

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

P. No. 85/2005

MINUTES OF THE MAIN TRIAL

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| Date of Proceedings: | 23 November 2005 |
| Venue of Proceedings: | Courtroom of Gjilan District Court |
| Presiding Judge: | Vinod Boolell, International Judge |
| Panel Members: | Leonard Assira, International Judge Nurul Islam Khan, International Judge |
| Public Prosecutor: | Jude Romano, International Public Prosecutor |
| CD Legal Officer | Andrey Antonov |
| Defence Counsel: | Mahmut Halimi, Haxhi Millaku, Fatmir Celina, Ethem Rogova and Mexhid Sylja |
| Accused: | Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf (Sherifi) Gashi and Islam Gashi |
| Court Recorders: | Robina Struthers and Nina Maric |
| Interpreters: | Algent Mezini and Gazmend Isaj |
| IJSD Legal Officer: | Virginie Monchy |
| Humanitarian Law Centre Monitor : | Anka Kurteshi Hajdari |
| 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 Rustemi, Hazer Tarjani, Avdi Berisha. To this day, they have never been seen again.

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

COUNT 2

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

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

COUNT 3

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

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

COUNT 4

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

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

The trial commences at 11:20 a.m.

The trial is public.

Presiding Judge: Good morning. We are resuming proceedings in the case. I take that the Public Prosecutor has a witness.

Public Prosecutor: yes. For today I requested the court summon three witnesses. I understand that one witness is present. I ask the court audience if the other two witnesses are present. The witness for today is Zenel Tarjani who testified previously as anonymous witness "F".

The witnesses' names are read out, they are not in court.

Presiding Judge: call the witness.

Public Prosecutor: we are calling Zenel Tarjani

Mahmut Halimi, Defence Counsel: before we start with this witness I have a question and also we would like you to inform us perhaps since the office of the international judges has been transferred to Pristina I will forward the appeal against the extension of detention of my client, Selim Krasniqi.

Presiding Judge: the appeal has been sent to the Supreme Court, you have to check with the Supreme Court.

Mahmut Halimi, Defence Counsel: on this issue it's the panel who decides because you as the presiding judge extended the detention against him.

Presiding Judge: after the indictment has been filed and when the court is not in session, the Presiding Judge alone decides. When trial is in session, then the whole panel decides. So it's gone to the Supreme Court you must check with them. My job

is to send it to the Supreme Court; I have sent it there. If the Supreme Court feels I have been wrong then they will refer it back to the proper panel.

International Prosecutor: I filed an order to have the witness testify and the order for anonymity has been lifted.

Presiding Judge: welcomes the witness. You will recall that when you testified before the Investigating Judge on 11 March 2004 you were referred to as witness "F" because you testified under the cover of anonymity. Today you have decided not to testify under anonymity, but openly, and this is a voluntary decision on your part taken in an informed manner. Thereby you waive the anonymity order and my question to you is that you have done this in a voluntary manner?

Witness: yes

Presiding Judge: since you are a witness in this case, I must give you the warning we give to witnesses. 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 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 will now take your personal data.

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|----------------------------|------------------------------------|
| Name: | Zenel TARJANI |
| Father's Name: | Kadri |
| Mother's Name: | Shyrete |
| Date of Birth: | 2 April 1955 |
| Place of Birth: | Pirane Village |
| Place of Residence: | Pirane Village |
| UNMIK identification card: | 101 669 2057 |
| Citizenship: | Kosovar Albanian |
| Occupation: | Farmer but currently am unemployed |
| Related to the Accused: | no relationship |
| Related to the Victims: | yes |

Presiding Judge: 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 8 days from the date of the decision to file a petition signifying your intention to proceed with a claim.

Presiding Judge: the Public Prosecutor will ask you questions.

Public Prosecutor: good morning. Do you know Hazer Tarjani?

Witness: he is my brother, we are siblings.

Public Prosecutor: can you tell us where your brother is right now?

Witness: he was murdered.

Public Prosecutor: when was the last time you saw your brother Hazer.

