

BASIC COURT OF MITROVICË/MITROVICA

Criminal case P.no. 61/2016

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICË/MITROVICA, in the Trial Panel composed of EULEX Judge Iva Niksic as Presiding Judge, and EULEX Judges Franciska Fiser and Rene Van Veen as Panel Members, with the participation of EULEX Legal Advisor Dukagjin Kerveshi as Recording Officer, in the criminal case P.nr. 61/2016 against:

R.R._____, nickname K. _____, father's name Z. _____, mother's name V.B. _____, born on __ __ ____, in _____, resides in _____, _____, _____, _____, citizen of Kosovo, _____ in _____, _____, _____, monthly income ____ Euros

and

M.V._____, nickname _____, father's name D._____, mother's name M._____, born on __ __ ____, in _____, _____, resides in _____, _____ street No. _____, _____, occupation: _____, _____, _____ of _____ and _____, _____, _____, monthly income ____ – ____ Euros;

Both accused through the Indictment of the State Prosecutor in Mitrovica dated 07 May 2014, filed with the Court Registry on 08 May 2014, and the Modified Indictment dated 07 September 2016, with the criminal offences of:

1. **Aggravated Murder**, described and punishable under Articles 146 and 147(4), (6), (8) and (10) of the Criminal Code of Kosovo, UNMIK/REG/2003/25 (CCK) as read in conjunction with Article 23 of the CCK *parimateria* of Articles 178 and 179 (1.5), (1.7),

(1.9) and (1.10) of the Criminal Code of the Republic of Kosovo, Code No. 04/L-082 (CCRK) as read in conjunction with Article 31 of the CCRK;

2. **Attempted Aggravated Murder**, described and punishable under Articles 146 and 147(4), (6), (8) and (10) of the CCK as read in conjunction with Articles 20 and 23 of the CCK *parimateria* of Articles 178 and 179 (1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK;
3. **Unauthorized Ownership, control, possession or use of a weapon**, described and punishable under Article 328(1) and (2) of the CCK as read in conjunction with Article 23 of the CCK *parimateria* with Article 374 of the CCRK as read in conjunction with Article 31 of the CCRK;
4. **Obstructing official persons in performing official duties** described and punishable under Article 316(1) and (3) of the CCK as read in conjunction with Article 23 of the CCK *parimateria* of Article 409(1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK;
5. **Endangering public traffic by dangerous act or means**, described and punishable under Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK *parimateria* of Article 380(1) of the CCRK as read in conjunction with Article 31 of the CCRK;
6. **Causing general danger**, described and punishable in Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK *parimateria* of Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK;
7. **Participating in a crowd committing a criminal offence** described and punishable under Article 320(1) of the CCK as read in conjunction with Article 23 of the CCK *parimateria* of Article 412 of the CCRK as read in conjunction with Article 31 of the CCRK;

After having held the Main Trial hearings, on 07, 14, 15, 19, 20 and 26 September 2016, 07, 10 and 17 October 2016, 16 and 18 November 2016, in the presence of the Prosecutor, the Injured Parties D.Z. _____ and M.Z. _____, the Injured Parties Representatives Burhan Maxhuni and Eron Prekazi, Defendnt **R.R.** _____, his Defence Counsels Zivojin Jokanovic and Nebojsa Vlajic, and Defendant **M.V.** _____ and his Defence Counsel Agim Lushta;

Following the Trial Panel's deliberation and voting, pursuant to Article 366 Paragraph (1) of the CPC, on 21 November 2016, in a public hearing and in the presence of the State Prosecutor, the Injured parties and their Representative, and Defendants and their Defence Counsels;

Renders the following:

J U D G M E N T

I Pursuant to Article 364., Paragraph 1., Item 1.3 of Criminal Procedure Code of Kosovo (CPCCK), the Defendant **R.R.** _____ and the Defendant **M.V.** _____ are found **not guilty** and hereby

A C Q U I T T E D

of the following charges (Count 1. of the Indictment) :

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of _____ and the village of _____ in the Municipality of _____, the defendants **R.R.** _____ and **M.V.** _____ in co-perpetration with defendants, **B.R.** _____ (nickname **D.I.** _____), **J.D.** _____ and **K.R.** _____ acting jointly and participating together by substantially contributing through his unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of Aggravated Murder depriving the life of **E.Z.** _____ for racial and national motives due to his _____ and _____ nationality at the time when **E.Z.** _____ was executing his lawful duties of protecting legal order, protecting the legal order, safeguarding persons or property, safeguarding persons or property and keeping public order and peace and in doing so intentionally endangered the life of passengers in the car,

- and, by doing so, committed the criminal offence of **Aggravated Murder** described and punishable under Article 146 and 147 paragraphs 4, 6, 8 and 10 of the Criminal Code of Kosovo (CCK) as read in conjunction with Article 23 of CCK parimateria with Articles 178 & 179 , Items 1.5, 1.7, 1.9 and 1.10 of the Criminal Code 2013 (CC 2013) as read in conjunction with Article 31 of CC 2013.

II Pursuant to Article 364., Paragraph 1., Item 1.3 of Criminal Procedure Code of Kosovo (CPCK), the Defendant **R.R.** _____ and the Defendant **M.V.** _____ are found **not guilty** and hereby

A C Q U I T T E D

of the following charges (Count 2. of the Indictment):

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of _____ and the village of _____ in the Municipality of _____, the defendants **R.R.** _____ and **M.V.** _____ in co-perpetration with defendants, **B.R.** _____ (nickname D.1. ___), **J.D.** _____ and **K.R.** _____ acting jointly and participating together by substantially contributing through his intentional and unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of Attempted Aggravated Murder to deprive the lives of other passengers (____ B.M. _____ and D.P. _____) in the car with the deceased injured party **E.Z.** _____ for racial and national motives due to his _____ and _____ nationality at the time when **E.Z.** _____ was executing his lawful duties of protecting legal order, protecting the legal order, safeguarding persons or property, safeguarding persons or property and keeping public order and peace and in doing so also intentionally endangered the lives of ____ B.M. _____, **D.P.** _____ and other ____ in the convoy of vehicles at the *locus in quo*,

- and, by doing so, committed the criminal offence of *Attempted Aggravated Murder*, described and punishable under Articles 146 and 147 paragraphs 4, 6, 8 and 10 of the Criminal Code of Kosovo (CCK) as read in conjunction with Articles 20 and 23 of CCK *parimateria* with Articles 178 & 179, Items 1.5, 1.7, 1.9 and 1.10 of the CC 2013 as read in conjunction with Articles 28 and 31 of CC 2013.

III Pursuant to Article 364., Paragraph 1., Item 1.3 of Criminal Procedure Code of Kosovo (CPCK), the Defendant **R.R.** _____ and the Defendant **M.V.** _____ are found **not guilty** and hereby

A C Q U I T T E D

of the following charges (Count 3. of the Indictment):

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of _____ and the village of _____ in the Municipality of _____, the defendants **R.R.** _____ and **M.V.** _____ in co-perpetration with defendants, **B.R.** _____ (nickname D.1.____), **J.D.** _____ and **K.R.** _____ acting jointly and participating together by substantially contributing through his unlawful conduct and actions being part of the named group of persons in the commission of the criminal offence of Unauthorized ownership, control or possession of weapons controlled and possessed a weapon used in the Aggravated Murder of E.Z. _____ in violation of the applicable law relating to such weapon,

- and, by doing so, committed the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons*, described and punishable under Article 328 paragraphs 1 and 2 of CCK as read in conjunction with Article 23 of CCK *parimateria* with Article 374 of the CC 2013 as read in conjunction with Article 31 of CCK 2013.

IV Pursuant to Article 364., Paragraph 1., Item 1.3 of Criminal Procedure Code of Republic of Kosovo (CPCRK), the Defendant **R.R.** _____ and the Defendant **M.V.** _____ are found **not guilty** and hereby

A C Q U I T T E D

of the following charges (Count 5. of the Indictment):

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of _____ and the village of _____ in the Municipality of _____ the defendants **R.R.** _____ and **M.V.** _____ in co-perpetration with defendants, **B.R.** _____ (nickname D.1. ____), **J.D.** _____ and **K.R.** _____ acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons destroyed, removed and seriously damaged the _____ to _____ public highway in the area located between the Vilages of _____ and _____, _____ giving erroneous signs, signals, placing obstacles and barricades on the said public road thereby endangering traffic, human life, the physical safety and properties on a large-scale.

- and by doing so committed the criminal offence of *Endangering Public Traffic by Dangerous Acts or Means* described and punishable under Article 299, Paragraph 1 of CCK as read in conjunction with Article 23 of CCK *parimateria* with Article 380 (1) of CC 2013 as read in conjunction with Article 31 of CC 2013.

V Pursuant to Article 364., Paragraph 1., Item 1.3 of Criminal Procedure Code of Republic of Kosovo (CPCRK), the Defendant **R.R.** _____ and the Defendant **M.V.** _____ are found **not guilty** and hereby

A C Q U I T T E D

of the following charges (Count 6. of the Indictment):

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of _____ and the village of ____ in the Municipality of _____, the defendants **R.R.** _____ and **M.V.** _____ in co-perpetration with defendants, **B.R.** _____ (nickname D.1. ____), **J.D.** _____ and **K.R.** _____ acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons destroyed, removed and seriously damaged the _____ to _____ public highway in the area located between the Villages of _____ and _____, _____ by weapons, other obstacles and barriers which caused the death of **E.Z.** _____ and substantial material damage to the public highway and vehicles of _____ _____ and great danger to other _____ _____ present in the vehicles convoy at the *locus in quo*,

- and by doing so committed the criminal offence of *Causing General Danger* described and punishable under Article 291 paragraphs 1, 3 and 5 of CCK as read in conjunction with Article 23 of CCK *parimateria* with Article 365 of the CCK 2013 as read in conjunction with Article 31 of CCK 2013.

VI Pursuant to Article 364., Paragraph 1., Item 1.3 of Criminal Procedure Code of Republic of Kosovo (CPCRK), the Defendant **R.R.** _____ and the Defendant **M.V.** _____ are found **not guilty** and hereby

ACQUITTED

of the following charges (Count 7. of the Indictment):

On the 26th of July 2011 between the hours of 13:30 hours to 14:15 hours in the area located between the village of _____ and the village of _____ in the Municipality of _____, the defendants **R.R.** _____ and **M.V.** _____ in co-perpetration with defendants, B.R. _____ (nickname D.1. ____), J.D. _____ and K.R. _____ acting jointly and participating together by substantially contributing through his intentional unlawful conduct and actions being part of the named group of persons participated in the assembled crowd who gathered at the *locus in quo* which by their collection action deprived E.Z. _____ causing general danger, damage to vehicles of _____ on a large scale and other criminal offences of grave violence against the _____ present in the vehicles convoy at the *locus in quo*,

- and by doing so committed the criminal offence of ***Participating in a Crowd Committing a Criminal Offence*** described and punishable under Article 320 paragraph 1 of CCK as read in conjunction with Article 23 of CCK *parimateria* with Article 412 of the CCK 2013 as read in conjunction with Article 31 of CCK 2013.

