

THE BASIC COURT OF PRISHTINË/PRIŠTINA

P. no 1656/12

5th June 2013

IN THE NAME OF THE PEOPLE

The Basic Court of Prishtinë/Priština, in the Trial Panel composed of EULEX Judge Vladimir Mikula, as Presiding Judge, EULEX Judge Cezary Dziurkowski and Kosovo Judge Lindita Jakupi, as panel members, with the participation of EULEX Legal Officer Emiliya Viktorova, as recording clerk, in the criminal case against:

S.L., R.X., A.A., R.H., Q.M.

Charged according to Amended Indictment PPS No. 10/11 with four counts of the criminal offence of Violating Equal Status of Residents of Kosovo, in violation of Article 158, paragraph 1 of the Criminal Code of Kosovo, in conjunction with Articles 23, 25 and 28 of the Criminal Code of Kosovo, and four counts of the criminal offence of Threats, in violation of Article 161, paragraphs 1, 2 and 4 of the Criminal Code of Kosovo in conjunction with Articles 23, 25 and 28 of the Criminal Code of Kosovo.

HAVING held pre-trial hearings on 12 and 20 March 2013, and main trial public sessions on 15, 16, 17, 18, 19, 22, 24, 25 and 26 April 2013, 20, 21, 27, 28 and 31 May 2013, and 3 June 2013, as well as a closed session on 26 March 2013;

HAVING held the above hearings in the presence of all the defendants and EULEX Special Prosecutor Maria Bamieh and the partial presence of defence counsels Arianit Koci for **S.L.**, Tahir Recaj for **R.H.**, Armend Krasniqi for **A.A.**, Sahit Bibaj for **R.H.**, and the legal representative of the injured party Kolë Ramaj;

FOLLOWING the Trial Panel's deliberation and voting, held on 3 June 2013;

PURSUANT to Article 359, 361 and 366, paragraphs 1 and 2 of the Criminal Procedure Code, in open court, the Trial Panel hereby renders the following

JUDGMENT

I.

Defendant **S.L.** in this time in detention on remand for other criminal offences and **R.X.** and **A.A.** are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 1

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

1) Violating Equal Status of Residents of Kosovo, contrary 158, par. 1 of the CCK, as read with Article 23 CCK (the **S.L.** interview)

Because

In a still unspecified time period in May 2009 in Kosovo, **R.H.**, A.D. and **A.A.** – being the decision makers and most influential persons at the newspaper **xxxxxxxxx** – agreed to run a media campaign against J.X. and her staff with the aim to attack her political and social opinions on such grounds as to destroy diverse political and social opinions in Kosovo society, which are deemed as unfavourable. The decision to attack J.X. was reached, because she hosted a TV program in RTK, in which she specified the mismanagement and unfavourable conditions in Skenderaj, of which **S.L.** serves as the major. The campaign was executed through publications of frequent articles in Infopress, in which political lies were spread – such as that J.X. was a Serbian spy.

With regards to the published articles, in a still unspecified time from May 2009 to 1 June 2009 in Kosovo, **S.L.** gave an interview to M.K. of Infopress, in which he – **S.L.** – accused J.X. of being a Serbian spy, knowing that such a declaration will be published by Infopress (the here so called "**S.L.** interview"). The front page article presents itself in big bold letters with **S.L.** statements according to which "J.X. body is in Kosovo, but she does the job from Belgrade, Serbia". It is furthermore stated that "shows like this can only be made by Belgrade and only Serbia made and knows how to make against KLA members" and that "I [**S.L.**] call the RTK's directors not to give J.X. space in the Radio Television of Kosovo". The publication closes with **S.L.** stating that "J.X. serves to the Serb Secret Police".

II.

Defendant **R.H.**

And

Defendant **A.A.**

And

Defendant **R.H.**

Are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 2

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

Violating Equal Status of Residents of Kosovo, contrary 158, par. 1 of the CCK, as read with Article 23 CCK ('J.X. Four Betrayals')

Because

In a still unspecified time period in May 2009, **R.H.**, A.D. and **A.A.** agreed to run a media campaign against J.X. and her staff by publishing, respectively instructing the publication of articles in Infopress as specified in Count 1 of this indictment.

In the published article written by **R.H.** - headlined "J.X. four betrayals" - it was stated that J.X. was a traitor, that J.X. was "treacherous", that she was a "sneaky person", that "a treacherous person cannot trust anyone" and that J.X. has made herself to have a short life. **R.H.** article was published on 5 June 2009.

III.

Defendant **R.H.**

And

Defendant **A.A.**

And

Defendant **Q.M.**

Are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 3

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

Violating Equal Status of Residents of Kosovo, contrary 158, par. 1 of the CCK, as read with Article 23 CCK ('A Broadcast that Terrorised Drenica')

Because

In a still unspecified time period in May 2009, **R.H.**, A.D. and **A.A.** agreed to run a media campaign against J.X. and her staff by publishing, respectively instructing the publication of articles in Infopress as specified in Count 1 of this indictment.

