

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:	May 23, 2006
Venue of Proceedings:	Courtroom of Gjilan District Court
Presiding Judge:	Vinod Boolell, International Judge
Panel Members:	Leonard Assira, International Judge Nurul Islam Khan, International Judge
Public Prosecutor:	Paul Flynn, International Public Prosecutor
CD Legal Officer	Andrey Antonov
Defence Counsel:	Mahmut Halimi, Rexhep Hasani, Fatmir Celina, Ethem Rogova, Mexhid Sylja and Fazli Balaj
Accused:	Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf (Sherifi) Gashi, Islam Gashi and Agron Krasniqi
Witnesses:	Zenel Tarjani and Witness "B"
Court Recorders:	Cecilia Takoff, Marilyn Micallef
Interpreters:	Ervin Mazniku, Tritan Kalo
IJSD Legal Officer:	Virginie Monchy
Humanitarian Law Centre Monitors:	Anka Kurteshi Hajdari and Luan Dushi
OSCE Monitor:	Lumnije Shkodra

The accused are charged with war crimes.

The trial commences at 11:05 a.m.

The trial is public. The composition of the Panel is the same.

Present: Presiding Judge and Panel Members; Accused Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf (Sherifi) Gashi, Islam Gashi and Agron Krasniqi; Public Prosecutor Paul Flynn; Defence Counsel Mahmut Halimi, Rexhep Hasani, Fatmir Celina, Ethem Rogova and Fazli Balaj.

Blerim Prestreshi is replacing Defence Counsel Mexhid Sylja for today's session.

Also present is Humanitarian Law Center Monitor Anka Kurteshi Hajdari.

Court Recorder: Cecilia Takoff

Translator: Ervin Mazniku

Presiding Judge: good morning. We resume the proceedings in this case. Mr. Blerim Prestreshi, welcome and thank you for agreeing to step in for Mexhid Sylja. Mr. Bedri Zyberaj, on the last occasion you made a request to be allowed to make phone calls. We have considered the request and we will authorize you to make phone calls to your wife. Do you have children?

Bedri Zyberaj: yes

Presiding Judge: to your wife and children. The same will apply to the other accused also. We will give the proper instructions to Dubrava.

I take it that the Public Prosecutor has a witness.

Public Prosecutor: yes. For today I requested the court summon three witnesses. One witness is open and two are anonymous. I propose to call Zenel Tarjani first. He has been recalled for the benefit of Fazli Balaj and Agron Krasniqi.

Zenel Tarjani enters the courtroom.

Public Prosecutor: thank you for having consented once more to come to Court.

Zenel Tarjani: thank you for serving the summons on me.

Presiding Judge: we apologize for calling you again but circumstances are such that we had no choice. Hopefully this is the last time. We hope to finish with you as quickly as possible. Before proceeding I will repeat what I told you on 23 November 2005. 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.

We took your personal data last time.

As I informed you last time since you are an injured party in the case you have the right to file a property claim pursuant to Article 355 of the PCPCK, and if at any time

the Public Prosecutor withdraws the indictment you have eight days from the date of the decision to file a petition signifying your intention to proceed with a claim.

The Public Prosecutor is given the floor.

Public Prosecutor: Mr. Tarjani, I have a couple of short questions. Do you remember that you appeared before this trial panel on 23 November 2005 and gave a statement?

Zenel Tarjani: yes

Public Prosecutor: do you stand by that statement, is everything in that statement accurate and correct?

Zenel Tarjani: it is accurate.

Public Prosecutor: to summarize you told the trial panel on that occasion that on 2 July 1998 you were with your brother, Hazer Tarjani, when he was detained, and that he was subsequently taken to the village of Drenovc

Zenel Tarjani: yes

Public Prosecutor: you told us that on that occasion one of the accused, Xhavit Elshani, had been with the group of men who had detained your brother?

Zenel Tarjani: yes

Public Prosecutor: and ultimately you haven't seen your brother alive from the day he was detained?

Zenel Tarjani: I no longer have seen him as of that day. I only found the corpse.

Presiding Judge: when did you find the corpse?

Zenel Tarjani: I need to look at my document.

Presiding Judge: we have that document and will check.

Public Prosecutor: I would like to ask apart from recognizing Xhavit Elshani did you recognize or hear the name of anyone else who may have been involved in the detention of your brother?

Zenel Tarjani: no. Xhavit Elshani was one out of the three persons.

Public Prosecutor: I think some people went to the village of Drenovc to make inquiries about Hazer, correct?

Zenel Tarjani: yes

Public Prosecutor: did you speak to those people afterwards?

Zenel Tarjani: no

Public Prosecutor: did you at any stage, either when Hazer was taken and today, learn that anyone by the name of Krasniqi was involved?

Zenel Tarjani: no

Public Prosecutor: I don't have any further questions.

Presiding Judge: Mr. Balaj, any questions?

Fazli Balaj, Defence Counsel: thank you. No questions.

Presiding Judge: the Witness has already been cross-examined by everyone on the last occasion. There are no further questions or presentations by any of the defence attorneys or the defendants. Mr. Tarjani, this terminates your interrogation, thank you for coming. You are free to leave. Excused at 11:16 a.m.

Zenel Tarjani: thank you.

Presiding Judge: Mr. Flynn, you have two more witnesses?

Public Prosecutor: yes

Presiding Judge: are they here?

Public Prosecutor: not yet. They are on their way.

