

**DISTRICT COURT OF PEJA/PEC**

**P.nr. 67/09**

**Dt. 29 April 2009**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF PEJA/PEC**, in the trial panel composed of the International Judge Gianfranco Gallo as Presiding Judge, the International Judge Ferdinando Buatier de Mongeot and the Kosovan Judge Osman Cucovic as panel members, assisted by the Recording Officer Patricia Faltusova, in the criminal case against the accused

**GJELOSH KRASNIQI**, born on 13 September 1973 in Nepole/Nepolje village, Peje/Pec Municipality, male, father's name Pren KRASNIQI, mother's maiden name Leze SHALA, Kosovo Albanian, residing in Nepole/Nepolje village Peje/Pec Municipality, personal identification number U.S. Refugee Travel Document #: A078220798, in detention from 27 May 2008 through 24 September 2008 and from 7 November 2008 to present, currently detained in Dubrava Detention Centre;

charged, according to the Indictment PP. Nr. 88/2008, dated 4 December 2008, and filed with the Court on the same day, with the following criminal offence:

*War Crimes against the Civilian Population contrary to Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4<sup>th</sup> Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions*

*because of:*

- A. the illegal arrest, detention, taking as hostage, deprivation of right to fair and impartial trial, inhumane treatment and murder of Pashk Luli, a civilian person;*
- B. the unlawful property confiscation and pillaging of an AK-47 rifle and a 7.65 pistol from Pashk Luli;*
- C. the unlawful property confiscation and pillaging of an M-48 rifle from Tune Kashnjeti, a civilian person;*
- D. the unlawful property confiscation and pillaging of an M-48 rifle and a CZ 99 9 mm pistol, from Gjergj Quni, a civilian person;*
- E. the unlawful property confiscation and pillaging of a 7.65 mm Bronvik pistol from Mihill Pergega, a civilian person;*

*in the village of Doblibare, Gjakova/Dakovica Municipality, on the 24<sup>th</sup> of March 1999, crime punishable by five to twenty years imprisonment*

After having held the main trial hearings in public on 11, 12, 17, 18, 19, 31 March 2009, 23, 24, 27 and 29 April 2009 in the presence of:

- the accused Gjelosh Krasniqi and his defense counsel Mr. Haxhi Millaku;
- the Special Public Prosecutor Mr. Robert Dean;

after the trial panel's deliberation and voting held on 29 April 2009, based on Article 391 Paragraph (1) of KCCP,

on 29 April 2009, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the Accused, the Special Public Prosecutor, the following

## **VERDICT**

*The charge against Gjelosh Krasniqi of committing the criminal offence of **War Crimes** against the Civilian Population, contrary to Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4<sup>th</sup> Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions as to the illegal arrest of Pashk Luli committed in the village of Doblinare/Doblibare, Gjakova/Dakovica Municipality on the 24<sup>th</sup> of March 1999 is reclassified as Unlawful Deprivation of Liberty contrary to the Article 162 of the CCK and consequently **REJECTED** since the period of statutory limitation has expired.*

Furthermore **Gjelosh KRASNIQI**,

is

### **ACQUITTED**

*of committing **War Crimes** against the Civilian Population contrary to Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4<sup>th</sup> Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions as to the detention, deprivation of right to fair and impartial trial, inhumane treatment and murder of Pashk Luli in the village of Doblinare/Doblibare, Gjakova/Dakovica Municipality, on the 24<sup>th</sup> of March 1999, because it has not been proven that the accused has committed the act with which he has been charged.*

is

### **FOUND GUILTY**

*of **War Crimes** against the Civilian Population, contrary to Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4<sup>th</sup> Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions, as to the taking as hostage of Pashk Luli and as to the unlawful property confiscation and pillaging of an AK-47 rifle and a*

7.65 pistol from Pashk Luli, an M-48 rifle from Tune Kashnjeti, an M-48 rifle and a CZ 99, 9 mm pistol, from Gjergj Quni, a 7.65 mm Bronvik pistol from Mihill Pergega in the village of Doblibare/Doblibare, Gjakova/Dakovica Municipality, on the 24<sup>th</sup> of March 1999.

*THEREFORE, the accused, is*

### ***SENTENCED***

*to seven/7/ years of imprisonment for the criminal offence of War Crime against the Civilian Population contrary to Article 142 of the SFRY Criminal Code;*

*The time spent in detention on remand by the defendant is to be credited against the punishment, pursuant to Article 391 Paragraph (1) Subparagraph 5 of the PCPCK.*

*The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCPCK.*

### **REASONING**

#### **A. PROCEDURAL BACKGROUND – THE INDICTMENT**

On 04 December 2008, the Special Public Prosecutor filed the indictment PP.no.88/2008 with the District Court of Peja/Pec, against the defendant Gjelosh Krasniqi, accusing him of the criminal offence of War Crimes against the Civilian Population, contrary to the Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4<sup>th</sup> Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions.

According to the indictment, on 24 March 1999, Gjelosh Krasniqi, in violation of the rules of international law effective at the time of war, armed conflict or occupation, namely the Geneva Convention Relative to the Protection of Civilians in Time of War (hereafter Geneva Convention IV), article 3 and 147 and Protocol II to the Geneva Conventions, article 4, in the village of Doblibare, Gjakove/Djakovica Municipality, Kosovo, committed:

A. the illegal arrest, detention, taking as hostage, deprivation of right to fair and impartial trial, inhumane treatment and murder of Pashk Luli, a civilian person;

B. the unlawful property confiscation and pillaging of an AK-47 rifle and a 7.65 pistol from Pashk Luli a civilian person;

C. the unlawful property confiscation and pillaging of an M-48 rifle from Tune Kashnjeti, a civilian person;

D. the unlawful property confiscation and pillaging of an M-48 rifle and a CZ 99 9 mm pistol, from Gjergj Quni, a civilian person;

E. the unlawful property confiscation and pillaging of a 7.65 mm Bronvik pistol from Mihill Pergega, a civilian person.

By these actions the defendant committed the criminal offence of War Crimes against the Civilian Population, in violation of the Socialist Federal Republic of Yugoslavia Criminal Law (SFRY CL) article 142, punishable by imprisonment of not less than five (5) years and no more than forty (40) years.

The hearing on Confirmation of the Indictment was held on 19 January 2009, in the presence of the defendant, his defense counsel, the special prosecutor and the injured party; the indictment was confirmed by the ruling KAQ.nr.363/08 dated 20 January 2009. No appeal has been filed against the above mentioned ruling.

## **B. COMPETENCE OF THE COURT**

### **1. Procedure, Competence and Panel Composition of the District Court of Peja/Pec.**

In accordance with the Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the accused is charged with War Crimes against the Civilian Population, in violation of the Socialist Federal Republic of Yugoslavia Criminal Law (SFRY CL) article 142, punishable by imprisonment of not less than five (5) years and no more than twenty (20) years.

The criminal offences, according to the indictment, were committed in village Doblbare, Gjakova Municipality, which is within the territory of the District of Peja. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Peja has the territorial jurisdiction to adjudicate the present case.

Thus, it can be concluded that the District Court of Peja/Pec has the subject-matter-jurisdiction to adjudicate the present case.

Pursuant to the article 3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, EULEX Judges assigned to

criminal proceedings will have the jurisdiction and competence over any case investigated or prosecuted by the Special Prosecutors of Republic of Kosovo.

The present case was investigated and indicted by the Special Prosecutor of Kosovo and, therefore, in accordance with the article 4.7 of LoJ, the Trial Panel of the District Court of Peja/Pec was composed of a mixed panel of two EULEX Judges and one Local Judge.

None of the parties objected to the panel composition.

## **2. The Main Session**

The main trial was held in public on 11, 12, 17, 18, 19, 31 March, 23, 24, 27 and 29 April 2009, in the presence of the accused Gjelosh Krasniqi, his defense counsel Haxhi Millaku and the Special Public Prosecutor. The injured parties were present in the hearings of 11 and 12 March, and 27 April 2009. In accordance with the article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial into Albanian and English, as necessary.

## **C. SUMMARY OF EVIDENCE PRESENTED**

1. During the proceedings of the main trial, the following witnesses were examined:
  - a) Gjergj LULI as witness and injured party on 11 March 2009
  - b) Zoje LULI as witness and injured party on 12 March 2009
  - c) Bekim LULI as witness on 12 March 2009
  - d) Engjell LULI as witness on 17 March 2009
  - e) Pren KASHNJETI as witness on 17 March 2009
  - f) Prenk LULI as witness on 17 March 2009
  - g) Mihill PERGEGA as witness on 18 March 2009
  - h) Gjergj QUNI as witness on 18 March 2009
  - i) Hazbi AXHAMI as witness on 19 March 2009
  - j) Miradije FEJZULLAHU as witness on 19 March 2009
  - k) Ismet JEMINI as witness on 19 March 2009
  - l) Gegë LLESHI as witness on 31 March 2009
  - m) Kolë KRASNIQI as witness on 31 March 2009
  - n) Pal KRASNIQI as witness on 23 April 2009
  - o) Pashk PERGEGA as witness on 23 April 2009
  - p) Robert PERGEGA as witness on 23 April 2009
  - q) Ermir SHEHU as witness on 24 April 2009
  - r) Pashk KRASNIQI as witness on 24 April 2009

1. a) **Gjergj Luli**, in his testimony given in front of the panel, stated that, on the 24 of March 1999, he was in the yard of his uncle Mark Luli (who is currently dead), together with his father Pashk Luli, his uncle's son Prenk Luli, Engjell Luli and Bekim Luli. While they were there, five persons in uniforms (at least three of them carrying long

weapons) came into the yard and asked for his father. According to the injured party he did not recognize any of them, but one of them just presented himself as Gjelosh Krasniqi. He said that they wanted to speak with Pask, because he was a local police officer. Pask stepped forward and then they asked for his weapons; after he gave the weapons, he was asked to go with them and they left the yard. Two, or two and half hours later, the armed people came back with his father, declared that he had to go with them to the KLA headquarters and left the courtyard.

According to the injured party, after that night, Pask Luli was not seen again any more and he tried to find out what had happened to his father; he went to the Red Cross in Gjakova, but he did not receive any information about the fate of his father, he went twice to KLA Headquarters immediately after the war, but he was told that they did not know anything. He contacted the police authorities in Gjakova and also UNMIK Police to in order to have intelligence about the final fate of his father but all his efforts proved useless; afterwards the ICTY investigators went to his house and he started to cooperate with them. He gave a statement to them and they also took blood samples from him.

During his testimony Gjergj Luli stated more than once that the defendant in the current trial (*id est* Gjelosh Krasniqi) was not the same person who, on the critical night, entered his uncle's courtyard and presented himself as Gjelosh Krasniqi. Furthermore he declared that before the confirmation hearing, which took place on 19 January 2009, he had never seen the defendant and that he never had met him neither soon after the war nor in 2008.

These are the main guidelines of the testimony of the injured party. During the investigation the injured party gave several statements. It is necessary to make a summary of all the statements given before the trial, since there are blatant discrepancies between them and the testimony rendered in the main trial.

***Statement given to the ICTY Investigators on 18.01.2003.***

In the above mentioned statement, Gjergj Luli affirmed that, on 24 March 1999, at around 20:30hrs, five KLA soldiers in green camouflage entered the house of his father. He knew one of them and he introduced himself as Gjelosh Krasniqi. He knew that this person was from village Nepole, Peja Municipality, and was about 30 years of age. The KLA soldiers where armed and wore KLA patches on their sleeves. Gjelosh told them that his father had to go with them, as that had been the order from the headquarters in Jabllanica. He also added the following words: "if Gega gives the permission, they will release him". The soldiers also asked for the weapons in possession of Pask. Gjergj stated that, after the armed soldiers had taken his father, they left one soldier behind to watch over the people in the courtyard and went, with his father, to the houses of Ded Quni, Mhill Pergega, Tune Kashnjeti and took weapons from them. Afterwards they returned, joined the soldier that they had previously left behind, and departed from the courtyard taking Pask Luli away.

While leaving, Gjelosh Krasniqi bawled out that they were going to kill him like a dog, meaning his father.

In the above mentioned statement, the injured party added that Gjelosh Krasniqi, at the time in which the statement was given, was living in USA, Bronx – New York and that

her sister Marta told him that once, in August 2002, Gjelosh Krasniqi popped in her office (Marta at the time was running in New York a travel company called Dolphin travel) and said to her: "Listen I killed your father and I don't care about that a bit, neither of you".

*Statement given to the ICTY Investigators on 02.03.2004.*

In the above mentioned statement Gjergj Luli gave some additional information which he was previously afraid to report in regard to the abduction of his father. He was scared of revealing the names of two persons who might be involved in the abduction of his father. He had known about these names from Gjelosh Krasniqi, who he recognized as the kidnapper of his father, when he met him in his home village Doblbare, and asked him about his father's whereabouts. So, Gjelosh told him that he had only escorted his father to the village of Maznik, but if he wanted to find out something about his father, he should go to KLA Headquarters in Jabllanica and speak with Lahi Brahimaj and Maliq Ndrecaj.

He also added that, the night his father was taken away, it was dark and he could recognize only Gjelosh Krasniqi.

*Statement given to the UNMIK Police on 16.01.2008.*

In the above mentioned statement Gjergj Luli affirmed that, in 1998, in the village Doblbare, KLA started mobilizing. In that period, a person called Gjelosh Krasniqi from village Nepole, Peja Municipality, together with three other persons, came to Doblbare and stole a car - Mercedes 190 - from Pal Ndrecaj and took it at his house yard in Nepole, but left a green colored Golf I to Pal. After having informed the KLA Headquarters, KLA soldiers went to Gjelosh's house in Nepole and returned the car back to Pal.

Gjergj stated also that, on 24<sup>th</sup> March 1999, at around 20:00 hrs, his family went to his uncle Nikolle Luli's house; at around 20:15, Gjelosh Krasniqi, wearing a camouflaged jacket without KLA badges, entered the house yard, told them not to be afraid, since they were KLA soldiers, and then asked for Tule's Mercedes. As they explained that they did not have a Mercedes, but only a VW Golf which did not work, Gjelosh gave a look at the car, while the three other persons, without uniforms and masks, but armed with AK-47 (Kalashnikov) were standing in front of them. Then, after having checked whether the car was working, he turned and asked them: "which one of you is a local police officer or we will take you all to the KLA HQ in Jabllanica". Then his father, Pashk Luli, stood up and told them that he was the local police officer in question. Gjelosh also asked for his father's weapons, one AK-47 and a pistol 7.65mm. When he took the weapons, he ordered the other soldiers to search the other people. Afterwards, they took his father, left one person behind and went to the village to search for weapons and took the weapons of Gjergj Quni, Gjoke Quni, Mhill Pergega and Tune Kashnjeti.

At around 23:30, Gjelosh returned with his two friends and his father and, after they drank some water, Gjelosh told his father that he had to go with them to the HQ. Gjergj's uncle, Mark Luli, asked also where they were taking him and that he had a bunch of children, but Gjelosh's reply was that each of them would give him 100 DM and he

didn't have to enter there (*meaning becoming a local police officer*). Gjeloš also added that if Gega and Mema released him, they would do the same and then ordered them to stay in the house for one hour.

Four days after the war, Gjergj Luli met Gjeloš Krasniqi in the house of Pashk Pergega in the village Doblbare. He asked Pashk's son Robert to call Gjeloš and asked the latter where he had left his father; Gjeloš explained to him that he had left his father in the village of Maznik, that he knew nothing about him and that he shouldn't bother looking for him as he might get lost the same way as his father. And when he asked why, Gjeloš's reply was that he should go away or he would turn this village into "green and black".

Gjergj Luli finally added that, after the war, Gjeloš had moved to the USA where he met Gjergj's sister, Marta Nrecaj, in her workplace in a travel agency and told her that her father had been buried not far from their house.

***Statement given to the UNMIK Police on 01.03.2008.***

In the above mentioned statement, Gjergj Luli affirmed that, on 20.2.2008, he had called police officer Hazbi in order to inform him about some threats he had received. More specifically, according to Gjergj Luli, a friend of his, during a conversation with Gjeloš, told the latter that Pashk's sons were growing older and that if he were in Gjeloš's shoes he would not feel so free to walk around. Gjeloš replied that he would kill him and make him vanish the same as his father. Gjergj knew the episode directly by his friend (whose name Gjergj did not intend to reveal) and stressed out that his family and him were scared of Gjeloš Krasniqi since he was very dangerous. Gjergj also stated that he had heard that Gjeloš had murdered his wife in USA and had returned to Kosovo with a Mercedes ML320, with New York plate numbers. Also he went to Croatia in order to change his name, but he had no success.

In the above mentioned statement, Gjergj also emphasized the danger he was exposed to and said that he had no other options left, but selling his car or other property in order to buy a weapon and protect himself and his family.

***Statement given to the UNMIK Police on 26.08.2008.***

In the above mentioned statement Gjergj Luli affirmed that, on 24 March 1999, when his father was taken, Gjeloš Krasniqi with four other persons had ordered the people who were in the courtyard to remain there for two hours. He and his uncle Mark Luli were near the gate when Gjeloš, who was holding Pask Luli by one hand, passed the gate; after a while Gjergj opened the gate, but Gjeloš saw him and addressed to Gjergj the following words: "shut the door and I will kill him like a dog".

Furthermore Gjergj added that, one month before, while he was waiting for his chief, at a fast food of a gas station, he overheard the discussion of two persons inside, saying the following words: "Gjeloš Krasniqi has a bad situation with one guy from Doblbare village and we have to go at his home". A short time afterwards, on 06.08.2008, a person named Pal Krasniqi, an uncle of his mother, a 60 years old man, went to the house of Gjergj asking "to help Gjeloš Kasniqi and drop the charges against him, because he is

not related to Pask's killing". Gjergj answer was that the case was in the hands of the police and the only wanted the remains of his father.

***Statement given to the UNMIK Police on 07.10.2008.***

In the above mentioned statement, Gjergj Luli affirmed that he wanted to drop the charges against Gjelosh Krasniqi, because, after he had consulted with his family, they had decided to do like this since his father "had a wrong uniform of Serbian Police", had been missing for a long time and they wanted to live a quiet life. He stated that he was not threatened and that, even though he had previously seen Gjelosh Krasniqi walking around Gjakova and had accused him, now he wanted to drop all the charges. He stated that he had not seen Gjelosh Krasniqi after he had been released from detention, because he was working in Albania, but his relatives asked him to come back home and told him that they had decided to drop the charges against Gjelosh. They were not threatened, but they all agreed they wanted to drop charges against Gjelosh.

***The confrontations of Gjergj Luli with his previous statements during the main trial***

Considering the big discrepancies between the previous statements and the testimony given in front of the panel, the witness Gjergj Luli was often confronted by the Prosecutor and the Panel. The main parts of the confrontations are reported below.

\* \* \*

Confrontation as to the facts (denied by Gjergj Luli during the main trial) that he already knew the defendant when Pask Luli was carried off and that he met him after the war.

*Public Prosecutor: With permission of the Court, I would like to go back to his previous statement, binder 2, subfolder 30, on 17<sup>th</sup> of January 2003; and also on the 18<sup>th</sup> of January 2003, on page 172.*

*But I start to read from this. I'd like to ask you, do you know Gjelosh Krasniqi?*

*Gjergj Luli: No. I do not.*

*Public Prosecutor: I will go to page 172, the last paragraph and according to the statement that you gave to investigator you said on March 24<sup>th</sup> 1999, at 20.30 hrs that 'five KLA, in green camouflage uniform, entered my father's house in Doblbare. I knew one of them and he introduced himself as Gjelosh Krasniqi.'*

*Presiding Judge: There a big discrepancy that was read by the Public Prosecutor and the statement that you gave to the Court that you gave five minutes ago. Can you explain to us? Why did you declare to ICTY that you knew Gjelosh Krasniqi and five people dressed in KLA uniform entered your fathers' house?*

*Gjergj Luli: They did not entered my fathers' house and I did not know Gjelosh Krasniqi. He just presented himself as Gjelosh Krasniqi. This thing should be clarified. And I never said that they were wearing green uniform.*

*Presiding Judge: Here it's written and signed by you. So you are saying that (interrupted)*

*Gjergj Luli: Yes but the interpreter (interrupted)*

*Haxhi Millaku: He is saying that nobody read what was signed by the interpreter.*

*Presiding Judge: You gave the statement in Albanian?*

*Gjergj Luli: Yes.*

*Presiding Judge: How did you sign this English Version?*

*Gjergj Luli: After I gave my statement, it was an international investigator Kelly, and I signed and it was Hazbije as well.*

*Presiding Judge: Yes but it's also written that his statement, that Public Prosecutor referred to, has been read to me in Albanian English and this is true to best of my knowledge and recollection and your signature.*

*To the Public Prosecutor and Defence Counsel, you can find this in page 72. Because you declared that you read it in Albanian.*

*Gjergj Luli: It was not read. They asked me if I wanted to read it, but I did not.*

*Presiding Judge: This was signed by you but this is a signature saying that this statement which is in English was read to you in Albanian. This is your acknowledgement, so be careful because you know that the witness is obliged to say the truth and false testimony is a criminal offence. So you insist that statement of 18<sup>th</sup> of January 2007, was not read to you in Albanian?*

*Gjergj Luli: It was not read.*

*Presiding Judge: Regarding to the fact that you do not know Gjelosh Krasniqi, you said that a person presented himself as Gjelosh Krasniqi, is this true?*

*Gjergj Luli: Yes, I did not know him before but that person presented himself as Gjelosh Krasniqi.<sup>1</sup>*

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*Public Prosecutor: I would like to continue where I stopped before. According to the statement you said (referring to Gjelosh Krasniqi), I knew he was from the village of Nipole in Peja municipality and he was about 30. All the KLA soldiers were armed and had KLA patches on their sleeves. How did this come into the statement, because before you said something else?*

*Gjergj Luli: I never said anything about signs, this is not true.*

*Public Prosecutor: But you have signed it.*

*Gjergj Luli: I have signed, but I did not say that.*

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<sup>1</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 13 - 14

*Public Prosecutor: If we go to page 174, you said the following to the investigators, 'Because of the fact that I knew Gjelosh Krasniqi from before and saw him personally entering my father's house in KLA uniform, I am one hundred percent sure that it was he who took my father away, whether he was in the KLA or not.'*

*Gjergj Luli: This is not true*

*Public Prosecutor: You signed it.*

*Gjergj Luli: The investigators took pictures in the yard and this is not my house.*

*Presiding Judge: We evaluate what is important. You are here to answer questions. The Public Prosecutor is drawing your attention to the fact that you told the court you don't know Gjelosh Krasniqi, while in this statement on two occasions you said that you knew Gjelosh Krasniqi and that you saw him entering wearing a KLA uniform*

*Gjergj Luli: I always said in the courtyard of my uncles and not my fathers, as this is a big difference.*

*Presiding Judge: You have clarified that it was you uncle's courtyard and not your father's. Now clarify this; the discrepancy with your former statement and what you are saying to the court.*

*Gjergj Luli: I do not know him, he presented himself as Gjelosh Krasniqi, and so I don't see a discrepancy.*

*Presiding Judge: It is not up to you; you just answer the questions asked of you as a witness. You keep on saying that you don't know Gjelosh Krasniqi, but you don't know him now or you did not know him in 1999?*

*Gjergj Luli: Back then I did not know him; he presented himself as Gjelosh Krasniqi. Now I know him from the confirmation of indictment and that day I wanted to say something, but everything was too fast. The person that came in the courtyard back then was shorter and fatter.*

*Presiding Judge: Fatter than whom?*

*Gjergj Luli: Than Gjelosh Krasniqi, the person who is here. I can state this is not the same person.*

*Presiding Judge: So the person who presented himself as Gjelosh Krasniqi in 1999 is not the person present now?*

