

DISTRICT COURT OF PEJA/PEC

P. Nr. 128/10

16 September 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of the Eulex Judge Gianfranco Gallo as Presiding Judge, the Eulex Judge Verginia Micheva-Ruseva and the Kosovan Judge Gezim Pozhegu as panel members, assisted by the Recording Officer Robina Struthers, in the criminal case against the accused

1. **Muhamet Demaj**, son of Abdullah and Cyme, maiden name Pajaziti, born on 10/04/1977 in village Jabllanica e Madhe, municipality of Peja, currently residing in Istog, street "Skenderbeu" nn, secondary school accomplished, a student, married and father of 2 children, of average financial state, Albanian-Kosovan, currently in detention on remand for the present case
2. **Bajram Mehmetaj**, son of Ukë and Mire, maiden name Rexhepaj, born on 09/11/1972 in village Zabllaq, municipality of Peja, residing in the same place, secondary school accomplished, a student, married, of average financial state, Albanian-Kosovan, there is no other criminal proceeding going on against him, currently in detention on remand for the present case
3. **Azem Veseli**, son of Rexhep and Shkurte, maiden name Elshani, born on 08/03/1964 in village Llabjan, municipality of Peja, resident of the same place, Secondary school accomplished, engaged in KSF/*kosovo security forces*/, married and father of 5 children, of average financial state, Albanian-Kosovan, there is no other criminal proceeding going on against him, and currently in detention on remand for the present case

charged, according to the Indictment PP. nr. 84/10 dated 29 March 2010, with the following criminal offence:

Extortion contrary to Article 267 par. 2 in conjunction with par. 1 of the Criminal Code of Kosovo (CCK) committed from 21 November 2009 to 28 February 2010, in Peja.

After having held the main trial hearings in public on 4, 5, 12, 24 and 25 August, 15 and 16 September 2010 in the presence of:

- the Public Prosecutor and the Eulex Prosecutor,
- the accused Muhamet Demaj and his defense counsel Mr. Zeqir Bujupaj
- the accused Bajram Mehmetaj and his defense counsel Mr. Zeqir Berdynaj,
- the accused Azem Veseli and his defense counsel Mr. Gezim Kollcaku;
- the injured party and the representative of the injured party Mr. Ferid Gjiko

after the trial panel's voting and deliberation held on 16 September 2010, based on Article 391 Paragraph (1) of Kosovo Criminal Code of Procedure (KCCP),

on 16 September 2010, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the above parties, the following

VERDICT

Muhamet Demaj, Bajram Mehmetaj and Azem Veseli

are

FOUND GUILTY

of Extortion in co-perpetration contrary to Article 23 and 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK), because in Peja, in a period of time between November and December 2009, acting as members of a group, with the intent to obtain an unlawful and great material benefit, threatened Ekrem Luka with the words "do not think we only know how to break windows" and "I warn you" to compel him to give them 150.000 Euros, half of which were actually given, through the middleman Naim Hajrizi, to Muhamet Demaj in December 2009.

And of

Attempted Extortion in co-perpetration contrary to Article 20, 23 and 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK), because in Peja, on 28 February 2010, acting as members of a group, took immediate action to compel Ekrem Lula to give to them 75.000 Euros, threatening the middleman Naim Hajrizi by saying that if the remaining 75.000 Euros had not been given to them Peja would be burnt down, not receiving the money for the refusal of Ekrem Lula to pay the above amount.

Thus, qualified the criminal conduct undertaken by the defendants

THEREFORE, Muhamet Demaj, Bajram Mehmetaj and Azem Veseli, are

SENTENCED

To two (2) years of imprisonment each, for the criminal offence of Extortion in co-perpetration, *contrary to Article 23 and 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK),*

And to one (1) year of imprisonment each, for the criminal offence of Attempted Extortion in co-perpetration *contrary to Article 20, 23 and 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK)*,

The aggregate punishment, pursuant to Article 71 Paragraph (1) and (2) Subparagraph 2, of the KCCP, is determined in (2) years and six (6) months of imprisonment for each of the defendants.

The time spent in detention on remand by the defendant from 01.03.2010 until 28.05.2010 and from 16.06.2010 onwards, is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5 and Article 278 Par. 7 of the KCCP.

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data are obtained pursuant to Article 100 Paragraph (2) of the KCCP.

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

On 29 March 2010, the District Public Prosecutor filed the indictment PP.no.84/2010 against Muhamet Demaj, Bajram Mehmetaj and Azem Veseli, accusing them of the criminal offence of *Extortion* pursuant to article 267 par. 2 of Criminal Code of Kosovo (CCK).

According to the Public Prosecutor, during the period 21 November 2009 – 28 February 2010 the defendants, acting as members of a group, exerted pressures and threats against the injured party Ekrem Lluka and constrained him to give them the sum of 150.000 Euros in order to let him deal freely with the purchase of the Spa-Hotel “Onix” in Banja e Pejës.

The indictment was confirmed on 29 April 2010 through the ruling KAQ.nr.102/10.

B. COMPETENCE OF THE COURT

1. Competence and Panel Composition of the District Court of Peja/Pec.

In accordance with the Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the accused are charged with *Extortion*, in violation of Article 267, paragraph 2 of CCK, punishable by imprisonment of one to ten years. Therefore, the District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offences, according to the indictment, were committed in the town of Peja. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Pursuant to the Article 3.3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, upon request from any party in the proceedings, the President of the Assembly of EULEX Judges can decide that Eulex takes over the case when it is considered necessary for the proper administration of justice and when the criminal offence is listed in Article 33 of the LoJ.

The EULEX District Prosecutor in Peja, filed a request with the President of the Assembly of EULEX Judges on 22 June 2010 requesting that EULEX Judges be assigned to this case, due to the fact that there were attempts made by the defendants to influence the conduct of the judicial process.

After having held the hearing in the District Court of Pejë/Peć on 7 July 2010 where all the parties were heard, the President of the Assembly of EULEX Judges issued on 09 July 2010 the decision to assign the case P.nr.128/10 to EULEX Judges in Pejë/Peć.

The Trial panel for this case was composed of a mixed panel of two EULEX Judges and one Local Judge. None of the parties objected to the panel composition.

2. The Main Session

The main trial was held in public in the premises of the District Court of Peja on 04, 05, 12, 24 and 25 August, 15 and 16 September 2010 in the presence of the Public Prosecutor, the EULEX Prosecutor, the defendants, their defense counsels and the representative of the injured parties.

In accordance with the article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial from English into Albanian and vice-versa, as necessary.

C. SUMMARY OF EVIDENCE PRESENTED

1. During the proceedings of the main trial, the following witnesses were examined:

- a) The injured party/witness *Ekrem LLUKA* examined on 05 August 2010 and 15 September 2010;
- b) Witness *Naim HAJRIZI* examined on 05 August 2010

- c) Witness *Klara BOKSHI* examined on 12 August 2010
- d) Witness *Armend SUSURI* examined on 12 August 2010
- e) Witness *Fatos ZAJMI* examined on 24 August 2010
- f) Witness *Nora KELMENDI* examined on 24 August 2010
- g) Witness *Agim ELSHANI* examined on 15 September 2010

2. Police reports and other documentary evidence read out during the trial sessions.

a) Documentary evidence and reports

During the main trial, the following documents were read as evidence, pursuant to article 367 of KCCP:

- Police Report dated 21.11.2009 case number 2009-DA-3199 drafted by Officers Sami Hoxha #6154 and Enver Salihaj #2788;
- Police Report dated 22.12.2009 case no. 2009-DA-3199 drafted by Officer Ragip Bytyqi #2900;
- Police Report dated 22.02.2010 case number 2010-DA-436 drafted by Officers Arsim Zabeli #5190 and Tomor Hysenaj #4202;
- Criminal Report against Muhamet Demaj, Azem Veseli and Bajram Mehmetaj dated 02.03.2010 case number 2010-DA-0436;
- Official Memorandum - Official Notice of the Regional Investigation Unit dated 05.03.2010 reference number HE/PE-06/2010;
- Request of Privatization Agency of Kosovo for General Investigative Information for the case of Extortion and Threat against the injured party Mr. Ekrem Lluka dated 08.03.2010;
- Documents related to the privatization procedure of Hotel "Onix" in Banja e Pejes, provided to the panel by witness Klara Bokshi on 12.08.2010;
- Documents and a CD containing the privatization Process of Hotel "Onix" in Banja e Pejes, acquired by the police from the Privatization Agency of Kosovo based on the Order issued by the panel on 16.08.2010;
- Police Report on Telephone Listing and SMS case number 2010-DA-436 dated 06 September 2010, drafted by Ragip Bytyqi #2900;
- Telephone listings and SMS content for numbers: 044 125 003 owned by Azem Veseli, 044 940 046 owned by Bajram Mehmetaj, 044 787 876 owned by Muhamet Demaj, 044 501 994 and 049 501 994 owned by Naim Hajrizi, 049 500 948 owned by Ekrem Lluka and 044 501 733 owned by Agim Elshani; for a period from 01 November 2009 until 01 March 2010.
- Police Report on Financial Disclosure case number 2010-DA-436 dated 08 September 2010, drafted by Ragip Bytyqi #2900;
- Financial Disclosure of the bank accounts of Fatos Zajmi, Dukagjini Shpk, Ekrem Lluka and Naim Hajrizi.
- Partnership Agreement between Agim Elshani and Muhamet Demaj dated 20.10.2009.

b) Statements of the defendants given to the panel

The defendants gave their testimonies on 25 August 2010 and on 15 September 2010.

D. FACTUAL RECONSTRUCTION OF THE EVENTS

Tender Procedure in PAK

Before entering into the merit of the case, it is useful to explain the rules which govern the privatization procedure for Socially Owned Enterprises and how the privatization procedure for the Hotel Onyx was carried out.

According to the rules of the Privatization Agency of Kosovo, the Agency shall prepare the Tender Schedule which indicates the obligations and the deadlines to be respected by all the bidders in cases of a privatization procedure.

As to the tender for the Hotel "Onix" in Banja e Pejes, the Agency had set prequalification conditions as follows:

Each potential bidder must provide the Agency with documentary proof that satisfies the following criteria:

(a) That it or an Affiliated Company is a professional Spa company, which has been involved in spa activities over each of the past (5) five years,

and / or

(b) That it has an able and professional team of managers and medical staff in sufficient numbers who are experienced in the spa and leisure activities.