Presiding Judge: can we discuss the issue of the site inspection? We have earmarked Saturday June 10, 2006 for the site inspection, if that day is convenient for everyone. Article 254 that deals with site inspections states, "The defendant and his or her defence counsel have the right to be present at the site inspection or reconstruction." I take it all defence counsel and defendants will be present?

All defendants and their attorneys say they would like to exercise their right to be at the site inspection.

Presiding Judge: Mr. Flynn, any idea approximately when your witnesses might be in attendance?

Public Prosecutor: the next witnesses are at least an hour away.

Presiding Judge: since we have one hour I suggest we break now for lunch. I will make arrangements for the accused to have an early lunch and then we will come back at 12:45.

Break at 11:30 a.m. and resume at 1:20 p.m.

Court Recorder: Cecilia Takoff

Translators: Ervin Mazniku and Tritan Kalo

Presiding Judge: good afternoon. Mr. Flynn, your witness is here.

Public Prosecutor: yes. I propose we commence with Witness "B".

Presiding Judge: Witness "B", can you hear me?

Witness "B": 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 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. Do you understand?

Witness "B": yes

Presiding Judge: your personal data has been taken and sealed in an envelope and is part of the record.

Since you are an injured party in the case, I have to inform you that you have the right to file a property claim in the present proceedings. If you do, you have the right to propose evidence, to put questions to the defendants, witnesses and expert witnesses, to make remarks and present clarifications concerning their testimony and to give other statements and to file motions. Or you may file your claim before the appropriate court subsequently.

Since you are an anonymous witness your voice will not be transmitted through the mechanical device so whatever you say will be transmitted to us through the translators. Is that clear?

Witness "B": yes

Presiding Judge: when you are interrogated make sure you don't give any information or reveal any facts that might lead to your identity or to the location of your premises. Do you understand?

Witness "B": yes

The Public Prosecutor is given the floor.

Public Prosecutor: I am the Public Prosecutor and I have some questions for you. Can you hear me?

Witness "B": yes

Public Prosecutor: do you remember appearing before the investigating judge in connection with this matter on February 26, 2004, and did you give a statement to the judge on that occasion?

Witness "B": yes, I remember.

Public Prosecutor: can you tell us if what you told the investigating judge on that occasion was correct and true?

Witness "B": yes, it was true and accurate.

Public Prosecutor: on that occasion you told the investigating judge about an incident that had occurred during the war which you had witnessed and what actions you took afterwards relating to that incident. Do you remember that account given to the judge?

Witness "B": yes

Public Prosecutor: could you tell this trial panel what you remember about this incident?

Witness "B": on 3 June I headed for the village of Ratkovc to pay a visit to my brothers. And KLA took away Bedri. When KLA came to my brothers they shot in the air three times. When Bedri went out of the house they said, who are you and he said Bedri and they said you have to come with us to the headquarters. Those two persons that came there both of them were from Ratkovsc, one was Milaim Hoti and the other was Ruzhdi Krasniqi. Bedri asked them do I need to take my car and they said no because we have our own car. Then they took him to Drenovc. The following day at 6:00 in the morning I headed for Drenovc. I went to the headquarters and asked for Bedri. They said we are going to keep him for two hours or two days and then we are going to release him. Then I returned to the village of Brestovc. On 4 June Bedri's father went there and he was detained for three days.

Presiding Judge: because of the anonymity order under which the witness is testifying, I would ask the Public Prosecutor to make sure and arrange that the witness doesn't give any information that might compromise the status of that witness. If you need some time I will give you a few minutes.

Public Prosecutor: I already discussed this with the translator.

Break at 1:44 and resume at 1:46 p.m.

Presiding Judge: please continue.

Witness "B": I myself went there several times to look for Bedri. On 16 July, it was a Thursday, I went to the headquarters in Drenovc. I talked to Bedri Zyberaj and I asked him where Bedri was. He said in three or four days the KLA will come to Brestovc and will ask people in order to find out where Bedri is. Ratkovc was set on fire on 17 and 18 July. Correction, I saw Bedri on 13 July and not 14 July. On

13 July when I went to the headquarters they brought Bedri in a 4 x 4 room, he was very skinny, they had taken away his belt and he was holding his trousers with a rope. He asked me if I could bring him a piece of bread, and some paprika and some chicken as well. But I could not make it there to bring him the paprika and chicken. As I said I could not bring the foodstuff to him. He cried and told me could you bring my little daughter, would it be possible. Those being his words at that time. But then at a later stage Bellacerke and Rahovec were set on fire and therefore I could not go there anymore. I gave him some clean clothes and in return he gave me the old ones that were dirty, and in particular his shirt and trousers were with bloodstains. I went there on several other occasions but I could not meet him and those KLA people that were there told me that he was in Ternica and he might come here at a later stage. I have gone there on numerous occasions to look for Bedri. I don't have anything else to say.

Public Prosecutor: I have a few questions for you, if you are finished.

Witness "B": okay

Public Prosecutor: you told us that on 3 June it was the KLA who took away Bedri and shot in the air three times. Can you tell us how the men who came to take away Bedri were dressed?

Witness "B": they had green uniforms on like army uniforms.

Public Prosecutor: did they have any distinctive insignias on their arms, words, badges or otherwise?

Witness "B": I was very concerned about Bedri therefore I couldn't see any insignia or signs.

Mahmut Halimi, Defence Counsel: we heard through the translator that the Witness stated that they had "green clothes" and not "uniforms".

Presiding Judge: it was translated to us as "uniforms". How do you know the Witness said "clothes". What is the Albanian word for "uniform"?

