Fondi për të Drejtën Humanitare Kosovë
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Analysis

CASE KLECKA: LEGALITY WON BUT NOT THE JUSTICE

Introduction

The District Court of Priština/Prishtinë mixed trial chamber presided by international judge Jonathan Wilford-Carroll[1], handed down a verdict on May 2nd, 2012 acquitting former members of the KLA Fatmir Limaj[2], Naser Krasniqi, Nexhmi Krasniqi and Naser Shala of all the charges that they had been charged with in the indictment filed by the Republic of Kosovo Special Prosecutor's Office (RKSPO) on July 25th, 2011. This indictment accused Limaj[3] and the other co-defendants on several counts for the commission of *war crimes against civilian population* and *war crimes against prisoners of war*. The verdict dated May 2nd, 2012 completed the first instance proceedings in the most high-profile and the biggest trial for war crimes in Kosovo since 1999. Namely, ten persons were accused in this case, but the court already rendered a verdict on March 30th, 2012 acquitting Arben Krasniqi, Behlul Limaj, Refki Mazreku, Sabit Shala, and Shaban Shala. The trial was officially registered as case *Prosecution vs. Arben Krasniqi et al.*, but among the general public it was known as Case "Kleçka" or Case "Limaj et al."

Two acquittals were a logical outcome after the trial chamber rendered the decision during the main trial on March 21st, 2012 on inadmissibility of evidence given by the cooperative witness known in the case by the pseudonym "Witness X"[4]. The indictment represented by the EULEX Prosecutor Maurizio Salustro was

[1] Members of the trial chamber: international judge Dean Pinales and local judge Shqipe Qerimi.

[2] One of the KLA commanders in the Drenica area of responsibility during the armed conflict in Kosovo; Deputy Minister of Defence in the Provisional Government of Kosovo, created after the war by Albanian parties; Minister of Transport in the Kosovo Government in the period 2007-2010. At the time when the criminal trial was initiated he was the Vice President of the Democratic Party of Kosovo (PDK) and a delegate in the Parliament of Kosovo; after the Constitutional Court of Kosovo rendered a decision on September 22nd, 2011, he was deprived of his delegate's immunity.

[3] Naser Krasniqi, Nexhmi Krasniqi, Behlul Limaj, Fatmir Limaj, Refki Mazreku, Naser Shala, Sabit Shala, Shaban Shala and Besim Shurdhaj.

[4] The identity of the cooperative witness had been concealed from the public for a long time and he was addressed as "Witness X" in the case file. However, since this witness is not alive anymore, it was revealed that he was a former KLA member, Agim Zogaj, who acted in the detention centre in the village of Klečka/Kleçkë. The report will refer to this witness by the name he was given in the indictment.

almost completely founded on the statements and material evidence provided by "Witness X" to the Prosecution. For this reason, the Humanitarian Law Center Kosovo shall pay special attention in the remainder of the text to the analysis of the court ruling to refute the main argument of the Prosecution for the criminal pursuit of a former high ranking KLA officer, Fatmir Limaj and nine KLA soldiers, who were subordinate to Limaj.

(In)admissibility of "Witness X"'s evidence

Acting upon a number of objections raised during the main trial orally and in written by the defence and after receiving the Prosecutor's response to these objections, on March 21st, 2012 the court rendered a ruling pronouncing the statements given by "Witness X" during the police and prosecutorial investigation in the capacity of a suspect and a cooperative witness inadmissible. His diaries were also pronounced inadmissible evidence. All of this evidence was pronounced admissible by the ruling on the confirmation of the indictment rendered by the confirmation judge on August 26th, 2011[5].

Since the very beginning of the main trial in Case "Klečka" (November 11th, 2011) the defence[6] began raising a number of objections, thus trying to challenge the admissibility of "Witness X"'s statements given during the earlier stages of the proceedings and in various capacities. Even though the defence had an opportunity, upon the initiative of the Prosecutor, to confront the cooperative witness and challenge his statements which incriminated their clients, still the Defence objected the possibility of hearing the cooperative witness claiming that in this time period: they did not have adequate access to the documents in the case file; that they did not have enough time to study the documents and prepare adequately for the hearing of the cooperative witness; that the Prosecutor was supposed to hear the cooperative witness again in their presence when "Witness X" was granted this status or that the cooperative witness should be examined by the pre-trial judge pursuant to Article 238 of the Kosovo Criminal Procedure Code. These were all of the facts that brought the defence to the conclusion that the Prosecutor only wanted to use the Defence in this way, so that they would help the Prosecution in the execution of the statutory duties. Hence, the Defence claimed before the court that the examination of the cooperative witness was limited in time and function, and that there was no possibility for the Defence to confront the witness in an adequate and suitable manner.