Three companies bid for the Hotel:

- "Dukagjini SHPK and Thermana" which offered the bid price of 8.600.000 €;
- "Eldrink" which offered the bid price 7.777.000 €;
- "Megi Bau GMBh & Kohl and partner Tourizem Consultancy International" which offered the bid price of 5.010.909 €.

In order to take part in the tender, the bidders had to deposit 500.000 € and to pay the administrative tax of 2.000 €.

On 11 November 2009 "Dukagjini SHPK and Thermana", represented by Fatos Zajmi was announced as the provisional winner.

According to the rules of the PAK, after the provisional winner is announced, he/she is notified for the payment of the first installment of the bid price, which is 25 % of the bid price minus the deposit.

On 17 November 2009 the Agency sent a notification to the provisional winner to pay the 25 % in the amount of 1.665.313 € within 20 days (*i.e.* by 15.12.2009).

The money was paid by “Dukagjini Company” in four different amounts:

On 10/12/2009 where paid 100.000 € through ProCredit Bank (PCB)

On 10/12/2009 where paid 765.313 € through Raiffeisen Bank (RBKO)

On 21/12/2009 where paid 274.000 € through Raiffeisen Bank (RBKO)

On 21/12/2009 where paid 526.000 € through Nova Ljubljanska Banka (NLB)

On 02 February 2010 the Agency informed Fatos Zajmi that 15 February 2010 was the deadline to pay the remaining 75 % of the bid price (6.495.937 €).

On 15 February 2010 a note was filed with the PAK expressing the will of Ekrem Lluka to withdraw from the purchase and requesting the refunding of the money already paid in relation to the tender (25 % of the entire amount).

On 01 March 2010 the Agency rejected the request and gave a deadline until 15 March 2010 to pay the remaining 75 % of the price (6.495.938 €).

On 02 March 2010 a request for reconsidering the decision was sent by “Dukagjini Shpk and Thermana” through its representative Fatos Zajmi. In the request it was mentioned that the owner of Dukagjini Company Ekrem Lluka had received threats and had been asked to give Muhamet Demaj and his group 75.000 €.

On 08 March 2010 the Agency sent a request to the Chief District Prosecutor of Peja to provide them with the general information as to the investigation regarding the Threats against the injured party Ekrem Lluka.

On 16 March 2010 the agency was informed by the District Prosecution office in Peja that three people were in detention on remand for the above criminal offence.

Since, the second highest bidder was in a sort of relations with the persons detained as to the threats against the owner of Dikagjini Company, on 01 June 2010 the Agency sent a letter to the third highest bidder “Megi Bau GMBh & Kohl and partner Tourizem Consultancy International” represented by Fahri Dëshishku, informing him that he was entitled to purchase Hotel “Onix” in Banja e Pejes for the highest price which had been bid (*i.e.* the price offered by the first bidder).

On 08 June 2010, since the third bidder had failed to give the money within the deadline, the procedure for the privatization of the Hotel “Onix” in Banja e Peje was annulled on the same day and the money already paid was given back to the bidders.

Witness testimonies in front of the panel

Ekrem LLUKA

The injured party/witness *Ekrem LLUKA*, in his testimony in front of the panel, explained that he was the owner and the general director of the Dukagjini Company. By the end of 2009 he had participated in a tender issued by the Privatization Agency of Kosovo as to the Hotel "Onix" in Banja e Pejes. The bid made by the Dukagjini Company and Thermana was the highest (8.600.000 €) and the two companies were announced as the temporary winners of the tender.

On 21 November 2009, after he had been declared provisional winner of the tender, Luka met Muhamet Demaj and discussed with him about the possibility for Demaj and other people to have 15 % of shares of the Hotel. At the end of the conversations, since Llukka did not want to have other partners, Demaj said to him: *"Don't think we only know how to break windows"*¹.

The witness declared that he did not reply anything to Demaj, even though in the statement given to the police his answer was: *"Are you saying that you will kill me? To kill someone today, even a kid can do that, but there is a law for this"*.

Confronted by the panel the witness did not deny having uttered the above words, but he declared that he could not be absolutely sure about that, since the conversation with Demaj had lasted not longer than 2 – 3 minutes².

On the very same day Llukka reported to the police the words uttered by Demaj and, after four or five days, Llukka spoke about the above conversation with his friend and business partner Naim Hajrizi.

According to the injured party, he was informed only in March by Naim Hajrizi that the latter had given Demaj 75.000 € in order to calm the situation, since Demaj's group wanted 15 % of the shares. Llukka stated that he was abroad when Naim gave the money, that he did not ask Naim to give it and that it was a spontaneous initiative of the latter³.

Llukka testified about another meeting with Demaj which took place on 28 February 2010 in Llukka's office at the Dukagjini Company; at the meeting was present also Naim Hajrizi and Demaj asked Llukka to pay further 75.000 €, but Llukka refused to pay since he was going to withdraw from the tender. Before leaving the office Meti turned to Naim Hajrizi and told him that if Llukka would not give the money than Hajrizi should give it.

Llukka testified that, on 28 February 2010, after the meeting, he was informed by Hajrizi that the latter had had another meeting with Muhamet Demaj, Bajram Mehmetaj and Azem Veseli and that the request to pay the remaining 75.000 € had been reiterated and that if they had not received the money "Peja would burn".

The witness reported this to the police, as he felt threatened, although not physically⁴.

¹ Minutes of the Main Trial dated 05.08.2010 page 6.

² Minutes of the Main Trial dated 05.08.2010 page 7.

³ Minutes of the Main Trial dated 05.08.2010 page 15.

⁴ Minutes of the Main Trial dated 05.08.2010 page 18.

Lluka added he had been constantly threatened through anonymous phone calls⁵ and hence, before the meeting with Demaj, he had already decided to withdraw from the tender.

Naim HAJRIZI

The witness *Naim HAJRIZI* in his testimony in front of the panel explained that he worked as a businessman. As to the tender procedure of Hotel "Onix" in Banja e Pejes, he was aware that the temporary winner was the Dukagjini Company.

The witness stated that he was acquainted with the three defendants. As to the tender of Hotel "Onix" in Banja e Pejes, he had some conversations with them, after the temporary winner was announced and but the talks were related to the shares of the Hotel.

The discussions were usually with Muhamet Demaj and Bajram Mehmetaj, but on two or three occasions also Azem Veseli was present.⁶ The defendants asked for 10 % of the shares, but in the end their request could not be accepted since Ekrem Lluka did not need any shareholder.

When the witness was asked as to the defendant's reaction after their request was rejected, he replied that there was none; as to this point, the witness was confronted with the content of the police statement he gave on 1.3.2010:⁷

Presiding Judge: since you are not able I confront you with what you said to the police on the 1st March 2010. You said "I was engaged from the beginning in the talks that were conducted by Ekrem Lluka and a group of people consisting of Muhamet Demaj, Bajram Mehmetaj and Azem Veseli. Initially these people were asking for the 10% of the total value of the facility. But after many negotiations, intimidations and blackmails done and addressed to Ekrem Lluka, we managed to offer those people the sum of 150,000 Euros which was also accepted by them". So now you have realized what is the purpose of the statements given during the investigation, it is just to see if the witness is lying or not, not to spare you the pleasure of appearing here. Now that I have read out loud what you said to the police, does this ring a bell or not?

Naim Hajrizi: the same statement I gave to the police is the one that I just gave here now.

Presiding Judge: this is what you said exactly. Is this your signature?

The Presiding Judge shows the witness a copy of his statement to the police.

Naim Hajrizi: yes it is.

Notwithstanding being confronted, the witness stated that the defendants had agreed to withdraw from their request of 10% of the shares and that in exchange he had offered them to be employed in the Hotel, but they refused the proposal.

Therefore Hajrizi spontaneously decided to offer them 150.000 €, but first gave them the sum of 75.000 €.

⁵ Minutes of the Main Trial dated 05.08.2010 page 19.

⁶ Minutes of the Main Trial dated 05.08.2010 pages 33 – 34.

⁷ Minutes of the Main Trial dated 05.08.2010 pages 35 – 37.

As to the money which was promised to the defendants the witness was confronted as follows:

Presiding Judge: was the deal for 75,000 or was it for 150,000?

Naim Hajrizi: 150,000.

Presiding Judge: can you explain to me why did you have to give them 150,000 Euros just for free because they didn't have any right to have this money. It sounds really weird.

Naim Hajrizi: starting from the life and work where we live, for instance, you take 10% of the shares, you enable someone to get hold of 10% and after one year he can come and say I don't want them, I am selling you my shares. He comes up with maybe double the initial price....

Presiding Judge: but they did not have any right to have anything, so you gave them 75,000 Euros for free. Is this what happened?

Naim Hajrizi: in order that they would not get any shares.

Presiding Judge: did you pay on behalf of Ekrem Lluka since he was the winner of the tender or did you pay spontaneously?

Naim Hajrizi: first of all because he was the winner of the tender and second it was my pleasure that he was the winner of the tender and thirdly because I was aware of the investment that in the future can take place, I considered from my point of view to settle this deal in such a way.

Presiding Judge: so it was your idea?

Naim Hajrizi: yes

Presiding Judge: it is completely different from what you said to the police. In the statement you gave the police on 1st of March 2010, you said the first part of the money in the sum of 75,000 Euros I personally handed over to Muhamet Demaj this money I paid on behalf of Ekrem Lluka, who was at that time in Slovenia. So here you said you paid on behalf of Ekrem Lluka, and now you say that you paid it spontaneously? What is the true version?

Naim Hajrizi: I can say that the true version is that the entire sum was paid by myself privately and after reaching a deal, after which I would have informed Ekrem Lluka, who was unaware of the whole deal⁸.

According to the witness the money was paid in cash, approximately in November or December 2009, to Muhamet Demaj in the presence of Bajram Mehmetaj and Azem Veseli⁹. The witness stated that he already had the money at his disposition and did not withdraw it from the bank. As for the remaining 75.000 €, the money should have been given after the privatization procedure had been completed.

Then the witness confirmed that there was a meeting with Muhamet Demaj in the office of Ekrem Lluka at the Dukagjini Company at the end of February, in which Ekrem Lluka said that he was going to withdraw from the tender and that Demaj had to give back the 75.000 € he had already received.

