



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:	22 March 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
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:	Witness "E"
Court Recorders:	Nina Maric and Ursula Oteng
Interpreters:	Ervin Mazniku and Gazmend Isaj
IJSD Legal Officer:	Virginie Monchy
Humanitarian Law Centre Monitor :	Luan Dushi
OSCE Monitor :	Lumniye 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 Krustemi, 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 10:50 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; Paul Flynn, Public Prosecutor; Defence Counsel Mahmut Halimi, Rexhep Hasani, Fatmir Celina, Ethem Rogova and Mexhid Sylja; Luan Dushi, Humanitarian Law Center Monitor; Lumniye Shkodra, OSCE Monitor.

*Court Recorder: Nina Maric*

Presiding Judge: good morning. We are resuming the proceedings in the case of the Public Prosecutor against Selim Krasniqi and others. Witness "E" who testified on 15 March is present to be cross-examined by the defence attorneys who decided that they would not cross-examine him on 15 March themselves. My legal officer has informed me that the defence attorneys were informed on Monday that Witness "E" is going to be called today for cross-examination.

At the beginning of the session Mr. Fatmir Celina, observed that when he was handed a decision of this court on the extension of detention, it was alleged that the name of a witness Zejnel Tarjani was revealed by the defence attorney and therefore on that basis detention was extended. According to him it was the court that revealed the name. He also added that when he disclosed the fact that his client Xhavit Elshani has brothers in Germany and that his client had traveled to Albania as president of a football club, the Supreme Court and the District Court used this information as a basis for the extension of detention of his client. For this reason he did not appeal the decision to extend detention.



The Presiding Judge in response to Mr. Fatmir Celina stated that detention was extended for a number of reasons and that he should not pick and choose a particular extract from a decision to criticize the court.

He also proposed that Witness "E" who testified under anonymity on 15 March 2006 should be allowed to give his evidence in open court because the defence attorneys have in possession the police statement of the witness with his signature and therefore they know who he is.

The Presiding Judge observed that the defence attorney was misconstruing the provisions on anonymity of witnesses. The order for anonymity made it clear that no disclosure should be made that may compromise the status of the witness. This is so even if somebody was aware of the identity of the witness.

The Presiding Judge also added that it was strange that notwithstanding the order of anonymity made by the investigating judge, those whose responsibility it was to disclose the police statement of Witness "E" to the defence did not ensure that his signature would not appear on copies of the statement.

Presiding Judge: Witness "E", you testified last week under the cover of anonymity and I warned you that as a witness, it is your duty to speak the truth and that 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. I give you also a warning be careful not to reveal any matter that may lead to your further or additional identification or whereabouts given the sequence of events this morning.

Public Prosecutor: last week as I was concluding you may remember that I did so by putting the photographs to the witness. There was another item which I overlooked and I hope you will allow me to do that before the cross-examination starts. That is the issue of the statement given to the police. Would it be possible if the legal officer shows it to the witness and ask him if that signature is his, which has been sealed since the status of anonymity?

Presiding Judge: yes Mr. Flynn, please proceed.

Public Prosecutor: Witness "E", this is the Public Prosecutor, I want to ask you one question related to the evidence you gave us last week. You told us on that occasion that you gave statement to the international police freely and when I asked you when, you said it was two years ago. I will show you the document now and I wonder if you can tell us if you recognize the signature appearing on top right-hand corner?

Witness "E": yes I do.

Public Prosecutor: when you say that you recognize it can you tell whose signature is it, is that your signature?

Witness "E": yes



Public Prosecutor: thank you.

Presiding Judge: Mr. Halimi?

Mahmut Halimi, Defence Counsel: Witness "E", I represent General Krasniqi and my first question is, could you see me from the place you are seated at?

Witness "E": I don't need to see you.

Mahmut Halimi, Defence Counsel: do you see me or not?

Witness "E": I cannot see you.

Mahmut Halimi, Defence Counsel: last week when you gave your testimony you said that you set off for Drenovc to pay condolences, was this because someone died of natural death or was killed?

Witness "E": was killed.

Mahmut Halimi, Defence Counsel: by whom?

Witness "E": by the Serbian forces.

Mahmut Halimi, Defence Counsel: was there only one person killed or there was someone else killed from the village of Drenovc?

Witness "E": I don't know.

Mahmut Halimi, Defence Counsel: I am referring to your answers because you said you went to pay condolences as a murder occurred in the village Drenovc, was there only one person killed or some else as well?

Witness "E": only one person.

Mahmut Halimi, Defence Counsel: do you by any chance know the name of that person?

Witness "E": I am not interested to know his name.

Mahmut Halimi, Defence Counsel: when Behadin Berisha stopped you had you already finished going to pay condolences or you were on your way to that place for that purpose?

Witness "E": I had already paid condolences.

Mahmut Halimi, Defence Counsel: for how long did you stay at the house where people were paying condolences?

Witness "E": I did not go on that day. I went there after 10 days and stayed only for 10 minutes, you know how the customs are.

Mahmut Halimi, Defence Counsel: when you were stopped by Behadin Berisha and he took your ID card, how long did you stay there with him till other two persons came there, those two persons you referred to as Rrezik and Celik, how long was that?

Witness "E": I stayed there for 15 minutes till they came and took me away.

Mahmut Halimi, Defence Counsel: the person you were with was he staying near the place where Behadin Berisha was?

Witness "E": I have already given my statement to you. Why are you mixing things up?

Mahmut Halimi, Defence Counsel: the question I asked you about is not part of any statement.

Witness "E": what I mean is that I have given the statement when I was in Pristina.

Mahmut Halimi, Defence Counsel: I have not been in the location when you gave the statement. I have your statement here and please answer to my question.

Witness "E": I will not give any answers. I will simply say that I adhere to my previous statement.

Presiding Judge: Witness "E", I am addressing you. You must bear with us as it is a right according to the law applicable in Kosovo for a defence counsel to put you questions on evidence you already gave and you must answer questions without arguing. If you feel you need protection when it is an awkward question I will help you. Please do not comment on the questions but simply answer them. Thank you.

Mahmut Halimi, Defence Counsel: any time I put the question he would reply 'come on, come on'. I will ask you to protect my integrity.

Presiding Judge: Mr. Halimi, put the question.

Mahmut Halimi, Defence Counsel: the person you were with in the car when Behadin Berisha stopped you was that person there all the time or not?

Witness "E": he was locked in as I was, that is sure.

Mahmut Halimi, Defence Counsel: during these 15 to 20 minutes you were with Behadin Berisha, did either you or the other person that was with you said something to Behadin Berisha?

Witness "E": there was nothing to talk about.

Mahmut Halimi, Defence Counsel: after Rrezik and Celik appeared, do I understand you correctly that they took away the other person that was with you, is that right?

