

**DISTRICT COURT OF MITROVICË /MITROVICA
P 26/2011**

12 November 2012

IN THE NAME OF THE PEOPLE

The District Court of Mitrovicë/Mitrovica, in the Trial Panel composed of EULEX Judge Nuno Manuel Ferreira de MADUREIRA as Presiding Judge and EULEX Judges Hajnalka Veronika KARPATI and Roxana COMSA as Panel Members, with the participation of EULEX International Legal Officer Beti Hohler as the Recording Officer, in the criminal case no. P 26/2011 against

1. L. Q., son of F. and Z. P., born on .. in village Obranq, Municipality of Podujeva, Kosovo-Albanian, secondary school education, unemployed, married, in detention on remand since 7 August 2010,

accused through the Indictment no. PP 99/2010 of the District Public Prosecution Office Mitrovica/ë dated 02 February 2011 with the criminal offences of:

Aggravated Murder pursuant to Article 147 Item 7) of the Criminal Code of Kosovo (CCK),

Unauthorized Ownership, Control, Possession or Use of Weapons pursuant to Article 328 Paragraph (2) CCK, and

Causing General Danger, pursuant to Article 291 Paragraph (1) CCK;

and

2. R. P., son of B. and B., maiden name Z., born on .. in Vushtrri/Vučitrn, residing in Vushtrri/Vučitrn, Kosovo Albanian, secondary school education, of good economic status, married with three children,

accused through the Indictment no. PP 99/2010 of the District Public Prosecution Office Mitrovica/ë dated 02 February 2011 with the criminal offence of

Causing General Detention pursuant to Article 291 Paragraph (1) CCK;

after having held the Main Trial hearings, all open to the public, on 06 July 2012, 10 July 2012, 11 July 2012, 17 July 2012, 18 July 2012, 05 September 2012, 02 October 2012, 07 November 2012, 08 November 2012 and 09 November 2012, in the presence of the EULEX Public Prosecutor, Accused L. Q. and his Defence Counsel Rexhep Kacaniku, the Accused R. P. and his Defence Counsel Mahmut Halimi, the Injured Party B. L. and in the hearing held on 17 July 2012 also in the presence of the Injured Party A. A.,

following the Trial Panel's deliberation and voting held on 12 November 2012,

pursuant to Article 392 Paragraph (1) of the Kosovo Code of Criminal Procedure (KCCP) on 12 November 2012 in a public hearing and in the presence of both Accused, their Defence Counsel, EULEX Public Prosecutor and Injured Party B. L.,

renders the following:

JUDGMENT

- I. The Accused L. Q.**, son of F. and Z. P., born on .. in village Obranq, Municipality of Podujeva, Kosovo-Albanian, secondary school education, unemployed, married, in detention on remand since 7 August 2010, is

FOUND GUILTY

because it was proven beyond reasonable doubt that on the 3rd August 2010, in the village of Prekaz/Prekaze, municipality of Skenderaj/Srbica, in Lushtaku neighbourhood, he intentionally and being fully mentally competent deprived the injured party N. L. of his life. Once promised by H. from Prishtina/Priština that he would receive 30.000 € (thirty thousand euros) if he would kill S. L. from the village of Prekaz/Prekaze, he went several times to this village but could not complete the murder. On the day in question he went to Prekaz/Prekaze village driving his metallic Opel Omega with reg. plates n° 132-KS-788 armed with an AK-47 automatic weapon, with serial n° 17077519, and a machine gun of PPSH type, with serial n° 3B-404. He went to Lushtaku neighbourhood and positioned himself behind some thickets of acacia in the house yard of the late with the aim of killing S. L. Once an Audi 80 entered the house yard being steered by N. L., the Accused, convinced he was S. L., waited for the driver to step outside and then, shot in his direction four times with the machine gun of PPSH type, inflicting an entry wound on his right eye, an exit wound on the upper side of the head, an entry wound on the right side of the chest and an exit wound on the back right side, an entry wound on the right side of the chest and an entry and exit wounds on the right arm – as a consequence of which the victim died at the crime scene. The Accused then escaped from the crime scene.

Therefore, the Accused L. Q. is CONVICTED of committing the criminal offence of *Aggravated Murder* pursuant to Article 147, item 7) CCK.

- II. The Accused L. Q.** is also

FOUND GUILTY

because it was proven beyond reasonable doubt that for an unknown period of time up to 7th August 2010 he intentionally and being fully mentally competent held in possession, without a valid permission, an AK-47 automatic weapon with 17 rounds of bullets of 7,62 x 39 mm calibre, and a machine gun of PPSH type, with serial n° 3B-404, including 56 rounds of bullets of 7,62 mm calibre, and used the latter on the 3rd of August 2010 to kill N. L.

Therefore, the Accused L. Q. is CONVICTED of committing the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328 Paragraph (2) CCK.

III. The Accused L. Q., is

FOUND NOT GUILTY

because it was not proven beyond a reasonable doubt that on the 10th January 2008, on Hafik Zejnullahi Street, Vushtrri/Vučitrn Municipality, he arsoned a Mercedes C220 CDI with reg. plates 507-KS-681 property of the Injured Party A. A., following R. P.'s promise of paying him 3.500 €, by taking an oil drum filled with petrol at Pushkolli fuel station and then going to the Injured Party's house yard, where the car was parked, splashing it with petrol, setting it on fire and running from the crime scene, by this causing a general danger.

Therefore, the Accused L. Q. is ACQUITTED of committing the criminal offence of *Causing General Danger* (Article 291 Paragraph (1) CCK) pursuant to Article 390 Item 3) KCCP.

IV. The Accused L. Q. is hereby

SENTENCED

i.) to 17 (seventeen) years of imprisonment for the criminal offence of *Aggravated Murder* in accordance with Article 36 Item 2) CCK, Article 38 CCK and Article 147 Item 7) CCK; and

ii.) to 4 (four) years of imprisonment for the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* in accordance with Article 36 Item 2) CCK, Article 38 CCK and Article 328 Paragraph (2) CCK;

and thereafter in accordance with Article 71 Paragraph (2) Item 2) CCK,

the aggregate punishment imposed on the Accused is

19 (nineteen) years of imprisonment.

The time served in detention on remand since 7 August 2010 is to be included in the punishment of imprisonment pursuant to Article 73 Paragraphs (1) and (4) CCK.

- V. **The Accused R.P.**, son of B. and B., maiden name Z., born on .. in Vushtrri/Vučitrn, residing in Vushtrri/Vučitrn, Kosovo Albanian, secondary school education, of good economic status, married with three children, is

FOUND NOT GUILTY

because it was not proven beyond a reasonable doubt that on the 10th January 2008, on Hafik Zejnullahi Street, Vushtrri/Vučitrn Municipality, he has incited his cousin L. Q. to commit a criminal offence, by promising him an amount of 3.500 € in exchange for the burning of the Mercedes C220 CDI with reg. plates 507-KS-681, property of the Injured Party A. A.

Therefore, the Accused R. P. is ACQUITTED of committing the criminal offence of *Causing General Danger* (Article 291 Paragraph (1) CCK) pursuant to Article 390 Item 3) KCCP.

- VI. **The weapons and ammunition** - AK-47 automatic weapon, with serial n° 17077519 and 17 rounds of bullets of 7,62 x 39 mm calibre, and a machine gun of PPSH type with serial n° 3B-404 and 56 rounds of bullets of 7,62 mm calibre - **are hereby confiscated** pursuant to Article 60 Paragraph (1) CCK and Article 328 Paragraph (5) CCK.