In the published article written by **Q.M.** - headlined "A Broadcast that Terrorized Drenica", it was stated that "that report did really look like one of those broadcasts that Radio Television Serbia used to make in the hardest years in Kosovo, when there was a fascist campaign against anything that was Albanian, which was testified by the NATO bombing this Serb monster". The article continues by stating that J.X. deserves "a professional bomb" and that "J.X. sent a sort of journalist called J.A., who to me looked more like those Serb detectives who used to come to Kosovo in the guise of journalism, while actually doing police work". Finally, due to the fact that "the viewers had to be terrorized in a long TV report", J.X. "came out with two messages for which the fascist Serb propaganda would have paid good amounts of money". **Q.M.** concluded that "the truth is that someone had to tell J.X. just where she belongs. [...] It so happened that **S.L.** did this, and it's good that he did."

IV.

Defendant **R.H.**

And

Defendant **A.A.**

Are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 4

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

Violating Equal Status of Residents of Kosovo, contrary 158, par. 1 of the CCK, as read with Article 23 CCK ('The Fight Over the "Embassy-slut"')

Because

In a still unspecified time period in May 2009, **R.H.**, A.D and **A.A.** agreed to run a media campaign against J.X. and her staff by publishing, respectively instructing the publication of articles in Infopress as specified in Count 1 of this indictment.

In the published article headlined with "Fight Over the Embassy-Slut" and written by R.S. - a person that was not contactable by the SPRK - it was stated that "for some time in Kosovo we see pseudo-journalists acting like journalists. The journalists of "Life in Kosovo" [...] have entered a competition to win the title of "chef", a condition required by the specialized Belgrade kitchen called B92. [...] It seemed that the Embassy-slut J.X. was unrivalled in deserving this title. [...] In any part of the world [...], any 'journalist' that did what this chef has done would have been shunned and punished for anti-state actions. [...] Such embassy-sluts and the USB chefs should bear in mind that what they do won't remain totally unpunished. [...] When Albanian officials in Kosovo meet their obligations to defend the national and state symbols from being raped by B92's embassy-sluts, then dutiful Albanians assume full rights to punish embassy-sluts as terrorists. It seems that day is not far off [...]. What would the RTK moderator say if a dutiful Albanian punishes the substitute of H.S., the embassy-slut J.X. in Pristina? I would be honoured to shake hands with this dutiful Albanian."

V.

Defendant **S.L.**

And

Defendant **R.H.**

And

Defendant **A.A.**

Are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 5

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

Threats, contrary to Article 161, par. 1, 2 and 4 of the CCK, as read with Article 23 CCK (the **S.L.** interview)

Because

By taking reference to the description in Count 1, **S.L.** threatened J.X. by unjustly and without presenting any evidence accusing her of being a Serbian spy, knowing that this statement will be

published in Infopress and also knowing that on the basis of the social and political environment in Kosovo, such a statement will seriously endanger her well-being and cause her anxiety and frightening. M.Q., **R.H.**, A.D. and **A.A.** passed on this statement and published it in Infopress on 2 June 2009, knowing that the dissemination of such a statement to the public sphere will endanger J.X. and her crew's life and will frighten them, cause them anxiety and will place them under serious conditions for an extended period of time. The threats that were made by **S.L.** and published by **R.H.**, A.D. and **A.A.** resulted in death threats against J.X. and her team and caused great, sustained anxiety for them.

VI.

Defendant **R.H.**

And

Defendant **A.A.**

And

Defendant **R.H.**

Are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 6

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

Threats, contrary to Article 161, par. 1, 2 and 4 of the CCK, as read with Article 23 CCK ('J.X. Four Betrayals')

Because

By taking reference to the description in Count 2, **R.H.** threatened J.X. by unjustly and without presenting any evidence accusing her of being a "betrayal", a "traitor", "treacherous" and a "sneaky person". **R.H.** directly threatened J.X. with death by stating that she "made herself to have a short life". **R.H.** knew that his statements were to be regarded as threats against the life and well-being of J.X., which would cause her anxiety and frightening.

R.H., A.D. and **A.A.** published H. statement on 1 June 2009 in Infopress, knowing that the dissemination of H. statements to the public sphere will endanger J.X. and her crew's life and will frighten them, cause them anxiety and will place them under serious conditions for an extended period of time. The threats that were made by **R.H.** and published by **R.H.**, A.D. and

A.A. resulted in death threats against J.X. and her team and caused great, sustained anxiety for them.

VII.

Defendant **R.H.**

And

Defendant **A.A.**

And

Defendant **Q.M.**

Are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 7

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

Threats, contrary to Article 161, par. 1, 2 and 4 of the CCK, as read with Article 23 CCK ('A Broadcast that Terrorised Drenica')

Because

By taking reference to the description in Count 3, **Q.M.** threatened J.X. by unjustly and without presenting any evidence accusing her of having used broadcasting methods "that Radio Television Serbia used to make in the hardest years in Kosovo" and that J.X. and her staff - including J.A. - looked like Serb detectives that were doing Serbian police work. **Q.M.** directly threatened J.X. with death by stating that she deserves "a professional bomb". **Q.M.** knew that his statements were to be regarded as threats against the life and well-being of J.X., which would cause her anxiety and frightening.

R.H., A.D. and **A.A.** published **Q.M.** statement on 30 May 2009 in Infopress, knowing that the dissemination of **Q.M.** statements to the public sphere will endanger J.X. and her crew's life and will frighten them, cause them anxiety and will place them under serious conditions for an extended period of time. The threats that were made by **Q.M.** and published by **R.H.**, A.D. and **A.A.** resulted in death threats against J.X. and her team and caused great, sustained anxiety for them.

