Basic Court of Prizren
P.nr.93/14
31 July 2014

IN THE NAME OF THE PEOPLE

The District Court of Prizren, in the trial panel composed of EULEX Judge Marie Tuma, Presiding Judge and Panel Members Juge Skender Cocaj and Judge Artan Sejrani, assisted by the court recorder Vlora Johnston, in the criminal case against

S V , father's name Q , mother's name O ., born on in the village of , Municipality of Titovo Veles, last known adress Rruga , Mitovice/Mitorvica, Kosovo Albanian ethnicity, Macedonian citizenship, labourer, married, father of two children, primary school completed. S V is in detention on remand since 23 May 2014 which meausure will expire on 22 September 2014.

S V . is charged with the criminal offence of:

Murder contrary to article 30, paragraph 2, item 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo;

After a public main trial sessions on 10 June, 23 June, 24 June, 27 June and 25 July 2014 in the presence of the defendant, his Defence Counsel S M ., the Public Prosecutor Danillo Ceccarelli, the injured party Sh . Q and the representative of the injured party Lawyer B B , the trial panel has deliberated and voted on 25 July 2014, pursuant to article 383 of the Provisional Criminal Procedure Code of Kosovo and announces in public the following:

JUDGMENT

The defendant, S V , with personal data as set out above, charge with Murder contrary to article 30, paragraph 2, item 3 of the Criminal Law of the Socialist Autonomous Province of Kosovo

IS AQUITTED OF THE CHARGE IN THE INDICTMENT

The charge is as follows according to the Indictment dated 10 September 2010 and amended on 17 December 2012, that S. V. for personal gain consising of taking away the victim's vehicle, a red Audi 80, bearing registration plates 183-KS-207, took the life of A. Q. on 9 August 1999 in an unknown place between Prizren and Karaqice/Luhznice, where the remains of the victim were found on 16 August 2000 and later, on 10 July 2002.

COSTS OF THE CRIMINAL PROCEEDING

Pursuant to article 99 of the Provisional Criminal Procedure Code of Kosovo the costs of the criminal proceeding shall be paid from budgetary resources.

DETENTION ON REMAND

Detention on remand will be terminated as and from today and a seperate Ruling will be issued.

R E A S O N I N G

Procedural decisions and administered evidence:

1. The Court decided with the agreement of the Public Prosecutor and the Defense Counsel to apply the Provisional Criminal Procedure Code of Kosovo April 6 2004 (KCCP) in accordance with article 544 of the Procedure Code of Republic of Kosovo (PCRK).

2. The Court upon the submisson of the Public Prosecutor summoned the witnesses J. M. and A. Sh. The injured party Sh. Q. was also summoned.

3. The Court upon the submission of the Defense Counsel summoned the witnesses E. K. and E. K. in relation to the financial situation of the defendant in 1999.

4. The Court in agreement with the Public Prosecutor and the Defense Counsel admitted as evidence statements given by witnesses listed under Presented evidence in accordance with article 368 paragraph 3 of the KCCP and all the listed statements are considered as read during the main trial. The same applies to the written evidence listed under Presented evidence in accordance with article 368 of the KCCP.

5. The Public Prosecutor, the Defense Counsel and the representative of the injured party, Lawyer B R. B. submitted written closing speeches to the Court on 27 July 2014.

Procedural History

6. On 3 June 2008, the District Public Prosecutor in Prizren issued a Ruling on Initiation of Investigation (HP. no. 143/08) against the defendant S V for the criminal offence of Aggravated Murder pursuant to Article 147 paragraph 7 of the Provisional Criminal Code of Kosovo, punishable by imprisonment of at least 10 years or long-term imprisonment.
7. On 9 July 2009 the EULEX District Public Prosecutor issued a Ruling on suspension of investigations against the defendant S V .
8. On 12 June 2010 the defendant was arrested in Croatia on an International Wanted Notice issued on 22 October 2009 by the United Nations Special Representative of the Secretary General. S V was on 6 August 2010 extradited to Kosovo upon the request of the EULEX District Public Prosecutor filed to the Kosovo Ministry of Justice on 22 June 2009.
9. On 6 August 2010 the District Public Prosecutor resumed the investigation against S V . The Pre-trial Judge of the then District Court of Prizren decided to put the defendant in detention on remand.
10. On 10 September 2010 the District Public Prosecutor filed an Indictment (HP.no.143/08; HEP. No. 118/08) against the defendant S V for the criminal offence of Murder pursuant to Article 30 paragraph 2 item 3 of the CLK. In accordance with Article 38 paragraph 2 of the CC SFRY, the indictment was confirmed by the Confirmation Judge on 4 October 2010.

