

1 Wednesday, 17 April 2024

2 [Open session]

3 [Closing Statements]

4 [The accused entered the courtroom]

5 --- Upon commencing at 9.31 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning. Welcome.

7 Court Officer, can you please call the case.

8 THE COURT OFFICER: Good morning, Your Honours. This is the
9 file number KSC-BC-2020-04, The Specialist Prosecutor versus
10 Pjeter Shala. Thank you, Your Honours.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Mr. Prosecutor, I would like to know who is present today in
13 court. I see a slight change in composition.

14 MR. DE MINICIS: Yes, good morning, Your Honours. Good morning,
15 everyone else. This morning we have Mr. Max Karakul with us, who's
16 one of our legal interns. The rest of the team remains the same.

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

18 Victims' Counsel, I see that you are in the same composition as
19 yesterday. Very well.

20 Defence counsel.

21 MR. GILISSEN: Thank you very much, Your Honour. We are here
22 with Mr. Shala, for one time with us in the courtroom. We have the
23 same composition of the team except Ms. Annie Lagueux, a legal
24 adviser who is with us this morning.

25 PRESIDING JUDGE VELDT-FOGLIA: Very well.

1 MR. GILISSEN: Thank you very much.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Mr. Shala, welcome.

4 On Monday and Tuesday we have heard the closing statements of
5 the Specialist Prosecutor's Office, of Victims' Counsel, partly we
6 heard the closing statements of the Defence. There is still a part
7 remaining.

8 It is my understanding, Defence counsel, that you would need the
9 first session of this morning for finalising your closing statements.
10 If there are any changes time-wise, please let the Panel know. And
11 if not, then I give you now the floor.

12 MR. GILISSEN: Thank you very much. I have a feeling we will
13 respect the timeline we provided yesterday. And with your
14 authorisation, I provide the floor or give the floor to Ms. Cariolou.
15 Thank you very much.

16 PRESIDING JUDGE VELDT-FOGLIA: You have floor.

17 MS. CARILOU: Good morning, Your Honours. Good morning,
18 everyone.

19 I will begin today with where we were left yesterday, with Count
20 4 of the indictment, under which Mr. Shala is being charged with
21 murder as a member of a joint criminal enterprise intending to kill,
22 or participating in a joint criminal enterprise knowing that murder
23 could follow and willingly accepting that risk, or, indeed, as an
24 aider or abettor. I would like to address three points before
25 discussing the Prosecution's charges based on the adopting of a JCE

1 and the evidence presented in that respect.

2 First, the Prosecution allege that [REDACTED] Pursuant to In-Court Redaction Order F833RED.

3 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

4 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

5 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

6 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

7 No evidence was presented that the accused was in any way
8 involved or linked to this incident.

9 Second, the Prosecution maintain that on 4 June 1999, KLA
10 members, again other than Mr. Shala, shot and wounded the two persons
11 identified in the indictment and that the accused was present and
12 participated in those beatings.

13 As Mr. Aouini has mentioned, Witness 01 is the only witness who
14 actually claimed that Mr. Shala was present during this incident.
15 The Panel must treat his evidence with the utmost caution. It is our
16 submission that this is not a discretionary matter; given his
17 propensity to lie, his record, and his relation to Mr. Shala, this is
18 an absolute requirement. Witness 01's evidence cannot be accepted
19 without corroboration for any of the allegations he made in his
20 evidence.

21 Third, the Prosecution's case is that one of the factors that
22 led to the detainee's death was the insufficient medical treatment
23 provided to the victim after the victim was shot. The evidence
24 presented by the Prosecution showed, as we discussed in paragraphs
25 166 to 169 of our final brief, that medical treatment was provided to

1 the victim after the victim was shot.

2 Now, the Defence does not take any position as to the adequacy
3 of the medical treatment given. What needs to be stressed is that
4 the accused was in no position to provide, to authorise, to instruct,
5 or allow the provision of medical assistance to any person present at
6 the Kukes metal factory. In these circumstances, he cannot be held
7 liable for the death of a person there due to the provision of
8 inappropriate or insufficient medical care.

9 In any event, Witness 01 made no allegation implicating the
10 accused in the alleged decision to decline offering the victim with
11 medical treatment.

12 Now, the Prosecution charged Mr. Shala with murder relying on
13 two forms of liability under the doctrine of joint criminal
14 enterprise, the first and the third. As we know, the principle of
15 legality applies not only to criminal offences but also to forms of
16 liability. I refer the Panel by way of an example to the ICTY
17 Milutinovic decision on Ojdanic's motion challenging jurisdiction
18 dated 22 March 2006, paragraph 15.

19 The 1977 Criminal Code that applied in Kosovo in 1999 did not
20 provide for liability through participation in a joint criminal
21 enterprise. Article 22 of the Criminal Code provided for liability
22 for co-perpetrators who clearly intended the criminal act. That is
23 the classic notion of co-perpetration. Article 26 of the Criminal
24 Code of 1977, concerning the creation or use of criminal associations
25 for the purpose of committing criminal acts, makes no reference to

1 the so-called foreseeability standard.

2 The case law of the Kosovo Court of Appeals has confirmed in its
3 judgments, in the case of J.D. and others as well as XH. K. that JCE,
4 and I quote, was "not was not one of the modes of criminal liability
5 set in any of the applicable codes."

6 It is our submission that the criminal law in Kosovo did not
7 include liability under any form of a joint criminal enterprise.

8 Not only was joint criminal enterprise not included in the SFRY
9 Criminal Code, it was also specifically excluded from the law of the
10 Kosovo Specialist Chambers. It is our submission that stretching the
11 language of Article 16(1) (a) of the Kosovo Specialist Chambers law to
12 include liability under a JCE would be to the detriment of the
13 accused and in breach of the principle of legality.

