

IN THE MUNICIPAL COURT of PEJA/PEC
Case P. Number 581/10
16 September 2010

IN THE NAME OF THE PEOPLE

Judge Malcolm Simmons Presiding with Court Recorder Robina Struthers in the criminal case against (1) Bekim Luli (hereinafter "the First Defendant"), (2) Engjell Luli (hereinafter "the Second Defendant") and (3) Prenk Luli (hereinafter "the Third Defendant") all charged pursuant to Indictment Number PP. 1644/09 filed by the Municipal Prosecutor of Peja dated 3 September 2009 and amended on 29 January 2010 with the criminal offence of Giving a False Statement under Article 307 (1) of the Criminal Code of Kosovo, after holding a public trial on 14 July, 5 August, 14 September 2010 at which Ms. Alenka Sagmeister-Ranzinger appeared for the Municipal Prosecution Office and the Defendants, who were unrepresented, on 16 September 2010 took and publicly announced the following:

JUDGMENT

The First Defendant Bekim LULI, fathers name Nuhe Luli, mothers name Jane, maiden name Shkurreti, born on 28 February 1977 in the Village of Doblibare, Kosovar Albanian, ID number 1008864817, farmer, currently residing in the Village of Doblibare, married, no children is

GUILTY

that on 12 March 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi he gave a false statement in that he stated that on 24/03/1999 he did not know Gjelosh KRASNIQI, and that on 24/03/1999 Gjelosh KRASNIQI with another four KLA soldiers had not participated in taking Pashk LULI as a hostage, although he knew that was not true.

By reason thereof the First Defendant committed the criminal offence of Giving a False Statement under Article 307 (1) of the Provisional Criminal Code of Kosovo and is

SENTENCED

to a term of imprisonment of 5 months, suspended pursuant to Article 43 of the CPCK for a period of two years from the date the Judgment becomes final.

In accordance with Article 102 (1) of the Criminal Procedure Code of Kosovo the First Defendant shall pay the costs of these criminal proceedings which the Court assesses in the sum of 50 (Fifty) Euros. The First Defendant shall also pay the sum of 15 (Fifteen) Euros in respect of the Scheduled amount.

The Second Defendant, Engjell Luli, fathers name Nuhe Luli, mothers name Jane, maiden name Shkurreti, born on 11 October 1969 in the Village of Doblbare, Kosovar Albanian, ID number 1009362661, employee in the marble industry, currently residing in the Village of Doblbare, married, father of 4 children is

GUILTY

that on 17 March 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi he gave a false statement in that you stated that on 24/03/1999 he did not know Gjelosh KRASNIQI, and that on 24/03/1999 Gjelosh KRASNIQI with another four KLA soldiers had not participated in taking Pashk LULI as a hostage, although he knew that was not true.

By reason thereof the Second Defendant committed the criminal offence of Giving a False Statement under Article 307 (1) of the Provisional Criminal Code of Kosovo and is

SENTENCED

to a term of imprisonment of 5 months, suspended pursuant to Article 43 of the CPCK for a period of two years from

the date the Judgment becomes final.

In accordance with Article 102 (1) of the Criminal Procedure Code of Kosovo the Second Defendant shall pay the costs of these criminal proceedings which the Court assesses in the sum of 50 (Fifty) Euros. The Second Defendant shall also pay the sum of 15 (Fifteen) Euros in respect of the Scheduled amount.

The Third Defendant Prenk LULI, fathers name Mark Luli, mothers name Zyle, maiden name Bardhi, born on 22 August 1958 in the Village of Doblibare, Kosovar Albanian, ID number 1003023512, employee in the marble industry, currently residing in the Village of Doblibare, married, father of 7 children is

GUILTY

that on 17 March 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi he gave a false statement in that he stated that on 24/03/1999 he did not know Gjelosh KRASNIQI, and that on 24/03/1999 Gjelosh KRASNIQI with another four KLA soldiers had not come to the courtyard of Nikolle LULI'S house and said to Pashk LULI to stand and come with them, although he knew that was not true.

By reason thereof the Third Defendant committed the criminal offence of Giving a False Statement under Article 307 (1) of the Provisional Criminal Code of Kosovo and is

SENTENCED

to a term of imprisonment of 5 months, suspended pursuant to Article 43 of the CPCK for a period of two years from the date the Judgment becomes final.