After the meeting he had with Demaj and Ekrem Lluka, the witness met again the same day Meti (Demaj), Galani (Bajram Mehmetaj) and Azem Veseli in café bar "Calabria". They spoke about the withdrawal of Ekrem Lluka from the tender and then they

⁸ Minutes of the Main Trial dated 05.08.2010 pages 37 – 38.

⁹ Minutes of the Main Trial dated 05.08.2010 page 38:

Presiding Judge: who did you give the money to?

Naim Hajrizi: to Meti. Galani was present and also Azem Veseli happened to be there too.

requested the remaining part of the money (75.000 €) saying that if the money was not paid “within Wednesday, Peja would burn”. The witness could not remember who exactly said the above words, but they were mentioned while all of them were sitting in the cafe bar.

Klara BOKSHI

The witness *Klara BOKSHI* stated that she worked in PAK as a transaction officer. Her main commitment was to check the payments made by the bidders, to prepare the paperwork for the bidders who lost the bid, in order to refund their deposits, to notify the winners about their provisional appointment and verify their payments¹⁰.

The witness explained that when a bidder appointed as a temporary winner failed to complete the full payment because of threats, the case was always sent to the Legal Office of the Agency to make an assessment and the final decision was taken by the Management Board¹¹.

As to the tender of the Hotel “Onix” in Banja e Pejes, she notified the winner and verified the deposit. The temporary winner were “Dukagjini SHPK and Thermana” represented by Fatos Zajmi. Actually Dukagjini and Thermana were two different companies, which made a joint bid for the Hotel¹².

She verified the payment and notified the two companies in order to have the remaining 75 % (i.e. 6.495.937 Euros) paid. After the request of Lluka to withdraw from the tender, the final decision was to refund the money already paid by the two companies.

More specifically, according to the witness the deposit of 500.000 € was paid on 11/11/2009. The notification to pay the 25 % (i.e. 1.665.313 Euros) was sent on 17/11/2009 and the deadline for the payment was on 15/12/2009.

Afterwards, three letters were filed with PAK by Fatos Zajmi; a notification for threats on 23.11.2009, a request for withdrawal from the tender on 02.03.2010 and a further request for withdrawal on 15.03.2010.

The 25 % was refunded to Dukagjini Company on 05.03.2010, but as to the deposit the witness did not know when it had been returned back.

Armend SUSURI

The witness *Armend SUSURI* in his testimony in front of the panel stated that he was the Head of Marketing at the PAK. His scope of work dealt mostly with promotion, but he also had contacts with bidders.

As to the tender of Hotel “Onix” in Banja e Pejes, he was not involved and he did not know who the investors were. After the sale was completed and the temporary winner

¹⁰ Minutes of the Main Trial dated 12.08.2010 page 3.

¹¹ Minutes of the Main Trial dated 12.08.2010 page 4.

¹² Minutes of the Main Trial dated 12.08.2010 page 5.

was announced, then Nora Kelmendi, the Director of Sales Department, was involved in the procedure.

As to the withdrawal of the deposit, the witness stated that the decisions were taken by the Board of Directors, which was composed of three international and five national experts. The witness explained that, according to the practice, one of the reasons to refund the deposit was in case of threats against the bidder.

Fatos ZAJMI

The witness *Fatos ZAJMI* in his testimony in front of the panel stated that he had been employed in the Dukagjini Company as an attorney, since 5th August 2002. He represented the company in relation to juridical matters.

As to participating in the privatization tenders, he had a general authorization to make the bid whereas, as to civil litigations, he needed a specific authorization from the owner of the company, Mr. Ekrem Lluka.¹³

In relation to the privatization procedure of Hotel "Onix" in Banja e Pejes, he prepared and filed with PAK in Pristina the documentation regarding the tender. The transfer of the deposit in the sum of 500.000 € was made by the Finance Department of the Company.

According to the witness there had been no troubles until the provisional winner was announced. In November 2009, he was called by Lluka who informed him that he had received threats from some people. Ekrem Lluka asked the witness to notify the Agency about these threats.¹⁴

The witness confirmed that he had written and signed three letters to the agency on behalf of his employer Ekrem Lluka and on the basis of his instructions.

The first note was filed on 23 November 2009 and it was mentioned that the owner of the Dukagjini Company, Mr. Ekrem Lluka, had had a meeting with some people who had threatened him regarding the purchase of Hotel "Onix" in Banja e Pejes and that Lluka had informed the Peja Regional Police of the threats.¹⁵

The witness stated that he had been called by Ekrem Lluka who told him that he had had a meeting with some people and that they had threatened him in relation to the purchase of the Hotel. Lluka did not mention who the people were. According to the witness Mr. Lluka only wanted to inform the Agency of the circumstance.

The second letter was filed on 15 February 2010 and further threats from different people were mentioned. According to the witness, he had the impression that Ekrem Lluka was scared and because of these threats he had decided to withdraw. The witness received a call from Ekrem Lluka who told him that he wanted to withdraw from the tender because of these threats and that Fatos should send a letter to the Agency notifying the intention

¹³ Minutes of the Main Trial dated 24.08.2010 pages 2 – 5.

¹⁴ Minutes of the Main Trial dated 24.08.2010 pages 5 – 6.

¹⁵ The letter is located on the binder of the main trial Volume II, annex III – PAK Documents.

of the company to withdraw. Before filing the notice, the witness called Ekrem Lluka and read out some relevant parts of the letter and Lluka agreed on the content of it.¹⁶

The third notice was filed on 3 March 2010 as a reply to the decision of the Board of the PAK to reject Lluka's request for withdrawal. In this letter, written by Fatos Zajmi on the basis of the instructions of Luka, the Board of Directors was asked to reconsider its decision, because Lluka had been threatened again by Muhamet Demaj and his group in order to receive 75.000 €. ¹⁷

The letter, by which it was asked again the permission to withdraw from the tender, was written by Fatos on the basis of the instruction of Ekrem Lluka and Fatos read out some parts of the letter to Ekrem Lluka before filing it.¹⁸

Furthermore the witness explained that the two companies, Dukagjini Shpk and Thermana (a Slovenian company), had decided to make a joint bid for the Hotel "Onix". The witness had also an authorization from the director of Thermana to represent them in the bidding procedure. According to the contract between the two companies, the shares of the Hotel should be 90% Dukagjini and 10% Thermana.¹⁹

Nora KELMENDI

The witness *Nora KELMENDI*, Director of the Sales Department in PAK, stated that, as to the tender procedure for the privatization of Hotel "Onix", the Agency accepted only 3 bidders.²⁰ According to the witness there had been no problems as to the privatization procedure until the Agency received a request from Ekrem Lluka who wanted to withdraw from the purchase because he had been threatened.

As to the letters filed by Fatos Zajmi on behalf of Ekrem Lluka, she explained that when the second note was filed it was decided to send it together with a memo of the management to the Board of Directors. The memo was drafted by Shkelzen Lluka, who was also present in the meeting of the Board. On 25 February 2010 the Board decided to reject the request for withdrawal.

When the Agency received the third letter from Fatos Zajmi and before sending it to the Board, the Department where the witness was working asked the District Public Prosecution Office in Peja for information.

On 12th March 2010 the Agency was informed that three persons were detained for extortion in relation to this case. On 15 March 2010 the deadline for the payment of the total bid price expired, but Lluka failed to pay.

¹⁶ Minutes of the Main Trial dated 24.08.2010 pages 8 – 9.

¹⁷ The letter is located on the binder of the main trial Volume II, annex III – PAK Documents. The date on this letter is written "02.02.2010", but it was obvious that it was a mistake and it was clarified during the hearing of 24.08.2010 page 8, that it should have been 02.03.2010.

¹⁸ Minutes of the Main Trial dated 24.08.2010 page 10.

¹⁹ Minutes of the Main Trial dated 24.08.2010 pages 11 – 14.

²⁰ Minutes of the Main Trial dated 24.08.2010 page 16.

The witness wrote a memo dated 28 May 2010 in order to advise the Board. On the memo she put forth three options: either to cancel the tender and give back the money to the provisional winner or to proceed with the tender and ask the second highest bidder to pay the money or to ask the third highest bidder to pay for the entire amount.²¹

The witness explained that, based on the rules and the experience with PAK, if the provisional winner provided the Agency with police reports stating that he/she had been threatened, the money already paid was usually given back.

Eventually the Board decided not to annul the tender and to invite the third bidder (the second highest bidder was disqualified, since it turned out that he had some hidden agreement with the people in detention for the extortion) to pay the price offered by the provisional winner. However, the third bidder did not pay, since the difference between his offer and the one made by Lluca was very high (around 3.300.000 €). Therefore, according to the rules of KPA, the tender was annulled.²²

Agim ELSHANI

The witness *Agim ELSHANI* in the testimony in front of the panel stated that he had participated in the tender for the privatization of Hotel "Onix" in Banja e Pejës and was the second highest bidder. In order for him to take part in this tender, he needed to have a "professional team of managers and medical staff" and, in order to contact these people, he requested Muhamet Demaj's assistance.

He made a written contract with Muhamet Demaj by which Muhamet was in charge to find these people and establish contact with them; in case of victory in the tender, Muhamet Demaj would have had 15% of the shares.²³

Asked whether there was also a deal with Ekrem Lluca, the witness said that he had consultations with him as to joining as partners, but they did not come to any agreement.

Confronted with the statement given in front of the police on 16.12.2009 in which he had made references to an agreement with Lluca (*"I want to add that one day prior to the tender I talked to Ekrem, we had an official meeting concerning the tender, and reached a verbal contract where we agreed that if Ekrem wins and I am the second, we would sit and talk for further steps"*) Elshani confirmed that there were discussions with Lluca, but they did not make any written agreement. They agreed that, after the tender procedure, they would discuss about the eventual steps to be undertaken after the end of the tender procedure²⁴.

According to the witness, on the day the winner was announced, about five hours later, he called Ekrem Lluca and asked him to have a coffee together and to talk about the

²¹ Minutes of the Main Trial dated 24.08.2010 page 20.

²² Minutes of the Main Trial dated 24.08.2010 pages 21 – 22.

²³ Minutes of the Main Trial dated 15.09.2010 pages 10 – 11.

²⁴ Minutes of the Main Trial dated 15.09.2010 pages 11 – 12.

possibilities regarding the tender, but the reply of Ekrem Lluka was that he was the winner and there was nothing to talk about.