14 In addition, as set in paragraph 267 to 271 of our final brief,
15 it is our position that JCE in general, and specifically JCE III,
16 were not established in customary international law in 1999 and,
17 thus, could not generate liability for offences committed at that
18 time.

19 As we noted in our brief, the Tadic appeal judgment, which is
20 commonly considered as the foundation of JCE liability in customary
21 international law, was only issued on 15 July 1999. The time span of
22 the alleged JCE we have in our indictment starts on 17 May 1999 and
23 finishes on 5 June 1999. That is, it preceded the delivery of the
24 Tadic appeal judgment.

25 Criminal law must be accessible and foreseeable so that an

1 accused can know what acts will amount to crimes. This is clearly
2 not the case here. Mr. Shala could not have anticipated that he
3 would be accused of any crime he did not intend on the basis of a
4 judicially constructed notion of customary international law which
5 would be retrospectively considered part of Kosovo law 20 years
6 later.

7 The small number of post-World War II cases on which this notion
8 was relied upon were clearly not accessible to him, were issued in a
9 language he could not understand nor read, and in any event were
10 inconclusive as to the precise scope of this form of liability.

11 Apart from the serious problem with charging Mr. Shala on the
12 basis of a JCE, the Prosecution has failed to show that a plurality
13 of persons acted in concert to achieve the purpose of killing
14 detainees at the Kukes metal factory, nor can such purpose be
15 inferred from the evidence we've heard.

16 Several witnesses provided evidence that any beatings of
17 detainees at the Kukes metal factory had stopped by 5 June, the day
18 that the person identified in the indictment died. After that date,
19 according to the Prosecution's evidence always, a new officer was put
20 in charge of the detainees, and this new officer apparently ensured,
21 in the words of Witness 01, better conditions, and with his arrival
22 any ill-treatment ceased.

23 Similarly, Witness 1448 stated, and I quote, "the usual beatings
24 stopped" after 5 June. Witness 1448 also stated that Xhemshit
25 Krasniqi played a significant role in the immediate - the immediate -

1 improvement of the detention conditions. Witness 1448 also stated
2 that after the victim's death, Xhemshit Krasniqi, and I quote, "was
3 nervous and was using bad words against the KLA soldiers. He
4 repeated that 'This is not going to happen again here.'"

5 This evidence is supported by Witness 04, who stated that new
6 professional guards arrived immediately after the death of the one
7 detainee and that they improved the conditions of detention.

8 Thus, the evidence presented suggests that after the death of
9 the detainee in question, measures were taken by those in charge,
10 including Krasniqi, to ensure that the detainees were treated
11 humanely. They changed the persons responsible for the detainees,
12 there was an immediate improvement of conditions of detention, and
13 this was all to ensure, in the words of Krasniqi, that "this is not
14 going to happen again here." Your Honours, how is this consistent
15 with a common purpose to kill detainees?

16 This evidence directly contradicts the Prosecution's allegation
17 of the group in charge of the detainees at Kukes - and Mr. Shala was
18 never a member of such group - shared the intent to kill them. In
19 fact, this evidence demonstrates that the persons in charge did not
20 want to kill any detainee, they regretted what had happened, they
21 immediately took measures to ensure that this would not happen again.

22 The evidence relied upon by the Prosecution also suggests that
23 whatever medical treatment was available, that was provided to the
24 individual concerned. This also goes to show that the said group did
25 not want to kill him or let him die.

1 Importantly, those in charge of the detainees and those who
2 allegedly mistreated the two victims were not different persons.
3 This is not a case where the commandants find out that inferiors
4 acted unlawfully and immediately took steps to take care that this
5 doesn't happen again. The person in command, according to
6 Witness 01, at least according to the most recent version of his
7 story, is actually the person who allegedly shot the victim.

8 Lastly, no evidence was presented which demonstrates that the
9 accused himself wanted to kill this particular detainee. On the
10 contrary, the accused was not aware of and had no role in the murder.
11 He was only informed of his death long after the end of the war.

12 Your Honours, no evidence was presented showing that the death
13 of the said individual was foreseeable to the accused.

14 As found in the Geci trial, this death did not follow the type
15 of ill-treatment that detainees allegedly experienced at the Kukes
16 metal factory. *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

17 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

18 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

19 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

20 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

21 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

22 No evidence was presented to suggest otherwise. In fact, the
23 death of the detainee appears to have been an isolated incident, and
24 the Prosecution's evidence suggests that it was regretted, and
25 immediately thereafter measures were taken to ensure that this would

1 not be repeated.

2 All these elements show, it is our submission, how unlikely it
3 was that the accused could have foreseen that the said individual
4 would be shot and left to die.

5 Essentially, the suggestion that the accused was present in the
6 ill-treatment that followed the shooting is based on the sole account
7 of Witness 01, which cannot be accepted uncorroborated for the
8 reasons already mentioned by Mr. Gilissen and Mr. Aouini yesterday.

9 Your Honours, I will now turn to address a few matters related
10 to the fairness of these proceedings and Mr. Shala's complaints in
11 this regard. These have been extensively developed in the fourth
12 part of our final brief. Today, I will focus on three major issues.

13 I will turn first to the fundamental unfairness resulting from
14 the use and any possible reliance on the statements made by Mr. Shala
15 in conditions which violated his right to effective legal assistance
16 and not to incriminate himself. I will then turn to the fundamental
17 unfairness caused in this case by the unique circumstances in the 08
18 case. And, finally, I will refer to the violation of Mr. Shala's
19 right to properly confront witnesses against him.