VIII.

Defendant **R.H.**

And

Defendant **A.A.**

Are

Pursuant to article 364 (1), (1.1) of the Criminal Procedure Code of Kosovo,

ACQUITTED OF THE CHARGE under Count 8

Indicted in the Amended Indictment PPS No. 10/11 from 24 October 2012 under which they allegedly committed the criminal offence of

Threats, contrary to Article 161, par. 1, 2 and 4 of the CCK, as read with Article 23 CCK (“The Fight Over the “Embassy-slut””)

Because

By taking reference to the description in Count 4, **R.H.**, A.D. and **A.A.** published threats against J.X. by unjustly and without presenting any evidence calling J.X. an "embassy-slut" that has entered "a competition to win the title of chef; a condition required by the specialized Belgrade kitchen called B92"; and further specifying that J.X. served the title of "embassy-slut". **R.H.**, A.D. and **A.A.** published direct threats against J.X. physical well-being, by declaring that J.X. "in any part of the world" [...] "would have been shunned and punished for anti-state actions". The threat continues in such terms that "such embassy-sluts and the USB chefs should bear in mind that that what they do won't remain totally unpunished" and that "dutiful Albanians assumes full rights to punish embassy-sluts as terrorists". According to the publication, the day of punishing J.X., which has been declared to be highly welcomed, "is not far off".

R.H., A.D. and **A.A.** published the above mentioned statements on 5 June 2009 in Infopress, knowing that the dissemination such statements to the public sphere will endanger J.X. and her crew's life and will frighten them, cause them anxiety and will place them under serious conditions for an extended period of time. The threats that were made and published by **R.H.**, A.D. and **A.A.** resulted in death threats against J.X. and her team and caused great, sustained anxiety for them.

Because the acts the accused are charged with do not constitute criminal offences.

COSTS OF THE CRIMINAL PROCEEDINGS:

Pursuant of Article 454 (1) of the Criminal Procedure Code, the costs of the criminal proceedings in relation to all defendants shall be paid from the budgetary resources.

REASONING

I. Procedural Background

The Special Prosecution office of the Republic of Kosovo indicted the above-mentioned defendants with the alleged criminal offences of Violating Equal Status of Residents in Kosovo pursuant to article 158 paragraph 1 of the Criminal Code of Kosovo (“CCK”) and Threats pursuant to Article 161 paragraphs 1, 2 and 4 of the CCK. These criminal offences were contained in the Amended Indictment dated 24 October 2012. The prosecutor amended her previous indictment from 15 August 2011 pursuant to Rulings of the Confirmation Judge and Three Judge Panel. The court processed the indictment pursuant to the new criminal procedural code valid from 1 January 2013 pursuant to Article 541 of this code. The Initial hearing and second hearing were not held because these were sufficiently substituted by the confirmation procedure held pursuant to the old criminal procedural code valid until 1 January 2013.

II. Evidence

The crucial evidence is the content of certain articles and their headlines published Kosovo-wide by the daily newspaper “Infopress”. These are:

- 1) Commentary of **Q.M.** published on 30 May 2009 (Pages 5-7, Evidence binder, English version)
- 2) Interview with the defendant **S.L.** published on 2 June 2009 (Pages 32-34, Evidence binder, English version)
- 3) Commentary of **R.H.** published on 5 June 2009 called “J.X. four betrayals” (Pages 39-40, Evidence binder, English version)
- 4) Commentary of **R.S.** published on 5 June 2009 (Pages 47-48, Evidence binder, English version). For the purposes of this verdict the interview with **S.L.** will be referred to as an “article”.

The written evidence also included a decision of the Press council by which it considered the articles published by “Infopress” as contrary to the Press Code and fined “Infopress” in the amount of 1000 EURO. The court also had the opportunity to see the entire program “J.X. xxxxxxxx” regarding this issue as well as advertisements for the “Infopress” newspaper which were broadcast before the evening news on the RTK channel in which extracts of the above-mentioned articles were cited.

The statements of witnesses:

J.B. (record from 26th March 2013 of hearing outside of main trial)

J.B. referred to his meeting with journalist J.A. and his criticism of the situation in Skenederaj. His words were broadcast and became the reasons for his subsequent problems with the leadership of the Municipality which lead to his dismissal from his job in the xxxxxxxxxxxxxxxxxxxxxxxx. He also stated that from his experience people labeled as Serbian spies were discriminated against and occasionally killed. Specifically, he referred to the murder

from the year 1995 of S.X. from xxxxxxxx village and the murder of two brothers in the town centre of Skenderaj.