*Gjergj Luli: No, not the same*

*Presiding Judge: What about the KLA uniforms, because you said the person calling himself Gjelosh Krasniqi was wearing a KLA uniform.*

*Gjergj Luli: I never said KLA uniforms, I only said uniforms.*

*Presiding Judge: You cannot go on like this. Now you can say that you remember you never saw people wearing KLA uniforms and this can be taken into consideration by the panel. Which is your answer, were they wearing KLA uniforms?*

*Gjergj Luli: No.<sup>2</sup>*

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*Public Prosecutor: I would like to stay with the same statement and go to page 173; before I do that, I will ask when the people who took your fathers to the HQ left the house, did they say anything?*

*Gjergj Luli: Yes.*

*Public Prosecutor: What?*

*Gjergj Luli: Gege Lleshi and Meme Lleshi will do, and then we will do the same.*

*Public Prosecutor: Was that all that was said?*

*Gjergj Luli: And also they said, you are forbidden to leave the courtyard for 2 hours.*

*Public Prosecutor: Did they say more than that?*

*Gjergj Luli: Nothing.*

*Public Prosecutor: Did you try to see where your father was taken; did you go out when he was leaving the house?*

*Gjergj Luli: No.*

*Public Prosecutor: I would like to read what you told the investigators (page 173). It is the second to last paragraph, and according to this it says when they were leaving the house, Gjelosh Krasniqi said they are going to kill the dog, meaning my father. Do you remember having said that to the investigators?*

*Gjergj Luli: I can't remember.*

*Public Prosecutor: How did this enter the statement?*

*Presiding Judge: Now you cannot remember, but is it true or not that you heard these words?*

*Gjergj Luli: I don't remember saying such words.*

*Presiding Judge: Now that the Public Prosecutor has refreshed your memory, do you recall it?*

*Gjergj Luli: No.*

*Haxhi Millaku: You are asking about the facts and he is referring to his statement.*

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<sup>2</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 14 - 16

*Presiding Judge: The Public Prosecutor has drawn your attention to the statement you gave to ICTY investigators. In this statement it is written that when these people were leaving the house, Gjelosh Krasniqi cried out that they were going to kill the dog, meaning my father. This was your answer at the time. Now that you are in front of the court, I ask you again do you remember this fact or not?*

*Gjergj Luli: As I said he was presenting himself (judge interrupts)*

*Presiding Judge: I am thinking of the person who presented himself as Gjelosh Krasniqi and uttered these words, so?*

*Gjergj Luli: He did not say such words.*

*Presiding Judge: So how in this statement is there a different answer?*

*Gjergj Luli: In the beginning, also for those words that Gege and Meme will release your father, I did not say them, but after Mark Luli mentioned the words that if Gege and Meme will release my father, then I said the same answer as Mark Luli.*

*Presiding Judge: What about these other words; we are going to kill the dog?*

*Gjergj Luli: I cannot recall mentioning those words.*

*Ferdinando Buattier: But you can exclude saying them?*

*Gjergj Luli: I can't recall saying those words.*

*Presiding Judge: Do you exclude or not?*

*Gjergj Luli: I don't know.*

*Presiding Judge: Is it possible you said them?*

*Gjergj Luli: If I am not sure I cannot answer.<sup>3</sup>*

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*Public Prosecutor: To go back to this statement that you went to ICTY to ask for your father. I would like to confront you with page 167 paragraph 3, you said the investigator: "I have now spontaneously come to ICTY to this office in Pristina, in my will to ask for evidence for my father. When I was interviewed in January 2003, I was afraid to explain everything. I did not dare to give the two names that were involved in kidnapping of my father but I do now want to add this information."*

*As I read this statement, you have not gone only for your father but to add to your statement also.*

*Gjergj Luli: Regarding those two people that I have never mentioned them, if you want to confront me, tell me their names.*

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<sup>3</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 16 – 17

*Public Prosecutor: Paragraph 4, 'the names that I did not dare to confirm were Lahi Ibrahimaj and Maliq Ndrecaj. The first one was from Jabllanica and the other one from Klina'. Those were the names that you did not give on the first statement then you did on the second.*

*Gjergj Luli: It's not true.*

*Public Prosecutor: But you signed the statement.*

*Gjergj Luli: I never mentioned this. Everything else is written but this is not. You have to read these statements until the end.*

*Presiding Judge: You are not here to give instructions to anyone. When one member of the Panel speaks, you remain silent. You are here to answer questions asked by the Public Prosecutor, Defence Counsel or a member of the Panel. So, I warn you again not to give instructions to anybody because it's not your job.*

*So you said that you never said these names?*

*Gjergj Luli: No.*

*Presiding Judge: So ICTY invented these things out of the blue because they wrote those two names?*

*Gjergj Luli: I do not know. I did not mention them.*

*Presiding Judge: But bear in mind that you signed.*

*Gjergj Luli: Yes, I signed but I did not mention these names.*

*Presiding Judge: In paragraph 4 you said something more precise 'I learned Lahi Ibrahimaj and Maliq Ndrecaj from Gjeloš Krasniqi who was the one whom I identified as one of the kidnapers of my father - I received this information approximately 4 months after the war - when by accident I met Gjeloš Krasniqi in my village Dobljare. I saw him on the street in my village and approached him to ask for my father's whereabouts.'*

*Haxhi Millaku: Regarding what you read, Your Honour, I am reading now I met Gjeloš Krasniqi at my place in my village Dobljare, this is contrary to my previous statement. Was he in the village or at his house? Also at point 7, there is another contradiction.*

*Presiding Judge: Let's see the most important part first then we continue. Here, you said that you heard these names from Gjeloš Krasniqi 'the one that I identify as one of the kidnapers of my father.'*

*What do you say now?*

*Gjergj Luli: The things written here, that I have met Gjeloš Krasniqi at my house, it's not true.*

*Presiding Judge: I want to know whether you heard these names from Gjeloš Krasniqi?*

*Gjergj Luli: I met a person called Gjeloš Krasniqi, in the village, but it's not the same person sitting in the court now.*

**Ferdinando Buatier:** *The person who kidnapped your father?*

**Gjergj Luli:** *Yes, and things that I met Gjelosh Krasniqi it's not true, I never said that.*

**Presiding Judge:** *In my home village not in my village.*

**Gjergj Luli:** *I said home but now I make it clear that it's about village.*

**Public Prosecutor:** *Paragraph 5, it says that Gjelosh Krasniqi said that 'what has happened to my father I must go to KLA Head Quarters in Jabllanica, and talk to Lahi Ibrahimaj and Maliq Ndreca. Gjelosh Krasniqi told me that he escorted my father to village Maznik.'*

*Paragraph 7, 'when the kidnapping of my father took place it was dark and I could only identify Gjelosh Krasniqi as one of the kidnapers.' Do you remember stating that to one of the investigators?*

**Gjergj Luli:** *Based on the name, I said that.*

**Public Prosecutor:** *The one that you mentioned Gjelosh Krasniqi, it's not Gjelosh Krasniqi sitting here today?*

**Gjergj Luli:** *No, it's not.<sup>4</sup>*

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Confrontation as to the threats reported by Gjergj's friend.

**Public Prosecutor:** *Did anyone threaten you after the war, so you can withdraw from this case?*

**Gjergj Luli:** *No.*

**Public Prosecutor:** *Have you heard about a threat relating to your name?*

**Gjergj Luli:** *No.*

**Public Prosecutor:** *Sub-paragraph 27, page 149, it's a statement given on the 1<sup>st</sup> of March 2008, to UNMIK investigators and that was Hazbi officer, there you gave the following statement: 'A friend of mine, who was drinking with Gjelosh Krasniqi, he said that Gjelosh Krasniqi does not feel that free now that Pashk's sons are grown.' And his answer was that 'I will kill the same as his daddy and I will make him disappear as same as his father and my friend informed me on the phone about this and was asked not to mention his name, for both safety reasons for him and his family. My family and I, are scared from Gjelosh Krasniqi because he is very dangerous person.' Do you remember this?*

**Gjergj Luli:** *I did not say afraid.*

**Public Prosecutor:** *My question was, do you remember saying this to UNMIK investigators?*

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<sup>4</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 23 – 25

*Gjergj Luli: I gave this statement.*

*Public Prosecutor: But today you say that you were threatened by the third person.*

*Gjergj Luli: No.*

*Public Prosecutor: Now I am confused.*

*Presiding Judge: Here it's written that 'I am afraid from Gjelosh Krasniqi because he is very dangerous'. Why were you scared?*

*Gjergj Luli: I never said that.*

*Presiding Judge: 10 minutes ago you said this. This is not among friends, this is Court.*

*Anila Shehu is interpreting now*

*Gjergj Luli: I know what I said.*

*Presiding Judge: You are very unlucky because all the time that you are giving statements you are changing them*

*Gjergj Luli: But I never said that I was afraid.*

*Presiding Judge: Yes but you signed and it's in Albanian.*

*Presiding Judge: What about the words quoted by Public Prosecutor: 'I am going to kill him the same way as I killed his daddy'. It sounds like a threat.*

*Haxhi Millaku: These are not words said by the witness but please say all the quotes and do not interrupt them.*

*Presiding Judge: Okay but I do not think that the meaning changes but anyway, I will read it. 'I am going to kill him in the same way that I killed his father and I will make him disappear as I did to his father.'*

*Gjergj Luli: This is not a threat, unless someone comes at my door.*

*Presiding Judge: We are not here to give a definition of threat; we are here to know if this friend of yours referred the words said by Gjelosh Krasniqi.*

*Gjergj Luli: I was told so.<sup>5</sup>*

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Confrontation as to the fact that, on 7 October, the witness dropped all the charges against the defendant:

*Presiding Judge: It cannot be denied that on 7 October 2008 you gave a statement to the police.*

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<sup>5</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 27 – 28

*Public Prosecutor: It was the last statement you gave regarding this case. Do you remember why when you gave the last statement to them, did you go there?*

*Gjergj Luli: I do not recall it.*

*Public Prosecutor: I will refresh your memory. On page 134 it says to the question of why are you here today and the answer was that you came to drop charges against Gjeloš Krasniqi. Do you remember that?*

*Gjergj Luli: Yes.*

*Public Prosecutor: Do you remember why you went to the police, what was the reason you wanted to drop the charges?*

*Gjergj Luli: I remember it now. The reason I did that is based on his name because back then I did not know him and they said that he was released from prison, because back then I did not know him. When I heard he was released I went there to ask Kelly and Hazbi the reason why he was released and they told me they did not know because he was released by court order. I then said that if he was released by the court, then I can do so. And this was it; Kelly and Hazbi told me he was released by the prosecution and the court. Then I said if they released him he is innocent; but I have to highlight that I did not know him by face back then.*

*Public Prosecutor: But you are operating with two Gjeloš Krasniqi's? You said that you only knew the one that came to your house by name and you knew one Gjeloš Krasniqi had been taken into custody by the police. Why did you want to drop charges against someone that you thought had done something to your father?*

*Gjergj Luli: I did not know him, but the prosecution decided to release him regardless of the fact of whether he was the one that came that night. So as he was released by court and prosecution, I dropped my charges too regardless of the fact if he was that person or another one.*

*Public Prosecutor: What was the reason you wanted to drop the charges*

*Haxhi Millaku: He already answered.*

*Public Prosecutor: No.*

*Presiding Judge: It is true he did. If there is a discrepancy you can confront.*

*Public Prosecutor: Next, line 3, where it says why, and the answer was that on consultation with family members and relative I can to the decision to drop charges because my father had the wrong uniform of Serbian police. That was not the reason you gave before.*

*Presiding Judge: There is a difference.*

*Gjergj Luli: This is true. I talked about this with my family when he was released from prison.*

*Presiding Judge: Which was the real reason; because your father was wearing a wrong uniform or that the court released him?*

*Gjergj Luli: I heard that the person who presented himself as Gjeloš Krasniqi was released from prison. I discussed it with my family and after I talked with Kelly and Hazbi and once they said he was released by the court and prosecution and after talking to my family, my family said he is innocent here and to go and give a statement that because the court and prosecution released him, for us he is innocent.*

*Presiding Judge: This is the answer you gave at the beginning of your statement, but the Public Prosecutor reminded you that in front of the police you did not mention this reason, but just said that it was because your father was wearing the wrong uniform of Serbian police.*

*Gjergj Luli: The real reason why that was because he was released by prosecution and court and also that he was wearing the wrong uniform. The first is the most important.*

*Presiding Judge: Why did you not tell the police about this most important reason? On the contrary you referred to the less important reason; this is a strange behaviour isn't it?*

*Gjergj Luli: I declared the reason to that he was released by the court and prosecution, but I mention the uniform too.<sup>6</sup>*

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Confrontation as to the Mercedes 320 allegedly driven by the defendant:

*Public Prosecutor: I would like to stay in the same statement. Further down, the sentence which starts with 'then he came', it's the big paragraph, it says: 'Then he came (he is Gjeloš Krasniqi) to Kosovo driving a Mercedes 320, with New York licence plates, after that, he went to Croatia, and in information that I have, he went to Croatia to change his identity (name and surname) but he was not successful in this. After he came from Croatia, he stayed for couple of weeks to in Kosovo and then he went to Albania and returned with BMW Albanian licence plates.'*

*Gjergj Luli: I was told he went to Albania but I never saw him.*

*Public Prosecutor: How come someone told him that he came back with Mercedes New York number plates?*

*Gjergj Luli: Because they saw him.*

*Public Prosecutor: Who are they?*

*Gjergj Luli: There are some people there and perhaps they recognised him.*

*Public Prosecutor: Who are 'they'? 'Names?'*

*Gjergj Luli: Some of my people.*

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<sup>6</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 32 – 33

*Public Prosecutor: Names?*

*Gjergj Luli: First I have to know if the information are correct, then I tell you names.*

*Public Prosecutor: Names.*

*Presiding Judge: Answer to the Public Prosecutor questions.*

*Gjergj Luli: I can't give information.*

*Presiding Judge: You can't or you do not want to?*

*Gjergj Luli: I can't.*

*Presiding Judge: Why?*

*Gjergj Luli: Because they told me not to give their name.*

*Presiding Judge: This person driving BMW?*

*Gjergj Luli: Which one?*

*Presiding Judge: BMW with Albanian target plates.*

*Gjergj Luli: I do not know him. I never saw him.<sup>7</sup>*

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Confrontation as to the encounter with the defendant in Gjakova after the war:

*Ferdinando Buatier: Going to the current suspect in today's trial. You said that you first saw him at the confirmation hearing?*

*Gjergj Luli: Yes.*

*Ferdinando Buatier: In your statement to UNMIK international police in October 2008, page 135, you said to the investigator that you charged him because you saw him moving in Gjakova. This is your statement on 7 October. To which person are you referring; the current suspect or the one who took your father or both of them?*

*Gjergj Luli: This person I saw on that night when they came into my house. Later on after the war when I met him in the village.*

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<sup>7</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 29 – 30

*Ferdinando Buatier: Why do you say on 7 October 2008 that you charged him because you saw him in Gjakova. This is what you said. I saw him moving in Gjakova and I charged him.*

*Gjergj Luli: I did not mention that I saw him. I just said that he is moving around.*

*Ferdinando Buatier: It is not what you signed and what is written in your statement.*

*Gjergj Luli: I did not see him, because I was working all day long.<sup>8</sup>*

**1. b) Zoje Luli**, in her testimony given in front of the panel, stated that she had been married to Pashk Luli and they had seven children. Her husband had been working as a local police officer for Serbian Police for a period of 6 or 7 months. She did not know if her husband had weapons which were given to him by the Serbs, since women do not interfere with these issues.

The evening her husband disappeared, she was at her brother in law's house, Mark Luli, sitting with Tereza, her son's bride, three boys and her small daughter, when the son of Mark Luli came and told that they had taken away Pashk Luli.

She did not undertake anything in order to find out the whereabouts of her husband, she never even spoke to her son about what happened that night. She stated that there was nothing that could be done in order to find out who was the culprit.

Below there is an extract from the minutes of 12.03.2009:

*Zoje Luli: There is no way to find the one who did it. There is nothing I can do.*

*Presiding Judge: Do you want justice or is it not important anymore?*

*Zoje Luli: Yes. He is gone. There is nothing for me to do. I cannot now lose even my sons. There is nothing I can do. I have had so much trouble raising my sons. I could barely make ends meet.*

*Presiding Judge: I understand your problems. But I ask whether you are still interested in having justice regarding the kidnapping of your husband and the fact he never came back home. Or are you now thinking of other matters, your children? In other words I want to know whether for you this issue is solved or not.*

*Zoje Luli: Only my children. I do not care about anything else. All I care about is my children.*

*Ferdinando Buatier: You said that all you care about is your children?*

*Zoje Luli: Yes, because I could barely please them. I devoted my entire life to my children, and my husband is gone.*

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<sup>8</sup> Extract from the Minutes of the Main Trial of 11.03.2009, pages 39 – 40

*Ferdinando Buatier: What I don't understand is if you say this because you don't want to lose your children.*

*Zoje Luli: There is nothing that can happen. My life is with my children.*

*Ferdinando Buatier: Before now you said that, regarding this issue, you said you cannot lose your sons. What do you mean by this?*

*Zoje Luli: I don't want to go further. My life lies with my children. People give me stale bread for my children.*

*Ferdinando Buatier: Why do you fear to lose them?*

*Zoje Luli: I am not afraid at all, but my life lies with my children.*

*Ferdinando Buatier: The issue is that you said you don't want to lose them.*

*Zoje Luli: I don't want to leave my children. I had so much trouble raising them.<sup>9</sup>*

**1. c) Bekim Luli**, a distant relative of the victim, in his testimony in front of the panel, stated that, the night when Pashk Luli disappeared, he was in the house of Pashk's brother Kola watching TV, when five people in KLA uniforms and long weapons entered the yard of the house. They asked for Pashk Luli since they knew that he was a local police officer. One of the soldiers introduced himself as Gjeloš and asked for Pashk Luli. Consequently Pashk stepped forward and said that he was Pashk Luli. Soon after, the soldiers asked for his weapons and he gave one long weapon. Afterwards, they told him to go with them to some other houses to get weapons and when they went, they left one person behind, but he doesn't know why, since he went to his house and didn't know what had happened later.

The following day he had found out from Pashk's son, Gjergj and from other people that Pashk had been taken away.

*In the previous statement given to the UNMIK Police on 16.03.2008, Bekim Luli stated that:*

on 24 March 1999, at around 20:00/20:30, Bekim and some of his relatives were at the house of his uncle Nikol Luli watching the news on TV. When Bekim went out of the house, he met uncle Prenk who told him not to be afraid, because some KLA soldiers came. When he greeted the soldiers, they asked, who is Pashk Luli, and then his uncle Pashk stepped forward and presented himself. In the yard there where seven soldiers, amongst them there was Gjeloš Krasniqi from village Nepole, Peja Municipality, he didn't know the others.

Gjeloš asked his uncle Pashk for his weapons, one Kalashnikov and a pistol, and then he told him to go with them to the village to take some more weapons. When they went out, they left one soldier behind and said that they would return with Pashk.

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<sup>9</sup> Extract from the minutes of the Main Trial of 12.03.2009, page 7-8.

At around 23:00, when Bekim wanted to go back to his house, he was obstructed by the KLA soldier who was left behind, but when Gjelosh and his uncle returned, Bekim was not there any more. He added that, according to his opinion, only Gjelosh Krasniqi might know where the remains of his uncle Pashk Luli were.

Finally he pointed out that, when his brother Engjell Luli was working as a guard in a gas station, he was threatened by Gjelosh Krasniqi.

Considering the discrepancies between the previous statement and the testimony given in front of the panel, the witness Bekim Luli was confronted as follows:

*Public Prosecutor: I am now referring to your statement made to the police, subparagraph 21 page 110. Do you remember that you spoke to investigators of UNMIK?*

*Bekim Luli: When I gave my statement?*

*Public Prosecutor: Yes, the first paragraph, its almost at the end, the sentence beginning with "at the yard.....". Did you say this?*

*Bekim Luli: It is not true.*

*Public Prosecutor carries on reading from the statement.*

*Public Prosecutor: According to this you identified Gjelosh Krasniqi as being the one who was taking the lead.*

*Bekim Luli: It is not true.*

*Public Prosecutor: You even say that he came from Nepol village which is the place of birth and residence of Gjelosh Krasniqi, how come it is not true, you have signed it?*

*Bekim Luli: It is not true.*

*Public Prosecutor: So how did you get the bit saying that he came from Nepol?*

*Bekim Luli: I never said that he was form the village of Nepol.*

*Public Prosecutor: This is your statement signed by you, it is clearly written Gjelosh Krasniqi Neple Peja and you signed it.*

*Bekim Luli: It is not true.*

*Presiding Judge: But you signed it, how can you say you didn't say this?*

*Bekim Luli: I am convinced that I did not say that, these are mutilations the journalist could have put that there.*

*Presiding Judge: We are not speaking about journalist, when stating mutilations be careful. Now that Public Prosecutor has refreshed your memory and confronted you, which is your memory, your current memory?*

**Bekim Luli:** *I remember that my statement was not that long.*

**Presiding Judge:** *This is not true because your statement started at 1413 end 1447.*

**Haxhi Millaku:** *I think he is talking about the place in the village, he is saying different things, that is why the confusion.*

**Presiding Judge:** *Just to explore further, how long had you been in the court yard of your uncle?*

**Bekim Luli:** *Before these 5 people came, I was there for about an hour, they just came, took my uncle, I took off home, it was brief.*

**Presiding Judge:** *So after 5 people came, how long after did you leave?*

**Bekim Luli:** *They came and said we will take him, not long, 15 minutes not longer.*

**Presiding Judge:** *So then you left?*

**Bekim Luli:** *I left the house of my uncle.*

**Presiding Judge:** *It is clear now, what about your memory of what happened, now that you have been confronted by Public Prosecutor and I remind you your statement was not taken 5 years ago, it was taken in March 2008.*

**Bekim Luli:** *The statement ....*

**Presiding Judge:** *I do not want to know any more about your statement, I want to know about your current memory.*

**Bekim Luli:** *The statement was brief, I did not know any of the 5 persons that came I cannot blame.....*

**Presiding Judge:** *The answer is not consistent with my question. Which is your memory now after the Public Prosecutor has confronted you with your previous statement?*

**Bekim Luli:** *The incident of .....*

**Presiding Judge:** *No the specific facts.*

**Bekim Luli:** *I was there very briefly, but I know the words I spoke when giving the statement, which was taken in the house of my uncle Pashk Luli, when I began the statement they asked me questions such as do I know Gjelosh Krasniqi.*

**Presiding Judge:** *I have to stop you; I am not interested in the statement, what is your memory now? You said one thing, the Public Prosecutor reminded you, and you say different things now.*

**Bekim Luli:** *I do not know how to explain I spoke of the incident.*

**Presiding Judge:** *Yes but there are discrepancies and you are obliged to give clarification so please answer. Speak please. You said not in the statement, but here in front of the panel, you said that the person among 5 other people entered the yard and presented himself as Gjelosh,*

*this is what you said here. The Public Prosecutor raised his hand and said now there is a difference because in the statement which you gave on 16 March 2008 you said something different, you said that there were 7 KLA soldiers, among them there was Gjeloš Krasniqi from Nepol village and then added and I didn't recognise the other soldiers, the meaning of this sentence is that you recognised Gjeloš Krasniqi and that you knew him since you said that he was from Nepol village. If I don't know a person I cannot say which is his village, have you understood the difference of the 2 declarations?*

*Bekim Luli: I gave one declaration.*

*Presiding Judge: Yes, one here and one to the police, now the panel wants to know, since there is a difference, which is your current memory now and you are obliged to tell the truth.*

*Bekim Luli: I am saying the truth, I have never said that he is Gjeloš Krasniqi.*

*Presiding Judge: Which is your current memory, do not state your previous statement, please answer.*

*Bekim Luli: I was there briefly and I could not recognise any of the people.*

*Presiding Judge: So this is your answer.*

*Public Prosecutor: You said when asked how many or what weapons, you said long barrel weapons but you could not see them.*

*Bekim Luli: No because I was not there.*

*Public Prosecutor: Firstly you said to the police, Gjeloš Krasniqi took these two weapons and said to Pashk Luli come with us we go to village and take more weapons, how come a year ago you could say it was a Kalashnikov and a pistol?*

*Bekim Luli: Yes I was there when long weapon was taken, when I went the following day they told me his pistol was taken too.*

*Public Prosecutor: In the statement it appears that you were there when the weapons were taken.*

*Bekim Luli: Not true, I gave the statement later on.*

*Public Prosecutor: Why did you sign the statement then?*

*Bekim Luli: I signed the statement as my cousin told me that they had taken the pistol.*

*Public Prosecutor: Why did you sign the statement?*

*Bekim Luli: I was told the following day about the pistol.*

*Public Prosecutor: Yes but you are not answering my questions.*

*Bekim Luli: Yes it was written in the statement as I was told the pistol was taken.*

*Presiding Judge: Just to make things clear, since you were in the court yard when people came to take Pashk Luli, how can you not see him hand over the rifle and pistol?*

*Bekim Luli: When the people arrived I was not in the yard I was watching TV, I came out and Prenk told me 5 soldiers had come. I heard them asking for the weapons.*

*Presiding Judge: Who did you hear?*

*Bekim Luli: One of the 5 presented himself as Gjeloš.*

*Presiding Judge: Did you see Pashk Luli handing over the weapons?*

*Bekim Luli: Yes the weapon.*

*Presiding Judge: So did you see both the weapons or just the rifle?*

*Bekim Luli: I was inside so I could not see.*

*Presiding Judge: You said you saw the victim who was handing over the weapons?*

*Bekim Luli: The weapon.*

*Presiding Judge: The pistol or the rifle?*

*Bekim Luli: The long rifle.....<sup>10</sup>*

1. d) Engjell Luli, in his testimony in front of the panel, stated that he remembered he had given a statement to a police officer and initially confirmed that, in that statement, he had agreed with what was said by his brother Bekim. However, in the following part of his testimony, he denied having recognized Gjeloš Krashniqi and said that a person, who he did not know, the night of 24 March 2009, entered the yard of his uncle Nikoll Luli and just presented himself as Gjeloš Krashniqi.