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[5] International judge Ingo Richs.

[6] Especially during the sessions held on February 28th and 29th and March 1st, 6th, and 7th, 2012.

In the written response to the remarks of the Defence filed on March 12th, 2012, the Prosecutor stressed: that the law clearly prescribes mandatory defence when the accused is asked to plead guilty; that "Witness X", in the moment when he blamed himself and others for the incidents, which happened in Klečka/Kleçkë, the municipality of Lipljan/Lipjan in the Spring of 1999, had the status of a suspect; and that an indictment had never been filed against "Witness X". The Prosecutor especially emphasized that none procedural errors were made when issuing the decision on granting the status of a cooperative witness to "Witness X", when separating his statements, in view of the fact that the cooperative witness did not sign every page of his statements. The Prosecutor also claimed that during the session held on August 24th, 2010 in which the Prosecutor's motion for granting the status of a cooperative witness to "Witness X", the pre-trial judge informed "Witness X" that as a cooperative witness he was obliged to speak the truth. According to the Prosecutor, that is when "Witness X" confirmed all of his previous statements as true. In Prosecutor's opinion, the Defence Counsel were not deprived of an opportunity to access case file documents, the Prosecutor has no legal obligation to provide the Defence Counsel with copies of the documents in the case file. Prior to the session in which the indictment was to be confirmed, the Defence Counsel received documents on which the Prosecution founded the indictment; however, certain documents were redacted because they related to the identity of certain protected witnesses or some future investigations.

According to the findings of the court, the entire Prosecution's case in Case "Klečka" is based on the statements and material evidence of one witness, who was also a co-perpetrator of the criminal offences that the defendants were charged with and who was one of the suspects in the investigation, which was conducted in this case. "Witness X", a former KLA soldier, , according to his own words, was appointed prison guard in the detention centre located in a private house in the village of Klečka/Kleçkë, the municipality Lipljan/Lipjan by the accused Fatmir Limaj. According to the cooperative witness, during the war, his duties in the detention centre were, among other duties, to keep record of detainees with whom he was in touch on daily basis. The cooperative witness kept a diary about his activities and the activities of the KLA in which he described the events in the detention centre on daily basis.

According to the findings of the court, the status of "Witness X" had changed in the course of the proceedings. He testified before the investigators for war crimes in late 2009 in the capacity of a witness after he contacted the EULEX police upon his own decision. During the year of 2010, "Witness X" gave a number of statements before the Prosecutor in the capacity of a suspect[7], after which the pre-trial judge

[7] *A person whom the police or the authorities of the criminal prosecution have a reasonable suspicion of having committed a criminal offence, but against whom criminal proceedings have not been initiated* – Article 151 Paragraph 1 of the KCPC. The suspect was during these examinations led by the respective prosecutor informed of his rights as a suspect pursuant to Article 231 of the KCPC. Pursuant to Article 151 of the KCPC, the term "defendant" means a person against whom criminal proceedings are

conducted The term "defendant" is also used in the KCPC as a general term for a "defendant", "accused" and "convicted person"..

issued an order on August 25th, 2010 granting him the status of the cooperative witness. In July 2011[8], the defence attorneys were given an opportunity to cross-examine the cooperative witness in accordance with the results of the investigation conducted at the time.

As the main reason for rendering the ruling on inadmissibility of the evidence provided by "Witness X", the court stated that the Prosecution mainly erred because it did not deliver the entire documentation from that stage of the investigation led in Case "Kleçka", particularly the so-called "war diary" kept by the cooperative witness and the statements of persons, who had been examined as witnesses by that time, to the defence attorneys prior to offering them the opportunity to examine the cooperative witness in the month of July 2011. According to the findings of the court, certain documents from the case file were redacted, a part of the case file was delivered to the defence and the accused only after the Defence Counsel had an opportunity to confront the cooperative witness and cross-examine him, and the translations of certain documents in the case file were delivered to the Defence only in January 2012, which is several months after the beginning of the trial. In this context, the court established that the case file, when it was delivered to the defence, contained documents that the court had no record of.

