

1 Monday, 15 April 2024
2 [Open session]
3 [Closing Statements]
4 [The accused appeared via videolink]
5 --- Upon commencing at 9.30 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning, and welcome to
7 today's hearing.

8 Court Officer, can you please call the case.

9 THE COURT OFFICER: Good morning, Your Honours. This is case
10 KSC-BC-2020-04, The Specialist Prosecutor versus Pjeter Shala.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 First of all, I kindly ask you to indicate who's present for
13 today's hearing, starting with the Specialist Prosecutor's Office.

14 MR. DE MINICIS: Good morning, Your Honours, and good morning to
15 everyone else. Today for the SPO, we have the Specialist Prosecutor,
16 Kimberly West; our Case Manager, Line Pedersen; our legal interns
17 Xiao Guozhen and Ella Palsenbarg. And then, in the first row, we
18 have Gaia Pergolo, Eva Wyler, and myself, Filippo de Minicis.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 Victims' Counsel, you have the floor.

21 MR. LAWS: Good morning, Your Honours. I am Simon Laws, counsel
22 for the victims in this case, together with my co-counsel
23 Maria Radziejowska.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

25 Defence, please, your turn.

1 MR. GILISSEN: Thank you very much. Good morning, Your Honours.
2 So we are here with Mr. Pjeter Shala, as usual, from videolink from
3 the detention centre. We are here with my two co-counsel,
4 Mr. Hedi Aouini and Ms. Leto Cariolou; the Case Manager,
5 Ms. Dzeneta Petravica; an assistant legal officer, Ms. Kailin Chen;
6 and two assistant legal officer, Juliet Kolbe -- I'm sorry, one legal
7 assistant officer, Juliet Kolbe; and legal assistant, Alana
8 Goncalves; including Mr. Basile Mulera, our legal intern. Thank you
9 very much.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, counsel.

11 Mr. Shala, can you confirm that you hear me well?

12 THE ACCUSED: [via videolink] [Interpretation] Good morning,
13 everybody. I can hear you very well.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

15 Today we begin with the closing statements. We follow the
16 agenda as set out in the Panel's decision on the closing statements
17 and related matters, which is filing 824.

18 We will start with the closing statements of the Specialist
19 Prosecutor's Office.

20 This hearing will be held in open session unless otherwise
21 requested by the parties or the Victims' Counsel or decided by the
22 Panel.

23 Mindful of the principle of publicity, I repeat our directions
24 that parties and Victims' Counsel, that they should present their
25 closing statements as much as possible in public. However, in order

1 to ensure the protection of the victims and witnesses, parts of this
2 hearing will have to be conducted in a private or closed session.
3 And to this end, I remind you to give me prior notice should, for the
4 purposes of your submissions, you would need a private or closed
5 session. Yes? Very well.

6 I also -- and this is an important point. I also remind you to
7 inform me and the Registry that if there are visual aids which cannot
8 be broadcasted to the public, and also to indicate to us when a
9 document should not be broadcasted anymore. The reason is because it
10 has repercussions for what can be shown to the public if we are
11 broadcasting documents. So that's an important point, because then
12 there can be no broadcasting of the courtroom.

13 Not least, I remind also the parties and Victims' Counsel to
14 adhere to the in-court procedure for requesting redactions. We have
15 been doing that throughout the trial.

16 And before we proceed with the closing statements of the
17 Specialist Prosecutor, we want to address two points with regard to
18 the Defence.

19 First, the Panel notes that the Defence filed its trial brief,
20 which is filing 821, on 26 March of this year. We note that is one
21 day after the deadline set by the Panel. This was due to technical
22 difficulties, as explained by the Defence. And given its importance
23 of the final trial brief and because of good cause, we recognise the
24 said filing as valid, pursuant to Rule 9(5) (b) of the rules. So that
25 is set.

1 Another point is that we noted that, in the final trial brief,
2 the Defence reserves its right to make additional submissions on
3 sentencing after conviction, if any, of course. And this is filing
4 821, paragraph 308. And the Panel draws the attention of the Defence
5 to our oral order of 25 October, and I refer you to the transcript of
6 that same date, and to be more concrete, that is page 3153, line 9,
7 to page 3156, line 24, according to which it has already decided that
8 in case of a conviction, it shall determine the appropriate sentence
9 with the pronouncement of the trial judgment in accordance with
10 Rule 159 of the rules.

11 And I trust that this is clear to you and that any submissions
12 of this nature should be made this week at the indicated time. And I
13 see you nodding, Defence counsel. Thank you.

14 This concludes the Panel's remarks. We can now begin with the
15 closing statements of the SPO.

16 You have been allocated five and a half hours. Please inform us
17 if there are any changes time-wise. And then for now, you have the
18 floor.

19 MR. DE MINICIS: Your Honours, when the accused left Albania for
20 a life in Belgium in 1999, perhaps he thought that he could walk away
21 from his crimes, from his victims, and leave it all behind him. But
22 there is no statute of limitations on war crimes.

23 Those who have committed war crimes, Your Honours, do not evade
24 responsibility, ever. They can be prosecuted wherever they are and
25 whenever they are found. It is thanks to this principle that we

1 could bring the accused before Your Honours today to face trial.
2 We're now asking Your Honours to find him guilty for the crimes he
3 committed.

4 This is the second war crimes case tried before this Court, the
5 second one that comes to a close, and it is a case about
6 accountability.

7 The victims of the accused's crimes, Your Honours, they could
8 not walk away. One of them died at the Kukes metal factory. The
9 others carry permanent physical scars and remain haunted by that
10 experience. For them, there was no forgetting. They and their
11 families have described to this Court the deep and enduring trauma
12 they suffered.

13 Most of the witnesses were not telling their story for the first
14 time. They had done so over many years, including in prior trials,
15 but they were willing to do it again, to relive these events, because
16 they still believe in the possibility of justice that this Court can
17 offer. They believe in the principle of accountability that has
18 brought the accused before this Court.

19 The charges in this case concern crimes committed between
20 approximately 17 May and 5 June 1999 in an old metal works factory in
21 the town of Kukes in the northern part of Albania. With only a few
22 exceptions, the victims were Kosovar Albanians.

23 Pjeter Shala, the accused in this case, is charged with the war
24 crimes of arbitrary detention, cruel treatment, torture, and murder.
25 During the indictment period, he was a member of the Kosovo

1 Liberation Army.

2 The victims in this case, both women and men, were targeted by
3 the accused and certain other members of the Kosovo Liberation Army
4 on vague and unproven accusations of being traitors or spies. They
5 were apprehended when they were at their most vulnerable. They were
6 kidnapped on the street after fleeing their homes, they were picked
7 up from refugee camps where they had found shelter in Albania or
8 arrested as they were trying to join the Kosovo Liberation Army.

9 They were deprived of their freedom and arbitrarily detained at
10 the Kukes metal factory where they were kept in inhumane conditions
11 and mistreated by the accused and other perpetrators. They were made
12 to live in fear for days and weeks. Their detention, Your Honours,
13 was entirely illegal under international humanitarian law. The
14 violence used against them, however, was not only criminal, but it
15 was against any form of human decency.

16 One of these victims was a young Kosovar Albanian who was
17 arrested, severely beaten for days, and then murdered. He posed no
18 danger at all to the perpetrators, who nevertheless decided to take
19 his life. The accused was one of these perpetrators.

20 The murder victim, Your Honours, did not live to see the end of
21 the war. He could not celebrate it with his family, his friends, and
22 his loved ones. Nor could he see what awaited his country, Kosovo,
23 after the war. The accused and the other perpetrators took this
24 opportunity away from him. They denied him the right to live his
25 life, to work, to travel, to love, maybe have children, and to grow

1 old. He could not stand here before Your Honours to tell you what
2 they did to him, how frightening that was, and how much it hurt.

3 The other victims, those who survived, bore the physical and
4 psychological consequences of their mistreatment for years after that
5 experience. Some of them still do. Memories of their detention in
6 Kukes haunt them in their sleep as well as when they're awake. 25
7 years after the facts in this case, Your Honours, these memories
8 still affect their abilities to live normal lives, to hold a job, or
9 simply to have trust in other people.

10 The Prosecution case is that the accused took part in these
11 crimes in concert with others, but also individually, with the
12 required intent. His participation was continued, significant, and
13 extremely violent. Your Honours will hear more about it in the
14 course of our presentation.

15 The Prosecution case rests on multiple and solid pillars. The
16 evidence on the accused's responsibility comes from different
17 witnesses whose evidence is consistent and mutually corroborating.
18 In addition to their evidence, Your Honours, we have the statements
19 of the accused himself. He admitted that he was in Kukes during the
20 indictment period. He admitted taking part in some of the crimes,
21 although his admissions in that regard were only partial. Then we
22 have the evidence of KLA members who were at the factory and saw the
23 accused there at the same time that the victims said he took part in
24 their mistreatment.

25 Your Honours, it all fits; it all shows that he did it.

1 Not all the victims, unfortunately, had the opportunity to
2 testify here. Some sadly have died before this trial, but their
3 stories survive in their prior statements, in the accounts of their
4 fellow detainees, and in the testimony of their family members.
5 Indeed, their suffering is reflected in the partial admissions of the
6 accused.

7 Therefore, Your Honours, and we want to make it clear, as we
8 have made it clear in our trial brief, we are not asking this Court
9 to find the accused guilty solely, or to any decisive extent, on
10 evidence the accused could not confront at this trial. The Court has
11 heard from multiple, mutually corroborated witnesses which, together
12 with other evidence, prove the Prosecution case beyond reasonable
13 doubt.

14 Your Honours, how does the Defence respond to the charges and to
15 the evidence presented in support of these charges?

16 The Defence case is that the accused was a freedom fighter. He
17 left Belgium in 1999 to go to Albania to fight for the freedom of his
18 country. He was only occasionally at the Kukes metal factory where
19 he went to take provisions, but then left back for the front lines.
20 The accused, the Defence claims, had nothing to do with the crimes
21 he's charged with.

22 The Defence case is that the witnesses who identify the accused
23 as one of the perpetrators are either lying, wrong, or both. All of
24 them. It doesn't matter that the accused himself admitted that he
25 did, in fact, beat some of these victims, that he said he doesn't

1 regret it, and that he would do it again.

2 Defence witnesses, Your Honours, claim that they never saw
3 Pjeter Shala at the Kukes metal factory or even that they did not
4 even know who he was. But these, Your Honours, are the same
5 witnesses who never saw the detention building in the middle of the
6 Kukes metal factory. A building they passed in front of for months -
7 months - during their service with the KLA, impossible to overlook,
8 as you will hear and see from the presentation of my colleagues that
9 will follow mine. They never saw this building as they never saw the
10 accused.

11 The evidence before Your Honours shows that these witnesses were
12 not telling the truth. The victims, however, they didn't lie. Their
13 stories match and are corroborated by the statements of the accused.

14 The sentence requested by the SPO is the result of careful
15 consideration of all the relevant factors but especially the conduct
16 of the accused, of his own actions and of the consequences they
17 caused.

18 His contributions to the crimes, Your Honours, was significant.
19 He displayed a sickening degree of violence against his terrified
20 victims. And, Your Honours, beating people who can't defend
21 themselves is not fighting. It's an unjustifiable and cowardly act
22 of violence.

23 The accused did nothing to alleviate their suffering. He could
24 have, at the very least, walked away from their carnage but he
25 didn't. He beat them one after the other. And time, Your Honours,

1 hasn't changed his propensity to violence. It's for all these
2 reasons that he deserves severe punishment.

3 Ms. Wyler, to my left, will now show you and the public the
4 locations within the Kukes metal factory where the accused and the
5 other perpetrators committed these crimes. She will show you how the
6 treatment of the victims amounted to the crimes of arbitrary
7 detention, cruel treatment, and torture.