The vehicle Opel Omega with reg. plates n° 132-KS-788 **is hereby confiscated** pursuant to article 60 Paragraph (1) CCK.

The money in the sum of 3.300,00 EUR, belonging to L.Q., **is hereby confiscated** pursuant to Article 60 Paragraph (1) CCK.

- VII. The vehicle Renault Twingo, reg. plate 539-KS-305, seized on 10 January 2008 must be returned to its registered owner.
- VIII. The Accused L.Q. shall pay 400 (four hundred) Euros as part of the costs of criminal proceeding, but is relieved of the duty to reimburse the remaining costs in accordance with Article 102 paragraphs (1) and (4) KCCP. The Accused must reimburse the ordered sum no later than 30 days from the day this Judgment is final.

The costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1) through 5) KCCP, the necessary expenses of the Accused R.P. and the remuneration and necessary expenditure of his Defence Counsel shall be paid from the budgetary resources in accordance with Article 103 Paragraph (1) KCCP.

- IX.** The Injured Party B.L. is instructed that he may pursue his property claim in civil litigation pursuant to Article 112 Paragraph (2) KCCP.

REASONING

PROCEDURE, COMPETENCE OF THE COURT, EVIDENTIARY ISSUES

1. PROCEDURAL BACKGROUND

1. On 03 February 2012, the District Public Prosecutor of the District Public Prosecution's Office Mitrovicë/Mitrovica (hereinafter: Public Prosecutor or Prosecution) filed the Indictment no. PP 99/2010 (hereinafter: the Indictment) against the two Accused, L.Q. and R.P. The Accused Q. was charged with committing the criminal offences of *Aggravated Murder* pursuant to Article 147 Item 7) of the Criminal Code of Kosovo (CCK), *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328 Paragraph (2) CCK, and *Causing General Danger*, pursuant to Article 291 Paragraph (1) CCK. The Accused Pushkolli was charged with committing the criminal offence of *Causing General Danger*, pursuant to Article 291 Paragraph (1) CCK.

2. On 05 August 2011 the Confirmation Judge of the District Court of Mitrovicë/Mitrovica confirmed the Indictment in its entirety.

3. On 10 February 2012 the case was taken over by EULEX Judges of the District Court of Mitrovicë/a.

4. The main trial was held in public on 06 July 2012, 10 July 2012, 11 July 2012, 17 July 2012, 18 July 2012, 05 September 2012, 02 October 2012, 07 November 2012, 08 November 2012 and 09 November 2012 in the presence of the Public Prosecutor, the Accused L.Q. and his Defence Counsel Rexhep Kacaniku, the Accused R.P. and his Defence Counsel Mahmut Halimi, the Injured Party B.L. and in the hearing held on 17 July 2012 also in the presence of the Injured Party A.A..

2. JURISDICTION AND COMPETENCE

5. Pursuant to Article 23 Paragraph (1) KCCP, District Courts have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long-term imprisonment. If the same person IS charged with the commission

of several criminal offences of which some are subject to the jurisdiction of a lower court and some to the jurisdiction of a higher court, pursuant to Article 33 Paragraph (1) KCCP, jurisdiction is vested with the higher court. Pursuant to Article 33 Paragraph (3) KCCP co-defendants are, as a rule, subject to the jurisdiction of the court which has jurisdiction for one of them.

6. The charges in this case concerned *Aggravated Murder* pursuant to Article 147 Item 7) CCK which is punishable by imprisonment of at least ten years or long term imprisonment; *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328 Paragraph (2) CCK, punishable by a fine or imprisonment from one to ten years; and *Causing General Danger*, pursuant to Article 291 Paragraph (1) CCK, punishable by imprisonment of three months to three years. Thereby, the District Court, in accordance with the provisions mentioned above, is vested with the jurisdiction in this case for all alleged charges in the Indictment and both defendants.

7. Pursuant to Article 27 Paragraph (1) KCCP, territorial jurisdiction is proper with the Court in the district where a crime is alleged to have been committed. According to the Indictment, the criminal offences occurred in places which are under the territorial competence of the District Court of Mitrovicë/a, namely in the areas of Municipality of Skenderaj/Srbica and Municipality of Vushtrri/Vučitrn. Thus, pursuant to Article 27 Paragraph (1) KCCP, the District Court of Mitrovicë/a has the territorial jurisdiction to adjudicate upon this case.

8. Considering the Decision of the President of the Assembly of EULEX Judges no. JC/EJU/OPEJ/2662/ff/11 dated 10 February 2012 and in accordance with Article 3.2 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law No. 03/L-053), EULEX Judges have jurisdiction and competence over the case.

9. The Panel throughout the main trial was composed of EULEX Judge Nuno Madureira, acting as Presiding Judge, and EULEX Judges Hajnalka Veronika Karpati and Roxana Comsa as panel members. All three judges are assigned to the District Court of Mitrovicë/a. None of the parties objected to the composition of the Panel.

3. EVIDENCE PRESENTED

10. During the course of the main trial the following witnesses were heard:

- S. D. on 06 July 2012,
- Police Officer I. A. on 10 July 2012,
- N. L. on 10 July 2012,
- B. L. on 10 July 2012,
- G. A. on 10 July 2012,
- S. L. on 11 July 2012,
- Police Officer A. P. on 17 July 2012,
- Police Officer Q. A. on 17 July 2012,

- Injured Party A.A. on 17 July,
- Police Officer H. S. on 05 September 2012,
- Police Officer V. S. on 05 September 2012.

11. During the course of the main trial the following evidence was presented:

- Cassette confiscated on 19 November 2010 and micro cassette handed over by S.L., Exhibits 2 and 4,
- PED-OSCIU IT Forensics Unit, Evidence Examination Report dated 30 August 2012, submitted to the Panel on 05 September 2012,
- Transcript of Recordings dated 01 October 2012, produced by EULEX translators/interpreters pursuant to the Order of the Panel.

12. During main trial the following documents were read into the Record with the agreement of the Parties:

- Criminal Report – Suspects: R.P. and L.Q., 11/01/2008
- Additional Criminal Report, 10/01/2008
- Initial Incident Report, 03/08/2010
- Crime Scene Examination Report KP Forensics Unit, 04/08/2010
- List of Evidence – KP Forensics, 04/08/2010
- Crime Scene Measurements with Crime Scene Sketch, 03/08/2010
- Photo Album - KP Forensics, 03/08/2010
- Initial Incident Report on Causing General Danger case - KP Vushtrri Station (case no.2008-BD-0056), 10/01/2008
- Crime Scene Examination Report – Causing General danger case, 11/01/2008
- Incident Location Registry (Sketch Drawing), 10/01/2008
- Photo Album – Causing General Danger case, 10/01/2008
- Police Reports – KP A. B. and S. S. – Received info on dead body at Skenderaj Health Centre, 04/08/2010
- Police Report – KP Faton Xhema, 04/08/2010
- Investigation Report – KP A.P. – Crime Scene Description, 04/08/2010
- Investigation report – KP RCS officer V. S. – On search for the suspect, 04/08/2010
- Informative Investigation Report – KP RCS officer I. A., 03/08/2010
- Investigation Report – KP RCS Officers V. S. and P. F. on progress of case investigation, 06/08/2010
- KP Forensics – Additional Report on recovered weapons, 07/08/2010
- Investigation Report – KP RCS Officer V. S. on notifying the Public Prosecutor Shyqyri Sylja on Confiscated Vehicle – Opel Omega, 26/05/2010
- Interoffice Memorandum from KP RCS investigator B. G. to District Public Prosecution Office on incite of latent traces, 14/01/2008
- Interoffice Memorandum from KP RCS investigator B. G. to District Public Prosecution Office on extraction of SMS messages, 14/01/2008