Witness: I had a wedding and I had been to visit the father in law of my son three times together with my brother. When we went there we saw the KLA and as it is in our Albanian tradition we brought some money there. Then the KLA soldiers stopped us. They asked for our identification cards and told us to have a good time and asked for forgiveness for stopping us – they apologized. Then we went to my son's father in law's place. From my son's father in law's place we returned back home. My son's father in law said now we can have the wedding and we scheduled a date for that, being the date we were to go and pick up the bride for our son. We set the date for Thursday.

Public Prosecutor: do you recall the date?

Witness: I remember it was 2 July 1998. We went to pick up the bride. When we were going there we were again stopped by KLA soldiers, namely by Xhavit Elshani. Then Xhavit Elshani entered a vineyard; he didn't ask us any questions and he came back with some friends of his. These friends of Xhavit Elshani showed up there and he said you are those twin brothers from Pirane village. They asked for our identification cards. We gave them our identification cards. Then we went to my son's father in law and when we picked up the bride we saw those persons again. These three persons I am talking about I did not know them, they had beards, but I knew Xhavit Elshani very, very well. We continued then on our way back home. But they did not allow us to go back home. They put our car amongst some bushes from where you could hardly notice it. Then they asked who of you is Hazer Tarjani? Those three people had Kalashnikovs and Xhavit Elshani had a Kalashnikov also. Then a Lada Caravan car without number plates drove up. We waited there and they ill-treated us. And we stayed there for 2 ½ hours. My sister was also with us in the car as well as my son's bride. They said "Zenel, here is your identification. But Hazer Tarjani has to come with us". I asked them "what did we do so that Hazer Tarjani has to come with you?" On that day on the 2nd of July 1998 they took Hazer Tarjani with them. Then they told me to come early in the morning around 8:00 o'clock to take my brother. I said to them "my brother is 43 years old, he is not a little boy for me to come and pick him up." But they said, "don't talk" and they made a noise with the Kalashnikov (the translator makes a motion as though putting a bullet in the chamber). They said we might cut your head too. Then I continued on my way back home with my son's wife. I did not even have a driver's license, my brother had one but I did not. That's all I have to say.

Public Prosecutor: you said that you knew Xhavit Elshani very, very well, can you tell us whey you know him very, very well.

Witness: because he is from my village.

Public Prosecutor: how long have you known Xhavit Elshani?

Witness: I see him every day in the village.

Public Prosecutor: how was your relationship with Xhavit Elshani before you were stopped on 2 July 1998.

Witness: my brother had a problem with Xhavit Elshani because my brother had wounded him before the war.

Presiding Judge: which brother are you referring to?

Witness: Xhavit Elshani had quarreled with my brother Hazer Tarjani. Xhavit Elshani on that occasion had a gun in his hand. Xhavit Elshani tried to shoot first on my brother but my brother was faster and he got to shoot him first and wounded Xhavit Elshani. Because of that my brother was sent to prison. He served his sentence. I have a copy of the verdict here, he got three years and he served that.

Presiding Judge: may we have a copy?

Witness: yes

A partial copy of the verdict referred to by the witness is entered into the court records as Exhibit 4.

Public Prosecutor: you said that when you were stopped you asked the person what did we do? Can you tell us the answer to that?

Witness: he gave me a response; he said, "This is our business".

Public Prosecutor: who was it that gave this response?

Witness: no

Public Prosecutor: you also stated that when you were stopped you were told to come early at around 8:00 to pick up your brother. Who told you this?

Witness: no. In fact I did not dare to go pick up my brother.

Presiding Judge: but the question was who said this?

The witness says he does not know.

Public Prosecutor: did the person, who told you this, advise you where you were to pick up your brother?

Witness: in Drenovc

Public Prosecutor: where is Drenovc I know there are tow.

Witness: I am talking about the Drenovc in the municipality of Rahovec. Why did they say that Zenel should come with them and not Hazer Tarjani come with us?

Public Prosecutor: anything else? Did you go to Drenovc village to pick up your brother?

Witness: only my sister's son went there.

Public Prosecutor: can you give us his name?

Witness: Sadit Kryeziu

Public Prosecutor: do you recall when Sadit Kryeziu went to Drenovc?

Witness: no I don't remember.

Public Prosecutor: can you tell us if you know if Sadit told you what happened regarding his visit to Drenovc?

Witness: they told him Zenel his brother has to come and pick him up, not you.

Public Prosecutor: is that all that Sadit told you?