In accordance with Article 102 (1) of the Criminal Procedure Code of Kosovo the Third Defendant shall pay the costs of these criminal proceedings which the Court assesses in the sum of 50 (Fifty) Euros. The Third Defendant shall also pay the sum of 15 (Fifteen) Euros in respect of the Scheduled amount.

REASONING

The Indictment filed by the Municipal Prosecutors Office under Number PP. 1644/09 dated 3 September 2009 and amended on 29 January 2010 charged nine Defendants with giving False Statements contrary to Article 307 (1) of the Criminal Code of Kosovo.

On 21 July 2010 pursuant to Article 34 of the Criminal Procedure Code of Kosovo this Court severed the case against the First, Second and Third Defendants from the other defendants.

It was the Prosecution case against the First Defendant that on 12 March 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi he gave a false statement in that he stated that on 24 March 1999 he did not know Gjelosh KRASNIQI, and that on 24 March 1999 Gjelosh KRASNIQI with another four KLA soldiers had not participated in taking Pashk LULI as a hostage, although he knew that was not true.

It was the Prosecution case against the Second Defendant that on 17 March 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi he gave a false statement in that he stated that on 24 March 1999 he did not know Gjelosh KRASNIQI, and that on 24 March 1999 Gjelosh KRASNIQI with another four KLA soldiers had not participated in taking Pashk LULI as a hostage, although he knew that was not true.

It was the Prosecution case against the Third Defendant that on 17 March 2009 when appearing as a witness before the District Court of Peja in the case of Gjelosh Krasniqi he gave a false statement in that he stated that on 24 March 1999 he did not know Gjelosh KRASNIQI, and that on 24 March 1999 Gjelosh KRASNIQI with another four KLA soldiers had not come to the courtyard of Nikolle LULI'S house and said to Pashk LULI to stand and come with them, although he knew that was not true.

There was no dispute that on 29 April 2009 in case number 67/09 Gjelosh Krasniqi was convicted before a panel of the District Court of Peja of War Crimes against the Civilian

Population, contrary to Article 142 of the SFRY Criminal Code, Articles 3 and 147 of the 4th Geneva Convention, Article 4 of the II Additional Protocol to the Geneva Conventions, committed in the village of Doblibare/Doblibare, Gjakova/Dakovica Municipality, on the 24 March 1999.

Article 307 (1) provides

A witness, expert witness, translator or interpreter who gives a false statement in court proceedings, minor offence proceedings, administrative proceedings before a notary public or disciplinary proceedings shall be punished by a fine or by imprisonment of up to one year.

The Court finds that the statement must relate to a material fact and the witness knew the statement was false or had no reasonable grounds to believe the statement was true.

1. The First Defendant

The First Defendant testified before the District Court of Peja in the case of Gjelosh Krasniqi on 12 March 2009¹.

Prior to his testimony before that Court, on 16 March 2008 the First Defendant gave a statement to UNMIK police relating to the facts in issue therein.

The Indictment alleged the First Defendant gave a false statement when he testified before the Court on 12 March 2009, thereby committing an offence under Article 307 (1) of the CCK.

It was the Prosecution case that the testimony the First Defendant gave before the Court on 12 March 2009 was, in several important material respects, false and contradicted his prior statement.

¹ Exhibit P1

1.1 Statement given to the UNMIK Police on 16 March 2008²

The First Defendant stated that on 24 March 1999, at approximately 8 - 8.30pm he was at the home of his uncle Nikol Luli watching the news on TV.

He described soldiers arriving at the house. He said one of the soldiers was Gjelosh Krasniqi from the village of Nepole. He said he didn't recognise the others. The soldiers left the house taking Pashk Luli with them.

He stated Gjelosh Krasniqi asked Pashk Luli for his weapons, a Kalashnikov and a pistol.

In his statement he referred to an incident when his brother Engjell Luli was working as a security guard in a petrol station and was, allegedly, threatened by Gjelosh Krasniqi.

The statement was written in Albanian and had been signed by the First Defendant.

1.2 Testimony before the Court on 12 March 2009³

The First Defendant testified that on the night in issue he was at the home of Kola Luli in Doblbare when five soldiers entered the yard of the house. The soldiers were in uniform with KLA insignia. He testified that one of the soldiers introduced himself as Gjelosh Krasniqi. The soldiers seized one long-barrelled weapon.

He said that he discovered the following morning that Pashk Luli had been taken away.

The First Defendant denied he recognised Gjelosh Krasniqi. He said the soldier simply introduced himself as Gjelosh Krasniqi. That contradicted his prior statement.

