



District Court of Prizren
Sitting at the premises of
The District Court of Gjilan/Gnjilane

P. No. 85/2005

MINUTES OF THE MAIN TRIAL

Date of Proceedings:	8 February 2006
Venue of Proceedings:	Courtroom of Gjilan District Court
Presiding Judge:	Vinod Boolell, International Judge
Panel Members:	Leonard Assira, International Judge Nurul Islam Khan, International Judge
Public Prosecutor:	Jude Romano, International Public Prosecutor
CID Legal Officer	Andrey Antonov
Defence Counsel:	Mahmut Halimi, Rexhep Hasani, Fatmir Celina, Ethem Rogova and Mexhid Sylja
Accused:	Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf (Sherifi) Gashi and Islam Gashi
Witness:	Muhamet Berisha
Court Recorders:	Robina Struthers and Gwen Cheong
Interpreters:	Ervin Mazniku and Gazmend Isaj
IJSD Legal Officer:	Virginie Monchy
Humanitarian Law Centre Monitor :	Luan Dushi
OSCE Monitor :	Lumnije Shkodra

Accused and Charges:

COUNT 1

On days between 2 June 1998 and 13 July 1998, Selim Krasniqi, Bedri Zyberaj, Xhemajl Gashi, Isuf Gashi, Islam Gashi and Xhavit Elshani, acting in concert with

other individuals, and pursuant to a joint criminal enterprise, ordered and participated, directly or indirectly, in the illegal arrests and detention of Kosovo Albanian civilians in the Detention Center in Drenovc/Drenovac village. Among those illegally arrested civilians were: Shaban Shala, Bedri Berisha, Hysen Krasniqi, Hidaj Popaj, Murat Rustemi, Hazer Tarjani, Avdi Berisha. To this day, they have never been seen again.

By participating in the illegal arrest and detention of Kosovo Albanian civilians, as mentioned in paragraphs 61(i) to 61(vii) above, Selim Krasniqi, Bedri Zyberaj, Isuf Gashi, Islam Gashi and Xhavit Elshani incurred personal responsibility for the war crimes of illegal arrests and detention in violation of Article 142 of the CCY as read with Articles 22, 24, 26 and 30 of the CCY.

COUNT 2

On days between 2 June 1998 and 13 July 1998, Selim Krasniqi, Bedri Zyberaj, Isuf Gashi, Islam Gashi and Xhavit Elshani acting in concert with other individuals and pursuant to a joint criminal enterprise to unlawfully detain Kosovo Albanian civilians, ordered and participated, in the establishment and perpetuation of inhumane treatment of the Kosovo Albanian civilians illegally detained in the Detention Center located in Drenovc/Drenovac village, by housing those civilian detainees in inhumane conditions, depriving them of adequate sanitation, food and water, and needed medical treatment. The inhumane treatment of the civilian detainees caused immense suffering or was a violation of the bodily integrity and health of those detainees and constituted an application of measures of intimidation and terror. Among those civilians subjected to inhumane treatment were the seven (7) victims mentioned in paragraphs 61(i) to 61(vii) above.

By participating in the establishment and perpetuation of inhumane treatment of Kosovo Albanian civilians as mentioned in paragraphs 61(i) to 61(vii) above, Selim Krasniqi, Bedri Zyberaj, Isuf Gashi, Islam Gashi and Xhavit Elshani incurred personal responsibility for the war crimes of inhumane treatment and immense suffering or violation of bodily health of the civilian detainees and constituted an application of measures of intimidation and terror in violation of Article 142 of the CCY as read with Articles 22, 24, 26 and 30 of the CCY.

COUNT 3

On days between 2 June 1998 and 13 July 1998, Selim Krasniqi, Bedri Zyberaj, Isuf Gashi, Islam Gashi and Xhavit Elshani while being members of KLA, acting in concert with other individuals, and pursuant to a joint criminal enterprise, ordered and participated, directly or indirectly, in the beating and torture of civilians illegally detained in the Detention Center in Drenovc/Drenovac village. Among those civilians subjected to beatings and torture were the seven (7) victims mentioned in paragraph 61(i) to 61(vii) above.

By participating in the beating and torture of Kosovo Albanian civilians as mentioned in paragraphs 61(i) to 61(vii), Selim Krasniqi, Bedri Zyberaj, Isuf Gashi, Islam Gashi and Xhavit Elshani incurred personal responsibility for the war crimes of beating and torture in violation of Article 142 of the CCY as read with Articles 22, 24, 26 and 30 of the CCY.

COUNT 4

On days between 2 June 1998 and 13 July 1998, Selim Krasniqi, Bedri Zyberaj, Isuf Sherifi Gashi, Islam Gashi and Xhavit Elshani while being members of KLA, acting in concert with other individuals, and pursuant to a joint criminal enterprise, ordered and participated, directly or indirectly, in the killings of Kosovo Albanian civilians illegally arrested and detained in the Detention Center in Drenovc/Drenovac village. Among those civilians were the seven (7) victims mentioned in paragraph 61(i) to 61(vii) above.

By participating in the killings of Kosovo Albanian civilians as mentioned in paragraphs 61 (i) to 61 (vii), Selim Krasniqi, Bedri Zyberaj, Isuf Sherifi Gashi, Islam Gashi and Xhavit Elshani incurred personal responsibility for the war crimes of killings and in violation of Article 142 of the CCY as read with Articles 22, 24, 26 and 30 of the CCY.

The trial commences at 10:45 a.m.

The trial is public.

The Panel is composed of International Judge Vinod Boolell as Presiding Judge and Leonard Assira and Nurul Islam Khan, International Judges as Panel Members, which has been constituted in accordance with the law.