Witness: yes

Public Prosecutor: did Sadit tell you who told him that you should be the one pick up Hazer Tarjani?

Witness: some of the soldiers in the army told him.

Public Prosecutor: did Sadit tell you if he got any information from the people in Drenovc village as to what happened to Hazer Tarjani?

Witness: they just made him go. He did not talk to anyone there.

Public Prosecutor: can you tell us what was Hazer Tarjani's occupation before he was taken to Drenovc?

Witness: a farmer

Public Prosecutor: did Hazer Tarjani ever work for the Serbian police or military?

Witness: never, we have never been traitors. The father of Xhavit Elshani would do those sorts of things. He was a member of the village council and he organized 12 searches in my house I remember, in one year. Only I know how I survived all these things during the war because of the treason of father of Xhavit Elshani.

Public Prosecutor: who searched your house?

Witness: the Serbian police did that.

Public Prosecutor: after your brother Hazer Tarjani was taken on 2 July 1998, did you see him again?

Witness: no. I received the remains just recently. I show you a document how my brother was found murdered in Dragodan. This document is in English and Albanian. The panel looks at the document.

Presiding Judge: when did you get that document?

Witness: approximately three months ago after I buried my brother.

Public Prosecutor: I am looking at the document and I ask that the death certificate be marked as Exhibit 5.

Presiding Judge: we will have the whole set of documents marked. Ask the witness if he is prepared to have us make copies of this for the record and make copies for the defence.

Witness: I would not agree with the defence getting this. I don't want them to get any of these documents. He was my brother and you should feel sorry even if you kill a chicken and not a person, and Xhavit Elshani has dishonored my brother and the army. We fought for this country and without any grounds they said my brother is a traitor and they are saying that we were spies in our family. I had two sons in the army and they put my sons in prison too.

Presiding Judge: who put them in prison?

Witness: the KLA. There was a radio conversation where Xhavit Elshani had said these are two traitors just put them in prison.

Presiding Judge: we will mark this as Exhibit 5.

Public Prosecutor: can you please describe to us the man you keep mentioning as Xhavit Elshani?

Witness: you mean today or previously how he looked?

Presiding Judge: whatever you recollect of him.

Witness: he is short in my opinion. He has a mark on his chin, left chin, his hair was black and combed to the back of his head.

Public Prosecutor: I request the photo lineup number 6 from the court records.

The photo lineup is now shown to the witness and marked exhibit C. The index of names has been removed.

Ethem Rogova, Defence Counsel: I believe this happened in the previous session and is now happening again. We are doing some things that the procedure does not foresee and to our opinion is not necessary. The witness knows Xhavit Elshani since his childhood very well. So perhaps the Public Prosecutor should consult article 255.

Public Prosecutor: exactly, Your Honour, that's why I asked him to describe the person first as set out in article 255.

Mahmut Halimi, Defence Counsel: can I add something? I believe the provision of article 255 deals with cases when the witness cannot really identify another and it does not address our issue here I believe.

Public Prosecutor: if the defence counsel would agree that this witness can identify Xhavit Elshani because he knows him from childhood, then I will not continue. I think all of them are in agreement.

Defence counsel state they have no problem with this suggestion.

Presiding Judge: when it comes to persons the law of evidence knows two principles, identification and recognition. Identification relates to the situation when a person does not know the individual sought to be identified. Recognition deals with the situation where the person knows or has known that individual and therefore has to confirm the identification. Article 255 provides that before identification or recognition is carried out the witness must be asked to describe that person. This the witness has done in this case. The other procedural requirement of 255 is that the witness must be told that he is not obliged to recognize or pick out any individual in the photo lineup. The Prosecutor can therefore show the witness the photo line-up.

Public Prosecutor: I am showing you 33 coloured pictures. I want you to go over them and tell us if you recognize anybody. But you are not under any obligation to pick out anybody if you don't recognize anybody.

The defence counsels are against the Judge's ruling.

Presiding Judge: you can always take the point on appeal if your clients are convicted.

At this point, the court takes a break until 1:45 p.m.

The court resumes at 1:55 p.m.

The court recorder is now Nina Maric

Presiding Judge: before the break what exactly you wanted on the record Mr. Halimi?