After he spoke to Ekrem Lluka, Elshani called Muhamet Demaj and told him that he had lost the tender. According to the witness, Muhamet was a little disappointed, as it was normal in such cases.²⁵

As to the relation with Muhamet Demaj, the witness stated that he knew Muhamet since the war in Kosovo as they served together in the same brigade (Muhamet and Bajram were soldiers, he was the Deputy Commander and Azem Veseli was the Commander of the brigade). After the war Elshani had hired Muhamet in a beer factory run by him.

Elshani heard that Muhamet Demaj had an agreement with Ekrem Lluka as well regarding the tender of Hotel "Onix", but did not know the content of the agreement and he never spoke to them about it.²⁶

As to the written agreement between him and Muhamet Demaj, the witness explained that the agreement was only a partnership agreement and there was no reference to the amount of money involved. If they had won the tender, then they would have discussed the details.²⁷

Second examination of Ekrem Lluka.

The injured party/witness *Ekrem LLUKA* was examined a second time on 15 September 2010 in relation to the three letters filed on his behalf with the Privatization Agency of Kosovo.

As to the first notice, the witness explained that he had asked his lawyer to notify the Agency that he had received some threats and that he had instructed Fatos as to the content of the letter, even though he did not feel threatened.²⁸

As to the second letter, the witness stated that it had been written by Fatos upon his instructions (including the word "threat" mentioned in the letter several times).

As to the third notice, the witness specified that he had asked his lawyer to write, but he denied having instructed him to utilize words such as "Threats, Blackmail, Racketeer" which were actually mentioned.

As to a possible agreement with Agim Elshani in relation to the tender of Hotel "Onix" in Banja e Pejes, the witness stated that they spoke together before the tender, but they did not have any agreement. Lluka told Elshani that he was going to bid together with a Slovenian partner; therefore he was not interested in having another partner.

²⁵ Minutes of the Main Trial dated 15.09.2010 page 13.

²⁶ Minutes of the Main Trial dated 15.09.2010 page 16.

²⁷ Minutes of the Main Trial dated 15.09.2010 page 17.

²⁸ Minutes of the Main Trial dated 15.09.2010 pages 2 – 3.

Defendant's statement in front of the panel

Muhamet DEMAJ

Muhamet DEMAJ in his statement in front of the panel affirmed that he had known the injured party Ekrem Lluka for ten years and they had always been in good terms. As to the tender of Hotel "Onix" in Banja e Pejes, he knew that Ekrem Lluka and others had participated in the tender.

The defendant stated that he wanted to have a part of the shares of the hotel, buying them through the winner of the tender.

After Ekrem Lluka had won the tender, Naim Hajrizi told the defendant that it could be possible for Demaj to get 10% of the shares. Since the defendant could not afford the purchase, he had asked his friend Bajram Mehmetaj to take part in the shares. Few days later Hajrizi had told them that they could not buy any share, since Ekrem Lluka already had a partner, a company from Slovenia²⁹.

Then Naim Hajrizi told the defendant that maybe it would be the case that the defendant himself spoke to Ekrem Lluka and in November 2009 Demaj met Lluka.

In the meeting the latter said that he could not sell any share.

Demaj denied in front of this Court that after, having the above refusal, he uttered the words: *"Don't think we only know how to break windows"*.

After this discussion, the defendant met Naim Hajrizi and he offered Demaj and Mehmetaj 150.000 €, since the deal could not be finalized.

The defendant accepted the offer only after Naim had insisted. So, Naim gave the defendant 75.000 € in the presence of Bajram Mehmetaj. Azem Veseli was not present when Naim gave the money, but earlier Veseli was present in the coffee shop before Naim showed up. The money received was divided between Demaj and Mehmetaj.

According to the defendant the money was given sometime around the end of November or the beginning of December, two or three weeks after the meeting he had with Ekrem Lluka.

The agreement was that the rest of the money would be given to them after the tender procedure had been finalized³⁰.

The defendant did not meet Ekrem Lluka or call him until 28 February 2010. Some days earlier the defendant had been informed by Naim that Lluka was about to withdraw from the tender. Therefore an additional meeting was organized between Naim, Demaj and Lluka at the premises of Dukagjini Company. The defendant told Lluka that Naim had promised 150.000 €, but he had received only half of the money and told him that the rest would be given by Ekrem Lluka. But, Lluka replied to the defendant that he was withdrawing from the tender, that he was not going to give any money and that, if the agreement was with Naim, the latter had to give the money. Then the meeting ended.

Afterwards, on the same day, he met with Naim once again; also Bajram Mehmetaj was present, but not Azem Veseli. Naim asked to have the money back within a month.

²⁹ Minutes of the Main Trial dated 25.08.2010 page 5.

³⁰ Minutes of the Main Trial dated 25.08.2010 pages 8 – 10.

Demaj did not reply anything and did not utter words such as “We are going to burn Peja”. The defendant was confronted as to this point as follows:

Public Prosecutor: You were also interviewed by the Public Prosecutor, and according to the minutes of this interview you said reference to the meeting you had with Naim you said that this meeting we threatened Naim, page number on the English version is 4, paragraph 5, dated 19 March. So you said in this meeting with Naim “we threatened Naim but in somebody else’s name”. Do you remember saying that?

Muhamet Demaj: No, it is not true.

Public Prosecutor: You said that you threatened Naim in someone else name and it is not true that we gave him a deadline until Wednesday to pay the money and that Peja will burn. We mentioned that regarding this case we will direct it to the Peja Court.

Presiding Judge: This was said by a person not wanting money?

Muhamet Demaj: I did not say that, maybe the Public Prosecutor said that.³¹

As to the text messages related the telephone number 044 787 876 the defendant admitted that the above number was his.

Asked as to a text message (“*Congratulations, Congratulations*”) sent to Bajram Mehmetaj’s number on 11 November 2009 (the day when Ekrem Lluka was announced as the winner of the tender) the defendant said that he did not know about the message and, in any case, that it had nothing to do with the tender. He finally added that on those days there were the elections and maybe the message was related to the results of the elections. Reminded that the elections were on the 15th November 2009, he said that maybe the message was related to the celebrations of 28th November (even though he was confronted with the fact that the message was sent almost 20 days before the celebrations)³².

In relation to another message (“*We got it*”), sent on the 11th November 2009 to Azem Veseli, only two minutes after the one sent to Bajram Mehmetaj, the defendant said that he was referring to the elections for the Municipality.

Finally, asked as to another text message (“*We passed the first step, we qualified*”) sent to the mobile number 044 999 666, the defendant stated that the message might have been related to the privatization of Hotel “Onix”, since he had an agreement with Agim Elshani³³.

Bajram MEHMETAJ

The defendant *Bajram MEHMETAJ* in his statement in front of the panel confirmed the version given by Demaj.

Mehmetaj specified that when he realized that it was not possible to buy the shares he was disappointed, but, since he had not lost any money, he did not undertake any actions to obtain compensation.³⁴

Then Naim voluntarily proposed Muhamet to give him 150.000 € according to the Albanian code of ethics in relation to the promise he had made and that could not be kept.

³¹ Minutes of the Main Trial dated 25.08.2010 pages 14 – 15.

³² Minutes of the Main Trial dated 15.09.2010 pages 18 – 19.

³³ Minutes of the Main Trial dated 15.09.2010 pages 19 – 20.

³⁴ Minutes of the Main Trial dated 25.08.2010 page 21.

In front of the panel the defendant stated that the agreement as to the participation in the tender was between him, Muhamet Demaj and Naim Hajrizi.

Confronted with the content of his statement given to the police on 01.03.2010³⁵, he denied having mentioned the name of Azem Veseli as one of the participants in the agreement.

When asked why he did not give Naim the money back once he asked for the money, the defendant said that they did not have any evidence that Ekrem Lluka had really withdrawn from the tender.

After being confronted with his previous statement in front of the prosecutor, the defendant said that after the last meeting they had with Naim Hajrizi it was decided to give back the money to Naim, but they could not since the following day they were arrested.

Presiding Judge: Your Defence Counsel just reminded me that you were at liberty for 16 days why did you not give it back the money in those 16 days, you were completely free?

Bajram Mehmetaj: My brothers and sisters and quite a few of them were here from abroad and to be honest I spent time with them and I did not have time to even go out on the street.

Presiding Judge: Oh come on Bajram Mehmetaj you were on trial and you chose to spend time with your family, it makes no sense.

*Bajram Mehmetaj: I did not want to contact them because it could have been used against us in court.*³⁶

As to the text messages related the telephone number 044 940 046, the defendant admitted that the above number was his. As to the text message ("Congratulations, Congratulations") sent to him by Muhamet Demaj on 11th November 2009, the defendant was not able to give any explanation.

Azem VESELI

The defendant *Azem VESELI* in his statement in front of the panel confirmed the version given by the other two defendants.

He added that he met once Naim Hajrizi in Nositi bar, while he was having coffee with Muhamet Demaj and Bajram Mehmetaj, but he did not speak to him and did not even realize that Muhamet and Bajram were talking to Naim.³⁷

The defendant denied having met Naim Hajrizi again.

As to the tender of Hotel "Onix" in Banja e Pejës, the defendant stated that he did not know anything as to the tender.

Azem Veseli, Muhamet Demaj and Bajram Mehmetaj were comrades of the war and that's why they still hung out together. Demaj and Mehmetaj were soldiers during the war in the same Brigade where he was the Commander.

³⁵ "I along with friends of mine: Muhamet Demaj and Azem Veseli had an agreement with Ekrem Lluka through a person named Naim Hajrizi by which agreement after the privatization of Onix Hotel he would pay us an amount of 150000 Euros as it was agreed before the privatization."

³⁶ Minutes of the Main Trial dated 25.08.2010 page 27.

³⁷ Minutes of the Main Trial dated 25.08.2010 pages 31 – 32.

The defendant confirmed that his telephone number was 044 125 003. As to the message ("We got it") sent to him by Muhamet Demaj on 11 November 2009, the defendant stated that he did not read it or see it³⁸.

Additional evidence and records acquired during the sessions of the main trial

The panel decided *ex officio* to examine some employees of the Privatization Agency of Kosovo and summoned Klara Bokshi – a Transaction Officer in PAK, Armend Susuri – Head of Marketing in PAK and Nora Kelmendi – Director of Sales Department in PAK. During the hearing of 12th August 2010 the panel acquired *ex officio* the documents as to the privatization procedure which were brought to the Court by the witness Klara Bokshi³⁹.