Present: Accused Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf (Sherifi) Gashi and Islam Gashi; Jude Romano, Public Prosecutor; Defence Counsel Mahmut Halimi, Rexhep Hasani, Fatmir Celina, Ethem Rogova and Mexhid Sylja; Luan Dushi, Humanitarian Law Center Monitor; Lumnije Shkodra, OSCE Monitor.

Presiding Judge: good morning. We are resuming proceedings in the case. We shall have one witness today. There has been a new issue presented with respect to representation of Mr. Bedri Zyberaj. Mr. Zyberaj has revoked his defence counsel, Haxhi Millaku. Mr. Zyberaj, I have seen the letter you have sent to explain why you have done this. You also, in that letter, expressed the wish and requested that a lawyer be appointed to you ex officio. The president of Prizren court has appointed Mr. Rexhep Hasani as your new attorney. Mr. Zyberaj, I ask you, are you satisfied with this appointment and are you satisfied that Mr. Hasani represent you?

Bedri Zyberaj: yes

Presiding Judge: I met Mr. Rexhep Hasani this morning in my chambers and I asked him to have a conference with you in private and it is my understanding that this has been done. You are happy with this Mr. Zyberaj?

Bedri Zyberaj: yes

Presiding Judge: Mr. Hasani, my legal officer has informed me that you have been given all the minutes of the proceedings from the beginning of this trial. Have you had time to go through all these minutes so that you are in a position to defend your client's interests properly?

Defence Counsel, Rexhep Hasani: I was involved in this case more or less and Miss Virginie gave to me all the documents of the case file also she offered some other assistance that is important to me in regard to my client Bedri Zyberaj. I reviewed all the minutes of the main trial and quite frankly, it is a compliment to say that the minutes are compiled correctly and based on these minutes I got the impression about the objectivity of handling this trial. I notice that the Presiding Judge is very aware of the case file and I am happy with that. Even though I joined the trial at a later time with the assistance of my colleagues I will be able to properly represent my client Bedri Zyberaj.

Presiding Judge: thank you. We can proceed. Mr. Bedri Zyberaj, do you require more time to consult with your lawyer?

Bedri Zyberaj: not for today.

Presiding Judge: I take it Mr. Hasani that having talked to your client and your having read the minutes you are in the position to proceed today, to defend your client to the best of your ability?

Defence Counsel, Rexhep Hasani: yes I am.

Defence Counsel, Mexhid Sylja: I would greet you as I have not seen you for a month and I hope we are all rested and will work towards speeding up this process. I would like to raise an issue that we actually raised during the last session. This is about our clients not being able to talk on the phone to their family members. I notice from the last minutes that it is not included what I spoke of at the last session 15 December 2005. I again request that all our verbal submissions during the sessions have the same importance and weight as if they were introduced in writing.

Presiding Judge: what exactly is missing from the minutes?

Defence Counsel, Mexhid Sylja: you know that Isuf Gashi, during the last session, spoke about the matter of telephone conversations and in a way he expressed his anger towards the work of defence counsels. Consequently, you as the Presiding Judge, said that this is something that is for the Defense Counsels and that we as Defense Counsels have to raise this issue. I then said that we have raised this issue even before and in order to be convinced of this you can see the minutes of 23 November 2005 when I spoke on behalf of my colleagues and our clients to allow the telephone conversations between the defendants and their family members. Since this has not happened yet I repeat this request and kindly ask you to adopt a decision pursuant to Article 295, Paragraphs 3 and 4. We do not have a reason why this right is denied. If there is any obstacle according to this law please give us a written decision and we can consult with the article.

Presiding Judge: in fact it is Article 294 Mr. Sylja.

Defence Counsel, Mexhid Sylja: it is Article 294 and Article 295 if such an obstacle exists. I believe that our clients' behaviour has been very good and there has been no complaint from the detention authorities and therefore, I kindly ask you to render a

reasonable decision and to order that such a measure will be taken. I just spoke to my colleague Mr. Ethem Rogova; therefore, I also speak on his behalf and on behalf of his client in asking that he be allowed to visit his wife because she is sick. I ask that my client be allowed to visit his sick mother. If the court requires documentation we can provide that.

Presiding Judge: the minutes of 15 December, 2005 will be supplemented with the following. “There have been previous requests by the Defense Counsel for the accused to be allowed to contact their relatives by phone.” It is not correct to say as Mr. Isuf Gashi asserted that the lawyers have not made such a request.

Defence Counsel, Mexhid Sylja: thank you.

Presiding Judge: with regard to the phone requests I believe, if I am not mistaken, that I did ask that you communicate a list of the persons and the phone numbers to my legal officer so that we can take a decision. Secondly, with regard to allowing Isuf Gashi to visit his ailing wife and allowing Islam Gashi visit his mother, I will refer you, Mr. Sylja, to what I stated on 15 December 2005 at about 8:10 p.m. when I was addressing Isuf Gashi. (The Presiding Judge quotes the passage from the minutes of 15 December, the Presiding Judge also quotes what Mr. Gashi replied). Let there be no attempt in putting the blame on the court for having ignored that aspect of the case. I say it again in public, I need a written request, and I need a medical certificate stating the health of the wife of Isuf Gashi and the mother of Islam Gashi and you tell me approximately when you want this visit to take place and we shall make the arrangements. We have a precedent for this because we did that in the case of Mr. Khavit Elshani. The earlier you submit these documents to me the earlier these accused will be able to visit. You’d better do it this week or when we come next week nothing will have been done about it.

Public Prosecutor: the witness for today is an anonymous witness but a motion has been filed to do away with anonymity.