J.X. (main trial record from 15-16 April 2013)

The injured party J.X. stated that she presents the most watched program in Kosovo “J.X. xxxxxxxx” (in English “xxxxxxx”) dealing with problematic and taboo topics in Kosovo society. She is also at the xxxxxx of the Kosovo BIRN, (Balkan Network for Investigative Reporting). One of the “J.X. xxxxxxxx” programs was dedicated to the promises of Municipality Mayors in Kosovo. A camerawoman and reporter J.A. were sent to Skenderaj to ask people about this topic. They spoke with opposition politician J.B.. The RTK crew was not welcomed in Skenderaj and they were ordered by anonymous people who showed them a gun to switch off the camera. They left Skenderaj with a police escort. This happened in March 2009. The report was broadcast on 28th May 2009. The witness admitted the report was not at all positive about the Skenderaj region. The press reaction came firstly from “Infopress”. J.X. mentioned reaction on websites and to her email address which she considered at that time as ordinary reaction like it used to be after the broadcasting of some controversial topic. After a Saturday publication of “Infopress” she received more *emails* with similar language to the “Infopress” article. *She quoted emails the content of which can only be evaluated in a very threatening manner (see court binder number I, item 31).* She stated that she considers that to be labeled as a Serbian spy in post-war Kosovo society was a call for lynching, especially with the headlines of such articles. According to J.X., S.L. mobilized his passionate supporters by his interview. J.X. considers the most threatening words from the commentary of R.H. as, “*J.X. did it herself to not have a long life*”, and these words were addressed to her personally and were not about the television program. She justified this interpretation by stating that if R.H. had meant the television program he would have used the masculine form. J.X. mentioned the reactions of various NGOs which considered such articles as an attack on freedom of speech. She considers the accusation that “*J.X. is a servant of secret Serbian police*” may represent a threat to her. She mentioned the names of the journalists who were threatened for their work namely V.K. who was threatened by S.G., a former KLA soldier, by accusations that he wrote against the KLA and H.M. who was beaten on the street because after writing against KLA veterans he was called a traitor. This happened in 2000. J.X. stated that two journalists from “Bota Sot” were killed. One of these was B.A. who, six months before he was killed, wrote a column about crimes committed by soldiers and before he was killed he was labeled as a Serbian spy. There was also B.K., who was also a Bota Sot journalist and was killed in 2001. Four journalists of Bota Sot were protected by UNMIK for four years because they were labeled as Serbian collaborators. She stated that the staff of RTK were subject to offensive words and were spat on. She stated that after the publication of all these articles she was asked for her reaction. She reacted on BIRN websites. She stated she observed the different impact on the public when the headlines of such Commentaries were read in the TV news.

A.M. (main trial record from 17 April 2013)

A.M. stated he was alleged to be a Serbian spy also. He said if somebody is labeled a spy it is the equivalent of being labeled a traitor. To be called a traitor is the most serious accusation to a man. It is a huge “tainting” in Kosovo. It has an impact on the entire family and it is dangerous in particular if it is made by powerful people and/or people with influence. He said that he had threats from S.L. and his people. After the war in his municipality a few people were killed amongst them one journalist, but these cases were never solved and he cannot suppose why they were killed. He rejected the labeling of J.X. as a spy because J.X. came from respected family.

He worked for the xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx from xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (not from xxxx to xxxx when the position was occupied by xxxxxxxxxxxxxxxxxxxxxxxx) when S.L. unlawfully removed him from the job. The court reinstated him but S.L. did not execute this decision. He said that this is a huge absurdity to accuse someone of being a Serbian spy when Kosovo is free and Serbia is not here. Then he used a metaphor for labeling someone a Serbian spy. This resembles when in forest you make the tree which have to be cut and it is matter of moment when those trees will be cut.

H.M. (main trial record from 18 April 2013)

He said that he has worked for as a journalist 30 years, including four years for xxxx xxxxxxx. He shared his experiences of being assaulted but he was very reluctant to connect these assaults to articles he had written. Even when he was threatened after publishing articles against KLA veterans he never felt unfree in his job. He stated although he was called a Serbian spy or traitor it has never affected him. He has not confirmed the fact that journalists were killed or beaten because they were labeled Serbian spies. He considers such labeling an insult. H.M. stated that from his experience the columnist is responsible for the column, the chief editor for the reporting news, and the chief of the day for headlines. He stated that there is an increase in the use of words such as a traitor, bandit, UDBA agent, SHIK worker in everyday Kosovo life.

J.A. (main trial record from 18 April 2013)

J.A. was an investigative journalist working for the program “J.X. xxxxxxxx” who at the age of xxxxxxxxxxxx made a report from Skenederaj about the Mayor’s promises and fulfillments, which two or three months later, were broadcast as part of the program regarding freedom of speech moderated by J.X.. Her report was not targeting against Skenederaj/Drenica people as it is mis-interpreted by the authors of commentaries, and she had to explain to her friends and colleagues that the reports was not against Drenica, mostly without success. After the articles she felt animosity towards her. People on the street called her a spy. She had a car accident where a car hit her car and drove away. When she left BIRN after these incidents she worked as the xxxxxxxxxxxxxxxxxxxxxxxx. She has not been discriminated against in the labor market. She insisted that her report was very balanced.

T.E.J. (T.J.) (main trial record from 18 April 2013)

T.J. stated that he lives in **xxxxxx** but he is the Balkans correspondent of the “Economist” magazine. He spent a lot of time in the Balkans including Kosovo. In 1995 he returned to **xxxxxx** but continued to spend a lot of time covering the Balkans, including Kosovo, the Kosovo war and its aftermath. He has written one book on the history of Serbs and two books on Kosovo. He stated that if someone (in Kosovo) was seen to be a collaborator with the Serbs her life would be under threat. This could be seen already from 1998 when the first people that died during the conflict were Albanians killed by their fellow Albanians, because they were seen by Albanians as being Serb collaborators. This continued after the war when also many Kosovo Albanians are believed to have been kidnapped and murdered, although this is something of a taboo subject in Kosovo. He remembers there was a period when people from LDK, the party of Ibrahim Rugova, were killed. There were journalists who were killed perhaps for political reasons as well. If in 2009 someone was called a traitor or Serb spy, the impact that would have on that person’s life, quite apart from the damage it would do to your personal and professional reputation, he thought that this sort of accusation could create a climate of incitement which was seriously life threatening. Indeed, at the time, friends of Kosovo abroad thought this was so worrying that we mobilized to alert as many people as possible because they wanted to make sure that this climate of incitement would result in no violence and the top levels were involved and informed.