He added that the last time he saw his uncle Pashk Luli was the night he was taken away: he was in the house of his uncle Nikoll Luli when five people came, surrounded the people who were in the courtyard and asked for Pashk Luli. These people were KLA soldiers in military uniforms as the witness came to know afterwards. The one leading them was a little short and chubby. Pashk Luli stepped forward and then they took him and went to the village, he did not know towards what direction.

*In the previous statement given to the UNMIK Police on 16.03.2008, Engjell Luli stated that:*

he stood by the statement of his brother Bekim Luli who had explained that, on 24 March 1999, Pashk Luli had been taken away by Gjeloš Krasniqi, from Nepole village and that Gjeloš wa together with other KLA soldiers.

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<sup>10</sup> Extract from the Minutes of the Main Trial of 12.03.2009, pages 14 – 17.

Furthermore, he stated that, after the war, when he was working in a gas station, in Doblbare village, Gjelosh Krasniqi drove by and stopped the car and asked him where Lusi (the owner of the gas station) was. He replied that Lusi was not there and Gjelosh rejoined that if he got out of the car he would destroy the gas station and burn it down.

Considering the discrepancies between the previous statement and the testimony given in front of the panel, the witness Engjell Luli was confronted as follows:

*Public Prosecutor: I would like you to think back to last March on the 16<sup>th</sup>, do you recall giving a statement to the police officer along with your brother Bekim?*

*Engjell Luli: Yes, we gave statements.*

*Public Prosecutor: Do you recall what you said about your brother's statement to the police? May I ask some questions about the statement, Your Honour? This is how I am going to confront him with his own words. I am referring to the statement, which is contained on pages 102 to 105 and is in the court file. Do you recall saying to the police that you agree entirely with the statement given by your brother Bekim?*

*Engjell Luli: I can reply about my statement but I cannot give answers about the statement of my brother.*

*Public Prosecutor: Do you recall saying the following to the police officer: "I agree completely with the statement of my brother Bekim who gave the statement for missing of our Uncle Pashk Luli who was taken by Gjelosh Krasniqi together with other KLA soldiers"?*

*Engjell Luli: I was not with Bekim. I was alone. I can swear to this.*

*Public Prosecutor: Do you recall saying that to the police officer?*

*Engjell Luli: My statement, yes.*

*Public Prosecutor: Do you recall what I just quoted to you from your statement?*

*Presiding Judge: Do you understand the question? Do you recall these exact words that you stood by the statement given by your brother Bekim? Have you understood the question of the Public Prosecutor?*

*Engjell Luli: Yes. As I said, we were four brothers and when they asked for my Uncle Pashk Luli, my uncle stood up ...*

*Presiding Judge: I have to interrupt. This is not the question. The Public Prosecutor confronted you with your previous statement in which you said, and he quoted your words: "I agree completely with the statement of my brother Bekim who gave the statement for missing of our Uncle Pashk Luli who was taken by Gjelosh Krasniqi together with other KLA soldiers." This is what you said on 16 March 2008. Do you stand by what you said on 16 March?*

*Engjell Luli: Yes, that is what I said.*

*Public Prosecutor: You are aware then of the statement your brother gave to the police because you told the police that you agreed with what Bekim said.*

*Engjell Luli: Yes, we were together.*

*Presiding Judge: You were together when you were interviewed by the police?*

*Engjell Luli: First, my brother, then it was I.*

*Presiding Judge: First, your brother was interviewed and then you were interviewed, but all the time both of you were present?*

*Engjell Luli: No.*

*Ferdinando Buatier: While Bekim was interviewed, were you in the room?*

*Presiding Judge informs Gjergj Luli, who appears to be unwell, that he can leave the courtroom whenever he wishes.*

*Engjell Luli: No. I understood all that. First, it was Bekim who was interviewed.*

*Presiding Judge: How can you know the content of your brother's statement?*

*Haxhi Millaku: In reply to the Public Prosecutor's first question and which has been stated in the minutes, this witness said: "I was interviewed in the village of Doblizare." We cannot refer to an office.*

*Presiding Judge: I was meaning the room and the interpreter used the word "office". Since you said on the 16<sup>th</sup> that you stood by the statement of your brother Bekim, how could you know this statement? Did you hear what he was saying to the police or was the statement of your brother read to you?*

*Engjell Luli: I do not know how to read.*

*Public Prosecutor: It was read to you?*

*Engjell Luli: The one who was there read it.*

*Presiding Judge: Was he a police officer?*

*Engjell Luli: He was not wearing a uniform.*

*Presiding Judge: Was he an American or an Albanian?*

*Engjell Luli: There was one of each.*

*Presiding Judge: The one who read was Albanian?*

*Engjell Luli: Yes.<sup>11</sup>*

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<sup>11</sup> Extract from the minutes of the main trial dated 17.03.2009, pages 5 – 7.

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*Public Prosecutor: I will repeat the following statement from your brother's statement. This was read to you: "At the yard of the house of my Uncle Nikoll were seven KLA soldiers. From them was Gjelosh Krasniqi from Nepole village, Peja municipality and I did not recognize the other soldiers." You agreed with that statement in March 2008. Would you agree with that statement now?*

*Engjell Luli: Yes, but I never said Gjelosh Krasniqi. I think he was introduced as Gjelosh Krasniqi. Now, I do not recognize him and never did.*

*Public Prosecutor: Your brother said he recognized him and you agreed with your brother.*

*Engjell Luli: It is not true.*

*Presiding Judge: You cannot say that because you signed the statement. You can say that, now your memory is different. Which is your memory now?*

*Engjell Luli: I do not know what to say. What is my memory? Ten years have gone by.*

*Presiding Judge: You are here to explain to us what your memory is. On 16 March, you stood by the statement of your brother who said that he recognized Gjelosh Krasniqi also adding that he came from Nepole village. Your brother did not simply say: "I saw somebody" he said: "I saw Gjelosh Krasniqi" who is from this specific village. The logical conclusion is that he recognized Gjelosh Krasniqi and on the same day, you said that you agreed completely with this statement, which means that on that night you also saw Gjelosh Krasniqi and you also recognized that he was coming from Nepole village. This is what you said on 16 March. You cannot deny it because you signed it. This is in the court file and is history and it will be assessed by the court. You are here to explain to us what your current memory is. We know what your memory was on the 16<sup>th</sup>. It is not useful to say I did not say this, because you signed. You are here at this moment to inform us about your current memory of the fact of 1999 of course. Which is your memory now?*

*Engjell Luli: He presented himself. I did not recognize him. If I had recognized him, I would say I recognized him. I am not denying the statements that I gave. Other than this, I have lost two days of work. He thought I had run away or fled. The police came to my house and ...*

*Presiding Judge: You can raise this issue when your testimony is over, not now. Since this is your memory now that you did not recognize Gjelosh Krasniqi, why did you say on the 16<sup>th</sup> that Gjelosh Krasniqi was from Nepole village? It is the same ...*

*Haxhi Millaku interrupts: The Presiding Judge has already ruled on his objection and it is in the minutes.*

*Presiding Judge: How is it possible that there is this contradiction?*

*Engjell Luli: What I said that day, you have before you. I do not know what I said 10 years ago.*

*Presiding Judge: You said this one year ago and not 10.*

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*Engjell Luli: Yes, 2008.*

*Presiding Judge: Why did you say something different one year ago?*

*Engjell Luli: I did not recognize him but I did give those statements.*

*Presiding Judge: Your current memory is that you did not recognize him but all of us want to know why there is this difference between the two statements. The Public Prosecutor, the Defence Counsel, and the panel want to know. There is a pivotal difference between the two statements.*

*Engjell Luli: There is no difference. I do not know what he said or how he said it.*

*Presiding Judge: "He". Who?*

*Engjell Luli: You are saying that I have changed my mind.*

*Presiding Judge: It is not that you have changed your mind, but there is discrepancy between the two statements and I want to know why?*

*Engjell Luli: Which statements?*

*Ferdinando Buatier: In 2008, you said, recalling the statement of your brother Bekim, that you knew Gjelosh Krasniqi and he came from Nepole village. Today, you said that you did not know Gjelosh Krasniqi and just this person that you did not know presented himself as Gjelosh Krasniqi. Why do you say two different things?*

*Engjell Luli: He presented himself as Gjelosh Krasniqi but I did not recognize him.*

*Ferdinando Buatier: You do realize there is a difference between what you are saying today and what you said one year ago. They are two different things.*

*Engjell Luli: I am sorry but I do not understand.*

*Ferdinando Buatier: Today you said you did not know Gjelosh Krasniqi but one year ago, you said you did.*

*Engjell Luli: I did not say that.*

*Presiding Judge: You cannot deny that you said such a thing. You can say that you remember in a different way. As you did because you said you remember in a different way and we are here to ask you why. If you can tell us why, we will take the answer into consideration. Can you explain to us why there is this difference? If you cannot explain, that is OK. What is your answer?*

*Engjell Luli: I do not now.*

*Public Prosecutor: I am going to read to you one other portion of the statement that you agreed with, and this is the statement that your brother Bekim gave to the police on 16 March 2008 and which was read to you and you agreed with it: "Firstly, Gjelosh Krasniqi asked for my Uncle Pashke to give him the weapons ..."*

*Presiding Judge: He did not deny that his uncle handed over some weapons. It is better to ask him whether his uncle handed over weapons or not and if there is a discrepancy then you can confront him.*

*Public Prosecutor: Was your uncle asked to turn over weapons to Gjelosh Krasniqi and the other soldiers?*

*Engjell Luli: Yes, my uncle gave them the weapons.*

*Public Prosecutor: Was that at the order of Gjelosh Krasniqi?*

*Engjell Luli: Yes.<sup>12</sup>*

*\*\*\**

*Public Prosecutor: I would like to take you to after the war had ended and I understand that you were working at the petrol station Alfa and that is at your village Doblbare.*

*Engjell Luli: Yes.*

*Public Prosecutor: Do you recall at some point Gjelosh Krasniqi coming to the petrol station?*

*Engjell Luli: He passed by on that street.*

*Public Prosecutor: Did you talk to him?*

*Engjell Luli: From a distance of 5 metres.*

*Public Prosecutor: How much longer after the war ended?*

*Engjell Luli: It was dark. It was nighttime.*

*Public Prosecutor: How many weeks after the war?*

*Engjell Luli: I cannot lie to you but it was immediately after the war. Very soon after.*

*Public Prosecutor: Tell us about your encounter with Gjelosh Krasniqi at the petrol station soon or immediately after the war.*

*Engjell Luli: I did not have a meeting with him.*

*Public Prosecutor: A conversation or a word spoken?*

*Engjell Luli: He talked to me from the street.*

*Public Prosecutor: What did you say?*

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<sup>12</sup> Extract from the minutes of the main trial dated 17.03.2009, pages 8 – 10.

*Engjell Luli: He told me: "If I come close to you, I will blow up the petrol station." My reply to that was that the strong can do everything.*

*Presiding Judge: Who said that, you or Gjeloš Krasniqi?*

*Engjell Luli: I said.*

*Public Prosecutor: Have you seen Gjeloš Krasniqi since that time at the petrol station?*

*Engjell Luli: No.*

*Public Prosecutor: Do you see Gjeloš Krasniqi here in the courtroom? Turn around and look at everybody.*

*The witness turns around to look around the courtroom.*

*Engjell Luli: I cannot recall. He was much shorter and much fatter.*

*Public Prosecutor: Which Gjeloš Krasniqi? The one who took away your uncle or the one at the petrol station?*

*Engjell Luli: He was in a car and did not get out. I could not see him.*

*Public Prosecutor: Gjeloš Krasniqi who took away your uncle and the one at the petrol station are the same person, are they not?*

*Engjell Luli: It was dark and a distance of 5 metres.*

*Presiding Judge: The yard of your uncle or at the petrol station?*

*Engjell Luli: After they took my uncle.*

*Presiding Judge: It was dark in your uncle's courtyard?*

*Engjell Luli: It was dark.*

*Presiding Judge: The meeting at the petrol station, was it daytime or night?*

*Engjell Luli: It was night. I was working as a guard.*

*Presiding Judge: Was it dark or not? Usually petrol stations are well lit.*

*Engjell Luli: It was dark.*

*Presiding Judge: Also at the petrol station?*

*Engjell Luli: Yes.*

*Presiding Judge: Gjeloš Krasniqi the one who took away your uncle and the one you met at the petrol station were the same person or not? Yes or no?*

Engjell Luli: *You are confusing me.*

Presiding Judge: *I am not confusing you. The person who presented himself as Gjelosh Krasniqi took away your uncle and you told us this during the hearing. About the question of the Public Prosecutor, you said that, after the war, you saw Gjelosh Krasniqi at the petrol station. I am asking you if the Gjelosh Krasniqi that you saw taking away your uncle and the Gjelosh Krasniqi who you saw at the petrol station are the same person or not? It is a very simple question.*

Engjell Luli: *I did not have a long conversation with him ...*

Presiding Judge: *Were they the same person or not?*

Engjell Luli: *No, they were different.*

Presiding Judge: *So, this is your answer. Since these two persons are two different persons, why didn't you point out this in your statement given one year ago? First, you said, I agree completely with the statement of my brother and in that statement the story is told of the kidnapping of your uncle by a group of people among whom was Gjelosh Krasniqi and then in the statement given by you on 16 March, you say that, after the war, I saw Gjelosh Krasniqi. The logical consequence, which is to be taken by this statement, is that the two Gjelosh Krasniqis, the one who took your uncle and the one at the petrol station, are the same person. Now you are saying that they are two different persons. Why did you not say this on 16 March? Even though you are illiterate, you understand that it is important.*

Engjell Luli: *It was the translator doing the translation. You can say to the Judge whatever you want and may be you can use a swearing word and I would not understand.*

Presiding Judge: *This statement is in Albanian. There is nothing regarding translation.*

Engjell Luli: *I already told you and made myself clear to you. I cannot add anything to this or my statement.*

Presiding Judge: *I want to know why you did not stress that these two persons bearing the name of Gjelosh Krasniqi were two different persons.*

Engjell Luli: *May be someone is taken for another person who is not that person and can do harm to someone else.*

Presiding Judge: *Why did you not point out this difference?*

Engjell Luli: *I do not know to explain this. You are ruining me.*

Presiding Judge: *What do you mean by this? Are you afraid of anything?*

Engjell Luli: *No.*

Presiding Judge: *Why?*

Engjell Luli: *I do not want to ruin someone else's faith.*

*Presiding Judge: Did you receive any threat regarding your testimony to be given here in front of the court?*

*Engjell Luli: I never have.<sup>13</sup>*

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*Presiding Judge: I have one or two clarifications for you. These soldiers were in uniforms, did you recognise these uniforms? Or did you recognise somehow the army?*

*Engjell Luli: The uniform were the same as every other army.*

*Presiding Judge: Since in your statement of 16<sup>th</sup> March 2008 you said that "my uncle Pashk Luli was taken by Gjeloš Krasniqi together with other KLA soldiers." You said this on the 16<sup>th</sup> March 2008. Now, what is your memory?*

*Engjell Luli: He said that he was Gjeloš. He was wearing a uniform.*

*Presiding Judge: So the persons presenting himself as Gjeloš Krasniqi was wearing a uniform?*

*Engjell Luli: Yes.*

*Presiding Judge: Others too?*

*Engjell Luli: Yes.*

*Presiding Judge: How could you recognize the KLA uniforms, since as you said it was dark?*

*Engjell Luli: It was dark.*

*Presiding Judge: Since it was dark, and for this reason you couldn't recognise the face of the person presenting himself as Gjeloš Krasniqi, how could you recognise these uniforms?*

*Engjell Luli: We understood that afterwards.*

*Presiding Judge: How did you understand this afterwards?*

*Engjell Luli: I understood that it was our army. That of the Albanians.*

*Ferdinando Buatier: Did anyone tell you?*

*Engjell Luli: Nobody told me. Because that was when war started. We knew which parties were involved.*

*Presiding Judge: You say it was a deduction of yours that they were KLA, not something you were shown directly?*

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<sup>13</sup> Extract from the minutes of the main trial dated 17.03.2009, pages 12 – 14.

Engjell Luli: Yes.

Presiding Judge: This answer is not consistent with what you said to us a while ago.

Engjell Luli: It was dark, he was wearing a uniform.

Presiding Judge: You did not recognise any badge on the uniform?

Engjell Luli: I don't know. I wanted to go back to my family.<sup>14</sup>

1. e) **Pren Kashnjeti**, in his testimony in front of the panel, stated that he had known Pashk Luli since his childhood, because they were both from the same village, Doblbare and that Pashk had been working as a local policeman for two or three months. The evening of the 24<sup>th</sup> March 1999 he saw Pashk Luli with three or four KLA soldiers, his hands were tied behind his back. More specifically, when they arrived at Pren's house, Pashk called out "Godfather Tune" and Pren went out. When he saw Pashk and the soldiers, he asked Pashk: "What's going on". Pashk replied that he did not know. Then the soldiers asked for the weapons of his uncle Tune Kashnjeti and Tune turned over his rifle.

After a part of his previous statement was read to him, he confirmed that his uncle Tune, two weeks prior to the night of 24 March 1999, had been already taken away by the KLA members, that he had been kept for two nights and that a pistol had been taken from him. He did not recognize anybody, but he heard that Gjelosh Krasniqi, the night Pashk was taken, was among the soldiers who came to his yard looking for Tune.

During the hearing eight pictures (the same pictures already shown to him during the investigation) were exhibited to him asking if he could recognize Gjelosh Krasniqi. In front of the panel he pointed at two pictures: one of the pictures he pointed at (the one at page 126, bottom right corner) was the picture of Gjelosh Krasniqi (even though the name is not put under the picture, it can be easily inferred that this photo depicts the defendant, comparing it to the pictures of the defendant at pages two and three of the binder labelled Materials paginated 0-179).

*In the previous statement given to the UNMIK Police on 16.03.2008, Pren Kashnjeti stated that:*

on 24<sup>th</sup> March 1999, at around 22:00, Pashk Luli called out in Pren's yard: "Godfather Tune": Pren went out and saw Pashk Luli along with six or seven persons in KLA uniform, but he didn't recognize any of the soldiers. Pashk Luli had his hands tied behind his back. He asked: "What's up, Pashk", and his reply was: "I don't know".

Then, one of the soldiers asked for his uncle Tune Kashnjeti and, when Tune came out, they asked for the weapon that Tune had; when he gave the weapon they told him that they would return it, but they never did so.

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<sup>14</sup> Extract from the minutes of the main trial dated 17.03.2009, pages 21 – 22.

Pren stated that he had heard that the person who took Pashk Luli that night was Gjelosh Krasniqi from Nepole village, Peja Municipality and, according to the witness; they had taken away Pashk Luli because he was a local police officer working for the Yugoslav government. As far as he knew, Pashk had not had problems with anybody; he had become a local police just to feed his family.

Pren added that, two weeks before that night, some KLA soldiers (he had heard that Gjelosh was one of them) had taken his uncle Tune and kept him for two days and had seized his pistol.

During the interview the witness was shown eight pictures of different people and among them Pren recognized only Gjelosh Krasniqi.