8 Ms. Pergolo will then discuss the incidents set out in
9 Sections V.E and V.F of the Prosecution brief. She will show you
10 that murder was committed. She will address witness credibility and
11 respond to specific Defence allegations on that matter.

12 I will then take the floor again to illustrate the timeline of
13 the accused's involvement in the charged crimes, discuss his criminal
14 liability under the applicable law. And, finally, Your Honours, in
15 the end, I will respond to certain Defence allegations with regard to
16 the credibility of Trial Witness 1. I will do that in the end
17 because part of that, a large part, will need to be done in private
18 session. So rather than interrupting the publicity of my
19 presentation, I prefer to do that in the end so that we can lump in
20 the private session in one part.

21 PRESIDING JUDGE VELDT-FOGLIA: Very good.

22 MR. DE MINICIS: Ms. Wyler will now take the floor.

23 MS. WYLER: Good morning, Your Honours and colleagues. In the
24 next approximately 30 minutes, I will take us and the public to the
25 place where the ordeals of the victims of this case happened, and I

1 will guide you through the premises of the Kukes metal factory which,
2 in 1999, became the crime site of arbitrary detention, cruel
3 treatment, torture, and murder.

4 The detailed accounts of those who survived their mistreatment
5 and torture at the Kukes metal factory are provided in the SPO's
6 final trial brief. Before Your Honours and the public today, I will
7 present a brief outline of what happened in 1999 at the Kukes metal
8 factory and what the evidence establishes in regard to the four
9 counts charged in the SPO's indictment.

10 Throughout this trial, Your Honours have heard the account of
11 witnesses and victims who courageously came forward to testify,
12 describing how they, or persons dear to them, were taken to the Kukes
13 metal factory and detained there in inhumane conditions. They
14 described repeated abuse, most brutal beatings. Their stories are
15 coherent, they are consistent, and they are amply corroborated by
16 each other. Their evidence establishes all of the elements of the
17 crimes charged in the indictment and the responsibility of the
18 accused Pjeter Shala for those crimes.

19 The crimes charged in this case all took place in Kukes, a town
20 in Albania located approximately 20 kilometres from the Kosovo
21 border, in their local KLA headquarter, now marked with a red dot.
22 The KLA headquarter was set in the premises of an old metal works
23 factory. Located at the road going to Krume, now marked in red, the
24 Kukes metal factory had an entry gate, now marked with a red arrow.

25 The KLA used these premises as a mobilisation and logistics

1 centre for military operations conducted, among others, between the
2 border of Kosovo and in Albania. However, as set out in the SPO's
3 final trial brief, some KLA members, which included the accused, also
4 used these premises for the commission of crimes against at least 18
5 victims. None of these victims was taking part in the hostilities at
6 the time of their arrest, of their detention or mistreatment, or for
7 one of the detainees, when he was killed. None of them posed any
8 military threat to the KLA. In any event, once they were in the
9 custody of their captors, they were all entitled to the protections
10 afforded to them by Common Article III of the Geneva Conventions.

11 The victims were arrested, abducted, and taken to the Kukes
12 metal factory where they were detained - some of them for a few days,
13 some of them for over a month. No reasons for their arrest were
14 provided, besides some generic and unsubstantiated allegations that
15 they were traitors, collaborators, or spies. While they were
16 repeatedly and harshly interrogated, they were never brought before a
17 judge or other competent authority or otherwise given the possibility
18 to challenge their detention. No basic procedural guarantees were
19 afforded to them. And I refer to paragraphs 328 to 337 of the SPO's
20 final trial brief for further details. This made their detention
21 arbitrary and thus illegal.

22 At the Kukes metal factory, the crimes charged in the indictment
23 principally took place in two locations: The building referred to as
24 the command building, now visible on the lower right of the picture,
25 and the detention building, now circled in red in the upper centre of

1 this aerial photograph. In these two buildings, the victims of this
2 case endured a horror beyond words.

3 Let us have a closer look at these locations with the help of
4 the SPO's 3D model of the premises of the Kukes metal factory.

5 To get to the command building, we enter the Kukes metal factory
6 through its main gate. It is the same entry gate the victims passed
7 through when they were brought to the Kukes metal factory. Once
8 there, the command building was on the left-hand side. It is a
9 two-storey building, now visible on the picture shown on the right
10 lower corner, where KLA officers and soldiers slept and had office
11 space and where they detained and mistreated their detainees. The
12 accused has described this building as "the very heart of the
13 headquarters."

14 The door to the command building, now marked in red and enlarged
15 on this picture, led into a small entrance area. Opposite the door,
16 across this entrance area, there was a staircase leading up to the
17 1st floor. You can now see the view down on the staircase from this
18 1st floor. The wall you can see on the left-hand side of this
19 picture is the wall the staircase shared with the detention room in
20 the command building, which we can see here.

21 This was the room where Witness 1448 was taken to when he was
22 brought to the Kukes metal factory on or around 18 May 1999. 1448, a
23 Kosovo Albanian, an immigrant worker in Germany, had travelled to
24 Albania to visit his family but was arrested by KLA soldiers before
25 he could reach them. On this sketch of the command building 1448

1 made, now visible on the screen, he marked this room as the "prison
2 in the attic."

3 Witness 4733 and the murder victim, both fellow Kosovar
4 Albanians, eventually joined 1448 in this room on or around 20 May
5 1999. They were detained in this dark, narrow space with no windows,
6 no insulation, with some dirty blankets and bottles filled with
7 urine. The slanting roof did not allow the detainees to stand
8 upright.

9 One late evening, it was around 20 May 1999, 4733 was taken out
10 of this room. He was taken down the stairs, through the ground floor
11 corridor to an office room, to a night of most brutal beatings.

12 Trial Witness 1, who was taken to the same room that very night,
13 he marked this office room on a picture shown to him during his
14 testimony before Your Honours, and he marked it with a blue dot now
15 visible on your screen. He identified it on the ground floor as "the
16 third office."

17 1448, taken again to the very same room that very night, also
18 indicated the location of this office on the sketch he made of the
19 command building, and he also marked the third room on the ground
20 floor, calling it the "beating room."

21 The inside of this very room can be seen on a video shot by
22 Defence Witness 3887 on or around 2 June 1999. 3887 identified the
23 room where he made that video on a picture shown to him of the
24 command building during his testimony before Your Honours, and he
25 marked it as a number 2. Clearly, the same location as indicated by

1 the victims. For comparison, you can see Trial Witness 1's marking
2 on the right down corner.

3 The video of which I'm going to show you a short sequence of
4 shows a gathering of approximately 10 KLA soldiers.

5 [Video-clip played]

6 MS. WYLER: It shows the interior of that room. We can see a
7 bunkbed. We can see a piece of furniture in the corner, a table in
8 the middle of the room, and chairs or benches to sit on.

9 When 4733 was brought to that room on or about 20 May 1999, he
10 described a gathering similar to what we just saw in the video but of
11 different KLA soldiers. The group that night included, among others,
12 the accused, Sabit Geci, and Xhemshit Krasniqi. 4733 recalled in his
13 previous statements, for example, in his 2002 ICTY witness statement,
14 on page 2, that when he entered the room, the KLA soldiers were
15 drinking. They sarcastically welcomed him to a party in his honour
16 and sat him down to what unfolded as a night of most brutal beatings.
17 That night, 4733, Trial Witness 1, 1448, the murder victim, and
18 further detainees were subjected to most brutal violence.

19 Most of the victims of that night were fellow Kosovo Albanians.
20 Accused of having ties with Serb institutions, being collaborators or
21 spies, they were beaten with whatever the KLA soldiers present could
22 get a hold on - baseball bats, metal bars, rubber batons, and guns.
23 Their tormentors hit the victims as hard as they could, all over
24 their bodies, until they lost consciousness. One victim vividly
25 remembers that the accused was smiling as he hit the first blow

1 against him. And 4733 stated that the accused hit him "like a
2 horse."

3 When the victims fainted, the perpetrators threw water at them
4 to make them regain consciousness, just to continue their
5 mistreatment. They were covered in blood. The beatings inflicted on
6 them caused them unbelievable pain. And yet to make them suffer even
7 more, their tormentors threw salt in their eyes and wounds.

8 In addition to the beatings, 4733 was repeatedly burned with
9 cigarettes and they pushed a baton in his mouth, breaking his teeth.
10 With another victim, the perpetrators placed a plastic bag over his
11 head, tied it around his neck, and they poured water over his head.

12 In all this misery, the victims were deliberately made to
13 witness each other's mistreatment. 1448 was made to watch the
14 torture of 4733, and he remembered that "it looked as if all of them
15 were in some sort of competition to beat and humiliate ..."

16 This night, as in other instances, as my colleague Ms. Pergolo
17 will show you in a bit, the victims were subjected to repeated,
18 lengthy mistreatments by the accused and his co-perpetrators with the
19 aim to inflict maximum pain. At the same time, they were humiliating
20 and accusing the victims to be spies and collaborators and
21 interrogating them on these baseless accusations. The perpetrators
22 continued their abuse in spite of the visible injuries, the blood,
23 and horrendous conditions of their victims, who fainted, some of them
24 falling in and out of consciousness. As pointed out in the SPO's
25 final trial brief in paragraphs 349 to 355, this also qualifies their

1 mistreatments as torture.

2 All of this evidence on the 20 May 1999 incident is amply
3 corroborated, as set out in the SPO's final trial brief, Section D.
4 In particular, the accused's participation in this incident. First
5 and foremost, the accused himself has made partial admissions
6 concerning his participation in this very incident. He specifically
7 admitted to beating two of the victims, as set out in paragraphs 204
8 to 206 of the SPO's final trial brief. In addition, Trial Witness 1,
9 1448, and 4733 all corroborate repeatedly the presence of the accused
10 that night and his violent contribution to the mistreatment of each
11 of them. 1448 stated that "Wolf," "he hit us all."

12 The Defence tries to cast doubt on the fact that Trial
13 Witness 1, 1448, and 4733 witnessed each other's martyrism during
14 that night, in particular by pointing to alleged differences in
15 4733's testimonies in their final trial brief, paragraph 132.

16 From the details both Trial Witness 1 and 4733 recalled - and as
17 discussed in paragraphs 135, and 140 to 141 of the Prosecution final
18 trial brief - it is clear that at that moment they both were in the
19 same room. At that point in time, 4733 had already been severely
20 beaten up to the point where he lost consciousness. He was bleeding
21 profusely from a wound on his head. And when shortly after he was
22 taken out of the room, he had been reduced to a terrible state.
23 Given his condition at this moment, it is understandable that 4733
24 may have had some confusion as to the exact number of other victims
25 who were in the room with him when he was mistreated. Unlike what is

1 submitted by the Defence, this does not affect the credibility or
2 reliability of 4733's evidence.

3 After being beaten in the office room on the ground floor of the
4 command building, 4733, 1448, and the murder victim were brought
5 upstairs into the detention room of the command building, while Trial
6 Witness 1 was taken to the detention building. The three detainees
7 remaining in the command building at that moment would join him there
8 in the days afterwards. Let us follow them.

9 We are leaving the command building and pass the large
10 warehouses surrounding it. Across the courtyard of the command
11 building, the detention building was situated in the middle of the
12 premises. The detention building is the second main location where
13 the victims of this case were detained and mistreated. You can now
14 see a picture of how the building looked from its outside.

15 In the inside, the detention building had three rooms - two
16 rooms to hold detainees, marked on this sketch by Trial Witness 1 as
17 room number 1 and 3; and one room to torture detainees, marked as
18 number 2.