Witness "E": yes



Mahmut Halimi, Defence Counsel: could you tell us the seating arrangement in the car, the seats where you sat at?

Witness "E": of course. I had to sit at the back place, as I was not driving.

Mahmut Halimi, Defence Counsel: could you tell us who was driving, who was seated in and who was at the back seat?

Witness "E": Celik and Rrezik and I do not know the name.

Mahmut Halimi, Defence Counsel: who was driving?

Witness "E": I don't know. I don't remember.

Mahmut Halimi, Defence Counsel: for how long could you see Rrezik and Celik?

Witness "E": when I was taken from that place to Drenovc.

Mahmut Halimi, Defence Counsel: how long did it take the drive from the place you were taken to Drenovc, approximately in minutes if possible?

Witness "E": it took five minutes.

Mahmut Halimi, Defence Counsel: when you were taken to Drenovc, did you have any other contacts with Rrezik or Celik?

Witness "E": yes I did.

Mahmut Halimi, Defence Counsel: could you tell us anything in addition to that?

Witness "E": I have had contacts with them. I had contacts with both of them.

Mahmut Halimi, Defence Counsel: could you elaborate on the term 'contacts', like were you questioned, were you beaten up, what kind of contact was that?

Witness "E": that is what I call contact. They took me, they beat me up and they locked me in. That's what I call contact.

Mahmut Halimi, Defence Counsel: when did they beat you up right at the spot when you were with the other person or after you arrived in Drenovc?

Witness "E": once I was taken inside of the car they start beating me up.

Mahmut Halimi, Defence Counsel: meaning Rrezik and Celik beat you up when they put you in the car and when they brought you to Drenovc?

Witness "E": as for Drenovc I have stated that the people that beat me up were unknown to me. I do not know those persons that beat me up in Drenovc.

Mahmut Halimi, Defence Counsel: my apology, but I would have to pose that question once again.

Presiding Judge: you are putting him the same questions already put by the Public Prosecutor. The witness has already answered that masked persons beat him up and he could not recognize them.

Mahmut Halimi, Defence Counsel: I know what he stated during the investigations on that day and especially today so I know the three statements that he stated that Selim Krasniqi has beaten him up.

Presiding Judge: but put it to him. Don't make him repeat the same things.

Mahmut Halimi, Defence Counsel: Your Honor, I got an answer the witness gave on 15 March 2006. He said, "Rrezik and Celik beat me up at the moment and they took me and they brought me to Drenovc".

Mahmut Halimi, Defence Counsel: in the basement they put you in, do you know how many rooms were in there?

Witness "E": I do not know how many rooms for I was not interested.

Mahmut Halimi, Defence Counsel: from the room you were held and locked in would you be able to see movements of other people outside of the room you were put in?

Witness "E": but how could I see movements. I was locked in and I was guarded.

Mahmut Halimi, Defence Counsel: what about the other person that was with you was he also beaten up or what?

Witness "E": no

Mahmut Halimi, Defence Counsel: how long after you were released from Drenovc you were detained in the village of Krusha, namely Retije?

Witness "E": five to six months after.

Mahmut Halimi, Defence Counsel: if permitted by the Presiding Judge I would remind you of the statement you gave to the Investigating Judge where you have stated August 2, 2004, page 18 of the Albanian version, page 19 of the English version, towards the middle of the page...

Fatmir Celina, Defence Counsel: may I say something? Your Honor, this is regarding Xhavit Elshani and I kindly ask the witness not to give answers to this question in order to avoid mixing up issues and clients. I would kindly ask the witness not to answer about Xhavit Elshani. Let's finish first with Selim Krasniqi.

Mahmut Halimi, Defence Counsel: with all due respect I am trying to put all of my efforts to put the questions for the benefit of all accused and this question is put to



verify the statement of the Witness "E" and he said he was arrested only 3 weeks after and not as the answer he gave while ago.

Presiding Judge: following the observation of Mr. Celina we agree that the questions of Mr. Halimi should be limited to his client so not to jeopardize the interest of Mr. Xhavit Elshani but the witness is being confronted with the departure from his previous testimony and he can be asked to explain without referring to Xhavit Elshani because this is a credibility exercise too. The witness will be confronted with what he said to Investigating Judge and will be asked to explain in the light of the answer he gave today but he must do that without referring to any accused for the time being. This is how I will allow it. Witness "E", the question of Mr. Halimi is following, you have stated here that you were detained in Retije five to six months after your detention in Drenovc when you gave the testimony before the Investigating Judge you said that you were detained in Retije two weeks after, can you explain that difference and contradiction if you have any explanation. That is all and don't mention any names.

Witness "E": I told him that I am illiterate. I was the one to be detained and I know that better than anyone else how long I was kept in detention.

Presiding Judge: how long was after Drenovc?

Witness "E": in Drenovc I was detained in spring while I was detained in winter in Retije.

Presiding Judge: you were detained in Drenovc can you tell us approximately how many days months after you were detained in Retije?

Witness "E": after six months.

Presiding Judge: he tried to explain it by referring to spring and winter. Mr. Halimi, please go on.

Mahmut Halimi, Defence Counsel: in your statement you have also stated that NATO had bombed Drenovc, can you tell us whether that is accurate or not, page 25 of the Albanian version, page 25 of the English version.

Witness "E": I did not get it.

Mahmut Halimi, Defence Counsel: you said that the picture number 24 of Exhibit D was shown to you before the Investigating Judge you said, "This is the place bombed by NATO" so it is regarding pictures 23 and 24. Do you know when NATO performed an attack on Drenovc?

Witness "E": I did not say it. I don't know the dates.

Mahmut Halimi, Defence Counsel: also on the same page in relation to the picture 29 you have said, "When the Serbs burned down the school and banished KLA from there to Drenovc village, the KLA forces left this place and went to another village".



Witness "E": it is not true that I have said it.

Mahmut Halimi, Defence Counsel: during the last session you stated that you noticed the wounds on your back after you noticed the bleeding. When did you notice the bleeding while you were in detention center or after you were released from the detention center?

Witness "E": how could I notice the bleeding after I was released from the detention center!

Mahmut Halimi, Defence Counsel: I would still like to ask something regarding your statement you gave last week and the statement you gave to the Investigating Judge on August 2, 2004. Here you have stated, "Rrezik is killed whereas Celik is here present", whereas at page 32 of the English version of the statement to the Investigating Judge you have stated that "Selim Krasniqi was Rreziku". In your testimony you gave during the last session on 15 March 2006 and you quite frequently stated that Selim Krasniqi was referred as to Celik?

Public Prosecutor: slight correction, he did not said he was referred as Celik but he said he was known by the particular name, he did not say also.