According to the findings of the court, the possibility for examining the cooperative witness by the defence, which was offered during the month of July 2011, is far from the standards envisaged by the Criminal Procedure Code. Namely, the defence attorneys did not have an opportunity to prepare adequately for the examination of the cooperative witness because they did not possess the required documents from the case file (including statements that the cooperative witness had given to the ICTY investigators) to be able to prepare adequately for the examination of "Witness X".

The court found that, at the time when they were offered the opportunity to examine the cooperative witness, which was in July 2011, the defence attorneys were not in possession of 41 witness statements that the Prosecution had already had. The Defence was not even informed of the reasons for scheduling sessions in which they had an opportunity to examine the cooperative witness. On this occasion, the court invoked Article 7 Paragraph 2 of the KCPC and stated that the Prosecutor is obliged to make available to the defence all the facts and pieces of evidence, which are in favour of the defendant so that the defence would be able to make appropriate preparations for the examination of the crown witness on whose statements the indictment was founded and who was at the same time the co-perpetrator of the criminal offences that the other defendants were charged with. In this stage of the proceedings, the defence has the right pursuant to the law, to ask witness questions at the same level as during the main trial. In this case, the defence attorneys did not have an opportunity to exercise this right.

[8] On July 5th, 6th, 7th, and 9th, 2011.

According to the findings of the court, the Prosecutor failed to fulfil its legal obligation towards the defence. The examination of the cooperative witness in this stage of the proceedings should have been conducted in the manner prescribed by Article 238 Para 1 of the KCPC[9] on the basis of which the Prosecution's confrontation with the witness and their examination of the witness os conducted before a pre-trial judge in the presence of all parties to the proceedings during which the Prosecutor would again ask the cooperative witness questions and after which the defence attorneys would ask questions relating to the statements given by the cooperative witness.

According to the findings of the court, the fact that the defence attorneys were given an opportunity to examine the witness pursuant to Article 156 Paragraph 2 of the KCPC does not mean that legal conditions prescribed by Article 238 of the KCPC, according to which the examination of witness before the trial chamber may be replaced, were met since Article 8 Paragraph 2 of the KCPC clearly stipulates that the court renders its decision on the basis of the evidence examined and verified in the main trial.

The court did not accept the opinion of the Prosecution according to which it was necessary to open an investigation against him and examine him before the prosecutor in the capacity of a suspect or an accused in order to grant a suspect the status of a cooperative witness. The Criminal Procedure Code envisages that a suspect or a defendant with respect to whom the indictment has not yet been read and who is expected to be able to testify during the main trial may be pronounced a cooperative witness[10]. The court opined that it

[9] Article 238:

Paragraf 1: *The public prosecutor or the defendant may, on an exceptional basis, request the pre trial judge to take testimony from a witness or request an expert analysis for the purpose of preserving evidence where there is a unique opportunity to collect important evidence or there is a significant danger that such evidence may not be subsequently available at the main*

trial. An appeal can be filed with the three-judge panel against the refusal of the pre-trial judge to take such testimony."

Paragraph 2:*" In cases under paragraph 1 of the present article, the pre-trial judge shall take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defendant. The defendant and his or her defence counsel and the public prosecutor shall be present at the hearing for the taking of testimony. The injured party and his or her legal representative or authorized representative shall also be informed of the hearing and will have the right to attend. The taking of testimony before the pre-trial judge shall be conducted in accordance with the provisions of Chapters XX, XXI and XXII of the present Code regarding witnesses and expert witnesses."*

Paragraph 3: *"Article 165 shall apply, mutatis mutandis, to the examination of the witness and the expert witness."*

[10] Article 298 of the KCPC: "*the term "co-operative witness" means a suspect or a*

defendant with respect to whom the indictment has not yet been read at the main trial and who is expected to give evidence in court which is:

was not necessary for "Witness X" to be examined in the capacity of a suspect because the Prosecution had enough information from the police investigation and sufficient grounds to pronounce him a cooperative witness. According to the findings of the court there was no need for the Prosecutor to examine him once more in the capacity of a suspect in order to confirm his allegations, which he gave as a witness to the police department for war crimes investigation with whom "Witness X" made contact upon his own initiative, as he said, in order to protect himself from possible assaults by certain defendants and prevent fatal consequences.