19 On the photograph, we can see the window of room 1 going out on
20 the courtyard, now circled in red on the sketch and the picture.
21 Marked in green now is the entrance door to the detention building,
22 leading to the corridor between room 1 and 2. Trial Witness 1 marked
23 it at the very same spot as Trial Witness 10 did in his testimony
24 before Your Honours on 1 May 2023 at page 1055 of the transcript and
25 marked on REG00950.

1 In the detention building, the ordeal of the victims continued.
2 The detention conditions in the detention building were inhumane.
3 The detainees were kept in small rooms, in unbearable hot
4 temperatures. Access to water in tanks outside the building was
5 dependent on the goodwill of KLA soldiers, who kicked and stabbed
6 them on their way to the tanks. A similar treatment awaited them
7 when they needed to use the extremely dirty toilets. So they tried
8 to limit the use of these facilities and rather stayed thirsty than
9 to face further mistreatment.

10 In room 1, there were up to 13 detainees held at the same time,
11 crammed into the space of a room with about 3 to 5 metres per side.
12 There was no furniture. The detainees slept either on the broken
13 concrete floor. For a limited time, they had some thin mattresses or
14 blankets. Or they would lean against the wall and using their hands
15 as pillows. For them, food was scarce. Some days they were given a
16 boiled egg, a fish, or leftovers of what the KLA soldiers had eaten.
17 Some days they did not eat anything at all. They could not wash
18 themselves or change clothes. 4733 remembered the odour, that they
19 smelled "like animals."

20 In room 3, at least six detainees were kept. With one
21 exception, the detainees slept on the concrete floor with only some
22 blankets to put on it. Differently from those detained in room 1,
23 the detainees here were provided with food, even with only a watery
24 soup.

25 Some detainees were subjected to forced labour, to unload trucks

1 or cleaning the dirty toilets.

2 In their final trial brief, the Defence admits that the
3 conditions imposed on the detainees at the Kukes metal factory were
4 "poor," but claim that this was the general standard at the Kukes
5 metal factory and that the KLA soldiers had to live in similar
6 conditions. The list of allegedly comparable conditions for KLA
7 soldiers in paragraphs 107 to 109 of the Defence final trial brief
8 does not even come close to what the detainees endured.

9 The Defence compares detainees kept against their will,
10 defencelessly exposed to the whims of their tormentors, with KLA
11 soldiers staying in Kukes of their own will and able to leave the
12 Kukes metal factory whenever they liked, and to cater to their own
13 needs elsewhere. They compare starving detainees with KLA soldiers
14 not having access to properly cooked food for several days, so they
15 only had the choice to eat out of tins or dry food. They compared
16 detainees frightened to use the toilets or to get water due to the
17 harassment that awaited them on their way there and only able to
18 access such facilities with the permission of their captors with the
19 free access of KLA soldiers to sanitary installations, even without
20 doors. They compared detainees crammed into a small room where they
21 could not stand upright or lay down at the same time, on nothing but
22 a few blankets, with KLA soldiers free to move around, resting on
23 mattresses and sleeping bags.

24 To justify the misery imposed on the detainees, the Defence also
25 resorts to a general supply issue, naming specifically shortages of

1 water and electricity. The miserable conditions imposed on the
2 detainees at the Kukes metal factory were not dictated by any
3 external factors but intentionally set and maintained. The hardships
4 were imposed on them by the perpetrators who decided to hold them in
5 unsuitable rooms, in unbearable temperatures, without any possibility
6 to rest, and to make their access to water supplies or sanitary
7 facilities a gauntlet.

8 The Defence's claim in paragraphs 110 and 111 of their final
9 trial brief that detainees at the Kukes metal factory generally had
10 access and were provided with medical care is a mischaracterisation
11 of the evidence. There was, indeed, an infirmary and medical staff
12 at the Kukes metal factory. That care, however, was not available to
13 the detainees. Or in the rare cases they received treatment, it was
14 thwarted by certain KLA soldiers, despite horrific injuries sustained
15 from beatings.

16 So when the deep wound inflicted on 4733's head during the
17 20 May 1999 incident was bandaged, for example, the KLA soldiers
18 torturing 4733 immediately cut the dressing off. 4733 was bandaged a
19 second time, but the bandage was cut again. Also, the medication
20 4733 received for his diabetes was immediately taken away from him by
21 KLA soldiers although they were aware of his condition.

22 None of the injuries the victims suffered during their
23 mistreatments were treated properly, leaving the victims with
24 life-long impairments. I will come back to that later.

25 For the murder victim, the denial of medical care had fatal

1 consequences, as my colleague Ms. Pergolo will outline later.

2 In any event, generally poor circumstances and shortages of
3 resources cannot justify inhumane detention conditions. If anything,
4 they rather demand the release of detainees. The Extraordinary
5 Chambers in the Courts of Cambodia held in their trial judgment in
6 case 002/02, dated 16 November 2018, in paragraphs 734 to 739, citing
7 also the ICTY jurisprudence, that "even when the circumstances at the
8 time of the commission of the crimes are difficult due to shortages
9 of resources, resources which are nonetheless available should be
10 provided and counter-measures adopted to mitigate the impact on the
11 victims." There is a minimum standard of treatment which needs to be
12 guaranteed in any circumstances. If this is not possible, victims
13 should not be put in position which exposes them to the violation of
14 their basic rights.

15 In addition to the miserable conditions and specific incidents
16 of 20 May 1999 just discussed or the mistreatments my colleague
17 Ms. Pergolo is going to touch upon shortly, the detainees in room 1
18 of the detention building were beaten, harassed, sleep deprived, and
19 threatened almost every day.

20 Just to give you a few examples. During these mistreatments,
21 Trial Witness 11 was punched so hard in the eye that the blow still
22 affected his sight in the year 2023. 4733 was kicked in his mouth,
23 breaking his teeth. Three Roma musicians from Prizren were "beaten
24 as if they were animals," in the words of 4733. And Trial Witness 1
25 was beaten up so severely that when he was brought back into the

1 unbearably hot room 1 of the detention building, he was seen
2 shivering.

3 The detainees were made to beat each other, including on their
4 genitals. They were deliberately made to witness the mistreatment of
5 their co-detainees in the detention room. And they could hear the
6 screams of detainees beaten outside of room 1. Detainees returning
7 from the harsh interrogations they were routinely taken out for
8 showed signs of beatings.

9 Throughout this trial, Your Honours have heard how the victims
10 suffered from the inhumane detention conditions and severe
11 mistreatments, how degrading it was, and how severe the physical and
12 mental harm was. Some of them are still suffering from this today.
13 Their evidence establishes beyond reasonable doubt that the accused
14 and other KLA members subjected those detained at the Kukes metal
15 factory to cruel treatment and torture.

16 The walls of the detention building saw incredible violence and
17 horror beyond words. While the victims of the events charged in this
18 case suffer or suffered a lifetime from the ordeals they went through
19 at the Kukes metal factory, the detention building itself no longer
20 exists. This picture shown to you, and now visible on the screen,
21 was taken in 2009. Since then, the building has been demolished and
22 the detention rooms were made to disappear. Today, only a small part
23 of it, now visible in the big picture on the screen in brick stones
24 at the very back of the right picture, is left.

25 We heard a number of Defence witnesses throughout this trial who

1 did not remember this detention building. Let's have a look and go
2 back to the aerial view of the premises.

3 On the aerial photograph, we can see that the ground on which
4 the buildings stood still shows the shadow of the detention building
5 that once was there. The blueprint of the Kukes metal factory, now
6 visible on the left side of the screen, leaves no doubt about the
7 existence of this building and its dimensions. If we align both the
8 blueprint and the aerial view northwards and put the blueprint over
9 the aerial photograph, a building appears aligning with the remaining
10 parts of the detention building visible on the aerial photograph and
11 with the same specific staggered contours as seen on the photograph
12 taken from its front in 2009. In the middle of the courtyard,
13 between the warehouses amply used by the KLA, beside their toilet
14 facilities, impossible to overlook, and just as described by the
15 victims.

16 I'm now handing over to my colleague Ms. Pergolo who will talk
17 about two specific incidents charged in this case.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

19 We will continue, as we used to do, till 11.00, and then we will
20 have a break a little bit before or a little bit after, just how it
21 fits with your presentation.

22 MS. PERGOLO: Good morning, Your Honours. Good morning to
23 everyone in and outside the courtroom.

24 I will continue our presentation on the crimes and locations by
25 discussing two incidents which have been charged in this case as

1 cruel treatment, torture, and murder.

2 For Your Honours and the other parties' and participants'
3 reference, the parts of our final trial brief relevant to these
4 topics can be found in Section V.E and V.F.

5 I will not repeat the detailed account of these incidents that
6 is set out in our brief. I will just give a brief summary overview
7 of them. I will then address specific challenges raised by the
8 Defence in relation to these events.

9 And in order to comply with protective measures that have been
10 ordered by this Panel, I request that we move into private session
11 for this part of my presentation. The accompanying visual
12 presentation, Your Honours, also should not be broadcasted to the
13 public.

14 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, your request is
15 to go now into private session?

16 MS. PERGOLO: Yes, Your Honours, please.

17 PRESIDING JUDGE VELDT-FOGLIA: Very well.

18 MS. PERGOLO: Thank you very much.

19 PRESIDING JUDGE VELDT-FOGLIA: Could you please bring us into
20 private session.

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18 [Open session]

19 THE COURT OFFICER: Your Honours, we are now in public session.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

21 Madam Prosecutor, I understood from your submissions that the
22 next part will take 30 minutes. So what we will do is to have a
23 break now for 30 minutes till ten minutes past 11.00, and then we
24 will proceed.

25 The hearing is adjourned.

1 --- Recess taken at 10.42 a.m.

2 --- On resuming at 11.12 a.m.

3 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

4 Let me see. Can you confirm that there have been no changes?

5 No, that's easy.

6 And then on this side?

7 MR. GILISSEN: Yes, a tiny change, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Please, you have the floor.

9 MR. GILISSEN: We have with us Ms. Anouk Pinaud, a legal intern.
10 Thank you very much.

11 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

12 Mr. Shala, welcome. Can you hear me fine?

13 THE ACCUSED: [via videolink] [Interpretation] Yes, I can hear
14 you very well.

15 PRESIDING JUDGE VELDT-FOGLIA: Good. Thank you. Very well.

16 Before I give the floor to the Specialist Prosecutor's Office,
17 the planning for this morning. We will be proceeding for one and a
18 half hours in principle, unless the submissions ask for a new change,
19 and then we will have a break. And depending on when we stop for
20 lunch, I will see how long the lunch break will be so that in the
21 afternoon we can have two sessions, but we always need to have a
22 small break in between if we have two sessions. So I take it as it
23 comes.

24 You have the floor, Madam Prosecutor. And if you want me to go
25 into private session, please tell me so.

1 MS. PERGOLO: Yes, Your Honours, please, if we could move into
2 private session. Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Very well.

4 Madam Court Officer, can you bring us into private session,
5 please.

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22 [Open session]

23 THE COURT OFFICER: Your Honours, we are now in public session.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

25 Madam Prosecutor, you may proceed.

1 MS. PERGOLO: Your Honours, in this next part of my
2 presentation, I will address matters concerning the credibility of
3 the witnesses who testified in this trial. First, I will deal with
4 the allegations of influencing and collusion between SPO witnesses.
5 Second, I will make some remarks on the credibility of the evidence
6 provided by the Defence witnesses.

7 In their final trial brief at paragraphs 257 to 263, the Defence
8 references the evidence of some SPO witnesses that they met after the
9 war, which they themselves relayed, and argued that "it is likely"
10 that the witnesses "discussed material facts in this case." The
11 Defence implies that these discussions led to the witnesses
12 influencing each other's evidence.