Presiding Judge: bear that in mind when you put the question Mr. Halimi.

Mahmut Halimi, Defence Counsel: Mr. Witness "E", on page 27 of the Albanian version to the question of attorney Destan Rukiqi, you have given following answer, page 28 of the English version, "Q: Could you state again for the court which name he was known at?", the answer goes, "He was not known as Selim Krasniqi. He was known as Rrezik".

Public Prosecutor: I believe you have to read the first, second and third and fourth line of that for the context.

Presiding Judge: Mr. Halimi, can you come here with the Albanian version and you Mr. Public Prosecutor with the English one. I want to be sure which part you want to put to the witness.

*The Presiding Judge holds a bench conference with Mr. Halimi and the Public Prosecutor in order to clarify which specific passage they want to put to the witness from the investigative minutes and explains the purpose this afterwards to the other defence attorneys and the accused.*

Presiding Judge: can I put it to the witness Mr. Halimi?

Mahmut Halimi, Defence Counsel: yes

Presiding Judge: Mr. Halimi wants to remind you of following testimony you gave to the Investigating Judge "Destan Rukiqi: Could you state again for the court which name he was known at? A: he was not known as Selim Krasniqi. He was known as Rrezik (which means Danger in English). Destan Rukiqi: So on the day that you were topped by Behadin Berisha, you knew Selim Krasniqi only by the name Rreziku? A:



yes. Destan Rukiqi: is it true that Rrezik hit you with a Kalashnikov butt? A: if these were not true then why would I even bother to show up here today", Mr. Halimi will put the question now in light what has been read out now.

Mahmut Halimi, Defence Counsel: what is the accurate version, during the last session you stated that Mr. Selim Krasniqi was also known as Celik and to the Investigating Judge you have stated that it was Rrezik the one that hit you with Kalashnikov?

Witness "E": I cannot remember everything because I am illiterate person and I am not educated.

Presiding Judge: I will try to put it clear to you. We have two versions from you, you stated that Selim Krasniqi was known as Rrezik and also that he was known as Celik. What is your comment about this, was he known as Rrezik or Celik or both names? This is contradictory information from you?

Witness "E": Selim Krasniqi is Celik

Presiding Judge: why did you say to the Investigating Judge that he was Rrezik?

Witness "E": Rrezik was the one who got killed.

Presiding Judge: I will read again what you told to the Investigating Judge.

*The Presiding Judge repeats the answer the witness gave to the investigating judge.*

Presiding Judge: why did you tell to the Investigating Judge he was known as Rrezik?

Witness "E": I might have stated that but since I have not read I can make mistake.

Presiding Judge: are you saying that when you said he was Rrezik you made a mistake?

Witness "E": yes, it was the mistake because I cannot remember everything.

Mahmut Halimi, Defence Counsel: do you remember the statement you gave to the police? Was Selim Krasniqi in detention when you gave your statement to the police or not, to your knowledge?

Witness "E": he was not in detention.

Mahmut Halimi, Defence Counsel: thank you Your Honor. I have no other questions.

Presiding Judge: Mr. Hasani?

Rexhep Hasani, Defence Counsel: Witness "E", to the investigators and in the course of the main trial version the witness gave three versions regarding the alleged date of arrest, he said June, 17 May or one to two months before NATO bombing start, so could we establish which is the accurate date on which the witness was detained?



Witness "E": how can I tell you the exact date when I am illiterate person? I cannot write or read?

Rexhep Hasani, Defence Counsel: I do not know whether you can read or write but when it comes to identify objects you are better than any history or geography teachers are.

Presiding Judge: Mr. Hasani, next question please?

Rexhep Hasani, Defence Counsel: on which date were you arrested and please give us the accurate one if at all?

Witness "E": how can I tell you the exact date when I do not know it?

Rexhep Hasani, Defence Counsel: during 2005 have you been abroad?

Witness "E": I have never been abroad but I will go abroad during the month of March.

Rexhep Hasani, Defence Counsel: on page 6 of the investigating minutes of the Albanian version to the question of the judge you stated that you could not know whether they were other rooms in the building where you were held locked whereas you also stated that you could not see anyone being inside or outside of the premises, at the end of page 10 you have listed the names of the persons who were allegedly being held in the detention and then killed, two out of them were from the village of Pusto Selo.

Witness "E": there were people from other villages in detention but I did not know them, how can I say things about the people whom I don't know.

Rexhep Hasani, Defence Counsel: I am telling you have stated on page 6 of the minutes that you could not see anything, but how come to the Investigating Judge you listed names of the persons you saw in detention, how could that be possible?

Witness "E": I have heard that many people were held in detention and there were also people I have not known.

Rexhep Hasani, Defence Counsel: when did you hear about the persons that were being held in the detention?

Witness "E": I heard that they were detained before me.

Rexhep Hasani, Defence Counsel: I am asking you when exactly?

Witness "E": I told you that I do not know the dates. How come you are making me nervous when I told you I don't know the dates and I am illiterate?

Rexhep Hasani, Defence Counsel: was it before the war, after the war, or after Selim Krasniqi and his friends were detained?



Witness "E": they were detained before the war.

Rexhep Hasani, Defence Counsel: I am asking you when you heard that people were detained.

Presiding Judge: the witness said he couldn't give the dates.

Rexhep Hasani, Defence Counsel: among other names he mentioned the name of Hysen from Dejna do you know Hysen?

Witness "E": I don't know him but I have heard about him.

Rexhep Hasani, Defence Counsel: so you are saying you don't know Hysen but at page 10 to the question of the investigation judge you said, "I saw Hysen when they apprehended him".

Public Prosecutor: I believe he clarified it later in the passage as the response to the question of the Investigating Judge.

Presiding Judge: it is not quite clear to me what the defence counsel is trying to establish.

Public Prosecutor: he said, "I did not see him in prison" (page 10 of the English version of investigating minutes).

Presiding Judge: yes Mr. Hasani, go on.

Rexhep Hasani, Defence Counsel: to the Investigating Judge he said, "I know Hysen from Dejne even before the war and I have seen him" and now he said, "I don't know him".

Presiding Judge: next question please.

Rexhep Hasani, Defence Counsel: refers to the testimony of the witness given before the investigating judge where he identified certain photographs as depicting Malisheva where the witness was allegedly detained. He then puts the following question. You stated to the prosecutor that you were never detained in Malisheva and before the investigating judge you said you were detained there. What is the truth?