Mexhid Sylja, Defence Counsel: according to the law we have to put very concrete questions to a witness but Mr. Public Prosecutor's questions were dealing to the identification of Xhavit Elshani that witness could easily do. Then you decided to make the identification through photos you showed him but in the moment when the Public Prosecutor brought pictures in front of the Witness and he put in front of him question on very generalized way asking him whether he knew any person shown in a photo lineup. I believe the Witness did not leave us the dilemma as to other persons.

Presiding Judge: how would you have formulated the question?

Mexhid Sylja, Defence Counsel: I believe Mr. Public Prosecutor put the rightly in the beginning when he asked if he can identify Xhavit Elshani among those persons?

Presiding Judge: we will do it that way.

Public Prosecutor: no problem.

Fatmir Celina, Defence Counsel: also when the Witness entered into the courtroom he had a chance to visually see accused Xhavit Elshani.

Presiding Judge: this is why I said earlier on this issue; we are here dealing with a recognition issue as opposed to identification proper.

Public Prosecutor: Mr. Witness, I am showing you 33 colored pictures, which was marked as Exhibit "C" during the investigation hearings. Can you please tell us if you can recognize if any of the pictures here is of Xhavit Elshani?

Witness: I believe he has changed now. This one is Xhavit Elshani.

Presiding Judge: which number?

Witness: number four

The Witness goes through the photo lineup and he identified the photo number 4 as Xhavit Elshani and in the index is shown the name of Xhavit Elshani under number four.

Public Prosecutor: can you describe your brother Hazer Tarjani?

Witness: we looked similar, me and him.

Public Prosecutor: and if you are shown a picture would you be able to identify him?

Witness: I will try to.

Public Prosecutor: Your Honour, may I have Exhibit "B"? I am showing you nine colored pictures can you please tell us if you can identify your brother Hazer Tarjani?

Witness: this is my brother. Picture number seven.

Public Prosecutor: Your Honour, based on the index picture number seven is?

Presiding Judge: Hazer Tarjani.

Public Prosecutor: you mentioned while ago that while waiting at the check point when you were stopped on 2 July 1998, you said you were ill-treated, what kind of treatment did you receive, can you describe it to us?

Witness: they did everything to us. They said to my son's wife, "Don't talk because we will throw you out of the door". Her face was covered as per our Albanian tradition. I don't know anything else.

Public Prosecutor: who ill-treated you at that time?

Witness: two persons approached us but Xhavit Elshani stayed a bit further maybe 5 or 6 meters further away.

Public Prosecutor: do you have any idea why Hazer Tarjani was taken by the KLA on 2 July 1998?

Witness: yes, I have some idea.

Public Prosecutor: can you share it with us please?

Witness: yes. I believe he was taken because of Xhavit Elshani and because Xhavit Elshani wanted to take revenge against him and he spied against him. He did not know any of us others there. For example, for me it is my first time here today and how can I say that Mr. Public Prosecutor or Presiding Judge knows me without having seeing me before.

Public Prosecutor: thank you. I have no further questions.

Presiding Judge: Mr. Celina?

Fatmir Celina, Defence Counsel: I am Fatmir Celina, the Defence Counsel and my client is Xhavit Elshani. During the investigating stage in your statement there you have said that you were in a convoy what did you mean with that word convoy if you can explain?

Witness: it was not a convoy but now Xhavit Elshani is saying all sorts of things to our detriment. I could not get out of my house because I was scared of being hurt by Serbians or from my brothers in Kosovo. We thought that in our army were our brothers. I was scared of both sides at the end. I could not get out. I must say that a KLA soldiers come inside of our house.

Presiding Judge: the question was when you gave statement during the investigation phase you used a word convoy and Mr. Celina asked what did you mean by that?

Witness: I have not said that word. I think that was invented by Xhavit Elshani.

Presiding Judge: Mr. Celina, may I just refer you to what I have from the investigative hearing, it is page 5 of the English version and I think it was question put by Mr. Rexhep Hasani. The question, "In your statement of 5 July 2001 at the police you stated that when you were stopped Xhavit Elshani was among them and that there was a convoy. And today you are saying it was you, Hazer and your sister, which one is true?" and the Witness answered, "That is not true".

