



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:	25 May 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:	Paul Flynn, International Public Prosecutor
CD Legal Officer	Andrey Antonov
Defence Counsel:	Mahmut Halimi, Rexhep Hasani, Fatmir Celina, Ethem Rogova, Mexhid Sylja and Fazli Balaj
Accused:	Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf (Sherifi) Gashi, Islam Gashi and Agron Krasniqi
Witness:	Nezim Rrustemi and Anonymous Witness "A"
Court Recorders:	Robina Struthers and Gwen Cheong
Interpreters:	Mal Berisha and Algent Mezini
IJSD Legal Officer:	Virginie Monchy
Humanitarian Law Centre Monitor :	Anka Kurteshi Hajdari
OSCE Monitor :	Lumnije Shkodra

The accused are charged with war crimes.

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 Islam Gashi and Agron Krasniqi; Paul Flynn, International Public Prosecutor; Defence Counsels Mahmut Halimi, Rexhep Hasani, Fatmir Celina, Ethem Rogova, Mexhid Sylja and Fazli Balaj.

Presiding Judge: good morning. We are resuming proceedings in the case of the Public Prosecutor against Selim Krasniqi and others. I understand Mr. Prosecutor that you have witnesses today?

International Prosecutor: We have two, one open and one anonymous. We shall start with the open witness. The first witness is Nezim Rustemi who is recalled largely for Mr. Fazli Balaj's benefit.

Presiding Judge: good morning. Thank you for attending to give evidence. Before proceeding I will remind you what I told you on 15 December 2005. As a witness, it is your duty to speak the truth and you may not withhold anything. You are warned that false testimony constitutes a criminal offence. You may not answer individual questions by which you would be likely to expose yourself or a close relative to a serious disgrace, considerable material damage or criminal prosecution. We took your personal data last time. And as an injured party as I informed you last time since you are an injured party in the case, you have the right to file a property claim, pursuant to Article 355 of the PCPCK and if at any time the Public Prosecutor withdraws the indictment you have eight days from the date of the decision to file a petition signifying your intention to proceed with a claim.

Public Prosecutor: good morning, thank you for coming again. You gave a statement to the Investigating Judge on 4 June 2004 and to this Trial Panel on 15 December 2005, do you remember that?

Witness: yes

Public Prosecutor: on both those occasions is what you told the Investigating Judge and to this Trial Panel accurate and correct?

Witness: yes

Public Prosecutor: do you want to make any alterations or additions?

Witness: no

Public Prosecutor: for my benefit and to clarify I have some questions. In the statement to the Investigating Judge and more lately in the statement to the Trial Panel you gave an account of being present in your village on 10 June 1998 and witnessing the detention of your relative Murat Rustemi, is this correct?

Witness: yes

Public Prosecutor: can you tell us once more for the record if you recognized the individuals involved in the abduction of your relative?

Witness: yes

Public Prosecutor: can you give us their full names if you know them?

Witness: I know these two persons in fact there were three persons involved, I managed to identify two of them and I did not the third.

Public Prosecutor: can you give us the names of the two you identified?

Witness: I recognized Agron Krasniqi and Azim Bajraktari.

Public Prosecutor: can you tell us exactly where you were when you saw these two men?

Witness: at my house

Public Prosecutor: what were you doing at that time?

Witness: I was staying at my home.

Public Prosecutor: did you observe these men from inside your house or were you outside?

Witness: I saw them from the window, I was inside.

Public Prosecutor: did they arrive on foot or in vehicles?

Witness: by vehicle.

Public Prosecutor: where exactly did they drive their vehicle? Where did they park their vehicle?

Witness: by the front entrance

Public Prosecutor: of what?

Witness: by front entrance of my brother's house, by the yard.

Public Prosecutor: and your brother's name?

Witness: Murat Rustemi.

Public Prosecutor: did you actually see them arrive, or did you hear them arrive?

Witness: I heard the car driving and then I saw them.

Public Prosecutor: did you see them get out of the car?

Witness: yes

Public Prosecutor: can you remember who was driving the car and who got out of the car first?

Witness: I don't remember who went out of the car first but they left the car for sure. I don't remember who was driving.

Public Prosecutor: you have said the name Agron Krasniqi did you know this person at that time, and if so can you tell us how you knew him?

Witness: I knew him because Agron Krasniqi is my cousin.

Public Prosecutor: had you previous communications with him? Socialized with him, or talked to him before this date?

Witness: no

Public Prosecutor: where had you seen him before?

Witness: I had seen Agron Krasniqi during the war I remember seeing him just once. And then this time when he came into my yard was the second time I saw him.

Public Prosecutor: how did you come to know this man was called Agron Krasniqi?

Witness: because I knew Agron Krasniqi. I know his father, his brothers and generally, his family, uncles included, I know them, and he knows me too.

Public Prosecutor: you told the Trial Panel that Murat Rustemi was taken to Drenovc and you subsequently went there where you inquired about him?

Witness: Murat Rustemi was taken at his house and sent to the local village office there.

Public Prosecutor: did you go to Drenovc afterwards to ask about him?

Witness: I am from Drenovc so I didn't have to go there.

Public Prosecutor: did you make inquiries in Drenovc about him?

Witness: yes

Public Prosecutor: did you see Agron Krasniqi again after this time when you first saw him detaining and abducting Murat Rustemi?

Witness: no

Public Prosecutor: can you described this man Agron Krasniqi and tell us how he looked on the day that you saw him?

Witness: on that day he was uniformed.

Public Prosecutor: can you talk about his height, age, and weight?

Witness: he is a little dark; I believe he is 27 or 28 years old.

Public Prosecutor: was he wearing anything on his head, or anything covering his face when he came into the yard?

Witness: no. He was in uniform. But I can't recall if he wore a hat or not.

Public Prosecutor: can you estimate the distance from where you saw him? Can you tell me for instance if it was twice the distance of where the judges are sitting now?

Witness: I believe the distance was around 30 meters. That's approximately the distance between my house and my brother's.

Public Prosecutor: was there anything obscuring your view.

Witness: there is nothing in between. It is open space

Public Prosecutor: are you certain that this person you saw was Agron Krasniqi?

Witness: yes I am sure. It was Agron Krasniqi. I know him.

Public Prosecutor: can you tell us did you or your family or your brother or his family at the time have any personal difficulties or rows or feuds with Agron Krasniqi or any members of his family?

Witness: no we were on very good terms, never had a problem with him or them. We had a normal relationship with Agron Krasniqi and his father, Shaban and brother Muhammad.