11. The District Court of Prizren commenced the main trial against the defendant S V on 9 December 2010 with the announcement of a verdict on 23 March 2011 by which the defendant was found guilty and sentenced to seventeen years of imprisonment. The detention of remand against the defendant was extended until the verdict became final.

12. During the main trial, the First Instance Court examined the accused, S. V , and the following witnesses were questioned: I M , H K and Sh Q (9 December 2010), B M , A Sh , I B and A B (10 December 2010), M D and G K (24 January 2011), M H and Sh A (25 January 2011), F S and Y B (4 February 2011) and E D (17 March 2011). In addition the following evidende was taken into consideration in accordance with Article 368 paragraph 3 of the KCCP: Crime Scene summary drafted by Kosovo Police dated 17 March 2005: sketch of the place where remains of the victim A Q were found by A B ; Confirmation of Identity as issued by the Office of Missing Persons and Forensics (OMPF) dated 5 December 2002; autopsy report EX2002-126 of the OMPF (FZX01/001BP/MPU 2000) (identification of the remains of the victim); information of the Kosovo Vehicle Information System regarding the vehicle Audi 80 red color in the name of the owner B S dated 15 January 2004: contract on purchase the resptective Audi 80 between the victim Ajdin Qereti and the first owner of the vehicle, N B dated 17 July 1998; contract on purchase the respective Audi 80 between A M and company Venera Tours dated 20 November 2001; vehicle registration documents of the red Audi 80; pictures of the vehicle red Audi 80 as taken by police and the documents sent from the vehicle registration office of Ferizaj/Urosevac.

13. The Defence Counsel of the accused filed an appeal against the verdict and the Representative of the injured party as well and also the District Public Prosecutor of Prizren did timely appeal the verdict and in addition the OSPK challenged the first instance verdict.

14. Based on its findings the Supreme Court of Kosovo on 12 June 2012 Ruled in favor of the Defense Counsel of the defendant S.

V . The Supreme Court of Kosovo granted the filing of the Defense Counsel. The Supreme Court by its Ruling annulled the first instance verdict and the case was returned for retrial to the District Court of Prizren. In the same Ruling the Supreme Court did not grant the Defense Counsel's request to terminate the detention on remand. The filings of the prosecution and the representative of the injured party were not considered in the merits and were put aside.

15. The Disctrict Court of Prizren commenced the retrial on 30 October 2012 and held the session on 17,18,19 and 21 December against the defendant S V . During the retrial the same evidence was administrated as druing the first main trial with the additon of hearing the expert witness A R on 19 December 2012, in his position as the the head of the EULEX department of Forensic Medicine. The statements of the witnesses in the first main trial were read into the court record. The Court decided for various reasons not to summon J M as a witness. The Court did not grant the request filed by the Defense Counsel to summon R B and E. K as witnesses in relation to the financial situation of the defendant S V in the year of 1999 because these persons according to the Court never had access to the financial data of the defendant other than his daily expenses.

16. Based on its findings, on 24 December 2012, the District Court of Prizren announced its verdict and found the defendant S V not guilty and the detention on remand was terminated by the Court.

17. The EULEX Public Prosecutor at the Basic Prosecution in Prizren filed timely an appeal against the verdict of the Basic Court of Prizren and challenged the verdict of 24 December 2012.

18. On 22 January 2014 the Court of Appeals of Kosovo after reviewing the case file and the challenged verdict made the Ruling to grant the Prosecutor's appeal and returned the case for retrial at the Basic Court of Prizren.

