

ANNEX 2 to

Prosecution Brief in Response to Defence Appeals

Public

**SPO Translations of
Basic Court of Giljan, *LT*, P 873/2020, Judgment, 12 February 2021 and
Basic Court of Ferizaj, *KS and RB*, PKR 36/19, Judgment, 10 June 202**

**/Emblem of the Republic of Kosovo/
REPUBLIC OF KOSOVO
BASIC COURT IN GJILAN**

Case number:	2021:013216
Date:	12 February 2021
Document number:	01502336

P. No. 873/2020

ON BEHALF OF THE PEOPLE

In the - General Department of the BASIC COURT IN GJILAN, the single Judge Rilind SERMAXHAJ, with the assistance of the legal officer Eronita LLAPASHTICA, sitting in the criminal case against the accused LT from the village of SH, Municipality of /redacted/ charged with the criminal offence of intimidation during criminal proceedings, provided for in Article 395 of the Criminal Code, which according to the authorization is defended by the lawyer BE, from P, acting in accordance with the indictment of the Basic Prosecutor's Office in Gjilan - General Department, number PP. II. No. 1846/18, dated 27 November 2018, after holding the public judicial hearing, received and publicly announced on 29 January 2021 the case, and on 12 February 2021 issued the following:

JUDGMENT

The accused LT, father's name S, and mother's name H, née M, born on /redacted/, in the village of S, Municipality of K, residing in the village of SH, Municipality of Gj, completed high school, unmarried, self-employed as a hairdresser, of good economic standing, Albanian, citizen of the Republic of Kosovo,

IS FOUND GUILTY

Because on 14 October 2018, at around 17:00, in L village of E, in the Municipality of GJ, she used serious threats to make the victim AM, from LiE village, Municipality of GJ, refrain from giving a statement before the competent judge of the Basic Court in Gjilan, for a criminal case against her in this court, namely harassment, where the victim was Dr. /redacted/. She went to the village of the victim, met with his son, and told him that his father had a love affair with a woman by the name of RLL, from K, and that she was going to tell the brother-in-law and other family members of the victim's wife about it, if the victim was not going to refrain from given a statement and testifying against her, in the above-mentioned case. She caused anxiety and fear to the victim because when she met with the victim's son, she asked for the brother-in-law's number and put him under huge emotional distress worrying about himself and his family, if she was going to call and tell his wife's family members that he had had a love affair with the above-mentioned woman.

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- therefore, she committing the criminal offence of intimidation during the criminal proceedings stipulated in Article 395 of the CCRK,

The Court based on Articles 4, 41, 42, 43, 46, 49, 50, 51, 52, 73 and 74 of the CCRK and Articles 360, 361, 362 and 365 of the KPP/Criminal Procedure Code (CPC), sentences the accused LT to:

SENTENCE

A suspended prison sentence of 2 (two) years, provided the accused does not commit any other criminal offences during a probationary period of 4 (four) years, and a fine of EUR 2000 (two thousand), to be paid within 5 (five) months from the day of this judgement becoming final.

If the accused does not want to, cannot or is not able to pay the fine, the fine will be replaced by a prison sentence, in agreement with the accused, in such a way that for every EUR 20 (twenty), she will be assigned one day of imprisonment.

The victim /redacted/ is instructed to file a civil dispute claim in relation to the assets.

The accused shall pay a court fee in the amount of EUR 100 (one hundred), as well as a victim surcharge in the amount of EUR 30 (thirty), within 15 days of this judgement becoming final. Failure to pay the costs will result in bailiffs collecting the payments.

GROUNDS

1. Conduct of the case and the closing statements of the parties

The General Department of the Basic Prosecutor's Office in Gjilan filed on 29 November 2018 the indictment PP. II. no. 1846/2018, against the accused LT, from SH village, Gj Municipality, for the criminal offence of intimidation during the criminal proceedings, provided for in Article 395 of the CCRK/Criminal Code of the Republic of Kosovo (CCRP)/. The accused was acquitted by Judgement P. No. /redacted/, of /redacted/ on the grounds that the actions of the accused did not form the elements of the criminal offence she was charged with. The judgement of the Court of Appeal of Kosovo, in Pristina, number /redacted/ dated 28 October 2020, repealed the judgment of the First Instance Court and the case was returned for retrial.

After the case were returned for retrial, the First Instance Court, acting according to the instructions of the Second Instance Court, undertook the actions instructed of, and with the creation of legal conditions, a hearing was scheduled and held on 26 January 2021, attended by the State Prosecutor, the victim AM, the accused LT, her attorney Behar EJUPI, witnesses Fatos MUSLIU and AD. During the hearing the material evidence was reviewed and parties presented their closing arguments.

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In the closing arguments the State Prosecutor stated that he fully stood by the closing arguments presented in the hearing of 26 November 2019, where he stated that based on the administered and reviewed personal and material evidence, it has been proven that the accused LT committed the criminal offence she was charged with. This was ascertained by the statement of the victim Ajet MUSLIU, who stated that the accused had gone to Livoq village where the victim lives, met with the victim's son, FM, and told him things he was not aware of, namely *"Your father should not be a witness in the criminal case in Kamenica Court. He should withdraw, otherwise I will tell your mother's family and your family that your father has had an affair with a woman with the initial RLL, from Kamenica"*. The accused denied this, but she did so to escape criminal responsibility, therefore the Prosecutor invited the court to take into account all the evidence, especially the statement of the victim Ajet MUSLIU, the statement of the witness Fatos MUSLIU, as well as the statement of witness A D, who heard the victim ask the accused in her salon in Kamenica why she had gone to his house and bothered his family. As a result, the accused should be found guilty and punished according to the law.

In his closing statement the victim AM, stated that he fully stood by the closing statement presented in the hearing on 26 November 2019, where he declared that he fully supported the closing arguments of the State Prosecutor and requested that the Court took into account all evidence that has been proven and that the accused received a well-deserved punishment, because during the Court hearing the accused admitted it that on the day in question she had been to his village. He further added that that he supported the criminal prosecution and shall file a civil claim.

The defence for the accused LT, lawyer /redacted/ in the closing arguments, stated that he fully stood by the closing arguments presented in hearing on 26 November 2019, where he stated that the elements of the criminal offence had not been met for the accused, namely: 1) action, 2) illegality, 3) determinability and 4) guilt, because the accused had not undertaken any action, had not committed anything illegal, had not caused any harm. The victim himself stated that the witness FM, had stated that the accused had said to him the words "he has ruined my life" and she did not want his father to have anything to do with her. There was no other threat of any kind, nor was there any kind of promise from the accused. The victim, even though he is a qualified lawyer, did not report the case to the police, but went to the salon of the accused in /redacted/ and threatened her, for which he was sentenced by the competent court. With regards to administered evidence, the Court should not base the verdict on the witness's /redacted/ statement, because he is the son of the victim and it is not possible for the son to go against the father. In addition, witness Fatos MUSLIU gave statements to the police and the prosecutor which have significant differences. However, he does not state that /redacted/ made any threats towards his father, for him not to give any statements to the justice authorities, apart from the fact that she had told him *"He has ruined my life and I don't want your father to have anything to do with me"*. This statement is matches the statement of the accused /redacted/.

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Regarding the statement of the witness AD, she has nothing to do with the factual situation. Based on the above, the defence counsel asked for the accused LT, to be acquitted.

The accused LT, stated that she fully stood by her closing statement presented in hearing on /missing/, where she stated that she fully stood by the closing argument of her defence lawyer, adding that she did not even think of the victim withdrawing from giving a statement. She went to clarify things with the victim, because he had told her "You either come and have a coffee with me, or I will ruin your relationship with Dr. /redacted/".

2. Evidence administered during the trial

After assessing and analysing the evidence, the Court fully confirmed the factual situation as in enactment clause of the judgement, based on:

- Hearing the victim AM, in the capacity of witness;
- Reading the statement of the witness FM, given during the hearing on 31 October 2019;
- Reading the statement of the witness AD, given during the hearing on 31 October 2019;
- Reading and viewing material evidence such as: statements of the victim given at the Police Station in Gjilan and at the Basic Prosecutor's Office in Gjilan, statements of the witness FM given at the Police Station in Gj and at the Basic Prosecutor's Office in Gjilan, statements of the witness AD given in the Police Station in Gjilan and in the Basic Prosecutor's Office in Gjilan, the official report of the case investigator, the reply to the letter P. No. /redacted/ by the Basic Court in Gjilan - Kamenica Branch; and
- The defence of the accused LT.

2.1 Statement of the victim AM, in the capacity of a witness

The victim stated during the investigations that he fully stood by his statement given during the hearing on 26 November 2019, where he stated that he fully stood by the statements given to the police and the prosecution. On the day in question, at around 17:00, he was with a few friends at the /redacted/ restaurant in Gjilan, and received a call from his daughter, who asked to him urgently call his son FN because someone hand put the son into a car near the house. The son had been standing on the street with a few other people, and the person asked the son to get in her car and told the other people to go away. The victim, subsequently rang his son and asked him who this person was and what she wanted. The son replied that it was a woman, whose name he did not know, who had said that to him that she had come to speak to his father. The victim told the son to pass on his phone to the woman, so could understand who this person was and what she was looking for. The woman, however, had said that she did not want to speak on the phone. The victim asked the son to turn on the loudspeaker and told the accused that if she wanted to speak to him, he was at

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S restaurant and she could go there and talk to him. The victim heard the accused tell his son that she did not want to meet him. The victim added that his son was very upset and that the accused had initially asked the son for his maternal uncle's phone number and had mentioned to him another person from K, with the initials RLL with whom the victim had allegedly had a relationship. She had also mention to his son the name of victim's friend from Kamenica, Rrahim BEQIRAJ, saying that allegedly she was having an affair with him and the victim had been the reason of their break up. According to the victim, the only and the main reason why the accused had gone to the village of the victim was to prevent him from giving a statement regarding a case in the Basic Court in Gjilan - Kamenica Branch.

2.2 Reading the statement of the witness FM

The Court, having heard the parties and with their consent, within the meaning of Article 338(1)(1.3) of the KPP/Code of Criminal Procedure (CPC)/, read the statement of the witness FM, given in the hearing where he stated that he had given evidence regarding this matter to the police and the prosecutor's office and he stood by them. On the day in question, he was with his aunt's son and a neighbour of his, and at about /redacted/ they were about 80 metres away from their house, when a /redacted/ car approached them. The accused who was inside the car, called only the witness and told him "Are you Ajet's son?" and asked him for his maternal uncle's phone number. At first, she behaved normally and when he gave her his maternal uncle's phone number, she said to him "*Your father has ruined my life, all your immediate and extended family will find out about this*", because, allegedly his father was the cause of her break up with her lover. She told him that if she was not to get together with the doctor, she would commit suicide and his father was the reason why she had split up with the lover. Regarding the court case, he emphasized that the accused addressed him with the words "You as a whole family will see what I will do to you". She then asked the son to go his house. The son replied that if she wanted, she was free to go. She wanted his mother to know everything, and in the end, she told him "*If your father backs off, we are fine*". He then notified his father, the current victim, on the phone, who told him that he was at Shaqa restaurant, and if the accused wanted to meet him, she could go there to meet him. The son told the father that the main request of the accused was that his father withdrew from testifying in a court proceeding against her. The son did not report the case to the police immediately because he was upset. With regards to the threats, he stated that apart from the above, there were no other threats, nor were any other promises, apart from what she said "*if your father backs off, we are fine*".