13 First, these submissions are entirely speculative. The Defence
14 offered no evidence that these normal interactions undermined the
15 truthfulness and the credibility of these witnesses' evidence.

16 Indeed, the fact that certain discrepancies exist in the
17 evidence of the witnesses shows that their accounts are genuine and
18 personal, and that there was no attempt to agree on one version of
19 the events to provide to the investigators. These discrepancies,
20 which do not affect their credibility, are due to the different
21 experiences of the victims, to each individual victim's personal
22 recollection of certain details of what happened at the Kukes metal
23 factory, which differs from that of the others, and to the passage of
24 time.

25 We have provided some examples of these discrepancies in our

1 final trial brief, Your Honours. For example, at paragraph 131 and
2 footnotes or 233, so I will not repeat this here.

3 Second, the Defence claims that the presence of Trial Witness 7
4 during the 2009 EULEX interview of 4733 evidently influenced his
5 evidence. Your Honours, this claim is simply bizarre.

6 Trial Witness 7's knowledge of the plight of 4733 comes from 4733
7 himself, and that's the reason why the SPO called Trial Witness 7 as
8 a witness in this case. What Trial Witness 7 heard during that
9 interview was nothing new to him.

10 Finally, Your Honours, the Defence also alleges that Trial
11 Witnesses 6, 7, 8, and 9 came to an agreement on names to mention in
12 their testimonies, and this is because they all refer to a person
13 called Imer Imeri.

14 Your Honours, when it comes to these witnesses, the fact that
15 they may have discussed the events that befell them, that they may
16 have remembered certain information in a similar way, is not a
17 surprise. As Your Honours know, their knowledge of some of these
18 events is indirect and it comes from the same source. However, this
19 does not mean that they came to an agreement as to what they would
20 say during their testimony. There is no evidence that they were not
21 sincere nor any discernible reason why they would be.

22 I will turn now to the Defence's attempt to manufacture
23 allegations of collusion in respect of Trial Witness 1 and Trial
24 Witness 10. This is also entirely unfounded.

25 First, the Defence claims that when the accused was arrested in

1 2021, Trial Witness 1 changed his story and stated that it was the
2 accused who took him to Kukes in order to falsely incriminate him.
3 However, this is based not on the evidence of the witness but solely
4 on an Official Note from March 2021.

5 The Defence put this alleged inconsistency to the witness during
6 cross-examination, and he explained that he had never said that it
7 was the accused who took him to Kukes during the March 2021
8 conversation with the SPO.

9 We don't know what exactly was said in that conversation and how
10 the information conveyed by the witness was understood and reported
11 by the person who drafted the Official Note. Clearly, what is at
12 issue here is a simple error and most likely one that is not
13 attributable to the witness given that, when presented with the note
14 at trial, he corrected the information. The record is at odds with
15 the Defence allegation. If Trial Witness 1 intended to change the
16 evidence he had provided before, why would he have then changed it
17 back again at trial?

18 Second, the Defence also points to the fact that, in 2022, Trial
19 Witness 10 told the SPO that Pjeter Shala took Trial Witness 1 and
20 his companions to the Kukes metal factory. Both Trial Witness 1 and
21 Trial Witness 10 testified in court that it was another individual
22 who took them there. This is, in the Defence's view, clear evidence
23 of collusion between them.

24 Your Honours, Trial Witness 10 testified that the accused came
25 to the Kukes metal factory 15 to 20 minutes after Trial Witness 1 and

1 his companions arrived there. So he placed the accused at the Kukes
2 metal factory at a time temporally close to that transfer. This is
3 not very different from what he had stated in 2022, that
4 Pjeter Shala, who had arrived shortly after Trial Witness 1 and the
5 others, was also involved in their transfer there.

6 Trial Witness 10 testified that he did discuss these events with
7 his friends. This is a normal occurrence among people who live in
8 the same town. But the Defence did not challenge the witness on what
9 he stated about the accused, Trial Witness 1, and the other
10 individual involved in the transfer. They did not seek
11 clarifications in this regard in cross-examination. They chose not
12 to ask any questions on this topic, depriving Trial Witness 10 of the
13 opportunity clarify.

14 Other aspects of the identification of the accused at the Kukes
15 metal factory provided by Trial Witness 10 are corroborated by the
16 accused himself, who stated that he was coming and going to and from
17 the Kukes metal factory throughout the indictment period. The
18 testimony of Trial Witness 10 on the accused's presence at the Kukes
19 metal factory is therefore corroborated by the accused himself, it is
20 credible, and it is particularly reliable in light of the witness's
21 tasks at the time.

22 I will now make some remarks on the credibility of the evidence
23 provided by the Defence witnesses.

24 We have made detailed submissions on this topic in our final
25 trial brief in Section I at paragraphs 240 to 307, so I will not

1 repeat what we have included in the brief in this context. I will
2 just make a few observations.

3 In assessing the credibility of the Defence witnesses,
4 Your Honours, you should consider what they said in relation to the
5 commission of crimes at the Kukes metal factory, or the lack thereof,
6 and in particular what they said about the detention building. In
7 this regard, Zijadin Hoxha, Naser Koqinaj, and Mark Shalaj all denied
8 even seeing the detention building during the time they spent at the
9 Kukes metal factory.

10 Zijadin Hoxha, a KLA member in charge of weapons maintenance
11 during the indictment period, claimed that his view of the premises
12 was obstructed by the presence of trucks, and so he did not see,
13 among other things, the detention building. This is despite him
14 working at times in the courtyard just outside the food warehouse and
15 walking across the courtyard to reach the common building.

16 Naser Koqinaj was based at the Kukes metal factory between March
17 and June 1999 and worked in the uniforms warehouse. Koqinaj was
18 asked to confirm that he never saw the detention building even though
19 it stood in the middle of the courtyard which he crossed every day to
20 go from the entrance gate to the warehouse. He claimed that he
21 didn't remember. He said, and I'm quoting, "I didn't look around. I
22 just went to my workplace. I wasn't interested in other things."
23 The implausible and evasive nature of these assertions are evidently
24 a way to distance himself from the crimes committed just a few metres
25 away from where he was working.

1 Mark Shalaj was the chief of logistics for Operation Arrow. He
2 was based at the Kukes metal factory from early April 1999 until the
3 end of the war. He testified before this Panel that he didn't
4 remember the detention building being there at the time. We have
5 illustrated in our brief why this claim is not credible, and I refer
6 Your Honours to paragraph 255 of our brief.

7 What I would like to draw your attention to here today is the
8 absence of the detention building from the sketch he made of the
9 Kukes metal factory.

10 During his testimony, Mark Shalaj explained that his sketch
11 identifies the building that were in use by the logistics sector,
12 stating that there may have been other buildings behind those that he
13 marked. But he made no mention, nor did he draw, the long building
14 protruding inside the courtyard, in the middle of it. The building
15 that he would have had to pass by to get to the toilets he testified
16 he sometimes used. The same building that he would have to pass by
17 on the way to the dormitory warehouse where he said he went whenever
18 he had time.

19 And, Your Honours, I will now make use again of a visual
20 presentation to illustrate this point, and this presentation can be
21 broadcasted to the public.

22 In this first slide, we see again the 1996 blueprint of the
23 Kukes metal factory, which was illustrated by my colleague Ms. Wyler
24 earlier, with a particular focus on the buildings and in particular
25 of the detention building that we see on the left-hand side of the

1 small red square.

2 I will now show in the following slides the sketches of the
3 Kukes metal factory drawn by three different witnesses *vis-à-vis* the
4 blueprint.

5 In this slide, we can see now the sketch prepared by
6 Witness 1448. And he drew his sketch exactly in the same perspective
7 of the blueprint where we see the command building on the top
8 right-hand side of the drawing, which corresponds again to what is
9 building number 1 in the blueprint. Then we see what he called
10 "*magazina*" on the left upper corner, which corresponds to building
11 number 2 in the blueprint. And on the bottom, we see a building, the
12 detention building, which stands in the middle of buildings marked
13 with number 2 and 4 in the blueprint.

14 Moving on to the next slide, we now see another sketch, this
15 time provided by Trial Witness 2, also next to the blueprint. Trial
16 Witness 2 sketched the premises from another perspective. So we see
17 the entrance marked with number 1, the command building marked with
18 number 2, what he marked as the canteen or kitchen is number 6, and
19 then on the right-hand side of his sketch, between two *magazinas*, 5
20 and 3, again the detention building. So his sketch is drawn from a
21 different perspective than the blueprint, but I think that it is very
22 clear again in showing the presence of this building.

23 I will then move to the next slide, and here we have the sketch
24 provided by Trial Witness 1, also close to the blueprint, also drawn
25 from a different perspective than the blueprint, the same perspective

1 of the previous sketch.

2 Again we have the entrance, the command building on the
3 left-hand side, kitchen, the clothes and the food warehouses, another
4 building on the right-hand side of the gate, and, again, the
5 detention building with three rooms.

6 Trial Witness 10, a KLA member, who was also based at the Kukes
7 metal factory during the indictment period and *[REDACTED] Pursuant to
In-Court Redaction Order F831RED.*

8 *[REDACTED] Pursuant to In-Court Redaction Order F831RED.* also sketched
9 the detention building in his sketch. And I draw Your Honours'
10 attention to REG00947 to REG00947. This drawing is consistent with
11 the sketches provided by the victims that we have just seen.

12 And, finally, Your Honours I will show here the sketch prepared
13 by Witness Mark Shalaj, again, next to the blueprint.

14 Your Honours, if we look at this sketch, it is notable that
15 Mark Shalaj, who spent the longest time at the Kukes metal factory
16 and knew the premises in consideration of his work and his role, he
17 left a completely empty space in the middle of the courtyard. As
18 opposed to these witnesses, the victims whose sketches we've seen
19 before, who spent much less time but clearly remembered the building
20 where they were detained.

21 We submit, Your Honours, that it is not by chance that
22 Mark Shalaj did not sketch the detention building in his drawing. It
23 is keeping this in mind that we ask the Panel to assess the evidence
24 provided by the Defence witnesses.

25 This, Your Honours, concludes my part of the presentation. I

1 thank you for your attention, and I leave the floor to my colleague
2 de Minicis who will continue from here.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor. I
4 give you the time to swap places.

5 MR. DE MINICIS: In this regard, Your Honours, my presentation
6 is divided in three parts. The first one may last approximately 40
7 minutes. Now, before I start with that, I have a short introduction
8 that will take a few minutes. Perhaps I could limit myself to that
9 introduction right now, and then we could take the break. Or we can
10 continue past the time that we would continue this session, which
11 would be 12.30 or 12.40.

12 PRESIDING JUDGE VELDT-FOGLIA: My intention was 12.40.

13 MR. DE MINICIS: Okay. Then I could actually finish by then.
14 Yes.

15 PRESIDING JUDGE VELDT-FOGLIA: Okay. You have the floor.

16 MR. DE MINICIS: Your Honours, the accused's responsibility in
17 this case is established beyond reasonable doubt by multiple sources
18 of evidence. The witnesses who directly implicate him in the crimes
19 are mainly, but not only, Trial Witness 1, 4733, 1448, and Trial
20 Witness 10. Their evidence is mutually corroborating and strongly
21 corroborated by the evidence of the accused, as we have set out in
22 detail in Section V.H of our brief.

23 While the accused made admissions about his participation in
24 some of the charged crimes, his admissions are only partial ones.
25 They are limited to what he thought he had to admit to come across as

1 credible while trying to avoid prosecution. In paragraphs 208 to 214
2 of the Prosecution brief, we have again set out in detail the
3 numerous contradictions in his statements. I will make but just one
4 example which is his denial, in 2019, that the KLA was looking for
5 4733 in 1998, when in 2016 he had stated the contrary, including
6 expressing his regret for not having found 4733 in 1998.