A journalist labeling anybody as a spy, a Serbian spy without a shred of evidence to support such an allegation would immediately be sued in civil law for slander or libel. If he said something that is untrue about someone, he would assume that would be a civil claim. However, at a certain point, if it crossed the border into incitement to murder, clearly that would be a criminal offence. But he was not able to tell the court where the line is. In the Kosovo context this can be interpreted as either incitement to murder or a way of silencing people that you do not like, and a way of destroying their careers. The accusations to J.X. became a news story internationally and many friends of Kosovo abroad were alerted, were mobilized because they wanted to alert as many people as possible so news would go back to Kosovo as they were afraid that something would happen to her. Then he presented an example. In Great Britain, in 1170 the King complained about the Archbishop of Canterbury. The king said, “Who would get rid of this troublesome priest?” At which point the Archbishop was murdered and the king said that there was nothing to do with him and he did not mean that he should be murdered. So for thousands of years it is clear what such accusations mean and he does not think it is any different in Kosovo. Considering the circumstances in Kosovo and the Balkans, if you label a journalist as a Serbian spy, traitor and a cook for Serb kitchen; that would be a spectrum from one end to the other and he thinks that at worst case scenario it could be well understood as incitement to violence but at the very minimum it would be understood to destroy the credibility of the journalist in question. He cannot give an example in journalism but he knows that even people in 1998 who worked in humble positions such as in forestry were murdered because they were considered collaborators. He stated when journalists are murdered in former Yugoslavia this mystery was never solved and he supposes that Kosovo is no different from Croatia or Serbia in that case. It seems to be the same in Kosovo as elsewhere.

T.J. read out the translation of the Article by **R.H.** and he understands, at the beginning, **R.H.** is speaking about J.X., however, by the time **R.H.** gets to paragraph 2, without explaining it to the reader, he is talking about J.A. . For some reason, the authors talk about “she”, but he doesn’t explain to the reader he has switched from J.X. to J.A.. According to the witness the author refers to J.X., because J.X. is of course associated in all senses with “J.X. xxxxxxxxxx” although confusingly. T.J. stated that even in 2009 to be accused of being a Serbian spy was a very powerful and dangerous accusation. He stated that people believe it was in their patriotic interest to eliminate certain traitors in their midst. He stated that in any post-conflict situation, wherever, there will always be people who are psychologically damaged by their trauma and in this context might cite that the right thing to avenge their own loss would be to eliminate someone like J.X. This would be the same in any post-conflict situation.

H.G. (main trial record from 24 April 2013)

This witness contested the veracity of the footage regarding the Mayor’s promises.

B.H. (main trial record from 25 April 2013)

He is the xxxxxxxxxx of the Professional Journalists Association. In xxxx he was the xxxx of “xxxxxxx”. In February xxxx he worked as the xxxxxx of “xxxxxxxxxxx”. He knows **S.L.** a long time and they had their ups and downs with disagreements and they do not have a close relationship with each other. He has experience with **S.L.** from the war and at the time when they were in tense circumstances, referring to the beginning of February 1999. He said that Kosovo is among the few regions in the Balkans where you lay down as a patriot and when you wake up you are a traitor. He said he was called a Serbian collaborator through the media by **S.P.** (xx) later on **S.P.** apologized to the witness and he said that is the easiest way to ruin someone in the Balkans. The social and political context in Kosovo determines the accusations. Normally if a Serb said that somebody was a collaborator it would do more harm than if a local said it. Then he continued that the statement of **S.L.** in his interview was irresponsible at its height. The front page of the “Infopress” lacked professionalism. When someone makes a public statement and belongs to a state institution he should find a way for the offence not to be so obvious as it appeared in “Infopress”. He stated that the managing journalist cannot censor a public person but he can suffocate the language used. There is possibility that J.X. got wounded by the “Infopress” article, at least spiritually, and he would support J.X. fully and for her to have submitted the claim to the court for the reason of the unbearable language used. An experienced journalist such as J.X., should have not hurt the profession by engaging a prosecutor to help. A journalist has the knowledge to get a Defence Counsel and file a civil claim and it is not good to be identified with the state.