According to the findings of the court, one of the huge errors made by the Prosecutor is the fact that after the order on granting the status of cooperative witness was issued, the Prosecutor did not seek to confirm the validity of the allegations in his statements given in the capacity of a suspect when, pursuant to the law, he can but does not have to answer questions asked, he can but does not have to speak the truth, which is not the case when he is being examined in the capacity of a witness, that is in the capacity of the cooperative witness, when he must be warned that the false testimony represents a criminal offence[11]. The court did not accept the stance of the Prosecutor that in the process of rendering the order on August 24th, 2010, this was done by the pre-trial judge, when according to the allegations of the prosecutor, cooperative witness confirmed all of his statements given during this procedure in the capacity of a witness and a suspect as true.

After filing and confirming the indictment, and during the preparation stage for the main trial, the cooperative witness committed a suicide in Germany under unresolved circumstances on September 28th, 2011, thus inevitably losing the opportunity of his examination before the trial chamber. Even though

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Paragraph 1: *likely to prevent further criminal offences by another person*;

Paragraph 2: *likely to lead to the finding of truth in criminal proceedings*;

Paragraph 3: *voluntarily made with full agreement to testify truthfully in court;*

Paragraph 4: *determined by the court to be truthful and complete; or*

Paragraph 5: *such that it might lead to a successful prosecution of other perpetrators of a criminal offence*.

[11] Article 164 Paragraph 2 of the KCPC: "*A witness shall first be told that it is his or her duty to speak the truth and that he or she may not withhold anything, whereupon he or she shall be warned that false testimony constitutes a criminal offence. A witness shall also be instructed that he or she need not answer any of the questions referred to in Article 162 of the present Code (A witness is not obliged to answer individual questions by which he or she would be likely to expose him or herself or a close relative to serious disgrace, considerable material damage or criminal prosecution. The court shall notify the witness of this right) and the instruction shall be entered in the record.*

certain documents in the case file (statements given by certain witnesses and former detainees[12]) confirm the allegations of the cooperative witness to certain extent, the death of the crown witness led to the appearance of an aggravating circumstance with regard to the possible continuation of the main trial because, according to the findings of the trial chamber, the case file does not contain evidence that could conclusively confirm his allegations.

And finally, the court established that during the prosecutorial examination of "Witness X" Article 89 Paragraph 2 of the KCPC, which imposes an obligation on the examined individual to sign each page of the statement longer than one page, which was not respected in the case of the statements given by "Witness X", thus making these statements inadmissible for the court.

According to the findings of the court, all of the aforementioned errors made by the Prosecution had a cumulative effect on the depravation of the defence's right to act effectively during the pre-trial proceedings, which placed the Prosecution in a privileged position in relation to the disadvantaged defence attorneys.

Objections of the defence with regard to "Witness X"'s evidence, which the court did not accept

The court did not accept the objections of the defence regarding the inadmissibility of the statements given by "Witness X" to EULEX police in the second half of the year of 2009 because these statements were taken before the investigation was opened by issuing the investigation order. Articles 200 and 201 of the KCPC authorize the police to take actions and measures in order to prevent the concealing of evidence and for this reason, the statements given by "Witness X" given to the police, according to the opinion of the court, represent admissible evidence.

The court also established that the objections of the defence relating to the circumstance that "Witness X" did not have a defence attorney in the stage when he pleaded guilty, are not founded. The court based this finding on Article 73 Paragraph 1 of the KCPC, which clearly regulates the matter of mandatory defence. "Witness X" had not entered the phase of the guilty plea agreement in any moment during the proceedings; therefore, according to the opinion of the court the presence of an attorney was not mandatory. The court also found that the allegations of the defence that the Prosecution did not undertake a psychiatric examination of "Witness X" during the prosecution investigation are also unfounded because there is no evidence that "Witness X" during the interviews conducted during the year of 2010 showed any signs of mental disorders or incapacity to organize his successful defence on his own.

[12] Note of the HLC Kosovo monitor on the basis of the court documents in the case file, which he managed to obtain.