VII Defendant **R.R.** _____ and the Defendant **M.V.** _____ are

FOUND GUILTY

of the charge under count 4. of the Indictment, because it was proven that they committed the following action:

On the 26th of July 2011, between 13:30 - 14:15 hours, in the area located between the village of _____ and the village of _____ in the Municipality of _____, the defendants **R.R.** _____ and **M.V.** _____ in co-perpetration with other persons, acting jointly and participating together by substantially contributing through intentional and unlawful conduct and actions, being part of the group of persons who, while _____, the _____ (_____), convoy proceeding towards Gate _____, they blocked the road with four to five vehicles, created a barricade and forced the _____ convoy to stop, and then, they confront the _____ by screaming and making gestures at them to go back not obeying the _____'s order to remove the cars, but continued screaming and

shouting at the officers, gesturing and raising three fingers and middle fingers at them, and when the _____ armoured vehicle, according the order of the operation leader, pushed away the vehicles of the barricade in order the _____ convoy to proceed, they left the barricade and entered the woods hereupon shooting started against the _____ vehicles from three different directions, and the one of shots hit member of the _____ Unit E.Z. _____, and it lasted until the convoy pulled back moving in the direction of Mitrović/a,

- and by doing so they committed the criminal offence of *Participation in a Group Obstructing Official Persons in Performing Official Duties* described and punishable under Article 318, Paragraph 2 of the CCK, whereby the Court requalifies the original charge of Obstructing Official Persons in Performing Official Duties in violation of Article 316 paragraphs 1 and 3 of CCK as read in conjunction with Article 23 of CCK currently criminalized under Article 409 paragraphs 1 and 2 of the CCRK as read in conjunction with Article 31 of the CCRK.

Therefore, pursuant to Article 318, Paragraph (1) of the CCK,

1. Defendant **R.R.** _____ is hereby

C O N V I C T E D

To 2 (two) years of imprisonment,

but, in accordance with Article 43 Paragraph (1) and Article 44 Paragraph (2) of the CCK, **this punishment shall not be executed if the convicted R.R. _____ does not commit another criminal offense for a verification period of 4 (four) years.**

Pursuant to Article 73 Paragraph (1) of the CCK the time of being in detention on remand and during the deprivation of liberty in relation to **defendant R.R. _____, respectively from 11 April 2014 until 22 April 2015** shall be included in the punishment of imprisonment in the case of revocation of the suspended sentence and execution of the punishment.

2. Defendant **M.V.** _____ is hereby

C O N V I C T E D

to 1 (one) year and 6 (six) months of imprisonment.

but, in accordance with Article 43 Paragraph (1) and Article 44 Paragraph (2) of the CCK, **this punishment shall not be executed if the convicted M.V._____ does not commit another criminal offense for a verification period of 3 (three)years.**

VIII Pursuant to Article 463 Paragraph (2) of the CPC, the injured parties D.Z. _____, B.M. _____, D.P. _____ are invited to seek any compensation claim in relation to this case through the civil courts.

IX Pursuant to Article 451, Paragraph (1) and Article 453, Paragraphs (1) and (4) of the CPC, the defendant **R.R.**_____ shall pay 400,00 Euro as part of the costs of criminal proceeding, but is relieved of the duty to reimburse the remaining costs. Defendant **M.V.** _____ shall pay 300,00 Euro as part of the costs of criminal proceeding, but is relieved of the duty to reimburse the remaining costs.

The Defendants must reimburse the ordered sum no later than 30 days from the day this Judgment is final.

R e a s o n i n g

Procedural background

On 08 May 2014, the Prosecution of the EULEX Prosecution Office of Mitrovicë/a filed an Indictment PP.nr. 103/2011 dated 07 May 2014 against the Defendants **R.R.**_____ and **M.V.**_____, thereby charging them both with the criminal offences of “Aggravated Murder”, described and punishable under Articles 146 and 147 Paragraphs (4), (6), (8) and (10) of the CCK as read in conjunction with Article 23 of the CCK, “Attempted Aggravated Murder”, described and punishable under Articles 146 and 147 Paragraphs (4), (6), (8) and (10) of the CCK as read in conjunction with Articles 20 and 23 of the CCK, “Unauthorized Ownership, Control, Possession or Use of Weapons”, described and punishable under Article 328 Paragraphs (1) and (2) of the CCK as read in conjunction with Article 23 of the CCK, “Obstructing Official Persons in Performing Official Duties” described and punishable under Article 316(1) and (3) of the CCK as read in conjunction with Article 23 of the CCK, “Endangering Public Traffic by Dangerous Acts or Means” described and punishable under Article 299(1) of the CCK as read in

conjunction with Article 23 of the CCK, “Causing General Danger”, described and punishable under Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK and “Participating in a Crowd Committing a Criminal Offence”, described and punishable under Article 320(1) of the CCK as read in conjunction with Article 23 of the CCK.

The first Main Trial Proceedings in criminal case 59/2014 were opened on 19 January 2015 and concluded on 20 April 2015, with the acquittal of both Defendants for all charges when the verdict was announced. Based on that verdict, both the Accused, **R.R.** _____ and **M.V.** _____ were found not guilty of all charges.

On 08 June 2015, the Prosecutor filed an Appeal against the mentioned First Instance Court Judgment.

Following the Appeal of the EULEX Prosecutor filed against that Judgment, on 29 April 2016, the Court of Appeals of Kosovo, by its Ruling PAKR 355/2015, granted the appeal, annulled the Judgement and the case returned to Basic Court of Mitrovica for retrial.

On 07 September 2016, the Main Trial proceedings re-opened against the Accused, **R.R.** _____ and **M.V.** _____, this time under case number P. 61/2016. The Judgement was announced on 21 November 2016.

Under Article, 11 Paragraph (1) of the Law on Courts, Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.

Article 9, Paragraph (2) Subparagraph (2.7) of the same Law states that the Basic Court of Mitrovicë/Mitrovica is established for the territory of the Municipalities of Mitrovicë/Mitrovica South and Mitrovicë/Mitrovica North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zveçan, Skenderaj/Srbica and Vushtrri/Vučitrn. Based on the filed Indictment, the alleged criminal offences have taken place in Mitrovicë/Mitrovica and, therefore, within the territorial jurisdiction of the Basic Court of Mitrovicë/Mitrovica.

According to Article 15, Paragraph (1) Subparagraph (1.11) of the above mentioned Law on Courts, the criminal offence of ‘Aggravated Murder’ falls within the jurisdiction of the Serious Crimes Department of the Basic Court. Therefore, the entire case was adjudicated by the Serious Crime Department. The same competence was retained also during the Re-Trial proceedings and as per the above cited Law.

Evidence presented during the course of the Main Trial

During the course of the Main Trial the following Witnesses were heard:

- _____ E.D. _____ was heard on 14 September 2016,
- _____ I.A. _____ was heard on 14 September 2016,
- _____ I.S. _____ was heard on 15 September 2016 and during the site visit on 07 October 2016;
- _____ N.S. _____ was heard on 15 September 2016,
- _____ S.S. _____ was heard on 15 September 2016,
- _____ D.P. _____ was heard on 19 September 2016,
- _____ F.U. _____ was heard on 20 September and on 10 October 2016 and
- _____, expert witness was heard during the site visit on 07 October 2016.

On 7 October 2016 the Trial Panel undertook the site visit on the crime scene.

During the Main Trial the parties agreed that the following witness statements previously given during first Main trial in this case, to be read:

- statement of witness V.K. _____ given on 29 January 2015,
- statement of witness F.Z. _____ given on 29 January 2015,
- statement of witness M.J. _____ given on 30 January 2015,
- statement of witness B given on 27 February 2015,
- statement of witness F.F. _____ given on 09 March 2015,
- statement of witness I.L. _____ given on 09 March 2015,
- statement of witness B.M. _____ given on 09 March 2015,
- statement of witness B.P. _____ given on 12 March 2015,
- statement of witness K.H. _____ given on 12 March 2015,
- statement of witness M.S. _____ given on 12 March 2015,
- statement of witness F.A. _____ given on 12 March 2015,
- statement of witness G.C. _____ given on 12 March 2015,
- statement of witness H.H. _____ given on 12 March 2015,
- statement of witness K.K. _____ given on 12 March 2015,
- statement of witness A.I. _____ given on 17 March 2015,
- statement of witness G.D. _____ given on 17 March 2015,
- statement of witness V.R. _____ given on 17 March 2015,
- statement of witness S.V. _____ given on 17 March 2015,
- statement of witness Z.J. _____ given on 17 March 2015,
- statement of witness Z.M. _____ given on 18 March 2015,
- statement of witness S.V.1. _____ given on 18 March 2015,
- statement of witness M.K. _____ given on 18 March 2015,

- statement of witness Z.D. _____ given on 18 March 2015,
- statement of witness D.D. _____ given on 12 March 2015.

The following documents were accepted as evidence:

INDEX-1 (Police documents) :

1. Police report-KP#2063, pages 10-11;
2. TF report-location of _____ in report, pages 12-32;
3. Initial /Incident report, pages 33-34;
4. Follow up flash report, pages 35-38;
5. Follow up flash report, pages 39-42;
6. Information report-Sgt. H. _____, pages 45-48;
7. Information on suspects, pages 49-54;
8. Operation and Communication Centre- "Bravo Control" 25-26.07.11;
9. Summary report on incidents, pages 108-113;
10. Summary report about the events, pages 114-122;
11. Investigators report-KP R.P. _____, pages 123-124;
12. Investigators report-KP R.G. _____, pages 125-126;
13. Information report, pages 129-136;
14. Operation Special Unit Mitrovica, pages 137-148;
15. Report on the examination of the crime scene, pages 149-164;
16. Crime scene report, pages 165-168;
17. Summary report about the event, pages 169-182;
18. Crime scene investigation report, pages 188-189.

INDEX-2 Prosecution Documents (binder 2)

1. KP memo-Report on operational investigative actions-Sgt. J.B. _____, pages 306-308;
2. Officer's report-KP M.A. _____ # 5789, page 309;
3. Officer's report-KP S.V.2 _____ # 7150, page 310;
4. Officer's report – KP M.A. _____ # 5789, page 314.

INDEX-3/1 (Police documents):

1. TFM report – Concerning the processing of the crime scene, pages 331-338;
2. Report about incident details, pages 339-340;
3. TFM report-Witness interview F.U. _____, pages 341-344;
4. TFM report – TFM AS # 1 witness, pages 345-348;
5. Investigation report, pages 363-365;
6. Location of _____ in convoy, pages 366-367;
7. Crime scene photos from _____, pages 390-391;

8. Official report –Investigator N.P. _____, page 392;
9. TFM report -Concerning the processing of the crime scene, pages 395-398;
10. TFM report-Concerning the witness F.U. _____ statement, pages 399 -418;
11. Interview of _____ I.A. _____, pages 419-430;
12. Re-interview of the witness F.U. _____, pages 431-436;
13. TFM report – 6 albums of the suspects, pages 437 -451;
14. Capture of Public Video Crime Scene, pages 452-506;
15. TFM report-Additional Photo Album, pages 511-515;
16. Photo album -15.08.2011, pages 516-521;
17. Follow up – report on report # 15 from 05.08.2011, pages 526-537;
18. TFM report concerning the interview of the witness D.E. _____, pages 538-549;
19. RIU examination of two cars involved in the road block, pages 550-555;
20. Photos of “Workshop /scrap yard”, pages 556-559;
21. Seized evidences, pages 560-565;
22. Recovery of evidence, pages 566-577;
23. TFM Report on agreement with a cooperative witness M.1. _____ to handover two vehicles, pages 588-593;
24. Database check on weapons records authorization for possession of firearms of _____ murder suspects, pages 588-593.