Public Prosecutor: did you know at the time Murat Rustemi was taken if he was having any difficulties within his own family that would prevent him from returning?

Witness: no, no problems.

Public Prosecutor: at this time did you know if Murat Rustemi had any enemies?

Witness: I don't know that.

Public Prosecutor: if Murat Rustemi had been released by those persons who took him do you know of any reason why Murat Rustemi would not have come back to his family.

Witness: no I am not aware of any such problem within his family.

Public Prosecutor: you told the Trial Panel that you had met Islam Gashi when you met to make inquiries about Murat Rustemi, can you remember exactly when that was? How many days after Murat Rustemi was taken?

Witness: yes I remember. I am not sure about the date but I am sure it was a few days after. Not just me but also my family was interested to know about his fate. But it is true that I have met Islam Gashi.

Public Prosecutor: you also told the Trial Panel that you had learned that Islam Gashi had been wounded sometime beforehand.

Witness: that is true, I learned Islam Gashi was wounded and that his father had been wounded.

Public Prosecutor: when you met Islam Gashi a few days after Murat Rustemi was taken did he exhibit any signs of wounds.

Witness: no I did not see that. Islam Gashi was wearing a uniform and I did not see any wounds.

Public Prosecutor: did you see if he had difficulty in walking around?

Witness: I did not see that, he was in an open field by the local office we call it there. That's where I saw him, he was standing. I saw him other days too but I specifically remember that occasion because that where I stopped and asked him questions.

Public Prosecutor: were you working in Drenovc in May, June or July of 1998?

Witness: I was there in May, June, and July in that area. In May and June I was there all the time and like as well as the other inhabitants of the village I was in my house.

Public Prosecutor: and you are tradesman by occupation, a builder and a painter? Did you move around?

Witness: no you could not really move around it was limited; other members of our community did not get out of that specific area that easily. To us it was prohibited to leave that area or get out. If you wanted to leave and go to Rahovec or Xexre, that was prohibited.

Public Prosecutor: can you tell us who was in actual or de facto control of Drenovc at this time and who was in control of the surrounding villages?

Witness: it was under KLA control.

Public Prosecutor: did you have any Serbian police or paramilitary or military checkpoints in the area when KLA was in control?

Witness: when KLA was inside the village there were no such points.

Public Prosecutor: during May, June, July, and into September can you recall were there any attacks by Serbian forces or skirmishes with the KLA or Serb forces occurring in your area.

Witness: during the months of May and June no fighting took place, but I did not leave my village so I am not sure if skirmishes took place in other villages.

Public Prosecutor: do you know how Islam Gashi was wounded?

Witness: I heard but I don't know. I heard he was wounded and this is a story I heard from a KLA member. I heard that this person and that person got wounded and some others were also killed that's what I heard. I did not get out of my village to see anything myself.

Public Prosecutor: who was supposed to have killed or wounded?

Witness: the Serbian army.

Public Prosecutor: you said you were prohibited to go to Rahovec can you tell us what you mean by this, who prohibited you?

Witness: the army.

Public Prosecutor: and when you say army, which army do you mean?

Witness: the KLA, yes because if you wanted to get out there and go in that direction you could have gotten killed.

Public Prosecutor: when you said you would have been killed, who would have killed you?

Witness: if you wanted to get out and go to Rahovec or take some other direction towards Xerxe you could have fallen victim because there was Serb police and army there so you were not safe to go in that direction.

Public Prosecutor: do you know of anybody who fell victim to the Serbian police or army in the manner you have described?

Witness: an Albanian or KLA fighter?

Public Prosecutor: either

Witness: I have not heard about civilians but about fighters, perhaps someone was victimized but now I cannot really remember. The uncle's son of Islam Gashi was killed, he was a KLA fighter

Public Prosecutor: do you know of any villages in the Drenovc area that were attacked during the war?

Witness: I believe all the villages were attacked that's why I said I was not often out of my village to see anything more concurrently.

Public Prosecutor: did this take place in 1998 or 1999?

Witness: when my village was shelled it was in 1998 and 1999 too and then when the war started almost all the villages were shelled. This is something everybody knows that all villages were shelled and burned.

Public Prosecutor: do you know which villages around your area were shelled and burned?

Witness: I remember when our village was shelled and then when the offences started then all the villages fell under that.

Public Prosecutor: do you remember when that was?

Witness: our village was shelled, on the 19, 20 or 21 of July, I am not sure, but I remember it was July when it happened.

Public Prosecutor: 1998 or 1999?

Witness: 1998

Public Prosecutor: when you were looking for Murat Rustemi after his detention did anyone ever offer you any reason for Murat Rustemi's detention?

Witness: when I went there to meet Bedri Zyberaj I met him at the office and I told him I want to know what happened with Murat Rustemi also Murat Rustemi's son was present and Bedri Zyberaj told me himself and I don't think he can deny this, he said "listen in 1992 and he pointed to Murat Rustemi son, Hazar, you did not let me pass through Arash meadow and I had to stop in the middle of the field with my tractor and I barely waited for this day to come and I knew this day would arrive and my aunt's son and a brother of yours, have bothered my children inside my yard. And I have talked to your brother too and have told him that those people that you think they are helping you in fact are challenging you" and then I said "listen Bedri Zyberaj, this is war, your son and my son hopefully will be safe and they have to live with each other" because me and Bedri Zyberaj are of the same age and I said these words to him in that office.

Rexhep Hasani, Defence Counsel: I believe this Witness was questioned on Bedri Zyberaj and we called him today to hear him explain to us about Agron Krasniqi and I believe that double questioning is not necessary at this stage. And I would ask the Public Prosecutor to limit his questions to what he was called to testify about.

Public Prosecutor: it was not my intention to go over previous testimony.

Presiding Judge: in fact what Rexhep Hasani, Defence Counsel says is true everything that the witness says has already been said is on page 8 of the previous minutes.

Public Prosecutor: I thought the Witness might have said that Agron Krasniqi said that.

Presiding Judge: but it was not put in that way.

The minutes of 4 June 2004 are shown to the witness to verify his signature.

Public Prosecutor: would Defence Counsel have any objection to the entering of the witness' previous testimony at the investigative hearing? This would save time. I think everyone is in agreement to not formally put the minutes in once the witness comes to give evidence at trial.

Mexhid Sylja, Defence Counsel: we know he signed it and that's his signature.

Public Prosecutor: I have no further questions.

Presiding Judge: Fazli Balaj, Defence Counsel?

Fazli Balaj, Defence Counsel: I want to remind the witness what he has said he has said that "I do not want anybody to be punished" in the main trial. I want to ask him do you still abide by what you declared in that session.