The Presiding Judge greets the witness. You are Mr. Muhamet Berisha. Good morning. Thank you attending court to testify in this case. When you gave evidence before the Investigating Judge you testified under the cover of anonymity. Following a decision by the trial judge today the Public Prosecutor has filed a motion for the waiver of immunity. Do you now agree to testify openly?

Witness: yes

Presiding Judge: you agree that your personal data will be mentioned in public?

Witness: yes

Presiding Judge: since you are a witness in this case, I must warn you that as a witness it is your duty to speak the truth and not withhold anything. You must also be aware that giving false testimony is an offence and you are not obliged to answer any questions if the answer to that question would expose you or a close relative to disgrace, substantial financial loss or criminal prosecution, you are not required to answer the question. Do you understand?

Witness: yes

Presiding Judge: we shall now take your personal data.

Name:	Muhamet Berisha
Father's Name:	Avdi
Mother's Name:	Nurie
Date of Birth:	September 17, 1952
Place of Birth:	Brestovc
Residence:	Brestovc
Occupation:	Farmer
Identification Card:	1030782824
Related to any Accused:	No

Presiding Judge: are you an injured party?

Witness: yes

Presiding Judge: there are also other injured parties in this case, are you related to any of them?

Witness: yes with one of them.

Presiding Judge: as an injured party it is my duty to tell you that you also have rights. You can file a claim in the course of these proceedings and you have the right to present evidence if you so wish. You also have the right to draw the attention of this court to certain facts that are relevant. Okay?

Witness: yes

Presiding Judge: now the Public Prosecutor will ask you questions.

Public Prosecutor: good morning. You mentioned when you were giving your personal data, that your father is named Avdi. Can you tell us where your father is right now?

Witness: I do not know that. My father was abducted (the Albanian word used is "kidnapue") on the 13th of July 1998 while at his house.

Public Prosecutor: can you tell us how your father was abducted?

Witness: seven KLA members came in uniforms with two cars. One of them was a Lada brand whereas the other one was a Niva brand car. They took him and they headed towards Drenovc.

Public Prosecutor: do you know the names of the seven who abducted your father?

Witness: no

Public Prosecutor: who was present when your father was abducted on 13 July 1998?

Witness: my two brothers were there.

Public Prosecutor: can you give us their names?

Witness: the late Selim Avdi Berisha and Milaim Avdi Berisha.

Public Prosecutor: where were you when your father was abducted?

Witness: I was in Switzerland

Public Prosecutor: how did you come to know about the circumstances of the kidnapping of your father?

Witness: I came from Switzerland and I did not know that my father had been abducted. I took the train from Switzerland to Italy and then went to Albania and I joined the KLA at the Albanian Kosovo border crossing. We came to Brestovc in order to defend our house and our fatherland.

Public Prosecutor: when did you arrive in Brestovc?

Witness: it was at the end of July or the beginning of August.

Public Prosecutor: when did you find out your father had been abducted?

Witness: when I arrived home.

Public Prosecutor: what did you do, if anything, after finding out your father had been abducted?

Witness: at that moment I thought that our family was the kind of family that gave both moral and material support to the army and also joined the army. When I heard that my father had been abducted by KLA members that was totally unacceptable. On the other hand a very strong enemy was right in front of us.

Public Prosecutor: you said army, what army are you referring to? You said that you were giving material and moral support to the army?

Witness: the liberation army.

Public Prosecutor: you stated that your family gave material and moral support to the army my question is what?

Witness: the liberation army.

Presiding Judge: what liberation army are you referring to?

Witness: the Kosovo Liberation Army.

Presiding Judge: is that UCK?

Witness: yes of course.

Public Prosecutor: so what did you do if anything after learning about your father's abduction?

Witness: nothing at the time but we started to enquire about the location of our father.

Public Prosecutor: what did you find out?

Witness: the result was we did not find our father.

Public Prosecutor: you said that you enquired? Can you tell us from whom did you enquire about your father's location?

Witness: we went to Drenovc and the road was in a bad condition. I went there with my brother, Milaim. At the headquarters we asked for a KLA leader to talk to us. We went to a small house, Mr. Bedri Zyberaj's house. He was with a soldier so I introduced myself to him and told him that I was from Brestovc namely the son of Avdi Berisha. I asked a question "would it be possible to learn why Avdi Berisha was abducted and also his whereabouts?"

Public Prosecutor: what was his response, if any?

Witness: he would only listen but not answer. At one point he told me that he was not the one dealing with this issue but advised that I should go to the school/prison and ask for Celiku Selim Krasniqi.

Public Prosecutor: when you went to Drenovc why, of all people, did you meet or see Mr. Bedri Zyberaj?

Witness: because it was a very well known name and everyone would say that he was the leader.

Public Prosecutor: the leader of what?

Witness: at that time people would say he was a political commissar.

Public Prosecutor: after you were told by Bedri Zyberaj to go to the school what did you do then?

Witness: I went there with my brother Milaim and asked for Celiku, namely, Selim Krasniqi. We asked a soldier over there and he answered that Celiku was not there. I asked the soldier his name and he said it was Isuf Bernisha. The soldier asked us what are you here for? I told him that my father was arrested/kidnapped and he is here somewhere in the prison. The soldier asked me about my father's name and I answered the name was Avdi Berisha. The soldier continued "yes I do know him I brought to him some tap water and also I bought the things he told me to in a shop nearby". Selim Krasniqi also known as Celiku arrived at that moment. Isuf Berisha

moved away from us telling us “I don’t dare to speak anymore.” And as I approached Selim Krasniqi I asked him about Avdi Berisha. He answered: “there is no one here in Drenovc they are somewhere in Drenica. We cannot bring them over here given the very bad road conditions. This is why they are in Drenica.” As I continued asking him other questions he said, “I have nothing else to tell you. “Come by the end of the week in order to clear out some things”. I could not go at the end of the week considering that the Serbian paramilitaries had started their offensive. Therefore I could not get an answer to my questions. But I could get that answer even today about the whereabouts of Avdi Berisha.