INDEX-3/2 (Police documents):

1. Summary of statement witness M.D. _____, pages 596-601;
2. TFM report-D. E. _____, pages 602-609;
3. TFM report- Search of VIN – _____, pages 628-633;
4. Photos of the heavily damaged vehicle “ _____ ”, pages 643 -645;
5. Customs documents, pages 646-652;
6. Copy of the driving license M.N. _____, pages 653-654;
7. TFM Report-Seizure of vehicle D.J. _____, pages 661-666;
8. Exhibition from Operation _____ – 08.09.2011, pages 674-675;
9. Securing of evidence during the Operation _____, pages 681-682;
10. Search Report- Operation _____, pages 683-684;
11. TFM report crimes scene search, pages 687-688;
12. OCIU Report-House Search, pages 698-704;
13. Photos of the found items, pages 705-707;
14. Description of the evidence, pages 708-709;
15. OCIU report Search of the house of **M.V.** _____, pages 710-712;
16. OCIU report Search of the house of **R.R.** _____, pages 721-723;
17. Description of evidence, pages 724-725;
18. Picture map attached to the search report, page issued 31.08.2011, pages 726-733;
19. TFM report- recovery of evidence from the crime scene, pages 738-746;

20. Response to request issued by _____ d.o.o Balgrade with attachments, pages 765-784;
21. TFM report – results of forensic examination fragments, page 786;
22. Annex to report Evidence lis, pages 787-795;
23. Expertise report of the evidences, pages 796-799;
24. KP Report F.G. _____, pages 836-840.

INDEX-5 Forensic/Autopsy (Binder 5):

1. Expertise report from Unit of Firearm Expertise, pages 3413- 3432;
2. List of evidence –Chain custody on murder case, Forensic No. 11-092, pages 3448-3460;
3. Crime scene examination report, Forensic No. 11-092 KP F.F. _____ # 5951, pages 3461- 3473;
4. Expertise report from Unit of Firearms Expertise, pages 3476-3494;
5. Forensic laboratory form A, D, C, B, TFM Crime Scene visit, pages 3495-3498;
6. Expertise report from Unit for traseology and dactiloscopy expertise, pages 3505-3507;
7. Forensic report on photo album of vehicles, page 3512;
8. Doctor's report on E.Z. _____ from Mitrovica Hospital, pages 3516-3517;
9. Doctor's report on E.Z. _____ from Prishtina Hospital, pages 3518- 3522;
10. Death Certificate with epicrisis, pages 3523-3525;
11. Report on autopsy from Institute of Forensic medicine, pages 3526-3527;
12. Attestation of death, pages 3528-3529;
13. Forensic report-Autopsy report, pages 3530-3535;
14. Photo Album Autopsy, pages 3536-3591;
15. Forensic list of evidence/Chain of custody. E.Z # 1A, E.z#1.1.A, pages 3592-3594;
16. Photo album official clothes of officer E.Z. _____, pages 3595-3604.

INDEX Vehicle examination (Binder 6)

1. Photo album of the vehicle examination with plates _____ -__, Forensic no. FRP-11 -140, pages 994-999;
2. Vehicle _____ -__, Forensics no. FRP-11-140 Vehicle examination Report, Photo album of the vehicle examination Vehicle examination Report, pages 1000-1016;
3. Vehicle _____ -__, Forensics no. FRP-11-139, Vehicle examination Report, Photo album of the vehicle examination, pages 1017- 1030;
4. Photo album of the vehicle examination with plates _____ -__, Forensic no. FRP-11-140, pages 1031 -1035;
5. Vehicle _____ -__, Forensics no. 11-092 Vehicle Examination Report List of evidence – Chain of custody Photo album of the vehicle examination, pages 1036- 1063;
6. Photo album of official clothes of the decease, photo of injured officers, pages 1064-1070.
Vehicle _____ -__, Forensics no. 11-088Ex Vehicle Examination Report List of evidence – Chain of custody, pages 1071-1076;

7. Vehicle ___-__-____, Forensics no. 11-092 Vehicle Examination Report List of evidence – Chain of custody Photo album of the vehicle examination, pages 1077 – 1089;
8. Photo album of the vehicle examination, pages 1090-1113;
9. Vehicle _____ - Forensic 11-088 Ex, List of evidence – Chain of custody, vehicle examination report, photo album of vehicle examination, pages 1115—1139;
10. Information report re: towed vehicles, pages 1140-1141;
11. Vehicle examination report I.L.1. _____, page 1142;
12. Photo album of the vehicle examination I.L.1. _____, page 1143;
13. Officers report on vehicle _____, page 1144;
14. Officers report on 7 vehicles, page 1145;
15. Officers report on 2 vehicles, page 1146;
16. Officers report on ammunition ___ are equipped with, pages 1147-1148;
17. TFM report capture of public video crime scene, pages 1149 -1157;
18. Photo album with snapshots shared on public websites, pages 1158-1185;
19. Evidence examination report, IT forensic case no. ITF 2011 012, pages 1191 -1196;
20. TFM report results of analysis of computer of J. _____ and V. _____, pages 1197 – 1200;
21. Information report, page 1204.

INDEX Witness statements (Binders 9_1/2/3):

1. Witness statement F.U. _____, pages 1762-1811;
2. Witness statement F.U. _____, pages 1819 -1818;
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During the session held on 17 October 2016 defendant **R.R.** _____ and Defendant **M.V.** _____ were given the opportunity to declare their case.

The defences did not contest the following facts:

On 26 July 2011, at approximately 13:30 hrs, more than fifty (50) Kosovo _____ (_____) _____, members of the _____ Unit (_____), who were on standby at the Mitrovicë/a _____ base, located in _____, received the order to depart in the direction of Gate _____ in order to take control of the border point. The convoy of _____ vehicles therefore left the _____ base. The convoy consisted of two armoured vehicle (one of them was leading the convoy and the second one was at the end of the convoy) and approximately 10-12 _____ vehicles between the armoured cars. While proceeding towards Gate _____ along the main asphalted road between Mitrovicë/a and Zubin Potok, in the vicinity of the village of _____, the _____ convoy encountered a first barricade made of stones and sand which prevented the convoy from further proceeding along the main road. Therefore, the convoy used an alternative/secondary road in order to overcome the barricade and then went back on the main road in the direction of Gate _____. Having

preceded for some 10 minutes, in the area located between the village of _____ and _____, the _____ convoy encountered a second obstacle, this time a barricade made up of vehicles placed in the middle of the road. Around eight persons stepped out of the vehicles and started confronting the _____ by screaming, swearing and making gestures at the _____. A few moments later, one more vehicle approached and stopped at some distance from the barricade. _____ I.S. _____ addressed the persons at the barricade in _____ language to unblock the road. _____ I.A. _____ ordered the persons who were blocking and obstructing the public highway to remove the obstructions and remove their cars, in _____ language. These persons did not obey that order and continued screaming and shouting at the _____, gesturing and raising three fingers and the middle finger at the _____. At that point the _____ operation leader I.A. _____ gave the order that the armoured vehicle should push away the vehicles of the barricade. As soon as the armoured vehicle approached the vehicles that were blocking the road, the persons who were standing closely to the barricade left and entered the woods located on left side. As soon as the persons left the barricade a first shots were heard. A bullet had hit the face of E.Z. _____, member of the _____ Unit, who was driving the second vehicle of the _____ convoy. At the moment he was hit, his vehicle was positioned left behind to the armoured vehicle leading the convoy. After the first shot, this had hit E.Z. _____, rapid shooting started against the _____ convoy from three different directions. The _____ fired back in order to defend themselves. At the same time, the injured _____ was moved to the armoured vehicle. The shooting against the _____ convoy lasted for an undetermined period of time, no longer than fifteen (15) minutes, but for sure until the convoy pulled back moving in the direction of Mitrovicë/a. E.Z. _____ was brought to the Emergency Centre at Mitrovica and later on by helicopter to the University Clinical Centre of Kosovo in Pristina, where he died at around 22:05 hrs as a result of the injuries. The incident took place on a bright summer afternoon, between the hours of 13:30 and 14:25 hours, when the weather was fine with good visibility.

Presented facts have also been confirmed by statements of the heard witnesses: F.U. _____, I.S. _____, N.S. _____, S.S. _____, E.D. _____, V.K. _____, F.Z. _____, M.J. _____, F.F. _____, I.L. _____, B.M. _____, B.P. _____, K.H. _____, M.S. _____, F.A. _____, G.C. _____, H.H. _____, K.K. _____, A.I. _____, G.D. _____ and V.R. _____.

During the main trial proceedings, the defences of Defendant **R.R.** _____ and defendant **M.V.** _____ denied the fact that that **R.R.** _____ and **M.V.** _____ were on the barricade at critical moment and committed any of criminal offences they have been charged with.

Witness F.U. _____ stated that, on 26 July 2011, as a Kosovo _____, he was traveling in an armoured vehicle which was first vehicle in the _____ convoy headed

towards Gate _____. The driver of that vehicle was E.D. _____. On the passenger seat was I.S. _____. On the back, with him, was N.S. _____, S.S. _____. First, he was on the left side of the back seat, but in the course of the journey, at the first barricade in the _____ village, he changed the position from the left side to the right side in order to show his colleagues the alternative road as he knows that area since he _____ there. When they encountered the second barricade with vehicles, he moved from the right side in the middle, between the driver's and the passenger's seat in order to provide direction about the route. He saw five vehicles which came there and blocked the road. The people went out of the vehicles, and, in different forms, by gestures, insulted the _____ and objected their presence and passing through that road. He saw them from the position between the driver and the front passenger. These people were showing the middle finger and three fingers at the _____. That was offensive for the _____ because showing three fingers is _____ symbol. The approximate distance between armoured vehicle and the vehicles that stopped on the road in front of the convoy was around 15-20 meters. He saw 10-15 people altogether. Some of them were in front of the vehicles but, afterwards, they also went behind the vehicles stopped on the road. Out of these 10-15 people, Witness F.U. _____ recognized four of them, by name or by their nicknames. He recognized **R.R.** _____, but regarding him, he had some confusion in regard to his last name as he was not sure was it **R.** _____, **R.1.** _____, or **R.2.** _____. When the witness was shown the photo album, he saw there the photo of **R.R.** _____ and he identified him as a part of the crowd that went out of the vehicles, which made a barricade to _____. He stated that first he recognised **R.R.** _____ from the photo album although he did not know his surname at that time. Then he learned his surname from media. Witness F.U. _____ further explained that he knew **R.R.** _____ by appearance for 20-25 years. They know each other since their _____ are next to one another. Furthermore, a week or ten days prior to that incident, the witness, together with the late E.Z. _____, had stopped **R.R.** _____ at a regular checkpoint. **R.R.** _____ was in red _____, with _____ registration plates. At that time **R.** _____ did not have any identification documents, only fines issued by the police. F.U. _____ also stated that he met and recognized **R.R.** _____ at the entrance of the Court and he stated that he is the same person, who was sitting first, in the first row in the Courtroom during the trial.