The First Defendant was cross-examined about the contradictions between his testimony before the Court and his statement of 16 March 2008.

² Exhibit P2

³ Exhibit P1

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: 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 Nepole 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 Nepole?

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

Public Prosecutor: This is your statement signed by you, it is clearly written Gjelosh Krasniqi Nepole 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 Gjelosh Krasniqi from Napol village and then added and I didn't recognised the other soldiers, the meaning of this sentence is that you recognised Gjelosh Krasniqi and that you knew him since you said that he was from Napol 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 Gjelosh 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, Gjelosh 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 Gjelosh.

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

Bekim Luli: Yes the weapon.

Presiding Judge: So did you see both 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...⁴

...

Ferdinando Buatier: In the beginning, you said there is some sort of relationship with you and Mr. Gjelosh Krasniqi. Is that correct, or am I wrong?

Bekim Luli: That is wrong

⁴ Extract from the Minutes of the Main Trial of 12.03.2009, pages 14 – 17.

Ferdinando Buatier: I understand. Can you tell us how many people you saw that night?

Bekim Luli: That night there were 5 people.

Ferdinando Buatier: You saw him that night for the first time?

Bekim Luli: I did not recognise him

Ferdinando Buatier: When was the first time you saw him?

Bekim Luli: Here in Court.

Ferdinando Buatier: Going back to the person who named himself Gjelosh on 24th March 1999. Again maybe I didn't follow before, but did you see him after the events? Or you didn't see him any more?

Bekim Luli: No.

Ferdinando Buatier: Could you describe the person that named himself Gjelosh, physically, from what you remember?

Bekim Luli: 10 years have passed. He was a bit short and a little chubby. Now 10 years have passed.

Ferdinando Buatier: This person who named himself Gjelosh in March 1999. Was he the leader of this small group of soldiers?

Bekim Luli: I do not know. I just heard that person speaking.

Ferdinando Buatier: Was he the person who spoke?

Bekim Luli: Just this person. As far as I was there.

Ferdinando Buatier: Do you remember if he told other soldiers what to do?

Bekim Luli: I don't remember that.

Presiding Judge: A clarification. When this group of people wearing uniforms took away Pashk Luli, did the person presenting himself as Gjelosh say anything?

Bekim Luli: He just said "I will take him to the village and I will return him". But I was not there.

Presiding Judge: But simply go to the village or go to the village in order to do something?

Bekim Luli He said "we will take him to the village to collect some weapons".

1.3 Summary

In his statement to UNMIK police on 16 March 2008 the First Defendant said one of the soldiers was Gjelosh Krasniqi from the village of Nepole. He said he didn't recognise the others. Clearly the First Defendant knew Gjelosh Krasniqi or, at the very least, recognised that person as Gjelosh Krasniqi.

When he testified on 12 March 2009 the First Defendant denied he knew Gjelosh Krasniqi or that he had identified him. That was a clear contradiction with his prior statements.

When challenged about that contradiction, the First Defendant alleged that part of the statement was a "mutilation" - a fabrication. He denied the fact he had identified Gjelosh Krasniqi. The statement was written in Albanian and signed by the First Defendant.

The Court finds that the testimony the First Defendant gave before the Court on 12 March 2009 was false in several material respects. His testimony contradicted his prior statements. In particular, the First Defendant testified that on 24 March 1999 he did not know Gjelosh Krasniqi. He said a person simply presented himself as Gjelosh Krasniqi. That was a lie. It is clear from his prior statement that he knew Gjelosh Krasniqi and that he was from the village of Nepole.

The Court finds the First Defendant gave a false statement when he testified before the Court on 12 March 2009 in the case of Gjelosh Krasniqi.

2. The Second Defendant

The Second Defendant testified before the District Court of Peja in the case of Gjelosh Krasniqi on 17 March 2009⁵.

⁵ Exhibit P3

Prior to his testimony before that Court, on 16 March 2008 the First Defendant gave a statement to UNMIK police relating to the facts in issue therein.

The Indictment alleged the Second Defendant gave a false statement when he testified before the Court on 17 March 2009, thereby committing an offence under Article 307 (1) of the CCK.

It was the Prosecution case that the testimony the Second Defendant gave before the Court on 17 March 2009 was, in several important material respects, false and contradicted his prior statements.

2.1 Statement given to the UNMIK Police on 16 March 2008

The Second Defendant cannot read or write. The statement was written in Albanian and signed by the Second Defendant. The Defendant was present when his brother was interviewed. The Second Defendants statement was read to him prior to his signing it.