7 The Defence has decided to remain silent on the accused's
8 statements. The Defence brief is replete with claims that there is
9 no evidence of the accused's participation in or knowledge of
10 detention and mistreatment in spite not only of reliable witness
11 evidence to the contrary but of the accused's own statements.

12 The Defence claims, in paragraph 340 of the Defence final brief,
13 that it is unclear whether the accused's 2016 and 2019 statements
14 will be used in the Panel's deliberations. This is an untenable
15 claim which is contradicted by the Panel's clear indications that
16 they will be used. In its decision of 20 April 2023, F00491 at
17 paragraph 41, the Panel unambiguously stated that "it considers the
18 2016 and 2019 Accused's Prior Statements to be available - available
19 to the Panel for the purposes of its judgment, subject to the
20 determination by the Court of Appeals Panel," which later, as we
21 know, upheld the decision. The Defence is within its rights to
22 remain silent about the accused's statements if it chooses to do so,
23 but the record should be clear that there was never any uncertainty
24 as to their availability for the Panel's deliberations.

25 Now, in the submissions that I will be making for the next 45 to

1 60 minutes, I will first discuss the timeline of the accused's
2 presence at the Kukes metal factory, what we know for sure about his
3 presence, and his participation in the charged crimes. I will then
4 address how this participation makes his responsible under the modes
5 of liability charged in the indictment. I will address some Defence
6 challenges in that regard, both challenges of law and of fact. And I
7 will make some further submissions to those we've already made on the
8 issue of murder intent. Finally, and I'll do that for last, for the
9 reasons I explained at the beginning, I will address the credibility
10 of Trial Witness 1.

11 Let us now start with the presence of the accused at the Kukes
12 metal factory with the assistance of a simple timeline I have
13 prepared for this occasion. And, Your Honours, if you can just give
14 us a second to load it up.

15 Now, Your Honours, we know this from the accused's own
16 statements, also from statements, by the way, that Your Honours
17 specifically admitted in evidence, those from 2005, that he arrived
18 at the Kukes metal factory around 22 or 23 March 1999. We know this
19 from his own statements. He speaks about it in several statements.
20 This is just two. The first one is from 2019. The second one is a
21 statement from 2005.

22 Now, in his 2016 and 2019 statements, the accused stated that
23 upon his arrival he stayed at the factory only a few days and then
24 left for the front lines, to find Fatmir Limaj, also known as Celiku,
25 who was preparing to attack. The Defence adopts this narrative in

1 their brief, although without referencing the accused's statements.

2 This story, Your Honours, is different from what the accused
3 stated in 2005, which we submit is what actually happened.

4 Your Honours, in the second half or end of April 1999, the
5 accused moves to Burrel and is arrested in the context of the killing
6 of a soldier, Halil Gashi. We know from the accused's 2005 statement
7 that upon his arrival in Kukes he remained there "until another group
8 came and we were sent to Burrel for training."

9 We know from page 32 and following of that statement that there
10 he was arrested in connection with the killing of a soldier. We know
11 from pages 39 and 40 that he was then released, according to the
12 accused, because his cousin was a commander. We submit that that is
13 a reference to 4754.

14 Now, this account, Your Honours, is consistent and further
15 details are provided by other witnesses. For instance, 4848, 4754,
16 and Defence Witness 2. From the account of these witnesses, we know
17 when the accused went to Burrel, which is in the second half of
18 April, end of April 1999, and until when he remained there, which is
19 until at least 2 May 1999, the time that Halil Gashi was killed. The
20 Defence stated that that's a fact of public knowledge. We know that
21 the accused went there with Ruzhdi Saramati and his men. We know, in
22 fact, that Ruzhdi Saramati and two military policemen were arrested
23 for that killing. And we know from 4754 that the accused was a
24 member of a military police platoon at that time.

25 So the accused, Your Honours, did not leave for the front lines

1 as soon as he arrived. He waited in Kukes and went to Burrel.
2 Burrel is not at the front lines. It's a town about 100 kilometres
3 south-west of Kukes, towards Tirana. There is also another detail
4 which we know from the evidence of 4754, that Fatmir Limaj was
5 appointed as commander of Operation Arrow and arrived in Albania from
6 Kosovo in mid-May 1999. So the accused setting off to meet
7 Fatmir Limaj at the end of March, Fatmir Limaj who was about to
8 attack at that time, it just doesn't fit.

9 Why is this important? For two reasons. First, it shows that
10 the accused was not truthful about his whereabouts once he was
11 informed through a summons he received towards the end of 2015 that
12 he was suspected of crimes committed in Albania in 1999. Second,
13 because this detail affects the credibility of 4754, a Defence
14 witness, about the timing of his meetings with the accused at the
15 Kukes metal factory. And I will get to this point in a second.

16 We're now in May 1999, Your Honours. And the accused went back
17 to Kukes after his release for the arrest and to the Kukes metal
18 factory. We know this from several sources. First, we know this
19 from 4754, who stated that he met the accused at the Kukes metal
20 factory and he issued him a sniper rifle after - he recalled that
21 very clearly - after he had come back from Burrel.

22 While 4754 testified that that meeting took place in mid-April
23 1999, it must in fact have happened in May because of that reference
24 to Burrel. And for more details on this and on the contradiction
25 between that witness's trial evidence and his prior statements, I

1 refer Your Honours to paragraphs 246 to 249 of the Prosecution brief.

2 Second, we know that the accused was at the Kukes metal factory
3 about three days before what we have consistently referred to as the
4 20 May 1999 incident. The relevant evidence is set out in
5 paragraph 55 of our brief. And during this time, the accused was
6 going in and out of the factory, a detail which, as set out in
7 paragraph 52 of our brief, matches the evidence of the accused and is
8 corroborated by a KLA soldier who testified in this case.

9 So, Your Honours, in the days immediately following the 20 May
10 1999 incident, the accused was around. He was in Kukes and he was
11 going in and out of the factory.

12 We're now on 20 May, on or around. On this day, the accused
13 took part in the transport of 4733 from Rromanat, just outside
14 Durres, to the metal factory. This incident is discussed in
15 Section V.A.3 of the Prosecution brief. Sadly, 4733 passed away
16 before he could testify in this trial, but his statements concerning
17 the accused's participation in this transport are reliable,
18 consistent, and corroborated.

19 They are reliable because 4733 knew the accused - knew who he
20 was, he didn't know him personally - from his work as a police
21 officer. As set out in paragraph 217 of the Prosecution brief, the
22 accused was a person of interest to the police, and 4733 saw his
23 picture in a photo album when he was working as a policeman. In
24 Part 1 of his SPO interview, pages 37 to 38, 4733 explained that the
25 Serb police had a file on the accused. That's how he knew of him.

1 The accused, by his own admissions, and this is in paragraph 44
2 of our brief, had been convicted and had served time in the 1980s.
3 And in the 1990s, he was conducting armed actions against Serb police
4 installations. The accused's criminal record that the SPO has
5 obtained from Serbia shows that in December 1996, the accused had
6 accumulated two criminal convictions including in relation to
7 possession of weapons. This, Your Honours, explains why the Serb
8 police would have a file on him, as consistently explained by 4733 in
9 the statements he gave over time.

10 The Defence, in their brief, argue that certain witnesses -- and
11 I'm referring to paragraphs 238, 246, and 247 of their brief.
12 Certain witnesses contradict 4733's evidence that he knew the accused
13 before the war. They don't. None of the evidence cited by the
14 Defence actually contradicts this part of his testimony. 4733 may
15 not have talked to these witnesses about it, and these witnesses are
16 not to be expected to know all of the persons that 4733 was familiar
17 with by virtue of his work as a policeman.

18 In fact, if 4733 knew who the accused was, the accused knew who
19 4733 was. They were familiar with each other by virtue of their own
20 occupations at the time. By his own admission, the accused knew
21 4733's name, his village of origin, and that he had been a policeman.
22 He even knew that in 1998, 4733 was no longer a policeman, which fits
23 the evidence of 4733 who stated that he had been dismissed from his
24 job at the end of 1997. And this evidence can be reviewed in
25 paragraph 218 of the Prosecution brief.

1 Contrary to the Defence submissions, 4733 did not give an
2 entirely inaccurate description of the accused's appearance. 4733
3 described him as a big man with a head full of hair, dark eyebrows,
4 and a big face. He stated he had a dark complexion, almost black,
5 but that can be attributed to the quality of the photo, the lighting,
6 or the exposure to the sun while labouring outdoors. We did not see
7 that photo and we don't know. We know, though, that the rest of the
8 description is accurate.

9 There's more, though. 4733 -- he is a big man and he does have
10 a head full of hair. That is the part of the description we are
11 referring to, Your Honours.

12 There is more though. 4733 stated that the accused looked
13 different from what he remembered when he saw him in the van. He was
14 sincere about it. But when the accused howled like a wolf, 4733 knew
15 that it was him. The howling, Your Honours, is something that the
16 accused himself admitted doing, and that 4379, a witness who met the
17 accused at the factory, distinctly remembered him for. And,
18 Your Honours, despite the Defence submissions to the contrary,
19 howling is a rather unique and therefore identifying feature for a
20 human being.

21 Finally, on reliability, 4733's evidence that the accused
22 transported him to the factory on that day is reliable because only a
23 few hours later, only a few hours after that transport, the accused
24 was still there at the factory to participate in the 20 May 1999
25 incident, as we know from multiple sources.

1 Now, 4733's statements are also consistent on this point. Since
2 2010, 4733 has always implicated the accused in his transport from
3 Rromanat, near Durres, to the factory. He testified to this effect
4 during the trial against Sabit Geci, where Pjeter Shala was not an
5 accused, and repeated it during his SPO interview.

6 In this regard, the Defence argues that this account is not
7 credible because 2010 is the first time that he mentioned the
8 involvement of the accused -- that 4733 mentioned the involvement of
9 the accused in this incident. But differently from what the Defence
10 argues, Your Honours, 4733 had not actually discussed the specifics
11 of that transfer in his previous statements, certainly not in great
12 detail, as submitted by the Defence in paragraph 232 of their brief.
13 In fact, from the 2003 ICTY statement, also relied on by the Defence
14 in support of this contention, it's actually evident that 4733 was
15 not asked any question at all about that transport.

16 Lack of mention of the accused's involvement in this incident
17 therefore in these statements does not undermine what 4733 said
18 consistently from 2010 onwards.

19 Finally, Your Honours, 4733's statements are corroborated.
20 They're corroborated by the accused himself. As set out in paragraph
21 207 of our brief, the accused stated that he had learned accusations
22 against 4733 in the Durres camp. This is where 4733 had been
23 detained right before his transport to which the accused
24 participated. The accused admitted that he had been there and that
25 he had learnt the details of the accusations against 4733. This, we

1 submit, is corroboration, direct corroboration, of what 4733 said.

2 Your Honours, we remain on 20 May 1999, on or around, for what
3 happened afterwards. I won't repeat the details of that incident
4 which has been discussed at length by my colleagues, and we've dealt
5 with it in detail in our brief, but I will address some Defence
6 challenges in that regard.

7 I will just remind Your Honours that his presence during that
8 night is proved by the mutually corroborating evidence of three
9 witnesses, Trial Witness 1, 4733, and 1448, discussed in Sections V.D
10 and V.H.3 of the Prosecution brief. It is also amply corroborated by
11 the statements of the accused himself, as discussed in Section V.H.1
12 of our brief.

13 I won't repeat that evidence, but now I'll address the Defence
14 challenges.

15 Now, the Defence argues throughout the Defence brief that Trial
16 Witness 1's evidence is not credible, that it's a fabrication
17 concocted with the intent to deceive, and I will address these
18 challenges later today as I have explained. For now, I'll just note
19 that Trial Witness 1's identification of the accused is highly
20 reliable - highly reliable - for the reasons set out in paragraph 202
21 of our brief. His evidence is also corroborated in detail by that of
22 4733 who, as we have seen, knew the accused, knew who he was, and his
23 identification is reliable.