Witness F.U. _____ also identified Defendant **M.V.** _____ as a person who was present at the second barricade at the time the _____ convoy was stopped there. In the pre-trial stage, Witness F.U. _____ was presented with Photo album and he identified Defendant **M.V.** _____. The Witness was sure that the man represented on the photograph no.1 of the Photo album no. 4 was one of the persons that he remembered at the barricade because he was particularly active in shouting and making gestures against the _____ convoy. In relation to two individuals he recognised in the Photo albums, wherein one of them was **M.V.** _____, the witness emphasized that, since he had not seen or met these persons before, he particularly focused on them in order to be able to recognize them in the

future. Regarding M.V. _____ Defence's allegations that photos of all the defendants related to the respective incident were placed under number 1 in the Photo albums used for identification, Witness F.U. _____ replied that there was no chance that someone can influence him to identify certain people. He stressed that as a Kosovo _____, in the case of receiving illegal order, it is his right and obligation to denounce it. Also it is the job of the person that presented the photo line-up, to mark photos with numbers, and his job was only to identify them. He denied any influence on him during the identification procedure during which he recognized M.V. _____ as one of the person at the second barricade.

Witness I.S. _____ testified that, on the respective day, on the way to Gate ____, he was in the armoured vehicle together with E.D. _____, F.U. _____, N.S. _____ and S.S. _____. E.D. _____ was a driver, and I.S. _____ was sitting on the front passenger seat. They encountered the barricade of four vehicles, and later another vehicle arrived. The vehicles had blocked the road and the persons went out the vehicles. Once the convoy encountered the barricade, his colleague F.U. _____ approached him, actually, he leaned forward at the space between I.S. _____'s and driver's seat coming closer to the windshield to have a close look of the persons at the barricade. The witness stated that F.U. _____, having a look, at the persons who went out of the vehicles said: "I recognize some of these persons.". Since F.U. _____ in the respective area, precisely he is from the _____, he recognized some of the persons at the barricade. I.S. _____ emphasized that he said to F.U. _____: "Since you recognize them, look at them properly". He also stated that there were 7-8 persons at the barricade, and both F.U. _____ and he had clear view. The gap between front seats was a rather fair space, so the view was clear and F.U. _____ could have had a good view from there in spite of some bars placed on the windshield. The vehicle had sufficient visibility and they could see entire road and the people at the barricade. I.S. _____ does not understand _____ language, but he understood that the people at the barricade were swearing, calling names, yelling, shouting and making gestures with their hands. At one moment, he opened the door of the armoured vehicle and then he stood at the door of the vehicle telling them, in _____ language, to free the road. At that moment, _____ I.A. _____ also came with his own vehicle and stopped parallel to his vehicle. I.A. _____ gave an order in _____ language to these people to free the road. Since the people at the barricade did not clear the road, he ordered the _____ to proceed and to open the road with the armoured vehicle. Witness I.S. _____ got in the armoured vehicle and notified the driver that they had an order to continue and free the road with the armoured vehicle. So they removed these vehicles from the road. As they were freeing the road, the shots commenced and then the fire shots were continuously heard. A kind of gas emerged in their vehicle. Probably the vehicle was hit by bullets or something like that, he stated. It was like tear gas. They went with our armoured vehicle near E.Z. _____'s vehicle which was behind them. Then, their colleagues started shouting: "_____ down!", namely, that there was a _____ injured. Therefore, they came closer to the vehicle where E.Z. _____ was, the

officers sitting in the back seat opened the door, grabbed E.Z. _____ and pulled him into the armoured vehicle. Since they had a wounded _____ they had to go back and provide him the medical treatment. E.Z. _____ was transported with the armoured vehicle to the health centre in Mitrovica and afterwards to Pristina where he died. The _____ did not reach the Gate ___ because they were stopped there by the barricade and forced to pull back.

Witness N.S. _____ stated that, on respective occasion, he was in the armoured vehicle together with I.S. _____, S.S. _____, F.U. _____ and driver from Pristina whose name he did not know. During the trip he was sitting at the back of the vehicle. He described the front of the vehicle where were two seats: driver' seat and co-driver's seat. At the back of the vehicle were two separate seats, more like benches, one on the right side, and one on the left side of the vehicle. F.U. _____ was, initially, seating behind the driver, but during the driving he changed his position. First, when they encountered the first barricade he set behind the co-driver in order to show the driver the alternative way. Then he moved between the front seats and contacted with driver E.D. _____ and I.S. _____. The witness remembered four-five vehicles which blocked the road and constructed the second barricade. At the moment the _____ convoy encountered the second barricade, the mobile phones and radios were not operational. There were approximately 7-8 people at the barricade. He did not recognize them, but F.U. _____ did. N.S. _____ also testified that, at that moment, F.U. _____, in regard to the people at the barricade said : "I know them!". The witness also testified that I.S. _____ then said to U. _____ : "Since you recognize them, come closer to me and observe them.". And, F.U. _____ stood up and leaned forward to see these people. He was close to the front windshield. The visibility was sufficient although the windshield was divided it two parts. N.S. _____ estimated the distance between their vehicle and the people at the barricades as 15-30 m. Upon receiving the order to remove the barricades with the armoured vehicle they started removing the cars from the way. The people who were at the barricade fled to a forest, and the shooting against the convoy started. Officer E.Z. _____ was shot and the convoy had to pull back.

Witness S.S. _____ testified that, on the critical day, as a _____, he was in the armoured vehicle with E.D. _____, I.S. _____, F.U. _____, and N.S. _____. On their way to Gate _____, they encountered two barricades. The second one was made of 4 or 5 vehicles put on the road blocking it in front of the _____ convoy. The barricade made of vehicles was 10-15, no more than 20, meters from the convoy. That is why the _____ convoy stopped. According to his recollection, there were 4, 5 or 6 persons at the barricade and they cursed with different swearing words. "They cursed as much as they could.", the witness stated. _____ I.S. _____ shouted to these people: "Stop _____!" and he shouted that several times without effect. They called the command up and told them about the situation, but the command ordered the _____ convoy to continue further. Witness S.S. _____ stated that I.S. _____ spoke to the command, but he also spoke to F.U. _____ who is from that _____. He suggested F.U. _____ to come closer to see

more clearly if he can recognize the people who were at the barricade what he did do. He also stated that they all (the _____) from that vehicle, actually saw the persons who came with the cars, blocked the road, and came out of those cars, but not all of them knew these people, only F.U. _____.

Witness E.D. _____ stated that he was the driver of the first vehicle, the armoured one. There, in the armoured vehicle, were his colleges whose names he did not recall. But he recalled that some of them were from _____ region. While they were on the way to Gate ___ on the respective day, they encountered four vehicles that blocked the road and posed an obstacle. Therefore, he stopped the armoured vehicle and addressed his colleague to receive further instructions. When they tried to get a radio connection, it was a “blank point”, there was no radio or telephone connection. The persons who got out the vehicle stood in front of the _____ vehicles, opposite of the armoured car. His colleague from _____ mentioned the persons he was able to recognize. Witness E.D. _____ claims that the one of his colleagues knew them. On that occasion, the named college was discussing that with another colleague from _____ from the backside. The person, from the first car that arrived there, (_____), got out of the car, came in front of the ___ vehicle, and made gestures indicating to the _____ to turn back as the road was blocked. The man, who gesticulated to them to turn back, was tall, of the height 185-190 centimetres, and as far he could see from the vehicle, he had dark short hair. The witness recalled the other one, with the round shape head, who also stayed near the vehicle and didn't move. The other two people from other two cars left as soon as they dropped of the vehicles. The witness also said that he did not pay much attention to the people as he was focused to open the road. He received such an order and while he was going to hit vehicles on the road with the armoured vehicle to open the road, the people at the barricade realized his intention, and dispersed. They got away from the road and entered the forest. From that moment onwards the shootings commenced. Asked how many windows the vehicle he was driving had, the witness answered that the vehicle had dual windshield separated in between with the metal separation.

Witness I.A. _____ stated that during the critical occasion, he was in a soft-skin _____ vehicle which was the third vehicle in the _____ convoy. The leading vehicle was armoured and the second vehicle was the vehicle of the late E.Z. _____. When they came at the second barricade, I.A. _____'s vehicle stopped on the right side of the road, while the armoured vehicle was a bit more advanced upfront. The other _____ soft-skin vehicle of their late colleague Z. _____ stopped on the left side, behind the armoured vehicle. The witness was in the vehicle with his three colleagues: F. _____, I. _____ and M. _____. The witness saw three persons stopping their vehicles on the road blocking it and then going behind the vehicles. He also saw 3 - 4 other persons standing a bit further away from that barricade. The persons he saw the witness described as of “more or less of aggressive attitude”. He was able to see that. He addressed them in the _____ language telling them to free the road. He also introduced himself and his colleagues as the _____.

But people at the barricade replied saying that the _____ cannot come to that side as that was Serbia. Then, the witness gave an order to the armoured vehicle to break through the barricade, and then again to retreat at the initial point. Following this action, these persons, who were at the barricade, fled to the forest as the forest was near. Then a fire shooting was heard. Next they were able to overhear from another _____ that a _____ was wounded. Then the more intensive shootings started, both from the opposite and their side. That lasted for about ten to fifteen minutes at most. The witness stated that, by other members of the _____ have been spoken that, at the spot, there were Kosovo _____ who were able to recognize the persons on the barricade, but the witness did not know them. Asked if he saw the defendants at the barricade, the witness answered that they fit the persons he have seen, but he could have been sure.

The testimony of the witness D.P. _____ and the statements of witnesses V.K. _____, F.Z. _____, M.J. _____, F.F. _____, I.L. _____, B.M. _____, B.P. _____, K.H. _____, M.S. _____, F.A. _____, G.C. _____, H.H. _____, K.K. _____, A.I. _____, G.D. _____ and V.R. _____, which have been read during the main trial, are identical regarding the essential circumstances. They all stated that they were in the _____ convoy as officials who were ordered to go to Gate _____. They, also, testified that the convoy was forced to stop because of the barricade of cars that was placed on the road near _____. They described that shooting against them started, and the one the _____ was shot, so the convoy was forced to pull back without reaching the Gate _____. They did not know any particular details regarding the persons at the barricade since they were in the _____ vehicles stopped on longer distance from the barricade and they were not in positions to clearly see the people at the barricade.

Witness B testified that, on 26 July 2011, he/she was moving from _____ towards _____. The barricade was ahead of him/her. On the way, in the area of the _____ village, he/she saw Defendant **R.R.** _____, approximately 200 to 300 meters away from the barricade made of cars. **R.R.** _____ was next to the road, 5-10 meters from the witness. The witness knows that **R.R.** _____'s nick name is "_____". At that time, **R.** _____ was with S.V. _____. There were around 10 people there, but the witness only recognized **R.** _____ and V. _____ among them. At the same time, the witness heard the shots, namely several bursts of fire. From the spot from which the witness saw defendant **R.R.** _____ he/she still could not see the barricade. The witness also stated that all the barricades were organized by the authorities in _____, President of the _____ and the _____. Barricades were something that happened rather frequently at that time. He/she explained that, when the situation would arise, the president of the _____ would alarm the people and the people would go where they were told to go. The people were warned by the siren in _____. When they heard the siren, they would gather. And that is exactly what happened on the mentioned day. He/she stated that the event was organized and the sound of siren meant

that one should go out there to the barricades. Witness B also stated that he/she saw the distribution of the weapons and ammunition at _____ (type AK-47) and some persons, who were near the warehouse in the _____ village, had fire arms. The witness marked the warehouse in the _____ village as point B on the sketch, while he/she marked the barricade as point A.