- Investigation Report – KP officer H. A. on Threat message received by his KP colleague Lieutenant A.A., 17/01/2008
- Officers Report – KP F. K. and KP B. T. – received message on their colleague's, Lieutenant A.A., vehicle on fire, 10/01/2008
- Officers Report – KP Lieutenant A.A. – on his vehicle set on fire, 01/10/2008
- Psychiatric Clinic Report on Mental Health condition of defendant L.Q. (YOB 1968), 04/08/2011
- Victim N. L. – Initial Medical Death Report, 03/08/2010
- RCS – List of evidence; Chain of Custody, 03/08/2010
- DNA expertise results from Forensic Science Center in Croatia, 20/12/2010
- Expertise report – DNA – KP Forensic Laboratory Directorate, 25/11/2010
- Expertise report -Weapons– KP Forensic Laboratory Directorate, 19/10/2010
- Expertise report – DNA – KP Forensic Laboratory Directorate, 06.04.2011
- RCS – List of evidence; Chain of Custody, 03/08/2010
- Vehicle Examination Report – Opel Omega, 03/08/2010
- Photo Album (vehicle examination) Opel Omega -reg. # 132-KS-788, 03/08/2010
- Forensic Unit – List of evidence found with the vehicle Opel Omega and List of evidence recovered in the bushes close to Vushtri, 03/08/2010
- Forensic Unit Photo Album – Crime Scene, 03/08/2010
- Official memorandum on handover of seized/impounded items – money 08/08/2010
- Photo Album of seized/impounded items, 08/08/2010
- Official memorandum on handover of seized/impounded items – weapon
- Photo Album of seized/impounded items
- Autopsy Report – KP Forensics Unit – KP Q. A., 04/08/2010
- Photo Album – Autopsy photographs, 04/08/2010
- Medical Examiner's Autopsy report – MA 10 – 216, 04/08/2010
- Medical Examiner's Autopsy photographs, 04/08/2010
- Vehicle Inventory Forms, defendant's vehicle Renault Twingo confiscated, 10/01/2008
- Fingerprint examination report – KP Laboratory, 21/01/2008
- RCS KP officers - Evidence List – victim A.A., 10/02/2008
- District Public Prosecutor – Defendant Examination Minutes – L.Q. ; Aggravated Murder, Causing General Danger, Unauthorized Ownership, Possession, Control or Use of Weapons, 05/01/2011
- Kosovo Police – Suspect Interview – L.Q. – Murder case, 07/08/2010
- Kosovo Police – Suspect Interview – L.Q. – Causing General Danger, Unauthorized Ownership, Possession, Control or Use of Weapons, 12/04/2010
- Kosovo Police – Suspect Interview – L.Q. - Causing General Danger case, 10/01/2008
- District Public Prosecutor – Defendant Examination Minutes – R.P. Causing General Danger case, 25/10/2010
- Kosovo Police – Suspect Interview – R.P. – Causing General Danger, 10/01/2010

4. SUMMARY OF EVIDENCE

13. The following witnesses gave testimony in connection with the events giving rise to the charges of *Aggravated Murder* and *Unauthorized Ownership, Control, Possession or Use of Weapons*: S. D., N. L., S. L., I. A., A. P., Q. A. and V. S.

14. Witnesses S. D. and N. L. were present at the crime scene on 03 August 2010 when the victim N. L. was killed. They testified about the shooting and the ensuing events, but were unable to identify the perpetrator. N. L. also recalled seeing the vehicle Opel Omega matching the description of the Accused Q.'s vehicle overtaking him on his way home just several hours before the murder.

15. The witness B. L. testified about a vehicle Opel Omega parked in the vicinity of the victim's house on the evening of the murder, between 21.00-22.00 hrs. He saw no person in the vehicle.

16. The witness S.L.described in detail meeting with H.A. in June 2010. H.A. was, according to Lushtaku, approached to participate in the killing of S.L.by one L. from Podujeva/Podujevo. He described the meeting and how he audio-recorded it. S.L. further described his family history and relationship with his former brother-in-law D. L. who has allegedly ordered his killing. S.L. during the main trial also presented to the Court a copy of the audio-recording of the meeting, whereas he already submitted the original to the Police on 19 November 2010 during the investigation.¹

17. Witnesses I. A., A. P., Q. A. and V. S. were in their capacity as Kosovo Police Officers involved in the investigation of the killing of N.L. They described the investigative actions they were conducting in this capacity.

18. The following witnesses gave testimony in connection with the events giving rise to the charge of *Causing General Danger*: G. A., Police Officer H. S. and Injured Party A.A.

19. Witness G.A. was present in the house on 10 January 2008 when the vehicle was burned and was able to see the vehicle through the house window. The Injured Party A.A., examined as a witness, testified about the sequence of events of the evening in question. Police Officer H. S. was on police duty together with the Injured Party on the evening of the event. The witness described the actions undertaken that evening, including the sighting of the vehicle Renault.

20. The statements of witnesses and the relevant documentary evidence will be discussed in detail below as part of the analysis of evidence.

5. OTHER MATTERS PERTAINING TO EVIDENCE AND EVIDENCE DECLARED INADMISSIBLE

¹ Refer to Receipt dated 19 November 2010, submitted during main trial, marked as Exhibit 3.

21. During main trial, the Panel also attempted to examine K. P., sister of the Accused R.P., as a witness. The witness appeared in Court on 02 October 2012. The witness is a privileged witness who decided to make use of her right not to testify pursuant to Article 160 Paragraph (1) Subparagraph 2) KCCP and accordingly did not give any statement.

22. The Public Prosecutor proposed that witness H.A. would be interviewed during main trial. The latter has been identified as a relevant witness with regard to the *Aggravated Murder* charge against the Accused L.Q.; however the Court was unable to locate him despite various efforts of the Panel. In July 2012 the Panel was notified that the witness is in pre-trial detention in Belgium and thereupon immediately issued a Request for Mutual Legal Assistance to the Belgian authorities. In September 2012 the latter notified the Panel that the witness is no longer in detention and his whereabouts are unknown. The Panel also requested the Kosovo Police to locate the witness. The Kosovo Police returned the response that the witness could not be found in Kosovo. The Public Prosecutor thereafter requested the statement of H.A. given before the Kosovo Police on 04 August 2010 to be read into the Record pursuant to Article 368 Paragraph (1) Item (1) KCCP. The statement was however declared inadmissible evidence pursuant to Article 156 Paragraph (2) KCCP and excluded from the case file (see below).

23. The Trial Panel excluded as inadmissible evidence the statement of witness H.A. to the Kosovo Police dated 04 August 2010. The evidence was excluded in accordance with Article 156 Paragraph (2) KCCP, because the Defence was not given the opportunity to challenge the witness' statement by questioning him during main trial or any previous stage of the respective criminal proceedings.

24. The Panel rejected the Public Prosecutor's proposal to interview F. L., B. L. and T. K. as unfounded.² The information that could be provided by these witnesses, in the view of the Panel, could not further enlighten any material facts regarding the commission of the criminal offence and the role of the Accused Q. Neither of the mentioned persons were alleged to be present at the time of the commission of the offence or had had contact with the Accused after the murder.

25. The Panel also rejected the motion of Defence of R.P. to present documentary evidence pertaining to the filing of complaints against A.A. as unfounded.³ The documents suggested related solely to the undisputed fact, namely that there is a quarrel between the A. and the P. families. The documents could not add anything to the credibility of the testimony of R.P. as such, as argued by his Defence Counsel.