24 The Defence attempts to cast doubt on 4733's identification of
25 the accused during that incident by attacking the identification he

1 made of other individuals. We have addressed some of these
2 challenges in our brief in paragraphs 296 to 307.

3 What matters, though, in particular for this incident is that
4 when it comes to the accused, 4733 has consistently always implicated
5 him in his mistreatment, and his evidence on this point matched that
6 of Trial Witness 1, 1448, and of the accused himself. There is just
7 this coming together of different testimonies who put him there that
8 night with a level of detail, Your Honours, that can only be
9 explained with the fact that they are telling the truth.

10 4733 recalled that, on this occasion, the accused told him he
11 had been looking for him in 1998, a memory that, as we know, 4733 had
12 also shared with other people after his liberation, as it's discussed
13 in paragraph 211 of our brief.

14 As we set out in paragraph 212 of our brief, the accused's 2016
15 statement corroborates this evidence. The accused, in fact, not only
16 acknowledged that the KLA was looking for him in 2018, but added, "If
17 I had caught him one year earlier, he wouldn't have been able to
18 testify about anything anymore. Unfortunately, I never found him."

19 Your Honours, these are his words, a statement that he had a
20 opportunity to re-read and sign.

21 The evidence of 4733 about the accused's participation in the
22 20 May 1999 incident is also corroborated by Trial Witnesses 6, 7, 8,
23 and 9. The existence of some minor differences in their evidence
24 does not make it incredible.

25 The Defence, for instance, repeatedly addresses one supposed

1 inconsistency of Trial Witness 8, who stated that 4733 was
2 electrocuted in Kukes, while in fact 4733 testified that this had
3 happened earlier during his detention. [REDACTED] Pursuant to In-Court
Redaction Order F831RED.
4 [REDACTED] Pursuant to In-Court Redaction Order F831RED.
5 [REDACTED] Pursuant to In-Court Redaction Order F831RED. He just didn't
remember when during the 12 days he had
6 been kidnapped that had happened. That, Your Honours, is certainly
7 not a sign of a manifestly false account, as the Defence argued in
8 paragraphs 99 and 136 of their brief. That is a minor difference
9 which, in fact, corroborates 4733's evidence.

10 In addition to Trial Witness 1, 4733, and Trial Witnesses 6 to
11 9, also 1448, another victim of that night, another victim whom the
12 accused beat, involved the accused in this incident. As set out in
13 section V.D of the brief, the accused had beaten 1448 at length that
14 night, as long as 30 consecutive minutes.

15 The fact that 1448, as pointed out by the Defence --

16 PRESIDING JUDGE VELDT-FOGLIA: Sorry, Mr. Prosecutor. Just for
17 the record, we have to adjust the transcript, because I see that we
18 have twice 1148 and that should be 1448.

19 MR. DE MINICIS: Yes, and I may have misspoken.

20 PRESIDING JUDGE VELDT-FOGLIA: Now it has been corrected. Thank
21 you.

22 MR. DE MINICIS: May I proceed, Your Honours?

23 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

24 MR. DE MINICIS: Now, the fact that he learned the identity of
25 the accused from the source indicated by the Defence in paragraph 14

1 of their brief does not make his identification any less reliable.
2 In fact, Your Honours, it makes his identification very reliable
3 because the source knew the accused very well. Also, this source
4 told 1448 who the accused was, who the person who beat him was, at
5 the time of their detention. It's not that they talked right before
6 the trial. They told him they discussed this at the time of their
7 detention, so there can be no suggestion that he was trying to
8 improperly influence a future witness when, Your Honours, these
9 people didn't even know if they would have made it out alive of that
10 prison.

11 Last but not least, Your Honours, the accused himself
12 corroborates all these witnesses, as set out in paragraph 206 of the
13 Prosecution brief.

14 Your Honours, we know from -- again, from the accused statements
15 that he must have been again at the Kukes metal factory at some point
16 between 20 May and 1 June 1998. Ostensibly on this occasion, he was
17 there to restock on ammunition for his rifle. He stated that his
18 rifle had used a rare type of ammunition which was heavy, so he kept
19 his reserve stock at the Kukes metal factory. And when he went out
20 in the field, he would only take a few bullets with him and then
21 would come back to get more.

22 On this occasion, the accused said that he saw 4733 in the
23 common building, wearing a camouflage uniform, serving coffee to KLA
24 commanders. And we don't know whether the circumstances of this
25 meeting are exactly what they are, but we know that 4733 was made to

1 wear a camouflage uniform after his arrival at the Kukes metal
2 factory. First during the transport, when the accused transported
3 him, he had a black uniform on. They had put it on him to disguise
4 him as a KLA military policeman in case the Albanian police stopped
5 them between Rromanat and the factory.

6 After that, we know from 4733 himself, he was made to wear a
7 camouflage uniform, and that's exactly what the accused says he was
8 wearing when he sees him there in the command building. This also
9 matches the evidence of 4733 who said that in one instance when he
10 was in the common building, he saw the accused, and it was about four
11 days before his liberation.

12 So whatever the exact nature of this sighting by the accused
13 was, this directly contradicts the Defence claim in paragraph 8 of
14 the Defence brief that the accused was not present at the Kukes metal
15 factory in late May 1999. It's proof once again that the accused has
16 not been truthful about his whereabouts and that he has tried to
17 distance himself from the Kukes metal factory during the indictment
18 period as much as he could or as he thought he could.

19 We're now at the last point of the timeline that I'm presenting
20 to Your Honours. And we know that the accused is again at the Kukes
21 metal factory on or around 3 June 1999, the day when the accused
22 participated in the incident described in detail in Section F of the
23 Prosecution brief.

24 We know that this evidence comes from Trial Witness 1, and I
25 will make some additional submissions on his credibility later. But

1 for now, I want to point out that his evidence on this point is
2 corroborated by Witness 4379, the Albanian man who had granted to the
3 KLA use of the Kukes metal factory, as discussed in Section V.F.1.a
4 of our brief.

5 Now, the Defence quoted 4379's evidence in their brief somewhat
6 selectively, stating that 4379 had met the accused at the factory
7 after the war. It actually says that in one line of the several
8 pages in which he talks about this meeting. I will talk about the
9 other lines, those that the Defence has not relied on.

10 A complete reading of 4379's evidence reveals that he met the
11 accused at the factory before the end of the war when the accused had
12 transported to Kukes those wounded and killed in the shelling of
13 Gorozhup. We know from another Defence witness, Your Honours, 3887,
14 whose evidence is discussed in paragraph 28 of the Prosecution brief,
15 that this shelling took place on 31 May 1999, with the funerals of
16 the victims taking place between the 1st and 4th June 1999 and
17 attended by a large number of soldiers who then returned to the front
18 lines.

19 4379 has also sadly passed away not long before he could testify
20 in this trial.

21 We're not asking Your Honours to rely decisively on his evidence
22 to find that the accused was at the factory at that time. Trial
23 Witness 1, his evidence is the main source of the accused's presence,
24 but 4379 does provide strong corroboration, as well as other
25 evidence, evidence of motive, that I will discuss later.

1 Now, this, Your Honours, concludes the SPO timeline of the
2 presence of the accused at the metal factory and of his participation
3 in the crimes as it emerged beyond reasonable doubt from the
4 evidence.

5 I will now address how this participation makes him responsible
6 as a participant in a joint criminal enterprise.

7 I will not repeat all the submissions that we have made in our
8 brief, but I will address certain Defence challenges to his
9 responsibility. I will just summarise how the SPO has framed this
10 responsibility.

11 Pjeter Shala is responsible or alleged to be responsible for
12 these crimes as a --

13 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, I'm looking at
14 the time.

15 MR. DE MINICIS: Oh, yes, I'm sorry. Yes. Yes, I got ahead of
16 myself. I see the clock. I think we should stop now and then
17 proceed later.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Yes, we are now in public session. I will set our lunchtime for
20 today till quarter to 2.00. Then we have one and a half hour of
21 hearing, a quarter of a break, and another half an hour, and then we
22 close at 4.00. Yes?

23 Very well. I wish you a good lunch, and the hearing is
24 adjourned.

25 --- Luncheon recess taken at 12.39 p.m.

1 --- On resuming at 1.48 p.m.

2 PRESIDING JUDGE VELDT-FOGLIA: Welcome to everybody.

3 Let me see. The SPO is in the same composition. Thank you.

4 Also for Victims' Counsel's team.

5 And the Defence?

6 MR. GILISSEN: Yes, Your Honour. You have one more change, and
7 we have with us Ms. Coralie Jobert Valla, our legal intern. Thank
8 you very much.

9 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

10 Welcome, Mr. Shala. Can you hear me fine?

11 THE ACCUSED: [via videolink] [Interpretation] Yes, I can hear
12 you fine. Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Very well.

14 Now, the floor is again to the Specialist Prosecutor's Office.

15 Mr. Prosecutor, you have the floor, and please inform the Panel
16 when we have to go into private session. Thank you.

17 MR. DE MINICIS: And, Your Honours, at the start, we want to
18 inform you that we are likely to finish today with our submissions.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you for informing us.

20 MR. DE MINICIS: So before we took the break, I was about to
21 embark on my submissions on the responsibility of the accused as a
22 participant in a joint criminal enterprise.

23 The JCE, as described in the indictment, had a common purpose,
24 which was to interrogate and mistreat detainees at the Kukes metal
25 factory. This common purpose involved the crimes of arbitrary

1 detention, cruel treatment, torture, and murder.

2 The accused is charged with having significantly contributed to
3 the furtherance of the common purpose and to have possessed the
4 intent to commit these crimes.

5 Members of this JCE, in addition to the accused, included
6 Xhemshit Krasniqi, Sabit Geci, and other KLA soldiers and policemen,
7 including those identified as Bedri and Van Dam.

8 Evidence of the existence of this JCE and of the accused's
9 responsibility for that participation is discussed in paragraphs 357
10 to 373 of the Prosecution brief.

11 I will now address certain Defence submissions on this topic. I
12 will start by addressing the Defence submissions on the evidence of
13 the existence of the common criminal plan described in our brief and
14 charged in the indictment.

15 In paragraphs 77, 81, and 144 of their final brief, the Defence
16 argue that the Prosecution failed to prove that a group of persons,
17 which included the accused, had agreed to adopt the common criminal
18 plan charged in the indictment. It also argues that no evidence of
19 any direct or indirect communications between the alleged JCE members
20 was presented.

21 These submissions, Your Honours, are premised upon a wrong
22 interpretation of the law governing JCE, but they also misstate the
23 facts.

24 For JCE liability to arise, Your Honours, there is no need to
25 prove the existence of an explicit agreement. The Prosecution does

1 not need to prove that the plan has been previously arranged or
2 formulated. The plan may materialise extemporaneously and its
3 existence inferred by the concerted actions of the JCE members.

4 The accused's participation -- the 20 May 1999 incident, the
5 participation of all the JCE members there, and the accused as well,
6 the incident discussed in Section V.F of our brief, or the accused's
7 transport of 4733 to the Kukes metal factory where he was to be
8 shortly after interrogated and beaten, these are, in and of
9 themselves, as well as collectively, clear examples of this concerted
10 action.

11 Evidence of this concerted action also comes from the accused
12 himself. As set out in paragraph 205 of the Prosecution brief, the
13 accused stated that he beat certain victims after being incited to do
14 so by Sabit Geci, another named JCE member.