Furthermore, the panel *ex officio* issued three orders:

- Order for copying the case file from the Privatization Agency of Kosovo issued on 16.08.2010 regarding the privatization procedure of Hotel "Onix" in Banja e Pejës;
- Order for disclosure of Financial Data issued on 17.08.2010 in regard to the bank accounts of Ekrem Lluka, Naim Hajrizi, Fatos Zajmi and Dukagjini Company for a period from 1st November until 31st December 2009; and
- Order for metering of phone calls and text messages issued on 25.08.2010 in regard to the mobile numbers of Muhamet Demaj, Azem Veseli, Bajram Mehmetaj, Naim Hajrizi, Ekrem Lluka and Agim Elshani for a period from 1st November 2009 until 1st March 2010.

Through the first order, the panel acquired documents regarding the privatization procedure of Hotel "Onix" in Banja e Pejës and a CD containing documents as to the above procedure⁴⁰.

Through the second order, the financial data of the bank accounts belonging to Ekrem Lluka, Naim Hajrizi, Fatos Zajmi and Dukagjini Company were acquired⁴¹.

Through the third order, the metering of phone calls and text messages were acquired⁴² (*the data are available in the binder labeled, Volume II, annex 2 part 1 and 2*).

The panel also decided *ex officio* to examine once more the injured party Ekrem Lluka, and the witness Agim Elshani.

The court *ex officio* requested the criminal record of the defendant from the District Court of Peja and it turned out that the defendants had never been convicted before.

³⁸ Minutes of the Main Trial dated 15.09.2010 page 23.

³⁹ Case Binder on the Main Trial, Volume II annex 3 (second part)

⁴⁰ Case Binder on the Main Trial, Volume II, annex 3 (first part).

⁴¹ Case Binder on the Main Trial, Volume II, annex 1.

⁴² Case Binder on the Main Trial, Volume II, annex 2 part 1 and 2.

E. EVALUATION OF PRESENTED EVIDENCE AND LEGAL QUALIFICATION

1. Factual findings and examination of the pieces of evidence

After the presentation of the above testimonies and statements, as to the factual reconstruction of the events relevant for the present case, the following points can be considered as proven and not in doubt, based on the testimonies of the witnesses, the admissions of the defendants and the documentary evidence in the case file:

- on 21.11.2009 a meeting between Ekrem Luka and Muhamet Demaj, related to the purchase of Hotel Onyx, took place at the premises of Hotel Dukagjini in Peja;
- on the same day, Ekrem Lluka gave the police a statement in which he affirmed that he had been threatened by Demaj;
- on 23 November 2009, Fatos Zajmi filed with KPA in Pristina a notice stating that Ekrem Lluka, a few days before, had been threatened regarding the purchase of Hotel Onyx. The notice was signed by Fatos Zajmi on behalf of Ekrem Luka;
- around December 2009, Naim Hajrizi gave Muhamet Demaj 75.000 Euros (the reason for the giving will be analyzed afterwards) with the agreement that, once the tender procedure had been concluded, further 75.0000 Euros should have been given to Demaj;
- on 15 February 2010, a second notice was filed with KPA in Pristina by Fatos Zajmi upon the authorization of Ekrem Luka; the notice mentioned that the same people who had threatened Ekrem Luka in November were still threatening him and that Lluka had received further threats by unknown people in relation to the tender; furthermore he manifested his will to withdraw from the tender and asked to have back the money (2.165.133 Euros) already given to KPA;
- on 28 February 2010, a meeting between Ekrem Luka, Naim Hajrizi and Muhamet Demaj as to the purchase of Hotel Onyx took place in the premises of Hotel Dukagjini;
- on the same day two other meetings occurred: the first was attended by Naim Hajrizi, Muhamet Demaj and Bajram Mehmetaj; the second by the above persons and Azem Veselaj;
- on 1 March 2010 the KPA rejected the request of Lluka to withdraw from the tender and to have back the money already paid;
- on 2 March 2010 a third notice was filed with KPA by Fatos Zajmi mentioning that on 28 February 2010 Ekrem Luka had received further threats by *"the same person, Muhamet Demaj and his group, who has requested 75.000 Euros as a blackmail in relation to the purchase of Hotel Onyx"*; in the letter the will of Ekrem Luka to withdraw from the tender was reaffirmed and it was asked the KPA to reconsider its decision dated 1 March 2010;
- on 8 June 2010 the tender procedure was annulled because of the failure of the third bidder (the second bidder was deemed not eligible) to pay and consequently the money already paid by Ekrem Lluka was given back to him;

The above circumstances appear to be clear and uncontested by the parties. What is disputed is whether or not serious threats were addressed against Ekrem Lluka and if so, what the purpose for the threats was.

The injured party stated that, in the meeting held on 21 November 2009, Muhamet Demaj, after having claimed that he and his group had to have 15 % of the shares of the Hotel Onyx, uttered the following words, after Lluka's refusal to sell the shares:

*"It is not only breaking of windows that we know how to do" (or "We do not only break windows") and "I warn you".*⁴³

In front of the panel the injured party stated he did not feel threatened by the above words.⁴⁴

However, on the very same day of the meeting, Ekrem Lluka went to the police and released a statement affirming that he had been threatened by a person called Meti (i.e. Muhamet Demaj).⁴⁵

⁴³ Minutes of 5 August 2010, page 6.

⁴⁴ Minutes of 5 August 2010, pages 9-10:

Presiding Judge: did you perceive these words as a threat or not?

Ekrem Lluka: I don't take that as a threat and I was not scared, if I am scared then I have to close the business and leave Kosovo.

Presiding Judge: yes, but in December you took the general behaviour performed by Meti as a threat. You said on 18 December 2009, I am here because of the threats committed by Muhamet Demaj regarding my bargain and privatization of AKM.

Ekrem Lluka: it is true that after the meeting with Meti I went to the police, but if it was a threat and I was scared I would ask for protection from the police.

Presiding Judge: I am challenging you that you said to us that you did not perceive these words as a threat. Whereas in December you said there were threats committed by Meti against you and regarding the tender of this hotel, you said, furthermore, "...since the time I was threatened I have not had any other threats", the meaning is very clear. Regardless of the opinion of the Defence Counsel I again remind you of the obligation as a witness and of the fact that giving false statements is a serious criminal offence. So here you spoke about threats.

Ekrem Lluka: I don't understand how I would be able to go to the police and say I had a conversation with Meti and had threats, how else could I say it, maybe in Albanian we don't have another word, maybe in English there is another word.

Presiding Judge: we are not here to assume. I challenge you on the basis that in December you spoke of threats, a threat is a threat; the meaning is very clear.

Ekrem Lluka: what I spoke to Meti I felt obliged as a citizen to go to the police and report it and I am telling you what we talked about and after this I reported it to the police.

Presiding Judge: yes, you reported it to the police as if it was a threat. Now that I am refreshing your memory do you still deny that in December you felt threatened by the behaviour of Muhamet Demaj?

Ekrem Lluka: I did not feel threatened, I felt I needed to go and report it to the police.

⁴⁵ Minutes of 5 August 2010, pages 5-6:

Presiding Judge: maybe I can help you refresh your memory; I am quoting the statement you gave to police on the very same day of this meeting so I assume your memory was clear then.

...

Presiding Judge: you said that during the conversation after you refused, the person threatened with words "don't think we only know how to break windows". So according to what you said to the police this sentence was uttered after you refused to give the 15% of the shares? Is this consistent with your memory?

Ekrem Lluka: yes, he said this to me at the end.

Presiding Judge: did you reply anything?

Ekrem Lluka: no.

Furthermore, on 23 November 2009, just two days after the meeting, a notice was filed on behalf of Ekrem Lluka with the KPA. In the notice it was clearly mentioned that during the meeting held on 19 November some threats were addressed against Ekrem Lluka.

And finally on 18 December 2009 Ekrem Lluka gave the police a further statement in which he again reasserted that on 21 November he had been threatened.⁴⁶

Therefore, as to the above words mentioned by Demaj, the conduct undertaken by the injured party shows clearly that actually threats were made against him and that he felt threatened.

This conclusion is corroborated by the statements given by Naim Hajrizi during the investigation.

In fact, even though, in front of the Court the witness declared that he had talks with Muhamet Demaj and Bajram Mehmetaj as to their will to purchase 10 % of the shares of Hotel Onyx, but denied that threats were made by the two defendants, the tenor of the statement given by Hajrizi on 1 March 2010 to the police is completely different as it results from the following excerpt taken from the minutes of 5 August 2010:

Presiding Judge: it is not 100% clear. Did they want to have a share in the ownership of the hotel?

Naim Hajrizi: yes

Presiding Judge: what was the percentage of this share?

Naim Hajrizi: 10%

Public Prosecutor: the understanding was that they would pay this 10%?

Naim Hajrizi: yes

Public Prosecutor: and did this happen?

Naim Hajrizi: no

Public Prosecutor: why?

Naim Hajrizi: because my friend did not need any shareholders.

Public Prosecutor: what was their reaction?

Naim Hajrizi: it was a common, usual talk, like indicating saying that he wouldn't be able to pay out the whole thing as it was 8 and a half million, things like that, it was daily common talk.

Presiding Judge: but the Public Prosecutor is saying, after that Ekrem Lluka said I don't want you as a shareholders, what did they do, did they just say, ok, thank you and goodbye or did they say anything else?

Naim Hajrizi: it was a very simple way of talking. They came up with an idea that the shares of the Slovenian partners as well as Ekrem Lluka's shares had to be reduced so they would come in and take over the rest of the shares because they originally come from that area.

Presiding Judge: but once Ekrem Lluka turned them down, what was their reaction, that's what the Public Prosecutor wants to know. We have gone around this for 5 minutes. So come to the point.

Naim Hajrizi: there was no reaction. Because I was a friend of Ekrem Lluka's I could influence, that was the whole thing. There were occasions here in Peja and elsewhere people would come

⁴⁶ Minutes of 5 August 2010, page 9.

together, 6 or 7 of them become shareholders and they thought this would be the case here as well.

Presiding Judge: I see you are not responding here as well. What you said before the police, before confronting you with the statement, have these people ever uttered threats against you or against Ekrem Lluka as to this tender or to take part in the ownership of the hotel?

Naim Hajrizi: I would not be able to say that.