The defence of **R.R.** _____ presented seven alibi witnesses: S.V. _____, Z.J. _____, Z.M. _____, S.V.1. _____, M.K. _____, Z.D. _____ and D.D. _____.

Witness S.V. _____ stated that, on critical day, from around 10:45 hrs, he was with **R.R.** _____. They were together in the cafe “_____” in _____, and then they went to the cafe “_____”. He also mentioned that, at one point, S.J. _____ was with them. From _____ they moved in the direction of _____. While they were still in _____, the shooting started. On the way to _____, they stopped near the warehouse in the _____ village, placed between _____ and _____. The warehouse is owned by S.V. _____’s brother S. _____. **R.R.** _____ parked his car, _____, with register plates of _____, _____, in front of the cafe _____, next to the warehouse premises. When they arrived at the warehouse they saw around 100 people taking shelter there, trying to hide from the fire that was still ongoing. S.V. _____ declared **R.R.** _____ as his friend, as well as **R.** _____’s father. He also mentioned that **R.R.** _____ was an athlete.

Witness Z.J. _____ stated that he saw **R.R.** _____ on the critical day at the café “_____”. That was around 10-12:00 hrs. **R.R.** _____ was with S.V. _____ having a coffee at the cafe, and the witness was sitting at another table in the cafe with his wife. While they were there, a siren went on. People started circulating, and they got up from their tables and started moving in directions where the people were moving. When they reached the petrol station and a small bridge in _____, the witness saw numerous people gathering there. He saw **R.R.** _____ parked his car at the petrol station and the witness also parked vehicle there, and they continued walking from there. They could hear from the people: “Let’s go to _____!”, and many vehicles were already passing by. They decided to return to their vehicles, the witness sat in his car, and **R.R.** _____ with S.V. _____ set in **R.** _____’s _____. **R.** _____’s vehicle was ahead of the witness’ vehicle. They reached the _____ village and the witness reached the warehouse from where he saw a crowd of people in panic running trying to tell them to stop because something was going on. **R.R.** _____ parked his car before what, at that time, was “_____ restaurant”, and Z.K. _____ parked just behind him. At the moment he turned his vehicle off, the witness could hear shootings. First, they went behind the restaurant, but later they decided to move within the compound of the warehouse because it was safer for them. This

witness also mentioned that he saw the “person D. _____” at the warehouse purchasing house construction material. Once the witness decided to leave the warehouse, he saw **R.** _____ and V. _____ down there near the electric post which was on the opposite side of the warehouse, across the regional road.

Witness Z.M. _____ stated that he had known **R.R.** _____ for a number of years. On the critical day, after he woke up around 12:00-12:30 hrs, he got in his car and headed towards _____ out of curiosity. He further added that the siren itself, which he did not hear on that day at all, but it was heard by his wife, caused a certain curiosity, maybe panic and fear among all citizens, and they gathered in ____ _____. Someone within the group of these people was shouting loudly that something was going on in _____ and that all of them should go in that direction. But the witness avoided answering why he went to that particular place in _____ after siren was heard by saying that he was not able to provide adequate reason for that at the moment he was testifying. Once he reached the warehouse in the _____ village, and while he was still in his vehicle, he heard the shooting. He also saw the people running from the warehouse and the left side of the road towards ____ _____. He saw defendant **R.R.** _____, standing on the road near the warehouse. He emphasized that he also saw S.V.1. _____ inside the warehouse. He also stated that, at that time he was an employee of the Ministry of _____ of the Republic of _____, but since 2014 he has been member of the _____.

Witness S.V.1. _____ is a director of the warehouse located in the _____ village. On 26 July 2011, before he heard the shots, he was in the warehouse with D.D. _____ who came there to buy some electric material. While they were having a coffee, the shooting started, whereas they heard the shootings from the direction of ____ _____. When the shooting started, they both went to the box part of the warehouse where sand and gravel have been kept. At that moment his brother, uncle’s soon S.V. _____, and **R.R.** _____ came to the warehouse from the direction of the restaurant called “_____”, as well as many other people (thirty, forty or fifty) who were hiding from the shots. The witness claims that, while he was walking towards the boxes, he saw **R.R.** _____ park his _____ car in front of restaurant “_____”, and he saw him and S.V. _____ walking in the direction of his warehouse. But he does not specifically remember any other person coming or any other parked cars, although there were many people and cars there. According to his opinion, the shooting lasted some five to six minutes. When it stopped, **R.R.** _____ went in the direction of ____ _____, whereas S.V. _____ went to his house which is some four hundred meters away from the warehouse. He remembers every detail regarding **R.R.** _____ from the moment he parked his car in front of restaurant “_____” until he left the warehouse and that area.

Witness M.K. _____ stated that on 26 July 2011, at the moment when the _____ convoy was shot at in the _____ village, he came together with R.V. _____ at the entrance of the warehouse In the _____ village, from the direction of ____ _____. They got there with V.I. _____'s car and parked the car on the right side of the road because they could not go any further as many vehicles and many people were there. He emphasized that there were 200 or 300 people, and maybe 50 to 100 vehicles. The entire road was blocked. He heard shooting while they were getting out of their vehicle. Since the shooting was ongoing at that moment, everybody was running and looking for shelter. They went on foot towards the warehouse and this is where he saw **R.R.** _____ together with S.V. _____ hiding. After the shooting was over, the people started dispersing. He further explained that he went to the _____ village because there was an alarm that something was going on in the _____ village and all the people went there. So, he went with "his people".

Witness Z.D. _____ stated that on 26 July 2011 he was in ____ ____ and he heard some people saying that there was a problem in _____. He saw crowd of people moving up and down in frantic way. Since most of his close relatives live in _____, he was worried about them, so he got to his car and departed to _____. When he reached the warehouse at the _____ village which is on the way to _____, he parked his car on the right side of the road because he saw many people there. He headed towards the warehouse and, at some maybe 50 meters from the warehouse, he heard shots. He took shelter behind some vehicles on that parking on the right side of the road as well as other people who were around him. He stayed until the shooting was over and until he saw people slowly getting up from the shelter they took behind these vehicles. When he stood up, he saw **R.R.** _____ standing across the street to the warehouse together with S.V. _____. But he could not recall any other person he might have seen. At that moment his wife gave him a call and he returned to ____ _____.

Witness D.D. _____ stated that on 26 July 2011, as every other working day, he was in his office in _____ when he received a call from the builders who were working in his house and they needed the certain material. They were lacking of cable and few electric sockets. So, he went to the warehouse in the _____ village where he purchased the material for the entire house. There he saw the owner of the warehouse S.V.I. _____. The witness entered in his office for ten minutes and then they heard large number of the vehicles passing by on the road. They stepped outside to see what was going on, and having stepped into the premises of the warehouse, they suddenly heard the shooting. At that moment, the vehicles which were on the road, started stopping and the people started leaving them both on the left and on the right side. Then the witness saw the vehicle which arrived from the direction of ____ _____. It stopped in front of the warehouse at the parking lot. And then he saw that out of that vehicle, at the passenger side, was S.V. _____ stepping out of the car, and on the other side he saw **R.R.** _____. They all started fleeing, and the two of them stood next to the witness behind the concrete blocks. He remember **R.R.** _____'s vehicle (____ _____) because he was the only

one who had that kind of type and brand of the vehicle in ____ _____. After the shooting stopped they split. D.D. _____ went to _____ straight to work. He assumes **R.R.** _____ also went to Z.P. _____.

Defendant **R.R.** _____ stated that, the critical day, started, for him, exactly as any other usual day without any signs that something could have happened. In the morning he had a coffee with his friend S.V. _____, _____ of _____, in the restaurant “_____”. S.J. _____ was also there. Then, S.V. _____ and the defendant went to the cafe “_____” in _____ where they set and ordered lemonade. At around the noon they heard the alarm that announced a state of emergency. Following the crowd of people, first they went to a petrol station on the main road to Mitrovica where they heard people saying : “Let’s go to _____!”. The Defendant was guessing that there was a barricade. So, S.V. _____ and him set in the defendant’s car in order to go to _____. The road was crowded with people and cars, but they managed to enter the convoy of cars heading to _____. When they reach restaurant “_____” which was on the way to _____, in the _____ village, they stopped. At that moment he heard shooting coming from direction of _____ where they were heading to. Therefore, they went to the depo of the warehouse that was there, and then the Defendant stood behind the concrete wall and electric pool. He emphasized that he saw S.V.I. _____, D.D. _____ and M.K. _____ there, as well as Z.J. _____. When he noticed vehicle moving again, he set in his car and went to _____ where he _____ with his mother. On the way to _____ he noticed some vehicle, two _____ and _____, in improper position, broken glass and cases scattered along the road. But, he did not have any idea that the _____ was present there. He arrived home and found out that everything was ok there, so he went to fish in nearby river. On the way he met his neighbour B.K. _____ who told him that there was shooting because of barricade on the road. Defendant **R.R.** _____ claims he was not involved in establishing the barricade, he was not at it and he did not see the _____ convoy that day at all.

During the main trial Defendant **M.V.** _____ exercised his right not to declare.

Having assessment of the all evidences presented during the Main trial, the Trial Panel concluded that it has not been proven that Defendant **R.R.** _____ and Defendant **M.V.** _____ committed the criminal offences under counts 1), 2), 3), 5), 6) and 7) of the Indictment, but that has been proven that they committed the criminal offence described under the count 4) of the Indictment.

The Trial Panel finds the following facts proven:

The first vehicle of the _____ convoy, an armoured vehicle which was leading the _____ convoy heading towards Gate _____, was driven by _____ E.D. _____

with ___ I.S. _____ on the front passenger side. The vehicle had two benches in the back part along the side walls of the vehicle. In the back part were seated the ___ F.U. _____, N.S. _____ and S.S. _____. The Chief of _____ of the _____ (convoy) was I.A. _____ who was front passenger in a “soft skin” vehicle driven by F.A.1. _____, which vehicle was right behind the armoured vehicle. In the “soft skin” vehicle that was left behind the armoured vehicle were E.Z. _____, as a driver, together with B.M. _____ and D.P. _____. When the convoy encountered the second barricade made of vehicles it was forced to stop. Around eight persons stepped out of the vehicles and started confronting the Kosovo _____ by screaming, swearing and making gestures at the _____. A few moments later, one more vehicle approached and stopped at some distance from the barricade. _____ I.S. _____ and _____ I.A. _____ ordered the persons who were blocking and obstructing the public highway to remove the obstructions and remove their cars but they did not obey that order and continued screaming and shouting at the _____, gesturing and raising three fingers and the middle finger at the _____. At that point the ___ operation leader I.A. _____ gave the order that the armoured vehicle should push away the vehicles of the barricade. As soon as the armoured vehicle approached the vehicles that were blocking the road, the persons who were standing closely to the barricade left and entered the woods located on left side. At the same time a first shots were heard and the _____ E.Z. _____, was shot. Then, rapid shooting started against the _____ convoy from three different directions. The _____ fired back in order to defend themselves but they had to pull back and take E.Z. _____ to the Emergency Centre at Mitrovica and later on by helicopter to the University Clinical Centre of Kosovo in Pristina, where he died as a result of the injuries.