Presiding Judge: allow me to put that to the witness in a cleared way. Mr. "E", Mr. Hasani referred to the investigative minutes where you were shown Exhibit D and you identified Photo No. 1 as being in Malisheva and you said it used to be detention center. Then the following appears, "Investigating Judge: You mentioned 3 different places that you were detained. You did not mention that you were detained in Malisheva. A: I was not detained in Malisheva. Photo No. 2 is in Malisheva. Investigating Judge: What is that building? A: This is where KLA stayed. Investigating Judge: Were you ever there in connection with your detention? A: Yes. Investigating Judge: Please explain. A: There was not enough space in Drenovc detention. So the people were brought to Malisheva detention center." I



take it Mr. Hasani your question to the witness is were you ever detained in Malisheva or where you ever taken to Malisheva?

Witness "E": no, never.

Presiding Judge: Mr. Hasani, can you continue after the lunch break?

Rexhep Hasani, Defence Counsel: of course.

Presiding Judge: we will be back at 1:45 p.m.

*Break at 12:45 and resume at 1:55 p.m.*

*Court Recorder: Ursula Oteng*

Presiding Judge: Mr. Hasani, proceed.

Rexhep Hasani, Defence Counsel: during the morning session when I asked you whether you have been abroad or not you said no, but in addition you said that you are going to go soon. Would it be possible for the court to learn who is organizing your move ... *(Presiding Judge interrupts)*

Presiding Judge: no because that may compromise his status as an anonymous witness.

Rexhep Hasani, Defence Counsel: No problem. We already received an answer to that. I am not interested to have the identity of the witness revealed. Would it be possible to know the age of the witness if it would not compromise his identity?

Presiding Judge: he mentioned it himself sometime last week and it is in the minutes. He said he was older than Selim Krasniqi and later he said he was 47.

Rexhep Hasani, Defence Counsel: has he completed military service if possible?

Presiding Judge: this question might lead to the identification of the witness Mr. Hasani and it is not strictly relevant to your case.

Rexhep Hasani, Defence Counsel: so as a shepherd, does he have a dedicated area to take his sheep or does he have a flock of approximately 300 sheep as other shepherds do?

Public Prosecutor: this has nothing to do with the case and his accountability. If there is any relevance I would not object.

Presiding Judge: we are just going round and round here. Whether he has 10 or 100 sheep he is a shepherd. What does that change?

Rexhep Hasani, Defence Counsel: As he was working as a shepherd, has he ever carried a hunting weapon to protect his sheep or his property as he stated?



Witness "E": one would never guard his sheep with a hunting weapon.

Rexhep Hasani, Defence Counsel: have you ever carried a hunting weapon?

Witness "E": I never needed one.

Rexhep Hasani, Defence Counsel: That is the answer. So since you never had a weapon, how could you possibly know the type of weapon you were hit with?

Witness "E": I knew the type because I have seen weapons.

Rexhep Hasani, Defence Counsel: you are seeing them now but never at that time, how could you possibly tell?

Presiding Judge: this is not totally correct Mr. Hasani. He knew which type of weapon because he has seen weapons before. He never said that he has never seen weapons before but that he never carried one. Then he said one would never need a weapon to guard sheep. Don't put words in his mouth; just put your questions.

Rexhep Hasani, Defence Counsel: In his answer he said he never carried weapons, but he has seen weapons.

Presiding Judge: I don't carry weapons but I see weapons all around me and I may identify some.

Rexhep Hasani, Defence Counsel: how could you tell the type of weapon the KLA soldiers were carrying on them?

Witness "E": I know it because a hunting weapon differs from a fighting weapon.

Rexhep Hasani, Defence Counsel: how could you tell that those weapons were Kalashnikovs?

Witness "E": Kalashnikov is smaller than a hunting weapon.

Rexhep Hasani, Defence Counsel: there are other types of smaller weapons like the ones those gentlemen (meaning CPU) over here are carrying. How did you know that that sort of a weapon was a Kalashnikov?

Witness "E": I have no words to answer that question.

Rexhep Hasani, Defence Counsel: to the police you mentioned one term, namely collaborator. What do you understand by that term and what is the connotation of it?

Witness "E": it is not true that I have mentioned that. I don't know what that means.

Rexhep Hasani, Defence Counsel: to the question posed to you by my colleague Mr. Mahmut Halimi you said you did not know where you went to pay condolences. Does the name Muharrem Gashi mean something to you?



Witness "E": I don't know Muharrem. I simply do not know who he is.

Rexhep Hasani, Defence Counsel: in your statement to the investigator you mentioned the name Elhami Morina and that he was allegedly brought in one or two hours after you were brought in but you have never mentioned this name to the police. How is that?

Witness "E": I heard that Elhami Morina was there, but I don't know him.

Rexhep Hasani, Defence Counsel: well then, who are Hasan Gashi and Fadil Gashi?

Witness "E": I don't know them. I don't know who Hasan Gashi and Fadil Gashi are.

Rexhep Hasani, Defence Counsel: I have no further questions Your Honor.

Presiding Judge: Mr. Celina?

Fatmir Celina, Defence Counsel: the witness is being held behind those windows, if allowed by the court, could he point out who Xhevat Elshani is?

Presiding Judge: the witness cannot see from there. The identification has been done. Article 255 of the PCPCK provides the mode of identification the court may resort to. Either identification is done by holding an identification parade or through photographs. When the legislator put that provision in the law presumably he had in mind the situation that we are facing today when an anonymous witness is testifying. The identification of the accused has been done on the last occasion and the witness did identify Xhevit Elshani from Exhibit C. So there is no need for him to go through the much contested procedure of dock identification which many criminal justice systems have rejected. Next question Mr. Celina?

Fatmir Celina, Defence Counsel: I have another provocative question – might I ask the honorable court whether the witness has on him or in front of him on the table, the statement he gave to the police or photographs or pictures?

Witness "E": I have no photographs, pictures or documents in front of me.

Presiding Judge: can I make one observation Mr. Celina? Last week we took a lot of precautions when providing the witness with photographs. The witness is under the control of the court. We have taken an oath of office to serve justice with integrity. The question seems to suggest that this court is privy to tempering with the witness when he is testifying. This is not fair. Either you trust the judges before whom you are appearing or you choose to challenge them and they are disqualified.

Fatmir Celina, Defence Counsel: I do respect the trial panel and the Public Prosecutor. On 2 August when he gave the statement, did he have any additional photographs or pictures on him when he gave that statement?

Presiding Judge: I will allow the question.

Witness "E": I had no documents.



Presiding Judge: at the investigative hearing did you have documents?

Witness "E": I had no documents.

Fatmir Celina, Defence Counsel: I think on page 18 of the English version of the investigative minutes before the identification process was to be performed, you stated that Elshani Xhavit was on photograph No.4. This means that you had his picture and other documents with you. Is that true?