Fatmir Celina, Defence Counsel: did you ever reconcile with the family of Xhavit Elshani when you had that reconciliation campaign?

Witness: yes, we reconciled but Xhavit Elshani said, "I am not reconciling with him but I am doing this for Kosova".

Presiding Judge: 'him' meaning with the witness or what?

Witness: we sent some people there and I just wanted to go there have a coffee and embrace Xhavit Elshani as per our tradition but they did not welcome us there. How can you call this reconciliation?

Fatmir Celina, Defence Counsel: has the Witness ever been sentenced in the District Court of Prizren for illegal possession of a weapon, the Witness or his brother?

Witness: no.

Fatmir Celina, Defence Counsel: are you sure in what are you saying?

Witness: I myself was never convicted.

Presiding Judge: but he said earlier that his brother was sentenced three years.

Witness: yes for wounding of Xhavit Elshani and I believe that was just revenge as my brother served that sentence.

Fatmir Celina, Defence Counsel: I did not ask the Witness about that case, later on was he ever convicted for illegal possession of a Kalashnikov?

Witness: I don't know. I can't say now. We lived separately and in different houses.

Fatmir Celina, Defence Counsel: has the Witness ever had any contact with family of Xhavit Elshani after the war or has he received any threats?

Fatmir Celina, Defence Counsel: after the detention of Xhavit Elshani, did you ever receive any threats from his family?

Witness: no, I have not.

Fatmir Celina, Defence Counsel: I have no further questions.

Presiding Judge: Mr. Rugova?

Ethem Rogova, Defence Counsel: no questions.

Haxhi Millaku, Defence Counsel: no questions.

Mexhid Sylja, Defence Counsel: I have a question. My question is not connected with the event but more linked with the status of this Witness if he can give the answer. In the investigative hearing he was anonymous witness and now he came here and testifies openly. Can the Witness explain the reasons why he came and decide to testify in public at this stage?

Witness: I came here to testify publicly because I feel pure. I am clean. If I were scared I would never come to testify.

Mexhid Sylja, Defence Counsel: can the Witness tell me was it his free will that he decided to be a protected Witness to testify during the investigative stage or what pushed him to chose to change that status?

Witness: no, not my free will.

Mexhid Sylja, Defence Counsel: thank you. No more questions.

Haxhi Millaku, Defence Counsel: I would like one clarification if possible. When earlier during his testimony the Witness said that his brother was found in Dragodan, can he explain in which town this Dragodan was located?

Witness: I am not stupid. Everybody knows that Dragodan is in Pristina. When they informed me about the death of my brother they said Dragodan, Pristina.

Mahmut Halimi, Defence Counsel: he said that he had past several times on the road from Pirane village to Ratkovc, can you tell us how long is the distance in kilometers from Pirane village to Ratkovc?

Witness: the attorney knows if he had measured but I don't know. I haven't measured that distance.

Mahmut Halimi, Defence Counsel: Mr. Witness, I apologize but you and I here in front of this panel are to be correct, I am from Mitrovica and I don't know that part of territory. I asked approximately.

Witness: I just wanted to tell the court I have completed only 4 years of elementary school and I was farmer and I never measured the roads.

Presiding Judge: you are not in position to estimate the distance?

Witness: I just don't know how many kilometers.

Mahmut Halimi, Defence Counsel: what about hours, how many hours are from Pirane to Ratkovc either by foot or car?

Witness: first of all I want to thank Your Honour for invited me to talk and Mr. Public Prosecutor who called me to come here. I came here to testify about my brother not about the roads.

Mahmut Halimi, Defence Counsel: but we are here for the same issue.

Presiding Judge: are you in position to say how many hours it takes to go from Pirane to Ratkovc or by car or by foot?

Witness: from Pirane to Prizren I cannot say how long it takes by foot or by car.

Mahmut Halimi, Defence Counsel: in this part of territory from Pirane to Ratkovc have you ever met any members of KLA there?

Witness: no, there were KLA soldiers from Papracane to Drenovc. And there were KLA soldiers up to Ratkovc.

Mahmut Halimi, Defence Counsel: means every time you would walk there you would see KLA soldiers at that part?

Witness: I have been there three times to visit my son's father-in-law and all those three times I have seen soldiers. I went there as it is in our tradition to bring the money.