Translator: "uniforme"

Presiding Judge: what word did the Witness use?

Translator: "army clothes".

Presiding Judge: on intervention of Mr. Halimi, the Witness said "army clothes".

Mahmut Halimi, Defence Counsel: please enter it in the record?

Presiding Judge: this has been done. When you see receive the record you will see that it has been done.

Public Prosecutor: on the clothes these men were wearing, these green clothes, was there any sign of any writing or insignia?

Presiding Judge: I have an answer here that the Witness could not see any insignia or signs.

Public Prosecutor: these men who came to take Bedri you said they told him you have to come with us to headquarters. Did they say to which headquarters and whose headquarters?

Witness "B": they said you have to come to with us to the headquarters in Ratkovc.

Public Prosecutor: you told us two names of these persons, Ruzhdi Krasniqi and Milaim Hoti. Did you know these people at the time?

Witness "B": yes, I know them very well.

Public Prosecutor: do you know if at this time they were members of KLA?

Witness "B": yes, I did.

Public Prosecutor: you told us that they then took him to Drenovc. You also said they told him they wanted to take him to the headquarters in Ratkovc. Do you know if they went to Ratkovc first and then to Drenovc and, if so, how do you know this?

Witness "B": people saw him remaining for ten minutes in Ratkovc and then being taken to Drenovc.

Public Prosecutor: which Drenovc are we talking about, in which municipality?

Witness "B": Drenovc, Municipality of Rahovec.

Public Prosecutor: the following day you said you went to Drenovc and to the headquarters to ask for Bedri. Can you tell us which headquarters you went to?

Witness "B": I went to the KLA in Drenovc.

Public Prosecutor: can you tell us where the headquarters was situated at this time, where the building was, and, if so, can you describe it?

Witness "B": the headquarters at that time was situated at the house that was used as the premises of the administration of the municipality and that house was near the school.

Public Prosecutor: having set out for Drenovc this day and going to the headquarters did you have a contact name, the name of any person whom you should make enquiries from?

Witness "B": some people on the street told me that I should go and see Bedri Zyberaj on that matter.

Public Prosecutor: did you look for Bedri Zyberaj when you arrived at Drenovc that first day?

Witness "B": when I went to Drenovc I asked for Bedri Zyberaj and people told me that I should go and look for him at another house because the old headquarters was transferred to another house.

Public Prosecutor: did you manage to meet him that first day you went there?

Witness "B": yes, I met him on that day and it was 16 July.

Public Prosecutor: I am talking about the very first day you went to Drenovc to look for Bedri who had been taken, if on that day, which you told us was the month of June, you managed to meet Bedri Zyberaj?

Witness "B": I only met him on July 16.

Public Prosecutor: you told us that you made several trips to Drenovc and you told us on 13 July when you went to the headquarters the Bedri who had been taken was brought to a 4 x 4 room. Could you describe his condition when you saw him apart from the clothes he was wearing?

Witness "B": when I saw him he was not shaved, he had lost weight and there were bloodstains on his shirt and trousers.

Public Prosecutor: were there any marks or cuts on him that might indicate that the blood that you saw came from him?

Witness "B": I could not see any wound because I wasn't allowed to approach him. Together with him was also Isuf Berisha, a policeman at that time who got killed later on in Dubrava.

Public Prosecutor: did you ask Bedri at the time where the blood had come from or did he explain to you where the blood came from?

Witness "B": I did not dare to because of the policeman that was there, and I was afraid that had I asked that would deteriorate the situation.

Public Prosecutor: you said he asked you for a piece of bread when you saw him. Did he explain why he was looking for this piece of bread and were you able to give him anything to eat?

Witness "B": he said, could you bring me a piece of bread and he touched his belly as a sign indicating that he had lost weight and he was hungry.

Public Prosecutor: how long did you spend with him on that occasion, how long were you in that room with him?

Witness "B": only 20 minutes.

Public Prosecutor: you spoke about bringing him clean clothes and taking away the dirty clothes. Do you know what you did with the dirty clothes, in particular the blood stained clothes?

Witness "B": he asked the policeman, can I change the clothes, and as he got in to change the clothes I attempted to look where he was staying. As I attempted to approach the policeman told me to move back or otherwise you will be put in there as well.

Public Prosecutor: can you tell us what you did with the clothes you took from Bedri this day, and, in particular, the blood stained clothes?

Witness "B": I took his pants and other clothes to his home and there was also a shirt with bloodstains that was put in a plastic bag.

Public Prosecutor: what did you do with that shirt and the other clothes?

Witness "B": the shirt in a plastic bag should be with the international police. As for the other clothes I think they got burned but I am not sure.

Public Prosecutor: I know that it is has been eight years but can you remember the color of the shirt you put in this plastic bag?

Witness "B": it was a dark red short sleeved shirt.

Public Prosecutor: you told us about meeting Bedri Zyberaj, and the date you gave us was 16 July. Did you meet Bedri Zyberaj after first meeting with the Bedri who had been taken?

Witness "B": that was my first and last time I met with Bedri Zyberaj.

Public Prosecutor: and you told us that he had said to you that KLA will come to Brestovc and we will ask people to find out where Bedri was. Did you not tell him at the time that you knew that Bedri was held in Drenovc by the KLA?

Witness "B": he said that the KLA will come to Brestovc in three or four days and we will see what we can do there.

Public Prosecutor: can you describe this man Bedri Zyberaj that you met? Can you give us a physical description of that Bedri Zyberaj?