20 As we have heard on Monday and yesterday, the Prosecution and
21 Victims' Counsel heavily relied on statements made by Mr. Shala in
22 the course of four interviews in which he was interrogated by
23 experienced Prosecutors and investigators, including Prosecutors and
24 investigators of the SPO, without being informed of and without being
25 provided with legal assistance either prior to being questioned or

1 during his questioning.

2 This concerned the interviews of the accused conducted by the
3 Belgian Federal Police and the SPO in 2016 and 2019, as well as two
4 older interviews by the Office of the Prosecutor of the ICTY. The
5 Panel has admitted the ICTY transcripts and found the Belgian and SPO
6 transcripts not inadmissible.

7 For all these interviews, the accused was questioned without a
8 lawyer being present and without being afforded the opportunity to
9 consult with a lawyer prior to being questioned.

10 All these interviews included questioning on highly
11 incriminatory matters to which the accused gave answers.

12 The Defence has consistently contested the admissions of these
13 statements, as mentioned by Mr. Gilissen yesterday. We repeatedly
14 argued that the Panel's reliance on them would render these
15 proceedings unfair. Despite these objections, despite the
16 acknowledgement of the Kosovo Specialist Chambers Appeals Panel that
17 Mr. Shala's right to effective legal assistance for the purposes of
18 the 2016 interview was violated, the statements even now remain
19 available to the Panel for its deliberations. As we have seen, they
20 play a prominent role in the Prosecution's final brief and closing
21 submissions.

22 The Appeals Panel has confirmed that Mr. Shala's questioning in
23 2016 was in clear violation of the standards of international human
24 rights law. The breach of Mr. Shala's rights for the purposes of
25 this interview makes the use of incriminatory statements made in the

1 context of the 2019 interview also impermissible and unfair. Had the
2 2016 interview been conducted in accordance with the law, Mr. Shala's
3 answers in 2019 might have been substantially different, especially
4 had he been afforded the legal representation he was entitled to.

5 The manner in which he was informed of his rights during this
6 interview, which was conducted in the presence of SPO officials, is
7 shocking. Mr. Shala was literally told, and I quote, "You have been
8 informed of your rights which were sent to you. It's the usual blah
9 blah." Your Honours cannot accept this flagrant lack of respect for
10 the rights of the accused.

11 The doctrine of the fruit of the poisonous tree, which, as we
12 have argued in our written filings on this matter, has been endorsed
13 by the European Court of Human Rights, precludes further use of the
14 incriminatory statements made in the 2019 interview. This is because
15 the 2019 statements were substantially affected by what took place in
16 the context of the 2016 interview which violated Mr. Shala's rights.

17 The Prosecution has failed to show that these statements were
18 given voluntarily, in the absence of oppressive conduct.

19 Any reliance by the Panel for the purposes of its judgments on
20 statements obtained in conditions that extinguished the very essence
21 of Mr. Shala's Defence rights would render these proceedings unfair
22 and any finding based on such statements unsafe.

23 There is another serious problem related to this. As said in
24 our final brief, the clear wording of Article 46(H) of the Law, read
25 together with Rule 138(1) of the rules, require the Panel to decide

1 on the admissibility of evidence. This is made clear by the use of
2 the word "shall" in Rule 138(1), which can be contrasted, for
3 instance, with the use of the word "may" in the equivalent provision
4 of the ICC framework.

5 The Kosovo Specialist Chambers law and rule that we've just
6 referred to require issuing of admissibility decisions, just like the
7 rules governing the procedure before the ICTY, the ICTR, the
8 Mechanism, The Special Tribunal for Lebanon, the Special Court for
9 Sierra Leone. This is because parties have a right to have a clear
10 understanding of the trial record by the close of the evidentiary
11 proceedings.

12 To this date, the Defence does not know whether the Panel
13 intends to rely on these statements. The silence of the Defence on
14 this matter, as the Prosecution has put it, shows the prejudice
15 suffered.

16 Addressing these statements was a fundamental aspect of this
17 case, a matter that even today we don't know how the Panel is
18 intending to approach. The uncertainty as to what is on the
19 evidentiary record violates Mr. Shala's right to know with certainty
20 the evidence against him and have an effective opportunity to respond
21 to it, at the very least, in his final brief and his closing
22 submissions.

23 Second, there is inherent unfairness and breach of the principle
24 of equality of arms by the abuse we have witnessed of the
25 Prosecution's power in the 08 case.

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25 [Open session]

1 THE COURT OFFICER: Your Honours, we're in public session.

2 Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Defence counsel, you have the floor.

5 MS. CARILOU: Thank you, Your Honours.

6 I now proceed to my last point. There have been clear
7 infringements of Mr. Shala's right to confront witnesses against him.

8 There is a serious issue with the fact that the evidence of two
9 witnesses, two important witnesses, Witness 02 and Witness 04, who
10 were available to testify before this Panel, was admitted in writing.
11 The Defence was not allowed to confront them and test their evidence.
12 This was not justified nor merited. It resulted in prejudice as the
13 Defence was deprived of the opportunity to confront them with a
14 number of contradictions in their prior statements and other
15 evidence.

16 In addition, the evidence of two central witnesses, Witness 4733
17 as well as Witness 1448, was admitted in writing. That is fair
18 enough, one could say, as they are both deceased. Yet given the
19 importance of exercising caution when it comes to identification
20 evidence, and the fact that, for Witness 4733, the description he
21 gave of the accused is evidently flawed, while for Witness 1448, he
22 identified the accused on the basis of information provided to him by
23 unreliable others, the prejudice resulting from the admission of
24 their untested evidence, in our submission, violates Mr. Shala's
25 right to confront important evidence against him.