Mahmut Halimi, Defence Counsel: and on no occasion any of them disturbed you?

Witness: they would stop us and ask us to show IDs and they would look and say, "Sorry, this is our duty and have a nice day".

Mahmut Halimi, Defence Counsel: if I got you right you never had any problems with the KLA, correct?

Witness: yes.

Mahmut Halimi, Defence Counsel: from 2 July 1998 till the beginning of NATO attacks, have you ever tried to go and report the case to the prosecution organs at that time in Rahovec or Prizren?

Witness: no, I reported the case only on the day they took my brother and after that I did not know where to go and report. I did not dare to go there and ask the army about my brother. I believed he was dead and since he never came back since 1998.

Mahmut Halimi, Defence Counsel: Your Honour, I was looking for a more precise answer from the Witness. My question was has the Witness ever reported to the prosecution organs?

Presiding Judge: he said that he reported that day. Ask him again if you wish.

Mahmut Halimi, Defence Counsel: where did you report the case?

Witness: at KLA.

Mahmut Halimi, Defence Counsel: when you reported the case to KLA did you say that Xhavit Elshani had taken him or KLA?

Witness: Xhavit Elshani

Mahmut Halimi, Defence Counsel: thank you. I have no further questions.

Presiding Judge: No questions by Selim Krasniqi or Bedri Zyberaj.

Xhavit Elshani: I have questions for this witness. First I want to ask the Witness in year 1991 when the brother of this Witness wounded me, where did he wound me, on what part of the body and how much time later did I pardon his brother for that wound?

Witness: I don't know where he wounded him. He must know better. I was not there. He was there present.

Presiding Judge: can you answer the second part of the question? How much time after the incident he pardoned your brother for that wound?

Witness: I do not remember now after how much time he pardoned him. This was before the war not after the war.

Xhavit Elshani: the Witness can't remember. I mentioned here the year was 1991 and if he can't remember how much time after I pardoned his brother he must have an answer on that because he was present when I sent people from Pristina to give him a news that I was pardoning his family for my wound. These men that I sent to him were notorious, academics, Professor Agim Vinca, Professor Muje Rugova, Professor Bajram Kurti, and some other persons. And these happened like three or four months after the wounding incident that I pardon his brother for it. And I pardoned him for that wound for life.

Presiding Judge: having heard this comment by Xhavit Elshani does that ring the bell so you can answer about the pardon?

Witness: I have nothing to say about this. It is not true what he is saying.

Khavit Elshani: from year 1991 until the date that he accused me for have we ever had something bad between us, I mean from 1991 till 1998, have any bad stuff were between us?

Witness: do you remember us ever talking on the street when we met?

Presiding Judge: is the answer that they never talk to each other when their paths crossed?

Witness: we did not as they did not want to talk to us.

Khavit Elshani: have we ever had anything bad between us or our families have we ever insulted you in some way?

Witness: why he never accepted me when I wanted to go to his house and have coffee and hug with him. That is all I have to say.

Mexhid Sylja, Defence Counsel: problem is that we don't know who is putting the questions now, the accused and the Witness?

Khavit Elshani: Your Honour, in year 1991 when the brother of the Witness wounded me at that time there was a kind of council for reconciliation of blood feud acting for all of Kosova and those people who came to my family they asked me to pardon Hazer Tarjani family for wounding me. I agreed with this request of this wise people of Kosova and I sent them to Tarjani family with the news. And I pardoned the Trajani family for wounding me from that they on.

Presiding Judge: Mr. Elshani, we exhausted that, you covered your piece and Mr. Witness covered his. Can you now move to something else if you have?

Khavit Elshani: yes. During the investigation the Witness declared when my attorney Fatmir Celina asked him whether he had been in vendetta with some other family in our village,

Presiding Judge: it is page 5 of English version dated 11 March 2004

Khavit Elshani: the question was put "Were you in blood feud or disagreement with any other families in Pirane?" and the Witness answered, "No". Is it true what you have stated in that occasion?

Witness: am I here to testify about my brother not about other blood feuds.

Presiding Judge: do you stand by what you said during the investigation hearing or you want to add something?

Witness: I have nothing else to say. I am here for my brother. These things that are mentioned here are private things from the old Yugoslavia time and are not relevant here.