He also stated that there is one case which is defined as a murder of a journalist. The murdered journalist was a journalist of the newspaper “Bota Sot” but he cannot say whether he was killed because of his profession or something else. The sentence from **R.H.** article that “J.X. brought it upon himself to have a short life” he would not take seriously. He also defined “Campaign”. According to him a campaign is called a gathering of sustainable facts to neutralize someone’s power who, in public opinion builds a career through fraudulence or falsifying. Whereas, a

Q.M. stated that he has xxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxx. He was a journalist and editor of the xxxxxxxx newspaper “xxxxxxx”, a journalist, editor and deputy editor of the youth newspaper “xxxxxxx”, secretary for the xxxxxxxxxxxxxx newspaper “xxxxxxx”, journalist and editor at the xxxxxxxx, correspondent for Radio xxxxxx, journalist and chief editor for xxxxxxxxxxxx, journalist and editor of xxxxxxxxxxxxxxxxxxxx, when it was established. He contributed to the BBC and sometimes Deutsche Welle, Vus newspaper of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

He believed something should have been said in relation to the program of J.X. regarding the Major’s promises in Skenderaj. He wrote about it. He criticized the translation of his article from Albanian to English. He based his criticism of J.X. on several facts: J.X. did not arrive or enter Kosovo TV as an institution via a competition as it is regulated and should be. It is obvious she demonstrates unbearable arrogance in some of her programs. J.X. babbles, spits, and shows off in the name of the freedom of press and speech, but in fact she is the most brutal example of violent speech and of the violation of freedom of speech.

He denies personal animosity towards J.X.. He explained that his criticism was targeting towards J.X. as a moderator and such a person has to be a subject of public criticism. Her program about Drenica, resembles those programs from the time of the Serbian regime. The program gives this impression or reflects similar tones. 30% of the northern territory is not controlled by the Kosovo government, 30% of the territory where Drenica is, is not controlled by the government. The crucial message of the program was this according to him and this was the reason why he reacted so. He stated that freedom of speech in Kosovo is violated, but not by **Q.M.**, but by political clans, by interest clans, and by a series of organized structures and journalism in Kosovo has done nothing to obstruct these groups. Regarding his Article, he said that polemics implies a harsh language but he is proud of the fact that this article doesn’t contain insulting words. He thought that his article has expressed parts of the public opinion that felt insulted by J.X. show. He doesn’t believe that J.X. and J.A. were attacked. He believed that their show was attacked. He doesn’t believe that people that read his articles can write such threatening emails as were received by J.X., those emails were incited by someone else. He denies any collaboration with other defendants.

R.H. (*Main trial record from 21 May 2013*)

He stated that he is not a journalist of “InfoPress”. The motive of his Article was that program (J.X. xxxxxxxx) and especially the reporting from Skenderaj. He felt insulted, he felt betrayed by the national TV station, and he felt betrayed by “J.X. xxxxxxxx”. In that piece of reporting, he saw bias, and he noticed that Drenica as a region appeared to be something different from the rest of Kosovo. He simply felt insulted, offended, and he felt that he could show and express his feelings and show how he felt about that broadcast through this Article. He sent this opinion to five newspapers. Throughout his life he has written 5-6 various opinions and usually he sends them to all the newspapers. He was not paid or contracted to “Infopress”. He understands when you put a word in quotation marks; this doesn’t receive the first meaning, in this case “traitor” as a national traitor, or in other family levels, a person that deceives the family. According to him it is not in the classic meaning. The sentence in the Article, “J.X. brought this upon herself to not

have a long life” is entirely connected or thought of in relation to the program “J.X. xxxxxxxxxx”. He stated that an individual must be mad to make such an open life-threatening threat. He explained that in Albanian an expression is used, for someone or something, “he/she doesn’t have it long”. Words and expressions such as ‘no longer to go’ are used, in metaphors and cynicism. He hadn’t read them from the earlier newspaper Articles. On the date when the reporting piece was broadcasted he was abroad. He wasn’t aware that “InfoPress” necessarily was covering a matter. His intention was not to present this as some defence for **S.L.**, and nor did it cross his mind that someone would take it as an attack against someone. He feels sorry that J.X. felt the way she felt. He stated that in Albanian the program cannot be a “she” or “her”, but “J.X. xxxxxxxx” specifically could be referred to as “she”. Maybe someone would have misread it, in various parts of the text. This is a personal individual matter, depending on the reader. He had no way of referring to J.X., another journalist was in the field; that is obvious. He stated that there is interlinked, “J.X. xxxxxxxx”, J.X. and J.A.. He addressed the concept, “J.X.” as a concept.

Evaluation of the evidence:

J.B. statement

J.B. referred to murders of alleged Serbian spies from 1995 and 2000 which were not successfully investigated. His statement has not shed any light on the question of the significance of somebody being labeled a “Serbian spy” or somehow differently with a meaning that the person is a traitor to Albanians in the service of Serbs. He confirmed the general knowledge of the murders of the people with the alleged reason that they were Serbian spies but only in time of conflict.

J.X. statement

The panel does not see any connection between the threatening emails and the “Infopress” article. Such an article can cause hatred between the citizens especially against the person, like J.X., dealing with such controversial topics. Hatred against J.X. could also have been caused by reportage from Skenderaj or by other reports of hers. This commentary cannot be considered as the incitement to violence against J.X.. The court used a purely linguistic interpretation of the commentary. The others connotations were not proved. The authors of the threatening emails have not been found to be interviewed regarding the connection of their emails and commentaries and S.L. interview. The inspiration and courage shown in Q.M. article can be deduced but this fact was not established by the evidence. J.X. considers the most threatening words from the commentary of **R.H.** as, “J.X. did it herself to not have a long life” and this is contradiction with the assertions of the author that he was referring to the program. Just because he did not use the masculine form does not automatically mean he intended a threat against J.X.. The interpretation of such articles has to be based on the fact that the authors worked with hyperbole and the entire context is very hyperbolic. The court does not consider that the hyperbolically venomous article automatically implies a threat. On the other hand the use of hyperbolic and metaphoric language strengthened the impact on J.X. reputation.