1 In order to remedy this infringement, the Panel should accord
2 little if any probative value to the untested evidence and not accept
3 it on any matter which is not corroborated by independent and,
4 importantly, reliable evidence.

5 Instead of acknowledging the evident problem with tendering the
6 evidence of Witness 4733 or the flawed identification of the accused,
7 the Prosecution has amplified it to the greatest possible extent. It
8 has brought no less than four others linked to him to repeat what he
9 had once told them.

10 Now, they may be convinced, these other persons may be convinced
11 about the veracity of what Witness 4733 had said. Indeed,
12 Witness 4733 may have been convinced himself. The problem remains
13 that his identification of the accused was false. Mr. Shala is
14 almost not black, and the Defence was unable to show this by
15 confronting Witness 4733.

16 The Defence was also unable to confront the false identification
17 conveyed through the other witnesses because they only know what they
18 were told. It is a clear breach of fairness to present such
19 problematic identification evidence and amplify it by presenting it
20 not only once but five times in circumstances where the Defence could
21 not even confront its essence at all.

22 This concludes my submissions, Your Honours. And Mr. Gilissen
23 can take now the floor to conclude our submissions. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

25 Then I give the floor to Mr. Gilissen.

1 MR. GILISSEN: Thank you very much, Your Honour. [Microphone
2 not activated].

3 This is the difficult moment for a Defence. This is the time to
4 draw conclusion in the case you defend. That's always a delicate
5 moment, and I think that more than ever it is important to be precise
6 and avoid any mistake or misunderstandings.

7 I have to say that when I'm hearing the Prosecution's
8 presentation and arguments, I'm afraid that it could exist some tiny
9 difficulties. And the first one, indeed, that the issue at the heart
10 of this legal proceeding, it's not whether people were deprived of
11 their liberty. Nobody contests that. It's not if some ill-treatment
12 had been imposed on some person. No, no, the question at the very
13 heart of this trial concerned, as Mr. Aouini told you, is
14 Mr. Pjeter Shala.

15 And so we have to insist that the question is whether he
16 participated or not in a criminal way or another in this arrest and
17 detention and in the condition in which the detention took place.
18 Mr. Shala is very clear about that. No, never, not even once.

19 Did he participate in the illegal treatment and violence
20 inflicted to the detainees? No, never.

21 And, finally, the question is whether he is guilty of the murder
22 of one of the detainees. Absolutely not.

23 So could be a simple case, as the Prosecutor announced it.

24 So was Mr. Shala part of a system developed to committing such
25 crimes? Did he himself commit the crime that the Prosecutor is

1 accusing him of or any of? No, he did not. Very clear. And if you
2 were to find otherwise, he had committed one criminal offence, has he
3 done so as a perpetrator or in quality of accomplice?

4 And, finally, if you want to turn out that Mr. Pjeter Shala has
5 committed an act contrary to the law, it would be necessary to know
6 whether this offence was linked to crimes committed by others or
7 whether it was specific to him and purely individual.

8 As you know, Your Honours, all forms of criminal participation
9 requires at least one thing to be: knowledge of a criminal situation.
10 And if, and only if, the knowledge is proven to be the case, then it
11 is necessary to establish the existence of at least one material act
12 characterising the situation of this person to participate in the
13 known criminal situation.

14 In order to link Mr. Pjeter Shala to the crime by those who had
15 already been recognised guilty for the crimes committed in Kukës
16 metal factory during the time of the indictment, the Prosecutor
17 relies on the statement of some witnesses who claim that Pjeter Shala
18 was part in the abuses and crimes committed on the detainees. The
19 Prosecutor was fully confident with three of these persons, and only
20 three of these persons, and built its prosecution plan on the base of
21 some of the statements of these persons at the exclusion of other
22 statements issued, provided, given by these three famous witnesses
23 because these other parts of the statement didn't match with this
24 plan.

25 So I use the word, I think so, picking and cherry. This is

1 really what is the situation, indeed. So we must remember that on
2 the basis of some statement of these three persons in order to
3 establish this necessary link between Pjeter Shala and the detainees,
4 Mr. Pjeter Shala was presented as a person with responsibilities in
5 Kukes. He was said to have been one of the main leaders and
6 important persons among the soldiers present in Kukes metal factory.
7 He was presented as being an important member of the 128th Brigade,
8 where he was Ruzhdi Saramati's associate.

9 And on the basis of a single - a single - statement, which has
10 never been confirmed one way or another, it was claimed that his
11 authority on the spot was such that he could freely leave or enter in
12 Kukes metal factory without having justified his movement to anyone.
13 A thousand people were in Kukes metal factory. Only these people
14 affirm, say, we don't know why, this kind of information.

15 Of course, this kind of information has never been corroborated
16 by someone.

17 It was very clear Mr. Shala was stationed - stationed - in Kukes
18 metal factory where, as well as exercising his authority on the
19 soldiers, or part of them, he regularly took part in violent
20 interrogation and crime scene involving the detainees.

21 You will recall that the Prosecutor claimed that Pjeter Shala
22 had attacked Witness 01 no less than 12 occasions. The reference
23 transcript 6 June 2023, page 1933. 12 occasions, please. And the
24 Prosecutor has confidence in the witnesses who support this clear and
25 precise presentation of the fact because - because - over several

1 years it was - it was - their presentation and the statement of these
2 witnesses. That was the situation.