Witness "B": he was I would say a short person, not so tall, a round shaped face. I would say he had a bit of dark complexion.

Public Prosecutor: what age approximately would he have been at that time?

Witness "B": something more than 30 years old.

Public Prosecutor: did you know this man personally at the time?

Witness "B": as I said, it was the first time I saw this person.

Public Prosecutor: at the time you met him did you know anything about him?

Witness "B": I knew something about him.

Public Prosecutor: can you tell us what that was and how you knew it?

Witness "B": before July 16 I asked people around about Bedri Zyberaj and they told me who he was.

Public Prosecutor: can you tell us what you were told by the people as to who he was?

Witness "B": people had told me that your problem can only be solved by Bedri Zyberaj.

Public Prosecutor: going back to your meeting with Bedri who was taken did you get to meet him again at any stage over the visits that you made to Drenovc that you told us about?

Rexhep Hasani, Defence Counsel: I remember the Witness answering that his only time of meeting Bedri Zyberaj was July 16.

Presiding Judge: I understand the question to be about the Bedri who was taken and not Bedri Zyberaj. The Witness said that he had seen Bedri Zyberaj once. The Public Prosecutor wants to clarify if the Witness had seen the Bedri who was taken on any other subsequent occasion. Is that right?

Public Prosecutor: yes

Presiding Judge: the Witness can answer.

Witness "B": as of the moment he was taken away I saw him only on July 13, and that was the only time I saw him ever since.

Public Prosecutor: I know that Bedri's body was subsequently located and you were notified by the office of missing persons. Can you tell us was there any reason you know of for Bedri to stay away from home during the years 1998, 1999, 2000, and the later years until his body was discovered?

Witness "B": Bedri had only two months returned from Germany where he lived for more than six years.

Public Prosecutor: do you know of any enemies Bedri had or people who may have wished to do him harm in and around the time he was taken?

Witness "B": not to my knowledge.

Public Prosecutor: if Bedri had been released from the headquarters in Drenovc where he was being kept within the two days or two weeks that was mentioned to you is there any reason why he would not have come home that you know of?

Witness "B": there was no reason for him not to come back home.

Public Prosecutor: looking back to 1998 and this period can you tell us how many visits in total you made to Drenovc to inquire about Bedri including the day you managed to meet him?

Witness "B": perhaps more than 30 times.

Public Prosecutor: how did you travel on those occasions?

Witness "B": by tractor to Rahovec and from there to Drenovc on foot.

Public Prosecutor: apart from the Bedri Zyberaj you mentioned to us and the Isuf Berisha you mentioned to us did you see any other people at the place where Bedri who was taken was kept, and did you recognize any of them or know the names of any of them?

Witness "B": among the other people I would name is Islam Isufi, Selim Krasniqi, Xhavit Elshani, Zaim Bajraktari, and a person known as Gjermani, whose real name was Xhamalji Gashi.

Public Prosecutor: can you tell us if you knew these persons personally?

Witness "B": I have seen those people at the detention facility and whenever I would see them I would ask people around who he is or who they are and people would tell me their names.

Public Prosecutor: do you remember if you mentioned any or all of these names to the investigating judge?

Witness "B": yes, I told him so.

Public Prosecutor: if I told you that the only names you mentioned as being present where Bedri was being held was Zaim Bajraktari and Isuf Berisha and that there is no mention in the minutes of the names Islam Isufi or Selim Krasniqi or Gjermani. What would you say to me?

Witness "B": Isuf Berisha and Zaim Bajraktari were the policemen that guarded Bedri while in detention.

Court Recorder: Marilyn Micallef

A short 5 minute recess was called at the request of the translators.

Public Prosecutor: Xhavit Elshani was one of those people you saw at Drenovc, but let me read what you said to the Investigating Judge (on page 9). The Investigating Judge said 'Did you know Xhavit Elshani before meeting him in Drenovc?' and you replied: 'I never said I met Xhavit Elshani in Drenovc.' The Investigating Judge asked: 'Where did you see him?' You replied 'I saw him in Brestovc.'

Is there a possibility that you might be mixing up today and you saw him in Brestovc and not in Drenovc?

Translator: Your Honor, the interpreter would like to approach the bench, if possible.

Translator and Presiding Judge confer.

Presiding Judge: It would appear from the information imparted to me by the translator that the answer the witness proposes to give to your question *might* just might – I am not saying 'would' - compromise his or her anonymity status. This is why the interpreter has informed me, since we have all those details to take into account.

Public Prosecutor: Let me rephrase and advise me if there is difficulty.

Presiding Judge: Yes.

Public Prosecutor: Witness "B", do you remember telling the Investigating Judge that it was in Brestovc and not in Drenovc that you saw Xhavit Elshani? A yes or no or I don't remember will suffice.

Witness "B": I have seen him in Brestovc.

Public Prosecutor: Did you also see him in Drenovc during those visits you made to make about the Bedri that was taken?

Witness "B": When I saw him in Brestovc I recalled that he was also the person I saw in Drenovc.

Public Prosecutor: Can you give us a physical description of this man Xhavit Elshani who you saw in Brestovc and Drenovc and tell us about the clothes he was wearing in Drenovc.

Witness "B": I did not pay too much attention, as I was concerned. To the best of my recollection, he had KLA clothes on.

Public Prosecutor: On seeing him on either of these days, would you be able to give us a description of him at all?

Witness "B": He was tall and I would say fat, but I did not notice any other details. As I said I was not too much concentrated on that.