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2.3 Reading the statement of the witness AD

The Court, having heard the parties and with their consent, within the meaning of Article 338(1)(1.3) of the CPC, read the statement of the witness Albina DEMOLLI, given during the hearing stating that at the time when the offence occurred she had been working as a hairdresser in the accused's salon in Kamenica, and that in October of the year 2/redacted/, while she was alone in the salon, the victim had come and asked her if L was in the salon. She rang the accused who turned up after 10-15 minutes. When the accused arrived, they started arguing and the witness heard both of them insulting each other. The witness went out of the salon and stayed approximately 5-10 meters away and from there she could hear the victim saying to the accused "*You destroyed my family*". She witness has no knowledge of what happened on /redacted/, namely about the criminal offence LT is charged with.

2.4 The defence of the accused LT

The accused, in her defence during the hearing, stated that she fully stood by her defence statement given in hearing on 31 October 2019, where she stated that on 14 October 2018 she was in the village of the victim, because in March of that year the victim had been to her salon and had told the accused that he could ruin her affairs with RB. The accused added that after receiving the case documents related to the case heard in the Basic Court in Gjilan - Kamenica Branch against her, she understood that the victim was proposed as a witness in that case. This is why she felt she had to go to his family, and the purpose of that was to clarify things with the victim's wife and tell her that she had not had an affair with the victim, and not intimidate him. On the day she went to the victim's village, she met two passers-by whom she asked about the victim's house and one of the passers-by was the victim's son. She asked him where his father was. The son asked the accused for her phone so that he could call his sister and through her /inform/ the victim. Following the phone calls, the victim called witness F and asked for the /?/accused to go to Shaqa restaurant where he was. She did not go there because her aim was to meet with the victim's family and clarify things with them. Subsequently, the victim's son asked her to go to and see his mother, but she refused because she felt sorry. She denied having made threats and having asked for his father to withdraw from his testimony as a witness.

3. Elements of the criminal offence

Article 395 of the CCRP stipulates that "Whoever uses force or serious threat, or any other means of compulsion, a promise of a gift or any other form of benefit to induce another person to refrain from making a statement or to make a false statement or to otherwise fail to state true information to the police, a prosecutor or a judge, when such information relates to obstruction of criminal proceedings shall be punished by a fine of up to one hundred and twenty-five thousand (125,000) EUR and by imprisonment of two (2) to ten (10) years."

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This means that the ways of committing this offence are through force, threat, coercion, promise of a gift or any other benefit so that the other person refrains from giving a statement or makes a false statement or otherwise fails to state true information to the police, a prosecutor or a judge when such information relates to the obstruction of criminal proceedings. If the criminal offence was not committed in any of the ways defined above, then this criminal offence was not committed. This offence is committed against a witness or an expert and this criminal offence can only be committed intentionally.

4. Assessing and analysing the evidence

In the criminal case hearings, the Court, in accordance with Article 7 and 361 of the KPP/Code of Criminal Procedure (CCC)/ truthfully and completely established the facts which are important to rendering a lawful decision, examined carefully and with maximum professional devotion to establish, with equal attention, the facts against and for the accused, enabling the accused to use all the facts and pieces of evidence, which were in favour of the defence. The Court conscientiously assessed each piece of evidence one by one and in relation to other evidence, and on the basis of such assessment, came to a conclusion in relation to the concrete facts proven. After examining and assessing the evidence that was administered in the hearing, the Court concluded that the statement given by the victim Ajet MUSLIU during the trial, as well as the statements of the witnesses Fatos MUSLIU and Albina DEMOLLI, should be believed because they are in harmony with one another as well as with other material evidence administered by the Court, and prove the factual situation described in the enacting clause of this judgement.

This finding is supported and is in complete harmony with the statement of the witness Fatos MUSLIU given in the hearing on 31 October 2020 and his statements given to the police and the prosecutor which are in complete harmony with one another and which the Court believes. Among other things, he had declared that on the day in question, while he was with a friend and a neighbour in his village, a /redacted/ vehicle approached him. The accused who was inside the car, called the witness and said to him "Are you Ajet's son", and asked him for his maternal uncle's phone number. She then said to him "Your father has ruined my life, all your immediate and extended family will find out about this", "You, as a whole family, will see what I will do", and "If your father backs off, we will be fine". The accused then told the witness to ring the victim and in the end told him "I will not leave it here", which means that the accused knew exactly that the aforementioned witness was the son of the victim and through him she wanted to convey a message and influence the will of the witness, namely the victim in this case, to refrain from testifying in a trial which was taking place against the accused in the Basic Court in Gjilan - Kamenica Branch. The fact that the accused conveyed the message through the victim's son, i.e., caused fear and wanted to influence the will of the victim in order for him to refrain from giving his testimony as a witness, is also confirmed by the statements of the victim given during the Court proceedings, to the police and the prosecutor's office, which are in complete harmony with the testimony of the witness Fatos

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MUSLIU. Among other things, the victim stated that at around 17:00, he had been with some friends at the /redacted/ restaurant in G and he received a call from his daughter, who asked him to urgently call his son, Fatos. The victim called his son Fatos, a witness in this case, and asked him who this person was and what she wanted. The son told him that she was a woman whose name he did not know, but who said that she had come to talk to his father. The victim then said that if she wanted to talk to him, he was at /redacted/ restaurant and she could go there and talk to him. The victim also stated that the accused had initially asked his son for his maternal uncle's phone number and had also asked the son about another person from K, with initials RLL. She had said that she was in a relationship with him. In the end she had told her son the name of a friend of the victim. /redacted/, who is from Kamenica. According to the victim, the only and the main reason why the accused had gone to the victim's village was so that he would refrain and not make a statement in a legal case that was being heard in the Basic Court in Gjilan - Kamenica Branch. This fact is also partially confirmed by the statements of the witness /redacted/, who in her statements given during the Court hearings, to the police and to the prosecutor's office, stated that at the time when the offence occurred, she had been working as a hairdresser at the accused's salon in Kamenica. In October 2018, while she was alone in the salon, the victim had come and asked her if Lulja was in the salon. She then phoned the accused, who arrived after 10-15 minutes and as soon as she had arrived, they started arguing, and insulting each other. The witness immediately went out of the salon and was standing approximately 5 to 10 meters away from the salon and from there she could heard the victim saying to the accused "*You destroyed my family*".

Based on the above, the Court confirmed that the fact that the accused LT had gone on /redacted/ to the victim's village, the fact that the accused had met the victim's son there, witness FM, the fact that the accused knew that witness F was the victim 's son are not contested, because these facts are proven by the statements of witness FM given to the police, the prosecutor and during the Court proceedings; statements of victim AM given to the police, the prosecutor and in during the Court proceedings; and partly from the statements of witness AD given to the police, the prosecutor and during the Court proceedings, and which the Court believes. Apart from being in harmony with one another, they are also in harmony with the material evidence, and this fact is partially confirmed by the statements of the accused LT given to the police, the prosecutor and during the Court proceedings. She did not deny the fact that on the date, time and place described in the enacting clause of this judgement, she had gone to the victim's village, met with his son, had a conversation with him, and explained to him the situation. According to her, this was only done to have some explanations from the victim, and no other reason.

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However, based on the above, the Court found that a contested fact in this criminal case was whether the accused, through the victim's son, wanted to influence the will of the victim in order for him to refrain from testifying before the competent court. However, as emphasized above, this disputed fact has been resolved based on the statements of the witness FM and the victim AM which the Court believes. In addition to being in harmony with one another, they were also in harmony with the material evidence administered by the Court. Among other things, witness Fatos stated that during the conversation with the accused, she told him *"Are you Ajet's son? Your father has ruined my life, all the immediate and extended family will find out about this. You, as a whole family, will see what I will do. If your father backs off, we will be fine. I will not leave it here."* This fact is partially confirmed by the statement of the witness AD, who stated that during the conversation she heard the victim telling the accused *"You destroyed my family"* because the accused met with the victim's son. Acting according to the instructions of the Court of the Second Instance, through submission number /redacted/, issued by the branch of this court in Kamenica, the Court also confirmed the fact that the victim /redacted/, was a witness in the criminal case before this court, with case number P /redacted/. Therefore, the victim /?accused/, committed all these actions intentionally, and with the aim to influence the victim, so that he would refrain from testifying in /redacted/. Based on the above, the Court concludes that this criminal case has been proven beyond reasonable doubt and that the accused /redacted/ committed the criminal offence of intimidation during criminal proceedings, provided for by Article 395 of the CCRK, and that the actions of the accused constitute the elements of the criminal offence for which she has been found guilty.

With regards to the submission of the defence counsel that the minutes of the proceedings in the case P. no. 180/18 be administered as evidence in these proceedings, where the victim, in the capacity of a witness, stated *"I personally don't have a problem with /redacted/ or /redacted/. I'm sorry to be part of these proceedings, especially in relation to doctor /redacted/ and it's also not my wish that the accused /redacted/ is found guilty in these proceedings"*, the Court rejected the submission on the grounds that it is not relevant and it is clearly unimportant for the fair and complete assessment of the factual situation because the object of the indictment is not the statement of the victim in those criminal proceedings, but the actions of the accused /redacted/, namely, intimidation of the witness during the criminal proceedings.

5. Proven factual situation

Based on the above, the Court concluded that it has been proven beyond reasonable doubt that the accused /redacted/ committed the criminal offence of intimidation during criminal proceedings provided for by Article 395 of the CCRK, at the time, place and manner described in the enacting clause of this Judgement.

6. Circumstances taken into account when determining the punishment

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In determining the sentence, the Court assesses that the accused should be sentenced as in the enacting clause of this judgement, because taking into account all the circumstances and evidence found in the case files, this sentence will be fair, in harmony with the seriousness of the criminal offence, the conduct and circumstances of the perpetrator, and her criminal responsibility. The Court, when determining the punishment, took into account the general rules for determining the punishment as stipulated in Article 73 of the CCRK, hence that the Court took into account, the degree of the criminal liability of the perpetrator, which from the personal and material evidence administered during the court hearings appears to be high, since the accused at the time of committing the criminal offence was responsible for her actions, as well as the fact, that the criminal offence was committed intentionally and with direct intention due to the fact that she was aware that with her action she would commit a criminal offence and despite this, she undertook the actions described in the enacting clause of this judgement. She committed this offense wilfully, because, as emphasized above, on the date, time and place described in the enacting clause of this judgement she went to the victim's village, met with his son and aimed at influencing the witness, also a victim in this case, so that he would refrain from giving a statement before the competent court. The Court also took into account the intensity of danger or harm, because great fear and emotional distress was caused due to the actions of the accused onto the victim, his son, the witness Fatos MUSLIU, and other family members of the victim.

When determining the punishment, the Court also took into account the general rules that affect the mitigation or severity of the punishment, as stipulated in Article 74 of the Criminal Code. The mitigating circumstance for the accused is she cooperated in general with the Court, because during all phases of the criminal procedure she responded to the summons of the Court. Another mitigating circumstance for the accused is her behaviour after committing the criminal offence. Evidence shows that she did not commit any other offences, and the victim was not disturbed by the accused. The Court considered as a mitigating circumstance the personal circumstances of the accused, who is employed, unmarried. The aggravating circumstance for the accused was the high degree of determination by the accused, because as described above, the evidence administered during the hearings show that she committed the criminal offence intentionally and directly because, on the date, time and place described in the enacting clause of this judgement, she went to the victim's village, met his son and by speaking to him she wanted to influence the witness, a victim in this case, so that he would refrain from giving a statement before the court. The Court found that another aggravating circumstance for the accused was the fact that the actions of the accused caused great fear and emotional distress to the victim and his son, witness Fatos MUSLIU, as well as other family members of the victim.