3 But we know today, My Honours, we know today that the reality
4 was never that. Never. All of us, we know it. And that's why the
5 Prosecutor changed the presentation of the case. Shala,
6 Pjeter Shala, Mr. Pjeter Shala was never the Ruzhdi Saramati partners
7 in the 128 Brigade. We know it today. He never even belonged to
8 this brigade. Never.

9 Shala, Mr. Pjeter Shala, has never had any responsibility or
10 authorities over someone in Kukes metal factory. At no time has the
11 slightest proof of any of this ever been produced in. Just nothing.

12 Today, indeed, nobody continued to defend this scenario anymore,
13 and there is even a definitive desire to forget that anyone has ever
14 claimed that. Indeed, fortunately, the Defence was able to establish
15 that while Pjeter Shala was never a member of the 128th Brigade, but
16 it also established that very, very few people of the thousands of
17 people who were in Kukes metal factory in the first half of 1999 saw
18 Pjeter Shala in this factory in the time of indictment -- of the
19 indictment.

20 And the few who saw him in Kukes metal factory at this moment,
21 they confirmed they saw him just some two, three, four, five times
22 maximum, and nobody said they saw him in the detention rooms or close
23 to the detention room. I'm waiting for the name or the number of a
24 witness who said that. No one. Absolutely no one.

25 What's more, no one now claims that Pjeter Shala ever had any

1 responsibility or hierarchical power at Kukes metal factory over
2 anyone, and nobody claims any longer he was stationed even, even
3 stationed, in Kukes metal factory or in Kukes town.

4 Moreover, moreover, it is now clear that apart the same three
5 witnesses who accused Mr. Shala of having committed crimes, none of
6 the other 18 people that the Prosecutor claims they were detaining in
7 Kukes metal factory have never recognised Pjeter Shala as one of the
8 crime perpetrators, Mr. Aouini was very clear about that, or even one
9 of the persons they saw during their detention.

10 Nobody provided us a description of a person who looked like
11 Mr. Pjeter Shala. So that's very strange, of course, if we have to
12 try to understand exactly what is the Prosecution's plan.

13 The witness, the direct witness, the eyewitnesses are very sure
14 they didn't recognise Mr. Shala, they didn't know him. They even
15 never heard the name or the nickname Shala or Ujku.

16 So nothing or almost nothing remains of the Prosecutor's initial
17 scenario apart from a whole new story, because, of course, [REDACTED]
Pursuant to In-Court Redaction Order F833RED.

18 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

19 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

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24 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

25 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

1 [REDACTED] Pursuant to In-Court Redaction Order F833RED. That's of
course very

2 important.

3 You know, this witness --

4 PRESIDING JUDGE VELDT-FOGLIA: Shall we go into private session?

5 MR. GILISSEN: Yes, indeed. It's better, I think so. I'm
6 sorry, I have to say it by myself.

7 PRESIDING JUDGE VELDT-FOGLIA: Court Officer, could you please
8 bring us into private session.

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17 [Open session]

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

19 Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

21 Defence counsel, you have the floor.

22 MR. GILISSEN: Thank you very much.

23 So I told you a new story, a new story issued by the Prosecution
24 team against Mr. Shala, but a new story that has constantly continue
25 to evolve and change. Change in the statement provided by this

1 witness to include new discoveries and information made during the
2 course of the ongoing investigation. Take care about that. You have
3 to take a look at the date.

4 You have a new element by the expert report, and the statement
5 of this witness changed. You have a new element by another witness,
6 and the statement of this witness changed. Take a look at the dates.
7 That's sure. With the number of shots, with the number of bullets,
8 with the position of -- a lot of things changed.

9 And so as a result, we have several versions of the events and
10 several versions of the same events with varied degrees of detail as,
11 by example, to who was involved and what weapons were used in the
12 scene of the shooting concerning the murder charge. And you know
13 even the name of the shooter. I told you yesterday, I know. I don't
14 have to repeat things, but sometimes we have to repeat to avoid to
15 commit an error. Even the name of the shooter changed not once, not
16 two, three times. We have four names of shooters.

17 As a result, as a result, we have several versions of the same
18 event, I say. And I have to ask the question: Who was present
19 during this scene? It changed a lot. It changed a lot.

20 So it's not only the only time this witness has changed it, but
21 it's not also -- and could be better to say it not in public but in
22 private.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Mr. Court Officer, can you bring us into private session,
25 please.

1 [Private session]

2 [Private session text removed]

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22 [Open session]

23 THE COURT OFFICER: Your Honours, we're in public session.

24 Thank you.

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

1 Defence counsel, you have the floor.

2 MR. GILISSEN: Thank you very much.

3 I think this is how the man who should be the improbable Witness
4 01, so much did he change and vary, became the incredible Witness 01,
5 so much did the explanation for his variation become incredible.
6 And, indeed, when this witness has to explain or justify so many
7 variation changes, contradictions he made through his statement,
8 Witness 01 did it. No hesitation to question competence of some
9 translators, of course. To question the correctness of some
10 investigators, of course. And even to question the honesty of a
11 prosecutor, I told you I think yesterday, the point. This is a very
12 important point, I think so. Because if someone -- if there is some
13 tricky thing in the procedure, of course, we have, all of us - all of
14 us - to be aware about that.

15 That's amazing that the Prosecutor didn't ask: Why my own
16 witness say that about one of my colleague? And you don't ask: Why
17 did you say that? What is the problem? Under oath my own witness
18 says that, and no, it's not a problem. Keep silence, please. We
19 pass through, we pass through, and as soon as possible we change the
20 subject.