15 Now, the Defence also argues that the accused did not
16 participate in certain specific acts forming part of the crimes per
17 part of the common purpose. They make the submissions, for instance,
18 in relation to arbitrary detention, in paragraphs 82 to 86 of their
19 brief. As Your Honours know, however, participation in a JCE need
20 not take the form of the commission of a crime or of parts of the
21 *actus reus*. What is required is that his participation contributes
22 in some way to the furtherance of that plan, accompanied of course by
23 the required intent.

24 It doesn't matter, therefore, as argued by the Defence in
25 paragraphs, for instance, 48 to 59 of their brief, that the accused

1 had no role in the release of the detainees, or whether he was
2 responsible for them during their detention, as argued in paragraph
3 83. It does not matter whether the accused held a particular rank
4 nor it matters how many arrests he took part in.

5 In any event, Your Honours, even though the contribution need
6 not be criminal per se, the accused did participate in the commission
7 of crimes. We have, by now, repeated that multiple times, and we're
8 talking about the evidence described in Sections V.A.3, V.D, and V.F
9 of the Prosecution final trial brief.

10 Further, as set out in paragraph 363 of the Prosecution brief,
11 the accused's contribution to the criminal plan was significant.

12 Now, with regard to the scope of the -- please.

13 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, I see that in the
14 transcript we have not -- not all the sections you mentioned have
15 been written down.

16 MR. DE MINICIS: I'm happy to repeat them.

17 PRESIDING JUDGE VELDT-FOGLIA: If you could do that.

18 MR. DE MINICIS: I spoke a bit too fast.

19 PRESIDING JUDGE VELDT-FOGLIA: I think because you were dealing
20 with numbers, it would assist --

21 MR. DE MINICIS: Yes, by all means, Your Honours.

22 PRESIDING JUDGE VELDT-FOGLIA: -- if you would repeat them.

23 MR. DE MINICIS: I referred to Sections V.A.3, that is the
24 transport of 4733 from Rromanat to Kukes; V.D, the 20 May 1999
25 incident; and V.F of the Prosecution brief.

1 PRESIDING JUDGE VELDT-FOGLIA: Yes, thank you, Mr. Prosecutor.

2 And then I also see that you read out that:

3 "... as set out in paragraph 363 of the Prosecution brief, the
4 accused's contribution to the criminal plan was significant."

5 And then I see that something is apparently missing.

6 MR. DE MINICIS: No, I think that's where my sentence stops.

7 I'm going to pick up from there.

8 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you. You may
9 proceed.

10 MR. DE MINICIS: The Defence, Your Honours, makes submissions
11 also on the scope of the accused's participation in this JCE,
12 observing that there is no evidence that he participated in certain
13 crimes or that he mistreated certain of the victims, for instance,
14 TW4-11. This can be seen, for instance, in paragraphs 112 to 120 of
15 their brief.

16 Your Honours, for the accused to incur liability for the crimes
17 that are part of the common plan, it's not necessary that he
18 participated in every aspect of that plan. Consistent jurisprudence
19 on this point rooted on case law dating to the aftermath of the
20 Second World War establishes that "liability for participation in a
21 criminal plan is as wide as the plan itself."

22 Based on this principle where the evidence establishes that a
23 common criminal plan existed, and that an accused made a significant
24 contribution to it with the required intent, the accused is
25 appropriately held responsible not only for his own contribution, but

1 also for the actions of the fellow JCE members that were part of the
2 criminal plan or that were foreseeable consequences of it. In fact,
3 he is also responsible for the actions of people who were not,
4 strictly speaking, members of the JCE as long as these actions were
5 carried out in furtherance of the plan.

6 Your Honours, the jurisprudence on this is consistent and
7 well-established. I can recall, for instance, the Brdjanin appeals
8 judgment issued by the ICTY on 3 April 2007, paragraphs 429, 431.

9 When it comes to the scope of the accused's liability,
10 Your Honours, I refer you also to paragraph 423 of the Brdjanin
11 appeal judgment.

12 Now, I have repeated a few times how a fundamental component of
13 JCE liability, the basic form is intent. The accused must have
14 possessed intent to commit the crimes. And in paragraphs 363 and 364
15 of the Prosecution brief, we discuss evidence of this intent.
16 Evidence of his intent is his conduct, Your Honours, his continued
17 participation in the crimes, his deliberate participation in the
18 beating of the detainees. It is, however, not the only evidence of
19 it.

20 His statements that he would beat his victims again without
21 hesitation are unambiguous, additional evidence of criminal intent.
22 They are discussed in paragraph 405 of the Prosecution brief.

23 The Defence submits that the crimes committed at the Kukes metal
24 factory were motivated by personal revenge. While some of the
25 witnesses have testified that, in their view, some personal conflicts

1 with some of the perpetrators may have been the cause for their
2 mistreatment, the fact remains, and the evidence is clear in this
3 regard, that they were all accused, to different degrees and in
4 different ways, of being associated with the Serb state. We have
5 made numerous references to this evidence in our brief. I will just
6 recall here by way of example paragraphs 58, 99 to 100, 133 to 134,
7 139, and 145.

8 Now, that these accusations were levied against the victims, we
9 know it also from the statements of the accused himself with regard
10 to two victims, as set out in paragraphs 206 and 367 of the
11 Prosecution brief, and with regard to a third victim, 4733, as found
12 on page 8 of the accused's statement from 2016.

13 In any event, Your Honour, even though there is evidence that
14 personal motives were not the reason for their mistreatment, any
15 personal motives that they may have had are not determinative for his
16 responsibility under the JCE as charged in the indictment.

17 I will now specifically address the accused's intent for murder.

18 The evidence establishes beyond a reasonable doubt that this
19 intent existed in the mind of the accused and of the other JCE
20 members. I refer Your Honours to paragraphs 366 to 372 of our brief.
21 In this regard, I just want to recall something that Xhemshit
22 Krasniqi told two victims before they were shot. He told them that,
23 "Tomorrow only one of you will be alive, not both of you." This can
24 be found in the evidence of a witness in this trial. I won't say
25 right now the specific number. I will say later.

1 Now, for the additional submissions on intent, I need to move
2 briefly into private session to give effect to existing protective
3 measures. I will only need to remain in private for two to three
4 minutes at this time and then I will revert back into public.

5 If we could move into private now, Your Honours.

6 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you
7 please bring us into private session.

8 [Private session]

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7 [Open session]

8 THE COURT OFFICER: Your Honours, we are now back in public
9 session.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 Mr. Prosecutor, you may proceed.

12 MR. DE MINICIS: Your Honours, the intent to kill, as set out in
13 the Prosecution brief, emerged clearly from the perpetrators' course
14 of conduct and words. I will provide a few examples.

15 During the 20 May 1999 incident, at least three people were
16 wielding unholstered guns. We are not talking about three people who
17 had guns around their waist. We are talking about people who had
18 guns in their hands. Two of them used them to hit two of the victims
19 on their heads, causing deep cuts and wounds. The soldiers also had
20 and used sharp objects and knives.

21 Now, people received strong blows on their head and bled
22 profusely, their clothes soaked in blood. They repeatedly lost
23 consciousness. And then they were revived, beaten, lost
24 consciousness again. This continued throughout the night. And
25 despite all this violence, the accused continued to participate,

1 during the 20 May incident and then again in June.

2 1448, one of the victims of the beatings, said that he "never
3 saw such tortures happening, not even in movies."

4 Finally, on the night of the shooting, firearms were discharged
5 in a way that leaves no doubt as to the existence of a murderous
6 intent.

7 Now, the Defence position on this point is that certain changes
8 in the detention conditions after the death of the murder victim show
9 that the perpetrators did not have the intent to kill. Well,
10 Your Honours, actions taken after the fact do not change the evidence
11 discussed above.

12 Second, Your Honours, and importantly, it was not Xhemshit
13 Krasniqi who ordered the change of the conditions. It was
14 Xheladin Gashi, Plaku, who was possibly the highest KLA officer
15 there, who instructed the new guards to make sure that nobody would
16 harm the detainees. We know this from the person who was instructed.

17 The Defence also argues that the accused was in no position to
18 allow medical care to be provided, so any denial thereof cannot be
19 imputed to him. Well, this circumstance, Your Honours, does not
20 absolve the accused from JCE liability for the murder. As discussed
21 above, as long as he participated in part of the plan with the
22 required intent, he need not participate in every single component of
23 it. Although, Your Honours, in any event, the accused's relatively
24 privileged position and closeness to some of the JCE members makes it
25 clear that he could have been at least able -- it could have been

1 within his power to try to assist the victim or to otherwise advocate
2 for them. Not only he didn't do that, but years later he said that
3 he would repeat the beatings again.

4 Now, Your Honours, the indictment also charges the accused, in
5 the alternative, with murder under the third form of JCE. That means
6 that if he did not intend the crime, it was foreseeable to him that
7 its commission might have happened. It's a possibility standard. In
8 fact, as I have just described, the evidence presented at trial shows
9 beyond reasonable doubt not only that it was foreseeable but that
10 there was intent to commit the crime.

11 Each of the factors that I have listed leave no room for doubt
12 in that regard.

13 Your Honours, I will now come to the last part of my submissions
14 which concern the credibility of Trial Witness 1.

15 I will start in public session, but I will soon need to ask
16 Your Honours to move into private session.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

18 MR. DE MINICIS: Trial Witness 1's story about the plight that
19 he suffered at the Kukes metal factory is credible. Your Honours, he
20 knew the accused. The accused knew him.

21 Although corroboration is not a requirement for an accused who
22 testified live, his testimony is amply corroborated about the
23 identity of the victims, the location of the detention, the type of
24 the mistreatments, as well as the role of the accused. When his
25 evidence is not directly corroborated, it's because the persons who

1 could corroborate it could not come to testify at trial.

2 The Defence contend that his account is fabricated, "with a
3 clear intent to deceive." They also argue that he lied to take
4 revenge against the accused.

5 Your Honours, I want to ask you: Revenge for what? The only
6 reason why Trial Witness 1 could feel resentment against the accused
7 is his own criminal conduct. There is no other possible reason that
8 emerged from the evidence nor has any other reason been adduced.

9 At this time, Your Honours, we need to move into private
10 session.

11 PRESIDING JUDGE VELDT-FOGLIA: Very well.

12 Madam Court Officer, kindly bring us into private session.

13 MR. DE MINICIS: I foresee having to stay there for about ten
14 minutes.

15 [Private session]

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10 [Open session]

11 THE COURT OFFICER: Your Honours, we are now in public session.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

13 Mr. Prosecutor, you have the floor.

14 MR. DE MINICIS: Now, the list of unsupported allegations
15 against Trial Witness 1 continues.

16 The Defence accused him of openly discussing the proceedings
17 with potential witnesses and deliberately fabricating evidence
18 against the accused. This is to be found in paragraph 202 of the
19 Defence brief.

20 The first purported example of this behaviour, provided in
21 footnote 449 of paragraph 202 of their brief, shows nothing improper
22 in Trial Witness's 1 behavior. Trial Witness 1 knew that this person
23 could be a witness of his suffering and wanted him to bear witness of
24 that. To ask someone to come forward and testify is not evidence of
25 improperly influencing a witness.

1 In relation to the other witness listed in that footnote which
2 should support that he deliberately fabricated evidence against the
3 accused, the Defence lists Trial Witness 2.

4 If you look at the evidence they refer to, it's 060664-TR-ET
5 Part 5 RED4, pages 2 to 3. It's really just an instance of one
6 victim sharing his experience with another victim. There's no
7 reference to the accused. Nothing improper with that.

8 Finally, a third witness which should support the evidence that
9 he fabricated evidence against the accused by openly discussing the
10 proceedings with other witnesses is 1448.