When making the decision on the condition of the prison sentence, the Court, based on Articles 49, 50, 51 and 52(3) of the Criminal Code, took into account, among other things, the purpose of

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conditional sentence, which consists of the fact that punishments for criminal offences that carry a sentence of up to 5 years of imprisonment, and a warning with a threat of punishment, are necessary to deter the perpetrator from committing other criminal offences. While determining the type and the amount of the punishment, the Court took into account the economic situation of the accused, which according to her and the documents of the case, appears to be good, and consequently, the Court considers that the maximum sentence imposed on her will not affect her and her family' economic well-being. Based on the above, the Court considers that with the sentence imposed as in the enacting clause of this judgement, the goals of the sentence can be achieved within the meaning of Article 41 of the CCRK, which consist in deterring the accused from committing criminal offences and her rehabilitation, deterring other persons from committing criminal offences, the expression of the social judgement for the criminal offence and raising morale and strengthening the obligation to respect the law.

7. Decision regarding the civil claim

Bearing in mind that the data in this criminal legal case do not represent a safe basis for full or partial judgement of the civil claim, the court based on Article 463(2) of the CPC suggested to the accused to file a civil claim.

8. Decision on the costs of the criminal procedure

Taking into account the nature of this criminal offence and the financial situation of the accused, the single Trial Judge based on Article 451(1) of the CPC, decided to imposed on the accused a court fee of EUR 100 (one hundred) as well as a victim surcharge of EUR 30 (thirty) to be paid within 15 days of this judgement becoming final. Failure to pay the costs will result in bailiffs collecting the payments.

Based on the above, the Court decided as in the enacting clause of this judgement.

BASIC COURT IN GJILAN,
General Department

P. No. 873/2020, on 12 February 2021

Legal Officer

Single Judge

Eronita LLAPASHTICA

Rilind SERMAXHAJ

LEGAL ADVICE: An appeal can be filed against this judgement in the Court of Appeal in Pristina, within 15 days from the day of acceptance of the same. Sufficient copies of the appeal are to be submitted to this court.

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REPUBLIC OF KOSOVO
BASIC COURT IN FERIZAJ

Case number: 2019:080214
Date: 10 June 2020
Document number: 00953160

PKR. No. 36/19

ON BEHALF OF THE PEOPLE

THE BASIC COURT IN FERIZAJ - DEPARTMENT OF SERIOUS CRIMES, with the Trial Panel composed of Judge Ibrahim IDRIZI, Presiding Judge, and Sahit KRASNIQI and Kadrije GOGA-LUBISHTANI lay judges, members of the Panel, assisted by legal secretary Qendresa BOBI-NEZIRI, in the criminal case against the accused: MS, charged with the criminal offence of providing assistance to the perpetrators after commission of the criminal offences, provided for by Article 388(2)(2.9) of the Criminal Code of the Republic of Kosovo (CCRP); KS charged with the criminal offence of intimidation during criminal proceedings provided for by Article 395, and the criminal offence of using a weapon or dangerous instrument provided for by Article 375(2) of the CCRK; EL charged with the criminal offences of providing assistance to perpetrators after the commission of criminal offences provided for by Article 388(2)(2.9) and the criminal offence of false declaration under oath provided for by Article 391(2) of the CCRP; RB charged with the criminal offence of providing assistance to perpetrators after commission of the criminal offences provided for by Article 388(2)(2.9) and the criminal offence of false declaration under oath under Article 391(2) of the CCRP, pursuant to the indictment of the Basic Prosecution in Ferizaj - Department of Serious Crimes, PPI. No. 62/14, dated 29 August 2016, after the conclusion of the public trial on 29 January 2020, announced and publicly communicated on 8 June 2020 the following:

Case number: 2019:080214
Date: 10 June 2020
Document number: 00953160

JUDGMENT

The accused:

KS, son of, father's name /redacted/ and, mother's name /redacted/, maiden name /redacted/ born on /redacted/, with personal identification number /redacted/, known by the nickname /redacted/, resident in Lipjan, /redacted/ Street, number /redacted/, an Albanian citizen of the Republic of Kosovo, who has completed secondary school, a singer, married, parent of three children, with poor economic condition, on bail,

RB, son of, father's name Jetullah and mother's name /redacted/, maiden name /redacted/, born on /redacted/, with personal identification number /redacted/, known by the nickname /redacted/, resident in Ferizaj, /redacted/ Street, number /redacted/, an Albanian citizen of the Republic of Kosovo, who has completed secondary school, unemployed, married, parent of four children, of medium economic status, on bail,

Are found guilty of

I.

The accused KS

1. From 13 May 2013 until the end of 2014, in the Municipality of Ferizaj, had a number of conversations with the victim QM, instructing him and asking him to only tell certain things, and not mention others to the police and the EULEX state prosecutor at the PSRK/Special Prosecutor of the Republic of Kosovo (SPRK)/, regarding a shooting incident. QM also told the victim to lie and say that they, the accused and the victim, were good friends, and that the victim had forgiven the accused or that he accidentally shot him while joking. The accused told the victim QM, that he would beat him up, if he was to tell the truth. The accused also told him that the children of the accused would not want to grow up without their father, implying that the children would not want to grow up with their father in prison because of the actions of the victim. During this entire period, the Accused tried to influence the victim's statements in the preliminary procedure before the law enforcement authorities and the EULEX state prosecutor, not only by threatening the victim but by driving him around and sending him gifts, as well as buying him medication, and paying for his coffee and lunch. By doing so he pushed the victim to "avoid giving a statement, giving a false statement or not to give accurate information to the law authorities".

- he has therefore committed the criminal offence of intimidation during criminal proceedings provided for by Article 395 of the KPRK/Criminal Code of the Republic of Kosovo (CCRK)/.

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2. On 13 May 2013 at around 12:00 at the /redacted/ restaurant, where music was being played, he intentionally used a weapon, a "Grizzly" handgun, 9 mm calibre, PAK, in a threatening or intimidating manner by saying the words "I will **** someone's mother here", shooting once at the leg of the victim QM, causing him minor bodily injuries.

- he has therefore committed the criminal offence of using a weapon or a dangerous instrument provided for by Article 375(2) of the CCRK.

The accused RB

1- a. On 13 May 2013, at around 21:000 at the /redacted/ restaurant, was present when the accused KS fired a handgun at the victim, the victim QM, and initiated contacts with the accused KS and other parties, attempting to concede the shooting. After the shooting he tried to convince at least one eyewitness, SHL not to report the case to the competent authorities. He also left the live music bar which he owned and where the shooting occurred, and did not report to the authorities what he knew about the incident. In addition, he gave the accused KS, the number of the accused MS, then he tried to create a strategy to help the accused KS to escape arrest, investigation and prosecution. Moreover, he gave false information to the law authorities regarding the incident that had taken place, did not identify the accused KS as the person responsible for the shooting, did not tell what he knew about this case, thus attempting to assist the accused KS to escape investigation and prosecution

- he has therefore committed the criminal offence of providing assistance to the perpetrators after the commissioning of criminal offences provided for by Article 388(2)(2.9) of the CCRK.

2-b. From 13 May 2013 until July 2014, gave signed statements under oath as a witness before the Police and the EULEX State Prosecutor, knowing that they contained untruths, ascertaining that at the incident of 13 May 2013, that occurred at the /redacted/ restaurant, there were no gunshots but they were fireworks, and he did not know anything else about this incident. From 13 May 2013 until the end of 2015, he gave false statements in which he knowingly hid or

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reminded silent about the facts regarding the shooting, assisted the accused KS and the victim QM, had contact with the accused KS while the later was hiding from the authorities, and played a multifaceted role in an effort to conceal the shooting that had taken place. From July 2014 until the end of 2015, when giving statements to the Prosecutor, he knew that the statements he gave contained multiple untruths regarding the shooting incident, what he knew about the shooting, his presence when the accused KS shot the victim QM, and reminded silent regarding the actions taken after the occurrence of the incident.

- he has therefore committed the criminal offence of false declaration under oath provided for by Article 391(2) of the CCRK.

Based on Articles 4, 7, 17, 21, 43, 45, 46, 47, 73, 80, 83, 375(2), 388(2)(2.9), 391(2) and 395 of the CCRK, as well as Article 365, the Court sentences:

The accused KS:

With a prison sentence of 8 months and a fine of EUR 500, for the criminal offence of intimidation during criminal proceedings provided for by Article 395 of the Criminal Procedure Code, as described in point I.1 of the enacting clause.

With a prison sentence of 6 months and a fine of EUR 400, for the criminal offence of using a weapon or dangerous instrument, provided for by Article 375(2) of the CCRK, as described in point I.2 of the enacting clause.

The accused RB:

With a prison sentence of 6 months, which sentence, with the consent of the accused, based on Article 47 of the CCRK, is replaced by a fine of EUR 1500, for the criminal offence of providing assistance to the perpetrators after the commission of criminal offences provided for by Article 388(2)(2.9) of the CCRK, as described in point I .1.

With a fine of EUR 800, for the criminal offence of making a false statement under oath, provided for by Article 391(2) of the CCRK, as described in point I.1-b, of the enacting clause.

Based on Article 80 of the CCRK, as well as the aforementioned legal provisions, the Court

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The accused KS, with a single sentence of imprisonment for a duration of 1 year and a fine of EUR 900 (nine hundred).

The accused RB, with a single penalty of a fine in the amount of EUR 2300 (two thousand three hundred).

In the prison sentence imposed upon the accused KS, the time spent in custody from 24.05.2017 to 19.07.2017 is deducted from the sentence, and the rest of the prison sentence will be served after the Judgement becomes final.

The punishments imposed by way of fines will be paid by the accused in full within 30 days after the Judgement becomes final.

The "Grizzly" /redacted/ handgun, 9 mm calibre, PAK will be confiscated.

The accused shall pay court costs in the amount of EUR 250 each, as well as the amount of EUR 50 each into the Protection Fund for the Victims of Crime.

The victim QM, is instructed to file a civil dispute to settle any asset claims.

II.

The Accused:

MS, the son of, father's name /redacted/ and mother's name /redacted/, maiden name /redacted/, born on /redacted/, resident in Ferizaj, /redacted/ Street, number /redacted/, known by the alias of /redacted/, an Albanian citizen of the Republic of Kosovo, who has graduated from the Faculty of Physical Education, unemployed, married, parent of two children, with medium economic status, on bail;

EI, the son of, father's name /redacted/ and mother's name /redacted/, maiden name /redacted/ born on /redacted/, resident in /redacted/ village, Ferizaj, an Albanian citizen of the Republic of Kosovo, who has graduated from the Law Faculty, employed by the Kosovo Police - Ferizaj Police Station, with the rank of lieutenant - Head of Operational Sector, married, parent of 6 children, with average economic status, on bail;

Based on Article 364(1)(1.3) of the CCRK,

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The accused MS

In the late hours of the evening, on 13 May 2013, was told by the accused KS that he shot while at the /redacted/ restaurant, the victim QM with a handgun and he /MS/ assisted him /KS/ in avoiding detection and arrest by not reporting what he knew about the shooting, the phone conversation and the meeting with the accused KS, distorting the evidence and misleading the police investigation, defending or corroborating the cover story to help the accused KS to avoid investigation and prosecution; spoke to the accused KS about the shooting; spoke to the victim QM and other people, said that he would investigate the case favouring the accused KS, telling him that he would be released as soon as he would hand over the gun; did not report the phone conversation and communications with the accused KS to the authorities in time, even though he was aware of the shooting incident, thus helping the accused KS not to be arrested, investigated and prosecuted in time;

- therefore committing the criminal offence of providing assistance to the perpetrators after the commission of criminal offences provided for by Article 388(2)(2.9) of the CCRK.