FINDINGS OF THE COURT

6. FACTUAL FINDINGS OF THE COURT

² See Record of Main Trial, Session of 02 October 2012, paras. 22-30.

³ See Record of Main Trial, Session of 08 November 2012, paras. 397-404.

6.1. Facts and analysis concerning the criminal offences *Aggravated Murder and Unauthorized Ownership, Control, Possession or Use of Weapons* (Accused L.Q.)

(Proven and unproven facts)

26. The Panel considers the following facts were proven during the main trial:

- (1) Before 3 August 2010, H. from Prishtina/Priština promised Defendant L.Q. that he would receive 30.000 € (thirty thousand euros) if he would kill S.L. from the village of Prekaz/Prekaze.
- (2) The Defendant went several times to this village but could not complete the murder.
- (3) On the 3rd August 2010 the Defendant L.Q. went to the village of Prekaz/Prekaze, municipality of Skenderaj/Srbica, driving his metallic Opel Omega with reg. plates n° 132-KS-788.
- (4) Defendant L.Q. was armed with an AK-47 automatic weapon, with serial n° 17077519, and a machine gun of PPSH type, with serial n° 3B-404.
- (5) He went to Lushtaku neighbourhood and positioned himself behind some thickets of acacia in the house yard of N.L. with the aim of killing S.L.
- (6) Once an Audi 80 entered the house yard being steered by N.L., the Accused, convinced the driver was S.L., waited for the driver to step outside and then, shot in his direction four times with the machine gun of PPSH type.
- (7) He inflicted an entry wound on his right eye, an exit wound on the upper side of the head, an entry wound on the right side of the chest and an exit wound on the back right side, an entry wound on the right side of the chest and an entry and exit wounds on the right arm. As a consequence of these wounds N.L. died at the crime scene.
- (8) The Accused then escaped from the crime scene.
- (9) For an unknown period of time up to 7th August 2010 Defendant L.Q. held in possession, without a valid permission, the AK-47 automatic weapon with 17 rounds of bullets of 7,62 x 39 mm calibre, and the machine gun of PPSH type, with serial n° 3B-404, including 56 rounds of bullets of 7,62 mm

27. The Panel finds that it was not proven that L.Q. acted in co-perpetration with A. N. from Ferizaj/Urosevac.

(Analysis)

28. It is uncontested that N.L. was murdered on 03 August 2010, upon the return to his house in the Lushtaku neighbourhood in the village of Prekaze/Prekaz. He was driving the vehicle with two additional passengers in it, and as he pulled into the courtyard of his house, and stepped out of the vehicle, he was shot several times. Witness S. D., who was in the vehicle at the time, confirmed this line of events. After the shooting, the victim's brother N. L. came outside to find the victim on the floor covered in blood. He loaded the victim into the car and drove him to the hospital in Skenderaj/Srbica. As confirmed by the Initial Medical Report dated 03 August 2010, the victim was dead when brought to

the hospital.⁴ The autopsy performed on N.L.'s body conclusively established that he died because of multiple gunshot injuries. Amongst other, the victim suffered an entry wound on his right eye, an exit wound on the upper side of the head, an entry wound on the right side of the chest and an exit wound on the back right side, an entry wound on the right side of the chest and an entry and exit wounds on the right arm. The Panel makes reference to the Autopsy Report Compiled on 05 August 2010 and the Autopsy Report MA 10-216, dated 04 August 2010.⁵ At the crime scene, the investigators immediately after the murder on 03 August 2010 recovered 4 cartridge casings of calibre 7,62mmx25mm.⁶

29. It is also uncontested that the Accused drove his metallic grey Opel Omega with the registration plate number 132-KS-788 to the village of Prekaze/Prekaz, Municipality of Skenderaj/Srbica on the night of the murder. The Accused himself admitted to that in all his statements. The presence of the Accused in the village on 03 August 2010 is further established through the testimony of N. L. and B. L., who both saw the Accused's vehicle, metallic colour Opel Omega on the critical day.

30. It is further uncontested that the Accused Q. led the Police investigators to the location of the weapon with which the murder of N.L. was committed. The Police recovered two weapons based on the information provided by the Accused exactly at the location he mentioned. The first weapon was the automatic weapon, rifle AK-47 serial number 17077519 and a magazine with 17 cartridges of calibre 7,62 mmx39mm. The second weapon was PPSH light machine gun with serial number 3B 404 and a magazine and 56 bullets of calibre 7,62mmx25mm. Both weapons were found in the Galica village next to the main road Skenderaj/Srbica – Vushtrri/Vuçitrn.

31. The Expert Analysis performed by the Directorate of Forensic Laboratory established that the four cartridges, parts of 7,62mmx25mm, recovered from the crime scene on 03 August 2010 and at the crime scene labelled as D2, D3, D4 and D13 were fired from the mentioned PPSH machine gun, serial number 3B 404.⁷

32. The Accused Q. was interviewed three times in relation to the killing of N.L. in the course of this criminal proceeding, namely on 07 August 2010, 05 January 2011 and during the main trial on 07 November 2012.

33. In his initial statement of 07 August 2010, immediately upon his arrest, the Accused stated that three months prior he met a person named H. from Prishtinë/Priština whom he had known from Slovakia. The latter offered him 30.000,00 EUR for killing a person named S. from Prekaze/Prekaz. He told him that S. works as a cook in the kitchen of

⁴ See Court Binder 1, Index II, pp. 14-15.

⁵ See Autopsy Report Compiled on 05.08.2010, Court Binder 1, pp. 107-121 and the Autopsy Report MA 10-216, dated 04.08.2010, Court Binder 1, pp. 122-130.

⁶ Crime Scene Examination Report, Forensic unit, dated 03 August 2010, Court Binder 1, Index II, pp. 74-81.

⁷ Expert Analysis Report, Directorate of Forensic Laboratory, completed 19 October 2010, Court Binder 1, Index II, p. 31.

Feronikel Company and travels every day from Prekaze/Prekaz to Feronikel at about 5.30 hrs in the morning. Since that day he (the Accused) went to Prekaze/Prekaz twice per week before 5.00 hrs in the morning and used to wait for S. He travelled there by his car Audi 80 until he changed it for the Opel Omega. In the beginning, in the white Audi, he used to keep a Kalashnikov. One day he was stopped by the Police who seized the weapon. H. then bought him new Kalashnikovs. Three days before the murder of N.L., H. brought to a meeting with the Accused a person from Ferizaj/Urosevac and presented him as A. A day before the murder, in the morning, A. and the Accused went to the Prekaze/Prekaz village and waited for S., but he did not go out that morning. They therefore returned the next day. They saw the gate open, the car was not at home. They then hid in some bushes of acacia and after some time a car – Audi 80 – arrived. It was dark and the time was between 22.00 hrs and 23.00 hrs. There were two women and a driver in the car. The Accused was at the gate about 7 or 8 steps away from the Audi and he had Kalashnikov AK-47 in his hands, whereas A. went following the car from the back until it stopped, he had a gun and then immediately there were four or five bangs heard. The Accused and A. immediately ran away into the car and drove away. On the way they came to a place where they left both weapons. Next day the Accused phoned H. and told him the matter they discussed was over. The next day H. called him and said someone else is killed instead of the right man.