Presiding Judge: in the minutes it says, "Investigating Judge orders the photo line-up with 33 photographs admitted as evidence and marked the same as Exhibit No. 6. Witness "E" viewed the photo line-up and examined the same. After examining the photographs, Witness "E" declares the following: Photo No. 1 – No. Photo No. 2 – No. Photo No. 3 – No. Photo No. 4 – Yes, I remember seeing him. Investigating Judge: Where do you remember seeing person No. 4? A: I saw person No. 4 in Drenovc village." The witness was given photographs and was asked to identify them. You cannot assume from this that the witness had these photographs with him. It was shown to him and the minutes are clear.

Fatmir Celina, Defence Counsel: when the identification process was carried out, the witness did not have the picture of Elshani Xhavit. He started from photo Nos.5, 6 and 7. This is why he said No.4

Presiding Judge: that is not correct. The photos were not with him but in front of him because the Investigating Judge gave him the photos.

Fatmir Celina, Defence Counsel: I am trying to find an alibi for my client. Could the witness tell the court when he had the first contact with my client; the time and where it was? Was it Retije, in Krushe? Once he said that it was in June and now he says in December. When and where exactly was that?

Witness "E": Elshani took me as I was in Krushe and then from Krushe they brought me to Retije.

Fatmir Celina, Defence Counsel: have you been in any restaurant and do you know the owner of the place where you were?

Witness "E": I was in a canteen and I don't know the name of the owner.

Presiding Judge: Mr. Celina, the witness has answered the question and repeated what he said last week as shown on page 6 of the minutes of 15 March. Today he qualified that and said, "I was in the canteen, but I do not know the owner."

Fatmir Celina, Defence Counsel: do you know who Nesime Mullabazi is?

Witness "E": yes I do. He is a police officer at present.

Fatmir Celina, Defence Counsel: did you have any contact with Nesime before the war?



Witness "E": no. I never had any contact with him.

Fatmir Celina, Defence Counsel: You mentioned something about a building and also the period of socialism, how long did this period of socialism last if you know?

Witness "E": it took approximately half an hour. I was kept in Krushe then sent to Retije.

Presiding Judge: what exactly did you mean by using the word socialism?

Fatmir Celina, Defence Counsel: this is only the statement of the witness to the investigating judge that at a certain location there was a building during the socialist time?

Presiding Judge: On page 25 of the investigating minutes when the witness looked at photograph No.30 he identified it as a cooperative during the socialist time. Do you want him to answer how long he stayed in that building, which was there during the socialist time?

Fatmir Celina, Defence Counsel: in his statement he stated that it was very cold; minus something and he also said that he is illiterate. How could he know that the temperature was in those figures?

Witness "E": I don't have anything to answer to that.

Fatmir Celina, Defence Counsel: I have no further questions. Thank you Your Honor.

Presiding Judge: thank you Mr. Celina. Mr. Rogova?

Ethem Rogova, Defence Counsel: We understand your illiteracy that you can't read and write. Is it that you don't know how to read or you can only read some letters?

Witness "E": nothing at all.

Ethem Rogova, Defence Counsel: do you know how to write and read your full name?

Witness "E": I don't know.

Ethem Rogova, Defence Counsel: when you were locked in the prison, who were you with in there?

Witness "E": alone.

Ethem Rogova, Defence Counsel: in your testimony dated 15 March 2006 you stated that, "In the prison there were approximately 20 people." so if you were all alone, how could you possibly know the approximate number of people therein?



Witness "E": I know that because I heard about them. As for the fact that I was alone, yes I was alone.

Ethem Rogova, Defence Counsel: have you ever discussed with Elhami Morina before, during or after the war?

Witness "E": I have previously told you that I have not discussed with Elhami before or during the war because the first time I heard of him he was there.

Ethem Rogova, Defence Counsel: you stated that on 15 March you remained for 3 days in prison, how could you possibly tell that Elhami was held there for 7 days?

Witness "E": I have heard people talking.

Ethem Rogova, Defence Counsel: on March 15 you stated that Isuf Gashi accused you of having murdered Rrezik. When did all this take place?

Witness "E": repeat the question please.

Ethem Rogova, Defence Counsel reiterates his question.

Public Prosecutor: I don't see anywhere that it is alleged that Gashi murdered anybody, perhaps if it could be pointed to us.

Presiding Judge: from my notes he never said that.

Ethem Rogova, Defence Counsel: given that we are not provided as yet with the minutes of March 15 .... (*Presiding Judge interrupts*)

Presiding Judge: I have referred to my notes as nobody has the minutes yet and even without my notes I can tell you he never stated that Isuf Gashi put the blame on him for the murder of Rrezik.

Ethem Rogova, Defence Counsel: Your honor, I kindly ask you to pose the same question to the witness if possible. According to my notes he stated that, "Isuf Gashi is putting blame on me regarding the murder of Rrezik."

Presiding Judge: I will put it in a question form without referring to the minutes. Mr. E, when you were in detention and you saw Isuf Gashi as you said one time, was there any talk of putting the blame on you or accusing you for the murder of Rrezik by Isuf Gashi?

Witness "E": no.

Presiding Judge: go on Mr. Rogova.

Ethem Rogova, Defence Counsel: also in his testimony of March 15 he stated that Isuf Gashi put the pistol on his chest and told Bedri Zyberaj, "Why don't you just kill this jerk?" Why would Isuf Gashi tell Bedri Zyberaj to just kill him when Isuf Gashi



had a pistol himself and was carrying a pistol in his hand? He could have killed the witness himself.

Presiding Judge: could the witness answer if he can?

Witness "E": he knows why he said that himself.

Ethem Rogova, Defence Counsel: I have no further questions.

Presiding Judge: Mr. Sylja?

Mexhid Sylja, Defence Counsel: I have no questions to the witness but briefly I would like to have a short comment as to why I have no questions to the witness. The first reason as to why I have no questions is that witness E has never mentioned the name of Islam Gashi because he does not know him. The second reason being that there are many discrepancies in his statement thus in my opinion, there are many contradictions in his statement regarding major issues in these proceedings. He does not know as to when he was arrested; he is not a victim in the indictment; he offers no evidence to this trial regarding victims mentioned in the indictment; there are many other discrepancies, which would clearly be demonstrated in his answers, and also the questions posed by my colleagues today. During the previous session the issue of photographs was mentioned in order for them to be admitted as evidence. We have already objected to this decision that the picture containing the injury of the witness should not be received in evidence. And even today, on behalf of my colleagues, I would like to state for the court that we stand by our previous proposal and that for the mere fact that the said pictures do not represent an official document as it contains no date and especially when they were shot. When taken into consideration, the statement of the witness states that it was his friends or the internationals who took the pictures and those pictures were taken one or two months prior to his statement to the police. It is for the aforementioned reasons that we propose that the said pictures are not received in evidence. Thank you very much Your Honor and the honorable members of the panel for your patience.

Presiding Judge: Thank you Mr. Sylja. Mr. Krasniqi?