Public Prosecutor: you said that Selim Krasniqi told you that “there is nobody here in Drenovc they are somewhere in Drenica?”

Witness: yes

Public Prosecutor: do you have any information as to who are these “they” that Mr. Krasniqi mentioned?

Witness: I meant to say I was told that my father was somewhere in Drenica.

Public Prosecutor: how many times did you go to Drenovc village?

Witness: one time I went with my brother and then my brother went there three times himself approximately. He went there but no one talked to him.

Public Prosecutor: let's go back to the time when you talked to Bedri Zyberaj, do you remember the clothes he was wearing?

Witness: plain clothes.

Public Prosecutor: did you notice if he had any firearms with him?

Witness I could not see.

Public Prosecutor: you mentioned that Bedri Zyberaj was with another person, do you recall the other person and what this other person was wearing?

Witness: military clothes.

Public Prosecutor: do you recall if this person in military clothing had firearms or weapons?

Witness: yes he did.

Public Prosecutor: what kind?

Witness: no recollection as to that, I would say only a weapon.

Public Prosecutor: a small weapon, a rifle?

Witness: just a weapon that's all I can say.

Public Prosecutor: how long did you talk to Bedri Zyberaj when you met him at Drenas?

Witness: 30 to 40 minutes. But I spoke more than he did.

Public Prosecutor: how far was this place where you met Bedri Zyberaj from the school where you met Selim Krasniqi?

Witness: I could say approximately 500 meters.

Public Prosecutor: when you met Selim Krasniqi do you recall the clothing he was wearing?

Witness: he had on a military jacket and he was wearing jeans. He had a pistol on his belt.

Public Prosecutor: what about this soldier Mr. Isuf Berisha? Do you recall the clothing he was wearing?

Witness: military.

Public Prosecutor: did he have any weapons?

Witness: no recollection as to that. He said that he was sort of a guard at the prison. He would open and close the doors.

Public Prosecutor: what was your father's occupation on the day he was abducted?

Witness: he was a farmer.

Public Prosecutor: and since when had he been a farmer?

Witness: from the day he reached the age to start working.

Public Prosecutor: did your father ever work for the Serbian police or military?

Witness: no this is unimaginable. I want to explain something to you. The witness takes some papers from a folder and states: This is a certificate saying it is awarded to a martyr's family. That person whose name is on the certificate has been raised by Avdi Berisha, educated by Avdi Berisha. The bravery and patriotism of Selim was given by Avdi. Another certificate of gratitude shows that we have paid our contribution and that certificate was awarded to us by LDK. Another one was awarded to the son of Avdi Berisha. And here it is written that "your contribution in Dardania helps the national cause and the same time it also helps the war for the liberation of Kosovo". These documents are not found on the streets but are given to people that really deserve them.

Public Prosecutor: thank you.

Witness: I wanted to indicate to the court another document regarding Avdi Berisha. When it was about helping other Albanian families Avdi Berisha would always be there. I have many documents certifying the material contributions given to the national cause.

The Presiding Judge asks the witness for photocopies of the documents and the Legal Officer arranges that.

Public Prosecutor: after your father was abducted on 13 July 1998, did you or any members of your family ever see your father again?

Witness: no

Public Prosecutor: have you or any members of your family heard from your father after 13 July 1998?

Witness: no sir.

Public Prosecutor: do you know if anybody has seen your father since 13 July 1998?

Witness: sure as hell there might be someone but they are not telling.

Public Prosecutor: let me go back to when you mentioned that when you were talking to Bedri Zyberaj he told you to go to the school. Did Bedri Zyberaj tell you the reason why you should look for Selim Krasniqi?

Witness: because he was the man in charge of the military police.

Presiding Judge: who was in charge? Selim Krasniqi?

Witness: yes. That was told to me by Bedri Zyberaj. I got the information from Bedri Zyberaj.

Public Prosecutor: when you had the opportunity to talk to Selim Krasniqi did he acknowledge to you that he was in charge of the prisoners or detainees?

Witness: he did not use this word, but he said all the people that were in here previously are currently in Drenica, but they cannot be brought over here given the bad condition of the road.

Presiding Judge: the question was did Selim Krasniqi tell you that he was in charge of the military police?

Witness: Selim Krasniqi did not tell me that he was the man in charge of the military police.

Public Prosecutor: do you recall testifying in front of the investigating judge on 11 March 2004?

Witness: yes

Public Prosecutor: on page 8 of those minutes, at line 11, I will quote your answer: “when I saw that person I asked him if he was Celiku and he said he was and right away I said I was there to look for Avdi Berisha and he said he was responsible for the detainees.” Can you explain to us the difference between your answer then....(interrupted by the presiding judge)

Presiding Judge: there is no difference. The witness never contradicted himself on the issue of who was in charge of detainees. The Presiding Judge corrects the questioning and the prosecutor acknowledges that he was confused.

Presiding Judge: to summarize: following the reference of the Public Prosecutor to page 8 of the investigative minutes concerning the responsibility of Selim Krasniqi for detainees, a question purporting to establish the contradiction between what the witness allegedly said in court and at the investigation proceedings, the Presiding Judge drew the attention of the Public Prosecutor that there had been no prior reference to Selim Krasniqi being responsible for the detainees in the interrogation of the witness. This has been explained to the attorneys.