Public Prosecutor: Could you give us a description of some of the other people you mentioned were at Drenovc where Bedri was taken? Can you give us a description of the person you said was Selim.

Witness "B": I myself was scared therefore I could not look at them in detail.

Public Prosecutor: Are we speaking for all these people that we are saying were in Drenovc or is it just about Selim?

Mahmut Halimi, Defence Counsel: Objection. The answer of the witness was: 'I could not look at them in detail.' Therefore the question was answered for all.

Presiding Judge: Let the witness answer.

Witness "B": I could not look at them in detail because I was scared.

Public Prosecutor: At this point, I would like to show the witness the photographs – Exhibit C.

The legal officer takes Exhibit C (photograph album) to the witness.

Presiding Judge to the Witness: You will now be shown an album of photographs. You will go through them and you will tell us whether you recognize or identify anybody. Bear in mind that you are absolutely not obliged to pick out any person – Warning Article 255 PCPCK.

Witness "B": I could say that photograph no. 12 would be Ruzhdi Krasniqi while photograph no. 16 would be Bedri Zyberaj.

Public Prosecutor: Are you finished?

Witness "B": Bedri Zyberaj would be photograph no. 15 or 16. (Translator: The witness is going through the pictures one by one.)

The selected pictures are shown to the Public Prosecutor, to the defendants and their defense lawyers.

Public Prosecutor: You have indicated that photograph no. 15 or no. 16 could be Bedri Zyberaj. Is this the same Bedri Zyberaj that you met on Drenovc on 16 July 1998?

Witness "B": Yes it is about him.

Public Prosecutor: I would also like to put to the witness Exhibit D.

Presiding Judge: You are going to be shown another set of photographs. The same instructions as given previously still apply - Warning Article 255 PCPCK.

The legal officer again takes a series of photographs to the anonymous witness.

Witness "B": Picture no. 3 is, I think, indicating the school. In picture no. 5 I see houses of Drenovc. The house where Bedri was kept in, there was coal kept on the first floor while on the second Bedri was kept – but I cannot tell that from the pictures that I am being shown. I am an uneducated person. These things occurred 8 years ago therefore I am not capable of remembering them accurately.

Public Prosecutor: At the time that Bedri was taken by the KLA as described by you, are you aware if he had any rows or difficulties with the KLA over anything at all?

Witness "B": He had no problems related to KLA.

Public Prosecutor: At that time, can you tell me if Bedri worked as a civilian or whether he was a member of any police or military?

Witness "B": He has lived for 6 years in Germany and when in Kosovo before that, he worked as a farmer. He was not related to paramilitary or anything of the like.

Public Prosecutor: That concludes my questions Your Honor.

Mahmut Halimi, Defence Counsel: Mr. Witness, you stated you had gone to Drenovc approximately 30 times. Can you tell me whether, those 30 times of going to Drenovc, had you been alone or were you accompanied by somebody else?

Witness "B": On the 13 July I went there with my son on a tractor. On other occasions I went there alone.

Mahmut Halimi, Defence Counsel: At the time you arrived in Drenovc, how long would you stay there, and where would you mostly stay while in Drenovc?

Witness "B": On several occasions, they did not allow me to approach the KLA headquarters. Whereas on some other occasions I managed to approach the KLA headquarters, hung around it, and then they prohibited me to approach it anymore.

Mahmut Halimi, Defence Counsel: At the time you arrived in Drenovc, how long would you stay there, and where would you mostly stay while in Drenovc?

The translator, before translating the next question of Mr. Halimi, requests permission to approach the bench.

Presiding Judge: We are again facing the problem where answers may compromise the status of the witness. I told the translator to tell the witness to rephrase the answer.

Witness "B": Whenever I could not make it home I would go to Ratkovc.

Mahmut Halimi, Defence Counsel: I think the witness did not understand the question. When he said that he would go to Drenovc and he would say he went to the headquarters of the KLA, how long would he hang around the KLA headquarters – half an hour, an hour, one and a half hours, how long?

Witness "B": When I would go there, I would hang around for half to one hour. It all depended on whether they would allow me to approach the headquarters or not.

Mahmut Halimi, Defence Counsel: You also stated that Bedri's father was kept in detention for three days. After Bedri's father was released, did you contact him (Bedri's father)? Did you ask him about the fate of Bedri or anything else related to him?

Witness "B": Yes I have met him, and he told me that he met with Bedri. When he saw Bedri his face was swollen and covered with blood. Also the policeman had told Bedri *'Wash your face before you meet your father.'*

Mahmut Halimi, Defence Counsel: Did Bedri's father tell you as to what was the attitude of the KLA soldiers towards him?

Witness "B": Yes. He has told me that the KLA soldiers' attitude towards them was a bad one. His father also told me that he was hit on the head with a baton by the KLA soldiers.

Mahmut Halimi, Defence Counsel: Do you know how many times Bedri's father had gone to Drenovc in order to learn about Bedri's fate?

Witness "B": I think that he has told me that he has been there two times and as far as I remember he has been held there for either three or four days.

Mahmut Halimi, Defence Counsel: Did the Investigating Judge or the people that examined you ever tell you as to who the suspect is or were in this case?

Witness "B": I don't remember – I think I have forgotten.

Mahmut Halimi, Defence Counsel: How is it possible that you remember very well the names of Selim Krasniqi and the others after eight years?

Witness "B": Those names got in my head eight years ago and have remained there ever since.

Mahmut Halimi, Defence Counsel: My question was: How come you never mentioned those names to the Investigating Judge and the police? Why is it only today that you are saying these names in court?