19. The EULEX Prosecutor on 23 April 2014 filed an application for Order for Arrest of the defendant S V pursuant to Article 270 (1) in conjunction to Article 281 (1) of the PCPC in order to ensure the commencement of the criminal proceedings.

20. The EULEX Presiding Judge ruled on the Application and granted the request of the Prosecutor on 23 May 2014. The defendant

S V . was arrested and brought before the Presiding Judge for a detention hearing on 23 May 2014.

Presented evidence:

I. Witnesses.

21. During the main trial the statements given by the following witnesses during the first main trial were read into the record:

S Q (statement given on 9 December 2010)
I M (statement given on 9 December 2010)
H K . (statement given on 9 December 2010)
B M . (statement given on 10 December 2010)
A Sh . (statement given on 10 December 2010)
A . B . (statement given on 24 January 2011)
M D (statement given on 24 January 2011)
G K (statement given on 24 January 2011)
Sh A . (statement given on 25 January 2011)
M . H . (statement given on 25 January 2011)
F S (statement given on 4 February 2011)
Y B (statement given on 4 February 2011)
E D . (statement given on 17 March)
A R (statement given on 19 December 2012)

On 23 June 2014 the injured party Sh Q was heard in her capacity as an injured party and witness.
On 23 June 2014 E K and E K were heard as witnesses.
On 23 June 2014 A Sh . was heard as a witness.
On 23 June 2014 J M . was heard as witness.

II. Written Evidence.

22. In addition the following evidence from the files in the case was taken into consideration and regarded as read out in accordance with article 368 paragraph 3 of the KCCP: Crime Scene summary drafted by Kosovo Police dated 17 March 2005; sketch of the place where the remains of the victim A Q were found by A B ; Confirmation of Identity as issued by the Office of Missing Persosn and Forensics (OMPF) dated 5 December 2002; autopsy report

EX2002-126 of the OMPF (FZX01/001BP/MPU) (identification of the remains of the victim); information of the Kosovo Vehicle Information System regarding the vehicle Audi 80 red color in the name of the owner B S dated 15 January 2004, contract on purchase the respective Audi 80 between the victim A Q and the first owner of the vehicle, N B dated 17 July 1998, contract on purchase the respective Audi 80 between A M and company "Venera Tours" dated 20 November 2001; vehicle registration documents of the red Audi 80; pictures of the vehicle red Audi as taken by police and the documents sent from the vehicle registration office of Ferizaj/Urosevac.

III. Hearing of the defendant Skender VOCA.

23. On 27 June 2014 the defendant S V was heard. S V had been heard on several occasions before 27 June 2014; 17 August 2010, 17 March 2011 and 19 December 2012 and as well an interview on 5 March 2004.

The Position of the Public Prosecutor.

24. The Prosecutor submits to the Court that the prosecution has demonstrated beyond reasonable doubt, through the witness statements and testimonies and all material documentary evidence that the defendant S V murdered A Q and submits that S V be convicted of murder for his role in either shooting the victim in the skull or hitting him with a blunt object so hard that it caused his death and then burying the victim in a shallow grave just outside of Karaqice village.

25. The Prosecutor refers to specific factual allegations in his submission regarding the stay of S V at Prizren Hospital, the relationship between S V and the victim and some of the witnesses including A Sh , the event on 8 August and the event on 9 August, and the alleged purchase of the vehicle belonging to the victim and finally the content of the autopsies conducted on 21 September 2000 by the ICTY and 5 December 2002 by the UNMIK Office of Missing Persons and the report of the Forensic Anthropologist dated 3 December 2012 and the expert opinion given by the anthropologist/archaeologist A R .

26. The Prosecutor affirms the case is one of circumstantial evidence. The Prosecutor submitted, based on all the evidence collected and presented in the present case, that the evidence is sufficient to rule out all other possible conclusions other than the victim A Q was murdered and the perpatrator of that murder is the defendant S V .