The accused EL

1. In the late hours of the evening, on 13 May 2013, he was told about the shooting, and advised the accused KS and the victim QM not to make a big deal out of it. He referred to the shooting as a joke, and helped the accused KS to avoid detection and arrest. He spoke to the accused KS about the shooting, spoke to the victim QM, as well as other people, including the accused MS, or said that he would help him, helped him or at least was present when a strategy to cover the shooting, the possession and use of the weapon as well as the release of the accused KS was discussed; he also pushed the accused KS and asked the accused QM not to talk about this issue; he did not report his communications with the accused KS to the authorities in a timely manner and he was aware of the shooting incident, thereby helping the accused KS /not/ to be apprehended, investigated and prosecuted in a timely manner,

- therefore committing the criminal offence of providing assistance to the perpetrators after the commission of the criminal offences provided for by Article 388(2)(2.9) of the CCRK.

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2. When interviewed as a witness under oath, more than once between August 2014 and February 2015, when asked whether he was involved or knew about the shooting incident at the /redacted/ restaurant on 13 May 2013 , he denied being involved in the shooting in any way, or that he knew anything about the shooting until he returned to work a few days later. Although he was not directly involved in the shooting, his statements under oath that he did not know of the shooting until several days later were simply untrue, because the witnesses and abundant circumstantial evidence in this case, have proved otherwise. He did not tell the truth or otherwise hide the truth in relation to what he knew about the shooting, the suspect, the people present at the decisive meeting at the /redacted/ restaurant the night of the shooting, and he discussed the release of the accused KS, prior to his arrest for having violated the law, and other important related issues to these criminal proceedings,

- therefore committing the criminal offence of false declaration under oath provided for by Article 391 (2) of the CCRK.

III.

In relations to the accused: MS, EL , RB and KS,

Based on Article 363(1)(1.1) in connection with (1.3) of the CCRK,

CHARGES DISMISSED

1. MS

A. On 13 May 2013, in Ferizaj, he received direct information from the accused KS that he shot QM with a firearm at the /redacted/ restaurant. He did not report the crime to the competent authorities even though he was a lieutenant in the Ferizaj Police and had been working for more than 10 years for the Police. It is a known that he often visited the /redacted/ restaurant and raided it. He knew or had reason to believe that the persons involved in the shooting were the workers of the /redacted/,

- therefore committing the criminal offence of not reporting criminal offences or their perpetrators provided for by Article 386(1)(1.9) of the CCRK.

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The State Prosecutor withdrew the charge, because the criminal offence was included within an absolute statute of limitations for criminal prosecution.

b. On or about 13 May 2013 in Ferizaj, he had a conversation with the victim QM and others, instructing and asking QM to say certain things and not mention other things to the law enforcement authorities about the shooting incident which involved a gun. He instructed him not to say anything about the involvement of the accused MS, EL, RB and the witness RB or the meeting that took place in the /redacted/ restaurant, and that he should not make a big deal about the shooting, using his authority as a police officer and taking advantage of QM's vulnerable personality. He told the victim QM to avoid giving a statement or to give a false statement or not reveal in any other way the true information to the competent law enforcement authorities

- therefore committing the criminal offence of intimidation during criminal proceedings provided for by Article 395 of the CCRK.

At the end of the proceedings, the State Prosecutor withdrew the charges for this criminal offence because the facts for commissioning this criminal offence by the accused have not been proven.

2. EL

a. On 13 May 2013, in Ferizaj, he received direct information from people including the accused KS, that KS shot someone with a firearm and did not report the crime to the competent authorities, even though he was a lieutenant in the Ferizaj Police and had more than 10 years of work experience with the Police. It is known that he often visited the /redacted/ restaurant and he knew or had reason to know that the people involved in the shooting were the employees of /redacted/. In addition to this, he learned that SC was asking for help from the Police and others, to reduce or avoid the expected legal proceedings, as a result of QM having been shot. Despite his high rank in the Ferizaj Police, he remained silent and did not report the case to the authorities as required under the circumstances.

- therefore coming the criminal offence of not reporting criminal offences or their perpetrators provided for by Article 386(1)(1.9) of the CCRK.

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The State Prosecutor withdrew the charge, because the criminal offence was included within an absolute statute of limitations for criminal prosecution.

b. On or about 13 May 2013 in Ferizaj, he had a conversation with the victim QM and others, instructing and asking QM to say certain things and not mention other things to the law enforcement authorities about the shooting incident. Instructed him not to say anything about the involvement of the accused MS, EL, RB and the witness RB or the meeting that took place in the /redacted/ restaurant, and that he should not make a big deal about the shooting, using his authority as a police officer and taking advantage of QM's vulnerable personality. He told the victim QM to avoid giving a statement or to give a false statement or not to reveal in any other way the true information to the competent law enforcement authorities,

- therefore committing the criminal offence of intimidation during the criminal proceedings stipulated in Article 395 of the CCRK,

At the end of the proceedings, the State Prosecutor withdrew the charges for this criminal offence because the facts for commissioning this criminal offence by the accused have not been proven.

3. RB

a. On 13 May 2013, the previous owner, the manager and the responsible person of the live music /redacted/ restaurant, and employer of the accused KS and the victim QM, was present when the shooting happened and knew about the incident, but did not report this crime to the competent authorities. In this way not only did he fail to fulfil his main responsibilities as the owner of the venue where the crime was committed, but shortly after the shooting he tried to convince and influence the witness SHL not to report this shooting to the authorities,

- therefore committing the criminal offence of not reporting criminal offences or their perpetrators provided for by Article 386(1)(1.9) of the CCRK.

The State Prosecutor withdrew the charge because the criminal offence was included within an absolute statute of limitations for criminal prosecution.

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b. On the evening of 13 May 2013, in Ferizaj exerting a degree of control over its employees, in /redacted/ restaurant, instructed or asked the witness SHL not to report the shooting incident, when it was clear that she was aware of the shooting. She had felt the heat of the firearm and wanted to report it. He also tried for several minutes to convince her not to report the shooting, although in the end she reported it

- therefore committing the criminal offence of incitement provided for by Article 32 in connection with the criminal offence of failure to notify criminal offences or their perpetrators provided for by Article 386(1)(1.9) of the CCRK.

The State Prosecutor withdrew the charge because the criminal offence was included within an absolute statute of limitations for criminal prosecution.

4. KS

a. On the evening of 13 May 2013, in Ferizaj in /redacted/ restaurant, when the accused KS shot the victim QM, the accused incited, demanded and encouraged witness SHL, a dancer employed at the /redacted/ restaurant, where the shooting took place, not to report the shooting as required by Article 386 of the CCRK, trying for several minutes to convince her not to call the police. Despite this SHL called the police, because she had felt the heat of the gunshot very close to her.

- thereby committing the criminal offence of incitement provided for by Article 32 in connection with the criminal offence of failure to report the offences, provided for by Article 386(1)(1.9) of the CCRK.

The State Prosecutor withdrew the charge because the criminal offence was included within an absolute statute of limitations for criminal prosecution.

b. On 13 May 2013, he shot the victim QM in the leg, as explained in this indictment, causing him grievous bodily injury with permanent consequences of chronic pain and numbness of the leg where he was shot, especially when the weather changes, and there is a good chance that the victim will experience weakening of the tissues and muscles, and will have other tiring pains in his leg during over time, which will likely be

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permanently, becoming even more tiring for the victim's health. In addition to this, the victim QM now has a fear of guns, something that he did not have before he was shot. This has harmed and will continue to harm his physical and psychological well-being.

- therefore committing the criminal offence of grievous bodily harm provided for by Article 189(1), (2) and (3) in connection with paragraph (5) of the CCRK.

At the end of the proceedings, the State Prosecutor withdrew the charges for this criminal offence because the facts for commissioning this criminal offence by the accused have not been proven.

C. On 13 May 2013, in the live music /redacted/ restaurant, he possessed a Grizzly gun, /redacted/, 9 mm calibre, PAK, without the appropriate permit and without having authorization for the possession of this firearm, which he used to shoot at the victim QM's leg, causing him bodily injuries

- therefore committing the criminal offence of unauthorized ownership, control or possession of firearms provided for by Article 374(1) of the CCRK.

Because the criminal offence is included in the amnesty, according to the Law on Amnesty number 04/L-209, the costs of the criminal procedure for the acquittal and rejecting part of the verdict are covered by the Court budget.

GROUNDS

1. The history of the proceedings and the indictment

The Basic Prosecutor's Office in Ferizaj - Department for Serious Crimes, filed the indictment PPI. No. 62/14, dated 29 July 2016, against the accused MS, KS, RA, EL, IA, BI, RB, ARR and JT for the criminal offences of failure to report criminal offences or their perpetrators provided for by Article 386(1) (1.9); providing assistance to the perpetrators after having the commission of

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the criminal offences, provided for by Article 388(2)(2.3)(2.7) and (2.9); intimidation during criminal proceedings provided for by Article 395; unauthorized ownership, control or possession of weapons provided for by in Article 374(1); use of a weapon or a dangerous instrument, provided for by Article 375 (2); grievous body injury provided for by Article 189 (1), (2) and 3; and the criminal offence of false declaration under oath, provided for by Article 391(2) of the CCRK.

The Court, acting upon to this indictment, held a trial, and at the conclusion of the trial and during the closing arguments of the parties on 24 January 2020, the State Prosecutor changed the amended the initial indictment dated 29 July 2016 in such a way that the accused MS was still charged with the criminal offence of provision of assistance to the perpetrators after commission of the criminal offences, provided for by Article 388(2)(2.9) of the CCRK, described in Point II of the initial indictment; the accused KS, was charged with the criminal offence of intimidation during the criminal procedure provided for by Article 395 of the CCRP, described in Point III of the initial indictment, and with the criminal offence of use of a weapon and dangerous instrument, provided for by Article 375(2) of the CCRK, as described in Point V of the initial indictment; the accused EL, was charged with the criminal offence of provision of assistance to the perpetrators after the commission of the criminal offences, provided for by Article 388(2)(2.9) of the CCRK, as described in Point II of the initial indictment, and with the criminal offence of false declaration under oath, provided for by Article 391(2) of the CCRK, as described in Point VIII of the initial indictment; the accused RB, was charged with the criminal offence of provision of assistance to the perpetrators after the commission of the criminal offences, provided for by Article 388(2)(2.9) of the CCRK, as described in Point II of the initial indictment, and the criminal offence of false declaration under oath, provided for by Article 391(2) of the CCRK, as described in Point VIII of the initial indictment.

During the trial, the accused IA, BI, ARR and JT pleaded guilty and admitted guilt for the criminal offences charged with in the initial indictment of the Prosecutor, and the Court decided upon the criminal case against these accused, and at the same time, separated the criminal procedure against the other accused. Also, during the course of the criminal proceedings, the Court issued a decision and dismissed the criminal procedure against the accused RA, as he had passed away.

At the end of the proceedings, the State Prosecutor: in relation to the accused MS, EL and RB, removed the charge for the criminal offence of failure to report criminal offences or their perpetrators, provided for by Article 386 (1)(1.9) of the CCRK, as described

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In Point I of the initial indictment; in relation to the accused KS and RB removed the charge for the criminal offences of incitement, provided for by Article 32, and failure to report criminal offences or their perpetrators, provided for by Article 386(1)(1.9) of the CCRK, described in Point VII of the indictment, because the absolute statute of limitations for criminal prosecution for these offences has been reached; in relation to the accused KS it seized the criminal prosecution for the criminal offence of unauthorised ownership, control or possession of weapons, provided for by Article 374(1) of the CCRK, described in Point IV of the indictment, because the criminal offence is included in the amnesty, according to Law No. 04/L-209. The prosecutor has also withdrawn the criminal prosecution against the accused MS, EL and RB for the criminal offence of intimidation during the criminal procedure, provided for by Article 395 of the CCRK, described in Point III of the indictment, and against the accused KS for the criminal offence of grievous bodily injury, provided for by Article 189 (1), (2) and (3) in connection with paragraph (5) of the CCRK, described in Point VI of the initial indictment, because the facts that the accused have committed these criminal offences have not been proven.