Presiding Judge: since you are not able I confront you with what you said to the police on the 1st March 2010. You said "I was engaged from the beginning in the talks that were conducted by Ekrem Lluka and a group of people consisting of Muhamet Demaj, Bajram Mehmetaj and Azem Veseli. Initially these people were asking for the 10% of the total value of the facility. But after many negotiations, intimidations and blackmails done and addressed to Ekrem Lluka, we managed to offer those people the sum of 150,000 Euros which was also accepted by them". So now you have realized what is the purpose of the statements given during the investigation, it is just to see if the witness is lying or not, not to spare you the pleasure of appearing here. Now that I have read out loud what you said to the police, does this ring a bell or not?

Naim Hajrizi: the same statement I gave to the police is the one that I just gave here now.

Presiding Judge: no, first of all, you are not here to assess your former statement; secondly, you did not say the same thing. You said that you did not receive, either you or Ekrem Lluka, received any threats. Whereas here you spoke of intimidation and even blackmail. What is your memory? Is this true that after several negotiations, intimidations and blackmail you and Ekrem Lluka decided to give these people 150,000 euros?

...

Naim Hajrizi: I did not say this before the police.

...

Naim Hajrizi: this resulted from the talks I had privately with these three people, Bajram Mehmetaj, Meti and myself.

Presiding Judge: Bajram Mehmetaj and Muhamet Demaj?

Naim Hajrizi: Bajram Mehmetaj and myself. And Azem Veseli occasionally here and there.

...

Presiding Judge: so when you speak about intimidations and blackmail, none of these were committed in the presence of Ekrem Lluka?

Naim Hajrizi: they were not committed even in front of me let alone in front of Ekrem Lluka, because he was not present when I met these people.

Presiding Judge: so when you speak here in this statement about intimidation and blackmail committed by this group of people, were these actions performed just in front of you?

Naim Hajrizi: they did not exist at all.⁴⁷

It is worth noticing that both Luka and Hajrizi changed massively their versions of the events when they were interviewed by the Prosecutor on 18 March 2010; in fact, unlike what they had declared in front of the police in November 2009, both of them stated that no threats were addressed against Luka by Muhamet Demaj.

In order to assess whether or not the words were felt as a threat by Lluka, it must also be taken in consideration that Naim Hajrizi around December 2009 gave Muhamet Demaj 75.000 Euros.

What was the reason for such a giving of money?

⁴⁷ Minutes of 5 August 2010, pages 34-37.

Naim Hajrizi stated in front of this Court that the money was given as a sort of compensation for the withdrawal of Demaj from any claims in relation to the Hotel Onyx, as it results from the following excerpt:⁴⁸

Naim Hajrizi: I made a deal through -- we reached a deal for them to withdraw from their interest to participate with 10%. I promised I could help them with employment since they were originally from the area, but they said why would they work without any shares, and then I decided to come to a deal of 75,000 in question.

Presiding Judge: was the deal for 75,000 or was it for 150,000?

Naim Hajrizi: 150,000.

Presiding Judge: can you explain to me why did you have to give them 150,000 Euros just for free because they didn't have any right to have this money. It sounds really weird.

Naim Hajrizi: starting from the life and work where we live, for instance, you take 10% of the shares, you enable someone to get hold of 10% and after one year he can come and say I don't want them, I am selling you my shares. He comes up with maybe double the initial price....

Presiding Judge: but they did not have any right to have anything, so you gave them 75,000 Euros for free. Is this what happened?

Naim Hajrizi: in order that they would not get any shares.

Presiding Judge: did you pay on behalf of Ekrem Lluka since he was the winner of the tender or did you pay spontaneously?

Naim Hajrizi: first of all because he was the winner of the tender and second it was my pleasure that he was the winner of the tender and thirdly because I was aware of the investment that in the future can take place, I considered from my point of view to settle this deal in such a way.

Presiding Judge: so it was your idea?

Naim Hajrizi: yes

Whereas, the reason why the money was given by Hajrizi to Demaj has been explained by Ekrem Lluka as follows:

Ekrem Lluka: Naim Hajrizi told me he had given 75,000 to Meti.

Public Prosecutor: Did he explain to you why he paid 75,000?

Ekrem Lluka: Yes he explained that they wanted to join as share holders and in order to calm the situation I decided to give 75,000.

Public Prosecutor: When you say "I" do you mean Naim Hajrizi?

*Ekrem Lluka: Yes.*⁴⁹

According to the version given by the defendants, Muhamet Demaj and Bajram Mehmetaj, Hajrizi had promised Muhamet Demaj 10 % of the shares of the Hotel Onix and, since he was not able to keep his promise, he had spontaneously offered 150.000 Euros as compensation according to the Albanian traditional rules.⁵⁰

⁴⁸ Minutes of 5 August 2010, pages 37-38.

⁴⁹ Minutes of 5 August 2010, page 15.

⁵⁰ Minutes of 25 August 2010, pages

Bajram Mehmetaj: My friend Muhamet Demaj contacted Naim Hajrizi and Muhamet Demaj contacted me and during our conversation he told me that he is in contact with Naim Hajrizi and that he made a proposal to buy some shares in the Onix Hotel. Then I and Muhamet Demaj met up more than once. Later Muhamet Demaj had contact with Naim Hajrizi during which meetings I was not present; Naim Hajrizi had promised him that he was going to become a participant and buy 10% of the shares. Then Muhamet Demaj proposed to me to become a participant of that 10% because he did not have enough funds and I was looking forward to accepting such an offer, of course.

...

In particular Demaj denied having uttered any threatening word and added that the agreement was with Ekrem Lluka and that Naim Hajrizi had acted as a mediator.⁵¹

In this jungle of conflicting versions some consideration can be made.

It appears very unlikely that in the meeting held on 21 November 2009 between Ekrem Luka and Muhamet Demaj no threats were mentioned against Luka and that the general behavior held by the latter was not perceived by the injured party as threatening.

Otherwise, the conduct of Lluka, who on the very same day stated in front of the police that he was threatened, and, just two days after, filed a notice with the KPA informing the Agency about threats, would be utterly preposterous and inexplicable.

Public Prosecutor: Then what happened, did you buy these 10% or?

Bajram Mehmetaj: No.

Public Prosecutor: Why not?

Bajram Mehmetaj: Because it was Naim Hajrizi who failed.

Public Prosecutor: Can you give us details please?

Bajram Mehmetaj: I don't know much about details but I know that it was Naim Hajrizi who said "I won't be able to keep my promise to make you able to participate in this tender."

Public Prosecutor: Were you present when Naim Hajrizi made this promise?

...

Bajram Mehmetaj: No I was not present in the first meeting.

Public Prosecutor: Were you present when he said he would not be able to arrange the sale of this 10%?

...

Bajram Mehmetaj: No.

Presiding Judge: Who was present?

Bajram Mehmetaj: It was Muhamet Demaj.

Public Prosecutor: What was your reaction, what happened?

...

Bajram Mehmetaj: Yes, during one of those days Naim Hajrizi proposed to Muhamet Demaj an amount of money and it was voluntarily proposed simply according to Albanian code of ethics with regards to the original promise made; which is simply that when one gives a promise the promise must be honoured and if one cannot keep his word then that person gives you something in return as a prize in order to compensate or satisfy the deed.

Presiding Judge: What was the offer of Naim Hajrizi?

Bajram Mehmetaj: Naim Hajrizi offered 150000 Euro.

Presiding Judge: And what did you do?

Bajram Mehmetaj: Muhamet Demaj explained it to me and he accepted it.

⁵¹ Minutes of 15.9.2010, pages 20-21

Muhamet Demaj: with regards to certain parts of my statement of last hearing, I wanted to add certain things so that we don't miss anything. It is very true that during opening of the tender for Banja of Peja, I expressed my interest to enter into an agreement with any bidder for the Hotel Onex. I intended to buy certain amount of shares. During that time I managed to reach an agreement with Agim Elshani in respect to 15% of shares. I also reached an agreement with Ekrem Lluka through his mediator Naim Hajrizi.

Presiding Judge: was this agreement with Ekrem Lluka after he won the tender or did it happen before the tender?

Muhamet Demaj: before he won the tender. Presiding Judge: what were the terms of this agreement with Ekrem Lluka?

Muhamet Demaj: in fact I reached an agreement through his mediator. I suggested an agreement on 15% of shares however verbally we managed to come to an agreement on 10% only on the basis of buying price. My intention was always to become a partner of anyone who would buy this hotel therefore I intended to come to an agreement with both, considering that one of them would be able to complete the purchase. As the offers were open, Ekrem Lluka was the winner. After this I was subject to pressure by Ekrem Lluka mediator Naim Hajrizi so I would withdraw from purchasing 10% of shares corresponding to the withdrawal from the agreement we had reached. After the pressure I was subjected to by Naim Hajrizi in incentive manner in terms of not realising the initial prior agreement he offered a compensation of 150,000 Euros where by I accepted the offer.

Obviously, the panel has considered the possibility that Lluka had somehow invented the threats in order to be allowed to withdraw from the tender, without losing the money already paid as provisional winner; however this option appears to be unlikely, since in November 2009, Lluka had not requested the KPA to withdraw from the tender, but simply informed the Agency about the threats he had received (such intentions will be notified only after three months, with the second notice filed with KPA on 15 February 2010).

It is clear that expressions like *"We do not know only how to break windows"* and *"I warn you"* in the context in which they were expressed (i.e. claims as to the participation in the shares of Hotel Onyx) must be considered as serious threats in the sense that they were sufficient to coerce the will of Ekrem Lluka to give some money to Muhamet Demaj in order to avoid any possible trouble.

It must be taken in consideration also the fact that Lluka is a well known entrepreneur in Kosovo with several activities and it was natural that he was concerned about possible actions against his numerous activities.

Furthermore in his statement in front of the police Hajrizi spoke clearly about intimidations and blackmails which led to the agreement to give 150.000 Euros. It is therefore very likely that the conduct undertaken by the defendants went beyond the words mentioned above and that they carried out further actions to coerce the will of Lluka.

And that the threats were effective and serious can also be inferred from the consideration that, notwithstanding the declarations made by Lluka⁵² and Hajrizi⁵³ (who sustained that

⁵² Minutes of 5 August 2010, page 15:

Ekrem Lluka: He gave the money on my behalf, I didn't pay.

Presiding Judge: He paid on your behalf, is that correct? Was he entrusted by you or not for this payment?

Ekrem Lluka: Yes he is a friend of mine. I would....

Presiding Judge: Was he entrusted by you or did he pay spontaneously?

Ekrem Lluka: More spontaneously.

Presiding Judge: Either it is spontaneously or not.