34. When interviewed by the Public Prosecutor on 05 January 2011 the Accused gave a considerably different statement. He now stated that on the day in question he went to kill S. and was with A. from Ferizaj only as a taxi driver. He also stated that H. from Pristina is the brother-in-law to S.L. and the agreement was made because S. used to ‘constantly stab his wife and H. with a knife in Austria’. He now also stated he was in the Lushtaku neighbourhood only on the night of the murder and not before. He stated he parked the vehicle at the school; he listened to the music and waited for A. for about 20 minutes until the latter committed the murder. He first saw the weapons when A. brought them to the car. When the murder was committed they returned to Prishtinë/Priština and on the way, close to the village of Duboc/Dubovac, under A.’s pressure, he took the automatic weapon and A. took the other and they threw them in the woods. It was there that he heard A. saying his night had paid off and he earned 30.000,00 EUR. The Accused, when confronted with the content of the statement given on 07 August 2010 said he was then beaten and compelled by the Police to confess to things he had not done. Further, the Accused was asked whether he ever spoke to anyone about following S. and killing him. He stated he discussed it with H.A. from Skenderaj/Srbica. His further statement related to this *verbatim* reads: “I told him that he had to provide 10.000,00 EUR if he wanted to kill S., but I asked him to help me and identify S.”.

35. The Accused during main trial did not give a statement but answered questions from the Parties and the Panel. The Accused stated he was just the taxi driver for a man named A. whom D. L. ‘put’ in his taxi. He drove to Skenderaj/Srbica and parked there while A. left the car, holding a bag. The Accused listened to the cassette player and did not hear any shots fired. A. came back some 20 min later with a weapon in one hand and another weapon in a bag. He could not see whether A. was walking or running. On the way back A. made him stop and dispose of the weapons under duress. The Accused now also stated

that D.L. and the person he previously referred to as 'H. from Pristina' are one and the same person. Further, the Accused stated he did not know where the house of S.L. was and he only learned about him during the trial. When confronted with the discrepancies between his current answers and the statements given previously, in particular on 07 August 2010, the Accused was unable to give any meaningful explanation for these discrepancies. He initially stated he was pressured and without a lawyer present, but when told his Defence Counsel *was* present he admitted he might have confused this questioning and application of pressure with another one.⁸ The Accused also stated he never spoke to H.A. about a killing contract.

36. The Panel at this point notes it was established that S.L. is a next-door neighbour of N.L., as confirmed by the testimony of witness S. D.,⁹ and witness S.L.,¹⁰ and the sketch of the crime scene.¹¹

37. As outlined above, the Accused every time he was questioned gave a different account of what happened on 03 August 2010 and in particular his role in the events. In his initial statement the Accused admitted to agreeing with H. from Prishtinë/Priština to kill S.L. for 30.000,00 EUR, he admitted to following him for a longer period of time and on 03 August 2010 hiding in front of (what he thought was) his house with a weapon to kill him. The Accused in his initial statement also presented remarkable details about the target S.L. and his daily schedule, namely that he goes to work early in the morning at 5.00 hrs and that he works in the Feronikel Company. S.L., when interviewed as a witness, confirmed this information. The Accused in his initial statement also with precision pointed out he was hiding in acacia trees and also correctly described the vehicle driven by the victim on the night of the murder – Audi 80 – and the fact that there were two more passengers in the car. The Panel considers the Accused could only know all this if in fact he was present at the murder scene, observing the house and the victim's vehicle. In his later statements the Accused withdrew his statement in part and claimed that he was only a taxi driver for A. and he never approached the house nor did he hear about S.L..

38. The Panel finds the Accused's initial statement of 07 August 2010 the most credible of the three. This was the first statement of the Accused and he gave it immediately after his arrest. Due to the proximity of the critical event (only days prior) and lack of time to devise a different account, this statement is considered to be the most accurate by the Panel. Further, the statement gives a logical and detailed description of events, which are corroborated by other pieces of evidence, whereas the Accused's later statements are not corroborated by *any* other evidence. For example, the Accused in his initial statement correctly described the schedule of S.L. He further correctly described the vehicle of the victim and its passengers as well as the location of the house and the surrounding acacia trees. He also made reference to 4-5 shots being fired, the same as witnesses S.D. and N.L.

⁸ Main Trial Record, session of 07 November 2012, paras. 148-154.

⁹ Main Trial Record, session of 06 July 2012, paras. 155-156.

¹⁰ Main Trial Record, session of 11 July 2012, paras. 128-129.

¹¹ Court Binder 1, Index I, p. 87.

39. The Panel is accordingly satisfied that the Accused was indeed at the courtyard of N.L.'s house (thinking it was S.L.'s house) and not sitting in the car when the murder occurred, as he later claimed. The conclusion is supported by witness B.L. who saw the Accused's vehicle parked on the night of the murder approximately between 21.00 and 22.00 hrs, but did not see anyone in the car. The witness described the vehicle as Opel Omega, grey dark colour, with broken back lights, fully matching the Accused's vehicle, as also seen from photograph no. 4 of the Photo Album dated 10 August 2010.¹²

40. What the Panel had to address next was the Accused's statement that, even pursuant to his initial statement, he was in front of L's house with A. from Ferizaj/Urosevac. The Accused, even in his initial statement, never admitted to shooting N.L., but claimed he was with the alleged A. and implied it was the latter who shot the victim. He stated he was holding the AK 47 rifle while A. held the machine gun.

41. The Panel finds there is no evidence in the case file whatsoever that would indicate that the second person, referred to by the Accused as A. from Ferizaj/Urosevac, actually exists. It is therefore the Panel's conclusion that the existence of this person and the claim that it was him who killed N.L. is merely a line of defence of the Accused.

42. The Panel notes that the witness S.D. only saw one person running away from the crime scene on the night of the murder. Further, witness N.L. on the evening of the murder saw the Accused's car (again mentioning the broken back lights) overtaking him and only saw one person in the vehicle. Moreover, the Accused was not able to give any more information about the alleged A. from Ferizaj/Urosevac nor was he able to identify any witnesses that could confirm his existence. If the person existed and the Accused was able to provide more information he surely would have, considering it was in his interest. The Panel also notes that the Police, based on the Accused's statements, tried to identify and locate the alleged A., but was unable to do so. Also the behaviour of the alleged A., as the Accused describes it, is entirely illogical, thus affirming the Panel's position that A. does not exist and there was no second person at the crime scene. Namely, A. would not first hide then suddenly expose the murder weapons if he was indeed the murderer and would thus had a strong incentive not to disclose himself as such. He also would not show to the Accused where he would dispose of murder weapons.

43. The Panel therefore finds that the Accused was acting alone and it was him who shot at N.L. on 03 August 2010 and killed him in the courtyard of his house in the Lushtaku neighbourhood in the village of Prekaze/Prekaz. The Accused was armed with two weapons, an AK-47 automatic weapon with serial number 17077519, and a machine gun of PPSH type with serial number 3B-404. He shot at the victim with the latter, causing several entry and exit wounds which resulted in the victim's death. The Accused disposed of the weapons later on. Both weapons were then found at the location the Accused gave to the Police.

44. The Defence argued that it cannot be concluded that the Accused was in possession of the murder weapon, light machine gun with serial number 3B-404, without relying on

¹² Court Binder 1, Index II, p. 52.

any forensic evidence.¹³ The Panel rejects such interpretation. Even in the absence of forensic evidence, the fact that the Accused was in the possession of the weapon can be based on a plethora of other evidence. It is only the Accused who claims that the murder weapon was in the hands of the alleged A. As discussed above the presence of A. and indeed his existence has not been corroborated by a single piece of evidence, thus the Panel does not believe this line of argument of the Accused. However, based on the detailed description of the events on 03 August 2010 (in his initial statement of 07 August 2010) it is established beyond reasonable doubt that the Accused *was* at the crime scene and it is the only logical conclusion that it was him who shot and killed N.L. One of the most conclusive pieces of evidence supporting this is the fact that witness S.D. only saw one person running away from the crime scene, i.e. the Accused. If there was another person present, the witness would have seen two persons fleeing the crime scene. Another strong piece of evidence is that the Accused knew the location of the murder weapon.