Khavit Elshani: do you know Xhemajli Latifi from Pirane village? He lives 30 meters from your house, and has your family ever wounded that person?

Witness: Khavit Elshani knows so much about everyone so he can clarify himself. What I had with Xhemajli should not be his interest.

Khavit Elshani: I want to ask him about another family, in our village, have you ever wounded your cousin Met Tarjani?

Public Prosecutor: Your Honour, I think we have to object. These questions are irrelevant to this case. I allowed the accused to ask them but they are not relevant.

Presiding Judge: I would allow the question, as there are two types of questions in cross-examination. The direct questions which go to merits of the case and there are collateral questions which go to the credibility of a witness. I believe that Mr. Elshani is engaging the credibility questions now and judging the answers of the Witness and judging his credibility too. Having said that I must warn the Witness that he is not obliged to answer any question that might expose him to disgrace, financial loss or criminal prosecution. Have you understood what I have said? The last question is up to you to answer but bear in mind what I just said.

Witness: I should not be asked these questions.

Khavit Elshani: has your family ever wounded Adil Xhafiqi in year 1992?

Witness: he said my family, I myself never wounded that person, it has been son of my brother who did that but I live separately from him.

Khavit Elshani: that is why I said your family and did not mention you. Is it true that same person wounded Adil Xhafiqi wounded the son of Nik Ndue, is this true?

Witness: I am more interested about my own business but not in what family of my brother does.

Presiding Judge: next question.

Khavit Elshani: have you ever beaten Haki Latifi with little shovel?

Witness: can I ask when that was?

Khavit Elshani: perhaps some 10 to 15 years ago.

Witness: 20 years ago. I don't know why he is mentioning this.

Presiding Judge: Mr. Elshani, if you want to talk to your lawyer you have to ask me and I will allow it, okay?

Khavit Elshani: what about Zeqa's son Selajdin Maksuti?

Presiding Judge: wounding or killing?

Khavit Elshani: have you ever beaten Selajdin or his father Zeqa shortly after that who was 70 years old?

Witness: this is not true.

Khavit Elshani: there are more people I could mention here. We lived near by and we know each other in the village.

Presiding Judge: is this a comment?

Khavit Elshani: it is a question. I know he beat Shumdi Berisha as well. About his brother's son whom I mentioned earlier and who has wounded two other persons where is he today? His name is Naim Tarjani.

Witness: Naim is in prison but we live separately but I don't like to be asked repeatedly about the same.

Khavit Elshani: can the Witness tell us what he is in prison for?

Witness: he was selling his truck and the other person did not give him the money and he had wounded that person.

Khavit Elshani: is it true that he is in prison for kidnapping? He kidnaped and brought that person to your house.

Witness: no

Khavit Elshani: Your Honour, the Witness who accused me here what I mention here to you is the reality and I abide to what I stated here and what I know is reality and the truth. All the things that he has said against me are simply slanders. I never saw this person during the wartime, never stopped him and never did anything bad to him, this is the truth. One more question, earlier the Witness said that Khavit Elshani together with his father, has brought Serbian police to his house 12 times, can the Witness bring any fact to prove that and when did this happen?

Witness: I can say something about it. I did say it was his father not him. It was the head of the village.

Presiding Judge: he said earlier that you father as a head of village council searched his house only in one year dozen times with Serbian police.

Xhavit Elshani: what year?

Witness: before the war. This was much before the start of the war, I can't recall the year now.

Xhavit Elshani: I do not have more questions for this Witness but I want to say that all the things he said about me here are lies.

Presiding Judge: anything else.

Xhavit Elshani: no. Thank you for your attention.

Presiding Judge: No questions by Isuf Gashi and Islam Gashi?

Presiding Judge: yes Mr. Celina?

Fatmir Celina, Defence Counsel: I was waiting for the Public Prosecutor proposal regarding confrontation. I believe it is the time to organize that confrontation and to come up with some conclusions.

Presiding Judge: with regard to confrontation of the accused and the Witness we have it all in the old code of criminal procedure because under the old law the accused was questioned by the court and now the accused has right to be silent and not give evidence at all. If he does not give evidence how I confront him? This is how I see it. But I will give a ruling on that.