Public Prosecutor: with respect is it not for the Trial Panel to decide that?

Presiding Judge: do you stand by that statement?

Witness: I have said on that day that I have done nothing to my people or to KLA and I have said I have nothing against the so-called Selim Krasniqi group even though I have never seen Selim Krasniqi. Also concerning Isuf Gashi, Islam Gashi or Xhavit Elshani, Agron Krasniqi I have said that I looked for my brother and I still look for my brother. And whoever committed I am not accusing anyone but I know that day Agron Krasniqi was in my yard, I recall the words that Bedri Zyberaj said to me and I know that Agron Krasniqi was under Bedri Zyberaj's command. All I want is my brother but I don't want to accuse anybody.

Fazli Balaj, Defence Counsel: no questions.

Presiding Judge: any questions Agron Krasniqi?

Agron Krasniqi: I have a comment. None of the things that the witness said up to this moment are true. Probably he was born to accuse people for no reason, nothing links with me or Bedri Zyberaj or the fact that he was a commander. I was a normal student like everyone else. I fulfilled my obligation like everybody else during the war in Kosovo. And now perhaps it's up to you to ask the Witness why he is accusing me or who is pushing him to accuse me or say these things.

Witness: Mr. Agron Krasniqi no one forced me to say these things; I can say that you were in my yard. No one forced me to say these things. It's true that Agron Krasniqi was in my yard but he forced me it's my brother in question and it's my right to look for him. Perhaps Agron Krasniqi can tell us under whose command or orders he was

acting. Every Albanian citizen or fighter its true was under certain obligations of KLA and it's true that Agron Krasniqi was in the yard. Now where did he bring him or where did he leave him I don't know but I know that he was there. I mean my brother. From the office he was brought to the old school and from there what happened or where did they bring him I don't know

Mexhid Sylja, Defence Counsel: as to Public Prosecutor's question when you met Islam Gashi did you notice any problem in his walking? The witness said I could not possibly know that because he was standing. Is this true?

Witness: yes it's true. I did not see Islam Gashi with bandages or with a cane or something so I can't say that.

No further questions from the Prosecutor, Defence Attorneys or the Defendants.

Presiding Judge to the witness you are free to leave.

Court recesses at 11:30 a.m. and resumes at 1:15 p.m.
Court Recorder: Gwen Cheong

Presiding Judge: We resume the proceedings now with Witness "A" and he will testify under anonymity. Witness "A", I'm addressing myself to you now. Since you are a witness in the case, I must warn you that it is your duty to speak the truth and that you should not withhold anything. You are warned that false testimony constitutes a criminal offence. You need not answer individual questions by which you would be likely to expose yourself or a close relative to a serious disgrace, considerable material damage or criminal prosecution. Is that clear to you?

Witness "A": Yes.

Presiding Judge: Your personal data has been taken and sealed in an envelope. Since you are an injured party in the case, I have to inform you that you have the right to file a property claim, pursuant to Article 355 of the PCPCK and if at any time the Public Prosecutor withdraws the indictment you have eight days from the date of the decision to file a petition signifying your intention to proceed with a claim or you may enter a claim in subsequent proceedings before the appropriate court.

Since you are a Witness testifying under anonymity, please ensure that you do not say anything or mention any particular fact that may reveal your identity. If you have any doubt on the answer you have to give because of the fear of revealing your identity, let us know and we will guide you but without coaching you.

The Public Prosecutor has the floor.

Public Prosecutor: Good afternoon, Witness "A". Can you tell us if you appeared before the Investigating Judge on 26 February 2004 and 3 March 2004 and gave statements to the Judge concerning the disappearance of Bedri Berisha or what you knew about it and an incident that occurred to you?

Witness "A": Yes.

Public Prosecutor: Was what you told the Investigating Judge on that occasion true and correct?

Mahmut Halimi, Defence Counsel: Your Honor, before we start questioning the Witness, my colleagues and I agree that the statement given on 26 April 2004 must be separated from the case file as unacceptable evidence because the Witness was not informed of the legal instruction that was supposed to be read to the Witness before giving his statement. The second reason is because the Witness who at the time was questioned by the Investigating Judge answered questions that were of a leading nature. The Witness' answers were foreseen and they were arranged before the answers were given.

Presiding Judge: Mr. Halimi, do you mean he was not given the warning as a witness?

Mahmut Halimi, Defence Counsel: Yes.

Public Prosecutor: I propose that we deal with the question of the admissibility of the investigative minutes after the interview. In the meantime, there is nothing of course to prevent me from using it as a basis to formulate questions. The Witness is here again to give testimony and let's hear him and deal with the investigation minutes later.

Mahmut Halimi, Defence Counsel: Your Honor, I still have a different opinion. This Panel first must decide on the admissibility of this piece of evidence or statement and then if the Panel decides that this statement is inadmissible, then it has to be separated from the case file documents and the Prosecutor and Defence cannot proceed with legal action. First, we will see a decision from the Panel on this issue and then continue with the rest.

Public Prosecutor: I have no difficulty with that, if that helps, Your Honor. Perhaps I could ask Mr. Halimi on behalf of the Defence Counsels, if he can point out the article in the new Code that precludes this statement without the preemptive caution.

Presiding Judge: Since the matter has been raised, we have to give a ruling. Thank you for your observation. We will decide on this proposal now.

Court recesses for the Panel to deliberate at 1:40 p.m. and resumes at 2:00 p.m.

Presiding Judge: When the Public Prosecutor started to interrogate Witness "A", an objection was taken by Mr. Halimi and the Court understood the objection to be made on behalf of Counsels and Accused, that the investigative testimony given by the Witness should be excluded in the record for two reasons. One - there was no warning given to the Witness, and secondly, the questions put by the Investigating Judge were leading. The Panel has considered that objection and after deliberation, has reached the following conclusion and gives the following ruling.

RULING: It is now disputed that the Witness was not given the warnings reflected in 164(2) of the PCPCK and which is a carry over of the old provision of the LCP.

Article 153 of the code provides that evidence that is obtained in violation of the provision of the criminal procedure shall be inadmissible when the law expressly so prescribes. The Panel has gone through the provisions in the code regarding evidence and has not found anywhere any provision that expressly excludes evidence of a witness who has not been duly warned to speak the truth. At best, the only expressed exclusion is to be found in Article 156 and no court of law that has the duty to interpret the law can read into this provision, matters that don't exist. The second reason given by Mr. Halimi is that the Investigating Judge put leading question to the Witness. Even if that were to be the case, the witness will be giving evidence and that evidence would have to be analyzed according to the existing rules concerning the credibility of witnesses irrespective of the form or nature of the questions put to him by the Investigating Judge.