In the closing arguments of the parties, /prosecution/ supported the amended indictment and stated that based on all the evidence examined in the proceedings and provided during the preliminary procedure, it has been proven indisputably that the accused committed the criminal offences mentioned in the amended indictment.¹

The guilt of the accused for having committed these criminal offences was confirmed by the witnesses QM, SHL and the testimonies of other witnesses given during the preliminary procedure, the material evidence. and in particular the recordings of telephone conversations as well as text messages between the accused KS and MS. Excerpts of the transcript show that KS asked MS to help him not to be arrested and refer to the meeting of the accused MS, EL and RB in /redacted/ restaurant with RB, while the accused KS and the victim QM were at this restaurant, but at a different table. Phone conversations has established that the accused KS called the accused MS at around 23:05 on the night in question and asked the latter to help him regarding the incident that had happened and that the /redacted/ restaurant employees and the accused RB told the accused KS the next day that he had helped MS not to end up in prison. The accused MS did not admit to these phone conversations. A few days after the incident, MS and EL went to the /redacted/ restaurant, and the accused KS thanked MS and offered him drinks, but he refused it. Phone messages

¹ See the State Prosecutor's closing arguments in the hearing of 24 January 2020.

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ascertained that the accused E on 13 May 2013 at around 23:45 was in the /redacted/ restaurant, and when the accused MS and RB were asked by the investigators in the preliminary procedure, they denied that they had knowledge of the shootings at the /redacted/ restaurant on 13 May 2013 and these were false statements under oath.

It has also been proven that the accused KS took actions to intimidate the victim QM, so that he refrains from reporting the incident to the police and coerced him to say that he was injured by fireworks. This attempt failed and he /victim QM/ admitted that he was injured unintentionally by the accused KS, because they were friends. He also prevented QM from notifying the police, by taking the phone of his hand, and then as stated by the victim, KS offered him gifts and took care of the leg recovery, which he himself had caused by shooting with the gun. This was all done so the witness would not tell the truth to the police and the prosecutor. On one occasion the accused had even threatened that if he was to go to prison, the victim would face consequences. This was later confirmed by the fact that the accused KS was remanded in custody because he had threatened the victim QM.

It has been proven that the accused RB helped the perpetrator of the criminal offence after committing the offence, so that he would not be discovered and arrested. He did not take any action to report the shooting incident to the police. He left the restaurant and later gave the accused KS the phone number of MS. When giving the statement to the police he stated that there were no gunshots in the /redacted/ restaurant, but it was a firework and that no one was injured, falsely testifying that he was not present when the shooting occurred. However, he admitted this fact in the last statement he gave during the preliminary procedure.

For these reasons, he invited the court to find the accused guilty of the criminal offences described in the amended indictment during the closing arguments of the parties, and sentence him according on the law.

The case of the victim QM has not been joined in the criminal proceedings of the accused KS and /QM/ has not filed a claim for damage compensation, i.e., a civil claim.

2. The defence of the accused

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The accused KS in the judicial examination of 21 October 2019, used his legal right and defended himself by remaining silent, while at the beginning of the proceedings and in the hearing of 29 November 2016, he pleaded guilty to the criminal offence of using a weapon or dangerous instrument, provided for by Article 375 (2) of the CCRK, described in point 5 of the initial indictment. In relation to the criminal offences mentioned in the initial indictment and the charge specified by the prosecutor at the end of the judicial review, he pleaded not guilty.

The accused, during the preliminary procedure, gave several statements about the incident that happened in the /redacted/ restaurant on 13 May 2013, where the shooting incident happened. In the statement given to the police on 14 March 2014, in the presence of the defence lawyer, he stated that in 2013 he was working at the /redacted/ restaurant, owned by RB. He worked there as a singer, and on 13 May 2013 at around 21:20 he was near the bar along with the owner RB, and the employees IA, BI, HM and ARR. The employees had said that the employee QM, who also worked at this restaurant as a singer, was afraid of the weapons, hence the accused went out of the restaurant to his car, took a pistol, came back inside, went near the bar where the victim QM was, started insulting the mother of the victim and fired a bullet from the gun. The victim started cursing and screaming. RB and BI grabbed him /the victim/ by his arms and took him out of the restaurant. In the meantime, SHL, an employee was scared, but the accused and the owner RB told him/her that this had nothing to do with him/her, but KS shot at QM to make fun of him. The accused then went out of the restaurant to ask QM if his leg was hurting. The accused drove the victim in his car to A&E in Ferizaj. The doctor examined the injured leg, and asked him how the injury occurred. The accused told him that he was injured by a gas bottle, and this was also confirmed by the victim QM, because on the way to A&E they agreed to state so before the competent bodies.

Furthermore, in his defence statement the accused says that on the way back from the hospital to /redacted/ restaurant, ARR phoned BI who was in the car with the accused and the victim, and told him that the police had attended the restaurant. Later on, the accused RB rang the accused KS and told him to hand over the gun to the police and tell them what had happened. The accused /KS/ was afraid, so he asked RB to meet at /redacted/ in Ferizaj. The accused RB again told him /KS/ that he should go to the police and hand over the weapon.

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He stated that he got the phone number of police officer MS, from RA, whom he called and asked if he could help him, because he set off two fireworks at /redacted/ restaurant. He was told by /MS/ that he was going to collect some information about the case and would inform him, but he did not call him back, even though the accused called him several times. He /MS/ did not answer the phone. He /the accused/ put the gun with which he shot at the /redacted/ restaurant in a bin near a warehouse and together with QM they returned to the /redacted/ restaurant, where they were arrested by the police and taken to the police station in Ferizaj. He told the police what had happened, showing them the place where he left the gun. The police officer KF informed the accused KS that the victim QM had forgiven him for the injury he had caused him and told him that they were forwarding the case to undergo the regular procedure and released him. The accused went to the restaurant and continued to sing. The victim QM was also there. The next day, the owner RB, the employee RA and other colleagues told the accused KS that MS helped in him not to be sent to prison. He stated that he had no knowledge of who helped him and how he was helped.

As noted, the accused KS gave several statements to the EULEX prosecutor. In the record of the /interview/ conducted on 5 February 2014, he reconfirmed that he worked as a singer at the /redacted/ restaurant. Following the incident, the victim forgave him for the injury caused. He had gone to the victim's house and the victim himself and his family members told him that the matter was over as the injury was not intentional. They enjoyed a good social relation with the victim because they continued to work together in the same restaurant. A few days after the incident, MS and EL, whom he had not known before, went to the /redacted/ restaurant, sat at a table and because his work colleagues had told him that MS helped him, the accused went to the table where MS was sitting, thanked him and offered him something to drink. MS and EL both declined.

On another occasion when interviewed by the prosecutor on 2 September 2014, the accused explained that after he had fired the gun injuring the victim QM in the leg, the accused RB told him that he should not have done it, and should not have joked with QM. He prevented QM and SHL from reporting the incident to the police. RB was not aware how RB prevented this, but he /RB/ told RB that they were not going to report the incident to the police. In a subsequent interview on 1 March 2016,

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the accused explained to the prosecutor the circumstances of the incident of 13 May 2013 at the /redacted/ restaurant, and what happened in the meetings at the /redacted/ restaurant with the accused RB and the other persons. However, this meeting had taken place a few days after the incident and they had also met there the accused MS and EL, and the accused often went to this restaurant to eat food. He remembered that he went there with RB in his BMW car, /redacted/. They found there MS and EL along with another person called R. They told him that he had to forget about the incident and that this was now over.

The accused RB, did not plead guilty to the criminal offences initially charged with, or to the criminal offences specified by the state prosecutor in the closing arguments of the parties.

In his defence, during the trial, he stated that in 2013 he was the owner of the /redacted/ restaurant, which was in the village of Prelez, Ferizaj Municipality, and employed up to 15 employees, including a singer. In the late hours of the evening on 13 May 2013 while preparing to start work and while the employees were standing in front of the bar, KS shot with a gun towards the floor, stating that he fired the gun carelessly. QM, one of the employees, started shouting and cursing and went out of the restaurant. The accused RB immediately went after him and noticed that QM had an injury to his leg, which was red. His trousers had a burn on the leg /area/ and he was frightened. The accused went back to the restaurant and was informed by SHL, an employee, that she/he had called the police and reported to them the incident that had happened. The accused went out of the restaurant and the injured QM was not there. The accused KS went to the /redacted/ restaurant where he was supposed to meet a friend in relation to a debt, and when he returned to the /redacted/ restaurant, he found police patrols. He told them that KS had shot with a gun. He phoned KS and told him to go back to the restaurant. As soon as KS arrived there he was arrested by the police. He was also interviewed by the prosecutor and the police on 13 May 2013, but does not remember whether he told the police when they arrived at the restaurant that KS had shot with a gun or that he set off fireworks.

He stated that at that time he owned a BMW car, but on the night of the incident, he was not at the /redacted/ restaurant. He knew the accused MS and EL from before, because they have been to the /redacted/ restaurant with their friends, but he only knew EL from afar and was aware that these two people worked for the police.

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The accused MS, pleaded not guilty to the criminal offences charged with in the initial indictment and to the criminal offences specified by the state prosecutor in the closing arguments of the parties.

In his defence during the proceedings, he stated that during 2013 he was a lieutenant in the Kosovo Police in Ferizaj, in the Human Trafficking Sector. He recalls that on 13 May 2013 in the late hours of the evening he received a phone call from the accused KS. He had no knowledge of who this person was and how he obtained the phone number of the accused. KS introduced himself as a person who worked at the redacted/ restaurant, and told him a number of policemen had attended the restaurant. The accused asked what had happened and the answer he received from the accused KS was that that he had played a joke on QM, a singer who worked at this restaurant and that he scared him by setting off two fireworks. The accused hung up the phone because he did not know what to say. The same night he received an SMS from KS, and from its content he understood that KS was at the Police Station, from where he had written to him asking for help. The accused MS did not reply to him. He stated that KS knew him from a far and as a singer who sang at the /redacted/ restaurant and he also stated that he did not help him in any way, nor did he see any reason to make any effort to meet KS's request.

He stated that he knew QM from afar because he had seen him singing at the /redacted/ restaurant. He only realised that the incident had happened at the /redacted/ restaurant later on, because there was no connection and he had no competences over the area where the accused MS worked. Even though he talked on the phone with the accused KS, he did not understand that KS had fired a gun. KS told him that he had set off two fireworks, and as for the transcripts extracted from the phone conversation dated 13 May 2013, which refers to the conversation with KS, where SH is mentioned, the accused MS stated that he does not remember having had this conversation and that the first time he heard about this conversation, extracted from the transcript, was during the proceedings. He did not deny the fact that a few days after the incident of 13 May 2013 at the /redacted/, the accused KS rang him and thanked him, even though he had no reason to thank him because he had not undertaken any actions to help about the incident. He did not attach any importance to this conversation and did not focus on what they talked about in relation to the 13 May 2013 incident. He did not meet with RB or with EL, who was also a work colleague. Moreover, he did not leave the house that particular night.

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After this and in the following days he might have met with the accused KS in one of the restaurants where KS would sing. There was, however, no special meeting, where there was a discussion, or where QM set at the same table together, because he was not that friendly with the accused KS.

The accused EL pleaded not guilty to the criminal offences charge with in the initial indictment and to the criminal offences specified by the state prosecutor in the closing arguments of the parties.