27. The Prosecutor refers to the following circumstances ;

The defendant was one of the last people to see the victim alive, the defendant had expressed an intention to kill when he, according to the statements of the witness A Sh . (20 February 2004, 13 March 2004, 10 June 2009, 10 December 2010 and 23 June 2014) on 8 August uttered while having a break in a restaurant in Malisheve/Malisevo, to the witness that on the following day (9 August 1999) "he would go with A to Prishtina, he would take his vehicle and we would finish with him since I have heard he is not a good person" . S . V . would not allow A Sh to go with them to Pristina on the 9th August 1999, because hed did not want to have any witnesses. The victim did not want to sell his car, the red Audi 80. The victim's plan was to go to Pristina or to Mitrovica on 9 August 1999. There exists no evidence that the victim wanted to sell his vehicle. S V did not have the money to purchase the vehicle and he did not have any intention to sell the car and no contract of the purchase, the vehicle was never registred in the name of S V , he had not driven the vehicle before buying it and he did not keep the vehicle instead he sold it, because S V wanted the vehicle in order to profit from it. S V never tried to contact the victim after 9 August 1999 and he never returned to Prizren. The defendant knew the vicinity where the body was found very well. S V did not use crutches. He was also seen in Shtime around the date of the disappearence. The victim did not have any ememies. S V . did not say goodbye to Sh A. after leaving his house. Finally S V is familiar with weapons and that the defendant is still today very violent and dangerous.

28. The Prosecutor also submits the defendant S V changed his statements in certain areas when questioned during the different main trials.

The Position of the Defendant.

29. The defendant pleaded not guilty. He was wounded by pieces of shrapnel on 6 June 1999 and had shrapnel in the right leg. He was admitted to a hospital in Kruma, then transferred to Tirana hospital and after that to the hospital in Prizren and after that to Pristina hospital. In total he underwent four operations. He walked with crutches until October-November 1999. He stated that during his hospitilization he became friends with the victim A Q , A Sh and Sh A . The victim A Q and Sh A visited him every day when he was hospitilized. A Q and Sh A took S VOCA to the house of Sh A when he was discharged from the hospital in Prizren. He stayed in the house for approximately one or two weeks. After that he was admitted to the hospital in Pristina. The defendant states that he stayed in the house of Sh A for approximately one or two weeks after he was discharged from the hospital. A Shaban and S Voca became friends as they shared the same room as patients in the hospital. A Q had on occassions driven S VOCA to the hospital in Pristina for check-ups.

30. The defendant stated that on 9 August 1999 together with the victim A Qeriti he left, and they went to a coffe bar Café Kosova in Prizren where he bought the vehicle, a red Audi 80, from the victim. Skender VOCA paid 2.100 DM for the car. No contract was drawn up. Present during the deal there was a person called A from Ferizaj present who also stayed at the hospital in Prizren. S V states that the bought the car with earnings from his work in Germany. After the purchase was done A Q left with three persons whose identiy S V did not know. Skender V left Prizren and went to his sister in Ferizaj. After a short period of time he sold the vehicle for 2.500 DM. at a car market in Pristina while he had difficulties driving it due to his leg injury. He learned about the death of A Q in 2004 when he was interviewed by the police. S V states that he knows Karaqic village because his sister lived in the area before the war. The defendant explains he is a co-owner of property and land in Macedonia as he also was in 1999.

The Court's assessment of the Evidence.

31. The Court reiterates that, in assessing the evidence in the present case, it adopts the well-known standard of proof *"beyond reasonable doubt"* as stated and applied in the Case of *El- Masri v. The Former Yugoslav Republic of Macedonia,* Judgment 13.12.2012 from the European Court of Human Rights.. The Prosecution has to prove its case beyond reasonble doubt .

Factual findings of the Court.

32. The defendant S. V met the victim A Q and Sh A and A Sh in July 1999 when he was hospitalized in Prizren due to a war injury to his leg. S V and the victim spent time together having coffees. When he was discharged from the hospital S V was invited to stay at Sh A house for approximately one to two weeks. On 9 August 1999 the victim A Q left his home at around 07:30 and went to his work place – "Kosova Printing House". He asked the Director of the Printing House, M D , for permission to go to Mitrovica on a private trip and he was then asked to bring ink to the Printing House. He also met his employer G K in the morning at his work place. Before he left his workplace A Q called his wife Sh Q at around 08:45 and told her we would go to Pristina in order to collect equipment for the work place but would return later that day. After this day the victim A Q disapperead and was reported as a missing person.