21 But just imagine, Your Honour, for a moment what you,
22 Your Honours, Judge of Mr. Shala, what saying if Mr. Shala chose to
23 testify under oath and vary his testimony as much as Witness 01 did,
24 if he changed the content of his statement several times in this
25 testimony he made before you? What if the content of his statement

1 has changed and when new information come to light, the
2 investigation, in contradiction with the previous statement he gave
3 before?

4 But it doesn't end there. I told you the same witness lied. He
5 admit it. [REDACTED] Pursuant to In-Court Redaction Order F833RED.
So this also
6 explain in details provided by Witness 01 about the murder in
7 question do not tally with the findings, the opinion, and the
8 conclusion of the expert.

9 Indeed, this witness claimed to have personally witnessed the
10 murder and to have seen the accused person, Mr. Shala, take part in
11 it. But while other witnesses have testified before you under oath
12 that this witness, 01, was not in the room where the murder was
13 committed because at this moment he was with them, detained in
14 another room, and you have several witnesses who say that.

15 And then that's why I say now we're able to understand why we
16 have the findings, the opinion, and the conclusion of the expert
17 don't match with the explanation of this Witness 01.

18 Whatever the opinion of each of us, we will never really know
19 what really happened that day when one or several shots were fired
20 because Witness 01 chose to lie and varied so much his statements
21 that no one can be certain about it anymore.

22 Again, what would you think and conclude should it appear that
23 Mr. Shala lied, lied even one time, in his explanation or statement?
24 That's sure you would declare him incredible, that's sure,
25 untrustworthy, and unreliable, and you would declare you could not

1 accept and have regard to his explanation, and, of course, you would
2 convict him. That's sure. And may I say, it would be normal.

3 What I am asking, and what the law and justice, real justice,
4 demands, is that the criteria used to analyse the credibility and the
5 reliability of statements be the same for everyone, be the same for
6 everyone whether the statements were made by an accused or a witness.
7 I would add that I have no doubt it will be the case during your
8 deliberation, because it is on the application and strict compliance
9 with the rules that the credibility and the fairness of the procedure
10 depends.

11 So I don't want to be too long. I know that lawyers, and
12 particularly defenders, are too long, always. That's because they
13 fear to forget something.

14 So as conclusion, I ask you to declare that the threshold of the
15 legal standard of proof beyond reasonable doubt has not been met in
16 this case concerning all charges against the accused. And as a
17 result, I say, I claim, that Mr. Pjeter Shala must be acquitted.

18 Thank you very much for hearing me. Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

20 We have now completed the closing statements by the Defence, and
21 we will now hear the responses to the points made by the Defence in
22 the closing statements by, first, the Specialist Prosecutor's Office,
23 if any, and then the Victims' Counsel.

24 Before I turn to you, Mr. Prosecutor, I have a small question
25 for the Defence more in terms of housekeeping of the transcript. And

1 that is not for now but for during the break.

2 On page 28, starting line 23 till page 29, line 3, I think that
3 two words were not transcribed, and for completeness, if you could
4 have a look at that, then you fill us in later.

5 MR. GILISSEN: For sure, Your Honour. Thank you.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7 Specialist Prosecutor, do you need time to further prepare the
8 points that have been shared in the closing statements by the
9 Defence, or can you take the floor now?

10 MR. DE MINICIS: Your Honours, if we could take the break now,
11 that could help us just organise the references to the transcript
12 with regard to the submissions made today.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes, very well.

14 Mr. Prosecutor, then we will proceed as such. We will have a
15 break now till quarter past 11.00, and then we proceed with the
16 responses.

17 Very well. Then the hearing is adjourned.

18 --- Recess taken at 10.40 a.m.

19 --- On resuming at 11.15 a.m.

20 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. Let me see. I see
21 that the Specialist Prosecutor's Office is in the same composition.
22 Is that right? I see a confirmation. Of course, the same
23 composition. And here you are also in the same composition. And
24 Mr. Shala is also in the courtroom.

25 Very well. Then we will continue with the response by the

1 Specialist Prosecutor's Office to the points raised by the Defence in
2 its closing statements.

3 Do you have an estimation, Mr. Prosecutor, how much time you
4 will be needing?

5 MR. DE MINICIS: My best estimate would be about 20 minutes.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. Just to see.

7 MR. DE MINICIS: Give or take.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Yes, yes. Just to
9 see if it was within the allocated 45 minutes in principle that
10 you --

11 MR. DE MINICIS: Definitely, Your Honour.

12 PRESIDING JUDGE VELDT-FOGLIA: Very well. Good.

13 Then you have the floor, Mr. Prosecutor.

14 MR. DE MINICIS: Your Honours, our preliminary remark before
15 addressing specific elements of the Defence submissions. It was at
16 times not easy to understand the source of certain Defence
17 submissions. Specifically, it was difficult to distinguish whether
18 they were based on evidence that is on record and available to
19 Your Honours for deliberations or on documents which were disclosed
20 but not tendered by the parties. At this time of the trial,
21 Your Honours, evidentiary submissions are closed, and so
22 Your Honours' deliberations will be based on the evidence that's been
23 tendered and considered available for deliberations.

24 By way of example, yesterday, there was at page 4258, in
25 relation to Trial Witness 01, certain statements about -- that this

1 witness purportedly made concerning throwing bodies into a lake.
2 There are others. This is just an example. We weren't able to find
3 his testimony in this regard in his trial testimony. We were able to
4 find this reference in previous documents. But, Your Honours, this
5 is not in evidence. And there are several other remarks which we
6 suspect are based on documents which have not been tendered by the
7 Defence and are by now not part of the trial record.

8 So Your Honours will, of course, exercise due caution during
9 your deliberations, but we felt we had to point this out.