Considering the discrepancies between the previous statement and the testimony given in front of the panel, the witness Pren Kashnjeti was confronted as follows:

*Presiding Judge: The question of the Prosecutor was that he wanted to know how the name of Gjelosh Krasniqi came into your statement.*

*Pren Kashnjeti: As I said before I was walking down the street, someone said "hello." I did not see who it was. They said "hello Gjelosh" and that was it.*

*Public Prosecutor: What street and when?*

*Pren Kashnjeti: In Gjakove, after the liberation.*

*Public Prosecutor: You saw Gjelosh in the street?*

*Pren Kashnjeti: I was walking down the street.*

*Public Prosecutor: Did you say hello to him?*

*Pren Kashnjeti: I did not say anything to him. We did not recognise each other.*

*Presiding Judge: I think he misunderstood. I think that someone else greeted Gjelosh, and from this he understood that the person was Gjelosh.*

*Pren Kashnjeti: It was someone else.*

*Presiding Judge: Someone else who greeted Gjelosh?*

*Pren Kashnjeti: Yes.*

*Presiding Judge: Before this chance meeting, you didn't know this person?*

*Pren Kashnjeti: No.*

*Public Prosecutor: Now I will ask you to clarify this statement you gave to the police. This is a sentence that is after your description of when Tune was taken, two weeks before Pashk. "After*

*the war I have heard it was Gjeloš Krasniqi from Nepole village, Peja municipality" What did you hear? That it was Gjeloš Krasniqi? Can you explain?*

*Pren Kashnjeti: Yes. All I heard was "Gjeloš Krasniqi" and that he belongs to the KLA and that's it.*

*Public Prosecutor: Was that at the time you saw some other person greet Gjeloš in the street?*

*Pren Kashnjeti: No, I did not hear anything then.*

*Public Prosecutor: So you heard from somebody that someone named Gjeloš Krasniqi was in the KLA?*

*Pren Kashnjeti: Yes, he was.*

*Public Prosecutor: And did you associate that information with the night that Pashk Luli was seen in your yard with the KLA soldiers?*

*Pren Kashnjeti: I did not associate anything.*

*Public Prosecutor: Let me see if we can clarify a little more. At the end of your statement you gave to the police last year, and I am now quoting your statement, "the night when Pashk Luli was taken by KLA soldiers that were at my yard I have heard that there was also Gjeloš Krasniqi."*

*Pren Kashnjeti: That is not true. I know what I said.*

*Presiding Judge: Here there is a statement signed by you. It is in Albanian. You cannot deny you said such a thing. What is your memory now?*

*Pren Kashnjeti: As I said, I did not recognise Gjeloš Krasniqi that night. On the 11th, you said I knew Gjeloš Krasniqi*

*Presiding Judge: The Prosecutor, who is quoting your statement, said that you had heard that night there was also Gjeloš Krasniqi in the courtyard of your uncle. In the courtyard where Pashk Luli was taken.*

*Haxhi Millaku: There are the wrong words used here, they are "I heard that."*

*Presiding Judge: We are not saying that you saw. In your statement it is written that you have heard that also Gjeloš Krasniqi was present that night.*

*Pren Kashnjeti: I don't remember that.*

*Presiding Judge: Is it possible your memory was better one year ago, when you gave this statement to the police?*

*Pren Kashnjeti: It is as fresh now as it was then.*

*Presiding Judge: But you don't say the same things. That is the problem.*

*Pren Kashnjeti: I say the truth.*

*Presiding Judge: Now you say the truth?*

*Pren Kashnjeti: I know what I said. What was written in the paper, I don't know.*

*Presiding Judge: You do know, because you signed it. You can't say you don't know.<sup>15</sup>*

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*Presiding Judge: So during the interview some photos were shown to you, is that true?*

*Pren Kashnjeti: Yes, they showed me some photos.*

*Presiding Judge: The next step is the question were these, the ones just presented to you by the Public Prosecutor, the same pictures as the ones which were shown to you?*

*Pren Kashnjeti: I think not.*

*Presiding Judge: So according to you they are not the same pictures. Are you sure that these are not the same pictures?*

*Pren Kashnjeti: From what I see I don't think they are the same*

*Public Prosecutor: Of the pictures that were shown to you last year do you remember picking one out that you did recognise?*

*Pren Kashnjeti: Maybe these two (indicates).*

*Public Prosecutor: You are looking at page 126 and you say maybe "these two." Which two are you pointing to? The one in the upper left hand corner?*

*Pren Kashnjeti: Yes.*

*Public Prosecutor: And which other?*

*Pren Kashnjeti: Him or him (indicates).*

*Public Prosecutor: Please put your finger on the second one. You are now pointing to the bottom right picture (indicates). You pointed to this (indicates) and this (indicates) picture?*

*Pren Kashnjeti: Yes.*

*Public Prosecutor: How do you recognise these two people?*

*Pren Kashnjeti: I think this one.*

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<sup>15</sup> Extract from the minutes of the main trial dated 17.03.2009, pages 29 – 31.

*Public Prosecutor: Explain please.*

*Public Prosecutor: You recognise these two pictures (indicates) as the two pictures the police showed you?*

*Public Prosecutor: I think so.*

*Public Prosecutor: Let's forget these for a moment. Of the pictures the police showed you last year, did you recognise any of them?*

*Pren Kashnjeti: I recognised the two I pointed at.*

*Public Prosecutor: Do you recall in your statement you said the following. I quote "From these photos you showed me I recognise only Gjelosh Krasniq." Do you remember saying that to the police in your statement?*

*Pren Kashnjeti: I do not remember that. I did not know I was going to come here.*

*Public Prosecutor: You must speak the truth here. Were you telling the police the truth when you said you recognised only Gjelosh Krasniqi from the photographs?*

*Pren Kashnjeti: That cannot be true.*

...

*Ferdinando Buatier: To summarise, because we need to understand. You told us that the police interviewed you and during this interview they showed you some photos requesting you to tell them if you recognised, among these pictures, some person participating in the acts of 1999. This is what I have understood. Is that correct or not?*

*Pren Kashnjeti: Yes, it is correct, but I didn't recognize anyone.*

*Ferdinando Buatier: You saw some photos and none of the persons in them were recognised by you as one of the soldiers of March 1999?*

*Pren Kashnjeti: I pointed out in one of the photos.*

*Ferdinando Buatier: So you recognised that person as the person you met after the war?*

*Pren Kashnjeti: Yes, three months after.*

*Public Prosecutor: Now you are telling us you did recognise someone in the photograph. And was that a photograph of Gjelosh Krasniqi?*

*Presiding Judge: Is it possible that you pointed out, when the pictures were shown to you, Gjelosh Krasniqi? Meaning the person that was greeted by someone else, sometime after the war? Is this correct or not?*

*Pren Kashnjeti: While I was passing by.*

*Presiding Judge: This person who was greeted is the same person that you recognised in the picture?*

*Pren Kashnjeti: It might be.*

*Presiding Judge: This is when you were interviewed by the police?*

*Pren Kashnjeti: Maybe I made a remark that this was the person.*

*Presiding Judge: The person who was greeted?*

*Pren Kashnjeti: With whom do you mean?*

*Presiding Judge: Let us start again. You said that some time after the war, while you were walking in Gjakove, somebody greeted the person calling him "Gjelosh Krasniqi." Is that correct?*

*Pren Kashnjeti: Yes.*

*Presiding Judge: Now I ask, is it possible that among the pictures which were shown to you by the police there was the picture of this person who was greeted?*

*Pren Kashnjeti: As you said.*

*Presiding Judge: So the answer is yes?*

*Pren Kashnjeti: It is possible.*

*Presiding Judge: I meant, is there this person among those pictures which were shown to you? The person who was greeted?*

*Pren Kashnjeti: Roughly I pointed out in that picture, but I am not sure.*

*Presiding Judge: You pointed out two pictures. But when you were interviewed by the police, did you point out one picture or more than one picture? Because here it is written that you pointed out only one picture.*

*Pren Kashnjeti: If you say so, then so be it.*

*Presiding Judge: I say so because you said so. Do you mean you stand by your previous statement on this point?*

*Pren Kashnjeti: As I said today, I pointed out in two pictures, so it might be one or the other.*

*Presiding Judge: But when you were interviewed by the police you pointed out one. Now I have refreshed your memory, do you stand by this?*

*Pren Kashnjeti: If I said so I won't deny what I said. But as far as the person goes I don't think something is true in that.*

...

*Presiding Judge: You can say you don't recall this but not that you didn't say this. I ask one more question. I ask you to turn now and look at the public and also at the defendant.*

*Witness turns to face the public and defendant, and turns back*

*Presiding Judge: Among these people, is there the person who was greeted in Gjakove some time after the war?*

*Pren Kashnjeti: Among those people I just saw I don't think there is a person about what we have spoken previously.*

*Presiding Judge: Now I ask you to look at the defendant whose name is Gjelo Sh Krasniqi.*

*Witness turns to look at the defendant.*

*Presiding Judge: Is he the same person as the one who was greeted in Gjakove?*

*Pren Kashnjeti: I am not sure 100 per cent.*

*Presiding Judge: It might be that he is the same person or not?*

*Pren Kashnjeti: I cannot say so.*

*Presiding Judge: What are the differences between this Gjelo Sh Krasniqi in front of us and the person who was greeted in Gjakova? If there are any differences at all.*

*Pren Kashnjeti: His face was a bit different. His face was longer.*

*Presiding Judge: Are there other differences or not?*

*Pren Kashnjeti: He was much whiter.*

*Presiding Judge: You mean the colour of the skin?*

*Pren Kashnjeti: Yes.*

*Presiding Judge: Since the pictures of the Prosecutor are slightly better than mine...(indicates to Prosecutor)*

*Public Prosecutor hands his copies of photographs to the panel.*

*Presiding Judge: Do you think that this person, I am pointing at the picture on page 126 in the right bottom corner of the page, who is he according to you? Who does this picture represent? Do you see anyone in this courtroom who resembles a little bit this picture?*

*Pren Kashnjeti: No, I don't think so.*

*Presiding Judge: Don't you think this picture might represent Gjelo Sh Krasniqi? Confronting the picture and the person present here, I am asking whether they could be the same person.*

*Pren Kashnjeti: Maybe in the picture you can resemble a person.*

*Presiding Judge: I am asking you about this picture and that person (indicates Defendant)*

*Haxhi Millaku: Take the picture, have a look...*

*Presiding Judge: Please take the picture.*

*Witness takes the picture from the Presiding Judge.*

*Presiding Judge: Just look at the Defendant. Don't be scared.*

*Pren Kashnjeti: I am not afraid. There is a big difference.*

*Presiding Judge: What are these big differences?*

*Pren Kashnjeti: The hairstyle is different firstly.*

*Presiding Judge: But hairstyles can change through the years.*

*Pren Kashnjeti: I am changing my own too.*

*Presiding Judge: What other differences?*

*Pren Kashnjeti: The person in the picture, his face is more round and the person seated behind me has a longer face.*

*Presiding Judge: Just to inform you that this picture is the picture of Gjelosh Krasniqi. Just to let you know this.*

*Witness hands the pictures back to the Presiding Judge.*

*Presiding Judge: Now, you are aware this picture is that of Gjelosh Krasniqi. Do you think the picture and the defendant are the same or not?*

*Pren Kashnjeti: I don't think so<sup>16</sup>.*

**1. f) Prenk Luli**, in the testimony given in front of the panel, stated that, on the evening of 24<sup>th</sup> March 1999, he was at home watching TV with his father Mark Luli and other relatives, when some children who were outside came and said that they took their uncle away, meaning Pashk Luli. Then he got out to the courtyard where he met his cousins (uncle's sons), who told him that Pashk Luli was taken away. He didn't see anybody, he enter the house immediately, since he was interested more in watching the TV about the bombardment.

Afterwards Pashk Luli was taken back to the courtyard Prenk went out again and he could see Pashk with three or four KLA soldiers, but he didn't know anyone, neither he spoke to anybody.

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<sup>16</sup> Extract from the minutes of the main trial dated 17.03.2009, pages 34 – 40.)

***In the previous statement given to the UNMIK Police 16.01.2008, Prenk Luli stated that:***

on 24<sup>th</sup> March 1999, at around 20:00, Pashk Luli's wife, Zoja, together with Gjergj's wife Tereza, came to his house to get shelter, because of the bombings. Prenk, together with his father, went to the house of Nikolle Luli. At around 20:30, Nikolla's son, Prenk, came into the house and told that Pashk had been taken away. Then he got out and saw an armed person with KLA uniforms, but he didn't recognize him. He had asked him who he was, but the answer was that he was from Kosovo and it was not important for him to know who he was.

At around 23:30, he heard a family member saying "Our uncle is back", so he went outside and this time he saw Gjelosh Krasniqi together with his three partners in the yard. He couldn't hear everything, but he heard very well when Gjelosh said: "Stand up and come with us". So, Pashk gave the ammunition he was asked by Gjelosh and they went towards Erenik's vineyard, but, ahead of leaving the yard, the soldiers told the people who were there not to move before one hour.

Considering the discrepancies between the previous statement and the testimony given in front of the panel, the witness Prenk Luli was confronted as follows:

*Public Prosecutor: I would ask if you recall giving a statement on 16 January 2008? Do you recall giving a statement that evening?*

*Prenk Luli: Yes.*

*Public Prosecutor: Let me ask you. That statement was given to police officers, is that correct?*

*Prenk Luli: Yes.*

*Public Prosecutor: Do you recall giving this part of your statement?*

*Prenk Luli: I did not say anything at all. I did not even see.*

*Public Prosecutor: See what?*

*Prenk Luli: No one armed.*

***Public Prosecutor: Listen to my question. Do you recall saying in your statement to the police on 16 January 2008, that after you heard from the children that your uncle was taken away, you said the following: "At the same time, I went out into Nikoll's yard and I saw an armed person wearing a KLA uniform. He also had KLA symbols but I did not recognize him." Can you remember saying that?***

***Prenk Luli: I have not said it and I do not remember saying it because I did not see anyone in the yard.***

*Public Prosecutor: You deny saying this?*

*Prenk Luli: I did not say that.*

*Public Prosecutor: Further in your statement: "I asked him: 'Who are you' and he told me: 'I am from Kosovo, and it is not important for you to know who I am'" and then you said: "After the conversation I had with the uniformed person, I got into the house but he continued staying outside in the yard standing guard." Can you explain to the panel how this information got into your statement that you signed?*

*Prenk Luli: I do not know who wrote that. I saw that there were three of four people when they returned my uncle but it was dark and could not see anything else.*

*Public Prosecutor: You cannot explain how this got into your statement.*

*Prenk Luli: I do not know.*

*Public Prosecutor: Even though you signed it?*

*Prenk Luli: I signed it but did not know what was written. How could I know?*

*Public Prosecutor: This was an important investigation, did you not care what you were signing?*

*Prenk Luli: My father was very sick. I dealt with other things. I did not see what the man wrote. I had to send my father to the doctor and I do not know what was written.*

*Public Prosecutor: It was in Albanian. You signed it.*

*Prenk Luli: Yes, I signed it.<sup>17</sup>*

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*Public Prosecutor: Let me ask about the following statement given in January 2008, I quote: "At about 23.00 hours Gjelosh Krasniqi, together with his three partners, came into the yard. I heard from one of the family members that our uncle is back. That is why I went outside again." Do you recall saying that back in January 2008?*

*Prenk Luli: Yes.*

*Public Prosecutor: Could you hear any words being spoken?*

*Prenk Luli: No.*

*Public Prosecutor: Next in the statement, you said the following: "I could not hear everything but I heard very well the words Gjelosh Krasniqi was saying: 'stand up and come with us'".*

*Haxhi Millaku: The opposite is the case in the Albanian version. In that version it says: "I did not hear well."*

*Public Prosecutor: "I could not hear everything very well what Gjelosh Krasniqi was saying."*

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<sup>17</sup> Extract from the Minutes of the Main Trial of 17.03.2009, pages 48 – 49.

*Haxhi Millaku: "I could not hear well" in the Albanian version. The words "get up and come with us that Gjelosh Krasniqi said I did hear very well."*

*Presiding Judge: It is the same. You can answer the question now.*

*Public Prosecutor: You heard the statement; do you agree that you gave that statement?*

*Prenk Luli: I agree but not the way it is being said. He presented himself as Gjelosh Krasniqi but I do not know him and have never seen him. It is not true that I said I know the man.*

*Presiding Judge: The Public Prosecutor did not say this. Just to be clear, how did it happen? Before saying the words he said, what did he say? Since you say he presented himself as Gjelosh Krasniqi, when did he present himself?*

*Prenk Luli: After they brought him back.*

*Presiding Judge: What did he say?*

*Prenk Luli: He just said: "Come with us" and that is it.*

*Presiding Judge: How can you know he presented himself as Gjelosh Krasniqi?*

*Prenk Luli: How could I know if it was him or not?*

*Presiding Judge: In which moment during that night did he present himself as Gjelosh Krasniqi? How did it happen?*

*Prenk Luli: He did not say that he was Gjelosh Krasniqi. I did not hear him say that and he did not say it.*

*Presiding Judge: How could you know he was Gjelosh Krasniqi since in the statement you said that Gjelosh Krasniqi together with his three partners came into the yard?*

*Prenk Luli: I heard the words: "Gjelosh Krasniqi took him." At that moment, I did not hear him say that or present himself.*

*Presiding Judge: Somebody else uttered the words: "Gjelosh Krasniqi took him away." Do you remember who said these words?*

*Prenk Luli: No.*

*Presiding Judge: Did you hear someone say this or did you see somebody say this?*

*Prenk Luli: Somebody said so but I did not see.*

*Presiding Judge: So you just heard.*

*Prenk Luli: I just heard.<sup>18</sup>*

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<sup>18</sup> Extract from the Minutes of the Main Trial of 17.03.2009, pages 49 – 51.

1. g) **Mihill Pergega**, in his testimony given in front of the panel, stated that, the night of 24 March 1999, in his house, there were 13 – 14 members of his family. At around 11 or 12 hours, he heard the dogs bark and also some voices and he went out. He saw some people in uniform and armed, but he couldn't recognize them since it was very dark. One of them, a little short and fat looking, presented himself but did not say his name and asked for Mihill's weapons. He showed him a picture and asked him if he recognized it and he recognized it as Pashk Luli's picture. Afterwards, he turned over the weapons and the armed people told him not to close the door before they leave. Afterwards he never saw these people again.

*In the previous statement given to the UNMIK Police 11.04.2008, Mihill Pergega stated that:*

on 24<sup>th</sup> March 1999, Gjelosh Krasniqi together with three other people wearing KLA uniforms, went to his house, showed him the Police ID Card of Pashk Luli and asked him if he recognized the person in the picture, who he did identify as Pashk Luli, since Pashk was his godfather.

Mihill knew Gjelosh Krasniqi, because they were friends and he told him to hand over his weapon to him. He told him that he would give the weapons just not to make a big deal out of this and handed over two weapons to him. He also told Gjelosh that he was afraid that they might return for him and his sons one day. But, Gjelosh responded that they would not do that, since he behaved well. He also told him not to leave the village as they could not guarantee his safety. After that, while they were leaving, Gjelosh told him to wait 5 – 10 minutes and then close the gate. He didn't see them again.

Considering the discrepancies between the previous statement and the testimony given in front of the panel, the witness Mihill Pergega was confronted as follows:

*Public Prosecutor: Do you recall in the interview telling them "Gjelosh Krasniqi along with 3 other people came to my house".*

*Mihill Pergega: I didn't say 3 or 4 or 10, just said that was some of them mentioned this name, if he was this person or not I don't know whether it was their intention to implicate things.*

*Public Prosecutor: My question was, did you make that statement to the police or not?*

*Mihill Pergega: I said that some of them mentioned this name Gjelosh Krasniqi and I didn't know him and I did not see him. Whether it was their intention to implicate me, some people changed their names during the war.*

*Presiding Judge: You talking about the soldiers.*

*Mihill Pergega: Yes one of the soldiers mentioned the name, but during the war they changed their names, I don't know the reason.*

*Public Prosecutor: Please turn around and look at the defendant.*

*Witness turns around*

*Public Prosecutor: Is that Gjelosh Krasniqi that you know, the one in front of you?*

*Mihill Pergega: You are telling me that this person is Gjelosh Krasniqi, I never saw him or know him.*

*Presiding Judge: He never said he knew Gjelosh Krasniqi, so the question should be rephrased.*

*Public Prosecutor: Do you know the person you just looked at in the court room?*

*Mihill Pergega: Only now that I saw him, now that you are telling me.*

*Public Prosecutor: I just asked do you know him?*

*Mihill Pergega: No.*

*Public Prosecutor: In the statement given in April, do you recall saying the following "I knew Gjelosh Krasniqi because we were friends, Gjelosh Krasniqi told me to give my weapons" do you remember saying this to the police in April last year?*

*Mihill Pergega: No, I don't know what they wrote back then.*

*Public Prosecutor: So that was never said by you?*

*Mihill Pergega: I don't know what friend I would be if I never saw him or spent time with him, even would like to know the people who came in.*

*Public Prosecutor: Based upon the request you received you handed the weapons over?*

*Mihill Pergega: That is what I said.*

*Public Prosecutor: So this statement is correct when it states that soldiers came to your house on 24 March 1999.*

*Mihill Pergega: I don't know the date, I just know that they came.*

*Public Prosecutor: You turned your weapons over?*

*Mihill Pergega: Yes I just said so.*

*Public Prosecutor: The statement is correct when you say that you saw Pashk Luli on an id card?*

*Mihill Pergega: Yes.*

*Public Prosecutor: But it appears to be wrong the name of Gjeloosh Krasniqi and that he showed you the card?*

*Mihill Pergega: I never knew Gjeloosh Krasniqi, if this is person that you are telling me now I know him, but I didn't know him before and this is not the person from that nigh.*

*Public Prosecutor: Did you say the following in your statement "I told Gjeloosh Krasniqi that I am giving you weapons but I am afraid that you might come to take me and my sons one day" did you say that statement?*

*Mihill Pergega: What I said is that I told this person who asked for weapons is that "tonight you are asking for weapons maybe later you will come for me", I said this to this person, never knew him as Gjeloosh Krasniqi.*

*Public Prosecutor: Before you said that you heard the name Gjeloosh Krasniqi.*

*Mihill Pergega: Based on this name that I heard I thought that this person is Gjeloosh. Their intentions I don't know maybe to implicate things.*

*Public Prosecutor: What I am trying to understand is your explanation about hearing the name of Gjeloosh Krasniqi and you admit hearing that name that night?*

*Mihill Pergega: Yes, one of the soldiers mentioned this name. During the war they changed their names.*

*Public Prosecutor: Answer clearly, did you give the name of Gjeloosh Krasniqi to the police as the person who you spoke to and gave the weapons to that night?*

*Mihill Pergega: You are mixing it up, what I said is what happened. I heard the name of Gjeloosh and I think that their intention was to mention that name to put blame on someone else.*

*Public Prosecutor: What blame?*

*Mihill Pergega: The blame that they asked for weapons, why would they changed their names?*

*Public Prosecutor: Do you recall saying this: "I didn't see Pashk Luli but only saw his card with his picture and Gjeloosh Krasniqi was holding it"*

*Mihill Pergega: I don't know what they wrote about Gjelosh, I said that I only heard the name of Gjelosh, I can't stand for much longer I am ill.*

*Chair is provided for the witness to sit*

*Public Prosecutor: Were you given the opportunity to sign your statement or not?*

*Mihill Pergega: Nobody read it to me, I don't know what happened.*

*Public Prosecutor: But you were asked to sign your statement, won't you?*

*Mihill Pergega: No, they just asked me to sign it and I asked whether I am going to go somewhere for this, they told me no, I would not have signed it if they told me I had to come to court.*

*Public Prosecutor: Why not sign it if you were to come to court?*

*Mihill Pergega: Why should I bring trouble to myself after 11 years, I am 74 years old and ill.*

*Riza Berisha: Is the statement that you gave before the police true or the statment you gave today?*

*Mihill Pergega: It is true what I said today, I don't know what they wrote back then.*

*\*\*\**

*Presiding Judge: Some clarifications, I want to know how it is possible that here in front of the court you said that you have never known Gjelosh Krasniqi. Why in the statement you gave to the police you said that "I knew Gjelosh Krasniqi because we were friends", how can you explain this contradiction?*

*Mihill Pergega: It is not true; I don't know how come they wrote that.*

*Presiding Judge: So you are saying that somebody changed completely the version you gave to the police?*

*Mihill Pergega: What I said today, these words I said to the police. What they wrote I don't know.*

*Presiding Judge: Are you sure that the statement which you gave to the police was not read to you?*

*Mihill Pergega: I didn't hear that they read it back to me.*

*Presiding Judge: So you just signed it?*

*Mihill Pergega: Well I signed it, I told them I can't, I don't know how to, just put my finger on it.*

*Presiding Judge: So you are saying you did not sign but just put your finger on it.*

*Mihill Pergega: No, I signed it as best as I could.*

*Presiding Judge: Did you sign each page?*

*Mihill Pergega: I can't tell you, it's been a long time, its 10 years now.*

*Fernando Buatier: When was the first time you saw the current defendant?*

*Mihill Pergega: If this is one today.*

*Fernando Buatier: When you started your statement today you said that Gjelosh Krasniqi is cousin, what is the degree of relationship with the defendant or his family?*

*Mihill Pergega: I said that we are over 18 houses of brotherhood, one of the brothers of Gjelosh Krasniqi is in law relationship with one of my brothers. I don't know my in-law or let alone the in-law of my brothers, we married a lot of women and daughter and they marry a lot of ours so I don't know my brothers in-law*

*Fernando Buatier: Living in the same village or different ?*

*Mihill Pergega: I don't know his village or the name I don't know where he resides. I have never been to his village.*

*Presiding Judge: Are you sure that this is the first time you see the defendant?*

*Mihill Pergega: I am sure, if this is the person you are telling me, yes it's the first time now that I see him in court.<sup>19</sup>*

**1. h) Gjergj Quni**, in his testimony given in front of the panel, stated that, the night of 24 March 1999 at around 10:00, he was at home with his late brother when some soldiers came and called him out. When he went out, they told him to hand over the weapons. He had a permit for the weapons but he decided to hand them over for fear that if he had not turned over the weapons he would have been in trouble. The soldiers that came were Albanians and they had the insignia with an eagle, but he didn't recognize any of them.