33. A few days after the disapperance of the victim S. V was driving the car which has belonged to the victim. The car was sold by S. V to A and I M in September 1999 for 2.500 DM in a car market in Pristina. The new owner registered the car in his name in the Car Registration Centre in Ferizaj.

34. After S V left Prizren on 9 August the defendant did not return to the house of Sh A . On 16 August 2000, between Karaqice and Luzhnice villages, human remains were found, namely a fractured skull, bones of the left pelvis, and clothing, namely a pair of brown shoes with laces, a blue short-sleeve shirt and a pair of

brown pants. UNMIK Police were informed and they turned the case over to ICTY in the Hague, the Netherlands. On 15 September 2000 the remains found on 16 August 2000 were removed by ICTY. The blue shirt was and shoes were removed on this occassion. An iron bar was found close to the bones. After the DNA examination it was established the remains were those of the victim A Q . On 10 July 2002 futher remains, one bone from the left arm and one from the left leg, were were discovered approximately at the same location as before. On 15 July 2002 the exhumation team removed the remains. A positive DNA match was made in September 2009 meaning it was confirmed that the remains belonged to the body of the victim. Again on 21 October 2002 additonal remains were found, namely two humeri, one fibula, one radius, several bones, bone fragments, skull fragments and a piece of a denture. These were located at the same site and exhumed by the UNMIK Missing Persons Unit, Exhumation Team. The bones were mixed with hair. A pair of pants and a piece of a black belt were also found. An examination on 5 September 2003 by the UNMIK Office of Missing Persons and Forensics yielded a positive DNA match . Finally on 16 June 2012, a DNA certificate issued by the Department of Forensic Medicine, shows that all of the remains mentioned above belonged to the body of the victim A Q .

35. The autopsies conducted on 21 September 2000 and on 5 December 2002 by the UNMIK Office of Missing Persons (FZX01/001BP) on the bodily remains of A Q and on the clothes of A Q could not clarify the exact modalities and circumstances of the death of A Q therefore it was not possible to determine the manner and cause of death.

36. According to the summarizing report of the Forensic Anthropologist T F , a wound found on the skull was sufficiently severe to have caused death. The injury was caused ante mortem.

37. The expert forensic anthropologist/archaeologist, A R in the main trial on 19 December 2012 stated the following: (page 8 of 48)

Upon the question of the Prosecutor if it was A R understanding that the case of death was injury to the head with a blunt object, the expert Alan Robinson answered the following (page 7 of 48):

"That is one possibility. We cannot reject other possibilites. Simply we don't have enough material to reconstruct the trauma accurately."

Upon the prosecutor's question if the injury to the scull would have been severe enough to cause death A R stated:

" In this case it would seem that way yes."

Upon the question of the defense counsel S M if one can state that the anthropology expert could not precisly determine the cause of death, Alan Robinson stated the following: (page 8 of 48)

"We havet o be careful to make an important difference; a violent trauma is evident in the remains and the two most likely possibilites are blunt injury,administering a blow to the head with a lot of enery, or a gunshot to the head; but as I pointed out before because we could not reconstruct the entire scull then determination of cause of death is not possible, it just mentions the likeliest possibilities."

"There was a reconstruction attempted, but unfortunatley too many bits were missing."

Upon a question referring to the date of death A R gave the following answer:

"With skeletal remains this is difficult especially with old cases and the methodology belonging to another field that studies insects that go into body cavities. This usually happens over a short space of time. The other way is to find artefacts that can be dated, but they only indicate and do not give a precise date. From the file I cannot see any such information that would tell us this."

Findings of the Court

38. The court finds there is a lack of direct evidence linking the alleged perpertrator to the crime he is charged with. In order to find the necessary link between the alleged crime and the perpetrator a chain of circumstantial evidence and indications must be so close that the requirement of the standard of proof *beyond reasonable doubt* has been met. This is not so in the present case.

