances as he believed them to be if the force used was proportionate in those circumstances.

The Court finds J.O. played an unnecessarily aggressive role in the events that unfolded on the night. The court finds his decision to arm himself and leave his house at approximately 05:45 on the morning of 20<sup>th</sup> August 2006 in pursuit of a person who posed no immediate or serious threat to him or his family was foolhardy. The trial panel offers the view J.O. should have remained indoors, locked the doors and windows (although there was no evidence the defendant, K.H. ever attempted to enter his home) and called the police. The fact he did not do so is even more surprising given the fact he had already called the police earlier that morning and they had come and taken A.K. into custody.

The Court finds that when the defendant, K.H. broke away from J.O.'s grip and attempted to escape it was J.O. who fired the first two shots in the subsequent exchange of gunfire between them. Again, this was unnecessarily aggressive behaviour. There was no evidence the defendant,

K.H. had stolen any property from J.O. or made any other threat against him or his family. The court offers the view J.O. should simply have allowed the defendant, K.H. to leave the scene and called the police. Instead, his use of his weapon was precipitous and provoked a reaction from the defendant, K.H. which was to have tragic consequences. The Court finds J.O. was the aggressor.

If the attack was immediate and dangerous the person being attacked may even at the beginning of the attack use greater violence for the purpose of defending themselves. They do not need to wait to be hurt first. The necessity of self-defence includes the right to stop a life-threatening attack such as being shot at repeatedly when running away from the assailant. The defendant, K.H. perceived the situation to be real and life-threatening and this must be taken into consideration. The evidence in the case supports this perception. The prosecutor did not show the defendant, K.H. had any other free escape route at the time. The defendant, K.H. stated that he had no other alternative but to run and to shoot back in order to save his own life. This view is supported by the trial panel. The Court finds that the violence used by K.H. was not disproportionate to the degree of danger posed by J.O. and therefore he cannot be found guilty of the charge against him. The witness, A.B. stated the defendant was not able to aim at anything because he was running away at the same time. Ultimately, the defendant, K.H. was acquitted of the offence of Aggravated Murder because while the court was convinced he fired the shot that killed the late J.O. he did this while acting in necessary self-defence and his actions were proportionate to the level of threat as he perceived it to be. While there were some circumstantial evidence to refute this and to support the prosecution's version of events (i.e.

that the defendant, K.H. aimed and deliberately killed J.O.) the prosecution failed to prove this to the satisfaction of the main trial panel. The defendant's version of events, i.e. that he returned fire as he was facing the opposite direction and running away and did not aim at the victim was possible and once it created a reasonable doubt in the mind of the trial panel the panel was bound to exercise this in favour of the defendant, K.H. however unappealing it considered his conduct otherwise.

For all of the foregoing reasons we hereby render this judgment.

Dated this 3rd day of March 2015.

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**Judge Marie Tuma**

**Presiding Judge**

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**Judge Arkadiusz Sedek**

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**Judge Arben Mustafa**

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**Azem Havollı**

**Court Recorder**

**LEGAL REMEDY:** Pursuant to Article 398 (1) of the CPC, authorized persons may file an appeal against this Judgment within fifteen (15) days of the day the copy of the judgment has been served. The appeal must be filed in written form through the Basic Court of Pejë/Peć to the Appeals Court of Kosovo.