Can we proceed now?

Public Prosecutor: Thank you, Your Honor. Witness "A", we asked you about the statements given to the Investigating Judge. My question is, was the statement given to the Investigating Judge, accurate, truthful and correct?

Witness "A": Completely correct.

Public Prosecutor: Can you tell this Trial Panel what you know if anything, about the disappearance of Bedri Berisha and what you did if anything, to try and locate him and what happened when you made those efforts? If you can tell us in a story format, we may then have some questions.

Witness "A": Bedri Berisha was taken in Ratkovc village on 3 June. He was together with his mother. He was taken in Ratkovc and was brought to Drenovc. The next day, neighbors told us that Bedri was missing. So I got on the tractor and went to Drenovc. When I went to Drenovc, three soldiers and two policemen stopped me. Then they put me inside. They asked, "What are you doing here?" I told them "I'm looking for Bedri, my neighbor." They said, "Bedri is not here." Then they took me and put me inside that place where they were keeping and beating people. I stayed there three days and on the second day, they came and took me out for a walk in a mountainous area. When I had walked about 100 meters, they took out some prisoners from some sort of basement and Bedri was together with two other people taken out. Bedri approached me and he asked me "What are you doing here?" I said, "I don't know but what are you doing here?" They led us up in a mountain like 1000 meters away from the prison. There I saw some holes with water inside. Those policemen told us "Now wash your face" because we had blood on our faces. Only one person who was from Prizren washed his face but Bedri said, "No, I don't want to wash my face."

When we came back to that place, they separated them and put them in the prison. That sort of prison was like 100 meters long and they were kept there at the very end of the prison that looked like a stable for animals. They put them there in the stable and they took me back to the place where the police and army were staying together. When I went there, I saw three people who looked like soldiers who stood up and one of them was Islam who was holding a police baton in his hand. The policemen at that time were Isuf Berisha from Drenovc and Zaim Bajraktari from Poluzhe village.

Then the soldiers came and they started beating me. The floor of that place was covered with my blood. Then after three nights when they saw that I came to my senses again, they released me. So I returned home but I'm not sure if this was on the third or fourth day. Then Witness "B" came and said "Please go to Radoste and find out what happened to Bedri."

When I went to Radoste - I must say I went there on God's behalf, I was stopped by three to four soldiers there. When these three soldiers came, they asked me "What are you looking for?" I said, "I was looking for some consolation." They said, "You are looking for Witness "A" but in fact it's you who should be kept here." There were three there, but one of them said, "To tell you the truth, I cannot bring this guy to Drenovc." These two others took me and brought me straight to Drenovc. As far as I remember, one of them told me "I am Halil Qadraku." When they brought me to Drenovc and those three soldiers saw me again there, they almost lost their minds. So they kept me there for three days and they were beating me and I just saw my blood all over, even on the ceiling. Islam was beating me the most with his baton, on both sides of my head and on my ears and since that time, I don't feel very well.

On the fourth day, they released me and I walked for five hours home to my village in Brestovc. Then that neighbor - Witness "B" came and told me to take Witness "B" to see Bedri in Drenovc. I know that Bedri's mother has gone thirty to forty times to Drenovc on her bare feet. She wanted to at least see Bedri or see Bedri released. She saw Bedri once in the end. After three weeks, the mother saw Bedri for the first time, only once. This is all I have.

Public Prosecutor: Witness "A", when you told us that Bedri was taken in Ratkovc on June 3, do you know who took him or were you told by anybody who took him?

Witness "A": No. I myself don't know but I know that he was with his mother in Ratkovc and they came there and took him from there. His mother should know.

Public Prosecutor: On the following day when you got on your tractor to go to Drenovc, can you tell us where in Drenovc you were going and who you were going to see?

To a query by Mr. Sylva whether the word tractor was used by the Witness, the Panel and the Public Prosecutor confirmed this.

Public Prosecutor: Witness "A", I was asking you when you got on the tractor and went to Drenovc on the following day, to where were you going and to whom were you going to see?

Witness "A": I went to see Bedri.

Public Prosecutor: Can you tell us where Bedri was being kept?

Witness "A": In Drenovc.

Public Prosecutor: Where in Drenovc?

Witness "A": In that stable that I mentioned in the middle of Drenovc, in that prison near the school building.

Public Prosecutor: Who was occupying this property at the time?

Witness "A": The KLA.

Public Prosecutor: In Drenovc, you were stopped by three soldiers and two policemen. Can you tell us which army the soldiers were from and which police force the policemen were from?

Witness "A": The soldiers were in a sort of black uniform - black trousers and sort of green jackets like the army was wearing.

Public Prosecutor: Which army did they represent? Were they the Serb army, the German army?

Witness "A": It was the Albanian army.

Public Prosecutor: Were the policemen you saw Serb policemen?

Witness "A": Albanians.

Public Prosecutor: You told us that they put you inside. Can you tell us what you mean by "They put you inside?" Where exactly were you taken?

Witness "A": This was a small house, a small place, like a sort of a local council and that's the place where the army was staying. Before, it was a sort of a maternity ward for new born babies there.

Public Prosecutor: You told us you were kept there for three days. Can you tell us where in these premises you were kept?

Witness "A": As far as I remember, that place had three rooms and one corridor. The army was in one of the rooms and the police in the corridor while I was in one of the two remaining rooms.

Public Prosecutor: Can you describe the room where you were staying? Was it inside the building, completely with no windows? How big was it and what was in this room?

Witness "A": This room was 3x3 meters. The room where I was faced the mountain and the room where the army was faced the village.

Public Prosecutor: Did the room have any furniture in it?

Witness "A": There was nothing at all in that room with exception of drawers, which they usually keep books in there.

Public Prosecutor: Was there anybody else in the room with you during the time you were kept there?

Witness "A": During the first three days of my stay there, there was nobody else there except me. Then when they sent me there for a second time, I saw a guy there named Hidaj Popaj from Bella Cerke village who was covered in blood.

Public Prosecutor: Talking about the first time you went there, on the second day you were taken for a walk and you met Bedri and two other people. Can you tell us if you know who the other two people were?

Witness "A": Yes. This happened during my first stay there. On the second day of my first stay there, they took me out and I saw Bedri.

Public Prosecutor: And you told us you saw two other people. Did you recognize the two other people?