Ekrem Lluka: It was spontaneously.

Presiding Judge: You didn't ask him to pay?

Ekrem Lluka: No.

⁵³ Minutes of 5 August 2010, page 38:

Presiding Judge: did you pay on behalf of Ekrem Lluka since he was the winner of the tender or did you pay spontaneously?

Naim Hajrizi: first of all because he was the winner of the tender and second it was my pleasure that he was the winner of the tender and thirdly because I was aware of the investment that in the future can take place, I considered from my point of view to settle this deal in such a way.

Presiding Judge: so it was your idea?

Naim Hajrizi: yes

Presiding Judge: it is completely different from what you said to the police. In the statement you gave the police on 1st of March 2010, you said the first part of the money in the sum of 75,000 Euros I personally handed over to Muhamet Demaj this money I paid on behalf of Ekrem Lluka, who was at that time in Slovenia. So here you said you paid on behalf of Ekrem Lluka, and now you say that you paid it spontaneously? What is the true version?

Naim Hajrizi: I can say that the true version is that the entire sum was paid by myself privately and after reaching a deal, after which I would have informed Ekrem Lluka, who was unaware of the whole deal.

Presiding Judge: who did you give the money to?

Naim Hajrizi: to Meti. Galani was present and also Azem Veseli happened to be there too.

Presiding Judge: did you pay the money cash or through a bank transfer, how did you pay?

the payment was made spontaneously by the latter), actually it appears that Lluka was the source of the money.

In fact, as it can be seen in the minutes reported in the footnote n. 53, Hajrizi admitted in his first statement in front of the police that the money was given to Demaj on behalf of Ekrem Lluka.

And that the decision to give the money came from Lluka can also be seen from another portion of the same statement (the witness was confronted as to this part of the statement) in which Hajrizi affirmed that he *"was engaged from the beginning in the talks that were conducted by Ekrem Lluka and a group of people consisting of Muhamet Demaj, Bajram Mehmetaj and Azem Veseli. Initially these people were asking for the 10% of the total value of the facility. But after many negotiations, intimidations and blackmails done and addressed to Ekrem Lluka, we managed to offer those people the sum of 150,000 Euros which was also accepted by them"*.

It is worth noticing that the use of the pronoun "we" makes it clear that the payment was not just a spontaneous initiative of Hajrizi.

Furthermore the Disclosure of Financial Data ordered by this Court in the course of the main trial revealed two cash withdrawals from the bank account of the Dukagjini Company on 8 December 2008 (exactly in the period of the payment) for the total amount of 75.000 Euros.

On the point, it is worth noticing that the injured party Ekrem Lluka, asked to give explanation as to these two cash withdrawals made by an employee of his (a certain Sekibja), was not able to provide the Court with any information.⁵⁴

Naim Hajrizi: cash

⁵⁴ Minutes of 15 September 2010, pages 5-6.

Presiding Judge: You told us that when Naim Hajrizi gave to Muhamet Demaj 75,000 Euro, it was his initiative; you did not entrust him to give the money to these people. Do you confirm this?

Ekrem Lluka: Yes.

Presiding Judge: even though we can understand that it is a little bit bizarre that a person gives 75,000 Euro for you without saying anything, especially for a businessman. For Dukagjini Company who are the people allowed to withdraw money from the Raiffaisen Bank?

Ekrem Lluka: My accountant, Ms. Sekibe Tigani.

Presiding Judge: Does this lady withdraw money on her initiative or upon your instructions?

Ekrem Lluka: on my instructions.

Presiding Judge: we have that on 8/12/09 a withdrawal was made by her, it is on the documents which have been provided to parties, of 25, 000 Euro and at the same day another one, but Sekibe is not mentioned. So I assume it was you who withdrew 50, 000 Euro and summing up it makes 75,000 Euro. Do you remember anything as to this cash withdrawal which happened on 8/12/09?

Ekrem Lluka: No, I cannot remember. I have to check that out.

Presiding Judge: in what sense because I can show you the documents provided to us by the bank.

Ekrem Lluka: Because there are other withdrawals.

Presiding Judge: we are not interested in the money deposited, but in the withdrawal of 75,000 Euro, which was the exact amount of money given to Muhamet. There is no explanation just a withdrawal of 75,000 cash and you know that Muhamet Demaj said that he received the money in cash. The panel will make its reasoning but you understand that there are 75, 000 Euros cash and the period was the one during the time that was given. It's bizarre that someone gives the money without any instructions. You know that if there is a false statement to the court you will be charged for giving false statement. Even though you are a rich person 75,000 Euros withdrawal in one day is a big amount of money?

Ekrem Lluka: I have to check as to what this money must have been within the company.

Even though Enver Lluka is an entrepreneur with several activities, it appears bizarre that he could not recall a cash withdrawal for the relevant amount of 75.000 Euros which took place not long time ago. This is an additional hint in the direction that the money was given by Hajrizi on behalf of Lluka and upon his instruction.

Furthermore the direct involvement of Ekrem Lluka (and not only of Naim Hajrizi) in the affair emerges from the very words mentioned to the police by Bajram Mehemtaj.

Presiding Judge: As to this participation in the shares of the Onix Hotel, the agreement was between you Muhamet Demaj and Naim Hajrizi?

Bajram Mehemtaj: Yes, me, Muhamet Demaj and Naim Hajrizi.

Presiding Judge: OK because on the 01.03.2010 you said: "I along with friends of mine: Muhamet Demaj and Azem Veseli had an agreement with Ekrem Lluka through a person named Naim Hajrizi by which agreement after the privatization of Onix Hotel he would pay us an amount of 150000 Euros as it was agreed before the privatization." These are the words you said in front of the police. So apparently the agreement was between you Muhamet Demaj and Azem Veseli on one side and on the other Ekrem Lluka and Naim Hajrizi.

Bajram Mehemtaj: No, this is not right. The investigative police officer asked me who arranged this agreement and I told him that it was Muhamet Demaj with Naim Hajrizi. The other question was if Ekrem Lluka had any knowledge about it (referring to the agreement) and I told him maybe. Why did I, because Ekrem Lluka was the main shareholder.⁵⁵

Moreover, it appears preposterous and against each normal business practice that a businessman like Hajrizi, since there had been some talks or an informal agreement as to the possibility to sell some shares of the Hotel Onyx, felt himself obliged to pay the relevant amount of 150.000 Euros, without having any formal obligation, just because eventually the purchase could not take place.

And it is even more incredible that he decided to give all this money without any pressure from the defendants and without any instruction by Lluka.

Therefore the panel deems that serious threats were uttered against the injured party and that this was the main reason (if not the only) why Luka and Hajrizi decided to promise the payment of 150.000 Euros and to give Demaj 75.000 Euros in December 2009 in order to stop the threats and not to have further troubles as to the purchase of Hotel Onix.

Presiding Judge: this was withdrawn from the company. Do you want to have a look at the document and your Defence Counsel has a copy too. Please come near and have a look at the document. Sekibe went to the bank and just withdrew 25,000. Do you remember whether these 50,000, Euros were withdrawn by you or Sekibe? As to the 25,000 Euros, the document of the bank states that the money was withdrawn by Sekibe, but to the other amount there is no specification so I assume that it was you who withdrew the money.

Ekrem Lluka: I never withdrew money from the bank personally.

Presiding Judge: In Dukagjini Company is there another person allowed to withdraw money apart from Sekibe?

Ekrem Lluka: just Sekibe.

Presiding Judge: but you can withdraw money too?

Ekrem Lluka: Yes. But I never have.

Presiding Judge: So are you sure that you did not give Naim Hajrizi the money for these people?

Ekrem Lluka: I'm sure.

⁵⁵ Minutes of 25 August 2010, pag. 22.

As to the request to pay the remaining 75.000 Euros, the injured party⁵⁶ and Naim Hajrizi⁵⁷ have confirmed that actually in a meeting between the latter and the three defendants one of them mentioned that *"If until Wednesday the money wasn't paid, Peja would burn"*.

Even though Luka stated in front of the Court that he did not feel threatened by these words⁵⁸ which were reported to him by Hajrizi, on the other hand, on the very same day, Lluca went to the police and gave a statement in which he spoke clearly of threats made by Demaj and his group and that he felt threatened by this behavior (see the confrontation of the injured party at pag. 18 of the minutes of 5 August 2010).

Public Prosecutor: Could it be that he said something like: 'if you don't pay, Peja will burn'? Do you remember you were interviewed by the Police on 28th February 2010?

Ekrem Lluka: Yes.

Public Prosecutor: And that Naim told you he had met Meti?

Ekrem Lluka: Yes but he did not tell me that on the Sunday, he told me later.

Public Prosecutor: When?

Ekrem Lluka: About 5 or 6 o'clock in the evening. I don't know the exact time.

Public Prosecutor: What did he tell you?

Ekrem Lluka: He had been told: 'unless the money was paid Peja would burn in flames'.

Presiding Judge: You said here in this statement: 'I got informed by Naim that Muhamet Demaj together with Azem Veseli and Bajram Mehmetaj met on 27th February 2010 and also on the following day, on 28th February 2010, asking for the additional sum of 75,000 Euros threatening that if on Wednesday the additional sum was not paid Peja would get burned down'. This is what you said on that day.

Ekrem Lluka: This is what Naim told me.

Presiding Judge: Yes you reported it to the Police, do you confirm it now?

Ekrem Lluka: Yes.

Public Prosecutor: 'I feel threatened by this visit and his demands as I do not have obligations from him and this is the kind racketeering'....

Ekrem Lluka: I considered the demand for money as a threat, not that he made threats of different matters. He did not threaten me physically or bodily...

And just two days after the meeting, on 2 March 2010, Lluca's lawyer filed with KPA a letter in which it was mentioned that *"Muhamet Demaj and his group"* were *"blackmailing Ekrem Luka with serious threats"* in order to oblige him to pay the remaining 75.000 Euros.

It appears therefore clear that also in February 2010 Lluca received threats and felt threatened by the behaviour of Demaj and his accomplices, but nevertheless decided not give further money.

As to the involvement of the defendants in the events, apart from the clear conduct of Demaj, who materially uttered the threats and received the money, the positions of Bajram Mehmetaj and of Azem Veseli must be assessed.

⁵⁶ Minutes of 5 August 2010, pag. 18.

⁵⁷ Minutes of 5 August 2010, pag. 46.

⁵⁸ Minutes of 5 August 2010, pag. 22.