45. The Defence in their closing speech raised the issue of how the Police was able to identify and locate the Accused's vehicle, the Opel Omega. The Defence referred to testimonies of police officers who were not able to state precisely from whom the information about the vehicle came from. The Panel however finds this argument obsolete, since the fact that the Accused with his vehicle was present in the village on the night of the murder is in fact undisputed. The Accused in all his statements namely places himself and the car there on the critical night.

46. The Panel also established beyond reasonable doubt that the target of the killing was in fact not the victim – N.L. – but his neighbour S.L.

47. The Panel makes reference to the Accused's first statement of 07 August 2010 in which the Accused described how he was approached by a person named H. from Prishtinë/Priština and promised 30.000,00 EUR for killing a man named S. from Prekaze/Prekaz who works at Feronikel Company. The Accused later on stated that H. from Prishtinë/Priština is in fact D.L. and the latter is the former brother-in-law of S.. He wanted S. killed because S. used to 'constantly stab his wife and H. with a knife in Austria'.

48. The person discussed was clearly S.L. who indeed works at Feronikel Company, is the former brother-in-law of D. L., lived in Austria and was accused of stabbing D. L. S.L. confirmed all this when examined as a witness during main trial.

49. Further, S.L. described a meeting with a H.A. who told him about the ordered killing. The Panel notes that the Accused Q. in his statement given on 05 January 2011 admitted that he told H.A. about the ordered killing of S.L.

50. S.L. described a meeting in June 2010 he had had with H.A., when the latter told him he had been approached by a Luta from Podujeva/Podujevo to participate in the killing of

¹³ See closing speech of Defence Counsel Rexhep Kacaniku, attached to record of Main Trial, session of 09 November 2012.

S.L.. The Panel finds witness S.L.'s testimony entirely credible. The witness gave a clear, logical statement that was in part corroborated by other evidence. The Panel finds that the mention of Luta from Podujeva/Podujevo must refer to the Accused. He is indeed from Podujeva/Podujevo and 'L.' can be considered as a nickname for 'L.', the name of the Accused. S.L. also stated that H.A. told him that D.L. gave certain amount of money to Luta from Podujeva/Podujevo to execute the killing. Witness N.L. confirmed the meeting between S.L. and H.A. took place but was unable to hear the content of the conversation itself.

51. S.L. audio-recorded the meeting with H.A.. He produced the original recording to the Police back on 19 November 2010 and he handed over a copy during main trial. The Panel ordered an evidence report in order to listen to and reproduce the content of the recordings. The Prosecution in session on 05 September 2012 presented the ordered Evidence Examination Report (Exhibit 5).¹⁴ According to the Report, the voices in the recording were too weak. Thereupon the Panel further instructed two EULEX translators/interpreters to listen to the recordings with the aim to produce a transcript, however complete or incomplete it may be. The translators/interpreters submitted the Transcript on 01 October 2012.¹⁵ They however were able to extrapolate only minor parts of the conversation, thus making this evidence of little probative value. The Panel does however note that the name Lutfi and Luli is mentioned in the transcript produced from the Recording.

52. The Panel also finds the time-line of the ordered killing compared to the Accused's statement and S.L.'s statement particularly relevant. The Accused in his statement of 07 August 2010 namely stated that he was approached some 3 months ago before the actual murder occurred. S.L. met with H.A. who told him about the ordered killing in June 2010. Further in his statement on 12 April 2010 (when questioned in relation with the criminal offence of *Causing General Danger*) the Accused stated that he had been stopped by the Police and an automatic rifle was confiscated from him. He repeated the same in his statement on 07 August 2010, namely stating that he was stopped by the Police in the village Dubovc and they found and seized a Kalashnikov.

53. The above evidence also confirms that the Accused had been planning the murder for some time, actively seeking out S.L. The Accused himself states so and describes his actions in his statement of 07 August 2010, stating, amongst other, that since he "was informed about the matter" he went to Prekaze/Prekaz twice per week and wait for S.L.

54. The Panel also points to further evidence that the Accused was hired and paid for the killing. When arrested, only four days after the murder, the sum of 3300,00 EUR was temporarily confiscated by the Police from him. The Accused, when asked about the money during this criminal case, gave two completely different answers. In his statement given on 07 August 2010 the Accused stated that his friend Q. K. sent him the money from Slovakia, whereas in his statement during main trial the Accused said that the money derived from selling the family tractor. The Panel does not find any of the

¹⁴ Evidence Examination Report dated 30 August 2012, labeled as Exhibit 5, Court Binder 2.

¹⁵ Transcript of the Recording, submitted to the Court on 01 October 2012, Court Binder 3.

statements credible, in particular considering they are completely different. The Panel considers that in the absence of a credible explanation and any corroborating evidence, and in light of overwhelming other evidence not least the Accused's own admission, the money found was in fact part of the payment for the commissioned murder of S.L., given to him by H. from Prishtinë/Priština aka Driton Latifi.

55. The Panel, based on the above discussed evidence, also concludes that the Accused used the weapon machine gun of PPSH type with serial number 3B-404 with which he killed N.L. without a valid authorization card. Further, the Accused also possessed the AK-47 automatic weapon with serial number 17077519, also without a valid authorization card. The same conclusion applies to the recovered 17 rounds of bullets of 7,62 x 39 mm calibre, and 56 rounds of bullets of 7,62 mmx25mm calibre. The Accused himself admits being in the possession of the latter and the possession and use of the machine gun PPSH type with serial number 3B-404 has also already been established. Both weapons were located at the location that the Accused in his interview to the Police indicated. If the weapons did not belong to the Accused he could not know where they were located. The Panel, for reasons already discussed above, did not believe that the alleged A. exists and considers this to be merely a line of the Accused's defence strategy, in order to exonerate himself. The Accused never produced or indeed indicated that he ever possessed a valid authorization card to carry either or both weapons.

56. The Panel also notes that the Accused was fully mentally competent and in control of his actions when he committed these acts. There is no information that would point to a different conclusion. The Defence during main trial did not raise any such objections. During the pre-trial stage, a psychiatric analysis was performed on the Accused, which concluded that the Accused did not manifest any mental disorder of any nature at the time the events giving rise to the Indictment occurred.¹⁶

57. Accordingly, based on all evidence presented during main trial evaluated separately and all-together, the Panel has found the facts listed in Paragraph 26 above as proven. The legal implications of so determined factual situation will be discussed below, under heading – Legal Findings.

6.2. Facts and analysis concerning the criminal offence of *Causing General Danger* (Accused L.Q. and R.P.)

(Proven and not proven facts)

58. The Panel finds that the Prosecution failed to prove the following facts stipulated in the Indictment against the Accused L.Q. and R.P.:

- (1) That on 10 January 2008, on Hafik Zejnullahi Street, Vushtrri/Vučitrn Municipality, L.Q. arsoned a Mercedes C220 CDI with reg. plates 507-KS-681 property of the Injured Party A.A., following R. P.'s promise of paying him 3.500 €, by taking an oil drum filled with petrol at Pushkolli fuel station and then going

¹⁶ See Psychiatric Clinic Report, dated 04 August 2011, Court Binder 1, pp. 1-13.

to the Injured Party's house yard, where the car was parked, splashing it with petrol, setting it on fire and running from the crime scene, by this causing a general danger.