Witness "A": When they took me for that walk, as I said I saw Bedri with two other people. One of them was from Prizren and his name was Shaban Shala. I don't remember the second person.

Mahmut Halimi, Defence Counsel: A little earlier, the Witness said "When they took me out, I saw Bedri and one guy from Prizren." He did not say there were two persons, but one person with Bedri.

Presiding Judge: In the record was two and not one.

Public Prosecutor: You don't know the other one because it was so long since the incident occurred, or you didn't know his name at the time?

Witness "A": I saw him there for the first time and I took the names of both of them. One of them was Shaban and the other was Hysen from Dejne.

Public Prosecutor: When you saw them, can you tell us how they looked? What was their condition?

Witness "A": This guy from the town - Shaban Shala was short. And this other one, Hysen was a tall man.

Public Prosecutor: At the time you saw them, did they appear to you to be normal or did you see anything wrong with them?

Witness "A": I saw that this guy Bedri had his right cheek hugely swollen, like he was carrying two kilograms of material there.

Public Prosecutor: What about the other two men? Did they exhibit any abnormal symptoms?

Witness "A": Those other two - Shaban and Hysen were all in blood, but let's leave this now.

Public Prosecutor: You told us about being brought back afterwards to this place where you were being kept in a room, and on returning, you saw three people who looked like soldiers, and you mentioned the name "Islam" who was holding a baton. Can you give us a surname if you know it, of this person named Islam?

Witness "A": Yes. His full name was Islam Isufi.

Public Prosecutor: Did you know him at the time? Had you met him before?

Witness "A": No, I did not know him from before but I was in great pain and when I asked some others from Drenovc, they told me his name was Islam.

Public Prosecutor: Can you give us a description of this man, if you can remember?

Witness "A": This guy was slim. The other two soldiers were more corpulent, but this one was slim.

Public Prosecutor: Was he tall or short, young or old?

Witness "A": He was young and short. He was not a tall guy.

Public Prosecutor: Do you know who his father was? His family name?

Witness "A": Islam's father is Isuf. His full name is Isuf Sherifi.

Fazli Balaj, Defence Counsel: Your Honor, the question is being repeated.

Presiding Judge: This is a different question. It's about the father.

Public Prosecutor: When I asked for his name before. He told me Islam Isufi but from my limited knowledge of Albanian, Isufi is the father's first name and now the Witness tells us that his father is Isuf Sherifi.

Presiding Judge: As far as the Panel is concerned, we have the information about the family name and not about Islam. We will go on now.

Public Prosecutor: These two other soldiers who were with Islam, are you able to give us any name for them?

Witness "A": To tell you the truth, I learned their names too. One of them was from Dragobil village and his nickname was "Rrezik" which means "danger" in Albanian. But this was not his real name. He had some other name. The second one was nicknamed "Celiku" but his real name was Selim. I'm not completely sure, but I think his full name was Selim Krasniqi.

Public Prosecutor: Can you tell us how you know both his nickname and his full name as Selim Krasniqi?

Witness "A": I believe that was his full name because this was the person who dragged me very forcibly by my nose and I think this person was Selim Krasniqi.

Public Prosecutor: Witness "A", this man who got you by the nose and who you described as Selim Krasniqi, when and where did you learn his name?

Witness "A": I came to learn it because I looked all around Drenovc area for that name.

Public Prosecutor: Can you tell us the circumstances as to how you came to know this man as Selim Krasniqi, from whom and where and when did you learn his name?

Witness "A": I have looked for that name as I have said, all around Drenovc and people told me.

Public Prosecutor: So referring back to this first time when you were brought back to the room, you told us that these soldiers came and started beating you and the floor was covered with blood. Can you tell us which of the soldiers beat you?

Witness "A": All these three people beat me - Rreziku, Celiku or otherwise Selim and Islam.

Public Prosecutor: Can you tell us with what they beat you and where did they beat you - what part of your body?

Witness "A": From my waist and up. I don't even remember. And they beat a part of my body with a baton that had some iron part on it and they also kicked me all over my body.

Public Prosecutor: You told us that the floor was covered with blood. Can you tell us what part of your body the blood came?

Witness "A": The blood was coming from my nose and from my head.

Public Prosecutor: For how long did they beat you?

Witness "A": Some thirty minutes.

Public Prosecutor: Did they tell you why they were beating you?

Witness "A": I don't even know why myself. Perhaps you could ask them why they beat me, as I myself have no idea.

Public Prosecutor: During these first three days you were held there, did you receive any food or water?

Witness "A": Yes. A policeman named Isuf Berisha was the one who would bring me bread and water there. He was looking after me. Later on, I learned he was killed by Serbs.

Public Prosecutor: Were you given the opportunity to go to the toilet and if so, where did you go?

Witness "A": Yes. The toilet was inside there but they would not allow us to go out; just inside.

Public Prosecutor: When you say "inside", did you mean inside the room or the building?

Witness "A": The toilet was not in the room but in the corridor. This was not a toilet where you could go to wash yourself; just for your personal needs.

Public Prosecutor: Were you allowed to wash during those three days with soap or water?

Witness "A": No, not at all. There was no water there. The only water I was getting was what the policeman got for me. Otherwise, there was no water inside.

Public Prosecutor: Were you allowed any visits from anybody during those three days?

Witness "A": No.

Public Prosecutor: Did anybody make any allegations to you during those three days to explain why you were being kept there?

Witness "A": Only God might have an answer because I don't really know why they kept me there.

Public Prosecutor: And at the end of those three days when you were released, can you tell us who it was who released you, if you know?

Witness "A": The army.

Public Prosecutor: On the day you were released, can you tell us who came to you to tell you why you were released and what they said?

Witness "A": The policeman came and took me from the room where I was and brought me to the room where the army was and then they told me I was released.

Public Prosecutor: Before you were released, did you meet any of the three men who had beaten you and if so, did they say anything to you?

Mr. Halimi said the question is leading. The Trial Panel decided it was not leading as it does not suggest any answer that leads to fact that have been canvassed before and which are on record.

Public Prosecutor: When you were released and before you left the detention center, did you see or speak to any of the three men who had beaten you?

Witness "A": Yes, those three who beat me released me in the end.

Session recesses at 3:40 p.m. and resumes at 4:00 p.m.
Court Recorder: Robina Struthers

Mahmut Halimi, Defence Counsel: Your Honor, please if we could write down that the last answer of the witness came as a result of the leading question that the Public Prosecutor made.

Presiding Judge: this is not the way. You objected because it was leading, we ruled that it was not leading. Then we gave the answer. We gave a ruling. We do not accept that it was leading. Your objection to the leading aspect of the question was put down.