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<sup>19</sup> Extract from the Minutes of the Main Trial of 18.03.2009, pages 6 – 10.

***In the previous statement given to the UNMIK Police on 11.04.2008, Gjergj Quni stated that:***

on 24.03.1999, at around 21:15, three persons in KLA uniforms went to his house, while 14 or 15 others were waiting a little bit further away. They called out his name: "Hey Gjergj"; he went out and they told him that they wanted to enter his house and get his weapons. Gjergj replied that he would bring the weapons himself and there was no need for them to enter his house. He gave one weapon to a soldier with KLA uniform, with KLA badge and a black hat whereas the other weapon, a pistol, was given to Gjelo Sh Krasniqi. After that, they told him to stay in his house and they left and he did not know anything more about them.

Considering the discrepancies between the previous statement and the testimony given in front of the panel, the witness Gjergj Quni was confronted as follows:

*Public Prosecutor: Did they call you by your first name?*

*Gjergj Quni: I did not hear my name, I just hear them yelling.*

*Public Prosecutor: In the statement, it says that they called 'Hey Gjergj.'*

*Gjergj Quni: Maybe they asked whose house it is.*

*Public Prosecutor: Is it correct: 'I gave the M45 rifle'.*

*Gjergj Quni: They yelled but they did not use my name.*

*Public Prosecutor: Okay, there is discrepancy.*

*I gave the M48 to a soldier who was wearing a KLA uniform and black hat with KLA badge. Do you recall saying this to the police?*

*Gjergj Quni: It was a while ago.*

*Public Prosecutor: Is this statement correct?*

*Gjergj Quni: I remember some of the words and some of them I do not remember.*

*Public Prosecutor: Which ones do you remember?*

*Gjergj Quni: I remember them asking me, but I did not recognise any others. I gave them the guns but they never gave me a certificate.*

*Public Prosecutor: 'I gave a pistol CZ 99, 9mm, number 45811, to Gjelo Sh Krasniqi', do you remember saying this?*

*Gjergj Quni: I remember stating this, to give the weapon to the unknown person but I do not remember saying if it was him or not.*

***Public Prosecutor: Do you know a person by the name of Gjelo Sh Krasniqi?***

*Gjergj Quni: I do not know. They mentioned him here in 19<sup>th</sup> of January. I did not know him then and I do not know him now. I also had 2 of my brothers' sons in KLA but I did not see them until the beginning of the July.*

*Public Prosecutor: Where in the statement did the police come up with Gjeloš Krasniqi name?*

*Gjergj Quni: I do not know what the police did. That person is unknown to me. I heard that name on the 19<sup>th</sup> of January. I heard the Public Prosecutor mentioning that name and I never heard his name and never spoke to him, but it was mentioned that he lived in Nepolje of Peja. I have never been in Nepolje.  
It was mentioned on the 19<sup>th</sup> of January.*

*Public Prosecutor: You heard the name of Gjeloš Krasniqi in January 19<sup>th</sup> 2009?*

*Gjergj Quni: From whom?*

*Public Prosecutor: From anybody in the whole world.*

*Gjergj Quni: I do not know.*

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*Riza Berisha: Did you mention Gjeloš Krasniqi in the statement that you gave to the police?*

*Gjergj Quni: No, I did not know them then and I do not know them now.*

*Riza Berisha: So, the police wrote Gjeloš Krasniqi's name in the statement?*

*Gjergj Quni: They were not my words.*

*Presiding Judge: So your answer is 'no I did not mention'?*

*Gjergj Quni: When they asked: 'who did you give it to' I said no. When they asked 'if you knew Gjeloš Krasniqi', I said no. 'Who did you give it to', I do not know.<sup>20</sup>*

1. i) **Hazbi Axhami**, in his testimony given in front of the panel, stated he had been working as a police officer for seven years. On 25<sup>th</sup> September 2007 he started working on the case of Pashk Luli's disappearance together with Kelley Reeves, an American police officer, and Zyhra Zeqiri, a Kosovan police officer. The investigation commenced upon a request of OMPF which received an application from the family members to dig the remains of Pashk Luli in a place where they suspected that he was buried. Although, when they got there, Gjergj Luli, the son of Pashk Luli, had already tried to dig him up, but he couldn't find the remains. This happened before the 25<sup>th</sup> September 2007.

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<sup>20</sup> Extract from the Minutes of the Main Trial of 18.03.2009, pages 15 – 18.

After this time, they started collecting information and took some statements from witnesses, but only as investigative notes, not signed statements, until 16 January 2008 when they went to Pashk Luli's house and took two statements from Gjergj Luli and Prenk Luli. The statements were taken according to the guidelines and procedures as set up by the rules of the police guidelines and when there was a need for an interpreter he would be present and sign the statement as well.

If the witness could not write, then they would put the statement in writing, read it out to the witness and eventually the witness was asked to sign all the pages of the statement. So, this procedure was undertaken with all the witnesses when questioned and there was no witness who was unable to read or write, all of them read their statements on their own and signed it, except for Zoje Luli who was unable to read, so, they had to read it out to her.

The police officer stated that he had taken several statements from Gjergj Luli during the investigation and, before giving the last statement; Gjergj Luli called him on the phone and informed him that Gjelosh Krasniqi had been released. Afterwards, on 07.10.2008, Gjergj went to Prishtina and, in his final statement to the police, withdrew all the charges against Gjelosh Krasniqi.

Throughout the entire investigation, he received several phone calls from Gjergj Luli informing him about Gjelosh's whereabouts and movements. As to these phone calls, he kept notes and added them as additional information on his reports. On 29 January 2008 the police were in pursuit of a Mercedes ML car, which was suspected to be owned by Gjelosh Krasniqi. They followed the car until it stopped at Restaurant Aviano and, on the same day, Gjergj Luli informed them that the same car had been parked at Restaurant Aviano and Gjelosh Krasniqi was inside the restaurant. Gjergj also gave the number plate (NEW YORK DXW – 5270) which corresponded to the plate of the car they were in pursuit.

On 25<sup>th</sup> March 2008, in the morning, Gjergj Luli contacted the witness again and gave him the intelligence that Gjelosh Krasniqi now had a different car, a BMW with Albanian number plate; in the afternoon Gjergj called him again and advised him that now that both the vehicles (Mercedes and BMW) had been parked at Metropole restaurant.

On 27<sup>th</sup> May 2008 Gjelosh was arrested in Peja in a bar, near his Mercedes ML car, the same car which they were in pursuit.

Regarding the plate number of the Mercedes ML, it is worth reporting the extract of the testimony of the witness:

*Public Prosecutor: Did you meet with the defendant Gjelosh Krasniqi at Dubrava prison?*

*Hazbr Axhami: Yes.*

*Public Prosecutor: Was that on 18 June?*

*Hazbr Axhami: Yes.*

*Public Prosecutor: Was Kelly Reeves present with you?*

*Hazbr Axhami: Yes.*

*Public Prosecutor: During that time, was the Defence Counsel for Gjeloš Krasniqi present?*

*Hazbr Axhami: Yes.*

*Public Prosecutor: I take it that all the formalities regarding taking a declaration from the accused were observed that day?*

*Hazbr Axhami: Yes.*

*Public Prosecutor: But he elected not to make a statement, is that correct?*

*Haxhi Millaku: Please Your Honour, he just used his own right in order remain silent but he did not say, I do not want to give a statement.*

*Presiding Judge: The meaning is the same.*

*Public Prosecutor: There was some discussion about the Mercedes car and the documents of another car, that is, a discussion among all those who were present, the Defence Counsel and the police?*

*Hazbr Axhami: Yes.*

*Public Prosecutor: It was to discuss what to do with ownership papers and the ownership of these vehicles, is that correct?*

*Hazbr Axhami: Yes.*

*Public Prosecutor: I would ask the court to take note of a document dated 18 June 2008 taken at Dubrava prison and attached is a certificate of title from New York state. May I show that document to the witness?*

*Presiding Judge: Yes, you are allowed.*

*Public Prosecutor shows the document to the witness and asks if he recognizes it*

*Hazbr Axhami: This is the authorization given by Gjeloš Krasniqi to his Defence Counsel in order to arrange for the papers of the car.*

*Presiding Judge: Our copy does not bear the signature of Gjeloš Krasniqi. I do not know about the copy you are looking at now. This should be the original. Was it signed by the defendant?*

*Hazbr Axhami: Yes and also by the Defence Counsel<sup>21</sup>.*

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Regarding the issue whether Gjergj Luli saw directly the defendant, it is worth reporting the extract of the testimony of the witness:

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<sup>21</sup> Extract from the Minutes of the Main Trial of 19.03.2009, pages 20-21.

*Ferdinando Buatier De Mongeot: To summarize. You received three calls overall or were there four?*

*Hazbr Axhami: There were more than three.*

*Ferdinando Buatier De Mongeot: Can you be precise about the number?*

*Hazbr Axhami: I have four of them written down.*

*Ferdinando Buatier De Mongeot: In which one of them did Gjergj Luli tell you that he had seen personally Gjelosh Krasniqi? If you can point them out.*

*Hazbr Axhami: 25 March 2008.*

*Presiding Judge: What happened on that day?*

*Hazbr Axhami: On this date, he informed me that he saw Gjelosh Krasniqi with a BMW X5. On the same day, he informed me at 14.35 and he told me that he saw him personally.*

*Ferdinando Buatier De Mongeot: He called twice?*

*Hazbr Axhami: Yes.*

*Ferdinando Buatier De Mongeot: On both occasions, he saw Gjelosh Krasniqi?*

*Hazbr Axhami: Yes.*

*Ferdinando Buatier De Mongeot: Were there other phone calls in which he said that he personally saw Gjelosh Krasniqi?*

*Hazbr Axhami: There were no other phone calls when he said he saw him personally and other times he told me that somebody else saw him.*

*Presiding Judge: You mean that on 20 February 2008 and 3 March 2008 when he called you and when he was saying to you something about the movements of Gjelosh Krasniqi, he did not see directly Gjelosh Krasniqi?*

*Hazbr Axhami: I think those notes are on the report that I gave you and additional information summarized on the report.*

*Presiding Judge: We are more interested in additional information not the overview.*

*Hazbr Axhami: I understand but all the additional information appears on the summary of the reports. They are all attached and appear in the original form. On 20 February during the conversation he told me that his friend saw him and not him personally which also appears in the report.*

*Presiding Judge: What about 3 March?*

*Hazbr Axhami: His friend.*

*Presiding Judge: Going back to additional information of 20 February 2008, when you received this call, did Gjergj Luli talk about any threat?*

*Hazbr Axhami: Yes.*

*Presiding Judge: Please explain what kind of threat and who was threatening.*

*Hazbr Axhami: During this conversation Gjergj Luli said that a friend of his was drinking alcohol with Gjelosh Krasniqi and that Gjelosh Krasniqi had told his friend that Pashk Luli's children are growing, so be careful.*

*Presiding Judge: Do you have anything to add?*

*Hazbr Axhami: According to this friend, allegedly, Gjelosh Krasniqi said: "I will do to Pashk Luli's son worse than what I did to his father." I requested to interview this person, Gjergj Luli's friend but he did not accept and I do not know who he is.*

*Presiding Judge: When you write here that Gjergj Luli is scared, was he scared because of this threat or because of other threats?*

*Hazbr Axhami: According to him, only because of these words.*

*Presiding Judge: Which were heard by a friend of his?*

*Hazbr Axhami: Yes.<sup>22</sup>*

**1. j) Miradije Fejzullahu**, in her testimony given in front of the panel, stated that she had been working as a police officer since 1999. In relation to this case she had assisted Hazbr Axhami acquiring statements from two elderly persons, Gjergj Quni and Mihill Pergega. Gjergj Quni was the first to be questioned, since the investigators were in his house: afterwards Mihill Pergega came and questioned him as well. Both of the witnesses were asked if they were literate or not, but their response was that they were literate, but because of the age they cannot write very well. After the interviews were finished the witnesses were read out their statement and they signed it.

**1. k) Ismet Jemini**, in his testimony given in front of the panel, stated that he was engaged in the investigation in 2005. At that time he contacted family members of the disappeared Pashk Luli and three other witnesses, namely Gjergj Quni, Mihill Pergega and Tune Kashnjeti. During the conversation with these witnesses, they mentioned the name of Gjelosh Krasniqi and the physical description of him was given by Gjergj Luli, describing him as dark skinned person, thin, 1 meter 75 cm, dark hair, black colored hair.

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<sup>22</sup> Extract from the Minutes of the Main Trial of 19.03.2009, pages 27- 28.

According to Ismet Jemini, Gergj Luli stated that Gjelosh Krasniqi, after the war was living in America and that Gjelosh came from village Nepole, Peja Municipality.

All of the witnesses told him that they knew Gjelosh Krasniqi, Mihill Pergega even told him that they were close of kin.

Some parts of the testimony given by the police officer are noteworthy and are reported below:

*Public Prosecutor: I asked you if Gjergj Luli was able to give you a physical description of Gjelosh Krasniqi. You may answer that question.*

*Ismet Jemini: He described him as dark skinned person, he is thin, 1 meter 75 cm, dark hair, black coloured hair, after the war he was living in America.*

*Public Prosecutor: One more question about the information Gjergj Luli gave to you. Was he able to describe the village or where Gjelosh Krasniqi was from?*

*Ismet Jemini: Yes.*

*Public Prosecutor: Where was that?*

*Ismet Jemini: Nepole village, Municipality of Peja.*

*Public Prosecutor: Is that information obtained from Gjergj Luli contained in the report you prepared in 2005.*

*Ismet Jemini: Yes.<sup>23</sup>*

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*Presiding Judge: Do you stand by this report drafted by you and concluded on 29<sup>th</sup> November 2005?*

*Ismet Jemini: I stand by the report compiled in 2005.*

*Presiding Judge: Do you have here some clarifications or amendments before this court? In respect of what you wrote more than three years ago. After that time the investigation went on. Is there anything you would like to change?*

*Ismet Jemini: No.*

*Presiding Judge: You stand by it completely?*

*Ismet Jemini: Yes.*

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<sup>23</sup> Extract from the Minutes of the Main Trial of 19.03.2009, page 36.

*Ferdinando Buatier De Mongeot: I don't remember which two persons you interviewed; you said three names I remember.*

*Ismet Jemini: Gjergj Luli, Tune Kashnjeti, Mihill Pergega and Gjergj Quni.*

*Presiding Judge: So four people.*

*Ferdinando Buatier De Mongeot: Do you remember if they told you they knew Gjelosh Krasniqi?*

*Ismet Jemini: Yes.*

*Presiding Judge: All of them or just some of them?*

*Ismet Jemini: All of them.*

*Presiding Judge: Knew in which sense, by face, by name?*

*Ismet Jemini: Mihill Pergega told me that we are related, that our families are related whether they have taken brides from their family, they are giving.*

*Presiding Judge: This was said by Mihill Pergega?*

*Ismet Jemini: Yes.*

*Presiding Judge: And the other three that you interviewed?*

*Ismet Jemini: The others told me we have seen him a lot before the war in our village. Because the village, their village, Nepole village, have a lot of relatives, a lot of marriages between them.*

*Presiding Judge: Between Doblobare and Nepole?*

*Ismet Jemini: Yes.*

*Presiding Judge: And what about the critical night, did all the witnesses on that night 24<sup>th</sup> March 1999 see directly Gjelosh Krasniqi?*

*Ismet Jemini: Yes.*

*Presiding Judge: When these people saw Gjelosh Krasniqi, on that night, was he alone or together with other people?*

*Ismet Jemini: With four other persons.*

*Presiding Judge: Were these persons wearing uniforms or not?*

*Ismet Jemini: Yes, they were wearing KLA uniforms.*

*Presiding Judge: This was said by all these four informants?*

*Ismet Jemini: Yes.*

*Presiding Judge: Do you remember whether some of these four informants told you whether they met, after the war, Gjeloš Krasniqi?*

*Ismet Jemini: Yes.*

*Presiding Judge: Can you tell us who of these?*

*Ismet Jemini: Gjergj Luli.*

*Presiding Judge: Can you remember on which occasion he met Gjeloš Krasniqi?*

*Ismet Jemini: He met him once at Doblbare village and the second time in Gjakove.*

*Presiding Judge: Do you remember what happened on these two occasions?*

*Ismet Jemini: No.<sup>24</sup>*

1. l) **Gegë Lleshi**, in his testimony given in front of the panel, stated that him and his five brothers, namely Prendi, Nika, Mema, Tomi and Deda, were involved in the war, in the supply unit of KLA in the Dukagjini Zone and he was the leader of this unit. He was wounded during the war and risked paralysis and went to Albania for recovery, so the leadership of the unit was brought upon his brothers Prendi and Mema. Soon after, in an ambush of the Serbian troops, Prendi and Mema were shot and killed on 28<sup>th</sup> January 1999.

Afterwards he returned to Kosovo, three months after the war had ended and he met Gjeloš Krasniqi in Gjakova wearing a KLA uniform, and asked him if he knew anything about the remains of his two brothers, since he was in Kosovo when the ambush took place.

He stated that, during the time he had been in Albania, Nepole village was within the Dukagjini Zone, but he did not know how the brigades had been formed and what had been the Chain of Command, because he returned to Kosovo only after the war was over. He stated that he had never heard that somebody in March 1999 presented himself in the name of Gjeloš Krasniqi, but actually was not him.

1. m) **Kolë Krasniqi**, in his testimony given in front of the panel, stated that during 1998 – 1999, in Nepole village, they had organized to defend the village, so on 16<sup>th</sup> June 1998 he became a soldier of KLA and he was in charge of the village. Other people became members of KLA as well; amongst them there was Gjeloš Krasniqi. In that period when they joined KLA there were few people in uniforms and for Gjeloš Krasniqi they couldn't find one, since he was very tall.

During that time Gjeloš Krasniqi was working in the kitchen and supplying the soldiers with food, since he was young and they used to put the young members to work in the kitchen.

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<sup>24</sup> Extract from the Minutes of the Main Trial of 19.03.2009, pages 39-41.

The night of 24<sup>th</sup> March 1999 around 6 or 7 of them gathered to celebrate for the bombardment and he told Gjelosh to go and get the calf and to prepare it for the dinner, and they celebrated the whole night. The morning of the 25<sup>th</sup> of March 1999 he woke up and realized that Gjelosh Krasniqi had left the house and did not see him any more: afterwards he just heard that Gjelosh was injured in a battle.

Gjelosh Krasniqi had to perform his kitchen duties until the war ended, he was entitled to carry weapons, but not in the kitchen.

Gjelosh was assigned in Nepole village for the whole war; they had a unit, brigade 32, so he didn't see him any longer.

The witness, presented by the defence counsel of the defendant, was cross-examined by the Prosecutor and afterwards examined by the Panel in order to verify the reliability of his version. Below, there some abstracts from the minutes of 31.3.2009.

*Presiding Judge: The Public Prosecutor wants to know how is it possible that you do not know anything what Gjelosh Krasniqi did after 25<sup>th</sup> of March 1999, since you were in charge of village Nepole. Did Gjelosh Krasniqi leave the village and join this Brigade 35?*

*Kole Krasniqi: When the offensive was taken and he was wounded, we were in the mountains and he was taken by people assigned to those duties to receive treatment.*

*Presiding Judge: Before this offensive which happened in April 1999 and after the 25<sup>th</sup> of March, do you know what Gjelosh Krasniqi was doing?*

*Kole Krasniqi: He was there on the 24<sup>th</sup> because it's the day that all the Albanians remind. Until the morning of (interrupted)*

*Presiding Judge: Until 25<sup>th</sup> of March?*

*Kole Krasniqi: Yes.*

*Presiding Judge: We want to know what happened to Gjelosh Krasniqi after the 25<sup>th</sup> of March, did he leave the village? Did he leave the village?*

*Kole Krasniqi: He left. I do not know anything else.*

*Presiding Judge: How do you know that he left?*

*Kole Krasniqi: He was not there.*

*Presiding Judge: So you did not see him anymore after the morning of the 25<sup>th</sup>?*

*Kole Krasniqi: No, they had brigades and Units, I did not have anything to do with this.*

*Public Prosecutor shows confirmation certificate of Kosovo Protection Corps – document embedded in subfolder 15, binder labelled materials paginated from page 1 – 179 of the court case file.*

*Public Prosecutor: I am going to show you the document in Albanian, are you comfortable to read the words, page 1-2?*

*Kole Krasniqi: I do not see very well.*

*Public Prosecutor: The document says Medicine Section dated, May 21<sup>st</sup> 2008, with the protocol no 09/08. Was Gelosh Prenk Krasniqi born in September 13, 1973, in Nepole Municipality of Peja, soldier of Kosovo Liberation Army -- Dukagjini Operative Zone in Nepole, from 16<sup>th</sup> of June 1998, the document goes on (interrupted)*

*Haxhi Millaku: Please continue to read from the document.*

*Public Prosecutor: He has been wounded on April 5<sup>th</sup>, 1999, while fighting in Jabllanica village, Gjakova municipality, wounded is in head. Does this information seem correct?*

*Kole Krasniqi: I do not know. I heard that he was wounded; there were times when we could not meet for 5-6 days.*

*Public Prosecutor: Did he ever return to the village?*

*Kole Krasniqi: No I have never seen him.*

*Public Prosecutor: Did you know that he was assigned to brigade 32, in September?*

*Kole Krasniqi: We were all assigned until the brigade 32 was created in May.<sup>25</sup>*

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*Presiding Judge: Who was present with you and Gjelosh Krasniqi on the night between the 24<sup>th</sup> of March 1999 and the morning of the 25<sup>th</sup> of March 1999? Start telling us some names and surnames.*

*Kole Krasniqi: There were 6-7 of us. Pashk, Kristi, I do not know the other names.*

*Presiding Judge: What are their surnames?*

*Kole Krasniqi: They are all Krasniqi.*

*Presiding Judge: Are these people alive?*

*Kole Krasniqi: Yes.*

*Presiding Judge: Where are they currently living?*

*Kole Krasniqi: In Nepole.*

*Public Prosecutor: Up to now, you said there were 6-7 people, you Gjelosh Krasniqi and?*

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<sup>25</sup> Extract from the Minutes of the Main Trial of 31.03.2009, pages 17 – 18

*Kole Krasniqi: I did not count people.*

*Presiding Judge: You stayed the entire night with these people, it was a very important night, and you do not remember who were the other people that you stayed together?*

*Kole Krasniqi: I do not know their exact names. I would recognise them if I see them.*

*Presiding Judge: They were from your village?*

*Kole Krasniqi: Yes but all the houses were burnt.*

*Presiding Judge: Yes but you should remember who remained in the village.*

*Kole Krasniqi: I could not have counted.*

*Presiding Judge: How many people were in the village at that time?*

*Kole Krasniqi: They would go to the church and come back to the village.*

*Presiding Judge: But before the bombardment, how many people were in the village?*

*Kole Krasniqi: There were 200-300 people in the village, including women and children.*

*Presiding Judge: At that time, how long did you live in that village, until 1999?*

*Kole Krasniqi: Since I was born.*

*Presiding Judge: So you should know the village.*

*Kole Krasniqi: I know them but sometimes I forget even my sons' names. I know the ones which older but the younger ones I do not know.*