The court also did not accept the objection of the defence that the prosecution failed to warn "Witness X" in a timely manner that his statements may be used in court. Even though Article 231 Paragraph 2 Item 5 of the KCPC stipulates that the prosecutor must inform the defendant during an interview of the fact that his statement will be used before the court, in this particular case, the circumstances and the reason for giving his statement, which was to be used in court, were clear since they were given for this purpose. According to the findings of the court, this circumstance does not represent a violation of the law, which entails that the statement should be proclaimed inadmissible.

Opinion of HLC Kosovo with regard to the decision on inadmissibility of "Witness X"'s evidence

1. The decision of the court to pronounce the testimony and material evidence provided by "Witness X" inadmissible is founded in the law. By this decision, the trial chamber presided by EULEX judge Jonathan Welford Carroll demonstrated the respect for one of the key principles of the international criminal law, which guarantees fair trial and equality of the parties throughout the proceedings, trial and pre-trial actions. The opinion of the court that the right to a fair trial, that is the right to a full and uninterrupted defence, was limited by procedural errors committed by the Prosecution during the pre-trial proceedings may serve as a valuable experience for judges in Kosovo with regard to the equal treatment of all parties to the proceedings, regardless of the gravity of the criminal offence, regardless of the obligation to clarify and resolve this criminal offence, and regardless of the existence of reasonable doubt related to certain perpetrators, even if they were of the highest political profile. The content of the indictment and the names mentioned therein, as well as public pressure due to the fact that the trial was considered the largest and the most high-profile trial for war crimes in Kosovo after the war, may not and must not be the reason for errors which may deprive the accused of their right to defence and to deprive their defence counsel of the right to have the equal treatment before the court as the prosecution. By such a decision, the court has shown that the law is superior to all individuals and that no individual is superior to the law. From a formally legal point of view, the decision of the court even represents a precedent in Kosovo – it should serve to the Kosovo judiciary as a pattern for respecting the principle of equality of the parties and the fair trial principle, regardless of the fact who is accused and who is the Prosecutor. The significance of such a decision is especially emphasized if one bears in mind that it relates to the errors in pre-trial proceedings in which traditionally the main rhythm is dictated by the indictment, i.e. in which the defence has a passive role.

HLC Kosovo wishes to underline that the court did not get involved in any moment in the evaluation of the groundedness of the claims made in the statements and written evidence provided by "Witness X" due to the procedural errors made in view of their provision. In this way they were not evaluated as true or false, but the manner in which they were acquired was proclaimed inadmissible.

2. The court was strict and very particular when applying the law in Case "Klečka". However, after the completion of the first instance trial, this case is not even a step closer to the truth about what had happened in the detention centre in the village of Klečka/Kleçkë during April 1999, or to the establishing of responsibility for these incidents. Other evidence, especially the evidence from the exhumation undertaken by the EULEX team of experts in September 2009, confirmed the violent death of at least 8 individuals, whose killings are related to the detention centre in Klečka/Kleçkë. For these reasons, HLC Kosovo believes that, in the present course of the trial in Case "Klečka", legality won, but not the justice. In order to serve justice, in order for victims' families to make peace and in order for the Kosovo judiciary to prove that it is capable of prosecuting even the most serious crimes committed during the war, Case "Klečka" needs to be completely resolved, perpetrators to be identified and their criminal responsibility to be established in accordance with the law.

Remarks of the HLC Kosovo regarding the work of the court

1. When passing the first verdict in Case "Klečka" on March 30th, 2012 by which the trial was separated pursuant to Article 385 of the KCPC and the defendants Arben Krasniqi, Behlul Limaj, Refki Mazreku, Sabit Shala, Shaban Shalu were acquitted, the court offered a short reasoning and announced that the trial of the remaining defendants led by Fatmir Limaj shall continue in view of establishing their command responsibility. Therefore, the court clearly stated that it assessed that the remaining evidence in the case file may serve as a basis for further trial in Case "Klečka". However, by its verdict dated May 2nd, 2012, the court acquitted Fatmir Limaj, Naser Krasniqi, Nexhmi Krasniqi and Naser Shala of all charges for the commission of war crimes from the indictment filed by the Special Prosecutor's Office of the Republic of Kosovo (SPORK) on July 25th, 2011. Such an outcome came as a surprise, especially because the court, in its second and last ruling by which it concluded the first instance trial did not get involved in giving reasons for the decision not to trigger the matter of command responsibility of the four high ranking soldiers of the then KLA[13], which was contradictory to the announcement made when reading out the verdict passed on March 30th, 2012. Pursuant to the law, the court is not bound by the legal qualification provided by the Prosecutor. A failure of the Prosecutor to cooperate, even though it had enough room to specify the indictment and put focus on command responsibility and yet it failed to show any initiative in this sense and it continued to insist on the original indictment and the dismissal of the court's ruling on the inadmissibility of "Witness X"'s evidence may not be used as a justification for the court either.