39. In relation to the issue of the death of the victim A Q and the alleged murder the Court relies on the expert witness A R statement on 19 December 2012. He states that the DNA examination resulted positive to match the remains of the body to the remains of the body of the victim A Q . He further convincingly states that the cause of death was not possible to determine because a reconstruction of the entire scull was not possible. A R . also stated that a blunt object causing the injury in the scull is one possibility but one cannot reject other possibilities. He said the experts did not have enough material to reconstruct the trauma accurately. Also the time of death could not be established. The Court read the report of T F . A R opinion is supported by the autopsies and conclusions by the ICTY on 21 September 2000 (NW01/001BP) and by the UNMIK office of Missing Persons (FXZ01/001BP) on 5 December 2002

40. The Court finds, based on the expert witness and the documentary evidence of autopsies, that the cause of death, the time of death, how and where the alleged crime was commited has not been established. No other evidence in the presentation of evidence can shed any light on these issues.

41. The Court also notes a lack of evidence that would link the perpetartor to the locations were the remains of the body of the victim A Q were found. There was no forensic evidence on the collected clothing , that could link the remains of the body of the victim to the defendant, or any other evidence that could suggest a link between the potential crime site and the defendant, for example the observations of witnesses or even hearsay evidence.

42. On the other hand there is some evidence to suggest the defendant could have been involved in the disappereance of the victim. The defendant S V allegedly joined the victim on last day (9 August 1999) the victim was seen alive according to the statement of S V and hearsay evidence given by the wife of the victim Sh . Q .. S. V drove the vehicle one or two days after the victim's disapperance. According to his statement S V was familiar with the terrain in the area where the remains of the victim were found. S. V . did socialize with the victim and they were friends. These circumstances do constitute a certain level of incriminating evidence for the defendant but the

level is not high enough to conclude that the defendant has committed the crime he is charged with.

43. The following circumstantial evidence has been addressed by the prosecutor to establish the sufficient chain of evidence to reach the treshold of guilt (i.e. proven beyond reasonable doubt).

The assumption that the defendant was one of the last persons to see the victim alive does not provide a sufficient link between the defendant and the disapperance of the victim. Even if it is the case that the defendant was one of the last persons to see the victim alive on the day 9 August 1999 that does not constiute evidence he murdered the victim. There is a possibility that any other person besides the defendant could have been involved in the disappearance of the victim. S V states that he was picked up by the victim on that day at the house of Sh A Sh Q states that she had got the information from A Sh and Sh A that S V left the home of the latter and together with a person named J M left for Pristina. During his testimony the witness J M denied any knowledge of the names S V and A Sh . He stated he had heard the name A Q but dit not know him. During the time frame of the indictment the witness did not work (?) in the Prizren area. The Court assesses that it seems reasonable that the witness J M was not with the defendant on 9 August 1999. The Court cannot discount the conclusion that the information Sh Q received from Sh A and A Sh was not correct.

44. The witness M H , who was the owner of the " " gas station between Prizren and Gjakova, stated that he saw the victim together with two other unidentified persons in the victim's car but he was not sure about the exact day this occured. The witness mentioned that he often had the victim as a customer and did not pay attention if the victim had any other passangers in his car when he filled the car with petrol. From this evidence it is not possible to determine if the victim on 9 August 1999 had or not passengers in this car.

45. The intention to kill the victim cannot be concluded soley from the conversation the defendant had with the witness A Sh on 8 August 1999 in Malisheve during a break in a restaurant. According to the witness A Sh the defendant said; *"he would go with A to Prishtina, he would take his vehicle and we would finsih with him, because... A Q is not a good man"*. The Court finds that

this statement does not consitute an expression of intention to kill another person. The meaning of this statement by the defendnat can be intrepreted as the defendant expressed the view that he was going to come to an end about the negotiations with the victim in order to buy his car. It could also mean that he did not want to be his friend any longer. In a previous statement A Sh stated that the defendant had said at this occiasion " He is not a friend, he is not a good person." If A Sh had at the time regarded this statement by S V as an intention to kill the victim it would have been expected that A Sh would have warned the witness not to travel with S V . No evidence suggests this. The statement of A Sh dated 17 March 2011 in the main trial should also be taken into consideration. According to the latter witness A Sh , on the way to Pristina the victim said that he wanted to sell the car and that the defendant would find him a buyer. There is no suggestion in the evidence that the defendant expressly stated that he would kill the victim on 9 August 1999.