10 The Defence also re-argued a number of issues in relation to
11 arbitrary detention, the customary nature of JCE, or the accused's
12 statements for that matter that have been litigated before the
13 Pre-Trial Judge, before Your Honours, upheld in appeal, so I won't
14 repeat. We don't feel there's the need to reply on those. These
15 matters have been settled.

16 The Defence made -- they repeated and made additional
17 submissions with regard to the credibility of the Prosecution
18 witnesses, especially Trial Witness 01 and 4733. I will just address
19 some of this for now.

20 Yesterday, the Defence, I think it starts at page 4248 of their
21 submissions, made the case that 4733 did not know the accused, and,
22 therefore, he could not identify him.

23 The basis for 4733's identification is set out in our brief in
24 detail, and we have supplemented these submissions in our closing
25 statements. But what, again, Your Honours, perhaps -- in this case

1 what I want to point out again is that Your Honours should have -- is
2 the wholistic consideration of the evidence on record that can leave
3 no doubt about 4733's identification of the accused's presence during
4 his transport and in the night of 20 May 1999.

5 The starting point of your assessment should be the multiple
6 witnesses placing him there at that time doing exactly the same
7 thing. I mean, what are the odds? The accused himself, and as we
8 stated in our brief, provides a lot of detail that corroborates this
9 witness's evidence. The Defence haven't engaged with those. But we
10 have explained why this witness's evidence is corroborated by him,
11 too.

12 So, really, what are the odds of all this just happening by
13 coincidence?

14 I mean, one of these witnesses, Your Honours, was Trial
15 Witness 01 who made the same identification, the same night, in the
16 same room as 4733. Trial Witness 01 knew the accused very well. Are
17 they both wrong? Did they both come up with the same story?

18 Now, just to dissipate any doubt that there may be that there
19 was some sort of communication between these two witnesses after the
20 fact, in 2002, 4733 identified Pjeter Shala, Wolf, as one of the
21 perpetrators of that night. He's the first person he mentions in
22 that statement as he's asked to provide a list. By then, 4733 had
23 never seen Trial Witness 01 after the events in Kukes. We know this
24 because when he's interviewed again by the ICTY in 2003 and he's
25 asked if he has any additional information about these people, 4733,

1 about Trial Witness 01, 4733 says:

2 "No, I don't. I thought that maybe -- maybe they were both
3 executed. Maybe he was executed. I don't know."

4 It shows that he had never seen him since then.

5 There can be no suggestion nor even a fleeting thought that
6 there had been some meeting in which the circumstances were agreed
7 upon. And, therefore, there can be no doubt that these witnesses
8 were truthful in describing the same event, placing the same persons
9 there, the same date, the same location.

10 In relation to 4733's statements, but also in relation to 1448,
11 the Defence made some remarks, at page 4229 of the transcript, that
12 the ICTY didn't consider them credible. They did not provide a
13 reference that the Panel could verify. We weren't able to find any.
14 We suggest that such finding was never made.

15 To the extent that the Defence refer to the fact that Mr. Shala
16 was not indicted by the ICTY, that is a matter of prosecutorial
17 discretion, which is far from proving that was based on an assessment
18 of the credibility of these witnesses by the then ICTY prosecutor.

19 Your Honours, we now come to Trial Witness 01, and I will need
20 to go into private session to make my submissions.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

22 Mr. Court Officer, can you bring us into private session,
23 please.

24 [Private session]

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16 [Open session]

17 THE COURT OFFICER: Your Honours, we're in public session.

18 Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Court Officer.

20 You have the floor, Mr. Prosecutor.

21 MR. DE MINICIS: Your Honours, the Defence did not completely

22 decline to comment or take a position on the statements of the

23 accused. They did rely on them a little bit, but they offered a

24 selective and decontextualised reading of these statements.

25 Yesterday, at page 4254, the Defence assertively stated that the

1 accused only learned about the murder victim's death during his 2016
2 interview. Your Honours, that's not true. It isn't true. They said
3 he learned that in the course of that investigation. It's not true.

4 What is stated in his 2016 interview is that he learned about it
5 a few years earlier, three or four. Why would he lie about that?
6 Why? Why would he lie so blatantly about such an important detail?
7 Why would he not tell the truth about that? This is a question that
8 Your Honours should ask yourselves, but it also shows that the
9 Defence submissions when it comes to the accused's statements are
10 selective and should be taken for what they are.

11 Now, another sort of selective interpretation of these
12 statements is their position, repeated yesterday at page 4254, that
13 the accused only met Trial Witness 01 in the courtyard of the
14 factory. That was the only time.

15 Your Honours, we have set out in our brief all the elements that
16 prove otherwise beyond reasonable doubt. But I'd like to point out
17 to just one other detail that Your Honours may want to consider in
18 assessing that evidence.

19 In paragraph 146 of our brief, we pointed out evidence that
20 during the night of 20 May 1999, one of the female victims in this
21 case was forced to make accusations against Trial Witness 01, to say
22 that he was a collaborator, and this happened inside the office room,
23 the office room where the 20 May 1999 incident took place.

24 Well, we invite you to look at what the accused stated in 2016,
25 and its ERN is 074117 to 074129-ET Revised 1, page 074126. The

1 accused on that occasion told the investigators how an 18-year-old
2 woman who was with them made accusations against them, which included
3 a certain person who is someone that the Defence suggests Trial
4 Witness 01 was collaborating with. These suggestions can be found in
5 the transcript on 2 June 2023, pages 1849 to 1850.

6 Your Honours, this is just another piece of evidence which tells
7 Your Honours that he was in that room that night. He saw what
8 happened, he heard what happened, and he recalled details about it.