[13] The court even refused to accept to open a discussion about this matter upon the insistence of Fatmir Limaj's defence attorney, a British solicitor Karim A.A. Khan).

Such a decision of the trial chamber left a bad impression on the otherwise very good and professional work of the trial chamber in Case "Klečka". Since the Prosecution announced to file an appeal against the first instance verdict, the court of the second instance is obliged to analyze very carefully the surprising ruling on the conclusion of the trial, which resulted in an acquittal of the remaining four defendants after the same court found in the analysis of the case that there were sufficient grounds for continuing the main trial in view of establishing command responsibility of the four defendants pursuant to Article 322 Paragraph 3 of the KCPC, which offered an opportunity for the Presiding Judge to acquire evidence without motions filed by the parties.

2. Another important remark that the HLC Kosovo has in view of the work of the trial chamber relates to their delay in the passing of the second verdict on May 2nd, 2012 by which Fatmir Limaj, Naser Krasniqi, Nexhmi Krasniqi and Naser Shala were acquitted of charges for the commission of war crimes. According to the findings of the HLC Kosovo, the court pronounced this verdict after the deadline prescribed by the law had expired. Namely, Article 392 Paragraph 1 of the KCPC clearly prescribes that, after having completed a criminal trial, and after having completed the evidentiary proceedings and closing arguments, the court shall announce the verdict within the time period not longer than three (3) days. Final procedural actions in the proceedings were conducted on March 30th, 2012 when the court rendered a ruling on separating the trial of six defendants.

Chronology of Case "Klečka"

The criminal trial of Limaj et al. was initiated after "Witness X", as one of the participants in the events which occurred during the conflict in Kosovo in the KLA detention centre in the village of Klečka/Kleçkë, the municipality of Lipljan/Lipjan in the period from the beginning of the year of 1999 until mid June 1999, contacted investigators from the EULEX War Crimes Unit in Kosovo in the second half of 2009. Acting upon the request of the Prosecutor dated July 6th, 2010[14], the pre-trial judge of the District Court of Priština/Prishtinë issued the order on August 25th 2010 granting the status of a cooperative witness to "Witness X" on the basis of which the criminal proceedings against him and the rendering of punishment in view of the criminal offences in the commission of which, according to his own words, he participated during the armed conflict in Kosovo were terminated.

[14] the date given in the reasoning of the order on granting the status of cooperative witness to "Witness X", according to the decision of the Presiding Judge from March 21st, 2012, the Prosecutor addressed the court with the aforementioned request on August 19th, 2010.

After the completion of the investigation led by the Special Prosecutor's Office of the Republic of Kosovo, on July 25th, 2011, the indictment against ten accused led by Fatmir Limaj was filed. The indictment charged the accused with a number of counts for the commission of criminal offences of *war crime against civilian population and war crime against prisoners of war*. The indictment charged them with the fact that in capacity of members or commanders of the KLA in the detention centre in the village of Klečka/Kleçkë, the municipality of Lipljan/Lipjan, they participated in the beating, torture, violation of physical integrity and health of an unspecified number of detainees; that they participated in the killing of detainees including police officer Đuričić Nebojša and civilians Marković Veljko, Arben Avdyli, Cvetković Bojan, Filipović Žarko, Todorović Života and a number of still unidentified Serb and Albanian civilians, prisoners of war and detainees. Mortal remains of some of the victims were found in the mass gravesite located in the vicinity of the village of Klečka/Kleçkë.

The confirmation hearing which lasted for two days before the District Court of Priština/Prishtinë began on August 24th, 2011 before the EULEX judge, Ingo Risch. The confirmation proceedings were mainly public, except for the part in which certain procedural decisions from the pre-trial proceedings were inspected. The full text of the indictment was confirmed by the ruling dated August 28th, 2011. All Prosecution's evidence on which the indictment was founded was assessed as admissible. The court stated that there was enough evidence, which supported the claim on the existence of a reasonable doubt in view of all of the charges against all of the accused, and that there are no circumstances which would exclude their criminal liability.