A.M. statement

A.M. spoke about his experience with **S.L.** very consistently. The Court has no hesitation about his veracity even with his bad experience with **S.L.**. His statement supports the court's opinion about the changing environment in Kosovo society from the war time and the logical changing of the meaning of the words "Serbian spy".

H.M. statement

H.M. gave his opinion as a journalist who has experienced assaults and it is clear from his statement that to be called a Serbian spy is an insult under some circumstances. He generally stated that such words are very frequent in the reality of Kosovo life. His statement supports his argument that the articles were offensive and slanderous but not a threat.

J.A. statement

J.A. interview showed the articles negatively influenced her reputation and psychological integrity but not her position in the labour market. Her statement supports the fact that the articles were offensive. Her statement was supported by V.D., the camera woman, present in the incident in Skenderaj (*Main trial record from 19 April 2013*).

T.J. statement

T.J. had filtered information from the circles close to the injured party and it is evident that he unintentionally took over their perception. He partially qualified the articles as a subject of slander. His statement about the seriousness of such allegations as a call for hatred are in contradiction with the statements of H.M. and B.H. who are local journalists also attacked for their controversial writings. He also conceded he is not able to define where the breaching of civil law ends and breaching the criminal law starts.

B.H. statement

Although B.H. was warned that he was not called as an expert, his experience as a Kosovo journalist was fruitful for understanding some facts in Kosovo reality. He did not consider that such offensive articles deserve state intervention and a journalist should resolve it through in a civil contest. His statement corresponds with the statement of H.M..

Additional evidence – evaluated:

Dictionary/translation

The court confronted the translation of the Albanian word “Horr” which in the indictment was translated from the Albanian language pun or word play “ambassadhorr” as “embassy slut”. According to the Albanian – Albanian dictionaries from 1981 issued by Rilindja, in Pristina “horr” means; 1. A person with bad habits that behaves badly, drinks or gambles; a person without honour; a man of the street; a street person. Example: horr i horrave, a very bad man. 2. A very poor man; a person without a dime in his pocket that survives with very little income. 3. A very rich man but very stingy; not generous at all; someone who has wealth but he doesn’t give anything to others but lives very badly himself. Example: a very horr deca, swore very badly at someone; disgraced somebody and denigrated someone very badly. According to another dictionary; author is Mikel Ndreca, published by Botuese Toena, 2007, Tirana. Definition found on page Page 259. The “horr” means 1. Person with bad habits and without honour; street man. 2. Poor man. 3. Very rich but stingy man. This is in contradiction with the Oxford dictionary which translates “horr” as a slut. The court accepts the lenient translation because to use such word as “slut” in the serious newspaper is against common sense. These problems with translation only illustrated the need of the court to have a deeper overview of the Kosovo reality and that is why the panel publicly consulted the case with the Kosovo ombudsperson.

Reports of RTK

The reports about the promises of the Mayor as the trigger and topic of these articles was played in the main trial to understand the motive of the articles as it was presented by the defendants – the authors. The entire program about freedom of speech moderated by J.X., in which reportage was inserted, was also played in the main trial.

The reports were about the promises of the mayor. It has to be said the entire impression was not positive for the Municipality management and was totally unbalanced. This was caused by the choice of interviewed persons and also the dramatic conclusion when the team of J.A. described that she was followed by car and she recalled her emotions but it was not related to the main topic. Also the answers to why some promises have not been fulfilled from the side of town hall were not presented. The biggest fault was that this unbalanced reporting was inserted in the discussion about freedom of speech so a slight negative impression about Skenedaraj was strengthened. The entire impression was that something is wrong with Skenderaj but on the others side it was very difficult for TV spectators to identify what it was specifically. The court mentions this which, on first viewing, is unimportant evidence because the reaction from journalists, **S.L.** and the readers of “Infopress” was inadequate. The reports objectively deserved criticism but not such harsh, strong reaction which attacks social and psychological integrity of the authors and the team. Such inadequate reaction gives the impression that “something is behind it”. This “something behind it” was not proven. It means that court, in contradiction to the indictment, considers all articles as individual initiatives of the authors who felt touched because their individual life values were attacked by these reports (see the paragraph “Not proven facts” beneath).

III. Claim of injured party

Concerning the claim of J.X., first of all, the Court notes that by the end of the session J.X. has not claimed any compensation for damages. She proposed to this court to refer her claim to civil proceedings. The court has no jurisdiction to refer this case to civil proceedings. Therefore, the court does not decide on such a civil claim.

IV. Motion of the parties

The court accepted all proposals for the evidence from the parties.

V. Legal assessment

The court was bound in its evaluation by the acts described in the indictment. The description of the acts only quoted the parts of the articles and the headlines of the articles so these parts quoted in the indictment were evaluated from the point of view of criminal liability but the entire article was taken in to account. The acts were fully proved (see bellow). The court found that the legal qualification of the acts is not identical to the legal qualification in the indictment. The court found that the offensive words in every article/commentary are a unique criminal offence.

The criminal collaboration between the defendants was not proved. The defendants acted separately. The court does not see these four articles issued in one week as a campaign. From the statements of the defendants it is understood that four articles were written as a spontaneous reaction to the program of "J.X. xxxxx". No preliminary oral agreement or implied agreements between the defendants were proven. There are some indications which indicate the prosecution can speak about collaboration because some of the defendants have known each other, or the time-line of issuing of the articles in the same newspaper, but it is not enough to come conclude there was collaboration between defendants.