*Presiding Judge: These 4 others, were they young or old?*

*Kole Krasniqi: They were young, 3 of us were older.*

*Presiding Judge: How young?*

*Kole Krasniqi: I do not know.*

*Presiding Judge: Young is not accurate, how young?*

*Kole Krasniqi: They were younger, I do not know. I can ask if you want me to.*

*Presiding Judge: So you know them, give us names.*

*Kole Krasniqi: I do not know their names.*

*Presiding Judge: You know them by face?*

*Kole Krasniqi: Yes of course.*

*Presiding Judge: Roughly, how old were they?*

*Kole Krasniqi: I do not understand, it was 10 years ago.*

*Presiding Judge: Were they children, teenagers, toddlers?*

*Kole Krasniqi: They were young persons.*

*Presiding Judge: So you can say only that they were young?*

*Kole Krasniqi: Yes.*

*Presiding Judge: Older or younger than 20?*

*Kole Krasniqi: I don't know.*

*Presiding Judge: I asked whether they were older than 20 or not?*

*Kole Krasniqi: I do not know if they were 17, 19 or 20, I do not know.*

*Presiding Judge: Were they older than 10 or not?*

*Kole Krasniqi: Yes of course.*

*Presiding Judge: All these 4 people were of the same age, more or less?*

*Kole Krasniqi: I do not know.*

*Presiding Judge: Do you remember how was Gjelosh Krasniqi dressed on that night?*

*Kole Krasniqi: Yes. He had a kitchen apron.*

*Presiding Judge: Was this his usual uniform while working in the kitchen?*

*Kole Krasniqi: Yes of course. Sometimes he was not even wearing that, we just had our clothes.*

*Presiding Judge: Do you remember the other two people that you remember, how they were dressed?*

*Kole Krasniqi: Which ones?*

*Presiding Judge: You mentioned two others Prenk Krasniqi.*

*Kole Krasniqi: Yes but we were not wearing uniforms.*

*Presiding Judge: Yes but I want to know what were they wearing?*

*Kole Krasniqi: Civilian clothing.*

*Presiding Judge: Yes but what exactly were they wearing?*

*Kole Krasniqi: I do not remember even now what I am wearing.*

*Presiding Judge: You should answer and do not make comments. Do you remember how they were dressed?*

*Kole Krasniqi: No.*

*Presiding Judge: How do you remember that Gjeloš Krasniqi was wearing that apron, is it a memory or a deduction?*

*Kole Krasniqi: I remember because he was serving us food with one other person.*

*Presiding Judge: So you remember only Gjeloš Krasniqi how he was dressed and not the others, is this your answer?*

*Kole Krasniqi: Yes. I was not paying attention how they were dressed.*

*Presiding Judge: So you were paying attention only how Gjeloš Krasniqi was dressed.*

*Kole Krasniqi: Yes, he was serving us.*

*Presiding Judge: This is why you paid attention as why he was dressed?*

*Kole Krasniqi: Yes. I told him to get calf at my house.*

*Presiding Judge: Was this the first time that Gjeloš Krasniqi served you?*

*Kole Krasniqi: No, he served hundreds of times.*

*Presiding Judge: And each time he paid attention how he was dressed?*

*Kole Krasniqi: Sometime when a bomb would go off we would leave to the mountains and we would not see each other for 10 days.*

*Presiding Judge: Was he serving alone or with other?*

*Kole Krasniqi: He would prepare it and bring it over there.*

*Presiding Judge: So he was serving alone?*

*Kole Krasniqi: Yes.*

*Presiding Judge: Then what happened, he was serving all of you, also these young people?*

*Kole Krasniqi: He prepared the food, there was an old stove there and we would take the food and serve it by himself.*

*Presiding Judge: Was he wearing boots or not?*

*Kole Krasniqi: I do not know what I was wearing.*

*Presiding Judge: You remember him wearing apron but not boots, if you pay attention to his clothing than you should know about his shoes.*

*Kole Krasniqi: Why would I care about his boots?*

*Presiding Judge: So you do not remember shoes but you remember the apron.*

*Kole Krasniqi: I know that.*

*Presiding Judge: You know or you saw.*

*Kole Krasniqi: I saw him wearing it.*

*Presiding Judge: What was the colour of this apron?*

*Kole Krasniqi: I do not know the colour because our thoughts were elsewhere at that time.*

*Presiding Judge: What was the shape of the apron?*

*Kole Krasniqi: It was longer at the front I did not care about it.*

*Presiding Judge: Did it have buttons? We were not there, just tell us?*

*Kole Krasniqi: I did not care about this.*

*Presiding Judge: Did this apron have pockets?*

*Kole Krasniqi: I do not know, I was not dealing with aprons.*

*Presiding Judge: So you remember the apron but you do not remember the shape or colour?*

*Kole Krasniqi: We were listening to the news; they were saying that the NATO planes would leave at 8.20. I did not even care to look at them.*

*Presiding Judge: Was Gjeloš Krasniqi wearing gloves?*

*Kole Krasniqi: No, were could we have gotten gloves from.*

*Presiding Judge: Please just answer and do not make comments. This is the last warning. Was he wearing gloves?*

*Kole Krasniqi: No.*

*Ferdinando Buatier De Mongeot: At what time did you see Gjeloš Krasniqi that night?*

*Kole Krasniqi: From around 2p.m. until next morning.*

*Ferdinando Buatier De Mongeot: The other persons present, when did they join you?*

*Kole Krasniqi: We were together at all time.*

*Ferdinando Buatier De Mongeot: So 6-7 persons were whole the time together?*

*Kole Krasniqi: Yes.*

*Ferdinando Buatier De Mongeot: In which house were they that day?*

*Kole Krasniqi: In the house of Pashke Krasniqi, who was there. His house had not burnt down.*

*Ferdinando Buatier De Mongeot: Were you all the time in the house or did you move around?*

*Kole Krasniqi: When they were shooting us or bombed, we would leave.*

*Ferdinando Buatier De Mongeot: You are talking about the same day?*

*Kole Krasniqi: The NATO planes, we heard that they would leave at 8.30. and we were there until 8.00.*

*Ferdinando Buatier De Mongeot: Since when you were concentrated there?*

*Kole Krasniqi: The mountains were close to the house and we would move to that distance. They would bomb us with grenades during the day, and at night we would return to the house.*

*Ferdinando Buatier De Mongeot: On that day, did they grenade you?*

*Kole Krasniqi: No.*

*Presiding Judge: At that night, on the 24<sup>th</sup> of March 1999?*

*Kole Krasniqi: Yes, all of them together. After 3-4 days they bombed us together.*

*Ferdinando Buatier De Mongeot: During that time, did someone leave?*

*Kole Krasniqi: We were there all the time.*

*Ferdinando Buatier De Mongeot: Inside the house?*

*Kole Krasniqi: Yes.*

*Ferdinando Buatier De Mongeot: All of them?*

*Kole Krasniqi: Yes, we had nowhere else to go.<sup>26</sup>*

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*Presiding Judge: In that night, how many KLA soldiers were present, on 24<sup>th</sup> of March?*

*Kole Krasniqi: 7-8 of us were there that night.*

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<sup>26</sup> Extract from the Minutes of the Main Trial of 31.03.2009, pages 19 – 25

*Presiding Judge: How many of these people were present there where Gjelosh Krasniqi was serving dinner?*

*Kole Krasniqi: 7-8 people.*

*Presiding Judge: So all the people present were KLA soldiers?*

*Kole Krasniqi: Yes, 7-8 people.*

*Presiding Judge: How old was the youngest soldier recruited by you in Nepole?*

*Kole Krasniqi: We recruited them from 17 years old and up. We were dealing more with emergency situations.*

*Presiding Judge: In that house, that night, was there anyone younger than 17?*

*Kole Krasniqi: I do not know, perhaps they were, I was concentrated on what was happening.*

*Shqipe Cavdarbasha interpreting now*

*Presiding Judge: You said that they were KLA?*

*Kole Krasniqi: Yes.*

*Presiding Judge: So you know them.*

*Kole Krasniqi: I do not know them, I know 2-3 of them, and I told you whose names I know.*

*Presiding Judge: You said that none of these people, names that you do not know, were not younger than 17?*

*Kole Krasniqi: I do not know.*

*Presiding Judge: Since you told us that you did not recruit people younger than 17, and since you told us that all of the people in the house were KLA soldiers, how is it possible that there were people younger than 17?*

*Kole Krasniqi: It is not strange for me not to know what age they were, what they were wearing, what was the colour of apron.*

*Presiding Judge: Since they were KLA soldiers you should know their age.*

*Kole Krasniqi: I told you, I was there in an attempt to help people, I did not care what age they were.*

*Presiding Judge: The answer is not consistent to my question. Since they were KLA soldiers, you should know their age.*

*Kole Krasniqi: I can ask the Commander.*

*Presiding Judge: This is not the way of answering. I want you know that since they were KLA soldiers of your village, you did not know the age of these people?*

*Kole Krasniqi: I did not ask for their age, someone else asked their age.*

*Presiding Judge: Who was recruiting people in the village?*

*Kole Krasniqi: They came voluntarily and joined.<sup>27</sup>*

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*Presiding Judge: No, did you know how many people were serving in Nepole?*

*Kole Krasniqi: Yes, of course.*

*Presiding Judge: Who was informing you about this number?*

*Kole Krasniqi: Because I was together with them.*

*Presiding Judge: During the day.*

*Kole Krasniqi: During the day, during the night. When the situation would calm down, we would put a guard on watch.*

*Presiding Judge: Since you were informed about all the movements, how come that Gjeloš Krasniqi, on the morning of 25<sup>th</sup> just left the village and you did not know anything about his fate?*

*Kole Krasniqi: He did not have to tell me.*

*Presiding Judge: Were these guards aware where they were?*

*Kole Krasniqi: The guards were in the village. We thought since NATO was about to bomb we were liberated and we did not think twice.*

*Presiding Judge: Of what?*

*Kole Krasniqi: We thought we are free. NATO will bomb and we did not have to deal with it.*

*Presiding Judge: Yes but that night, did you put the guards to patrol?*

*Kole Krasniqi: There were no guards; it was just us in the house.*

*Presiding Judge: Since all of you were in this house, how is it possible that Gjeloš Krasniqi just left the house, did anyone realise that he left the house and the village?*

*Kole Krasniqi: We did not see where this person went.*

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<sup>27</sup> Extract from the Minutes of the Main Trial of 31.03.2009, pages 26 – 27

*Presiding Judge: Since all of you were in the same house.*

*Kole Krasniqi: It was our obligation to care about the people as long as they were in the village, if they wanted to leave they could.*

*Presiding Judge: Since all of you were in the same house, did anyone of you realise that Gjeloš Krasniqi left the house?*

*Kole Krasniqi: Others left as well.*

*Presiding Judge: Did anyone realise that Gjeloš Krasniqi left the village?*

*Kole Krasniqi: I did not realise.*

*Presiding Judge: Did you see Gjeloš Krasniqi leaving the house or not?*

*Kole Krasniqi: I did not see him.*

*Presiding Judge: Did somebody else from this house, see him leaving?*

*Kole Krasniqi: I do not know. I know that we were celebrating until the early morning.*

*Presiding Judge: How many doors does this house have?*

*Kole Krasniqi: It's not my house, how would I know.*

*Presiding Judge: Yes but you stayed there all over the night, do you remember how many doors it had?*

*Kole Krasniqi: I know there was one, it could have been two.*

*Presiding Judge: Were you all staying in the same room or separate room?*

*Kole Krasniqi: In the same room, until the morning hours.*

*Presiding Judge: How is it possible that you all stayed together until morning hours and no one saw Gjeloš Krasniqi?*

*Kole Krasniqi: Perhaps someone saw him.*

*Presiding Judge: Since you were a Commander, I think that you should have been informed because you said that the movements of the soldiers were controlled.*

*Kole Krasniqi: We were not genuine military. Even Wesley Clark could have not known these things.*

*Presiding Judge: We are talking about just 7 people at the same room.*

*Kole Krasniqi: We were there until morning, whether it was 25<sup>th</sup> or 26<sup>th</sup> I do not remember. I just know that we were there until the early hours.*

*Presiding Judge: So you do not remember if it was 25<sup>th</sup> of 26<sup>th</sup>?*

*Kole Krasniqi: It was 25<sup>th</sup> because on the 24<sup>th</sup> we stayed until the morning hours.*

*Presiding Judge: You mean on the night of 24<sup>th</sup>?*

*Kole Krasniqi: Yes.*

*Presiding Judge: Why a while ago, you don't even remember if it was 25<sup>th</sup> or 26<sup>th</sup>?*

*Kole Krasniqi: We remembered that NATO will bomb, we had been waiting for that for 50 years, and we did not care about anything else.*

*Presiding Judge: So you are sure that this happened when NATO bombed?*

*Kole Krasniqi: Yes I will never forget it.*

*Presiding Judge: Was it the first time of NATO bombing?*

*Kole Krasniqi: Yes.*

*Presiding Judge: I want to know - so you were all staying in this room until the morning, were you all awake until morning?*

*Kole Krasniqi: Yes.*

*Presiding Judge: So how it is possible, you were staying in one room, there was just one door in that house, how is it possible that no one saw Gjelosh Krasniqi leaving the house?*

*Kole Krasniqi: We live in a village, we do not even have a bathroom, and we did not even care what was happening.*

*Presiding Judge: So you are saying that you did not see Gjelosh Krasniqi leaving the house?*

*Kole Krasniqi: No.*

*Presiding Judge: When after 2-3 hours you did not see him in the house, what did you do?*

*Kole Krasniqi: Nothing.<sup>28</sup>*

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*Presiding Judge: To resume, you are saying that you did not see Gjelosh Krasniqi leaving the house?*

*Kole Krasniqi: We stayed drinking until the morning hours at some time we went to sleep then I did not care about what happened we dispersed to our own house.*

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<sup>28</sup> Extract from the Minutes of the Main Trial of 31.03.2009, pages 29 – 31

*Presiding Judge: You said you stayed awake until the morning?*

*Kole Krasniqi: We stayed awake all hours.*

*Presiding Judge: When?*

*Kole Krasniqi: It was about 7 or 8 am*

*Presiding Judge: You are talking about the morning of 25<sup>th</sup> March?*

*Kole Krasniqi: Yes.*

*Presiding Judge: Where did these 57 people sleep?*

*Kole Krasniqi: Our houses are close to one another. Two or three of us slept there, the others left.*

*Presiding Judge: Who slept there?*

*Kole Krasniqi: Pashk and myself.*

*Presiding Judge: While the others went to where?*

*Kole Krasniqi: Their own houses. We did not deal with them anymore.*

*Presiding Judge: Can you explain why you stayed until 7 in the house? What happened at 7 that made you say "OK we can go to sleep now"?*

*Kole Krasniqi: We believed that NATO had begun bombing. We believed we had been liberated.*

*Presiding Judge: When did the bombing start?*

*Kole Krasniqi: I don't know if it was 9am, or 8.50am. We had a bad radio.*

*Presiding Judge: How come that at 7 the situation was not so dangerous anymore?*

*Kole Krasniqi: We could celebrate all night long.*

*Presiding Judge: So you were celebrating the whole night long?*

*Kole Krasniqi: Yes.*

*Presiding Judge: And at 7 what happened?*

*Kole Krasniqi: What was there to happen? We went to bed.*

*Presiding Judge: Who decided the party was over?*

*Kole Krasniqi: All of us. We all said "OK, the whole ordeal is over." I believe all of Kosovo felt the same way.*

*Presiding Judge: Who owned the house?*

*Kole Krasniqi: Pashk.*

*Presiding Judge: You stayed in the house and Pashk stayed in the house?*

*Kole Krasniqi: Pashk and myself. After 7 o'clock we went to sleep. The others went to their house.*

*Presiding Judge: Did Gjelosh Krasniqi say anything?*

*Kole Krasniqi: He did not say anything and I didn't see him.*

*Presiding Judge: He just left without saying a word?*

*Kole Krasniqi: We went to sleep and were drunk anyway.*

*Presiding Judge: Did he say goodbye?*

*Kole Krasniqi: I don't know whether he said goodbye.*

*Presiding Judge: Was he drunk?*

*Kole Krasniqi: We were so overjoyed that we were drunk even if we had not drunk anything.*

*Presiding Judge: Was he drunk or not?*

*Kole Krasniqi: I don't know, I don't know. We were all drinking. I cannot say I was drunk or not.<sup>29</sup>*

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*Presiding Judge: When a soldier left your unit, you did not inform anybody?*

*Kole Krasniqi: Then I did not have anything to do with the soldiers, it was the other commander.*

*Presiding Judge: We are talking of a soldier in your unit. You don't see him anymore and you don't inform anybody?*

*Kole Krasniqi: After the 25<sup>th</sup> we did not inform anyone about anything. I don't know what the others did.*

*Presiding Judge: When did you realise that Gjelosh was not any more in the village? On the same morning of the 25<sup>th</sup>?*

*Kole Krasniqi: On the 25<sup>th</sup> in the morning we were together. The others went to their houses and I did not care who went there.*

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<sup>29</sup> Extract from the Minutes of the Main Trial of 31.03.2009, pages 32 - 34

*Presiding Judge: After some time you woke up?*

*Kole Krasniqi: Yes.*

*Presiding Judge: And so you did not care any more about the people in the village?*

*Kole Krasniqi: I went to my own house, the other commander came and I did not deal with this anymore.*

*Presiding Judge: So on the 25<sup>th</sup> another commander came?*

*Kole Krasniqi: Pashk was the commander.<sup>30</sup>*

**1. n) Pal Krasniqi**, (the one who according to Gjergj Luli statement had asked to help Gjeloš Krasniqi) in his statement given in front of the panel, stated that Gjeloš Krasniqi lived in Nepole village and that his house was approximately 200 – 300 meter away from his, but he did not know anything about the activity of the KLA soldiers, since he fled from Kosovo when the war begun.

He also stated that he knew Gjergj Luli, since he was a relative of his, but after the war he had never met him any more. Pal visited once Gjergj's house five years ago, when he returned from abroad, in order to pay a visit to his niece, mother of Gjergj, Zoje Luli. But, they never discussed about the disappearance of her husband Pashk Luli, or about the charges against Gjeloš Krasniqi.

Finally the witness stated that in the village of Nepole he knew two persons bearing the name of Gjeloš Krasniqi, one was the defendant whereas the other one was far younger, currently around 20 years.

**1. o) Pashk Pergega**, (the owner of the house close to which, according to Gjergj Luli's statement of 16.1.2008, Gjergj had met Gjeloš Krasniqi four days after the war) in his testimony given in front of the panel, stated the he had a house in the village of Doblbare, but that he had been living in Germany for a long time since before the war and that he returned to Kosovo long after the war ended. He said that his son Robert had access to his house, but he did not know where he was living soon after the war. He knew Gjergj Luli as he was a godfather to him, but did not know Gjeloš Krasniqi at all.

**1. p) Robert Pergega**, (son of Pask Pergega) in his testimony given in front of the panel, stated that he was acquainted with Gjergj Luli, but did not know Gjeloš Krasniqi. He was in Kosovo, in June 1999, in his father's house and was visited once by Gjergj Luli a few days after the war: Gjergj asked him if he knew Gjeloš Krasniqi, but his reply was that he did not and then he left and never visited him again. According to the witness, he wasn't the only one to be asked by Gjergj Luli if he knew Gjeloš Krasniqi.

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<sup>30</sup> Extract from the Minutes of the Main Trial of 31.03.2009, page 34

1. q) **Ermir Shehu**, in his testimony given in front of the panel, stated that he joined ICTY in February 2004, as an interpreter working for ICTY investigators who were investigating war crimes that had taken place in Kosovo during the conflict. The standard procedure regarding the interview process was that the witnesses gave initially an overall version of the story and then the investigator focused on the details or facts associated with the alleged war crimes and people. The statement was typed in English and afterwards it was read back and translated into Albanian for the witness. If there was no objection to the facts, the witness would sign the statement. The procedure was very accurate, in order to avoid any discrepancy relating to the facts or details. He recalled the statement of Gjergj Luli given on 25<sup>th</sup> February and 2<sup>nd</sup> March 2004, but his involvement in these statements was only to read back and translate what his colleague previously compiled. As far as he remembered, there had been no objections made by the witness Gjergj Luli who agreed with the statement and signed it.

1. r) **Pashk Krasniqi**, a far relative of the defendant, in his testimony given in front of the panel, stated that he had joined the KLA on 16 June 1998, after a meeting that had been held in the village and the leadership had decided that they had to get organized in order to defend the village. At that time also Gjelosh Krasniqi had been engaged in the KLA. They had organized the guards to follow the situation, because in March 1999, following the NATO's decision to bomb Serbia, Šešelj had issued a communiqué saying that the Albanians would be expelled from Kosovo. As to the shifts of the guards in the village, he had kept notes from the 20<sup>th</sup> March to the 2<sup>nd</sup> April 1999 in relation to the activity of KLA in Nepole village.

The witness testified that, when the soldiers wanted to go out of the village, they had to ask him for the permission. At that time Gjelosh Krasniqi had the task of working in the kitchen and he could not leave the village.

On 24<sup>th</sup> March 1999, he organized the guards of the village, while he and other persons went to his house to celebrate the starting of the NATO bombings. They were six persons in his house that night, namely Kole Krasniqi, Gjelosh Krasniqi, his brother Gjergj who was later murdered, Krist Krasniqi and a neighbour, Joze Ademi. That night they stayed awake until around 02:00 a.m. and, in the morning, he went to survey the guards. Gjelosh Krasniqi and Kole Krasniqi were together with him until around 10.00 p.m. of 25 March 1999. Before 25 March, Kole Krasniqi was the local commander of his unit and his house was utilized as headquarters. The unit was under the command of Lulzim Morina the commander of Brigade 132, Agim Zeneli. At the time, Gjelosh Krasniqi was in charge of food supply and kitchen equipment and also reported for the situation of the kitchen, but on the period of 20<sup>th</sup> March and 4<sup>th</sup> April 1999 he didn't go out of the village for food supplies.

The witness, presented by the defence counsel of the defendant, was cross-examined by the Prosecutor and afterwards examined by the Panel. Below, there some abstracts from the minutes of 24.4.2009.