46. With reference to the statement given by A Sh , that the defendant did not allow A Sh to go with the defendant and the victim to Pristina on 9 August 1999 the Court finds the following. In the statement of A Sh on 23 June 2014 S V had said regarding the trip that "We have some work to do, we can't take you along". To draw a conclusion that this circumstance would suggest an intention on the part of the defendant to kill the victim is in the opinion of the Court far-fetched. The meaning of what was said could be interpreted as it is was said, namely that the defendant and the victim would have some business to do and that it would be best for them to do that by themselves. The sentence uttered by the defendant on this occassion cannot according to the Court be intrepreted as an intention by the defendant to kill the victim. The witness A Sh in his statement states that the defendant and the victim planned to go to Pristina on 9 August 1999.

47. The Prosecutor also submits that the defendant had a motive to kill the victim because he wanted to have the possesion of the vehicle of the victim, the Audi 80. The defendant has on several occasions stressed that he did purchase the car from the victim on 9 August 1999. The purchase took place at the "Cafe Kosova" near to the hospital in Prizren. The defendant paid an amount of 2.100 DM to A Q . A person named A who allegdly lived in Ferizaj and was known by face and surname to the defendant, had witnessed the

purchase according to S V . . . The Prosecutor submitts that no purchase occurred on the 9 August between S . . V . . and the victim. He makes this conclusion based on the following circumstances;

48. According to the wife of the victim, Sh Q , the victim did not have any intetion to sell the car and the couple were financially stable in August 1999. However, it should be be noted, the victim did not tell his wife on 8 August 1991 about his plans to go to Pristina on 9 August 1999, he did this first in the morning when he called his wife from his work to inform her about the trip to Pristina. This indicates that the victim had some business with the defendant of which his wife did not know and the victim did not want her to know. It is a possibility that he had an intention to sell his car but did not want to involve his wife into this. The victim did have more than one car at the time according to the statement of the wife which means that he would have a vehicle even after selling his Audi 80. The prosecutor states that the defendant did not have enough money to buy the car.

49. According to the statement of the defendant he possessed about 6000 – 7000 DM from the work he did in Germany. He was also given money from his father and in addition he had a pension. The defendant was also the co-owner of land and property in Macedonia. The Court assesses that at the time the defendant had the financial resources to buy the car.

50. The Prosecutor also submitts that the lack of any written contract regarding the purchase of the car would indicate that the purchase did not occur. The Court is of the view that one must take into consideration the specific conditions in Kosovo during the time period the alleged murder occurred. Kosovo was at the time a war-torn country which meant that the conditions were different from a more political stable territory. The absence of a written contract regarding the purchase of the car does not in the opinion of the Court constitute a conclusion that the defendant was responsible for the death of the victim. Nor does the circumstane that S V did not keep the car but sold it for 2.500 DM. On the contrary this has subsidary relevance, given that the price the defendant allegedly has paid, 2.100 DM and the price he recieved 2.500 DM from the next

buyer are quite low, even taking into consideration the value of money at the time in question. The Court assesses that the reason given by the defendant for why he sold the vehicle is acceptable and does not constiute an indication that the defendant committed the alleged crime he is charged with.

51. The alleged witness to the purchase ( ) could not be found. S V gives a reasonable explanation in the statement of 19 December 2012 and 27 June 2014; He states that he got to know A from the hospital in Prizren. S V could not find out the surname of A because the police at the time said they would and he was told by the police not to speak with any witnesses or go to Prizren. The Court takes the view that this explanation is plausible and acceptable.

52. S V stated he used to visit family in the area where the remains of the body of the victim were found. This is a circumstantial evidence, however it does not provide an exclusive link between the defendant and the area where the remains were found. Even the statement of the witness H K living in Shtime at the time, stating that the defendant came to his house one afternoon driving a red Audi does not change the Court's view.