Public Prosecutor: I withdraw that question.

Public Prosecutor: did Selim Krasniqi tell you that he was responsible for the detainees?

Witness: Selim Krasniqi seemed to know where the detainees were. He knew that because he told me that they were in Drenica. In addition he said that we could go there because we are young people but they cannot be brought here because of the road conditions. In addition he said to come by at the end of the week.

Presiding Judge: did Selim Krasniqi ever mention to you that he was in charge of detainees?

The Presiding Judge summarizes: Following the answer given by the witness to the question of the Public Prosecutor the Presiding Judge sought a clarification from the witness as to whether Selim Krasniqi had mentioned to him that he was in charge of the detainees and the witness answered that since Selim Krasniqi knew where the detainees were, that it might be that he was in charge of detainees.

Public Prosecutor: can you describe Mr. Bedri Zyberaj to us?

Witness: he looked the same then as he looks now.

Public Prosecutor: please describe his features.

Witness: I can see him so how can I describe him?

Public Prosecutor: describe for the record please, his build etc.

Witness: his face is oval, he is bald.

Public Prosecutor: what about his height?

Witness: he is shorter than me and I don't know how tall he is.

Public Prosecutor: what is your height?

Witness: 175 cm.

Public Prosecutor: and what about Selim Krasniqi? Can you describe him please?

Witness: Selim Krasniqi – I saw him only for about 10 minutes. As I said earlier, he was wearing jeans and a military shirt.

Presiding Judge: we want his physical description?

Witness: he is not very tall, he has a thin face.

Public Prosecutor: what about the school you went to when you were looking for your father can you describe it?

Witness: there is a corner on the right side that leads to the school. In front of the school on the left side there is a building in which there is a cellar. I did not see the people inside there but I think this building was used as a prison.

Public Prosecutor: I am now showing you 33 photographs. I want you to look at them and tell us if any of the pictures presented to you are of Bedri Zyberaj or Selim Krasniqi.

Witness: picture number 8 is a photograph of a person I recognize; it might be the picture of Selim Krasniqi. Also picture number 16 it might be Bedri Zyberaj. I can say for certain but I am saying it might be. I don't recognize the other pictures.

Public Prosecutor: for the record, photograph number 8 is Selim Krasniqi and photograph number 16 is Bedri Zyberaj.

Public Prosecutor: I now show you exhibit D – can you tell us if you recognize any of these photographs as the school building you went to?

Witness: in photograph number 16 there is a structure and this structure is the one I mentioned was on the left side of the school. Also photograph number 32 is probably the school. Photograph number 20 may show the school. I cannot say for certain because I cannot see the school entrance.

Public Prosecutor: in the photographs shown to you does it show where you met Selim Krasniqi?

Witness: no, the place where I met Selim Krasniqi is not photographed.

Public Prosecutor: these are all my questions.

Presiding Judge: we shall now break for lunch and resume at 1:40 p.m. The court adjourns at 12:45.

*Session resumes at 1:50 p.m.
Court Recorder is now Gwen Cheong.*

Presiding Judge: Mr. Berisha, you are still under an obligation to speak the truth.

Defence Counsel, Mahmut Halimi: I'm Mahmut Halimi, the Defense Counsel for Selim Krasniqi who is accused pursuant to the Indictment of the Public Prosecutor in this case. While you were abroad, had you heard or seen or followed news of the events of Kosovo at that time?

Witness: Yes.

Defence Counsel, Mahmut Halimi: We are interested to learn about news or events that occurred at that time in your area and also in Rahovec and its surroundings. Do you know when Rahovec and the surrounding villages were attacked by the Serbian forces?

Witness: I don't know the exact date, but I have seen news about that.

Defence Counsel, Mahmut Halimi: The date when you came back to Kosovo was the end of July or the beginning of August?

Witness: Yes.

Defence Counsel, Mahmut Halimi: Do you know for how long before you came to Kosovo that Rahovec and the surrounding villages were attacked by Serbian forces?

Witness: I don't know what attacks you are making reference to because there were too many of them. I was in Kosovo when such an attack was carried out.

Defence Counsel, Mahmut Halimi: You said too many attacks. Could you list them for me, please? It would be highly appreciated if dates were provided.

Witness: Rahovec as a city *per se* was attacked earlier. I wasn't concentrating on dates too much because more important events were happening. I think that my village was attacked on March 25. I know it for a fact because my house was set on fire.

Defence Counsel, Mahmut Halimi: It was March 25, 1998?

Witness: Yes.

Defence Counsel, Mahmut Halimi: You were home at that time?

Witness: Yes.

Defence Counsel, Mahmut Halimi: So, this March 25, 1998 attack – was it the first attack ever on your village and Rahovec region?

Witness: I would say this was the second attack on our village. The first one occurred when I wasn't there.

Defence Counsel, Mahmut Halimi: Do you know what year the NATO bombing started?

Witness: 1998.

Defence Counsel, Mahmut Halimi: From the time you arrived in Kosovo, did you ever hear that Rahovec was attacked on several occasions?

Witness: Yes, of course.

Defence Counsel, Mahmut Halimi: How many times, and if you can tell us the dates and the time span between the attacks?

Witness: As I said, one of the attacks was before I came to Kosovo. The second one was when the NATO bombing started – the second and the biggest, and I shall repeat this - my brother and I were in the village at the time.

Defence Counsel, Mahmut Halimi: How many days before you came to Kosovo, was Rahovec and the surroundings attacked? Approximately, if possible.

Witness: One month prior to my coming to Kosovo.

Defence Counsel, Mahmut Halimi: Was Rahovec attacked before your father was taken away or after that?