*Public Prosecutor: Can you help me understand a document prepared by sub-colonel Sali Lajqi. This document indicates the service record of Gjelosh Krasniqi and it indicates he was assigned to Nepole unit as a soldier not a cook from 16<sup>th</sup> June 1998 to August or September 1998 and then brigade 132 Zeneli from September 1998 to June 1999 and this document is stamped on letterhead from TMK Headquarters. Do you agree with this recorded confirmation from the records?*

*Pashk Krasniqi: The local did not have brigades this was a war based on a voluntary basis and after the offensive 2<sup>nd</sup> August and 3<sup>rd</sup> September as I mentioned after the agreement between Milosevic and Holbroke the brigades were formed in September.*

*Presiding Judge: The Public Prosecutor is saying that Gjelosh Krasniqi was serving as a soldier not as a cook, this was the point of the Public Prosecutor, but according to you he was just a cook and the weapon was assigned to his brother not to him. This is the point that needs clarification.*

*Pashk Krasniqi: We did not have a typing machine or stamp. All we had was handwritten so we did not keep a written record about every soldier just the commander and deputy. We did not specify their position.*

*Public Prosecutor: I'm trying to understand and perhaps you can clarify after 24<sup>th</sup> March did Gjelosh Krasniqi remain in the village and under your command?*

*Pashk Krasniqi: Yes.*

*Public Prosecutor: Was Kole Krasniqi the commander?*

*Pashk Krasniqi: He was commander of local Head Quarters until he went to Buqan, around 27<sup>th</sup> or 28<sup>th</sup>. 26<sup>th</sup> or 27<sup>th</sup> March.*

*Public Prosecutor: If somebody left their post without your permission would you report this fact?*

*Pashk Krasniqi: If such thing happened but I did not have any such cases.*

*Public Prosecutor: We have heard after 24<sup>th</sup> March Gjelosh Krasniqi disappeared from Nepole and never seen again.*

*Pashk Krasniqi: It is not true; Gjelosh Krasniqi was in Nepole until the end of the war. How could Gjelosh Krasniqi disappear when on 24<sup>th</sup> April, we buried his brother and he was there?*

*Public Prosecutor: Would you agree with this assertion that after the bombing of 24<sup>th</sup> March that there was a break down in discipline among the soldiers in Nepole?*

*Pashk Krasniqi: It's not true.*

*Public Prosecutor: I would like to ask about the wounding of Gjelosh Krasniqi according to the service record I showed you it states on 5<sup>th</sup> April 1999 while fighting in Jaballanica he was wounded shot by a missile grenade. Where you present during this battle?*

*Pashk Krasniqi: No.*

*Public Prosecutor: Who sent his unarmed un-uniformed cook into battle?*

*Pashk Krasniqi: The offensive on 3<sup>rd</sup> and 4<sup>th</sup> April that took place on entrance of Nèpole I was present but after 10 hours I left the battlefield and Serb police and military forces entered the field and rest of population went to the church and I spent rest of day with his brother Gjergj and Gjelosh Krasniqi went Jaballanica and the following day, I heard that Gjelosh Krasniqi had been wounded. The same day Branhimi was killed and my soldiers buried him.<sup>31</sup>*

*\*\*\**

*Presiding Judge: We want to go back to the night of the 24<sup>th</sup>. Do you remember what Gjelosh Krasniqi cooked for dinner?*

*Pashk Krasniqi: Veal.*

*Presiding Judge: You said that there were six or seven people.*

*Pashk Krasniqi: Six.*

*Presiding Judge: What about the age of the others. Were they young, old?*

*Pashk Krasniqi: Kole was the oldest. Joza was a little bit younger than Gjelosh. Krist was born around 1965. Gjergj was born in 1965. I took their personal data when they were soldiers.*

*Presiding Judge: More or less this was the age of the people. Then, how did it go? There was the dinner until when?*

*Pashk Krasniqi: When we have this kind of celebration or joyful event, the dinner or the meal can last quite long since we keep drinking alcohol and eating slowly so the dinner lasted some four hours.*

*Presiding Judge: When did it start?*

*Pashk Krasniqi: Around 8 and lasted until midnight.*

*Presiding Judge: What time did you gather in the house?*

*Pashk Krasniqi: Before 8.*

*Presiding Judge: Did you go all together to the house?*

*Pashk Krasniqi: Yes, all together in my house.*

*Presiding Judge: Was Gjelosh with you?*

*Pashk Krasniqi: Yes.*

*Presiding Judge: What time did you start eating?*

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<sup>31</sup> Extract from the Minutes of the Main Trial of 24.4.2009, pages 17 – 19.

*Pashk Krasniqi: Slightly before 8. I cannot be more precise.*

*Presiding Judge: You entered around 8 and you started eating at around the same time, at 8.*

*Pashk Krasniqi: We arrived at my place around 7. We did not start dinner immediately, but we started with rakia and coffee.*

*Presiding Judge: Why did you say a minute ago that you arrived at the house slightly before 8 and now you are saying 7?*

*Pashk Krasniqi: 7, 8. I said before 8.*

*Presiding Judge: When did you gather at your house?*

*Pashk Krasniqi: At around 19.00 hours.*

*Presiding Judge: When did the dinner start?*

*Pashk Krasniqi: We started drinking around 8 and the dinner started later since the meat cannot be prepared in two minutes.*

*Presiding Judge: How much later?*

*Pashk Krasniqi: Around 10.*

*Presiding Judge: Just one minute ago, you said you started eating slightly before 8 and now you are saying that the dinner started at 10. How is it possible that there is such a big discrepancy?*

*Pashk Krasniqi: We sat down and started drinking rakia and coffee and eating appetizers and we consider that from that moment it is dinner.<sup>32</sup>*

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*We are now around midnight and the dinner is over. What happened?*

*Pashk Krasniqi: The Albanians were being saved. We were in a good mood and we hung out for another two hours until 2 and then we went to have some rest and some sleep in the house until the following morning.*

*Presiding Judge: Where did you have this rest?*

*Pashk Krasniqi: Three of us rested in the kitchen and the other three went in another room, which I call the guest room.*

*Presiding Judge: Who went to the other room?*

*Pashk Krasniqi: Gjergj, Kole and Krist.*

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<sup>32</sup> Extract from the Minutes of the Main Trial of 24.4.2009, pages 20 – 21.

*Presiding Judge: Whilst you and Gjeloš and a third person were resting in the kitchen?*

*Pashk Krasniqi: Yes.*

*Presiding Judge: What do you mean by rest, do you mean sleeping?*

*Pashk Krasniqi: Yes, we were sleeping.*

*Presiding Judge: How long did you sleep?*

*Pashk Krasniqi: Until around 6 in the morning.*

*Presiding Judge: Not for two hours. For four hours.*

*Pashk Krasniqi: Approximately for four hours from 2 until 6.*

*Presiding Judge: Were you sleeping?*

*Pashk Krasniqi: Yes.*

*Presiding Judge: So you cannot say what Gjeloš was doing in that time?*

*Pashk Krasniqi: Gjeloš went to sleep or to rest at the same time as me.*

*Presiding Judge: If you were sleeping, you cannot say what he was doing. Maybe woke up but if you know, just tell us.*

*Pashk Krasniqi: He could by no means wake up. We did not have a heavy sleep during the war.*

*Presiding Judge: How can you say he could wake up since you were sleeping for four hours?*

*Pashk Krasniqi: I would have heard the door opening and I had two dogs in my garden so he could not go out of the house.*

*Presiding Judge: This is an assumption of yours and as a witness you cannot make assumptions. You can only refer to what you see and what you hear. You are not here to make assumptions. You were sleeping for four hours.*

*Pashk Krasniqi: Yes.*

*Presiding Judge: Then we are now at 6 on the 25<sup>th</sup>.*

*Pashk Krasniqi: Yes.*

*Presiding Judge: What happened?*

*Pashk Krasniqi: When we woke up in the morning, we washed our hands and face. We went to the village to survey the guards. We started the daily activities.*

*Presiding Judge: All of you or some of you?*

*Pashk Krasniqi: All of us.*

*Presiding Judge: Was Kole Krasniqi present during these activities performed by this group of people?*

*Pashk Krasniqi: Yes.*

*Presiding Judge: And then? All of you went to see what the guards were doing also Gjelosh was present.*

*Pashk Krasniqi: He came with us to the village. I went together with Krist to survey the guards and I came back 20 minutes later and joined him again.*

*Presiding Judge: What about the other three, Kole and the other two?*

*Pashk Krasniqi: Kole and the other two stayed in the village.*

*Presiding Judge: To be clear. After 6 you wash and then all together all six of you went to see what the guards were doing. Then the group splits up in the middle of the village.*

*Pashk Krasniqi: For 20 minutes<sup>33</sup>*

*\*\*\**

*Presiding Judge: Let us speak about Gjelosh. You are all together in the village, this group of six people. Then, Kole receives the order to go to Buqan and he goes to his house. What about the other five?*

*Pashk Krasniqi: We had our duties to perform. We were informed that in Kralan, 2,000 people had arrived from Drenica and we had to go there and settle them in houses.*

*Presiding Judge: All of you went there or not?*

*Pashk Krasniqi: Yes.*

*Presiding Judge: Also Gjelosh Krasniqi?*

*Pashk Krasniqi: Yes, he was driving the tractor.*

*Presiding Judge: And then?*

*Pashk Krasniqi: After, we brought them in the village in Glllogjan and Llugaxhi where some families had up to 90 members amongst them Gjelosh and his brother. It is worth mentioning that in those days an old lady ... (witness is interrupted)*

*Presiding Judge: We are not dealing with the war but with a war crime, which is something different. How was Kole Krasniqi as a Commander? Did he want to be informed of the*

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<sup>33</sup> Extract from the Minutes of the Main Trial of 24.4.2009, pages 24 – 26.

movements of his soldiers? For instance, if a soldier left the village without informing him, was this behaviour accepted or not?

*Pashk Krasniqi:* As a Commander, he was good but it was not the duty of the Commander to deal with all the soldiers and for that reason, I was there since he had tasks to forward to me, tasks given by the Commander of the Zone and the Commander of the Brigade.

*Presiding Judge:* Did he want to be informed or not?

*Pashk Krasniqi:* I informed him of every case.

*Presiding Judge:* So he wanted to be informed?

*Pashk Krasniqi:* Certainly.

*Presiding Judge:* If you had not informed him about such a fact, would he have become angry or not?

*Pashk Krasniqi:* Certainly, yes.

*Presiding Judge:* If this had happened in the morning of the 25<sup>th</sup>, would he have become angry or not?

*Pashk Krasniqi:* Which thing had happened?

*Presiding Judge:* If a soldier of his had left the village without informing you.

*Pashk Krasniqi:* He would have punished me first and certainly the soldier.

*Presiding Judge:* He was a very stern Commander?

*Pashk Krasniqi:* A very sincere man.

*Presiding Judge:* Was he stern or not?

*Pashk Krasniqi:* He was stern.

*Presiding Judge:* Regarding this issue of leaving the village without permission, was he strict or not?

*Pashk Krasniqi:* Yes.

*Presiding Judge:* So he would never have allowed such a thing.

*Pashk Krasniqi:* No.

*Presiding Judge:* Even though this was the morning of 25<sup>th</sup> after NATO bombing?

*Pashk Krasniqi:* No.

*Presiding Judge:* He was strict even though it was the morning of the 25<sup>th</sup>.

*Pashk Krasniqi: Yes.*

*Presiding Judge: You said Kole Krasniqi is a very sincere person.*

*Pashk Krasniqi: Yes.*

*Presiding Judge: To let you know that in front of the court, the Public Prosecutor, the Defence Counsel and the defendant, he said that he did not care any more and since the 25<sup>th</sup> he did not see Gjelosh Krasniqi anymore and that he was not informed at all that he had left the village. Just to let you know. This was the early hours of the 25<sup>th</sup>.*

*Pashk Krasniqi: I do not know what Kole Krasniqi stated.<sup>34</sup>*

*\*\*\**

*Presiding Judge: On the 24 March, how was he dressed?*

*Pashk Krasniqi: On 24 March was wearing civilian clothes since we did not have enough uniforms. All in all we had 17 uniforms.*

*Presiding Judge: During the dinner, what kind of clothes was he wearing?*

*Pashk Krasniqi: He had a cook's apron on.*

*Presiding Judge: How long was this apron?*

*Pashk Krasniqi: Down to the knees.*

*Presiding Judge: Do you remember the colour?*

*Pashk Krasniqi: White.*

*Presiding Judge: Were there pockets on this apron?*

*Pashk Krasniqi: Two front pockets.*

*Presiding Judge: Do you remember what kind of shoes he was wearing?*

*Pashk Krasniqi: Dark black shoes.*

*Presiding Judge: Were they boots or shoes?*

*Pashk Krasniqi: Shoes.*

*Presiding Judge: Do you remember the colour of his trousers?*

*Pashk Krasniqi: No.*

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<sup>34</sup> Extract from the Minutes of the Main Trial of 24.4.2009, pages 27, 28, 29.

*Presiding Judge: You remember perfectly that he had dark black shoes from 10 years ago. My compliments, you are a brilliant man.*

*Pashk Krasniqi: My memory is quite sharp since I have 11 children and grandchildren*

*Presiding Judge: May be you can inform us of the colour of the shirt.*

*Pashk Krasniqi: It was a slightly different colour from the apron.*

*Presiding Judge: Were there stains on the apron or not?*

*Pashk Krasniqi: No.*<sup>35</sup>

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*Public Prosecutor: A few questions based upon the translated document, which I have now read. I am looking at the daily report for 23 March 1999. Perhaps he can look at his version. It says on my translation there were enemy movements from Dollova where they had many NATO bombings.*

*Witness now looks at the original document.*

*Pashk Krasniqi: There were movements from Dollova because of the fear from NATO bombings even though the bombings started before but they were expected.*

*Public Prosecutor: I believe you testified earlier that Dollova was held by the Serb police and Serb paramilitaries, is that right?*

*Pashk Krasniqi: Yes.*

*Public Prosecutor: It was 4 kms from Nepole.*

*Pashk Krasniqi: Yes.*

*Public Prosecutor: As we look at the daily report for 24 March, I read the following translation: "The guard was on the level of action it was added because the enemy had many movements from Dollova. We had added guards because of the activity in Dollova." Is that correct?*

*Pashk Krasniqi: Yes.*

*Public Prosecutor: If I understand the military situation, we are expecting NATO bombing on 24<sup>th</sup> and we are just 4 kms away from Nepole. We have a Serb-controlled area full of paramilitary Serbs.*

*Pashk Krasniqi: The village of Nepole is at a higher altitude compared to Dollova. We placed our guards at the exit to survey the area.*

*Public Prosecutor: It is fair to say there is added security because of the situation.*

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<sup>35</sup> Extract from the Minutes of the Main Trial of 24.4.2009, pages 31, 32.

*Pashk Krasniqi: Yes.*

*Public Prosecutor: Would Kole Krasniqi be wrong when he said that on the night of the 24<sup>th</sup> there were no guards?*

*Pashk Krasniqi: Kole Krasniqi did not deal with guards.*

...

*Public Prosecutor: The women and children were placed in the church on the night of the 24<sup>th</sup>, is that right?*

*Pashk Krasniqi: Yes.*

*Public Prosecutor: Why is that?*

*Pashk Krasniqi: Because NATO bombings were expected and Serbia was retaliating by attacking us.*

*Public Prosecutor: The 24<sup>th</sup> going into the 25<sup>th</sup> is very dangerous particularly in Nepole village, is that right?*

*Pashk Krasniqi: Yes.*

*Public Prosecutor: You decide that night to have a party and drink raki. No further questions.*

*Pashk Krasniqi: You cannot open a grave before you die.*

*Presiding Judge: It is strange why people gathered in the church if you were afraid of a bombing and you were celebrating in a house in the same village. Can you explain to us?*

*Pashk Krasniqi: We did not have a party we had a get-together to listen to the news and regarding the people who were staying at the church, the priest and the nuns took care of them and not us.*

*Haxhi Millaku: I am sorry to interfere, Your Honour, but I would like to say a fact. This witness has been here for six hours. Without being in Kosovo on 24 March 1999, you can never understand the experience of what happened on that day. On that day, I was together with my family 100 metres away from the police station in Prishtina and after the bombs fell on the Ministry, my children went out on the balcony and applauded.*

*Presiding Judge: You said that you were drinking rakia.*

*Pashk Krasniqi: Yes.*

*Presiding Judge: Were some of you drunk afterwards or not?*

*Pashk Krasniqi: No.*

*Presiding Judge: All of you were sober?*

*Pashk Krasniqi: Yes.*

*Presiding Judge: Again, Kole Krasniqi told us that all of the people in the house were drunk and in particular, he said he was drunk.*

*Pashk Krasniqi: A person can have one glass of raki and say he was drunk. The police would give you a ticket. I do not know the limit.*

*Ferdinando Bautier de Mongeot: Since you saw him on that night, was Kole Krasniqi drunk or not?*

*Pashk Krasniqi: I did not notice.*

*Ferdinando Bautier de Mongeot: He was speaking and moving normally?*

*Pashk Krasniqi: It was normal but Kole Krasniqi is always drinking anyway.<sup>36</sup>*

## **2. Statements, police reports and other documentary evidence read out during the trial sessions.**

### **2. a) Documentary evidence and reports**

During the main trial, the following documents were read as evidence:

- UNMIK Police War Crimes Unit Case Report, case number 2002 – 00047.
- UÇK Dukagjini Command Operative Zone Minutes concerning interrogation of Pashk Luli, dated 25 Mars 1999.
- UÇK Intelligence Service notes.
- *Note regarding the documents requested for applying in Scheme of Martyr Families, Invalids and Civil Victims.*
- Confirmation dated 21 May 2008, Protocol No 15/06, series 62, issued by TMK.
- Confirmation dated 21 May 2008, Protocol No. : 09/08, issued by TMK.
- Documents seized from person of Gjelosh Krasniqi during arrest on 26 May 2008.
- *Rights of An Arrested Person* form completed for Gjelosh Krasniqi on 18 June 2008.
- *Interview / Examination of Defendant* form completed for Gjelosh Krasniqi on 18 June 2008.
- Ante Mortem Report, INV NRO # 0592/INV/05, dated 29 November 2005.
- Ante Mortem Report, INV NRO # 0031/INV/07, dated 17 January 2008.
- Additional Report of Off. Hazbi Axhami, KPS #5529 dated 3 March 2008.
- Supplement Report of Off. Hazbi Axhami, KPS #5529 dated 5 March 2008.
- Additional Report of Off. Hazbi Axhami, KPS #5529 dated 25 March 2008.
- Summary Information gathered for the Investigation by Off. Hazbi Axhami, KPS #5529 dated 29 April 2008.

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<sup>36</sup> Extract from the Minutes of the Main Trial of 24.4.2009, pages 32-34.

- National Crime Information Center data base print out.
- Memo from Off. Andrew Thorpe, UNMIK Interpol Liaison Office, to Off. Kelly Reeves, CP # 15905, dated 17 June 2008.
- Letter from Special Agent Cindy Coppola, FBI, to Off. Kelly Reeves, CP # 15905, dated 24 June 2008.
- Indictment against Angelo Nocosia, John Melicharek, Dominick Memoli, Luis Pipolo, Dardian Celaj, Ened Gjelaj, and Gjelosh Krasniqi in the United States District Court, Southern District of New York, criminal case number S1 07 Cr.907 (SAS).
- Warrant for Arrest of Gjelosh Krasniqi issued on 18 December 2007 by Judge Ronald L. Ellis, U.S. Magistrate, Southern District of New York, and Docket No. S1 07 Cr. 907 (SAS).
- Verdict against Angelo Nicosia, John Melicharek, Dominick Memoli, Luis Pipolo, Dardian Celaj, and Ened Gjelaj, in the United States District Court, Southern District of New York, criminal case number S1 07 Cr.907 (SAS).
- Photocopies of cover and all pages from original U.S. Refuge Travel document for Gjelosh Krasniqi, issued 8 Mars 2007, and expired 8 March 2008.
- Pisces data base print out (“Travel Summary”) for Gjelosh Krasniqi.
- Pisces data base print out (“Identity” and “Travel Documents”) for Gjelosh Krasniqi.
- Copy of I.D. page from Gjelosh Krasniqi U.S. Refuge Travel Document issued on 8 March 2005, expired 8 March 2006.
- Copy of I.D. page from Gjelosh Krasniqi U.S. Refuge Travel Document issued 1 December 2003, expired 1 December 2004.
- Photocopies of Gjelosh Krasniqi travel documents and Pisces records form Kosovo Border Police.

## **2. b) Statements**

The following statement was read as evidence:

- Witness statement of Marta Nrecaj dated 7 – 9 December 2005.

In her statement given to the ICTY Investigators, the witness affirmed that when she was travelling, together with other people, from Doblbare to Glllogjan to visit a family member, they were stopped by Anton Prenkaj from Doblbare and Gjelosh Krasniqi from Nepole. Both of them were members of KLA and belonged to the special unit “Blacj Eagles” which was led by “Togeri”. According to the witness, in December 2005, Krasniqi had been living in New York now and he was obliged to leave Kosovo, since there was an attempt against his life and he was afraid of the blood feud, due to some atrocities he committed during the war. The witness described Gjelosh Krasniqi as a very bad person, who had been involved in various crimes and killings. She did not know him personally, but knew that he was around 30 years of age.

## **2. c) Statement of the accused**

In the main trial the defendant Gjeloš Krasniqi exercised his right to remain silent.

### **3. Additional evidence and records acquired during the sessions of the main trial.**

Upon a request of the defence counsel, in the hearing held on 24.4.2009, the reports compiled by Pashk Krasniqi, first as deputy and afterwards as commander of the KLA army in Nepole, as to the military situation in Nepole from 21 March 1999 until 27 March 1999, were acquired as evidence. The translation of the notes is in the minutes of the 24.4.2009.

The court *ex officio* requested the criminal record of the defendant from the District Court of Peja. From the registrar of the DC Peja, the following documents were retrieved:

- Copy of the District Court of Peja judgment in the criminal case PM nr.7/90 against Gjeloš Krasniqi dated 25.1.1991.
- Copy of the Supreme Court judgment in the criminal case PAM. nr.2/91 against Gjeloš Krasniqi dated 29.04.1991.

## **D. EVALUATION OF PRESENTED EVIDENCE**

### **1. Factual Findings and examination of the pieces of evidence**

In the light of the evidence as accumulated during the investigation and as presented during the sessions of the main trial, the Panel considers the following sequence of events as proven beyond reasonable doubt.

As to the factual reconstruction of what happened the night of the 24 March 1999, the court had to make a choice between two different versions of the events.

One version emerges from all the statements given during the investigative stage by the witnesses who directly assisted at the events of that crucial night. All of them (*i.e.* Gjergj Luli, Gjergj Quni, Mihill Pergega, Engjell Luli, Bekim Luli, Prek Luli) clearly stated that the defendant, Gjeloš Krasniqi, the night of the 24 of March 1999, wearing a KLA uniform, or at least an uniform with KLA insignia, together with other soldiers of the KLA, entered, armed, the courtyard of Nikole Luli, Pask Luli's brother, and, after having inquired who was Pask Luli and having individuated him, searched the house, pilfered an AK 47 rifle and a 7.65 pistol, and carried off Pask Luli as a prisoner. According to these statements, immediately after and with Pask in custody, the armed group went to the house of Pren Kashnjeti and obliged Tunc Kashnjeti to turn over an M-48 rifle that he owned, then the group went to Mihill Pergega's house and obliged him to turn over his M-48 rifle and a 7.65 pistol and finally went to Gjergj Quni's house and obliged him to hand over an M 48 rifle and a CZ 99 pistol. It is undeniable that all these witnesses

affirmed, during the investigation, that they had directly seen Gjelosh Krasniqi performing the deeds they had described in their statements.

On the other hand, a different version emerges from the testimonies given by the same eyewitnesses during the main trial. This version of the events diverges mainly regarding one, pivotal, point: the eyewitnesses stated, in front of the court, that, at that time, they did not know Gjelosh Krasniqi and that an unknown person, that night, presented himself as Gjelosh Krasniqi, but that this person was not the defendant (according to the testimonies the unknown person was shorter and fatter than the defendant).

This irreconcilable discrepancy obliges the panel to assess which of the two versions can be considered as trustworthy. The panel reckons that between the two groups of statements, the ones given during the investigative stage are to be considered reliable for the following reasons.

First and foremost: it is worth noting that, during the investigative stage, none of the witness declared that they had seen a person, which they did not know, who just presented himself as Gjelosh Krasniqi: all of them clearly stated that they had seen Gjelosh Krasniqi perform the actions described in the indictment. It is very bizarre and disproves the testimonies given in the main trial that all the witnesses clarified only during the main trial, and not during the statements given during the investigation, the paramount circumstance that the person they saw, just presented himself as Gjelosh Krasniqi, but actually they could not say whether he was really Gjelosh Krasniqi, since they did not know him.

Therefore, it can be deduced that all the eyewitnesses had to know by face the defendant and could see him the crucial night (one of them, Mihill Pergega, even stated that he was a friend of Gjelosh Krasniqi whereas Gjergj Luli, Bekim Luli, Engjell Luli stated that Gjelosh Krasniqi came from Nepole village, meaning that they knew him personally).