Presiding Judge: The names were mentioned to the Investigating Judge – you must be specific about the names.

Mahmut Halimi, Defence Counsel: This is up to the court to decide upon.

Witness "B": I have mentioned those names but apparently those names were not entered into the record and I am not the one to be blamed for that.

Rexhep Hasani, Defence Counsel: First of all, since parts of the corpse of Bedri Berisha have been identified I would like to express my condolences. When the Investigating Judge asked you what clothes the people who took Bedri away had on – you answered you did not remember – whereas today, you have stated that they had green uniforms on. Why this contradiction?

Public Prosecutor: I draw the attention of the panel to page 2 of the English minutes – lower part of the page where there was reference made to the KLA uniforms. The Judge's question was: *'Did they all have multicolored ones?'* – the answer was – *'It was one colour – green in colour'*.

Presiding Judge: I believe Mr. Hasani is referring to page 3 of the English minutes. *(Presiding Judge reads out the questions and the relevant answers.)* Please ask the witness to answer.

Court Recorder: Cecilia Takoff

Translator confers with Presiding Judge.

Presiding Judge: explain to the Witness that the question is very specific. He said today that the person who took Bedri wore green clothes but to the investigating judge he said he couldn't know as he was afraid. Why is he mentioning the color today? We don't want any details.

Witness "B": I was concentrated on Bedri and not on the clothes, but I think I have mentioned the color of the clothes was green.

Rexhep Hasani, Defence Counsel: you have stated today you know very well Milaim Latifi. You have stated you saw the persons who took Bedri only from behind. And that AA or Bedri Berisha was taken by Milaim or Ruzhdi Krasniqi. On page 7 you stated that you do not know Milaim Latifi. What is the truth, that you know or don't know Milaim Latifi? Your memory must have been fresher at that time rather than today.

Witness "B": I know very well Milaim Latifi.

Rexhep Hasani, Defence Counsel: to the question posed to you, had Bedri Berisha been released would he return home without any problems, and your answer was, yes, of course. Is it possible that after being released by the KLA forces Bedri Berisha was abducted by the Serbian forces and then disappeared?

Public Prosecutor: objection. It calls for speculation.

Presiding Judge: that is a very wild and speculative question. Too much speculation is embodied in that question. There was an objection by the Prosecutor and the objection is sustained. Rephrase or go to something else.

Rexhep Hasani, Defence Counsel: given that in 1998 the Serbian forces were moving around the territory of the Municipality of Rahovec could the Serbian forces arrest and liquidate Bedri Berisha?

Presiding Judge: you would be perfectly entitled to canvass that point either in your closing speech or bringing in witnesses to that fact, and bringing evidence before the Court to establish that fact. Asking this Witness that question without any specifics is speculative and vague.

Rexhep Hasani, Defence Counsel: Your Honor, I only ask if it would be possible that the Serbian forces abducted him and killed him after he was released by the KLA

Presiding Judge: we have overruled that question and you are asking it again.

Rexhep Hasani, Defence Counsel: had the corpse of Bedri Berisha been found in the Municipality of Rahovec or Prizren I would have not posed that question.

Presiding Judge: we have given a ruling on this. Maybe you can rephrase to get the information you want but not in that way, subject to your legitimate right to bring in evidence to establish that fact.

Rexhep Hasani, Defence Counsel: okay. Did they show you any pictures at the police station, a picture line up, to identify different individuals?

Witness "B": yes, I was shown pictures.

Rexhep Hasani, Defence Counsel: have you identified Bedri Zyberaj at the police?

Witness "B": I told them it is him, but I don't know what happened next.

Rexhep Hasani, Defence Counsel: have you ever seen Bedri Zyberaj on the TV screen?

Witness "B": yes, I could see him on two or three occasions.

Rexhep Hasani, Defence Counsel: that is all.

Fatmir Celina, Defence Counsel: I only want to repeat the first question of the Public Prosecutor. To the question of the investigating judge whether you met with Xhavit Elshani you answered I have never met with Xhavit Elshani in Drenovc.

The Presiding Judges reads the portion referred to in the investigation minutes

Presiding Judge: the question and answer are on record.

Fatmir Celina, Defence Counsel: my question would be, were the questions of the investigating judge and your answers accurate or not?

Presiding Judge: the Witness has qualified what he said before the investigating judge and today; the two answers he has given have been qualified by him. You must be more specific in the formulation of your question. Don't forget that the Witness stated that it was when the Witness saw Xhavit Elshani in Brestovc that jogged his or her memory and the Witness remembered that the person was the same one he or she saw in Drenovc. That is how he or she explained that particular situation.

Fatmir Celina, Defence Counsel: I do not wish to continue with the second question of the Public Prosecutor because the Witness has already given an answer to that and I think it would compromise the identity of the Witness and the family. Did the Witness tell the truth to the investigating judge or today?

Witness "B": I have always told the truth on every single occasion. Be it the investigating judge or the trial panel.

Fatmir Celina, Defence Counsel: that is all at this time but after completion of the session I would like to make a comment.

Ethem Rogova, Defence Counsel: to your knowledge was the family of Bedri Berisha involved in any conflict with some other families?

Witness "B": not to my knowledge.

Ethem Rogova, Defence Counsel: that is all.

Blerim Prestreshi, Defence Counsel: no questions.

Fazli Balaj, Defence Counsel: I have one or two questions. Witness "B" went by car from Drenovc to Ratkovc and then to Brestovc. Were there any Serbian police controls or any kind of controls on the road at that time? Did the Witness ever see any battles between the KLA and the Serbian forces?