Witness: No recollection as to that. My father was taken away on July 13.

Defence Counsel, Mahmut Halimi: When you went to your village through Albania, you said that you rested some days over there. Could you tell the Court as to how many days you stayed at home after you came from Albania?

Witness: Till the NATO bombing started when the Serbian military attacked Rahovec and also my village. I stayed at home for one week after the Serbian forces were deployed in our village. We moved our children out of our village. I returned and met with my brother. One week after that, I stayed in the village of Nagavc. That happened because when I came back home, I saw my house burned to the ground. We took our children with us. We went back to Nagavc and one week after this, headed for Albania.

Defence Counsel, Mahmut Halimi: How many days after you came from Albania did you go to the village of Drenovc to learn something about the fate of your father?

Witness: Milaim went there once on his own while I was home. He went there together with a fellow villager. The name of that villager was Adem Krasniqi.

However, my brother didn't collect any information about the whereabouts of our father.

Defence Counsel, Mahmut Halimi: How many days after you returned from Albania did your brother Milaim and that other villager go to Drenovc?

Witness: Approximately 10 days after.

Defence Counsel, Mahmut Halimi: How many days after this did you yourself go to Drenovc?

Witness: Approximately 10 days after that, I went to Drenovc with Milaim.

Defence Counsel, Mahmut Halimi: When you went to Drenovc, did you see any houses or properties of the villagers of that area burned?

Witness: No.

Defence Counsel, Mahmut Halimi: When you arrived in Drenovc, was there someone else with you and your brother, Milaim?

Witness: No. It was only the two of us.

Defence Counsel, Mahmut Halimi: Do you have any relatives residing in Drenovc?

Witness: No.

Defence Counsel, Mahmut Halimi: How were you able to locate the house where you met with Bedri Zyberaj?

Witness: We asked Bedrush and some other soldiers as to where we could find Bedri Zyberaj.

Defence Counsel, Mahmut Halimi: You said you conversed with Bedri Zyberaj for approximately 30 to 40 minutes. Would you have any recollection as to the content of that conversation, topics you discussed with Bedri Zyberaj and the words used?

Witness: Yes, I do. I asked him "Where is Avdi Berisha? Why was Avdi Berisha kidnapped or arrested and where is he?" I asked him why Avdi Berisha was taken away.

At this stage, Defence Counsel, Rexhep Hasani intervenes and states that he would respectfully ask his colleague, Mahmut Halimi to concentrate on his own client.

Defence Counsel, Mahmut Halimi: I will withdraw my question. Did you see any other soldiers in Drenovc?

Witness: While entering the village, I encountered some soldiers and on several occasions while in the village, I saw soldiers. It's not that we did not know as to where Bedri Zyberaj was working because my brother was there before me, so we

knew. We were clear about that. My brother knew where Bedri Zyberaj was working and we didn't have to ask people around.

Defence Counsel, Mahmut Halimi: When you went to the school that you said that was used as a prison and you said you ran into Isuf Berisha, how long did you stay with that person before Selim Krasniqi showed up?

Witness: I would say 7 to 10 minutes.

Defence Counsel, Mahmut Halimi: Do you remember topics apart from the things that you mentioned a while ago? Would you recollect any of the other topics you talked about with Isuf?

Witness: Nothing else.

Defence Counsel, Mahmut Halimi: Did you ask him or did he tell you that there were prisoners in Drenovc?

Witness: Isuf Berisha told me "Avdi Berisha was here. We don't know where they are now. I brought him some water and I bought for him in a shop nearby, the things he asked me to." We told him "We are here to see Selim Krasniqi." At that time, he was known as "Celiku."

Defence Counsel, Mahmut Halimi: I would ask the witness not to repeat things.

Witness: I think the attorney is asking me the same question, but the only things I have are the same answers.

Defence Counsel, Mahmut Halimi: For as long as you were there, did Isuf Berisha or did you understand in some way that in that place or somewhere else, prisoners were held?

Witness: Isuf Berisha time and again told me, "Your father was here in the prison. I bought foodstuff for him. As for now, I don't know where they are." As Isuf was telling these words to us, Selim Krasniqi showed up and right away, Isuf Berisha moved away. I approached Selim Krasniqi and asked him regarding Avdi Berisha. Selim Krasniqi told me "They are not here. They are somewhere in Drenica, but the road is in very bad condition. We could cross the road, but not them. You'll come by the end of the week and I will tell you something new."

Defence Counsel, Mahmut Halimi: How come in the morning session you said that Isuf Berisha was a guard at the prison and in the meantime, there were no detainees in there?

Witness: Isuf Berisha himself told us that he brought water and foodstuff to Avdi Berisha in the prison. So there must have been a prison.

Defence Counsel, Mahmut Halimi: In your statement to the Investigating Judge on Page 7, Paragraph 3 from the bottom of the Albanian version (Page 5 of the English version), to the Public Prosecutor's question "Do you remember the color of the

uniform he was wearing?” Your answer was “It was a military uniform – light and dark green.”

Presiding Judge: Whose uniform are you talking about?

Defence Counsel, Mahmut Halimi: Of Selim Krasniqi. Can we clarify this issue that the witness said that day he was wearing a uniform, and today, he said he was wearing jeans?

Presiding Judge: Can you clarify on this, Mr. Berisha?

Witness: As I said earlier, the upper part of his body was in military uniform and from the position where I saw him, I could see the upper part and the blue color of his trousers. And I did not pay attention to the details because I had another intention. It was not important for me what he was wearing, but what his position was.

Defence Counsel, Mahmut Halimi: After this occasion when you met Selim Krasniqi, did you ever meet him again even after the war?