Selim Krasniqi had no questions.

Presiding Judge: Mr. Zyberaj?

Bedri Zyberaj had no questions.

Presiding Judge: Mr. Hasani do you want to say something?

Rexhep Hasani, Defence Counsel: About the victim's pictures in the line up, is the Public Prosecutor due to propose that or is it us or the court?

Public Prosecutor: I did not propose to put in the victim's photographs.

Presiding Judge: Mr. Elshani, any questions?



Xhavit Elshani: yes. When was the first time that the witness learned my name?

Witness "E": the day when you apprehended me.

Xhavit Elshani: what about the surname?

Witness "E": Same day as well.

Xhavit Elshani: last time you said, "I was in Krushe e Madhe having lunch and then Xhavit Elshani came and took me that day and the corpses of the people killed by the Serbs were brought and as of that day I never saw Xhavit Elshani again." Could you indicate to the court the names of the people who were killed because I live near Krushe area so that I could know when this event occurred?

Witness "E": it is true that the corpses were brought on that day but I don't know the names of those people who were killed. Some trucks drove away to collect the corpses. I went to have lunch and you came by car together with a friend of yours. You met the owner of the canteen and as you were returning you touched me on my shoulder and said to me, "Get up. The army needs you. We have some business with you" and you locked me at a place with phones.

Xhavit Elshani: can you indicate to the court where those people killed by the Serbian forces were from?

Witness "E": I don't recall that.

Xhavit Elshani: where was the place they were killed at since you said the truck drove away to collect the corpses?

Witness "E": They were killed in Granica in Pashtrik.

Xhavit Elshani: do you know where the corpses were buried?

Witness "E": they were buried near our area in some other village. I don't know the name of the village.

Xhavit Elshani: do you know as to how many people were killed?

Witness "E": I don't know how many, but I know that people were killed.

Xhavit Elshani: Sir, you gave a statement to the police on July 17 2004 and when identifying picture No.5 you stated, "I know him as Xhavit Elshani - as a KLA soldier who has operated in Bellacerkve." Then after two weeks you have given a statement to the investigating judge and it is there you mentioned my surname. "Why did you not tell the police my full name - like my surname and just tell the police that it is Xhavit Elshani who arrested me or this and that as you say being for the second time?"

Witness "E": they did not ask me about the surname. They only asked me, "Do you know the person on this picture" and I said, yes. It is Xhavit.

Xhavit Elshani: did you know my second name at that time?



Witness "E": I knew your name and surname since the day you took me away while I was in Krushe.

Xhavit Elshani: in your statement to the Investigating Judge you stated that, "Xhavit Elshani for the second time has detained me in the village of Retije," whereas at the previous session and today you stated that, "Xhavit Elshani only caught me in Krushe and left me there and I have not seen him since." Could you tell the court which is the truth?

Presiding Judge: what is your point Mr. Elshani?

Xhavit Elshani: I will ask you again. To the investigating judge you stated that, "For the second time I was apprehended in the village of Retije." Which is the truth?

Presiding Judge: what truth are you referring to?

Presiding Judge: Mr. Elshani, are you trying to clarify with the witness how many times he was detained by you?

Xhavit Elshani: The witness mentioned two names, Krushe and Retije villages.

Witness "E": what other question would you like to ask me from Krushe? You took me to Retije. What else do you want me to tell you?

Xhavit Elshani: the last time you stated that, "I saw Xhavit Elshani in Krushe and I have never seen him since."

Presiding Judge: Mr. Elshani, what I have is, "I was held there and it was very cold, 15 degrees". (page 6 – testimony of 15 March 2006)

Xhavit Elshani: when the Investigating Judge asked you, "Was it him that arrested you?" and the question was about me, you answered, "The person that arrested me is working at present as a police officer. This is on pages 18-19 of the minutes of 16 March.

Presiding Judge: in fairness to the witness, you must put the whole passage to him. During the sequence of questions put by the investigating judge then your name came out after the name of Nesime Mullabazi.

Xhavit Elshani: I have no further questions but I will have a short comment if I am allowed. Your Honor, all of us heard the witness. He stated that he saw me for the first time at the restaurant and when I asked him as to when he learned my name, he replied at that very moment. But when the witness gave a statement to the international police, he only knew my name at that time, meaning 2004. Two weeks later when he gave a statement before an investigation judge, he appeared to know my surname as well. I hereby state before the honorable trial panel that I have never known this person and I have never taken him and brought him to Krushe as so testified by him. Regarding the corpses of the people killed by the Serbian forces, I asked him because I wanted to know where those killed people were from so that we could learn the exact date of the event, meaning when this whole thing happened.



What the witness has stated so far is completely untrue. I never had any contact with the witness. Thank you for your patience.

Public Prosecutor: I have 2 or 3 questions on re examination.

Presiding Judge: Before you do that, Mr. Gashi, do you have any questions?

Isuf Gashi: Yes, Your Honor. I hereby greet the honorable panel, Public Prosecutor and your staff. As of that day I decided to refer to you Your Honor as Mr. Presiding Judge. I will have very short questions to Witness "E". I would like to have him answer to my questions with yes or no if possible. I would like to ask the witness what he did for a living before the war?

Presiding Judge: He said that he has been a shepherd since he was very young.

Isuf Gashi: I forgot to introduce myself. He might know me very well. My name is Isuf Sherif Gashi from the village of Drenovc. On April 12, I will turn 60. What did I do for a living before the war?

Witness "E": You were a bricklayer.

Isuf Gashi: what about after the war?

Witness "E": I have never been interested to learn as to what you did for a living after the war.

Isuf Gashi: at which location did Behadin Berisha stop you when entering or leaving Drenovc?

Witness "E": when I was leaving it.

Isuf Gashi: do you remember when did you go to pay condolences in Drenovc?

Witness "E": at your brother's?

Isuf Gashi: were you alone or accompanied by someone else?

Witness "E": there were many of us paying condolences.

Isuf Gashi: when Behadin stopped you, who were with you?

Witness "E": I don't think you need to know that.

Isuf Gashi: where is he from?

Witness "E": From your own village of Drenovc.

Isuf Gashi: where is Elhami Morina from?

Witness "E": I don't know.



Isuf Gashi: where was the corpse of Hidaj Popaj found?

Witness "E": I don't know and I do not remember ever giving a statement on that issue.

Isuf Gashi: when you were brought to the wooden barracks, where was it located in relation to the road?

Witness "E": it was up the road and as for Hidaj Popaj you should know better about that, not me.

Isuf Gashi: what was that barrack used for?

Witness "E": it was used and also referred to as, "*zyia e vendit*" in Albanian.

Isuf Gashi: was there something else down the road?

Witness "E": I don't know. I did not come with a camera to film things over there.