In the defence given in the proceedings, he stated that in 2013, he was the deputy commander of the Police Station in Ferizaj. He clarified that when the station commander or deputy commander is absent, that is, when they are on vacation, the chief of operations stands in for them, and since May 2013, there has been no designated chief of operations at the Police Station in Ferizaj, and this position has been held by the commander of the Police Station in Ferizaj. This person was also the shift leader. At that time this position was held by KF, a police officer. On 13 May 2013 he was not on duty, however, the shift leader did not inform him of any incidents having occurred. According to practice, when the deputy commander is on leave, the shift leader notifies him of the incidents that have occurred. He did not, therefore, know and neither did have any knowledge that there had been a shooting incident at the /redacted/ restaurant. However, he realised this when he returned to work on 14 or 15 May 2013 after reading the official reports about the incident that had happened, while he was away from work. He only knew QM and KS from afar and that they sang at the /redacted/ restaurant. He did not socialise with them and he had sometimes gone to this restaurant to spend time there with his friends.

He stated in his defence that in the late hours of the evening on 30 May 2013 he called the police station in /redacted/ from his mobile phone and asked about an incident where the traffic police patrols had seized the travel documents of a Macedonian citizen as he was not able to travel to Macedonia. He /the Macedonian/ had asked the accused to clarify for him and enable him to pay the traffic fine. This happened due to the fact that the accused was a police official and was aware that following the rules the Macedonian citizen was able, even in the late hours of the evening, to pay the fine. This was the reason why he had contacted the police, in order to understand who was on duty that night from the traffic police superiors, so he could instruct the citizen how to pay the fine and take hold of the seized document. He often went to the /redacted/ restaurant in Ferizaj for a coffee, but

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he does not recall having gone to the /redacted/ restaurant in the late hours of the evening on 13 May 2013 with MS, even though he is a work colleague. The accused did not have a social relationship with him and he never set with him at the /redacted/ restaurant in Ferizaj.

He further stated that he was in no way involved in this case stated in the indictment, therefore he invited the court to acquit him of the charges.

3. Claims by the defence attorneys

The defence attorney of KS, lawyer Asdren HOXHA, in the closing arguments of the parties claimed that the accused did not commit the criminal offence of intimidation during the criminal procedure provided for by Article 395 of the Criminal Code, as described in point 3 of the initial indictment. Based on the description of the provision of the charge for this offence, the elements of this offence were not carried out. There was no serious threat or physical violence committed by the accused KS towards the victim QM. There was no benefit for the victim to refrain from giving a statement or to give a false declaration. In this particular case, there was no intimidation due to the fact that the accused sent gifts to the victim, bought medicine for him, drove him in his car, and paid for lunches, in order for the victim not to give a statement, or give a false statement. Even the words the accused said to the victim that the children of the accused KS would not want to grow up without their father, or with their father in prison, do not represent threats or physical violence, so they can be considered as elements of the criminal offence, of which he is accused. He, therefore, proposes that the accused is acquitted of this criminal offence. For the criminal offence of using a weapon or dangerous instrument provided for by Article 375(2) of the CCRK, to which the accused has pleaded guilty, he proposed that a softer sentence be imposed, taking into account all the mitigating factors.

The defence attorney of KS, lawyer Samir REKAJ, in the closing arguments stated that the prosecutor's indictment is not based on sufficient evidence to prove the guilt of the accused for the criminal offences he is charged with. It has not been proven that the accused helped KS, after he fired a gun in the /redacted/ restaurant. On the contrary, he told him to go to the police and hand over the gun. He told the police officers what had happened in the restaurant on 13 May 2013 and that the case had been reported to the police by the employee of the restaurant, namely, SHL. The accused RB praised her for her actions. It has also not been proven that he committed the criminal offence of false declaration under oath, as charged in the prosecutor's indictment, because he did not write himself the statement given to the police on 13 May 2013, but he just signed it. He subsequently told the prosecutor

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the circumstances and the incident that happened on 13 May 2013 at the /redacted/ restaurant. For these reasons, he invited the Court to acquit him of the charge.

The defence attorney of MS, lawyer Burhan QOSA, in his closing arguments, stated that there is no evidence to prove that the accused MS committed the criminal offences he is charged with in the initial indictment and the amended indictment following the proceedings. It has not been proven that KS assisted the perpetrator of the criminal offence who had injured the victim QM with a gun. The case was immediately reported to the police and the accused KS and the victim returned to the /redacted/ restaurant, where they continued to sing. There is no evidence to prove that the accused assisted the perpetrator of the criminal offence. None of the witnesses nor the accused have stated that MS assisted the accused KS in any way on the critical night. On the contrary none of them have stated that the accused was that night at the /redacted/ restaurant. KS's phone call to the accused MS, seeking help because there were many police officers at the /redacted/ restaurant, cannot be understood as assistance, due to the fact that the accused MS did not answer and hung up the phone. Based on all this, he invited the Court to acquit the accused of the charges.

The defence attorney of the accused EL, Mrs. Elvira HETA-VATA, in the closing arguments of the parties stated that it has not been proven that the accused committed the criminal offences charged with in the initial indictment and in the amended indictment by the state prosecutor. The elements of the criminal offence of providing assistance to the perpetrators after the commission of the criminal offences have not been proven by any evidence due to the fact that during the proceedings it was not proven that the accused assisted KS after he fired a gun at /redacted/ restaurant. None of the witnesses stated that the accused EL assisted or that he contributed in any way after the incident at the restaurant /redacted/, on the contrary, he had no knowledge of the case at all. He only became aware of the incident when he went to work two days later and that was from the compiled official reports. The criminal offence of making a false statement under oath has not been proven either. When summoned by the prosecutor as a witness during the proceedings against the accused MS, he stated what he knew about the circumstances, and he told the truth based on what he knew. Following this, he was charged by the prosecution. He invited the Court to acquit the accused of the charges.

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3. Evidence presented in proceedings

During the proceedings, the Court presented all the evidence of the criminal case proposed by the prosecutor in the indictment, including hearing of witnesses and material evidence as well as:

- The crime scene report,
- Initial accident report,
- Notification report and photographs taken at the scene of crime,
- Medical reports for the victim QM and the forensic report dated 15 June 2016, regarding the nature of the injuries,
- Psychiatry report number 2279, dated 16.03.2016 regarding the health and mental state of QM,
- Answers of forensic experts Arsim GËRXALIU and Arbër TOLAJ dated 29 March 2016, with number 200/DML, to the questions requested by the prosecutor,
- Expert report from the weapons expert unit at the AKF/acronym unknown/, dated 5 May 2014,
- Statement of the ballistics expert Lutfi RRACI given to the prosecutor on 22 December 2014, regarding the expertise performed,
- Expertise carried out by the unit for traceological and dactyloscopic expertise from AKF dated 24 April 2014, regarding the traces of papillary lines on the weapon found at the scene of crime,
- ~Reports related to the 15-day results applied through secret technical surveillance and investigation measures evidenced in files number 2, 3, 4, 5 and 6.
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4. Summary of witness' testimonies

Victim QM, interviewed as a witness, stated during the proceedings that in 2013 he started working at the /redacted/restaurant, and he sang when live music was arranged. The entertainment started every night around 22:00 and lasted until the early hours of the morning. Singer KS also sang there. There were other people who worked there such as bartenders, waiters and dancing ladies. The owner of the restaurant was RB. On 13 May 2013 he went to work as per usual. Next to the bar were the owner, RB

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and some workers and dancers. The accused KS who was nearby said: "someone is asking for me to **** his mother" and fired the gun downwards. The victim felt pain in his leg. He was very scared and went out of the restaurant, pulled his trousers down to knee level and noticed that the skin was burnt. RB and BI also came out. The witness took out his mobile phone and wanted to call the police, but the accused KS took it from him and threw it on the ground, saying "you do not need to call the police" and suggested that they go to the doctor. They went to A&E in Ferizaj in his car, together with ES. In the meantime, KS told the doctor that his injury was caused by a gas canister. The witness did not tell the doctor the truth because on the way /to A&E/, KS told him that there was no need to tell the truth.

After the medical examination they passed by the house of ARR in Ferizaj, because KS wanted to hide the gun, but A refused, therefore they headed to the /redacted/ restaurant. KS hid the gun in a rubbish bin near a warehouse, and continued his way. Shortly before reaching the restaurant, he had to get out of the car as they were stopped by the police and the witness told them what had happened and where the gun was. The witness stated that before returning to /redacted/ restaurant with KS, they stopped at the /redacted/ restaurant. The witness stayed in the car, while the accused KS got out of the car. The witness did not remember whether the BMW of the accused RB was parked there. He confirmed in the statements given to the police that when they went inside /redacted/, he saw MS, EL, RB and a person named R. During the investigations, the witness admitted that in the statement given to the police on 3 November 2015, he said that in the parking lot /redacted/, the accused KS told MS on the phone that the police wanted to arrest him.

During the investigations, on 1 March 2016 the witness admitted before the EULEX prosecutor that he met at /redacted/ with MS, RB and rang EL, but did not clarify who spoke on the phone. The witness further stated that the accused KS during the conversation with MS, E, RB and R told them that he unintentionally shot with a gun at the /redacted/ and injured QM. They told him this seemed like a joke. The witness stated that he did not know where MS and EL worked. When he was injured by the accused KS, there were other employees around. One of the employees, SHL, fainted, and was sent to A&E. Having fired the gun the accused KS told his work colleagues that he did it as a joke. After giving a statement at the Police Station, the witness returned to the restaurant where KS was singing and the witness continued the sing too. After the incident, KS apologized to him

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as per the traditions. They reconciled and enjoy a good relation. They have continued to sing at the same restaurant.

Witness SHL, stated that he had been working at /redacted/ restaurant since 2012 /as a/ dancer. The owner of the restaurant was RB. On 13 May 2013, she went to work and there were other employees including some of the dancing girls. The owner RB, and employees QM and KS were near the bar. KS was laughing at QM, holding a gun in his hand. He pointed the gun at QM, swore at him and fired the gun at him. After that QM started shouting, holding his leg with his hands and went out the restaurant. The witness was scared. She too went out of the restaurant and rang the police officer KF from her phone and told him about the incident. The police officer told her that she should call the police number and report the incident. The witness called the police number and reported the incident to them. The accused KS begged her not to inform the police because it was a gun, and the owner RB told her not to make this a big deal and not to call the police. The witness then called a taxi and went home. She returned to work after 3-4 days as she had taken a few days off. When she returned to work, QM and KS were singing as usual. She only knew the people named MS and EL as guests who had occasionally gone to this restaurant.

Witness HM, stated that in 2013 he worked at the restaurant /redacted/ as a bartender. There were other employees working there, including dancers and two singers named QM and KS. While at the bar, KS told him that he intended to scare QM. The witness heard a cracking noise while he was in the kitchen and went back to the bar. The owner of the restaurant RB, was there. The employee SHL was scared, and QM was shouting saying that his leg was hurting and his trousers were on fire. The witness realised that QM was injured by a gun shot by the accused KS and the witness told Shkurta not to call the police because that was a gun and that KS was joking. The accused KS took the QM to the doctor and after about 20-30 minutes the police patrols arrived at the restaurant and asked for the owner. The witnesses had told him that there was a shot fired. The witness /HM/ answered that he did not know anything about it. He was taken to the police station and when he returned to the restaurant, QM and KS were singing there.

Witnesses BSH and DN, stated that they had often been to music events organized at the /redacted/ restaurant, in Prelez of Muhaxherve, Municipality of Ferizaj. One evening in 2013 they had gone to the music event and realized that a problem had occurred between

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singers KS and QM. They had known KS from before and he told them that there had been a problem at this restaurant.