Mahmut Halimi, Defence Counsel: I heard the witness answer and you allowed the question despite the leading nature of the Public Prosecutor's question, but my right is that you record my objection.

Presiding Judge: Your objection was recorded and a ruling was given.

Public Prosecutor: Witness "A", I want to turn now to the second incident that you described in which you told us that when you went to Radoste you were stopped by 3 or 4 solders and taken to Drenovc just so we can be clear can you tell us from which army the solders who stopped you came from?

Witness "A": those who stopped me in Radoste were KLA and I knew Halil Cadraku only one of them.

Public Prosecutor: and you told us about being brought back to Drenovc where you saw those three soldiers again. Which three soldiers are you speaking about?

Witness "A": those were the same there during the first time.

Public Prosecutor: can you give us their names if you can please?

Witness "A": I don't know which soldiers you mean, the names of the soldiers?

Public Prosecutor: yes, it may sound repetitive, can you tell us who you mean by the same three soldiers again, give us their names so we can be clear about who you are talking about?

Witness "A": yes, first one is Islam second one, Celik or Selim as you want. And the third one was Razik from Dragobil who was killed by Serbs.

Public Prosecutor: where did you stay when you went back the second time, did you stay in the room where you were the first time or were you put somewhere different?

Witness "A": same room where I was the first time.

Public Prosecutor: and you told about being beaten on this second occasion, and you said that Islam was beating you with his baton; did either of the other men beat you on this occasion?

Witness "A": all three of them jumped on me just like a predatory bird on its victim.

Public Prosecutor: were you standing, sitting or lying down when you were beaten?

Witness "A": I was lying down and even when I was lying down they jumped on top of me.

Public Prosecutor: and on this occasion can you tell us what part of your body they beat? And if they drew blood?

Witness "A": the blood was coming from my nose, my mouth and my head.

Public Prosecutor: on this occasion did they give any explanation for beating you?

Witness "A": I don't know and that's why I am here today to ask why they beat me up like that.

Public Prosecutor: you told us earlier that there was another man in the room a guy called Hidaj Popaj was he in the room when you were beaten?

Witness "A": yes he was in the room too.

Public Prosecutor: can you tell us did you see anyone ill-treating Hidaj Popaj while you were there?

Witness "A": no I did not see him being beaten but I saw dry blood on his mouth and nose from the beating.

Public Prosecutor: did he tell you what he was doing there and who had beaten him?

Witness "A": I asked him "why are you here" and he said "I don't know" and then he asked me what I was doing there and I said "I don't know myself, I don't know either".

Public Prosecutor: on this second occasion when you were there, did you see any others or meet with any other prisoners apart from Hidaj Popaj?

Witness "A": no, the second time I only saw Hidaj Popaj.

Public Prosecutor: on the first occasion you told us about seeing Shaban Shala and Hysen did you ever get to see Shaban Shala or Hysen after that first day that you met them on the side of the mountain?

Witness "A": no I did not see them again because on the second occasion they did not bring me to that place, so I did not see them.

Public Prosecutor: can I read to you what you told the Investigating Judge when you appeared before him, (page 6 at the bottom of the English minutes last paragraph) you told the Investigating Judge about meeting Hidaj Popaj on the second occasion, and you told him “that you slept in the same premises as Hidaj Popaj, you then said, “the next day they brought Shaban Shala there. Shaban Shala was all covered in blood when he arrived”. And then you referred to a conversation that you had with Shaban Shala. Does this help in any way to jog your memory and can I ask you again if you met Shaban Shala on the second occasion?

Witness “A”: yes I met Shaban Shala on the second occasion.

Public Prosecutor: and was Shaban Shala all covered in blood as you described to the Investigating Judge?

Witness “A”: Shaban Shala was at the prison that was upwards there and when they brought him down I was present there.

Public Prosecutor: did you see if he had any blood on him?

Witness “A”: when they brought Shaban Shala there he was all covered in blood, you could barely see his eyes but I still recognized him. When they brought him he recognized me and I recognized him and those three soldiers there they told us that if they saw us talking to each other they would tear us up like birds. Shaban Shala was short but very strong and he showed a very high endurance even though they beat him badly and then he asked me if I was still there from the first time.

Public Prosecutor: can you tell me where did you know Shaban from and how long did you know him?

Witness “A”: I did not know him from before, I knew him from there and found out his name was Shaban.

Public Prosecutor: can you tell us how you knew Hysen? Was it from the previous encounter or incident?

Witness “A”: I came to know Hysen there too and then I asked in the village and then I asked all around Drenove about that tall good looking guy and learned that he was Hysen of Dani.

Public Prosecutor: you told us that on the 4th day you were released, can you tell us who released you and whether they said anything to you on your release? Of course we are speaking about the second time.

Witness “A”: the three persons, who apprehended me first were the same three persons who released me on the second time and they told me they did not want to see me there anymore, to get out of there and not to show up again.

Public Prosecutor: you told us that Bedri Berisha’s relation managed to see him in Drenove on one occasion as far as you knew. Do you know if Bedri Berisha’s

relation brought anything to him at the time? Or conversely, took anything from him after she had seen him?

Witness "A": yes he gave to his mother his bloody jacket and trousers. We had them hanging in our stable and then the Serbs came after that. The Serbs came and burned the house, the stable and the blouse and trousers were burned but not the blood stained jacket. We found the jacket and the police came and took it afterwards, and I believe that jacket is now with the police.

Public Prosecutor: can you describe to us what you call the jacket?

Witness "A": it was a reddish colored jacket with bloodstains on it.

Public Prosecutor: this jacket you mentioned, was Bedri Berisha wearing this jacket on the first day that you saw him on the mountain?

Witness "A": yes that was the same jacket.

Public Prosecutor: Witness "A", can you tell us, if you remember, on the day you saw Bedri Berisha on the mountainside with Shaban Shala and Hysen, can you tell us how was he dressed if you remember?

Witness "A": Bedri Berisha was wearing that jacket that had bloodstains on it and those other clothes that were burned later on.

Public Prosecutor: you told us about being beaten on two separate occasions; did any of those beatings leave marks or scars on your body?

Witness "A": I have a lot of marks on my head especially from the baton they beat me with and from the iron parts on the baton and if I go get my hair cut you will see the marks from the beating. Since that time I don't feel well and I don't see well either. I have consequences from that beating in my life.

Public Prosecutor: could you tell the Trial Panel what consequences have resulted from the beating?