Witness "B": I have not seen such a thing.

Fazli Balaj, Defence Counsel: first, I would express my condolences to the Witness since a close relative of his had died. Would the Witness recollect as to when those villages were set on fire, like Brestovc, Ratkovc, Xerxe, Pirana? Your Honor, with you permission I could rephrase the question in order to make a more accurate question out of my first question. I am not looking for dates if the Witness has a problem remembering dates. Would he be so kind as to tell the Court was it on New Years Eve that those villages were set? Could the Witness tell us the year or give an approximate date, the nearest date possible?

Witness "B": those villages were set on fire on 17 and 18 July. When Kosovar Albanians were expelled to Albania, those villages were set on fire for the second time and on that occasion other villages like Krushe were set on fire as well.

Fazli Balaj, Defence Counsel: does the Witness know the months of the year? What are they called? It might seem a strange question but I would like it answered.

Witness "B": I know very well the 12 months of the year.

Fazli Balaj, Defence Counsel: no further questions or presentations.

No questions or presentations by other defence attorneys.

Bedri Zyberaj: no questions.

Xhavit Elshani: I have a question. The Witness stated that I have seen Xhavit Elshani in the village of Brestovc. And after a certain period of time said he came and asked for weapons along with two friends. Could the Witness indicate which year it was? Which year did the Witness see me in the village, when were my friends killed and where?

See Investigating Judge minutes pages 9 and 10, 26 February and 2 March.

Witness "B": Xhavit Elshani came together with two friends and asked Bedri to give them the weapon. Bedri answered that he had bought the weapon for the price of 1000 deutschemarks and he was keeping it to protect his family. One of them, the other one, told him if you don't bring the weapon we are going to lock you in just like the others. The following day Bedri with his father and Bedri's brother with his father went to the village of Retimlje to bring the weapon as they were told, namely to hand it over to the KLA.

Presiding Judge: the question was in what year did this happen?

Witness "B": it happened in December 1998 when Bedri was taken away, in that year as well.

Presiding Judge: do you have more questions and, if so, we will take a break and come back. I don't want to rush you.

Break at 5:45 and resume at 6:10 p.m.

Presiding Judge: put your questions, Mr. Elshani

Xhavit Elshani: Your Honor, I have no further questions because I am afraid the identity of the Witness may be comprised. But I have a short comment. My family and the family of the Witness knew each other very well. It is not true what the Witness stated like he saw Xhavit in Drenovc. Had the Witness seen me in Drenovc then he would have told the investigating judge that he saw me in Drenovc. The Witness stated that two friends of Xhavit Elshani were killed five days after. It is true that two friends of mine were killed on January 21 when I was ambushed, I got wounded also. That is all. Thank you.

Isuf Gashi: no questions.

Islam Gashi: no questions.

Agron Krasniqi: no questions.

Selim Krasniqi: I have questions. My name is Selim Krasniqi. I would like to ask what does the Witness think of the KLA?

Witness "B": you know the good guys were the good guys but those who killed my son were real criminals.

Selim Krasniqi: did Bedri have any problems with KLA and, if yes, what kind of problems did he have?

Public Prosecutor: I think I asked that and the answer was negative.

Presiding Judge: I think he said, not to my knowledge.

Selim Krasniqi: I would like to continue with other questions. Earlier today you stated that Bedri was taken to Ratkovc first. Who told you he was going to be taken to Drenovc at a later stage?

Witness "B": the people that took him away told him they were going to take him to Drenovc, and he said I better take my car and they said no we are going there with our car.

Selim Krasniqi: when did they tell these words, right on the spot when he was taken away or on their way to Ratkovc?

Witness "B": he was told so when they arrived at the KLA headquarters in Ratkovc.

Selim Krasniqi: I would like to pose a more personal question, how did you get acquainted with Selim Krasniqi?

Witness "B": when we went to the headquarters we were told that the people that might solve this problem are Selim Krasniqi, Bedri Zyberaj and the others.

Selim Krasniqi: when did you meet Selim Krasniqi for the first time?

Witness "B": I did not see him personally, but people around told me that guy is Selim Krasniqi.

Selim Krasniqi: could you tell the Court who told you the name of Selim Krasniqi?

Witness "B": people around there near the headquarters told me that this person is Selim Krasniqi.

Selim Krasniqi: who were those people, what was their position, were they informants or what were they?

Witness "B": those were people around, like villagers.

Selim Krasniqi: have you ever met with Selim Krasniqi and, if so, when?

Presiding Judge: he said he did not know Selim Krasniqi personally but that people around told the Witness that this guy is Selim Krasniqi.

Selim Krasniqi: would you be able to identify Selim Krasniqi if you are shown a picture of him or identify him in person?

Witness "B": no, I do not know him.

Selim Krasniqi: have you ever mentioned the name of Selim Krasniqi to the investigating judge or when giving a statement to the police?

Presiding Judge: I think Mr. Halimi put the next question about mentioning the name to the investigating judge.

Selim Krasniqi: I do not remember as a long time has passed since then.

Public Prosecutor: both Mr. Halimi and I put the question.

The Presiding Judge repeats the question and answer.

Presiding Judge: please rephrase your question in light of what is on record.

Selim Krasniqi: does the Witness think the investigating judge or the police on purpose have taken off my name from the list at that time?

Public Prosecutor: objection. Calls for speculation; it is not a fair question.