(2) On 10 January 2008, on Hafik Zejnullahi Street, Vushtrri/Vučitrn Municipality, R.P. has incited his cousin L.Q. to commit a criminal offence, by promising him an amount of 3.500 € in exchange for the burning of the Mercedes C220 CDI with reg. plates 507-KS-681, property of the Injured Party A.A..

(Analysis)

59. It is undisputed that on 10 January 2008 in the early morning hours the vehicle Mercedes Benz C 220 CDI, registration plate 507-KS-681, property of A.A., was burnt in front of the owner's house in Vushtrri/Vučitrn. The Panel in particular refers to the Crime Scene Examination Report dated 10 January 2008.¹⁷

60. Witness H.L., Police Officer, was on policing duty together with the Injured Party on the evening when the vehicle was burnt. The witness, when examined during main trial, testified that he saw a blue Renault with two people inside. He recognized the car as R.P.'s car. The vehicle raised his suspicion because there was no traffic at that time on the road. He saw the vehicle close to Pushkolli gas station.

61. The Panel finds that both Accused in the vehicle Renault Twingo were indeed in the vicinity of the crime scene on the night of the burning of the car, however there is no conclusive evidence linking any of them to the burning of the car.

62. The Accused L.Q. was examined four times in relation to the events giving rise to this charge, namely on 10 January 2008 itself and again on 12 April 2010. On 05 January 2011 the Accused was examined by the Public Prosecutor and at that time declared he stands by the statement given on 12 April 2010. The Accused also answered questions from the Parties and the Panel with regard to this criminal offence during main trial on 08 November 2012.

63. The Accused Q. in his first statement denied being involved in any way in the burning of the vehicle and did the same during main trial on 08 November 2012. The Accused stated he came to see his cousin (who he calls uncle) R.P. to ask him for a ride to Skopje where he was to visit the Swedish Embassy. When they were on their way the Police stopped and arrested them with connection to the burning of A.A.'s vehicle. The Accused reiterated several times that R.P. never offered him any money to burn A.'s car nor did he in fact know where A.A.'s house was.

64. The Accused was confronted with his statement of 12 April 2010 when he in fact stated that he was the one who burnt A.A.'s vehicle in January 2008 and in fact produced several details about the car – i.e. the make, type, colour. He stated R.P. promised him 3.000,00 EUR to do that because of the quarrels between the two families. The Accused

¹⁷ Court Binder 1, Index I, pp. 121-122A. See also Photo album compiled on 10 January 2008, Court Binder 1, Index I, pp. 131-147.

during main trial argued that he was pressured to give such statement and again maintained he was not involved in the criminal offence in any way.

65. The Accused R.P. during this criminal proceeding was interviewed twice. He gave a statement before the Public Prosecutor on 25 October 2010 and during main trial on 08 November 2012. The Accused P. denied any involvement in the burning of A.A.'s vehicle. He essentially corroborated the testimony of co-Accused Q. given on 10 January 2008 and during main trial on 08 November 2012. Namely that L.Q. came to see him on the night before 10 January 2012; that they had dinner, stayed at the Pushkolli gas station and then in the early morning on 10 January 2008 left Vushtrri/Vučitrn to stop by Obranc village and then continue to Skopje. It was then that they were stopped and arrested by the Police.

66. The Injured Party A.A., examined as a witness during main trial on 17 July 2012, stated that while on police duty on 10 January 2008 he received a phone call from his daughter, telling him his vehicle in front of the house was on fire. He immediately returned to his house, informed all patrol units to block the roads to and from Vushtrri/Vučitrn and check all suspicious persons. When he entered Haxhi Zeka Street he noticed a Renault Twingo coming from that street and going to the direction of Prishtinë/Priština. He saw two persons in the vehicle.

67. G. A., daughter of the Injured party, questioned as a witness during main trial on 10 July 2012 was in the house at the time of the event. She was also the one that phoned her father about the vehicle being set on fire. She heard a blast and saw that when the fire started, it took the whole vehicle and was burning at once. She did not see anyone in the vicinity of the vehicle.

68. It is uncontested that the two Accused were in the neighbourhood on the night of 10 January 2008 when the vehicle of the Injured Party A.A. was burnt, however there is no conclusive evidence linking either of the Accused to the actual crime scene and criminal offence. The fact that they were in the neighbourhood is not sufficient to conclude that they were responsible for the burning of the vehicle. More so, because they both gave the same account of why they met, how they spent the evening and where they were travelling.

69. The Panel notes that the only piece of evidence linking both Accused to this criminal offence is the statement of L.Q. given on 12 April 2010 when he stated he set the vehicle on fire and that R.P. promised him money to do that. The Accused however in his initial statement on 10 January 2008 denied this as he did in his later statement during the main trial.

70. The Panel finds that in the absence of any other evidence corroborating the statement of L.Q. of 12 April 2010 and in particular noting the conflicting statements of L.Q. – the latter vehemently denying any involvement in the burning of the vehicle during main trial – it has not been proven that the Accused have committed the criminal offence as charged in the Indictment.

71. The Panel in this regard also makes reference to Article 157 Paragraph (2) KCCP, stipulating that the Court shall not find the Accused guilty based solely, or to a decisive extent, upon statements given by them to the police or the public prosecutor.

7. LEGAL FINDINGS OF THE COURT

7.1. Legal findings concerning the criminal offence of *Aggravated Murder* (Accused L.Q.)

72. As discussed under heading 6.1. above, the Panel found that the Accused L.Q. deprived N.L. of his life by shooting him on 03 August 2010. The Accused has committed the killing, believing the victim was in fact S.L., in exchange for obtaining the sum of 30.000,00 EUR as agreed with a H. from Prishtinë/Priština aka D. L.

73. The Accused therefore committed the criminal offence of *Aggravated Murder* pursuant to Article 147 item 7) CCK. This criminal offence is committed by any person who deprives another person of his or her life for the purpose of obtaining a material benefit. All elements of this criminal offence are established as elaborated above.

74. Pursuant to Article 11 Paragraph (1) CCK, a person is criminally liable if he or she is mentally competent and has been found guilty of the commission of a criminal offence. Pursuant to the same provision, a person is guilty of the commission of a criminal offence when he or she commits a criminal offence intentionally or negligently.

75. Firstly, there is no doubt as to the fact that the Accused was fully mentally competent when he committed the offence. Nothing in the case-file suggests otherwise and no such challenge has been raised by the Defence.

76. Secondly, the Accused, when committing the crime, acted with direct intent.

77. A criminal offence may be committed with direct or eventual intent. A person acts with direct intent when he or she is aware of his or her act and desires in commission. The Accused wanted to deprive a person of his life, he was preparing for it for several months and made extensive plans in order to commit the murder. Further, the Accused shot at the victim multiple times with a machine gun, which shows he was determined to kill the person.

78. The Panel reiterates that the fact that the Accused thought he shot S.L. is irrelevant in this case. Mistake in fact would only absolve the Accused of his responsibility if the characteristic would be of such nature that would render the act permissible. Namely in accordance with Article 18 CCK, a person is not criminally liable if, at the time of committing a criminal offence, he or she is unaware of a characteristic of that act or he or she mistakenly believed that circumstances existed which, had they in fact existed, would have rendered the act permissible.