In relation to the charges of “Aggravated murder” “Attempted aggravated murder” “Unauthorized ownership, control, possession or use of a weapon”:

The Trial Panel finds that the barricade of vehicles which forced the _____ convoy to stop and the subsequent shooting at the convoy when the convoy started to remove the barricade, which, in the end forced the _____ to pull back, was a well-organized operation. At this part of the road, because of the terrain, as the panel could notice during the site inspection and which can also be seen on photos of the crime scene, it was easy to create a barricade which was impossible to pass. The terrain further gave good coverage for those who fired gun shots against the convoy. Moreover, at that point the mobile phones and radios were not operational. It is important to note here that none of the _____, who were heard as witnesses during the proceedings, saw people at the barricade wearing firearms. It can therefore not be ascertained whether the persons at the barricade were the same persons who shortly after started shooting from the forest. However, the Trial Panel finds that there must have been some connection between at least one or more persons at the barricade and the shooters. The Trial

Panel does not believe that the creation of the barricade and the shooting were a mere coincidence. It might very well be that those who organized the operation thought that the convoy would stop and turn around because of the barricade. However, when the convoy tried to clear the road, the gun fire towards the convoy started. At this point, the shooters were already in the forest, ready to attack.

The basic principle of criminal law is that any criminal liability is dependent on an action or omission done by the Defendant. This “act requirement” is not met in this case regarding the counts 1), 2) and 3) of the Indictment. It was not proven that any of the Defendants had weapons or that they were shooting. It was also not proven that they attempted to deprive E.Z. _____ of his life, or had an intention to deprive him or any other person of their life, not even that they took any action or that they knew that other people may take action that led to the murder of E.Z. _____.

Therefore the Defendants have to be acquitted under Article 364 paragraph (1), subparagraph (1.3) of the CPC of having committed the criminal offences of:

- **“Aggravated murder”** described and punishable under Articles 146 and 147(4), (6), (8) and (10) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Articles 178 and 179(1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Article 31 of the CCRK, count 1) of the Indictment;
- **“Attempted aggravated murder”** described and punishable under Articles 146 and 147(4), (6), (8) and (10) of the CCK as read in conjunction with Articles 20 and 23 of the CCK *pari materia* of Articles 178 and 179 (1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK, count 2) of the Indictment; and
- **“Unauthorized ownership, control, possession or use of a weapon”** in violation of Article 328(1) and (2) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* with Articles 374 of the CCRK as read in conjunction with Article 31 of the CCRK, count 3) of the Indictment.

In relation to the charges of “Endangering public traffic by dangerous act or means” and “Causing general danger”:

Regarding the charges under the count 5) of the Indictment, **“Endangering public traffic by dangerous act or means”** described and punishable under Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 380(1) of the CCRK as read in conjunction with Article 31 of the CCRK and the charges under the count 6) of the Indictment, **“Causing general danger”** in violation of Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 365 of the CCRK as read in

conjunction with Article 31 of the CCRK, the Trial Panel emphasizes that there is a relation of concurrence between these two legal provisions. Real concurrence of offences arises when the perpetrator commits more than one crime, either by violating the same provision a number of times, or by violating a number of different provisions by separate acts. Apparent real concurrence may arise when a series of separate, but closely related, acts fulfil all the elements of a certain criminal offence, but are considered as a single, albeit continuing, crime. Ideal concurrence refers to the situation whereby a single act or factual situation constitutes more than one crime. Moreover, apparent ideal concurrence of offences arises when a relationship of concurrence is resolved by the application of further analytical methods. The starting point of this analysis is a comparison of the different elements of the crimes in order to determine reciprocal specialty. The principle of subsidiarity is applied as an additional method to determine the propriety of cumulative convictions for ideal concurrence. Subsidiarity refers to relationships between offences of the same kind, that are designed to protect the same or closely related social interests, but which differ in relation to particular elements. In such circumstances, the special crime consumes the general crime. In the Indictment, however, the Prosecutor has used the principle of apparent real concurrence for no obvious purpose. For one act, the Defendants were charged with two crimes even if the general clause of “Causing general danger” is already covered by and enshrined in the elements of Article 299 of the CCK. So the same result (putting in danger) is used in two different provisions. The Trial Panel has to stress that the criminal act envisaged in Article 291 of the CCK represents a general criminal act in relation to other criminal acts from this Chapter, which is manifested in separate forms, i.e. specific aspects of this general criminal act. Namely, the criminal act of “Causing general danger” also contains the significant characteristics of Article 299 of the CCK. Both crimes punish the violations of the same criminal value (endangering the life or body of persons or for sizeable property, not only by the activities or means explicitly stated in the law), but with different forms of action (one “by another” generally dangerous activity or generally dangerous means, another with a full description of specific form of actions). The subsidiary character of this crime (Article 291 of the CCK) also ensues from its general character, because it exists only if legal characteristics of another criminal act from both Chapters have not been met in a concrete case. Therefore the Trial Panel can conclude that we have an apparent concurrence based on the subsidiarity of these two criminal provisions. Moreover, regarding this charge (“Endangering public traffic by dangerous act or means”), the Trial Panel has to stress that no fact was proven that could demonstrate that the Defendants, committed such criminal action.

This is so because Paragraph 1 of Article 299 of the CCK (Endangering Public Traffic by Dangerous Acts or Means Article) states:

“Whoever destroys, removes or seriously damages installations, equipment, signs or signals designed for traffic safety, or gives erroneous signs or signals, places obstacles on public roads or in any other manner endangers traffic and thereby endangers human life or physical safety or property on a large-scale shall be punished by imprisonment of up to three years”.

The objective element of this criminal provision is one action that could cause concrete (real and immediate) general danger for the life or body of persons or for sizeable property. In this case, the only action committed by the Defendants who were at the barricade was to create a concrete obstacle to the _____ convoy in order to prevent them to reach the Gate __. That barricade itself did not cause any concrete danger to the _____. It was the firearm shootings and the creation of an ambush that killed E.Z. _____ and put in danger the persons who were in the _____ convoy. Therefore, without a solid link between the shootings and the barricade, the Defendants could not be convicted as the perpetrators of these two criminal charges.

Consequently, the Defendants have been acquitted, under Article 364 paragraph (1) subparagraph (1.3) of the CPC of having committed the crimes of:

- **“Endangering public traffic by dangerous act or means”**, described and punishable pursuant Article 299(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 380(1) of the CCRK as read in conjunction with Article 31 of the CCRK, count 5) of the Indictment;
- and **“Causing general danger”** described and punishable pursuant Article 291(1), (3) and (5) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 365 of the CCRK as read in conjunction with Article 31 of the CCRK, count 6) of the Indictment.

In relation to the charge of “Participating in a Crowd committing a Criminal Offence”:

Article 320 of the CCK (Participating in a crowd committing a criminal offence) provides:

“(1) Whoever participates in an assembled crowd which by collective action deprives another person of his or her life, inflicts a grievous bodily harm on another person, causes a general danger, damages a property on a large scale or commits other offences of grave violence, or attempts to commit such offences, shall be punished by imprisonment of three months to five years”.

Article 412 of the CCRK (Participating in a crowd committing a criminal offence and hooliganism) states:

“1. Whoever participates in an assembled crowd of more than eight persons which by collective action deprives another person of his or her life, inflicts a grievous bodily injury on another person, causes a general danger, causes damages of twenty thousand (20,000) EUR or more to property or commits other offenses of grave violence, punishable by imprisonment of at

least five (5) years or attempts to commit such offenses, shall be punished by imprisonment of six (6) months to five (5) years”.

Under the old provision, it was the general opinion that the crowd should be bigger than seven (7) or at least ten (10) persons. However, it is also stated that:

“taking into account, on the other hand, that the creation of a gathering is often a spontaneous act and consequently it is not tied up with a constant number of participants [the number fluctuates, goes up and down, depending on the unfolding of the events], it is not thus advisable to set upfront a particular number [of people] as a threshold, instead it should be assessed independently in each case, taking many circumstances into account”.

The scope of this provision is to punish the organization of gathering, not for the creation of a group that committed an ambush. Usually, the gathering is dangerous precisely because it has its own reactions that are independent from the reaction of its members. In this form, a gathering is different from a group, which is generally speaking limited as regards to the number of participants, has a consciousness and is organized. One real gathering is the unorganized [chaotic] crowd, although the term gathering/crowd may apply even when there is a certain [smaller or bigger] amount of order and organization. Thus, involvement of the Defendants in the creation of the barricade itself, in this case, is closer to a group than to a real gathering or crowd due to the number of people. Therefore, under the old Code, this Trial Panel cannot establish that the persons present at the barricade were at least 10. In fact, none of the above named witnesses (the Kosovo _____ who were in the first two cars) on this issue stated that there were more than eight persons at the barricade. Under the new Code, this objective element of the criminal charge was reduced and established as more than eight (8) persons.

Since, the Trial Panel could not establish that at the barricade were more than eight (8) persons, one objective element of the criminal provision was not proven and thus the Defendants have to be acquitted under Article 364 paragraph (1) subparagraph (1.3) of the CPC of having committed the crime of “Participating in a crowd committing a criminal offence”, described and punishable pursuant Article 320(1) of the CCK as read in conjunction with Article 23 of the CCK *pari materia* of Article 412 of the CCRK as read in conjunction with Article 31 of the CCRK, count 7) of the Indictment.

In relation to the charge of “Obstructing Official person in Performing Official Duties”:

When the Trial Panel finds proven that the both defendants **R.R.**_____ and **M.V.** _____ were at the barricade within a group of people, and illegally obstructed the Kosovo _____ convoy, the Trial Panel relies on the statement of the witness F.U. _____ whose

statement is supported by statements of witnesses I.S. _____ , N.S. _____ , S.S. _____ and E.D. _____ , and further by statements of V.K. _____ , F.Z. _____ , M.J. _____ , F.F. _____ , I.L. _____ , B.M. _____ B.P. _____ , K.H. _____ , M.S. _____ , F.A. _____ , G.C. _____ , H.H. _____ , K.K. _____ , A.I. _____ , G.D. _____ and V.R. _____ . It also relies on the statement of witness B and other corroborated evidence such as the findings during the site visit, the radio communication reports, the map presented by the _____ company and the EULEX Police report.

Witness F.U. _____ knew the appearance of **R.R.** _____. He recognized him at the barricade although he was not sure about his surname, was it **R.** _____, R.1. _____, or R.2. _____. F.U. _____ also stated that that he knew **R.R.** _____ by appearance for 20-25 years since they _____ in the _____ close to each other. When he was shown the Photo album, he saw there the photo of **R.R.** _____ and he identified him as a part of the group of people that went out of the vehicles which made the barricade to the Kosovo _____. F.U. _____ recognised **R.R.** _____ on the spot and then in the Photo album and later on he learned his surname. A week or ten days prior to the respective incident, F.U. _____ , together with the late E.Z. _____ , had stopped **R.R.** _____ at a regular checkpoint. Further, when the armoured vehicle was at the barricade, F.U. _____ immediately told his colleges that he recognized some of the persons at the barricade. Witnesses I.S. _____ , N.S. _____ , S.S. _____ and E.D. _____ gave their statements in accordance with F.U. _____ 's statement confirming that he recognised the people at the second barricade and, on the spot, he said he knew them. They all confirmed that I.S. _____ suggested F.U. _____ to observe the people at the barricade more carefully in order to remember them. All above mentioned witnesses in addition stated that F.U. _____ , who was initially placed at the back of the armoured vehicle, stood up and approached the middle between the driver and the front passenger to have a better visibility. And F.U. _____ stated that he had the same visibility from inside the armoured vehicle as the driver. Hence he was able to observe these persons and among them recognised four persons including **R.R.** _____ , and he remembered appearance of **M.V.** _____ whose picture he identified in the Photo album.