Witnesses AB and NR, traffic police officers in Ferizaj stated that on a date they cannot remember in 2013, while they were on official duty in the afternoon shift on patrol on the highway Ferizaj-Pristina, in the late hours of the evening the police control room informed them that they should go to assistance at the /redacted/ restaurant, because there had been an incident. They went there and secured the perimeter of the restaurant's courtyard while the investigation and forensics units dealt with the case. Witnesses remained there until they were allowed to leave the scene.

Witness KF, while interviewed, stated that during 2013, he replaced the shift /team/ leader at the police station in Ferizaj. He did not remember the date, but while on duty in the afternoon shift in the late hours of the evening he received a call from SHL who worked at the /redacted/ restaurant. She told him that there was a shot fired at this restaurant but she did not tell him who fired it or if anyone was injured. The witness advised her to notify the police control room about the incident. The Police control room informed him about the incident at this restaurant, hence he rang the police station commander and informed him about it. He also informed the competent prosecutor as well as the investigating police officers of the police station as well as the regional investigators with whom he went to the scene of the crime. All the competent units were there and a traffic patrol was also assisting. Appropriate actions were taken, the owner of the restaurant was not present, but he came to the restaurant in the meantime and said that he was not present when the incident had happened. Some of the employees said that nothing had happened, while others said that there were fireworks set off. They met with KS and QM, whose leg was bandaged, in the courtyard of the restaurant. They accompanied him to the doctor and on the way there he told them that KS had shot him in the leg with a gun. He showed them the place where he had hidden the gun. When this incident happened, the head of the shift at the police station in Ferizaj was PA and he was replaced by the witness. The head of the operations was EL who was on vacation and whom the witness did not inform about the incident, even though according to the internal work regulations he should have notified the chief of operations. He stated that as a police officer he was aware that the use of a weapon or possession of weapon without a permit is competence of the Serious Crimes Department.

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Witnesses HA and RK, stated that in 2013 they were working as investigating officers at the Police Station in Ferizaj. They do not remember the date but they were on the second shift in the evening hours. The leader of the shift, KF requested that they go to assist at the scene of a crime at the restaurant /redacted/. Together with colleagues VG, AI, and some other police officers they went to the scene of the crime. They entered the restaurant and asked for the owner who was not there. The employees said that they did not know anything. Police officer KF was also present, and he informed them that there had been a shooting. In the meantime, the owner of the restaurant arrived and when the Regional Investigation Unit arrived at the scene of the crime, they took the case under their jurisdiction and the witnesses returned to the Police Station. Witness RK together with the police officer VG interviewed the victim, as the regional investigating police officers said that they had contacted the prosecutor regarding the actions that had to be taken.

Witness HS, stated that he had often attended the /redacted/ restaurant, as there was live music. Singers QM and KS sang there, and he usually went there in the evening. One night while he was at the restaurant, he heard a gunshot. He noticed that QM was angry and the other employees were laughing. He left the restaurant, went to a casino and when he returned to the same restaurant, the police who were attending the place did not allow him in. The owner of the restaurant was RB, and he knew some of the employees who worked there because they were his neighbours, namely HR and ARR. Having heard the shot, he left the restaurant with ARR and KS and went to a casino. Someone from the restaurant told Arben that the police were there, and then the witness returned with Arben to the restaurant, while KS did not join them.

Witnesses IO and VSH stated that during 2013 they worked as investigating police officer on criminal offences, in the Regional Investigation Sector in Ferizaj. They remember that during this year while on duty together, they were informed by the police control room that there had been a gunshot injury at the /redacted/ restaurant. Together with the forensics team they went to the scene of the crime and the place had been secured by other police officers. Police officer KF told them that nothing had happened, and that it was a firework that had been set off. They entered the restaurant and the restaurant owner told them that there had been a firework set off. Some of the employees said the same thing. The restaurant owner and three employees were taken by them and the investigating officers, because suspicions that they were hiding the truth. While on their way, the police officer KF informed them that the suspected was found and that they had also found the gun used. The forensics team were processing the place where the gun was found. The suspect was then escorted to

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the police station, where he stated that he accidentally fired a gun and injured the victim in the leg. The victim stated the same thing. His leg was bandaged and he said that there was no problem. The witnesses assessed that the case could not be investigated by the regional investigation unit. The witness IO rang and spoke to the duty prosecutor at the General Department. The case was handed over to the Police Station Investigation Unit. The police station investigator VG, was present along with other police officers and they took over the case. The witness stated that they had no other information on what happened to this case.

Witness VG-H stated that in 2013, in the hours of the evening while working on the afternoon shift with the police station investigation unit, she received an order to assist the regional investigations in Prelez village, and together with the colleague RK, they went to the scene of the incident at the /redacted/ restaurant. Action had already been taken by the regional investigation unit. Upon investigations being conducted at the scene of the crime, the case was transferred to the Police Station's Investigations Unit. After the witnesses gave their statements and all the evidence was collected, criminal charges were filed against the accused for the criminal offences of illegal possession of a weapon, causing of general danger and bodily harm. The accused, pursuant to prosecutor's order was released on bail.

Witness AI, stated that in 2013 he was a police officer on patrol when the shift supervisor, police officer KF, informed him and ordered him to go to the scene of the incident at the /redacted/ restaurant in Prelez. The witness secured the crime scene while the regional investigation unit was investigating the case.

4. Evaluation of the evidence presented in the proceedings and the factual findings of the Court

The Trial Panel examined all the evidence presented during the proceedings, assessed them one by one and in relation to each other. The accused KS, at the beginning of the proceedings pleaded guilty to the criminal offence of using a weapon or a dangerous instrument provided for by Article 375(2) of the CCRK, mentioned in point V of the initial indictment and amended by the prosecutor at the end of the proceedings. All the evidence, including those in relation to the criminal offence for which the accused pleaded guilty, were examined by the Panel because of the relevance to other offences committed by KS and other accused, and because the sentencing and the acquittal part of the judgement

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are derivative or stem from the criminal offence of using a weapon or a dangerous instrument, which was committed by the accused KS.

The Trial Panel found that all the facts and circumstances in which the accused KS committed the criminal offence of using a weapon, including the admission of guilt by the accused, were indisputably proven; after committing this criminal offence on 13 May 2013, at the /redacted/ restaurant when he shot the victim QM in the leg by shooting with a gun at him, the accused KS also committed the criminal offence of intimidation during the criminal proceedings against the victim QM, which was also fully proven by the evidence, because having committed the first offence, when the victim QM wanted to call the police and inform them about the incident while in the courtyard, the accused took the phone away from his hand and threw it on the ground. He then took the victim in his car to the doctor and on the way there he instructed the victim not to tell that the accused had injured him with a gun, but say that he had been injured by a gas canister. When the doctor was tending the victim's leg, he asked how the victim had incurred the injury because he could smell gunpowder. The accused told the doctor that the victim was injured by a gas canister. The victim then confirmed the same thing to the doctor. The accused instructed the victim to declare before the competent authorities that there was a shooting with pyrotechnic devices or that there was a shooting by the accused, but that was due to carelessness, and in turn he would help the victim. He subsequently offered the victim gifts, paid for his lunches and clothes. This was partially admitted by the accused KS in his defence, stating that after shooting with a gun, on the way to the doctor, he advised the victim not to tell the truth about the incident to the doctor and the competent law enforcement bodies.² This was also confirmed by the accused RB, and witnesses SHL and HM.

The Trial Panel assessed the actions of the accused to have been incitement or pressure upon the victim, so he would not tell the truth. By putting pressure and by giving the victim gifts, he convinced him not to state the truth about the incident, hence the victim at first stated to the police that he was injured by a gas canister, instead of having been injured by the accused shooting at him with a gun.

² Excerpt from the statement of the accused KS, before the prosecutor on 14 March 2014.

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The Trial Panel, /having/ fully assessed all the evidence, also concluded that the actions of the accused RB contained all the elements of the criminal offence of assisting the perpetrators after the commission of the criminal offence and making a false statement under oath, as described in point I -1-a and 2-b of the enacting clause of the judgement. The fact that the accused committed these criminal offences was proved by the evidence examined and assessed in the proceedings, the testimonies of the witnesses QM, SHL, HM, KF and of the other accused KS, but also partly by the defence of the accused RB, given at all stages of the criminal procedure.

The facts that the accused in 2013 was the owner of the /redacted/ restaurant, and on 13 May 2013, he was present when the accused KS fired the gun and injured the victim QM in the leg are not contested.

It was proven that even as the owner of the restaurant, the employer of the employees, including the accused and the victim, but also as a citizen, he did not take any action to notify the police or to report the case to the police, despite the fact that he was very close when the incident happened. He noticed that QM's trousers were burnt by the shooting of the accused KS, and that the victim was scared and screaming. He left the restaurant, enabled the accused KS to leave the scene of the crime, thus helping the accused KS not to be discovered and arrested by the law enforcement authorities. He made the work of the police difficult, and for a while impossible, to discover the crime and the perpetrator, due to the fact that the accused RB, following the incident suggested to the restaurant employees that the incident should not raise any alarms "and not make a big deal out of it", as stated by the witness SHL. The accused also told the restaurant employees not to report the case to the police, and said the same to the victim. Other actions of the accused that refer to helping and not revealing the perpetrator and the criminal offence, are also evident. When he returned to his restaurant, the accused told the police units who were trying to find the perpetrator and the particulars of the incident that he had not been in the restaurant at the time of the incident, that nothing had happened, and that a firework had been set off. This happened after the police informed him that there had been a shooting incident at the restaurant.

These facts were proven by all the evidence and by the testimonies of the witnesses QM, SHL, HR, KF heard in all phases of the criminal procedure, but also partly by the defence of the accused. The accused did not tell the truth to the investigating bodies

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in relation to what had happened, by making it difficult, preventing the police from discovering the perpetrator and the criminal offence and helping the accused KS to avoid being discovered and arrested by the police for a while.

The Trial Panel found that in relation to the criminal offence of false declaration under oath, it was fully proven that the accused is guilty of this criminal offence. Based on the material evidence, namely the statements of the accused given to the prosecutor in the capacity of a witness, he stated that he was not present at the time when the gun incident had taken place at the /redacted/ restaurant. Later on, in the statement given to the prosecutor in July 2014 he admitted that there had been an incident, but there were no gunshots, just fireworks which were set off. Even in the other statements given to the prosecutor he concealed and remained silent about facts related to the shooting on 13 May 2013, after he helped the accused KS who shot and injured the victim QM. He tried to influence and convince the witness SHL so she would not report the incident to the police and afterwards he influenced other employees of the restaurant insisting they do not contact the police and do not report the incident. After the accused KS left the restaurant, the accused RB rang him and it was ascertained by the call log that during this time there were at least 15 phone calls between RB and KS. KS was not at the restaurant and he was avoiding the police authorities. In this way, the role of the accused in concealing the shooting incident was multifaceted. The accused took all these actions knowing that the incident had happened and he was present. He however, declared otherwise before the prosecutor, concealing the incident until the last statement before the prosecutor, where he admitted that he saw the accused KS when he shot with a gun, injuring the victim QM.

5. Assessment of the actions of the accused

The Trial Panel found that the actions of the accused KS contained all the objective and subjective elements of the criminal offence of using a weapon or a dangerous instrument, provided for by Article 375(2) of the CCRK, and of the criminal offence of intimidation during criminal proceedings provided for by Article 395 of the CCRK. The actions of the accused RB contained all the objective and subjective elements of the criminal offence of false declaration under oath provided for by Article 391(2) of the CCRK, and of the criminal offence of providing assistance to perpetrators after the commission of criminal offences provided for by Article 388(2)(2.9) of the CCRK. The accused are criminally responsible for these criminal offences, therefore the Trial Panel found them guilty and sentenced them to the penalties as in the enacting clause.