79. Accordingly, the Panel found the Accused guilty of committing the criminal offence of Aggravated Murder pursuant to Article 147 Item 7) CCK and found the Accused criminally liable for the said criminal offence.

7.2. Legal Findings concerning the criminal offence *Unauthorized Ownership, Control, Possession or Use of Weapons* (L.Q.)

80. The criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328 Paragraph (2) CCK is committed by whoever owns, controls, possesses or uses a weapon without a valid Weapon Authorization Card for that weapon. All elements of this criminal offence are established, as elaborated above under heading 6.1..

81. The Accused also in respect of this criminal offence was fully mentally competent and acted with direct intent. The Accused knew that carrying weapons without appropriate authorization is prohibited but continued to do so for a longer period of time. This even after a weapon has been confiscated from him by the Police as he himself admitted.

82. Accordingly, the Panel finds the Accused guilty of committing the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328 Paragraph (2) CCK and finds the Accused criminally liable for the said criminal offence.

7.3. Legal findings concerning the criminal offence of *Causing General Danger* (Accused L.Q. and R.P.)

83. The criminal offence of *Causing General Danger* pursuant to Article 291 Paragraph (1) CCK is committed by whoever, by using fire, flood, weapons, explosives, poison or poisonous gas, ionizing radiation, mechanical power, electrical power or any other kind of energy causes great danger to human life or to property of substantial value, shall be punished by imprisonment of three months to three years.

84. As elaborated above under heading 6.2., the Panel did not find the facts giving rise to this charge against the Accused L.Q. and R.P. to be proven. Accordingly, the Panel acquitted both Accused of this criminal offence pursuant to Article 390 item 3) KCCP.

8. SENTENCING

85. The Panel when considering sentencing took into consideration the purposes of punishment as laid out in Article 34 CCK, namely prevention, rehabilitation and deterrence. The Panel also explored and considered the mitigating and aggravating circumstances with regard to each criminal offence in accordance with Article 64

Paragraph (1) CCK, as well as that the punishment imposed must be proportionate to the gravity of the offence and the conduct and circumstances of the offender.

86. The Accused Q. was tried and convicted for two criminal offences. Pursuant to Article 71 Paragraph (1) CCK, the Panel first pronounced the punishment for each criminal act and then imposed an aggregate punishment in accordance with Article 71 Paragraph (2) Item 2) CCK.

87. Pursuant to Article 147 item 7) CCK, the criminal offence of *Aggravated Murder* is punishable by imprisonment of at least ten years or long-term imprisonment. Pursuant to Article 38 CCK, the general maximum prescribed by law is twenty years of imprisonment and the punishment of imprisonment is imposed in full years and months. The punishment of long-term imprisonment is imprisonment for a term of twenty-one to forty years pursuant to Article 37 CCK.

88. The Panel, when determining the punishment for this criminal offence took into consideration the following aggregating circumstances, mainly relating to the manner in which the criminal offence was committed. The Panel considered it an aggravating circumstance that the victim was caught entirely by surprise, making any reaction or defence impossible; and the Accused shot him in his own courtyard. Further, the Accused endangered other people by shooting at the victim in front of his house and being aware of other persons present, namely the two women in the vehicle. The Accused thus endangered the life of these two persons. The Panel also considered as an aggravating circumstance the fact that the Accused had planned the criminal offence for a longer period of time, namely several months and in all that time never retracted from committing the offence. As for the mitigating circumstances, the Panel could only identify one, namely that the Accused does not have prior (identified) convictions.

89. Considering that the aggravating circumstances outweigh the mitigating ones and considering all purposes of punishment outlined above, the Panel considered that a sentence of 17 (seventeen) years of imprisonment is the appropriate punishment for the criminal offence committed.

90. The criminal offence of *Unauthorised Ownership, Control, Possession or Use of Weapons* pursuant to Article 328 Paragraph (2) CCK is punishable by a fine of up to 7.500 EUR or by imprisonment of one to eight years.

91. The Panel found the same mitigating circumstance also for this criminal offence to exist, namely that the Accused does not have a criminal record. The Panel identified the persistency of also this criminal offence as an aggravating circumstance. The Accused namely admitted to having in his possession weapons for several months and even replacing them after he had been stopped by the Police and weapons were confiscated. Further, the Panel considered the number and type of weapons for the possession of which the Accused was found guilty as an aggravating circumstance. The Accused namely had not one but two weapons, whose function and configuration is particularly severe (sometimes referred to as being ‘weapons of war’).

92. Considering that the aggravating circumstances outweigh the mitigating one and considering all purposes of punishment outline above, the Panel determined that a sentence of 4 (four) years imprisonment is the appropriate punishment for the criminal offence committed.

93. Pursuant to Article 71 Paragraph (2) Item 2) CCK, if a punishment of imprisonment for each criminal offence is pronounced, the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all pronounced punishments nor may it exceed a period of twenty years. In accordance with this provision, the Panel determined the aggregate punishment imposed on the Accused to 19 (nineteen) years of imprisonment.

94. The Accused has been arrested on 07 August 2010 and since then in detention on remand, thus this time is to be included in the punishment of imprisonment pursuant to Article 73 Paragraphs (1) and (4) CCK.

OTHER MATTERS

9. CONFISCATION

95. Pursuant to Article 60 Paragraph (1) CCK and Article 328 Paragraph (5) CCK, the Panel ordered confiscation of the weapons and the ammunition, namely AK-47 automatic weapon, with serial n° 17077519 and 17 rounds of bullets of 7,62 x 39 mm calibre, and a machine gun of PPSH type with serial n° 3B-404 and 56 rounds of bullets of 7,62 mmx25mm calibre.

96. The panel also ordered confiscation of the vehicle Opel Omega with reg. plates n° 132-KS-788 pursuant to article 60 Paragraph (1) CCK.

97. Pursuant to the same provision (Article 60 Paragraph (1) CCK) the Panel further ordered the confiscation of the money temporarily confiscated from L.Q. at the time of the arrest, i.e. 3.300,00 EUR.

10. COSTS

98. The Accused L.Q. was found guilty of two criminal offences and pursuant to Article 102 of the KCCP he must reimburse the costs of criminal proceedings. The Panel took note that the Accused was acquitted of one charge and thus not liable for reimbursement of costs with regard to that charge.

99. Due to his poor economic status, the Accused Q. was ordered to reimburse only part of the costs in the amount of 400,00 EUR. The Trial Panel decided to relieve the Accused of the duty to reimburse the remainder of the costs pursuant to Article 102 Paragraphs (1) and (4) of the KCCP.

100. Because the accused R.P. was acquitted of the criminal charge against him, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1) through 5) KCCP, the necessary expenses of the Accused and the remuneration and necessary expenditure of his Defence Counsel were ordered to be paid from the budgetary resources in accordance with Article 103 Paragraph (1) KCCP.

11. COMPENSATION CLAIM

101. The Injured Party B.L. has been instructed that he may pursue his property claim in civil litigation pursuant to article 112 Paragraph (2) KCCP.

102. A.A. during the main trial did not file any compensation claim.

For these reasons it is decided as in the Enacting Clause.

Done in English, an authorized language.

Presiding Judge

Nuno Manuel Ferreira de MADUREIRA
EULEX Judge

Recording Officer

Beti HOHLER
EULEX Legal Officer

LEGAL REMEDY:

Authorized persons may file an appeal against this Judgement within 15 days from being served with an authorized copy of it. (Article 398 KCCP). The appeal must be filed with the District Court of Mitrovicë/Mitrovica and will be decided by the Court of Second Instance.