Isuf Gashi: do you know the name of Behadin's father?

Witness "E": I don't know.

Isuf Gashi: whom did you meet first with at the barrack?

Witness "E": Bedri Zyberaj .

Isuf Gashi: was he alone or with some one else?

Witness "E": I said that he was alone.

Isuf Gashi: did you ever meet with Bedri Zyberaj in the course of those three days?

Witness "E": yes, that took place in the basement.

Isuf Gashi: after how long did I come down there?

Witness "E": 15-30 minutes.

Isuf Gashi: what was my outfit at that moment? Did I have a white hat on? What did I have on?

Witness "E": you did not have a tall white hat on, I would say, medium height.

Isuf Gashi: did I have any weapons on me?

Witness "E": yes you did.

Isuf Gashi: what kind of weapon?



Witness "E": a Kalashnikov.

Isuf Gashi: something else?

Witness "E": I did not see anything else.

Isuf Gashi: was Bedri Zyberaj carrying any weapons?

Witness "E": I did not see.

Isuf Gashi: when I entered the place, what were the first words I said?

Witness "E": The first words you said were that you told Bedri Zyberaj, "Why are you interrogating him? Why don't you just liquidate him?"

Isuf Gashi: liquidate you with what?

Witness "E": you know better than me.

Isuf Gashi: why did he not liquidate you then?

Witness "E": you should know why.

Isuf Gashi: have you been there when Hysen Krasniqi was arrested?

Witness "E": No.

Isuf Gashi: same question.

Witness "E": Same answer.

Isuf Gashi: you have given 3 statements, one to the police, one to the investigating judge and one to this trial today. Did someone put pressure on you on what to tell the court?

Witness "E": no pressure at all.

Isuf Gashi: any promises or anything of the like?

Witness "E": no promises, nothing.

Isuf Gashi: did I by any chance slap you or hit you with something?

Witness "E": No.

Isuf Gashi: do you know where Elhami Morina is from and did you ever socialize with him?



Witness "E": I don't know him. If I were to know, I would have told you the same way as I told you that you did not slap me.

Isuf Gashi: Your Honor, I have no further questions for the witness at this time but I would like to provide the court with some short comments. I would like the court to verify what this is all about. There was no pressure exercised on the witness; the witness was not promised anything; three different statements he has given contain different things and many discrepancies, which do not comply with each other.

*At this stage accused Isuf Gashi reads through the whole of the investigative minutes of Witness "E" and concludes that the testimony given by the witness in court is in contradiction with his testimony given before the investigative judge.*

Isuf Gashi: I have a proposal for the trial panel. All other statements the witness gave are amended ones. He took the oath to tell the truth, nothing but the truth in front of the judge. I would kindly ask the Presiding Judge and his colleagues to allow our Defence Counsels to consult with them. They are very distinguished in their profession. The consultation would be in order to order the medical check up of the witness. If he is sick then the trial panel can forgive him, otherwise he can be taken from the trial for false testimony and punished for it. If he is mentally sick, then it is okay but if he did everything on purpose with his conscience, then he has to suffer the consequences. I have not seen the statement of the police, but comparing the two testimonies, the one given before the investigating judge and the one he gave a week ago, there are many differences. So I ask the court to take necessary measures and send this witness for medical check up and should the court or medical report show that he is fine, and then the court has to take measures against him. You have the witness here so take him for check up and take the necessary measures. Witness "E" stated that he was stopped by Behadin Berisha from Drenovc. I would kindly suggest to the Public Prosecutor to pose the following question to the witness whether the Behadin Berisha is from Drenovc or not. I could tell you that Drenovc comprises of 200 and something houses, all men from 20 to 80 years I know them all but I would be more than willing to be pronounced a life sentence if there is one single person in Drenovc named Behadin Berisha. There are people like Brahim, Bajram, Bedrush. I don't think you are taking seriously my proposal, I think to tell to the Public Prosecutor to go to Zyre e Vendit to make inquiries and to locate the person named Behadin Berisha. Thank you.

Presiding Judge: do you still have questions Mr. Prosecutor?

Public Prosecutor: I just want to clarify something relating to Elshani's question in which he was asking you about the incident at Krushe and Retije. The question was, "Did you ever see him in the village of Drenovc before the incident at Krushe or Retije?"

Witness "E": I have not seen him in Drenovc but I have seen him in Krushe.

Public Prosecutor: the investigating judge asked you the same question on page 18 of the investigation minutes after identifying Mr. Elshani by reference to the photographs, he asked you whether you remember seeing him and you said, "I saw



the person No.4 - Mr. Elshani in Drenovc village.” Was that a correct answer or did you make a mistake? Did you tell that to the judge?

Witness "E": I have said that, but I cannot remember. I don't know how to write and read.

Public Prosecutor: in response to Defence Counsel Hasani asking you about the photographs in Malsiheva, you said you have never been to Malisheva. If that is the case then how did you recognize these buildings to be in Malisheva?

Witness "E": I have heard about the detention center in Malisheva.

Public Prosecutor: If you have never gone there, how did you manage to recognize the photographs?

Witness "E": I was in Malisheva before the war and after the war and I was shown where the prison was.

Public Prosecutor: Defence Counsel Rogova asked you a direct question if you know how to write your full name and you said no. This morning before we started I asked you to recognize a signature on a police statement as yours. What you said to Defence Counsel Rogova was a contradiction. Do you know how to write your name?

Witness "E": I said I don't know.

Public Prosecutor: who put the signature on the police statement if you don't know how to write your name? The signature that you said was yours this morning?

Ethem Rogova, Defence Counsel: well the thing is that I think the question should be allowed. I asked him the same thing and he said that it was his signature yet he said he did not know how to read and write. I should ask him what kind of school did he go to?

Witness "E": it was my signature. I can fix it up but I don't know how to read and write.

Public Prosecutor: I have no further questions.

Presiding Judge: Witness "E", did you tell the investigating judge that you were illiterate and could not read or write?

Witness "E": yes I told him so because I don't know how to read or write.

Presiding Judge: and he still insisted that you sign your investigation minutes? Did you sign that?

Witness "E": that is nothing. I can make up something. I don't know how to read and write.

Presiding Judge: Mr. E, you signed 32 pages and put your signature on every page?



Witness "E": yes, I signed that but it is not a signature.

Presiding Judge: what else have you made up here in court?

Witness "E": nothing.

Presiding Judge: are you conscious that there are many things you stated before the investigation in August 2004 and to the police are departures from your testimony which you have given here in court? Do you have any explanation for this?

Witness "E": yes I do. I have something with Isuf Gashi. He said that what he read out is completely untrue. Could he just indicate to me where are the lies? Could he tell me the whereabouts the corpses of those people who were killed? Why did I not say something bad about his son? It is because he did nothing to me. Let them just tell me what else they have that I did for being detained. What did I do to them?