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/translator note: see original for bullet numbering/

5. Determining the punishment for the accused KS and RB

The Court, while determining and assessing the punishment for the accused took into account all the circumstances that influence the mitigation and severity of the punishment provided for by Article 73 of the Criminal Code. The mitigating circumstances are that the accused does not have any previous criminal records. The accused KS pleaded guilty to the criminal offence of using a weapon or dangerous instrument provided for by Article 375(2) of the CCRK. The Trial Panel considered as aggravating circumstances for the accused: the manner and circumstances of the commission of the criminal offences, in particular by the accused KS, who used the handgun against the victim in a public place; the other actions and synchronization of the actions with the accused RB, in order to conceal the offence from the police authorities; and in addition, exploitation of victim's personality by the accused KS, who intimidated him through various methods, so that the victim would not to tell the truth about the incident to the competent authorities.

Moreover, the actions of the accused RB, after the occurrence of the incident in /redacted/, were aimed at helping the accused KS not to be discovered by the authorities, even though apart from the general citizen's obligation to notify that a criminal offence has occurred when aware of it, he was the owner and the manager of the restaurant where the incident took place. He tried to conceal the truth about the incident before the competent authorities. In general, these criminal offences attack the protected value that help the administration of justice.

On the basis of these circumstances, the Trial Panel imposed the sentences as in the enacting clause, with the conviction that the sentences imposed are in accordance with the weight of the criminal offences and the criminal responsibility of the accused. Such sentences will deter the accused from committing crimes in the future, but will also deter others from committing criminal offences, hence serving as a general deterrent.

6. Calculation of detention and the costs of criminal proceedings

The decision on the calculation of detention is based on Article 83 of the CCRK.

The decision on the costs of the criminal proceedings is based on Article 450(2)(2.6) and (3) of the Criminal Procedure Code, taking into account the length and complexity of the criminal proceedings, while the decision to pay the amount to the Fund for the Protection of Crime Victims is based on Article 39(1)(3.2) of the Law on Compensation of Crime Victims.

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The decision to confiscate the item, namely the handgun is based on Article 374(3) of the CCRK.

II.

The acquittal part of the verdict

With regards to the acquittal part of the verdict for the accused MS and EL, i.e., the criminal offence of providing assistance to the perpetrators after the commission of the criminal offence, and the criminal offence of making a false statement under oath for the accused EL, as charged in the original indictment and the amended indictment by the prosecutor at the end of the proceedings, the Trial Panel having assessed all the evidence, found that it was not proven that the accused committed these criminal offences.

The Trial Panel found that the victim QM, was injured on 13 May 2013 at the /redacted/ restaurant, by a gunshot fired by the accused KS. The Trial Panel also found that subsequently the accused KS, also committed the criminal offence of intimidation during the criminal procedure, while the accused RB committed the criminal offence of providing assistance to the perpetrator after the commission of the criminal offence, as elaborated in the sentencing part of the judgment. There were no dilemmas during the verification of the factual situation. However, the dilemmas were whether the accused MS and EL, on the night of the shooting incident at the /redacted/ restaurant, took actions to help the accused KS so that he would not be discovered by the prosecution bodies, hindered the arrest of the accused or helped the accused in any way to avoid being discovered by the police authorities.

According to the indictment, following the incident at the /redacted/ restaurant, the accused were at the /redacted/ restaurant in Ferizaj and met the accused RB, while the accused KS and the victim QM were at the same restaurant but at another table. The indictment states that the involvement of the accused MS in the case has been proven by the witness QM, and the phone contacts between MMS and KS, in particular phone recordings and SMSs between them. According to the indictment, the accused were involved in the criminal offence of providing assistance to the perpetrators after the commission of the criminal offence, and this is proven by the direct and indirect evidence, such as circumstantial evidence that the accused E, the night of the incident in /redacted/ was at the /redacted/ restaurant. This has been proven by the messages sent to the contact number

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of the accused E and from his number, at around 23:45 on 13 May 2013, when the accused sent an SMS from his mobile phone to another number, informing this person that he is was at /redacted/, and that the person should come there, they would meet up and then they could go anywhere /they wished/. Another piece of evidence showing that the accused were involved in the commission of this criminal offence, as claimed in the indictment, is that two days after the incident at /redacted/, the accused went to this restaurant, the accused KS who worked there thanked them and offered them drinks, but the accused turned them down.

With regard to the criminal offence of false statements under oath the accused EL is charged with, the claims are based on the circumstances that the accused had knowledge of the incident that occurred at /redacted/, where the shooting took place but when being interviewed by the prosecutor he denied it, stating that he had no knowledge about this case because he had been on holiday.

The Trial Panel examined and assessed all the evidence about these criminal offences and found that it has not been proven that the accused were involved in concrete actions and committed the criminal offence charged with. A number of witnesses including the victim QM MEHMETI were heard in the proceedings. According to the claims in the indictment, the victim had spoken to the accuse at the /redacted/ restaurant. The witness described the event at /redacted/ and the subsequent actions undertaken by the accused KS, among other things, that the witness had gone with KS to /redacted/. He saw there the accused MS and EL. KS spoke to the accuse MS telling him that "the police wanted to arrest him", confirming in such a way in the proceedings the statements given in the preliminary procedure that he had spoken to the accused E on the phone. However, he did not give any other explanations about the reason why he spoke to him, whether he discussed anything with him and whether je met with the accused E.

The Trial Panel also assessed the testimonies of other witnesses who were interviewed during the investigations and in the proceedings, finding that none of them mentioned any circumstances or facts from which the involvement of the accused in the criminal offence would be deduced. On the contrary, the witness KF, a police officer, stated that on the night of the incident at /redacted/ he was replacing the accused E, who was the deputy commander of the Police Station in Ferizaj and the chief of operations, but that he was not on duty that night as he was on holiday. The witness was notified by the station about the incident. He undertook legal action

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and according to the work regulations, he was obliged to notify the chief of the operation about the incident that had occurred, but he did not report the specific incident to the chief of the operation, namely, the accused E.

The accused MS did not deny that on the evening of 13 May 2013, the accused KS phoned him and told him that a number of police officers had gone to /missing/, because he had set off fireworks to scare the victim QM. He later received a text message from the accused KS from which he understood that KS was at the police station and was asking for help from the accused MS who did not reply and did not take any action to help him not to be arrested, nor did he offer any other kind of help. He did not rule out the possibility that after the occurrence of this incident he went to the /redacted/ restaurant to listen to music, and that the accused KS had thanked him, even though there was no reason for this. He did not meet the accused E after the incident, even though they were work colleagues and he was not at the /redacted/ that night.

The accused EL, in his defence, stated that on 13 May 2013, he was not on duty because he was on holiday. The police officer who replaced him did not inform him that there had been an incident in /redacted/. When he went back to work, he became aware of the incident when he read the official reports. He did not deny the fact that in the hours of that evening a citizen had phoned him, asking him about the possibility of paying a traffic fine because his personal document had been seized and he could not travel to his country, Macedonia. The accused had contacted the police HQ in /redacted/ to check and get information on the progress of the procedure in such cases, so he could inform the citizen who had contacted him. In relation to the claim that the night of the incident he was at the /redacted/ restaurant, he did not remember this, but stated that he often went there to spend some time and drink coffee, but he denied the fact that he met with the accused KS, RB and MS.

After assessing these facts, the Trial Panel concluded that the accused were not involved in the criminal offences charged with. In fact, the witness QM, who according to the prosecution had knowledge and had proven the involvement of the accused, during his testimony given during the preliminary procedure and in the proceedings, was quite vague as to whether he met the accused at the /redacted/ restaurant after the incident had happened at /redacted/. He did not clarify if he did meet them, whether he told them what had happened in /redacted/, and whether they did assist the accused KS, in any way. None of these things were clarified by the witness, on the contrary, the witness stated that he was with the accused KS when

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he saw the accused MS and E at /redacted/. KS phoned MS, while the witness phoned E. He also stated that he did not know them before and had no knowledge of where the accused MS and E worked. The Trial Panel's assessment is that an accused cannot be found guilty based only on the testimony of one witness, and based on the fact that the testimony of the witness QM did not prove the incriminating elements for the accused, while the other evidence that was assessed and which refers to the telephone contacts between the accused KS and MS, including the electronic message sent by the accused E, do not present incriminating actions in terms of the criminal offences charged with, because the elements of criminal offences were not found or manifested in these actions.

The criminal offence of providing assistance to perpetrators after the commission of criminal offences is committed when someone hides the perpetrator of the criminal offence or helps him not to be discovered by the competent authorities. The forms of commission could be hiding the traces, the means of committing the criminal offence or any other form that enables the criminal offence and the perpetrator not to be discovered, or any other obstacle for the authorities to capture the perpetrator of the criminal offence.

In the specific case, as established above, there were none of these circumstances in any form, where the accused MS and E helped the accused KS to hide and not be discovered by the authorities. Moreover, there is no evidence to prove that the accused E had any knowledge of the incident at /redacted/. The telephone contacts between the accused KS and MS when KS asked for help from MS do not present any incriminating element because it has been proven that KS informed him that there was a firework set off to scare the other person, but did not inform him of the proper incident that had happened. With regards to the criminal offence of making a false statement under oath by the accused EL, charged with the amended charge by the prosecutor, the Trial Panel found that it has not been proven that EL made a false statement to the investigating authorities. He denied that he had any knowledge of the shooting at the /redacted/ restaurant and that on the evening of 13 May 2013 he was at the /redacted/ restaurant with the accused MS and RB. It was not initially proven that the accused E had knowledge of the incident, that was elaborated in the acquittal part about the criminal offence of providing assistance to the perpetrators after committing the criminal offences, therefore he cannot be found guilty of the criminal offence

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of giving a false statement under oath as he stated that he did not have knowledge. This was also proven by all the evidence that was examined. In relation to the fact that he denied to the authorities that he was at the /redacted/ restaurant when this incident happened and did not meet with the accused MS and RB, the Trial Panel found that it was not proven by any evidence that the accused committed this act. His denial or admission of the occurrence of the incident cannot be understood as and be an element of the criminal offence, as the accused in his defence stated that he often went at this restaurant, but did not remember whether he was there on the night in question. However, even if he had been at the restaurant, this element does not represent an incriminating action. The person is incriminated when he/she undertakes a specific action to commit a criminal offence and in this specific case, as elaborated, no element was found in the actions of the accused that would incriminate him in any criminal offence.

Therefore, based on these circumstances and facts, the Trial Panel acquitted the accused of the criminal offences charged with by the state prosecutor due to lack of evidence.

The gathering of evidence and the burden of proof rests with the Prosecution Service. Doubts about the existence of a fact must be interpreted in favour of the accused and their rights, which is a fundamental principle provided for in Article 3 of the KPPRK/Code of Criminal Procedure of the Republic of Kosovo/, and guaranteed by the Constitution of the Republic of Kosovo.

7. Criminal procedure costs and the court charges for the acquittal and rejection part of the judgment

The decision on criminal proceedings costs and the court charge for the acquittal part is based on Article 454(1) of the CCRK.

Based on the above, the decision was taken as in the enacting clause of this judgement.

BASIC COURT IN FERIZAJ DEPARTMENT OF SERIOUS CRIMES PKR 36/2019

On 8 June 2020

Legal Secretary

Presiding Judge

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Qëndresa BOBI-NEZIRI

Ibrahim IDRIZI

LEGAL ADVICE: This decision can be appealed within 15 days after receiving a copy to the Court of Appeal of Kosovo in Pristina, through this Court.