Witness: No. I did not make any attempt and I did not dare to tell anybody after the war about this. I gave a statement to the International Red Cross when they came to our village to search for the victims of the population of our village. And on that occasion, I asked them about the disappearance of my father. And from there, this process started.

Defence Counsel, Mahmut Halimi: My last question. Your brother, Selim Berisha was a member of the KLA and he was killed while fighting against Serbian forces. Taking into consideration all his awards that you showed to the Court about your family's merits, how can you explain the fact that you mentioned that you were afraid to look for your father, considering you were a member of the KLA as well?

Witness: My brother was a soldier in the KLA and as the Defense Counsel mentioned, we are a family of martyrs. Many people admire the position of our family. Regarding the fear that the Defense Counsel is referring to, Tahir Zema was the general of KLA and General Drini was a member of the KLA. But these great people are no longer among us. That's why I was afraid. Maybe this is the last question of the Defense Counsel and he is satisfied with the answer I gave.

Defence Counsel, Mahmut Halimi: The last question. Have you seen Selim Krasniqi anywhere - on TV or elsewhere after the war? If yes, how many times have you seen him?

Witness: Yes, I had seen him when he received a medal in Prizren and I remember it very well.

Defence Counsel, Mahmut Halimi: Thank you. No further questions.

Defence Counsel, Rexhep Hasani: I only have two questions. I'm very sorry because I knew the late person very well. Did you ever have any conflict with any family in the territory of Rahovec or in your village?

Witness: No, we never had. I want to clarify something with the Presiding Judge. When he started to speak, he said “I knew the late person.” It’s not correct to say “the late person because I have not buried my father”.

Presiding Judge: I get your point.

Defence Counsel, Rexhep Hasani: It seems that their family are a good family, a family of martyrs. Have they ever talked about why their father was taken or who might these people be who took their father?

Witness: Yes. We discussed this and not only with the members of the family but also with other people, in so-called rooms where people gather. We have discussed this issue with our co-villagers and not only with co-villagers but also other villagers, and everybody we have talked to have said “Shame on these people who took this person from this family.” I would like to clarify something. If I’m here to testify, it does not mean I’m against the KLA. But I’m against those people who kidnapped my father, because I have always supported the KLA. I’m not against the KLA. But I’m against those people who spoil Albanian families and the KLA.

Defence Counsel, Rexhep Hasani: Your brother was a member of the KLA and he was killed in 1999, while your father was kidnapped or abducted in 1998. Do you know the reaction of your brother about the kidnapping of your father?

Witness: Reaction of whom?

Presiding Judge: Your brother.

Witness: It was not only the reaction of my brother but the reaction of the whole family. We had two goals; first to find out where our father was and why he was kidnapped and second, was to defend our country. I may say that even today, they are the same reaction about this issue and I mean family reactions and reactions from the villagers.

Defence Counsel, Rexhep Hasani: It is normal about the reaction you just told us, but I asked about your brother’s reaction as a member of the KLA.

Presiding Judge: Any question from other counsels?

No questions from other Defense Counsels.

To the Questions by the Accused:

Selim Krasniqi: Could the witness indicate to the Court the date Avdi Berisha was taken away?

Witness: July 13, 1998 at approximately 1:00 p.m.

Selim Krasniqi: I would kindly remind the Court to take into consideration my statement and the ones of the witnesses of the defense, without entering into details. Was there someone else present when he talked to Isuf Berisha?

Witness: My brother.

Selim Krasniqi: Would the witness know where Isuf Berisha is presently?

Witness: Yes, I do.

Selim Krasniqi: Who killed Isuf Berisha?

Witness: I don't know who killed him and how he was killed, but I know that he got killed in a prison somewhere in Serbia.

Selim Krasniqi: On what date did the witness talk to me?

Witness: No recollection as to that.

Selim Krasniqi: Approximately?

Witness: By the end of July, the time when I talked to Bedri Zyberaj.

Selim Krasniqi: I would still kindly remind the Court about my statement and the ones of the witnesses of the defense. I would be very much interested to know as to why the witness was not interested to talk to me, given that he said he knew me?

Witness: We could not. We did not know who he was and where he was from. But we were sure that no conversation on that issue had taken place because there were rumors and lots of slanders regarding the reasons as to why Avdi Berisha was abducted. Those were unjust things and I was afraid that the same kind of injustice could happen to me as well.

Selim Krasniqi: I still would like to ask the witness why he was afraid to come and talk to me given the contribution that your family has paid, given that we were defending our people. This is why we wore uniforms and carried weapons. So, I think we had common interests. We were fighting against the same enemy and when I think it would be a very good thing to talk about these things, be it during or after the war, given he knew his father was abducted, why was he afraid to come and see me the first time?

Witness: I think I covered the after-the-war issue as well. At present, today is after the war. Just tell me where my father is. I have asked questions during the war and I was told nothing about Avdi Berisha's whereabouts. It's not only conversation between me and Mr. Krasniqi. All of us here are asking questions about the same purpose. So where is my father?

Selim Krasniqi: I have one last question for the witness. Would the witness know anything about the contribution my family and I paid to the KLA and the war?

Witness: I don't understand the question.

Presiding Judge: Would you know about the contribution Selim Krasniqi and his family paid during the war?

Witness: In general yes, but not in detail.

Selim Krasniqi: What would you say about the contribution? Is it positive or negative?

Witness: In my opinion, all contributions are positive ones.

Selim Krasniqi: Would the members of the family of the witness recognize the kidnapers of his father?