A further element which proves that one of the eyewitnesses, specifically Gjergj Luli, knew by face the defendant (notwithstanding the obstinate denial of the witness) is confirmed by the testimony of the police officer Hazbi Axhami who stated that Gjergj Luli called him by phone saying that he had seen Gjelosh Krasniqi drive a BMW X 5 (see also the report dated 25.3.08, pag 32 of the binder labelled *Materials impaginated 1-179*). Also the testimony of police officer Ismet Jemini confirms the paramount circumstance that the eyewitness knew the defendant by face and that, therefore, they are not trustworthy when they affirm, in front of the court, that the crucial night a person presented himself as Gjelosh Krasniqi but the person was not the defendant.

In fact the police officer Jemini, in front of the court, confirmed in its entirety his report (see the report in subfolder 1 of the binder labeled *Volume I, Investigative stage*) in which it is stated that when Gjergj Luli was interviewed by the police officer he affirmed that, on the crucial night, he had recognized Gjelosh Krasniqi (adding also that he came from Nepole), disavowing dramatically the version given to the panel by the injured party. Also three other eyewitnesses (Tune Kashnjeti, Mihill Pergega and Gjergj Quni) told the police officer that, the crucial night, they saw directly Gjelosh Krasniqi whom they already knew.

In order to justify this blatant oddity, it should be assumed that the investigators somehow forced the witnesses, during the investigation, not to tell the truth about the events on the night of the 24 of March 1999: but this assumption is not sustained by either a single piece of evidence or even a vague hint which can lead to the conclusion that these statements were the outcome of some sort of pressure exerted by the investigators on the witnesses.

It might be also supposed that the declaration given in the investigative stage are the result of a misunderstanding between the investigators and the witnesses, but also this option is not worth of consideration, since it is very unlikely that the same flaw regarding the identification of Gjelosh Krasniqi affects all the statements given during the investigation.

Another possible option to justify the dramatic change of version is that there are two Gjelosh Krasniqi coming from the same village of Nepole and the eyewitnesses, on the crucial night, saw not the defendant but this other person: but also this explanation must be discarded, since the witness Pal Krasniqi testified that in Nepole actually there were two persons bearing the name of Gjelosh Krasniqi: one was the defendant whereas the other one was far younger (currently around 20 years old) which means that, in March 1999, this other person was around ten years of age and could not have been the one who committed the crime.

Second: even though there is no proof of threats addressed by the defendant to the witnesses, it is undeniable that the attitude of the main injured party, Gjergj Luli, the son of Pask Luli, changed dramatically in autumn 2008, when the defendant was not any more in detention on remand (he was in detention on remand from 27<sup>th</sup> May 2008 until 24<sup>th</sup> September 2008 and then from the 7<sup>th</sup> November 2008 on). In fact, until that period, Georgj Luli had been very cooperative with the police, rendering several statements and spontaneously calling the investigators on many occasions in order to provide them with useful information.

But, on 7 October 2008, after having repeatedly accused the defendant, he went to the police and said that we wanted to drop the charges against Gjelosh: it is worth remarking that, according to the statement given on that day by Gjergj Luli, the reason for this change was that his "father Pask Luli had the wrong uniform of the Serbian police", not because he realized somehow that the defendant was not the person who carried off his father.

Since Gjergj Luli was aware from the very beginning of the investigation that his father worked as a police officer for the Yugoslavian government, the above mentioned reason cannot explain the dramatic change: it is therefore clear that something happened in October 2007, something which pushed Gjergj Luli and all the eyewitnesses to give in the main trial a different (and false) version of the events.

Moreover it must be stressed out that throughout the entire investigations Gjergj Luli has repeatedly spoken about the fact that he was pretty scared by Gjelosh Krasniqi and that he had no other options left, but selling his car or other property in order to buy a weapon and protect himself and his family (see the statement given on 1.3.2008). It is therefore clear that the only explanation for the, otherwise inexplicable, change of version must be sought in the evident fear and terror which obliged almost all the eyewitnesses to lie during the main trial.

And the state of pure panic which affected the witnesses throughout the entire main trial is made clear by the words of Zoje Luli, Pask's widow (see the minutes of 12.3.2009) by which she makes hints of the fact that she is concerned for her children.

Third: as it has already been stressed out, the testimonies given by the eyewitnesses in the main trial are contradictory, with blatant and unexplained discrepancies as to what they said during the investigative stage. However, the only explanations given by the witnesses in relation to this pivotal contradiction is that what was written in the statement given to the police is simply non true and that they did not say what was written in the statement. Even though more than once the witnesses were confronted with the fact that the statements had been signed by them, the only explanation they gave was always the same: what was written in the statement was not true. Thus, in order to believe the witnesses it is necessary to assume that a gigantic fabrication of false pieces of evidence was made against the defendant, but there is not a single element which can make think of such a manipulation. It is far more likely that all the witnesses simply decided to change their version, because they were scared of the defendant.

Fourth: the failed attempt of the defence to provide an alibi. The defence tried to demonstrate that, the crucial night, the defendant was somewhere else. On the issue two witnesses, Kole Krasniqi and Pashk Krasniqi, respectively the commander and the deputy of the KLA in Nepole, testified that Gjelosh had spent the entire night of 24 March 1999 in Pashk's house, together with the two of them and other people. As to these two testimonies, it is worth stressing out that the internal and external incoherencies are so many and so blatant that both the statements must be considered as utterly unreliable.

In fact Kole Krasniqi stated that, the crucial night, besides himself, Gjelosh and Pashk in the house there were other three or four people and these people, all of them KLA soldiers, were around 20 years of age. Moreover Kole stated that Gjelosh served in the KLA as a cook, since he was very young (and it must be noted that, strangely, the other KLA soldiers who were in Pashk's house were younger than Gjelosh, but were not utilized as cooks)

On the contrary, on the same issue, Pashk said that these other people were much older, around 35 years (not teenagers as it was said by Kole).

Furthermore Kole affirmed that, after having had dinner, all the people in the house stayed awake until around seven in the morning celebrating all night and finally went to bed. When he woke up, on 25 March, he realized that Gjelosh had disappeared and he did not see him any more. On the contrary, on the same issue Pashk stated that, in the morning of 25 March, all the people who were in the house (including Gjelosh and Pashk) went to bed around 2 a.m. and the following day stayed together until around 10 a.m.

It is more than clear that the external contradictions of the testimonies are huge and irresolvable.

And finally and decisively, the reports compiled by Pashk Krasniqi, first as deputy and afterwards as commander of the KLA army in Nepole, as to the military situation in Nepole from 21 March 1999 until 27 March 1999, clarify every possible doubt and doom both the testimonies to the realm of utter falsity and unreliability: from these reports, it

appears without any doubt that the situation in the night of 24 March in Nepole was very tense and dangerous and that the Serbian forces were close to the village: "*The guard was on the level of action it was added because the enemy had many movements from Dollova*". (see, the translation of the report of 24 March 1999, in the minutes of 24.4.2009). Moreover, according to the testimony of Pashk Krasniqi, all the women and the children in the village were gathered in the church, in order to have shelter lest a retaliation of the Serbian forces.

If the night of 24 March the situation in Nepole was so tense and dangerous, it is absolutely unthinkable that, in such conditions, the KLA commander of the village and his deputy, together with other four KLA soldiers, including the defendant, were celebrating, drinking and getting drunk. Again the falsity of the testimony of Kole and Pask Krasniqi is made clear by the report of the 24 March 1999: "*At around 20.30 o'clock NATO bombings began and we were awake during the whole night and we were following the situation*" whereas Kole and Pask told that they were celebrating more or less the entire night and they were even drunk.

Fifth: it must also be stressed out that, Gegë Lleshi, a prominent KLA commander of the Dukagjini aerea testified that, as far as he knew, nobody during the war used inappropriately the name of Gjelosh (and it must be borne in mind that such a behavior would have been noticed inside the KLA).

This are the reasons why the panel has come to the conclusion that it was the defendant, Gjelosh Krasniqi, together with other unknown accomplices, who took away as a hostage Pask Luli from the courtyard of Mark Luli and pillaged the weapons from him and from the other victims.

However, the evidence provided by the prosecutor regarding the factual reconstruction of the events related to the fate of Pask Luli does not go beyond this point. In fact no proof has been given which can demonstrate that against Pask Luli the following actions were carried out: detention, deprivation of right to a fair trial, inhumane treatment and finally murder. Actually it was not proven what happened to the victim after he was carried off: in fact the only two pieces of evidence presented to the court on this regard are the so called *process verbale* and the statements given by Gjergj Luli concerning some phrases he heard regarding the final fate of Pask Luli.

As to the *process verbal*, this document retrieved by ICTY investigators, states that, after the arrest of Pask Luli by Gjelosh Krasniqi, the victim was interrogated and finally executed by the Brigade 132. But the point is that the *process verbale* does not bear any signature and therefore cannot be considered as a reliable piece of evidence. In fact anybody could have typed the *process verbale* and the lack of any signature does not give the possibility to verify who wrote the document and whether its content corresponds to the truth or not.

As to what was reported by Gjergj Luli in his statements to the police, in relation to the final fate of his father (in particular that his sister Marta said to him that Gjelosh Krasniqi had told her that he had killed her father Pask Luli), the impossibility to have the

testimony of Marta Ndrecaj in front of the court and the subsequent lack of any statement given by the direct witness on the point (Gjergj had just reported what he heard from his sister), oblige the court not to consider as proven the circumstances stated by Gjergj Luli during the investigation about the final fate of his father.

It must be highlighted again that since Gjergj Luli did not assist directly to the events told by Marta, without the confirmation of the direct witness, it becomes impossible to reach the level of certainty necessary to issue a conviction on the specific point of the murder.

Therefore, after the final evaluation of the pieces of evidence presented by the parties, it can be said that, as to the factual reconstruction of the events of the night of the 24 of March 1999, only the fact that the defendant carried off Pask Luli as a prisoner from his brother's house and that together with other KLA soldiers pillaged weapons from other houses in the village of Dublibare is proven and demonstrated, whereas no firm evidence has been provided regarding the final fate of the victim.

Regarding the conduct of the witnesses Gjergj Luli, Gjergj Quni, Mihill Pergega, Engjell Luli, Bekim Luli, Pren Kashnjeti, Prenk Luli, Kole Krasniqi and Pashk Krasniqi the minutes of their testimonies will be sent to the District Prosecutor's office since they committed the criminal offence of False Statements, contrary to the CCK, Article 307.

## **2. Motions of the Parties**

The defense counsel raised objections in particular against the statements given by Gjergj Luli to the ICTY investigators and regarding the statements given by Engjell and Bekim Luli.

As to the statements given to ICTY in 2003 and 2004 by Gjergj Luli, which are in English, the defence counsel objected that the statements bore two different dates and therefore the statements were taken unlawfully. The point has been clarified by a ruling of the Panel which has deemed the statements as admissible, since it came out that on the first day the witness gave his statement in Albanian and then the statement was translated and typed in English. Afterwards, the statement was printed out and, on the second day, read out to the witness. If there were no objections the witness signed it.

In fact the witness Ermir SHEHU testified that this was the usual procedure for the statement taken by ICTY investigators (procedure that was followed in this case as well) and, as far as he remembered, there were no objections raised by Gjergj Luli.

According to the panel, this procedure, even though might contain some irregularities, does not violate the law in force at the time, since it can be said that the statement was actually given formally on the second day, when the statement was signed and therefore finally endorsed by the witness.

As to the statements given by Engjell and Bekim Luli to the police, the defence raised the issue that they had not been taken lawfully and, in particular, not in compliance with the KCCP, Article 164, par. 1, which says that a witness shall be examined separately and without the presence of other witnesses.

Actually police officer Hazbr Axhami admitted that Engjell Luli was present when his brother Bekim Luli gave the statement, but the Panel deems that this was just an

irregularity and not a substantial violation of the procedure which would oblige to rule out the piece of evidence.

In fact, according to the KCCP, Article 153, evidence obtained in violation of the procedure is inadmissible only when the law expressly so prescribe: and it is clear that in the procedural code no prescriptions can be found which impose to rule out the statement taken in violation of the rule envisaged in the KCCP, Article 164.

No motions have been presented by the injured parties.

## **E. LEGAL QUALIFICATION**

### **1. Legal assessment of the facts by the Court**

The constant jurisprudence about War Crimes has established, throughout the years, which are the requirements that found the criminal responsibility of the accused; in particular, the following must be proven as a minimum:

- the existence of an internal armed conflict and the binding nature of applicable international law on the parties;
- the participation of the accused in the armed conflict;
- a nexus between the alleged crime and the armed conflict;
- the civilian (protected) status of the victim;
- that the conduct concerned is in violation of international law effective at the time of the conduct and also falls within those criminal acts identified as war crimes within Article 142 (the so called duality test);
- the participation of the accused in the offence.

#### **The existence of an internal armed conflict and the binding nature of applicable international law on the parties;**

An armed conflict exists whenever there is resort to armed force whether between states or protracted armed violence between governmental authorities and organized armed groups. International humanitarian law (IHL) applies from the initiation of such conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached.

In the event of international armed conflict, civilians, persons rendered hors de combat and non-combatants are protected by the basic principles of IHL, in particular the Geneva Conventions of 1949, and their Additional Protocols of 1977. In case of Internal armed conflict, the same persons are entitled to protection under Article 3 common to all four Geneva Conventions supplemented by Additional Protocol II (hereinafter CA3 and APII).

To be considered an internal armed conflict under CA3 the essential criteria is that protracted armed violence takes place between governmental authorities and organized armed groups or between such groups within a State. APII supplements this by requiring

that those groups be under responsible command and exercise such control over a part of the territory of the State as to enable them to carry out sustained and concerted military operations and that hostilities take place at a level in excess of that which could be characterized as merely internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

It is uncontested by the parties and it also can be considered as a well-known fact that, on 24 March 1999, there existed an armed conflict involving the KLA and the Yugoslav/Serbian forces, which can be considered as an internal conflict contemplated by CA 3 and AP II .

### **Participation of the accused in the armed conflict**

The participation of the accused in the armed conflict is undeniable: in the case file there is an official certificate issued by Kosovo Protection Corps and signed by sub colonel, Salih Lajci, attesting that Gjelosh Krasniqi joined KLA from 16.6.1998 until 20.6.1999. A second certificate attests that Gjelosh Krasniqi, soldier of KLA since 16.06.1998, was wounded in action on 5.4.1999.

These circumstances are not contested by the defence.

Both certificates can be found in the binder labeled "Materials paginated 0-179" at pages 81-84.

### **Nexus**

The armed conflict played a fundamental role in the ability of the defendant to commit the crimes. The decision to take as a hostage Pask Luli and to pillage the weapons was clearly linked to the conflict. In fact the purported reason for the action against the victim Pask Luli was because of his supposed collaboration with the Serbs since he was a local police officer working for the Serbian government. The weapons were pilfered while Pask Luli was taken as a hostage and were clearly seized and claimed by the KLA soldiers as an army which was controlling the territory in an armed conflict. In fact no specific blame was raised against the people who were obliged to hand over the weapons, but it was clear that they had to turn over their weapons, since the army controlling the area had claimed the possession of them.

### **Status of the victims**

In this case the question of the status of the victim Pask Luli, even though not raised by the defence, must be examined, since Pask Luli was a police officer. Article 142 of the CCY expressly requires that the victim be part of the civilian population. In the case of internal conflict, IHL through the provisions of CA3 and AP11 protects all persons who are not combatants and who do not take a direct part in hostilities. A civilian is defined as someone who does not actively participate in hostilities by intending to cause physical harm to enemy personnel or objects.

Article 5 of the IV Geneva Convention provides that, for a civilian to lose his/her status as a protected person, he/she must be “*definitely suspected* of ...activities hostile to the security of the State...” and the Panel finds that the mere fact that Pask Luli was a member of the local police does not create a *definite* or *legitimate* suspicion of hostile activity. Furthermore, it is worth stressing out that police are ordinarily a civilian organization, distinct and separate from the military.

In most modern states in time of war, the police remain “civilians” and are entitled to be considered as such, unless they take a direct part in the hostilities or have been specifically designated as part of the armed forces and meet the requirements for militia forces (responsible command, distinctive insignia, carrying arms openly, and respecting the laws of war). Police officers without combat duties therefore are not legitimate military targets but are civilians and thus protected persons.

**Violation of Domestic and international law effective at the time of the conduct – (the so called duality test);**

Article 142 CCY provides that the primary definition of the prohibited conduct must be found among the underlying offences listed in Article 142. Secondly, such offence must constitute a violation of international treaties. Yugoslavia ratified the Geneva Conventions and both the Additional Protocols. In relation to acts committed in the internal armed conflict, the act must be committed in violation of the CA3 and/or AP II.

Given the facts and circumstances of this case, the indictment alleges that the accused committed the following deeds: the illegal arrest, detention, taking as hostage, deprivation of right to a fair trial, inhumane treatment and finally murder of Pask Luli and property confiscation and pillaging of weapons from Pask Luli and from the other victims. Since, for the reasons above mentioned, it has not been proven what happened to the victim after he was taken away, only the conducts related to the illegal arrest, detention, taking as hostage and pillaging of weapons must be taken in consideration.

As to the illegal arrest – which can be defined “*the act of apprehending a person for the alleged commission of an offence or by the action of an authority*”<sup>37</sup> action surely carried out by the defendant, who acted as the commander of the group of KLA soldiers who carried off Pask Luli, it must be observed that this conduct does not fulfill the duality test. In fact, even though illegal arrest is specifically proscribed by Article 142 YCC, no proscription about this conduct can be found in the Geneva Conventions and in AP II.

Therefore the conduct of illegal arrest undertaken by the defendant must be reclassified as Unlawful Deprivation of Liberty, contrary to the Article 162 of the CCK (law more favorable in respect to the Article 63 of the Criminal Law of the Republic of Serbia - Unlawful Detention -) and consequently the charge, on the specific point, must be rejected, according to Article 389, paragraph 1, subparagraph 4, since the period of statutory limitation has expired.

As to the detention, which can be defined in general “*as the condition of detained or imprisoned persons, which is further described as the condition of any person deprived of*

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<sup>37</sup> *Simic, Tadic, and Zaric*, (ICTY, Trial Chamber), October 17, 2003.

*personal liberty except as a result of conviction for an offence.*"<sup>38</sup>, it cannot be said that in the period of time subsequent to the arrest and to the taking as hostage of Pask Luli, he detained, since, as it has already been demonstrated above, there is no solid evidence regarding what happened to the victim after he left definitively the courtyard of Nikole Luli. Therefore the defendant must be cleared of the charge of the detention of Pask Luli.

However, the defendant did not confine himself to the illegal arrest of Pask Luli: the victim was carried off from the courtyard where he was staying and obliged to follow the soldiers, as a hostage, while they were pilfering weapons around the village (and according to the statements of the witnesses, the pillage lasted around two-three hours, from the entrance of the KLA soldiers to the courtyard of Nikole Luli, until Pask Luli left definitively the courtyard in order to be taken to the KLA headquarters).

As to the taking as hostage it must be stressed that this conduct is proscribed both by the Article 3, common to all the four Geneva Conventions, by the Article 4, par. 2 of the AP II and by Article 142 YCC. Therefore the requirement of the duality test is fulfilled.

The concept of taking a person as hostage has been accurately clarified by the jurisprudence on war crimes, saying that "*the essential element in the crime of hostage-taking is the use of a threat concerning detainees so as to obtain a concession or gain an advantage*"<sup>39</sup>

And it is exactly what happened in the present case: Pask was first arrested and then utilized as a hostage in order to convince other people to turn over their weapons during the pillaging carried out in the village of Dobljare by the KLA soldiers headed by Gjelosh Krasniqi, on the night of 24 March 1999.

It must be borne in mind that Pask was not only in custody, but that his hands were tied behind his back (see the testimony of Pren Kashnjeti), therefore the threat against the people who had to hand over the weapons, even though not uttered, was explicit in itself. Moreover it is undeniable that the KLA soldiers were counting on the strong impression excited on the villagers by the fact that they had in custody, as a prisoner with tied hands, a police officer working for the Serbian government. It must be noticed that the hostage was shown to all the victims, with the evident aim to display that the soldiers had a police officer at their disposal and to show their power and capacity to obtain whatever they wanted (Mihill Pergega significantly, in his statement given to the police, affirmed that he was afraid that the soldiers could come back and carry him off, meaning that the display of power given by the display of the hostage worked perfectly).

Furthermore, the circumstance that the KLA soldiers were counting on the fact of having as a hostage Pask Luli, in order not to have troubles in the pillaging of the weapons they needed, is made clear by the consideration that first they went to take Pask and only afterwards, showing him as a prisoner, went around the village, whereas it is obvious that for the KLA soldiers it would have been far easier to pilfer the weapons without a prisoner to handle and then to arrest and carry off Pask. They decided to go and take away Pask before the pilfering, just because they thought it would be useful and more effective to show the hostage to the other victims.

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<sup>38</sup> *Simic, Tadic, and Zaric*, (ICTY, Trial Chamber), October 17, 2003.

<sup>39</sup> *Blaskic*, (ICTY Appeals Chamber), July 29, 2004.

Furthermore, some threats of death were uttered by Gjelosh also directly against Pask and Gjergj Luli (see Gjergj Luli's statement of 26.8.2009), when the soldiers left the courtyard in order to oblige Pask's relatives not to leave the courtyard, threats which had the instrumental aim for the soldiers to obtain the advantage not to be followed by anybody.

As to the pillaging of weapons, the duality test is utterly fulfilled, since the conduct is proscribed both in Art. 142 of YCC and in the AD II Article 4, par. 2.

The jurisprudence on War Crimes has defined the act of pillage as follows: "*the unlawful appropriation of public and private property during armed conflicts*"<sup>40</sup>.

It is undeniable that the conduct undertaken was to steal, rob and unlawfully appropriate private property (in particular, weapons) during the time of war without having any legal right to do so and using force or threat. It has already been explained how the fact that Pask Luli was in custody was utilized by the KLA soldiers as an implicit threat in order to oblige the victims to turn over the weapons without raising any objection.

### **The participation of the accused in the offences**

The participation of the defendant in the criminal acts he has been convicted for has previously been discussed in this reasoning. As noted above, the Court is satisfied beyond a reasonable doubt of the participation of the defendant in the taking as hostage of Pask Luli and in the pillage of weapons.

## **F. DETERMINATION OF PUNISHMENT**

When imposing the criminal sanction the court has to bear in mind both the general purpose of punishment - that is to suppress socially dangerous activities by deterring others from committing similar criminal acts - and the specific purpose, to prevent the offender from re-offending.

In the present case the Panel came to the conclusion that, this was a serious criminal act committed through several deeds and against the civilian population by a group of heavily armed people. As to the aggravating circumstances, it must be noted that the defendant is a recidivist, since he committed a murder when he was a juvenile. As to the mitigating circumstances, it must be taken in consideration that he was relatively young when he committed the crime.

Even though the conduct was performed through several deeds, the criminal offence must be considered as a single crime and the punishment, taking in consideration both the aggravating and the mitigating circumstance, shall be of seven years of imprisonment.

The time spent in detention on remand is to be credited in the sentence.

## **G. COSTS**

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<sup>40</sup> *Simic, Tadic, and Zaric*, (Trial Chamber), October 17, 2003.

The accused Gjelosh Krasniqi was pronounced guilty; he has to reimburse the costs of criminal proceedings with the exception of interpretation (KCCP, Article 102, Paragraph 1). A separate ruling on the amount of the costs shall be rendered by the court when such data will be obtained.

#### H. COMPENSATION CLAIM

At the beginning of the main trial the injured parties have been reminded of the possibility to file a motion to realize a property claim within the criminal proceeding, pursuant to the KCCP, Article 355, Par. 2, but they declared that they did not intend to file a property claim.

Therefore the court did not have to make a specific decision on the issue.

#### Legal Remedy

Authorized persons may file an appeal in written form against this verdict through the District Court of Peja/Pec to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.

Recording Officer  
Patricia Faltusova



Presiding Judge  
Gianfranco Gallo