In his statement the Second Defendant adopted the statement of his brother Bekim Luli that on 24 March 1999 Gjesh Krasniqi from Nepole village, together with other KLA soldiers, had taken Pashk Luli.

Furthermore, he stated that, after the war, when he was working in as a security guard at the Alfa Petrol Station in Doblibare village, Gjesh Krasniqi stopped the car he was driving and asked him where Lusi (the owner of the gas station) was. He replied that Lusi was not there whereupon Gjesh Krasniqi stated that if he got out of the car he "destroy these pumps, I'll burn them".

2.2 Testimony before the Court on 17 March 2009

The Second Defendant recalled giving a statement to police and stated that he had agreed with the statement given by Bekim Luli.

He testified that on 24 March 1999 he was in the house of his uncle Nikoll Luli when five KLA soldiers in military uniforms entered the yard. He described the soldier who

appeared to be the leader as short and chubby. He described Pashk Luli being taken by the soldiers.

He denied having recognized Gjelosh Krashniqi on the night in issue and testified that one of the soldiers simply presented himself as Gjelosh Krasniqi.

The Second Defendant was cross-examined about the contradictions between his testimony before the Court and his statement of 16 March 2008.

Public Prosecutor: I would like you to think back to last March on the 16th, 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 16th 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.⁶

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 Gjesh 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

⁶ Extract from the minutes of the main trial dated 17.03.2009, pages 5 – 7.

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 16th. 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 Gjeloš Krasniqi, why did you say on the 16th that Gjeloš 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.

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.⁷

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?

⁷ Extract from the minutes of the main trial dated 17.03.2009, pages 8 – 10.

Engjell Luli: He talked to me from the street.

Public Prosecutor: What did you say?

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: Gjelosh 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: Maybe 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.⁸

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 16th March 2008 you said that "my uncle Pashk Luli was taken by Gjelosh Krasniqi together with other KLA soldiers." You said this on the 16th March 2008. Now, what is your memory?

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

Presiding Judge: So the persons presenting himself as Gjelosh 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 Gjelosh Krasniqi, how could you recognise these uniforms?

⁸ Extract from the minutes of the main trial dated 17.03.2009, pages 12 – 14.

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?

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.⁹

2.3 Summary

In his statement of 16 March 2008 the Second Defendant adopted the statement of his brother Bekim Luli.

Furthermore, he stated that, after the war, when he was working in as a security guard at the Alfa Petrol Station in Doblbare village, Gjeloš Krasniqi stopped the car he was driving and asked him where the owner of the petrol station was. He replied the owner was not there whereupon Gjeloš Krasniqi said that if he got out of the car he

⁹ Extract from the minutes of the main trial dated 17.03.2009, pages 21 – 22.

"destroy these pumps, I'll burn them".

However, when he testified on 17 March 2009 the Second Defendant denied having recognised Gjelosh Krasniqi on 24 March 1999. He said one of the soldiers simply identified himself as Gjelosh Krasniqi. He described the soldier who appeared to be the leader as short and chubby.

It is clear from his prior statement that he knew Gjelosh Krasniqi from the village of Nepole.

Furthermore, although the incident at the petrol station occurred after the war it is clear from the Second Defendants statement that the he is referring to the same person he says was present on 24 March 1999 and whom he identified as Gjelosh Krasniqi.

The Court finds that the testimony the Second Defendant gave before the Court on 17 March 2009 was false in several material respects. His testimony contradicted his prior statement. In particular, the Second Defendant testified that on 24 March 1999 he did not know Gjelosh Krasniqi. He said a person simply presented himself as Gjelosh Krasniqi. That was a lie. He knew Gjelosh Krasniqi from the village of Nepole. It was the same person with whom he had spoken at the the petrol station after the war.

3. The Third Defendant

The Third Defendant testified before the District Court of Peja in the case of Gjelosh Krasniqi on 17 of March 2009¹⁰.

Prior to his testimony before that Court, on 16 January 2008 the Third Defendant gave a statement to UNMIK police relating to the facts in issue therein.

The Indictment alleged the Third Defendant gave a false statement when he testified before the Court on 17 March 2009, thereby committing an offence under Article 307 (1) of the CCK.

It was the Prosecution case that the testimony the Third Defendant gave before the Court on 17 March 2009 was, in

¹⁰ Exhibit P

several important material respects, false and contradicted his prior statements.