After the confirmation of the indictment, in the preparatory stage for the main trial, "Witness X" committed a suicide in Germany on September 28th, 2011 under the circumstances, which have not yet been resolved.

The main hearing upon the confirmed indictment began on November 11th, 2011. That is when the Prosecutor modified the indictment and withdrew Count 2 in view of the accused Arben Krasniqi. After the indictment was read out during the main trial, the accused pleaded not guilty. On this occasion the defence also filed a motion for the exclusion of the Prosecutor, which was dismissed because the trial chamber was not authorized to act upon such a motion. The Chief EULEX Prosecutor, acting upon the repeatedly filed defence motion for the exclusion of Prosecutor Maurizio Salustro, and his summoning in the capacity of a witness, rendered a decision on February 2nd, 2012 dismissing the defence motion with the explanation that legal preconditions for his exclusion and the examination of the Prosecutor in the capacity of a witness were not met.

Mainly procedural matters and motions filed by the accused and their defence attorneys were discussed during the main trial which was held in a total of 10 hearing sessions. The discussion was dedicated to the admissibility of the key evidence on which the indictment was founded, the statements given by the

cooperative witness and his diaries, which he kept during the armed conflict in Kosovo, after the armed conflict and during his stay in Germany.

After the ruling on the inadmissibility of the statements and diaries of "Witness X" was pronounced, the parties to the proceedings reached an agreement during the continuation of the main trial held on March 21st, 2012 to consider that the remaining Prosecution evidence enclosed to the indictment had been read out and noted down in the record of the main hearing and that parties should submit their closing arguments to the trial chamber in written, thus waiving their right to verbally present closing arguments before the trial chamber. The trial chamber rendered a special ruling on March 21st, 2012 dismissing all measures imposed against the accused, thus releasing from detention the accused, who were kept in detention in jail and also the accused who were under house arrest.

Acting upon the request of the trial chamber, the Prosecutor, in his last written closing argument filed to the trial chamber, failed to elaborate the evidence, but stated that he entirely endorsed the indictment and the evidence attached to it. He asked that the court dismissed the ruling on inadmissibility of evidence provided by the cooperative witness, which he assessed as erroneous; the Prosecutor went on insisting that evidence does provide sufficient grounds for the court to render a decision based on them, finding all of the accused guilty of the criminal offences which they had been charged with in the indictment[15] stating his opinion that he still supports everything alleged in the original indictment, which was confirmed as such by the confirmation judge of the District Court of Priština/Prishtinë, the Prosecutor stated that he did not want to modify the indictment, propose new evidence to the court, or alter the qualification of the criminal acts that the accused were charged with. He also stated that he would not propose new evidence or propose the acquisition of new evidence. All of the proposed evidence, in the Prosecutor's opinion was more than sufficient for the rendering of a lawful and just court judgment relating to the criminal responsibility of the four and all ten accused individuals.

The defence attorneys in their closing arguments instated that the Prosecutor should have completely withdrawn the indictment in his situation, when the crown evidence on which he founded his indictment was pronounced inadmissible. In their motions filed pursuant to Article 390 Paragraph 3 the defence attorneys asked the court to acquit the defendants of all charges because it was not proved that they had committed the criminal offence they had been charged with.

All of the accused, acting upon the court order, accepted the closing arguments of their defence attorneys and confirmed this by signing the closing arguments before they were submitted to the court, which was duly noted by the trial chamber during the main hearing session held on March 30th, 2012.

[15] Presiding judge read out a part of the Prosecutor's closing argument during the trial hearing held on March 30th, 2012 noting that the Prosecutor failed to act upon the mandatory directive issued by the trial chamber to specify the existing indictment.

After receiving the closing arguments of the parties, the trial chamber announced the verdict acquitting Limaj and the remaining three accused of all charges from the indictment dated July 25th, 2011. This concludes the trial of the first instance in Case "Kleçka"[16]. The Prosecution announced that it will file appeals against this court judgment.

[16] HLC Kosovo has no information on possible communication, thus keeping the right to update its opinions after receiving information or the reasoning of the judgment except the decision on inadmissibility of the statements relating to the investigation conducted in 2009 at the critical position.