11 Now, this I've already talked about. Trial Witness 1 telling
12 1448 at the time of their detention the identity of the person who
13 had beat them up has nothing to do with trying to influence the
14 proceedings, nor is it evidence of Trial Witness 1 attempting to
15 fabricate evidence against the accused. As I stated earlier, I think
16 that, at the time, a future trial was the last thing in the mind of
17 these people who did not really know if they would have made it out
18 alive of that place.

19 Now, the Defence also states that Trial Witness 1 failed to
20 identify the guard that arrived when the conditions of detention
21 finally changed. This is in paragraph 219 of the brief. In fact,
22 Your Honours, this is not true. What the Defence refers to is a
23 photograph of 4848, not of the guard they refer to in their brief.

24 Finally, the story of Trial Witness 1's release. Your Honours,
25 the story of Trial Witness 1's release is corroborated by witness

1 evidence, a report about the events, and by 1448. What the Defence
2 points out to in paragraphs 225 to 226 of the brief are minor details
3 that cast no doubt as to the place where Trial Witness 1 was held and
4 then freed, nor has the Defence ever taken issue with that.

5 Now, in conclusion, Your Honours, the evidence of Trial
6 Witness 1 is both credible and reliable. His identification of the
7 accused cannot be questioned since the accused himself admitted to
8 these interactions with him at the time.

9 In addition, there is no evidence that Trial Witness 1 would
10 have any reason at all to implicate the accused in something he was
11 not responsible for. In fact, Your Honours, for this last comment, I
12 will need to go again briefly into private session, with your leave.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes, of course.

14 Madam Court Officer, kindly bring us into private session.

15 [Private session]

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15 [Open session]

16 THE COURT OFFICER: Your Honours, we are now in public session.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

18 MR. DE MINICIS: Your Honours, this concludes my submissions
19 today, and the Prosecution has established that the accused is
20 responsible for the crimes charged in the indictment, and that these
21 responsibilities are based on credible and reliable evidence.

22 I will now give the floor again to Ms. Wyler who will conclude
23 the SPO submissions on sentencing.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you. I will give you the
25 time to swap places.

1 MS. WYLER: Thank you.

2 The crimes committed by the accused warrant a severe sentence,
3 reflecting their gravity, their severe consequences on the victims,
4 the accused's role in them, the presence of multiple aggravating
5 factors, the lack of any mitigating factors, and the importance of
6 deterrence.

7 With regard to the gravity of the crimes committed by the
8 accused, they were undoubtedly brutal and devastating. Apprehended
9 without any warning, torn out of their lives and families, at least
10 18 victims were illegally held in inhumane conditions at the Kukes
11 metal factory where they were physically and psychologically
12 mistreated and tortured. You have heard about their ordeals earlier
13 today. They lived in constant fear. And to say it in the words of
14 Trial Witness 1, they were expecting to be killed at every moment.
15 Indeed, one of the victims did not survive his detention at the Kukes
16 metal factory.

17 The accused's crimes took a terrible toll on the detainees and
18 their families. To the victims, the crimes inflicted on them caused
19 far-reaching and long-lasting physical and psychological
20 consequences.

21 Trial Witness 1 testified that he will never be able to leave
22 behind the memories of what happened to him in Kukes, that he will
23 never find piece of mind. To this day he suffers from physical pain
24 and chronic PTSD related to what he endured at the Kukes metal
25 factory.

1 Trial Witness 11 still suffers consequences from the injury
2 received to his eye.

3 And more than 15 years after his detention, 4733's elbow and
4 hand were still damaged and his eyesight still impaired. He still
5 suffered from anxiety and was haunted by nightmares. And years after
6 his release, 4733 was still afraid and hesitant to visit a doctor in
7 Kosovo for fear of being apprehended again.

8 The accused's crimes also irreversibly traumatised the victims'
9 families. Your Honours have heard the account of a victim family
10 here in court. "What befell on us will stay with us and we will
11 never be able to erase it," a victim's wife said. When her husband
12 and the father of their children returned back home, he had injuries,
13 wounds, and bruises all over his body. He was unwashed, smelled
14 terribly, was pale, weak, and almost fainting.

15 The victim was an important member of his family, a loving
16 father, engaged in the upbringing of his children. All of this
17 changed after his detention at the Kukes metal factory, which left
18 him as a completely different person. His trauma brought
19 extraordinary distress, hardship, and suffering to his wife and
20 children. "With the mistreatment of my father," one of his sons
21 said, "we, as a family, were also mistreated." What had happened to
22 their father and spouse affected the family as a whole. They were
23 labelled as a family of spies, and they feared for their safety. Two
24 children had to stop to go to school. The victim used to provide for
25 his family and now could not work anymore due to his physical and

1 mental condition. At the same time, his medical treatments and
2 surgeries were expensive and meant a high financial burden on the
3 family which then the victim's son had to bear.

4 I spoke about aggravating factors. The gravity of the accused's
5 crimes is further aggravated by the fact that the victims were
6 particularly vulnerable and defenceless. Completely at the mercy of
7 their tormentors, the beatings and fear instilled in them amplified
8 their vulnerability and defencelessness. In addition to this, the
9 accused and his co-perpetrators displayed a particularly high level
10 of cruelty against multiple victims. My colleague Ms. Pergolo and I
11 have touched upon the brutality released upon the detainees earlier
12 in these closing statements.

13 One of the victims was already in a bad state when he was
14 detained at the Kukes metal factory due to an accident he had
15 recently sustained. His injuries were evident to everyone, including
16 the accused.

17 The Defence tries to downplay the gravity of the crimes charged.
18 In paragraph 354, the Defence final trial brief speaks of crimes with
19 limited scope, scale, and number of victims affected. Reason enough
20 to recall the invaluable worth of human life and dignity. Every
21 person locked up in inhumane detention conditions as imposed on the
22 victims at the Kukes metal factory is one too many. Every single
23 event of mistreatment and torture is a grave crime, and every victim
24 and every single life taken is one too many, permanently destroying
25 the lives of the victims and their families.

1 I spoke about the accused's role. The accused's personal
2 contribution to the crimes was direct, significant, deliberate, and
3 extremely violent. The evidence shows that the accused was
4 personally involved in the arrests, detention, and severe
5 mistreatment of the victims who vividly remember the accused's
6 actions. They particularly remember him as one of the main actors in
7 the night on or about 20 May 1999 and how he deliberately mistreated
8 them one after the other.

9 The victims report that the accused beat them as hard as he
10 could using various instruments. The accused hit 4733 with a
11 baseball bat and the rubber baton all over his body, including his
12 head. He beat 1448 with batons on his hands for half an hour so hard
13 that 1448 almost fainted. And when striking the first blow at Trial
14 Witness 1, he was smiling.

15 In this night, the victims were beaten until they could not
16 stand any more. They were beaten until they lost consciousness, and
17 the beatings continued once the victims regained their senses. They
18 were covered in blood, wounded, and in severe pain. None of this was
19 reason enough for the accused to stop. The accused participated in
20 this beating throughout the whole night. He never intervened, he
21 showed no mercy, at no point did he walk out.

22 And he had not enough. After the 20 May 1999 incident, he also
23 participated in the brutal beating of Trial Witness 1 and the murder
24 victim on or around 3 June 1999, described by Trial Witness 1 as the
25 harshest beating during his detention, and ultimately ending with the

1 killing of the murder victim.

2 The accused attempts to escape or diminish his responsibility
3 for the charged crimes by claiming that he was not a leader,
4 commander, or someone who had any authority or control. I refer to
5 paragraph 355 of the Defence final trial brief. While he may not
6 have been formally appointed a commander at the Kukes metal factory,
7 he was an influential figure, close to people in a position of
8 authority there, with access to the command building and unfettered
9 freedom of movement in and out the premises.

10 Indeed, in 2005 he claimed that it was because of his status
11 that he had been released when arrested in relation to the killing of
12 Halil Gashi in Burrel.

13 But the accused was also deeply involved in the physical
14 commission of the crimes. The evidence presented by the SPO
15 establishes beyond reasonable doubt how the accused through his
16 direct, deliberate, and hands-on participation and as a member of the
17 joint criminal enterprise is responsible for the crimes charged in
18 the indictment.

19 Finally, there are no mitigating factors. The circumstances
20 claimed by the Defence in their final trial brief in paragraphs 356
21 to 371 do not meet the standard to be considered mitigating factors.
22 At the time of the event, the accused was a grown man of 36 years,
23 fully aware of the gravity of his actions and the crimes he was
24 committing. None of the presented individual circumstances
25 pre-existing the charged crimes can serve as an excuse for the

1 decisions he took. None of the current circumstances put forward in
2 relation to his family or health situation meet the required
3 exceptional standards requested by the cited jurisprudence.

4 With regard to his allegedly good conduct in the meantime, the
5 SPO refers to the Trial Panel's findings in its decision on the 15th
6 review of detention in filing 00766, paragraph 26, and the evidence
7 referred to therein.

8 In light of the aforesaid, the SPO requests the Panel to impose
9 the following sentences on the accused for the individual crimes
10 charged: For Count 1, arbitrary detention, eight years of
11 imprisonment; for Count 2, cruel treatment, 15 years of imprisonment;
12 for Count 3, torture, 20 years of imprisonment; and for Count 4,
13 murder, 26 years of imprisonment.

14 Pursuant to Rule 163(4) of the rules, the Panel imposes a single
15 sentence reflecting the totality of the criminal conduct of the
16 accused. The SPO requests to impose on the accused a single sentence
17 of 28 years of imprisonment.

18 Your Honours, the Defence describes the accused as a "simple KLA
19 soldier who assisted his people through fighting at the front." I am
20 citing to paragraph 355 of their final trial brief. The evidence in
21 the case at hand, however, proves that he was certainly also someone
22 else, someone rendering at least 18 individuals to victims of
23 arbitrary detention, cruel treatment, and torture, and murdering one
24 of them.

25 Your Honours, this concludes the SPO's closing statement. Thank

1 you.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

3 Now it's the moment for some further planning for today.

4 Victims' Counsel, I propose to continue tomorrow morning.

5 MR. LAWS: Certainly, Your Honour. Yes.

6 PRESIDING JUDGE VELDT-FOGLIA: And that would mean that for
7 today we will then adjourn the hearing. Then we meet again tomorrow.
8 Very well.

9 Before I close this hearing for today or before I adjourn it for
10 today, I would like to know if, from the side of the Specialist
11 Prosecutor's Office, there's something you would still want to raise
12 with this Panel?

13 MS. WYLER: No, thank you, Your Honours.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

15 Victims' Counsel, is there something we need to discuss?

16 MR. LAWS: Only to say, Your Honour, that we gave our time
17 estimates obviously without having seen the details of what was being
18 said by the Defence, and we'll have a look at our submissions again
19 overnight in the light of what the SPO have said, but we may be a
20 little longer than I suggested. Just to give that warning.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Thank you.

22 Defence counsel, is there something you would like to discuss
23 with the Panel?

24 MR. GILISSEN: Just one thing, Your Honour. It's a question of
25 timing, of course. I hear my learned friend in his explanation, so I

1 would like to know if we have to take the floor during the morning
2 tomorrow or at the beginning of the afternoon?

3 PRESIDING JUDGE VELDT-FOGLIA: That is something that, at this
4 moment, the Victims' Counsel can answer better.

5 Victims' Counsel, what would you have in mind?

6 MR. LAWS: Certainly in the morning, yes.

7 PRESIDING JUDGE VELDT-FOGLIA: Good.

8 MR. GILISSEN: Thank you very much.

9 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then that has been
10 answered. Very well.

11 Then we adjourn till tomorrow, till 9.30, and I thank you all
12 for your participation. Thank you.

13 The hearing is adjourned.

14 --- Whereupon the hearing adjourned at 2.48 p.m.

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