Presiding Judge: Mr. "E", did you come to court to lie? You are free to answer or not?

Witness "E": I am not here to lie to the court but to tell the truth.

Presiding Judge: and you genuinely believe in the evidence you gave last week and this week was done in good faith?

Witness "E": I know that what I said is the truth and I am illiterate person and could not take notes so that I could remember things better.

Nurul Islam Khan, International Judge: Mr. E, this is not a question but I will read out a small portion of the minutes of 15 March and I quote. "I had troubles with Serbs and KLA. I would not dare to go out of my house. I was afraid of both the Serbs and KLA." I am interested to know what was your problem with both the Serbs and the KLA? Did you have any quarrels with this?

Witness "E": yes I do. They had killed us. I had problems with them like everyone did with them. As for the KLA, I had been detained and I was afraid to go out.

Presiding Judge: why were you afraid to go out?

Witness "E": from both parties, the Serbs would kill us.

Presiding Judge: given the history of Kosovo, I understand you were scared of the Serbs but why were you afraid of KLA as they were fighting the Serbs?

Witness "E": some of the KLA were not interested in fighting against the Serbs but against their own people.

Presiding Judge: Mr. "E", you are released and you can leave now.

*Break at 5:00 and resume at 5:10 p.m.*



*Court Recorder: Nina Maric*

Presiding Judge: we have finished with the testimony of the Witness "E". We thought we would come back tomorrow to tie up whatever loose ends we have as this cannot be done today. Mr. Public Prosecutor, do you have any witness for tomorrow?

Public Prosecutor: no. I would like to mention something in relation to the photographs of his injuries. I postpone making any proposal and I believe they were taken by a digital camera and that is why they appeared in digital form but I will make further inquiries. Tomorrow I would like to address you and put some proposals with regards to reading of witnesses' statements and I believe my colleagues would be in position to answer and to comment to whether or not they are prepared to enter stipulation I propose which I proposed to them in a letter two weeks ago dealing with the issue of war conflict so they stipulations are about arm conflict participation of the accused in the KLA and other issues as mentioned in the letter.

Presiding Judge: I hope that all your defence attorney colleagues got the copy of the letter. Anything else Mr. Flynn?

Public Prosecutor: two other small proposals to supplement the issues from the letter but won't cause any difficulty. That is what I have for tomorrow.

Mexhid Sylja, Defence Counsel: we had a conversation with Mr. Public Prosecutor and it was not a first conversation we had. I think all of us have common stand regarding the conversation with the Public Prosecutor. We could as well introduce the court our stand regarding that tonight but in principle but all of us are of the opinion that we can do that on some other day. Regarding tomorrow's session I don't think that we are going to gain much time if we come tomorrow and express our stand and opinion regarding the Public Prosecutor's letter. We could do that on some other day after the completion of other witness's hearing. So even if we come tomorrow I don't think it would be only two hours of work to do but I don't think it will be rational for all parties involved in this proceedings, the panel, the Public Prosecutor, us defence attorneys and the accused. We have already informed the Public Prosecutor in the short break we had that as of tomorrow we would be ready to provide the court, the panel and the Public Prosecutor with our response to his letter in writing.

Presiding Judge: Mr. Sylja, you can do that by tomorrow?

Mexhid Sylja, Defence Counsel: yes we can Your Honor.

Presiding Judge: in Pristina?

Mexhid Sylja, Defence Counsel: yes, but I don't think it is necessary for the response to be signed by all of us defence attorneys but the document shall be compiled on behalf of all my colleagues. I would kindly ask the panel to enable us the defence attorneys to have a short meeting with our clients after this session today so that we can have their approval of what we have prepared in writing and provide the court tomorrow as promised.



Presiding Judge: are you going to make your proposals Mr. Public Prosecutor as the attorneys?

Public Prosecutor: I will redraft my proposal which I previously addressed in a way of letter to the defence attorneys as a form of the proposal to the court. I would be making the amendment in addition to it in which I would be seeking to admission of the investigative minutes of all the witnesses heard today in addition to other items mentioned in my earlier proposal. With my proposal and the defence attorney's answer may I presume that the court will consider it in the chambers themselves or we are to have the hearing tomorrow?

Presiding Judge: since all this will be done in writing we will not have the session tomorrow. Is this what you proposed Mr. Sylja?

Mexhid Sylja, Defence Counsel: yes Your Honor, definitely. I wanted to add another issue. The proceedings is going on as foreseen by the provisional code so we are initially examining a witnesses proposed by the Public Prosecutor. In case the Public Prosecutor will not have any additional witness it would be good for us to be informed in the event that the Public Prosecutor has no additional witnesses so we can propose our witnesses and proceed speedily. We have not done such a thing as of yet awaiting the completion of the list of the witnesses proposed by the Public Prosecutor.

Presiding Judge: Mr. Public Prosecutor, you will confer with your colleagues once we break and you can discuss all these issues.

Public Prosecutor: the court summoned a dozen witnesses, those are largely the last witnesses that the prosecution would have and many of those are as I asked for reading of the statements so those two things are interrelated.

Mexhid Sylja, Defence Counsel: that is very much true.

Presiding Judge: Mr. Sylja, where you would meet your clients?

Ethem Rogova, Defence Counsel: in order to increase the efficiency of the proceedings in relation to the testimony of the forensic expert who expressively stated that the postmortems are performed only in Pristina, more than 300 postmortems in Pristina and over 300 performed in Prizren hospital. I would propose the statement of the forensic expert be received in evidence as indicated in logbook but in order to be more convincing I would kindly propose to the panel on behalf of all my colleagues that the trial panel proposes that in writing to the Prizren hospital center in order to avoid any potential misunderstandings. On the other hand the expert that performed the postmortems is willing to come and testify in the open court. I would still think that I will be able to provide the court with some pages with logbook regarding 1998 and 1999 but an official request would be perfect. I think that this is a very crucial testimony for all of us.

Presiding Judge: are you saying that we need to get the original logbook from Prizren?



Ethem Rogova, Defence Counsel: you can take copies of the logbook of some pages, or to take a look at the logbook and let that be entered into the minutes and you yourself gentlemen be convinced about its truthfulness. I am sure that I in my capacity as the defence attorney cannot get hold of that book but I could get hold to some parts of that book regarding the period of time involving the defendants.

Presiding Judge: okay, we will consider that. The Public Prosecutor would consult defence counsel and they would consult their clients and tomorrow you will give me the proposals. Thank you.

The court adjourns at 5:45 p.m.

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Presiding Judge, Vinod Boolell

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Court Recorder, Nina Maric

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Court Recorder, Ursula Oteng