Witness "A": I am not seeing or hearing very well and sometimes I lose my, equilibrium and I am falling down. Thanks to Europe that gives me 40 euros because otherwise I would have died a long time ago.

Public Prosecutor: since that day on the mountain where you saw Bedri Berisha have you ever seen Bedri Berisha again?

Witness "A": no not me, but his mother has.

Public Prosecutor: if he were released from the place where he was detained, is there any reason why Bedri Berisha would not have come home?

Witness "A": no there is no such reason for him to go home if he had been released.

Public Prosecutor: at the time he was taken what was his occupation?

Witness "A": he was a farmer and he was working for 6 years in Germany, he came back home for 2 months and during those two months he was taken.

Public Prosecutor: to your knowledge when he came back from Germany did he ever work for the Serbian regime?

Witness "A": no he did not but when he came from Germany someone stole his passport. He had a lot of money in Germany and he paid 1000 DM to get a new passport and when he got that, people started saying that he was collaborating with the Serb regime.

Public Prosecutor: I am more or less finished. However, I would like to show the witness the various photograph exhibits that we have starting with exhibit "C". However, before that I need to ask the witness when you refer to the person Selim Krasniqi or Celik I don't believe I asked you for a description of him. Can you describe this person?

Witness "A": Selim Krasniqi was a middle aged man, not fat, not slim, but more corpulent than Islam.

Public Prosecutor: can you describe his height?

Witness "A": approximately 170, 175 centimeters tall.

Public Prosecutor: perhaps we could not present Exhibit "C" with your leave Your Honour?

Presiding Judge gives the warning according to article 255 of the PCPCK to the witness.

The witness is shown the book of photographs by the legal officer.

Witness "A": I cannot really see that well and therefore I am unable to identify any of the persons shown in exhibit "C".

Public Prosecutor: if he can't see, he can't see. Mr. Witness "A", do you remember looking at a number of photographs when you appeared before the Investigating Judge?

Witness "A": yes I remember the Investigating Judge showing me photographs and I was able on that occasion to recognize some but not all of them, but since that time my sight has worsened a lot so now I can't really see that well anymore.

Public Prosecutor: and is there any reason that the identification made by you before the Investigating Judge was wrong? Was it right or wrong?

Witness "A": when I was shown those photographs in front of the Investigating Judge I was sure that I recognized those people.

Public Prosecutor: can you also remember if you were ever shown photographs by the police and if you recognized anybody in those photographs?

Witness "A" very little, I was not 100% sure when I recognized those persons that the police showed me in those photographs;

Public Prosecutor: there is one other item I would like to present to the witness; he has given evidence today with regards to the clothing given to a family member. The evidence was that some of these clothes were burnt but some of the clothes were handed over to the police. He described what clothes Bedri Berisha was wearing when he last saw him and so my application Your Honor, is to present this item of clothing that was handed to the international police and see if the witness recognizes this as the jacket that he says he saw Bedri Berisha wearing when last seen by him.

Mahmut Halimi, Defence Counsel: now your honour we see two different things, for the identification the witness was shown 33 pictures and for this jacket he will be shown only one picture and he said he can't see very well, he already mentioned that.

Public Prosecutor: I think what my colleagues on defence are suggesting is that I should be showing a number of jackets, similar to the photograph lineup. I quite understand that when it comes to identification of persons it is such a sensitive matter that you must be extra careful because the tendency of any person is to identify someone if they are told that person's name. Briefly, while we must take very extra precautions when it comes to objects the rules are more relaxed.

Rexhep Hasani, Defence Counsel: I would like to propose this to make it simpler, as there are no pictures of many jackets we as defence object to the identification of one jacket, a single jacket.

Presiding Judge: I understand this. I now ask the Public Prosecutor to take a stand on this.

Public Prosecutor: strictly speaking my colleagues on the defence are correct.

Presiding Judge: with regard to the rule of law, yes

Public Prosecutor: the difficulty is that I do not have six or seven shirts.

Presiding Judge: this is what I was saying earlier on.

Public Prosecutor: I don't wish to bring the witness back again. However, if my colleagues want to delay things that's okay. Even if I do not comply, strictly speaking to 255, I go back to 153 and because 255 does not mention anything about expressly excluding I agree there must be some flexibility there and it would be a matter of the Panel at the end of the day to decide of whether or not to allow. But there is nothing that says even if I don't keep to 255, that the evidence must be excluded. Therefore I agree there is room but even if I don't have the shirts this does not automatically rule the evidence inadmissible. If it was the lawmaker's intention that strict non-

compliance with 255 meant that the evidence would be inadmissible they would have expressly provided that. They did not.

Presiding Judge: we will leave that issue aside for the time being.

Public Prosecutor: I have more or less finished with my questions your honor.

Presiding Judge: the point is that we have not yet decided on that issue of the shirt yet but we are going to proceed so as to not waste more time.

Presiding Judge: yes, Mr. Mahmut Halimi, Defence Counsel?

Mahmut Halimi, Defence Counsel: Your Honor, I would ask you on behalf of all the colleagues to give us some 5 to 6 minutes to consult with other defence lawyers whether we can continue with the questioning of the witness today.

The Presiding Judge agrees and a short break is taken at 5:30 pm.

Court recesses at 5:30 p.m. and resumes at 5:55 p.m.

Court Recorder: Gwen Cheong

Mahmut Halimi, Defence Counsel: Your Honor, we the Defence Counsels, after deliberation and having had a conversation with our clients, request the Panel to adjourn today's session and to give us a chance to put questions to this Witness on the next scheduled date of the trial. We justify this with the fact that this is the third day we are here in this very complex trial. We need to be concentrated at this stage. My colleagues and I have prepared and have read very carefully this Witness' statement and we consider that there are big discrepancies in his statement. We thank you if you would grant our request to adjourn today's session.

Also before adjourning, on behalf of my colleagues and my client, I have a proposal concerning detention. We consider that the conditions and the reasons under which the detention was set forth, have ceased to exist. There is not a single reason to keep our clients in detention. First of all, we consider the ground of suspicion that is established by the indictment to be very vague and has become very unclear and this has put a question mark here. Of course, we don't want to prejudicate the epilogue of this case, but according to the notes we keep and the proposals by the Public Prosecutor, after this Witness only Witness "O" is left to be heard, and after that, the witnesses for the Defence who were actually heard during the investigation stage. We know and you know very well that we or our clients do not have any special motives to try to influence Defence witnesses, because they know how things stand and have testified in favor of the Defence. Most of them have established alibis for our clients. So the grounds for detention concerning influence of witnesses do not exist because all these witnesses were questioned and we have their testimonies in the main trial.