Presiding Judge: how can the Witness answer for the investigating judge and the police? It is not fair to ask the Witness a question that could not be to the personal knowledge of the Witness.

Selim Krasniqi: I have a concrete question and would like the Witness to answer accurately if possible. On whom does the Witness put the blame of the murder of Bedri Berisha?

Witness "B": it was the KLA people that held him in detention, it was not the Serbs. Perhaps they killed him.

Selim Krasniqi: to whom did you give your first statement?

Witness "B": I have given the statement to international police officers; there were also interpreters with them.

Selim Krasniqi: did anyone ever tell you to put the blame on the people that are involved in this trial?

Witness "B": no one has ever told me that but I know that Bedri was detained by the KLA. Bedri was held by the KLA and perhaps killed by the KLA.

Selim Krasniqi: is the Witness literate? And when speaking is the Witness reading from any letters on him?

Witness "B": I am illiterate.

Selim Krasniqi: do you know how to write?

Witness "B": no

Selim Krasniqi: I would like to know how the Witness signed the statements given to the police.

Witness "B": I know how to write my name only and this is what I put.

Selim Krasniqi: was your statement read out to you before you signed it?

Witness "B": yes, it was.

Selim Krasniqi: here in Kosovo people say that one should not be afraid of telling the truth. Why do you not testify openly, what are you afraid of. Are you afraid of the untruths you are telling or from any individuals?

Witness "B": my innocent son got killed, perhaps my innocent son got killed and perhaps I might have the same fate.

Selim Krasniqi: I do not know whether you know how many people were killed and massacred by the Serbian forces, and their bodies are not found as of yet?

Witness "B": I know that many people were killed by the Serbs and the government is asking for the corpses from the Serbs to be brought back to Kosovo where they belong. On the other hand Bedri was killed by the Albanians and I think the Albanians should bring his body.

Selim Krasniqi: I wanted to ask the Witness if he knows that the KLA and their members main goal was the liberation of their country, the first thing was the protection of the civilians.

Witness "B": yes, I did know such a thing.

Selim Krasniqi: you said that you are waiting for the Albanians to bring back the corpse of your son, or your relative said. This is a great accusation. Is this your opinion or do you have facts to persuade the Court and us defendants as well?

Witness "B": I know that Bedri was taken away by the Albanians and I have nowhere else to go and look for him but to the Albanians.

Selim Krasniqi: would this mean that you accuse each and every Albanian or what?

Witness "B": I accuse those who took him away because they should know where he is.

Selim Krasniqi: I want you to believe me when I say that I am as well amongst those who are interested. I said I want you to be convinced I am amongst those who are interested to find those who are guilty and so is the Court I believe. In case the Witness knows something in addition I would ask the Witness to inform the Court and the other parties about that. And not make general accusations against Albanians. In case the Witness knows something I would like the Witness to reveal that to the Court. I think it is better than talking abstract things.

Witness "B": as every Albanian mother, father, brother, sister are looking for the corpses of their loved ones I am only looking for the corpses of my relatives.

Selim Krasniqi: I know that when it comes to accusing people each and every one said I am not blaming you or you. I have no further questions. I would have a short comment. I would regrettably have to repeat that those fabricated witnesses I understand very well. But no one knows as to who killed those people. And those people by lying to the Court and us and are telling untrue things. If the prosecution and the Court are sincerely interested in justice then you might easily understand that sincerely someone is working with those witnesses so that they slander so that they can reach their goal, namely the untrue seems as true. I am pretty much convinced that the witnesses here are telling names suggested by someone. They are not telling names of people whom they really know. This is my conviction. And I will try to support my conviction with facts until the end of the process.

Presiding Judge: thank you, Selim Krasniqi.

Nurul Islam Khan, International Judge: no questions.

Leonard Assira, International Judge: no questions.

Public Prosecutor: Your Honor, one other matter before we conclude. Given that the panel has to evaluate accurately the evidence of all the parties and given the issue of the police statements made by the Witness who was cross examined, as to those statements you may wish to put the statements to the Witness with a view to establishing their authenticity so that when you come to evaluate the various testimonies you can have regard to all the evidence that has been given.

Court Recorder: Marilyn Micallef.

The panel discusses the suggestion and issue raised by the Public Prosecutor.

Presiding Judge: As a follow up to what the Public Prosecutor said, we should consider showing the witness the statement and confirm whether it is the witness's signature or not. This arises directly from the question of Selim Krasniqi who asked whether the witness is literate and the answer was: *'I am illiterate, I cannot write.'* In respect to the second question by Selim Krasniqi, *'How did the witness sign the statements given to the Police?'* the answer was *'I know how to sign my name only.'*

Presiding Judge: For the Record: The witness identified the witness's signature on the police statement dated 20 March 2000, as well as the witness's signature on the police statement of 10 January 2001 and on the police statement of 23 November 2001, as well as investigating minutes taken on 26 February and 2nd March 2004. We also have a document dated 7th December 2001 where the photograph line up was shown to the witness and, following what was stated, the police drew up a statement which was signed only by the police and not the witness.

We have another witness, but we will not hear that witness today.

Public Prosecutor: I propose we hear this witness on Thursday.

Presiding Judge: You have witnesses for tomorrow?

Public Prosecutor: Yes.

Presiding Judge: we adjourn until 10.30 am tomorrow.

The Court adjourns at 7:30 p.m.

Presiding Judge, Vinod Boolell

Court Recorder, Cecilia Takoff

Court Recorder, Marilyn Micallef