The witnesses gave different approximation on distance between the people at the barricade and the front of the ___ convoy when the convoy stopped, but they all confirmed that the visibility from the vehicle, in spite of its divided windshield, was clear, good and sufficient. The Trial Panel also takes into consideration that without exact measuring, it is difficult to give a precise estimation of distance which the witnesses' statements illustrate, but the persons at the barricade stayed close to the vehicles at the barricade until the armoured vehicle started to remove the barricade, and then they left. This shows that whatever the distance had been before, when the armoured vehicle pulled up to the barricade and until they ran away, the distance to the

persons decreased considerably. Finally, the Trial Panel has noticed that the armoured vehicle is authorized for driving on public roads, which indicates that the visibility from the inside must be such that it is possible to recognize people outside. Therefore the Trial Panel believes that F.U. _____ was able to see and observe the persons at the barricade. Actually, all _____ who were in the armoured vehicle saw these people, but only F.U. _____ knew some of them.

From the large number of telephone calls and SMS messages (69 in total) made by Defendant **R.R.** _____ before, during and after the incident, the Panel concludes that he was mostly active during that day. The Court was not provided with the content of telephone calls made by him or content of the sent messages, but the case file contains the data regarding the metering of the position of the telephone of Defendant **R.R.** _____. According to the telephone cell identification, on 26 July 2011, between 14:13hrs and 14:17hrs, the telephone of Defendant **R.R.** _____ was under the _____ antenna (no. 11574). However, at 14:18hrs, the telephone of the Defendant used the _____ antenna (no. 11503). At 14:23hrs, his telephone used the _____ antenna again. As a result, from this material evidence, the Court can conclude that Defendant **R.R.** _____ was at or around the place of the barricade at the time of the attack against the Kosovo _____ convoy. Wherein, according to the map presented by the Serbian telephone company, the place where the warehouse in the _____ village is located is more or less in between the two relevant antennas, namely antenna no. 11574 and antenna no. 11503.

According to the radio communications, the attack took place at 14:15hrs and the shooting lasted for at least 15 minutes. The Trial Panel particularly stresses that the data presented in the EULEX Police report shows that Defendant **R.R.** _____ was at the barricade until 14:17hrs, then moved to the warehouse, and then went again to the barricade which scenario is very likely. In his statement he actually declared that when shooting had stopped, he immediately went to _____ to his house. On his way he must pass the point where the barricade was established, what he confirmed. From the site inspection, the Trial Panel knows with certainty that the distance from point A (namely, the second barricade) to point B (the warehouse) is 674 meters. Using common knowledge, the Trial Panel also knows that the normal walking speed is 5 kilometres per hour. So, the Trial Panel can conclude that it would have taken several minutes for Defendant **R.R.** _____, walking at a normal speed, to walk from point A to point B. Furthermore, the Court also has to stress that Defendant **R.R.** _____ is/was a sportsman. The Defendant appears to be in good health condition. So, if necessary, the Defendant could have walked faster or even run that distance. Therefore, the Trial Panel believes that Witness B saw Defendant **R.R.** _____ near the warehouse, located closed to the second barricade, after or during the last part of the shootings, when **R.R.** _____ was already arrived there from the point where the barricade was put. This shows that **R.R.** _____ was at the barricade when the Kosovo _____ convoy was forced to stop there. The Trial Panel finds Witness B's statement reliable and coherent. Witness B has no

connection with the Defendants and the act of the Witness to take a stand shows great courage. Thus the Trial Panel found that Witness B is entirely reliable in the opinion of this Trial Panel.

Further, according to Witness B, after the sirens went off, he/she saw a group of persons, civilians with firearms, near the warehouse. Witness B also stated that he/she saw the distribution of the weapons and ammunitions at _____ (type AK-47). And finally Witness B said that he/she saw only around 10 persons at that place and time. The presented statement of Witness B is opposite to the statements of **R.R.** _____'s alibi witnesses regarding the number of persons who were present at the vicinity of the warehouse on the day of the incident. As it is said, Witness B testified that there were only 10 persons whereas all the Witnesses who testified in favour of the Defendant's alibi stated that there were up to 200-300 persons near the warehouse. None of those Witnesses mentioned that there were civilians carrying firearms, as stated by Witness B. These discrepancies between Witness B's and the alibi witnesses' statements are serious. Further the alibi witnesses gave a remarkably detailed and precise description of, for instance their movements and what they ordered at the cafes, where **R.R.** _____ was sitting in cafes, what kind of clothes he was wearing, who he was with, what kind of car he had, where he parked, more than four years ago. Also, they remembered that they saw each other. Such details are, in the opinion of the panel, normally difficult to remember after many years, even if one takes into account the extraordinary event – the shooting – that took place that day. On the other side, none of them remembered any other person who was part of group of people on the road to _____ or near the warehouse in spite they estimate the group of 100, 200 or even 300 people. Further witness S.V. _____ declared that defendant **R.R.** _____, on critical day, before and during the incident / shooting on the ___ convoy, was with him in different cafes/restaurants, and finally, that the defendant was with him at the warehouse in the _____ village. Witness Z.J. _____ confirmed V. _____'s story saying that he saw V. _____ and R. _____ in _____ in a cafe before the shooting against the ___ convoy took place and that they arrived at warehouse at the same time, from direction of _____. Witness Z.M. _____ claimed he saw **R.R.** _____ when shooting started because R. _____ was already at the warehouse, despite the statement of S.V. _____ who claims that he was still in _____ with **R.R.** _____ when the shooting started. S.V.1. _____ confirmed that **R.R.** _____ was hiding inside the vicinity of his warehouse when shooting against the ___ convoy occurred, while D.D. _____ stated he saw **R.R.** _____ arriving from _____ and leaving his car near the warehouse at the time he heard shooting. All these statements obviously aim at proving that **R.R.** _____ was not at the barricade. But that fact has been proven by witness U. _____'s statement supported with evidence given by the other named witnesses and by the content of abovementioned documents. For this reason the Trial Panel concludes that all the witnesses who testified and confirmed Defendant **R.R.** _____'s alibi, namely Witness S.V. _____, Witness Z.J. _____, Witness Z.M. _____, Witness S.V.1. _____, Witness M.K. _____, Witness Z.D. _____ and Witness D.D. _____,

did not tell the truth. Moreover, these witnesses are also **R.R.** _____'s close friends and acquaintances, and obviously try to help him in establishing an alibi. Therefore they are not credible and reliable regarding the facts they were testifying about which results in assessment that **R.R.** _____'s alibi is forged.

In addition, having in mind content of the witness B's statements to the Prosecutor, the Trial Panel has more reasons not to believe that **R.R.** _____ was in _____ when the barricade of cars was made in order to stop the Kosovo _____ convoy. Namely, witness B described that on 25 July 2011 there was information that a _____ unit was on the way to the gate ___ to take over the control over the Gate. Witness B stated that "the president of the Municipality of _____", S.R.1. _____, called employees of the municipality to gather. R.3. _____ then told the people who had gathered outside the municipality building to go to the Gate _____ to block _____. He/she explained that the people went to the Gate ___, where S.R.1. _____ negotiated with _____, and that the persons from _____ stayed at the Gate ___ until the next morning. Witness B also stated that there was a warning system in _____ which is used by the mayor. First the mayor called responsible persons in various municipal institutions and then the general public is warned by the use of an alert siren. In ___ statement of 27 November 2011, on the question of the prosecutor if the crowd stayed at the Gate _____ until the next morning, witness B stated (redacted version) the following:

"Yes, the next day there were also some negotiations done by S.R.1. _____. I am not sure if he tried to negotiate with KFOR or EULEX I don't know. When he finished the negotiations he approached the crowd and stepped on some concrete flower bed and told us that they made an agreement to let the _____ go back so that nobody should attack, shot or do anything. So when he told us to disperse the people started moving and made a space free for _____ to leave, and then _____ left the spot and proceeded towards Mitrovica without any incident. When they passed us, S.R.1. _____ said we could all go home. Maybe an hour later when we went back to _____ me and others were standing in the center of _____ and at that moment we heard air sirens and then they heard from some other people who had gathered there that _____ was coming back and we had to go there and block them again. When I saw everybody was going I joined them and we went to _____ village. I went to _____ village with a vehicle and I parked it around two kilometres away from the place of the incident and then I got out of the car and heard the shots."

The Trial Panel is convinced that there is no doubt that F.U. _____ knew the appearance of **R.R.** _____ and that he had the possibility to, and he actually did, recognize **R.R.** _____ at the barricade. Further, the panel is convinced that he also saw, observe and later on identified in the photo album a picture of **M.V.** _____ as the one of persons at the barricade set out to stop the Kosovo _____ convoy. Witness F.U. _____ had both the sufficient time and view to observe all persons at the barricade including **R.R.** _____ and

M.V. _____. He could observe both of the defendants for some time while the convoy stopped, while the persons at the barricade were ordered to move, and finally while the armoured vehicle pulled towards the barricade to remove the vehicles.

The Trial Panel cannot see any reason for F.U. _____ not to tell the truth on what he observed. Moreover, identifying the defendants, who are of _____ ethnicity, as the part of the group of people who stopped the Kosovo _____, _____ Unit convoy when it was on the northern part of Kosovo could only cause _____ since he _____ in _____ where the _____ is _____. Thus the Trial Panel can conclude that the statement of Witness F.U. _____ is relevant and honest. Furthermore, the fact that Witness F.U. _____ stopped defendant **R.R.** _____ shortly before the event in a traffic control routine is important and strengthens the value of his statements. Therefore, the Court considers that this is more reliable than a simple identification. His statement has also been substantiated by statements given by above mentioned witnesses as well as by content of presented documents which all together leave no doubts that Defendant **R.R.** _____ and Defendant **M.V.** _____ were at the barricade at the critical moment. And the obvious purpose of placing the barricade was stopping the Kosovo _____, _____, who were in the convoy of vehicles and were executing their lawful duties, to proceed further towards the Gate _____.

The Trial panel does not put substantial weight on the discrepancies between the witnesses' description regarding the colour of the cars and number of the people at the barricade, estimation of their age, the colour of their hair, their clothes, body shape, and F.U. _____'s confusion concerning **R.R.** _____'s surname and his father's name, because these circumstances neither clearly exclude nor include **R.R.** _____ and **M.V.** _____ from the crime scene. The panel does not find the somehow unclear descriptions a decisive factor since F.U. _____ knew very well the appearance of **R.R.** _____ and he recognized him at the barricade. In addition, he remembered the appearance of **M.V.** _____ and he identified him as the person who was at the barricade stopping the Kosovo _____ convoy. Thus, it was the identification made with the use of photo albums which is decisive for the identification of Defendant **M.V.** _____ in this case.