Witness: I could say if assistance is provided, the answer could be yes. We may recognize one probably, but not all. I'm not accusing Selim Krasniqi of coming to my house and abducting my father. What I'm saying is that given the position of Mr. Krasniqi at that time, he could have helped me to find my father. Had Mr. Krasniqi asked the question he asked me now during the war, I would have had another answer. Mr. Krasniqi never asked that question of me during that time. I remember him saying, "You have to leave now. Come by at the end of the week."

Selim Krasniqi: Given that the witness was not in Kosovo at the time, of course his family members could ask a meeting with me to talk some place, and I'm still asking if someone from his family came to me or talk to me regarding his father before the witness was to come to Kosovo from Switzerland?

Witness: No one has ever asked that.

Selim Krasniqi: I had a position at the time. Why didn't they come?

Witness: Your position was indicated to me by Bedri Zyberaj.

Selim Krasniqi: Did someone else apart from Bedri Zyberaj indicate my position to you?

Witness: No.

Selim Krasniqi: I would like to tell the Court that I don't know the witness. I have never known him and I have never known his father. And if the Court would like justice to be done, the Court would establish, given the facts that at that time, I wasn't even present in Kosovo, let alone Drenovc. That is the truth because KLA was not engaged only in Drenovc. KLA was operating throughout Kosovo and the main goal of KLA was deliverance of Kosovo from the Serb occupiers and it wasn't in the interest of KLA to deal with Avdi Berisha. Moreover, the witness stated that his family gave contribution to KLA. So, who would harm a person providing assistance to them? Given the circumstances, why would KLA be against people that would support them? I know that someone may be interested to keep us locked in a cell.

These are only fabrications to the interest of the abovementioned purpose. That would be all, Your Honor. Thank you.

Presiding Judge: Thank you. Any questions from the Defendants?

No questions from the other Defendants.

Presiding Judge: When you were questioned by the Public Prosecutor, you said you arrived in Brestovc at end of July or beginning of August. What year was that?

Witness: 1998.

Presiding Judge: You also said that when Isuf Berisha was talking to you, and Selim Krasniqi arrived, Isuf Berisha moved away. When he moved away, he said “I don’t dare speak anymore.”

Witness: Yes.

Presiding Judge: Do you know why he said those words?

Witness: I don't know. He was telling me that Avdi Berisha was in prison.

Presiding Judge: How did you learn the name of Selim Krasniqi?

Witness: Through Bedri Zyberaj.

Presiding Judge: When you saw him, did you recognize him or did someone give you the name?

Witness: Isuf Berisha.

Presiding Judge: You stated that your brother, Selim Berisha had been a soldier with UCK.

Witness: Yes.

Presiding Judge: Has he ever had any problems with the UCK?

Witness: Yes.

Presiding Judge: Can you tell us details, if you recall?

Witness: He was on his way to Ratkovc to see some people over there, and they kept him for seven days there.

Presiding Judge: Who were “they”?

Witness: The Headquarters of Ratkovc.

Presiding Judge: Which HQ? What was happening at that HQ?

Witness: The KLA Headquarters of Ratkovic.

Presiding Judge: Do you know why they kept him there?

Witness: They had a letter and they told us “You are a family of collaborators. You collaborated with the Serbs. That’s why they kept him there.”

Presiding Judge: Has your family ever bought land from the Serbs?

Witness: Yes. We have bought 2 hectares. Not only us, but the whole village bought land from the Serbs.

Presiding Judge: When your brother was taken in, did you learn about what he was questioned?

Witness: Questions like “Where are you going? What are you doing?” And then they released him.

Presiding Judge: Have you heard about information on the list of people in Brestovc that had to be arrested in 1998?

Witness: Yes.

Presiding Judge: Can you tell us more about this?

Witness: I don't know details. I've never seen the list.

Presiding Judge: Do you remember giving a statement to the police on 1 March 2000 and towards the end of the statement, you said the following: “Selim had been arrested in July 1998 by the KLA and held for 3 days. He told me he was questioned about weapons. He was also asked why our family had bought land from Serbs and what contact we had with Serbs.” Do you remember having said that to the police?

Witness: Yes.

Presiding Judge: You stand by what you said?

Witness: Yes.

Presiding Judge: What kind of rumors and slanders were they saying regarding why Avdi Berisha was kidnapped?

Witness: As you previously quoted my statement to the police, questions were posed to my brother by the KLA like “Why did you buy land from the Serbs?” Regarding this issue, it was quite normal for people to buy land from the Serbs at the time.

Presiding Judge: Do you want to add anything on this?

Witness: In villages, people quite often get very jealous of each other.

Presiding Judge: What were they saying about your father? What were the specific nature of these rumors and slanders?

Witness: Collaborators of Serbs.

International Judge, Leonard Assira: I want to clarify one point, Mr. Berisha. When you went checking for your father, and you happened to be talking to Bedri Zyberaj and Selim Krasniqi, did you tell them that you were then a KLA member?

Witness: No.

International Judge, Leonard Assira: That's all.

Presiding Judge: Why didn't you tell them that?

Witness: I had no reasons to do that. Is it only KLA members who went to prison?

Defence Counsel, Mahmut Halimi: One short question: Your late brother, Selim, where was your brother serving with the KLA at the time your father disappeared?

Witness: In the village of Brestovc.

Presiding Judge: Thank you, Mr. Berisha. You are free to leave now.

Witness: My apologies if I exaggerated a little, but you have to understand my situation. I'm not here to send people to prison. I'm here to find out where my father is.

Presiding Judge: Tomorrow we have the head of OMPF, Mr. Jose Pablo Baraybar.

The court adjourns at 3:45 p.m.

Presiding Judge, Vinod Boolell

Court Recorder, Robina Struthers

Court Recorder, Gwen Cheong