The Criminal offence of Threats requires the same elements as in the old the criminal code (Valid until 1 January 2013) and the new criminal code. The acts were committed in the time of the validity of the old code. The threat can be committed by direct words, gestures, messages and also indirectly by using well-known symbols in some sub-cultures (a black pen, chicken cloth sent to an injured party). The offensive words used in the articles did not directly express the threat. The court had to find if, to call somebody a Serbian spy in Kosovo in 2009 is a hidden threatening message. The Court was very well aware of modern Kosovo history and such denunciation is considered as very offensive and attacking the psychological, social and economic integrity of the victim. The evidence did not prove the fact that the words used in the articles had a hidden threatening message to the injured party. The court qualified the words in the commentaries of **Q.M.**, **R.H.**, R.S. as an insult. The words of **S.L.** said in the interview are defamatory. The hyperbolic and metaphoric language of these three authors has the impact of an insult but logically because of exaggerated hyperbole cannot be consider as slanderous. It has to be said that the journalistic profession and also others writing in their social activity were not criminally liable for insult pursuant to Article 187 paragraph 1 subparagraph 1 of old criminal code. Also it has to be said that from 1st January 2012 insult and defamation are no longer crimes. **S.L.** asserted in his interview demonstrably untrue facts about the connection between J.X. and the Serbian secret service. The attempt to assert that because BIRN's office is also in

Belgrade and from that reason he calls J.X. a Serbian spy cannot hold up. **S.L.** act is qualified by the court as defamation but also **S.L.** act benefited from the new criminal code. If the acts are not anymore criminal offences the court does not deal with other defendant's criminal responsibility. The liability of the defendants **R.H.**, and **A.A.** for the article of an author who could not be found namely, R.S. was needed to be deduced from so-called cascade responsibility in the case of a criminal offence committed through the media (previously Article 28 of old criminal code, also approved in the new code but canceled in new code by Law 2012/04-L129) which is not applicable from 1 January 2012. Therefore it has to be said that in relation to R.H. there is also another reason for acquittal and it is that the owner of the newspaper according to the old and the new codes, especially in the new code, cannot be responsible for an article. As the criminal offences of "insult" and "defamation" are not part of the criminal code anymore, the Court did not deal with the other questions about the minor/more than minor significance of the acts and the evaluation of whether such acts deserve the intervention of the public/state power. It has to be mentioned that private law in Kosovo exhaustively regulates the civil law relationships between citizens and between citizens and legal entities in situations like that which is relevant to injured party in this case.

In the case of A.A. as chief editor who can be responsible for headlines as author of that, the court has to mention that his responsibility for printing such headlines was not proven. His statement denies the fact that he even did not read what was chosen for headlines. (These criminal offences did not suppose negligent liability and objective liability of the chief editor is a question for civil law).

The criminal offence Violating of Equal status of Residents of Kosovo (old criminal code) and violating equal status of citizens and residents of the Republic of Kosovo (new criminal code) in principle protects equal treatment of the persons assured by the Constitutional order of Kosovo. The prosecution sees the intent of the author of the articles to stop journalistic activities and to restrict the right of J.X. and her staff to free speech. (If the court were to accept the legal construction of the prosecution it would be a possible criminal offence of attempt to incite unknown persons to eliminate the journalistic activities of J.X.). Such a call is also expression of freedom of speech. The defendants wanted to express their own opinion about the journalistic job of J.X. and her crew. The criminal offence Violating of Equal status of Residents of Kosovo serves to protect the basic rights of persons. The right for public expression is the extension of freedom of speech. Journalists can openly criticize other journalists. The public call in such a hyperbolic manner to exclude J.X. from journalistic work is entirely legitimate only the manner of such a criticism is in question.

Proven facts

The Court considers as proven that articles/commentaries/opinions were written by the defendants. However, R.S. commentary is an exception because he was not charged. The court has no doubts **S.L.** was the author of the interview. The court considers as proven that the content of this interviews and articles related to the injured party, J.X. and the RTK program "**xxxxxxxxx**" and J.A..

Not proven facts

The court found that it was not proven that these articles are a campaign committed in co-perpetration and that it was done by individual acts and activities of each defendant. The court has analyzed the content of these articles and has not found that the content of the articles is a coded threat. We have not had the key to this code. No witness and no material evidence proved that labeling of somebody as a Serbian collaborator is a threat. However, what was found is that these articles affected the honor and reputation of J.X.. These articles were insulting and defamatory. What was not found is the link between the threatening emails to J.X. and the car accident involving J.A. and between these articles. The Court cannot say that they were incited by the perpetrators of these emails and in the main trial the court did not find they were inspirational for the authors of these emails.

VI. Conclusion

The decision of the court is entirely based on the legal assessment of the court.

PRESIDING JUDGE:

EULEX Judge

Vladimir Mikula

RECORDING CLERK

Natasa Malesevic

Legal remedy: Pursuant to Articles 380 and 381 of the Criminal Procedure Code, the authorised persons have the right to file an appeal against the present Judgement within 15 days of the day the copy of the Judgement has been served. Any appeal shall be filed with the Basic Court of Prishtinë/Priština.