It seems to me that it has been unjustified and the Supreme Court or the Panel has failed to convince us on the extension of detention of our clients when you speak of the possibility of escape once at liberty or failing to be present when summoned to court or to fulfill obligations. Your Honor, the provisions of the law on criminal proceedings always consider the facts and the criminal aspect of the detained person.

In order to say that this ground is justified, the suspect has to be recognized as a person who has committed criminal acts before or has the possibility of changing residence with the sole purpose to escape, failure to be present in court or hindering the work of the court. We have the honor to defend such clients. I believe that you too have to show this appreciation to our clients because none of them in their entire lives have been labeled as persons who could commit criminal acts. But instead, they have made contributions in order for us to live in liberty. We consider that the justifications are not in accordance with the law's requirement; the circumstances mentioned in your decision act. Now that we are at this stage when we are almost done with all the Prosecution witnesses, we are of the opinion that there is no more ground for continuation of detention and we therefore jointly propose to you to take a decision and terminate the detention of our clients. I feel it is necessary to perhaps mention here a very small part of the justification that my honorable colleague made on behalf of the accused, Agron Krasniqi. And I want to repeat that Agron Krasniqi was in Switzerland. That is where his permanent place of residence is. He was not aware a criminal proceeding against him was conducted. And therefore, it's unfair for him to continue to stay in detention. Thank you.

As I said, the reasoning provided in your decision to extend their detention and the reasoning provided by the Supreme Court on that issue - I am fully convinced that they do not cling to the respective provisions that are justified.

Presiding Judge: Even the Supreme Court?

Rexhep Hasani, Defence Counsel: Your Honor, I believe each of the accused present here has his own specifics when it comes to the detention issue. But generally speaking, I believe there are sufficient reasons already to order termination of detention, considering judicial practices of The Hague Tribunal where there are more serious crimes including genocide.

Presiding Judge: You asked for an adjournment because it's late and you want to cross-examine the Witness on another day. And before we have resolved that issue and that Witness is also waiting, and for him, it is also late, you are discussing issues that have nothing absolutely to do with that Witness. Can you be a bit more rational? Mr. Prosecutor, there is a request by the Defence that we defer the cross-examination of the Witness, bearing in mind the Accused have been up since 5:00 a.m. I have also been informed that the SPU have worked almost 24 hours and I did not know that fact. We are being courted by circumstances beyond our control and at the same time we are going to be blamed for delaying the trial. My big problem now is what about the Witness?

Public Prosecutor: I fully understand the difficulties. The Prosecution has been confronted with immense difficulties in obtaining witnesses and we have made stringent efforts to assist the progress of this trial, protecting the rights of the accused pursuant to Article 6, paragraph 2 to ensure there is no delay. This Witness has come for two days and I'm reluctant to have him come a third day. However, having said that, I'm in the hands of the Panel on this issue. I appreciate the Panel and the Defence have spent long hours on this.

Presiding Judge: The record will show the Witness was here and the Defence asked for an adjournment. We shall ask the Witness if he will come again next week. We know the difficulties in getting witnesses to this trial because many of the witnesses have expressed fear and have had to be compelled and be taken to court and all this involves a lot of logistics and preparation by the Public Prosecutor, by my legal officer and by myself. This is the second time the Witness has come. We will try and if the Witness cannot attend, I hope you will not blame the Public Prosecutor or the Court. The law of Kosovo does not allow any court to arrest a Witness to bring him to court. All the law allows is to compel and compel does not mean arrest. Having said this, apart from Witness "A", there is only one more witness for the Prosecution.

Mr. Prosecutor, can you try to talk to the Witness?

The Public Prosecutor leaves the courtroom and returns after discussing with Witness "A" about the possibility of returning on another date to continue his testimony.

Public Prosecutor: Your Honors, I have spoken at length to the Witness and he is extremely reluctant to come again, not because he does not respect the Court but he is extremely concerned for his safety and his family's and the fact that he has come here two days. While I appreciate the difficulties the Defence find themselves in, I believe the interest of the witnesses and the defence has to be balanced. And for that reason, I would be hoping that Defence might reconsider and might proceed. I'm sorry for the lateness of the hour. This Witness has been testifying for most of the day. We don't have court session tomorrow and given the fact that the Witness is reluctant, I don't want to see us wasting any more time now. That being said, I'm in the hands of the Court. You can see if the Witness will come next week but in the frame of mind that he is in, I doubt that this would happen.

Presiding Judge: We have taken all the circumstances into consideration. We totally agree with the accused that we have had a long day and we totally agree that we have all been working hard for three days and we three still have a trial tomorrow in Pristina. We have considered the stand of the Witness who expresses concern for his or her safety. So there comes a time when faced with different sets of inconveniences, we have to strike a balance. Very often, life is a question of competing interests and this is even more true in judicial proceedings when the balance have got to be struck. And it is in that spirit that the ECHR has decided time and again that due consideration must be given to the safety of witnesses and that a witness who testifies under anonymity is not necessarily a breach of fair trial. Even The Hague Tribunal in the case of Tadic has ruled on that. On the one hand today, everybody is exhausted and on the other hand, a witness who is here in Court and who is concerned for his or her safety and who is present and ready to be cross-examined by the defence. At the time the Public Prosecutor finished with that Witness, it was 5:30 p.m. and we are still here 1½ hours after, and I believe in 1½ hours, much progress would have been made regarding the cross-examination of the Witness. We will make a special appeal to the Defence if we can try to cross-examine that Witness. We will try to take as many short breaks in between and make do with that complex situation, as I know you are lawyers of experience. We may not agree all the time but I know you can do it because if we don't do it, we might be facing a situation where we may not have that Witness again. And it won't be in the interest of anybody - both Defence and Prosecution, not to have that Witness examined. The opportunity is

there for you to take and when we say that, we sincerely bear in mind the difficulties and the inconvenience of a long working day.

Mahmut Halimi, Defence Counsel: I'm sorry for this but I believe we expressed a very serious stand here. I think what you said was justified. Nobody is here for fun or to ill-treat the Witness. Our final purpose and intention here is to throw light on this case and have a fair trial. It's the third day of work already. Our clients wake up at 5:00 a.m. and these are the reasons. Therefore, we ask you to understand these reasons and find them justified, because the last thing we want to do is play a kid's game here.

Presiding Judge: We stand adjourned till 10:30 a.m. next Wednesday.

Court adjourns at 7:10 p.m.

Presiding Judge, Vinod Boolell

Court Recorder, Robina Struthers

Court Recorder, Gwen Cheong