53. The Prosecutor also refers to the defendant's knowledge of weapons as a further piece of circumstantial evidence. The Court is of the view that through his time as a KLA soldier the defendant acquired a knowledge of weapon as would any other soldier.

54. The Court finds the health of the defendant in August 1999 and onwards of interest. It is a fact the S V was injured in June 1999 by a shrapnel in his right leg. He was hospitalized in different hospitals and underwent several operations. He used crutches and according the witness A Sh the defendant was a little lame. The injury and the number of operations must have affected his health condition and his ability to walk and put weight on his wounded leg. Parts of the remains of the body of the victim were found near Karaqice village. This area is according to Skender Voca and Google Earth an extremely rural area. The location of the remains of the body of the victim were located 7-8 kilometers from the village of Karaqice. The Court is of the view that, taking the health condition of the defedant into consideration, it is not likely that he would be able to carry a heavy body a long distance in a rural area or even to

use a horse as a means of transportation as this would create the same problem. If the defendant and the victim would have been walking together in that rural, isolated area and to assume that the defendant then killed the victim in that area does not seem likely. The Court assesses that the health condition of the defendant and the location of the remains of the body cast doubt over the liklehood that the defendant committed the alleged crime.

55. The Court cannot establish any realible motive for the defendant to deprive the victim of his life taking the overall presented circumstances into consideration. They were friends, the victim did support the defendant, he helped him to find an accomodation after being discharged from the hospital in Prizren, he socialized with the victim and the victim also on several occassions provided lifts for the defendant to the hospital in Pristina. The defendant had some income resources at the time and was the co-owner of land and property. The Court cannot find a strong motive for the defendant to have committed the crime he is charged with.

56. The Prosecutor stated the defendant S. V has changed his story on serveral occassions during the investigation and the three main trials. The Court is of the opinion that ten years has ellapsed since the questioning in 2004 with the natural consequence that his memory does not always serve the defendant well. S V has on several occassions explained in various statements that he does not remember, he forgets due to the time that has passed. The Court finds this explanation acceptable.

57. The Prosecutor has in his written and oral closing speech alleged that the defendant had by either shooting the victim in the skull or hitting him very hard with a blunt object caused the death of the victim. The Court notes specially that in the presentation of the evidence by the prosecutor no reference has been made to any weapon used by the defendant other than the defendant confirming he has a knowledge of weapons due to his time as a soldier. There is no evidence at all indicating that the defendant was in possesion of a weapon at the time of the alleged murder.

CONCLUSION

The Court cannot, after having carefully scrutinized all evidence of the case and having heard all the proposed witnesses and injured party conclude beyond reasoable doubt that the defendant is responsible for the death of the victim A Q either by shooting the victim in the skull, or hitting him with a blunt object so hard that it caused his death and then burying him in the shallow grave outside Karaqice village.

The Court finds that the cause of death of the victim A Q is not established or in which circumstances the victim was deprived of this life, and how the alleged murder has been conducted and where exactly the alleged crime was committed and when. In the presentation of evidence the Court can conclude that the evidence contains less direct evidence but more indications and circumstantial evidence. The Court finally concludes that in the present case there exists circumstantial evidence however it is not proven beyond reasonable doubt that these circumstances when taken together reach the conclusion the defendant committed the crime he is charged with.

Legal assessment.

The defendant has to be accuitted of the crime he is charged with according to article 390 paragraph 3 of the Provisonal Criminal Code of Kosovo (KCCP).

For this reason it has been decided as in the enacting clause.

Presiding Judge Marie Tuma

Judge Skender Çoçaj

Judge Artan Sejrani

Court Recorder Vlora Johnston

Legal remedy:

An appeal must be announced within 8 days from the announcement of this verdict and shall be filed with the court of first instance, pursuant to Article 400 paragraph 1 of the KCCP.

Authorized persons may file an appeal in written form against this verdict through the Basic Court of Prizren to the Court of Appeals within fifteen days from the date the copy of the judgment has been served, pursuant to Article 398 paragraph 1 of the KCCP.