It appears clear and undisputed that Mehmetaj acted in complicity with Demaj (since undoubtedly the two of them divided the money received from Hajrizi) and that Mehmetaj took part to most of the meetings with Hajrizi, including the one in February in which further threats were uttered.

As to the involvement of Azem Veseli, despite the attempt of the other two defendants to leave him aside, his position in the events is made clear by Hajrizi who affirmed that he was engaged *"from the beginning in the talks that were conducted by Ekrem Lluka and a group of people consisting of Muhamet Demaj, Bajram Mehmetaj and Azem Veseli. Initially these people were asking for the 10% of the total value of the facility "* (statement of Naim Hajrizi dated 1 March 2010; the witness was confronted on the point, see minutes of 5 August 2010, pag. 35).

And it is worth noticing that, after having been confronted, Hajrizi admitted that also Veseli took part from the very beginning in the talks related to the possible participation of this group of people in the ownership of the Hotel Onix (minutes of 5 August 2010, pag. 36) and was even present when the money was given (minutes of 5 August 2010, pag. 38).

Furthermore the involvement of Azem Veseli in the events emerges clearly from what was stated by Bajram Mehmetaj, in front of the police on 1 March 2010.

Presiding Judge: As to this participation in the shares of the Onix Hotel, the agreement was between you Muhamet Demaj and Naim Hajrizi?

Bajram Mehmetaj: Yes, me, Muhamet Demaj and Naim Hajrizi.

Presiding Judge: OK because on the 01.03.2010 you said: "I along with friends of mine: Muhamet Demaj and Azem Veseli had an agreement with Ekrem Lluka through a person named Naim Hajrizi by which agreement after the privatization of Onix Hotel he would pay us an amount of 150000 Euros as it was agreed before the privatization." These are the words you said in front of the police. So apparently the agreement was between you Muhamet Demaj and Azem Veseli on one side and on the other Ekrem Lluka and Naim Hajrizi.

Bajram Mehmetaj: No, this is not right. The investigative police officer asked me who arranged this agreement and I told him that it was Muhamet Demaj with Naim Hajrizi. The other question was if Ekrem Lluka had any knowledge about it (referring to the agreement) and I told him maybe. Why did I, because Ekrem Lluka was the main shareholder.⁵⁹

And finally the involvement of Azem Veseli appears also from the text message sent to him by Muhamet Demaj on 11 November 2009 (*"We got it"*) as to which the defendant could not give any explanation. It is remarkable that 11 November was the day on which it was announced that Ekrem Lluka was the provisional winner of the tender.

Once evaluated the factual situation, finally the juridical assessment can be made.

As it is well known, the elements of the criminal offence of extortion are the followings:

⁵⁹ Minutes of 25 August 2010, pag. 22.

- the use of force or serious threat to compel another person to do an act in detriment of his property;
- the intent to obtain an unlawful material benefit.

In the present case it has already been demonstrated that serious threats were addressed towards Lluka both directly and through Naim Hajrizi.

It is clear that the threats were made in order to compel Ekrem Lluka to accept Muhamet Demaj and his associates as shareholders of the Hotel Onyx. And in order to get rid of the threatening and dangerous presence of the above people Lluka and Hajrizi decided to give them 150.000 Euros.

On 28 February 2010, serious threats were again made against Lluka, in order to oblige him to pay further 75.000 Euros.

It is not clear whether or not there had been talks between Lluka and Demaj as to a percentage of the shares of the Hotel Onyx, before the former was declared provisional winner. The defendant claimed that there was a deal, whereas the injured party did not mention it.

In lack of any piece of evidence as to the existence of any binding agreement between the two above persons (also bearing in mind that such an agreement was not confirmed by the injured party) the version given by Demaj, which consists in mere allegations which have not been corroborated by the versions of the other witnesses, must be discarded as utterly unreliable.

It is worth stressing out that, even if the defendants thought that there was a sort of agreement with Lluka and they threatened the latter in order to have what they deemed was their right, the criminal offence committed by the defendants would be still Extortion and not Coercion.

In fact the unlawfulness of the material benefit is present each time the claim of the perpetrator does not receive any form of protection by the law. Therefore any sort of informal agreement reached with Lluka or Hajrizi on the basis of the local tradition was not worth of any protection from the statutory law and therefore each claim based on such a sort of agreement would be unlawful.

Therefore, as to the episode occurred on 21 November 2009, all the elements of the criminal offence of Extortion are present both as to the *actus reus* and as to the *mens rea*.

Regarding the episode which took place on 28 February 2010, the criminal offence perpetrated must be classified as Attempted Extortion: in fact the conduct undertaken contains all the elements of the criminal offence of Extortion, but not all the elements have been fulfilled, since no money was given to the perpetrators notwithstanding the threats. And it is obvious that in order to commit a completed Extortion there must be an act of the victim which constitutes detriment to his or her property, act which is clearly missing as to the episode of February 2010.

Notwithstanding the prosecutor classified the conduct perpetrated by the defendants as completed Extortion for 150.000 Euros, the considerations made above lead to the conclusion that the correct classification of the conduct undertaken by the perpetrators

should be completed Extortion for 75.000 Euros committed in December 2009 and Attempted Extortion for 75.000 Euros committed on 28 February 2010.

On the point it is undisputed that the qualification given by the prosecutor is not binding for the judge, as it is foreseen in Article 386 of the KCCP. The code does not specify whether or not the qualification of the prosecutor is binding for the judge when the reclassification would be in detriment of the defendant; therefore, according to the interpretative principle *ubi lex voluit, dixit, ubi noluit, tacuit* (where the law wanted to regulate a matter it did it, when it did not want it did not), it should be assumed that the judge is free to reclassify the criminal offence, even though it is in detriment of the defendant.

However, in the present case, the reclassification made by the panel is undoubtedly in favour of the defendant, since the punishment for the criminal offence of Extortion for 150.000 Euros would be surely heavier than the aggregating punishment issued for the criminal offence of Extortion and Attempted Extortion.

It is finally undeniable that Demaj and his associates acted as members of a well defined and established group. This is made clear by the pronoun "*We*" utilized in the sentence: "*We do not know just how to break windows*"; and by the very words utilized by Demaj in his examination on 19 March 2010: "*We threatened Naim but in somebody else's name*".⁶⁰

And the circumstance that Demaj was not acting alone results very clearly by the letters filed on behalf of Lluka to the KPA, where it is always made reference to "*Demaj and his group*".

Another tip suggesting that the defendants were acting as members of a group is the fact that, as it has been pointed out previously, all the defendants took part in most of the meetings held with Hajrizi (even when threats were made on 28 February 2010 and also when the money was given).

Furthermore also Hajrizi in his statement given to the police on 1 March 2010 speaks clearly about of group of people composed of the three defendants: "*I was engaged from the beginning in the talks that were conducted by Ekrem Lluka and a group of people consisting of Muhamet Demaj, Bajram Mehmetaj and Azem Veseli. Initially these people were asking for the 10% of the total value of the facility. But after many negotiations, intimidations and blackmails done and addressed to Ekrem Lluka, we managed to offer those people the sum of 150,000 Euros which was also accepted by them*".

Regarding the conduct of the injured party/witness Ekrem Lluka and of the witness Naim Hajrizi the minutes of their testimonies, together with the statements given during the investigation and the present judgment will be sent to the Municipal Prosecutor's office of Peja/Pec, since both of them committed the criminal offence of False Statements, contrary to the CCK, Article 307. In fact both of them lied in front of the Court both as to the source of the money given to the defendants (the money was Lluka's and not Hajrizi's) and as to the actual conduct of the defendants (in particular Hajrizi spoke

⁶⁰ Minutes of the Main Trial dated 25.08.2010 pages 14 – 15.

during the investigation about blackmails and intimidations made by the defendants, but in front of the Court denied having said such words).

F. DETERMINATION OF PUNISHMENT

When imposing the criminal sanction, the court has to bear in mind both the general purpose of punishment - that is to suppress socially dangerous activities by deterring others from committing similar criminal acts - and the specific purpose, to prevent the offender from re-offending.

In the present case the Panel came to the conclusion that against the victim two serious criminal acts were committed. As to the aggravating circumstances, it must be noted that all the defendants constantly lied in front of the court denying self evident circumstances. Another aggravating circumstance to be taken in consideration is the fact that the money was never given back to Lluca or Hajrizi.

As to the mitigating circumstances, it must be taken in consideration the fact that the defendants did not have any previous conviction.

The punishment, taking in consideration both the aggravating and the mitigating circumstance, shall be as follows:

two (2) years of imprisonment for each defendant, as to the criminal offence of Extortion in co-perpetration, contrary to Article 23 and 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK);

one (1) year of imprisonment for each defendant, for the criminal offence of Attempted Extortion in co-perpetration contrary to Article 20, 23 and 267 par. 1 and 2 of the Criminal Code of Kosovo (CCK).

The aggregate punishment, pursuant to Article 71 Paragraph (1) and (2) Subparagraph 2, of the KCCP, is determined in (2) years and six (6) months of imprisonment for each of the defendants.

The time spent in detention on remand by the defendants is to be credited against the punishment, pursuant to Article 391 Paragraph (1), Subparagraph 5, Article 531, Par. 4 and Article 278 Par. 7 of the KCCP.

G. COSTS

Since the accused were pronounced guilty, they have to reimburse the costs of criminal proceedings with the exception of interpretation (KCCP, Article 102, Paragraph 1). A separate ruling on the amount of the costs shall be rendered by the court when such data will be obtained.

H. COMPENSATION CLAIM

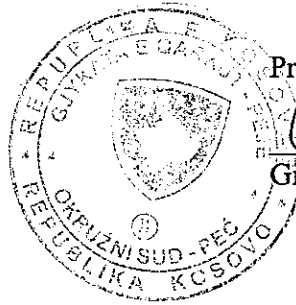
At the beginning of the main trial the injured parties has been reminded of the possibility to file a motion to realize a property claim within the criminal proceeding, pursuant to the KCCP, Article 355, Par. 2, but he declared that he did not intend to file a property claim. Therefore the court did not have to make a specific decision on the issue.

Legal Remedy

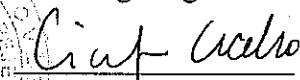
Authorized persons may file an appeal in written form against this verdict through the District Court of Peja/Pec to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.

Recording Officer


Robina Struthers



Presiding Judge


Gianfranco Gallo