Fatmir Celina, Defence Counsel: I agree with Mr. Public Prosecutor and what he said, I mentioned that he submitted his own defence but in the Indictment is mentioned that he is defending in silence.

Presiding Judge: I have few questions. Mr. Tarjani I have one clarification. In the statement you gave to the police on 5 July 2001 you were asked the following question "Can you say why your brother has been wanted and arrested?" and the answer you gave is "Because it is known that our family are sympathizers of the LDK and we could be a hindrance", do you remember having said that to police?

Witness: which police?

Presiding Judge: CCIU

Witness: I have not been there, perhaps my older brother was.

Presiding Judge: did you say that to the police?

Witness: I am with the LDK but I don't remember myself going to international police and saying that.

Presiding Judge: do you believe that your family and you being sympathizers of the LDK could cause you problems then?

Witness: no

Presiding Judge: I don't have any other questions.

Presiding Judge: Mr. Tarjani, we finished the interrogation. Thank you very much. You can go now. The witness is excused at 3.25 p.m.

Presiding Judge: who is your witness tomorrow if you can disclose the names for the security reasons?

Public Prosecutor: Your Honour, I requested two of witnesses for tomorrow.

Presiding Judge: can the names be disclosed?

Public Prosecutor: Eshref Berisha and Fadil Hoti, Your Honour.

Presiding Judge: these are two witnesses for tomorrow. Hopefully we will get them.

Mahmut Halimi, Defence Counsel: Your Honour, in the morning Mr. Public Prosecutor gave us two testimonies, the minutes of witnesses Haki Morina and Fadil Hoti. It is not that we have anything against hearing those witnesses proposed in the Indictment but for a witness who can help the trial, both the Public Prosecutor and the defence and then the Court decide about completing the procedure of evidence in according to article 360 paragraph 4. I am talking about Fadil Hoti Your Honour.

Presiding Judge: you don't want to hear him.

Mahmut Halimi, Defence Counsel: there are some procedural things at this stage, first we have to hear the Public Prosecutor's witnesses and then to complete procedure we can hear additional witnesses. I don't know how it says in the English version but in the Albanian is very clearly put.

Presiding Judge: what is your proposal?

Mahmut Halimi, Defence Counsel: my proposal is to first finish with the witnesses proposed in the Indictment according to the Indictment how they are put there and then we have our proposals for the additional witnesses. And you have to rule whether you will agree to this or not because today Mr. Public Prosecutor gave us also submission proposal to invite new witnesses. This is interlinked with the completion of procedure of evidences.

Presiding Judge: anything else?

Mahmut Halimi, Defence Counsel: nothing else.

Presiding Judge: in fact, Mr. Halimi, I understood from one of your numerous frequent interventions that we should hear the witnesses in the Indictment first and then the other witnesses. Is this what you are saying?

Mahmut Halimi, Defence Counsel: yes.

Mexhid Sylja, Defence Counsel: Firstly, I want to add to what Mr. Halimi said; hearing new witnesses in this stage would breach the equality of arms principle. We would need to go through the statement of the new witnesses proposed and compare that with the testimony of Shala family who has testified. Secondly, I would also like to repeat our request to get minutes from the previous sessions as soon as possible. Thirdly, it is request from our clients regarding phone conversations with their families. Is it possible to enable them that? Mr. Islam Gashi's wife is in bad health condition, and I think it is human to allow him to contact her on the phone. It is same for the other accused. I also want to thank the Public Prosecutor for informing us about the witnesses scheduled for tomorrow.

The Public Prosecutor: with regard the principle equality of arms he did not receive the minutes except the minutes dated 29 September. With regard to calling new witnesses, both parties are allowed to call new witnesses.

Haxhi Millaku, Defence Counsel: if you go along the lines of prosecutor I want to know when this process will end first we have to finish with the calling of the Witnesses proposed by the Public Prosecutor. The Public Prosecutor: should inform the court whether he intends to call his Witness: and after that he can call new witnesses.

Presiding Judge: I have taken note of these observations and we will give a ruling.

The court adjourns at 3:50 p.m. The next trial date is November 24, 2005 at 10:30 a.m.

Presiding Judge, Vinod Boolell

Court Recorder, Nina Maric

Court Recorder, Robina Struthers