3.1 Statement given to the UNMIK Police on 16 January 2008

The Third Defendant stated that on 24 March 1999 at approximately 8pm Pashk Luli's wife, Zoja, together with Gjergj Lulis wife Tereza, came to his house to get shelter from the bombing.

The Third Defendant, together with his father, went to the house of Nikolle Luli.

At approximately 8.30pm Nikolla's son, Prenk, informed them Pashk Luli had been taken away. He described seeing a soldier in KLA uniform with KLA insignia. He said he did not recognise that soldier.

He stated that at approximately 11.30pm he heard a family member say "Our uncle is back". He went outside and saw Gjelosh Krasniqi together with three other soldiers in the yard. He recalled Gjelosh Krasniqi say to Pashk Luli "Stand up and come with us".

The statement was written in Albanian and signed by the Third Defendant.

3.2 Testimony before the Court on 17 March 2009

The Third Defendant testified that on 24 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 Pashk Luli had been taken away.

He described going into the courtyard of the house where he met his cousins who told him that Pashk Luli was taken away. He said he did not see by whom. He said he went back inside the house to watch TV.

Some time later Pashk Luli returned accompanied by three or four KLA soldiers. He said he did not recognise any of the soldiers.

The Third Defendant was cross-examined about the contradictions between his testimony before the Court and

his statement of 16 January 2008.

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 or 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.¹¹

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.

¹¹ Extract from the Minutes of the Main Trial of 17.03.2009, pages 48 – 49.

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."

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.¹²

...

Public Prosecutor: You said somebody spoke the words: "Gjelosh Krasniqi", is that right?

Prenk Luli: Yes.

Public Prosecutor: Who was it that spoke those words?

Prenk Luli: I do not know.

Public Prosecutor: At the same time, you said you heard very well that Gjelosh said: "Stand up and come with us." How do you explain that? How do you know

¹² Extract from the Minutes of the Main Trial of 17.03.2009, pages 49 – 51.

the voice of Gjelosh so well and not the voice of someone else?

Prenk Luli: I do not know the voice of Gjelosh.

Public Prosecutor: That is contrary to what you said in the statement.

Prenk Luli: I am telling you what I said now and what is written in the statement, I cannot know.

Public Prosecutor: You are trying to get away from your statement aren't you?

Prenk Luli: I know what I said.

...

Haxhi Millaku: Can I ask the witness to turn around and face the defendant and tell us if he has ever seen him before.

Presiding Judge: Yes.

Witness turns around to face the defendant.

Haxhi Millaku: Have you ever seen this man before?

Prenk Luli: I have not seen him.

Haxhi Millaku: Thank you.

3.3 Summary

The Third Defendant testified that when the soldiers first arrived he did not recognize any of them. That is consistent with the statement he gave to UNMIK police on 16 January 2008. However, he further testified that when the soldiers later returned with Pashk Luli he again did not recognise any of the soldiers. That contradicted his prior statement.

In the statement he gave to UNMIK police on 16 January 2008 he said that at approximately 11.30pm he went outside and saw Gjelosh Krasniqi together with three other soldiers in the yard. He recalled Gjelosh Krasniqi say to Pashk Luli

"Stand up and come with us".

The Third Defendants statement was in Albanian and he had signed it.

When confronted with the contradictions between his statement and his testimony the Third Defendant denied that he had mentioned an armed person wearing a KLA uniform or that he had seen KLA insignia. In fact, he initially denied seeing anyone in the yard.

The Third Defendant denied having identified Gjelosh Krasniqi. He said one of the soldiers simply "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". The denial was emphatic. Later in his testimony the Third Defendant denied the soldier had even presented himself as Gjelosh Krasniqi and attributed this to someone else, whom he could not identify, who had stated that Pashk Luli had been taken by Gjelosh Krasniqi.

The Third Defendants testimony contained so many internal inconsistencies and so contradicted his prior statement that it was simply untenable.

The Court finds that the testimony the Third Defendant gave before the Court on 17 March 2009 was false in several material respects. His testimony contradicted his prior statement.

Having regard to all the circumstances of this case the Court is satisfied the sentences are reasonable and proportionate.

For the reasons stated herein I hereby render this Judgment.

Dated this 16 day of September 2010.



Judge Malcolm Simmons
Presiding Judge

Robina Struthers
Court Recorder

LEGAL REMEDY: Pursuant to Article 398(1) of the Criminal Procedure Code of Kosovo, the authorized persons may file an appeal of this Judgment within fifteen (15) days of the day the copy of the judgment has been served.