Regarding the legal classification of charges against defendant **R.R.** _____ and **M.V.** _____ under count 4) of the Indictment, the trial Panel emphasizes that the Court is not bound by the Prosecutor's legal qualification of the factual description of an offence in the Indictment (Article 360, paragraph 3 of the CPC). Under count 4) of the Indictment, both the defendants were accused of committing the criminal offence of "**Obstructing official persons in performing official duties**" described and punishable under Article 316(1) and (3) of the CCK as read in conjunction with Article 23 of the CCK *parimateria* of Article 409(1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK;

The above established event occurred on 26 July 2011, when the applicable law was the Criminal Code of Kosovo, which entered into force on 06 April 2004 under the name of Provisional Criminal Code of Kosovo. That was amended on 06 November 2008 merely by changing its name to Criminal Code of Kosovo. However, the new Criminal Code of the Republic of Kosovo (CCRK, Code No. 04/L-082) entered into force on 01 January 2013.

The Trial Panel points out that both, the old law (CCK) and the new law (CCRK), express the common principle in criminal law: “The law in effect at the time a criminal offence was committed shall be applied to the perpetrator”. However, both laws also express the universally accepted exception: “In the event of a change in the law applicable to a given case prior to a final decision, the law more/most favourable to the perpetrator shall apply”.

Pursuant the Old Code (CCK), the offence of Obstructing Official Persons in Performing Official Duties, paragraphs 1) and 3) are described in Article 316 as follows :

- 1) *Whoever, by force or threat of immediate use of force, obstructs an official person in performing official duties falling within the scope of his or her authorizations or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three months to three years.*
- 3) *When the offence provided for in paragraph 1 or 2 of the present article is committed against an official person performing his or her duties of maintaining public security, the security of Kosovo or public order or apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty, the perpetrator shall be punished by imprisonment of three months to five years.*

Pursuant the New Code (CCRK), the offence of Obstructing Official Persons in Performing Official Duties, paragraphs 1) and 2) are described in Article 409, paragraphs 1) and 2) as follows:

1. *Whoever, by force or serious threat, obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three (3) months to three (3) years.*
2. *Whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by a fine or by imprisonment of up to three (3) years.*

Thus Article 316, paragraph 1 of the CCK (Old code) prohibits obstruction of official persons in performing official duties “*by force or threat of immediate use of force*”. Paragraph 3 increases the penalty range if this offence is committed in a certain described way. Article 409,

paragraph (1) of the CCRK (New code) has a different wording, but the essence is the same (*“force or serious threat”*).

The proven actions of **R.R.** _____ and **M.V.** _____ do not include use of force, threats of use of force or serious threats. The establishment of the barricade consisting of vehicles was a kind of passive resistance and obstruction. It is not proven that any of the persons at the barricade, including the defendants, used force, or threatened to use force, or signalled by words or means serious threats. They forced the Kosovo _____ to stop by making the barricade, they refused to obey the orders of the Kosovo _____ _____ to free the road and showed three finger, or middle finger which was offensive and vulgar, and shouted at the Kosovo _____. In the opinion of the Trial Panel, these actions were not threats that are covered by Article 316, Paragraphs 1) and 3) of the CPC, or Article 409, Paragraph 1) of the CCRK.

But, the proven acts committed by both Defendant **R.R.** _____ and **M.V.** _____, as it is described in the enacting clause, constitute the criminal offence of Participation in a Group Obstructing Official Persons in Performing Official Duties, described and punishable under Article 318, paragraph 1 of the CCK.

With all that evidence, the Trial Panel can assess that the incident was very well organized at a professional level. This was not a spontaneous action. There was a clear plan to obstruct the _____ _____ from reaching Gate ___ with the use of the first barricade, then the second barricade and then the shootings that took place. They resisted the _____ force and were very successful. There is evidence that all this was very well organized and that each person had a role to play in this incident

Article 318, paragraph 1 of the CCK describes the criminal offence of Participation in a Group Obstructing Official Persons in Performing Official Duties as follows:

“Whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties or in a similar way forces him or her to execute official duties shall be punished for participation by a fine or by imprisonment of up to three years.”

In other words, their behavior, at the critical moment, was described and foreseen as a criminal offence by the Code which was in force at the time of its commission. And it has its continuation within Article 409 paragraph 2. of the present Code, CCRK. Namely, **R.R.** _____ and **M.V.** _____ together with other persons blocked the road with vehicles, and by this common action they obstructed the _____ in performing their duties, namely to proceed to the Gate _____. The applicable sentencing range is the same both in the old and the new Code: *a*

fine or by imprisonment of up to three years.”, herein the old Code (CCK) was in force at the time the respective criminal offences occurred.

Having in mind the common principle in criminal law: *“The law in effect at the time a criminal offence was committed shall be applied to the perpetrator”*, the Trial Panel finds Defendant **R.R.** _____ and Defendant **M.V.** _____ guilty of Participation in a Group Obstructing Official Persons in Performing Official Duties. Wherein the Trial Panel requalifies the original charge of Obstructing Official Persons in Performing Official Duties in violation of Article 316, paragraphs 1 and 3 of CCK as read in conjunction with Article 23 of CCK currently criminalized under Article 409 paragraphs 1 and 2 of the CCRK as read in conjunction with Article 31 of the CCRK in a way that is qualifies the criminal offence committed by the defendants as the criminal offence of **“Participation in a Group Obstructing Official Persons in Performing Official Duties”**, described and punishable under Article 318, Paragraph 2 of the CCK. The named criminal offence they committed with direct intent because they were aware of their act and desires its commission, their intent was to prevent the Kosovo _____ to reach the Gate ____, and the managed to reach that goal. Base on that the both of defendants are convicted for that particular criminal offence, as stated in the enacting clause. Here it should be highlighted that respective Articles require that the perpetrator “participates in a group of persons which by common action...”. Consequently, it is not necessary to apply “co-perpetration” according to Article 23 of the CCK or 31 of the CCRK.

Sentencing

According to General rules on Calculating Punishments in Article 64 of the CCK: “The Court shall determine the punishment of a criminal offence within the limits provided by law for such criminal offence, taking into consideration the purpose of the punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment (mitigating and aggravating circumstances) and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender”.

As aggravating circumstances for the Defendant **R.R.** _____ the Court considered that he already committed and he has been convicted for the very serious criminal offence of murder. Further, the Trial Panel also, as an aggravating circumstance for **R.R.** _____ takes into consideration that the criminal offence took place on 26 July 2011, and he was on the run until 11 April 2014 when he was arrested. In relation to the both defendants the Trial Panel considers it an aggravating circumstance that the obstruction of the Kosovo _____ convoy

was carried out in order to prevent the _____ to take control over Gate __ (boundary station) at a time when there was a very tense situation in the area between many Kosovo-_____ and the Kosovo authorities, especially the Kosovo _____. To establish the barricade and obstruct the convoy were bound to further escalate the already tense situation.

On the other side, the Trial Panel has not found any particular mitigating circumstances in relation to Defendant **R.R.**_____, nor in relation to Defendant **M.V.** _____.

Taking into consideration all of the above mentioned circumstances related to Defendant **R.R.** _____, the criminal offence he committed, a consequence of commission of respective offence, the fact that he acted with direct intent, as well as applicable sentencing range, the Trial Panel has sentenced **R.R.** _____ to 2 (two) years of imprisonment. In accordance with Article 43, paragraph (1) and Article 44, paragraph (2) of the CCK, this punishment shall not be executed if the Defendant **R.R.** _____ does not commit another criminal offense for a verification period of 4 (four) years. The court believes that in this case, the purpose of punishment can be achieved with application of the suspended sentence without execution of the imprisonment. And also, the court thinks that verification period of 4 years is long enough for him to change his behaviour in positive way. Pursuant to Article 73 Paragraph (1) of the CCK the time of being in detention on remand and during the deprivation of liberty in relation to defendant **R.R.** _____ respectively from 11 April 2014 until 22 April 2015 shall be included in the punishment of imprisonment in the case of revocation of the suspended sentence and execution of the punishment.

Taking into consideration the mentioned aggravating circumstance related to Defendant **M.V.** _____, the criminal offence he committed, a consequence of commission of respective offence, the fact that he acted with direct intent, as well as applicable sentencing range, the Trial Panel has sentenced **M.V.** _____ to 1 (one) year and 6 (six) months of imprisonment. In accordance with Article 43, paragraph (1) and Article 44, paragraph (2) of the CCK, this punishment shall not be executed if the Defendant **M.V.** _____ does not commit another criminal offense for a verification period of 3 (three) years. The court believes that also in his case, the purpose of punishment can be achieved with application of the suspended sentence without execution of the imprisonment. The verification period of 3 years is considered long enough for him to change his behaviour in positive way.

Cost of the proceedings

The Trial Panel finds the Defendants **R.R.** _____ and **M.V.** _____ guilty of criminal offence of Participation in a Group Obstructing Official Persons in Performing Official Duties and, pursuant to Article 453 Paragraph (1) of the CCK, they shall each reimburse the

costs of criminal proceedings. Considering the number of hearings held and the economic conditions of the Defendants, the Court decides that, pursuant to Article 451, Paragraph (1) and Article 453, Paragraphs (1) and (4) of the CPC, the defendant **R.R.** _____ shall pay 400,00 (four hundred) Euros as part of the costs of criminal proceeding, but is relieved of the duty to reimburse the remaining costs. The court decides that Defendant **M.V.** _____ shall pay 300,00 (three hundred) Euro as part of the costs of criminal proceeding, but is relieved of the duty to reimburse the remaining costs.

The Defendants must reimburse the ordered sum no later than 30 days from the day this Judgment is final.

Property claim

During the hearing session of 10 October 2016 the Representative of Inured Party, Mr. Burhan Maxhuni submitted statements of damage for injury parties, Ms. D.Z. _____, Mr. B.M. _____ and Mr. D.P. _____.

In her statement dated 19 September 2016, the injured party Ms. D.Z. _____ stated that the criminal offence had financial impact. The medical treatment costed her five thousand and three hundred (5300) euros, and requested the amount as widow, and her ____children are entitled by the law.

In his statement dated 05 October 2016, the injured party Mr. B.M. _____ did not specify the cost of medical treatment. He stated that the impact of criminal offence is enormous, causing feelings of fear, anxiety, insomnia, difficulties in concentration, continuous reappearance of the occurrence.

In his statement dated 19 September 2016, Mr. D.P. _____ did not specify the cost of medical treatment, he stated that during the incident he was in the vehicle with his colleague E.Z. _____, as of that moment he sustained irregularities in terms of insomnia and become more nervous person.

Since, the court renders a judgment acquitting the defendants of the charge of Aggravated Murder of E.Z. _____, pursuant to Article 463 Paragraph (2) of the CPC, the injured party D.Z. _____ is invited to seek any compensation claim in relation to this case through the civil courts. Further, Injured parties B.M. _____ and D.P. _____ who also submitted their property claims are invited to seek any compensation claim in relation to this case through the civil courts because the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award.

Mitrovica/ë, 21 November 2016

EULEX Presiding Judge
Iva Niksic

LEGAL REMEDY: The Parties have 15 days from service of this judgment to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.