9 Your Honours, I will conclude my submissions on -- I'd like to
10 respond to something the Defence said at page 8 of today's
11 provisional transcript. It concerns the foreseeability of the
12 murder.

13 Your Honours, we have made it clear what our position is about
14 the murder intent. There was intent. We have set out the reasons in
15 our brief. We have repeated our submissions and supplemented them
16 during our closing statements. But I want to make it clear that, in
17 addition to that, it is our position that as early as 20 May 1999,
18 that somebody could have died, that the murder victim could have
19 died, it was a concrete and foreseeable possibility, including to the
20 accused with all the information he had at his disposal.

21 Your Honours, they have guns, these three people had unholstered
22 guns in their hands, using them to bash heads open, knives, blood
23 aplenty, people losing consciousness, and alcohol. Now, something
24 could have gone wrong in a situation like that. It's not an
25 implausibly remote scenario. It's a concrete possibility foreseeable

1 to all those present in that room.

2 In this regard, Your Honours, any different finding from
3 previous judicial bodies are not binding on Your Honours, and you
4 should make the decision that, according to you, is based on the
5 evidence presented in this trial. And we submit that the evidence
6 presented in this trial leaves no doubt to the fact that it was
7 foreseeable that somebody could have died, that the murder victim
8 could have died, and that the accused, in spite of that, in spite of
9 all that, continued to engage in that conduct that night, throughout
10 the night, against multiple victims, one after the other, and again
11 on the 3rd or 4th June 1999. That is why in addition to intent, the
12 Prosecution has proven beyond reasonable doubt - there is no doubt -
13 that the murder was foreseeable.

14 This concludes my submissions, Your Honours.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

16 Now that we have concluded the response by the Specialist
17 Prosecutor's Office, I turn to Victims' Counsel.

18 Victims' Counsel, do you have a response?

19 MR. LAWS: Yes, please, Your Honour. I do.

20 PRESIDING JUDGE VELDT-FOGLIA: Very well.

21 And for planning purposes, will you remain within the 45 minutes
22 allocated?

23 MR. LAWS: I think I'm going to be five minutes or so.

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

25 Victims' Counsel, you have the floor.

1 MR. LAWS: Thank you, Your Honour.

2 Your Honour, we would wish to align ourselves with the
3 submissions that have just been made by the SPO, and we're certainly
4 not going to repeat them.

5 The only matter that I want to address relates to Witness 01 and
6 to the criticisms that are made of him and of his credibility. And
7 to do that, Your Honour, I'm going to need to ask for the Court to
8 move into private session.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

10 Mr. Court Officer, could you please bring us into private
11 session.

12 [Private session]

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17 [Open session]

18 THE COURT OFFICER: Your Honours, we're in public session.

19 Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Court Officer.

21 We are now giving the floor to the Defence counsel for his
22 comments on the response from the Specialist Prosecutor's Office and
23 Victims' Counsel.

24 You have the floor.

25 MR. AOUINI: Thank you, Your Honour.

1 So to briefly respond on a number of points that we just noted
2 from the responses from our colleagues in the SPO and later from
3 Victims' Counsel, I'll take them in turn, Your Honours.

4 The first one, I understand, is the inquiry about references or
5 indications on elements that are not in evidence, admitted in
6 evidence or available proper.

7 The basic answer is yes, but there is a more complex response to
8 this. They are probably not admitted per se as evidence, but they
9 are part of the case file. And I give you an example, Your Honours.
10 You may agree or not with it.

11 When we refer to the lake, Your Honour, yes, it was in a
12 statement and, yes, that statement is not admitted as documentary
13 evidence in the case, but it is part of the case file, in our
14 submission, and the history of this procedure. Why? Because those
15 are the statements that the SPO requested Your Honours to admit under
16 Rule 154. They are part of their case. And those are one of the
17 reasons that Your Honours refused to admit those statements, because
18 of a number of contradictions and issues that warranted that this
19 witness gives a full testimony live.

20 It is to be taken into account. It is part of what we lived,
21 why we heard some witnesses, and why not for some others. It is part
22 of the history. And more importantly, it is not wrong. It is not
23 false. What we said was correct, Your Honours.

24 The other example is the Defence Witness 05. Now, mindful we
25 are in open session. The basis for what we said is in filing 00680.

1 The one for the previous statements is filing 465. But for the
2 Defence witness, it is filing 00680 where you find the exact
3 elements, which are not evidence because they were not done at the
4 time the source of this information was in the stand but later on.
5 But this is something Your Honours can take into account because it
6 is in our papers, it is in the case file, it has come across your
7 eyes and in your filings, official filings, at one point or another.
8 We cannot make just simple abstraction of everything that surrounded
9 this procedure, and I will come to that point on a later point. And
10 I know we disagree. And Your Honours have heard submissions far east
11 and far west. We disagree, and we agree to disagree. This is our
12 position, Your Honours.

13 On the reproach, the second point, the reproach that we revisit
14 and resubmit some of our legal arguments, Your Honours, the answer is
15 simple. We have to exhaust all domestic remedies. Maybe for our
16 colleagues this might be the end of their intervention of this
17 procedure, but we don't know potentially for us. The procedure is
18 still long, and we have to make every argument we believe that is
19 necessary to be put in any form of record, through filing, in the
20 transcript. Some of the elements are addressed for the first time
21 orally, and it is our right and our duty to expose them again. And
22 we might disagree, but this is our position, Your Honour.

23 Turning to the third point, which I believe concerns the Witness
24 4733 and the invitation by the SPO to take the evidence
25 wholistically. We invite you to do the same, Your Honours, as well.

1 But what we disagree with the SPO on is their reference to odds and
2 coincidence. This is not the standard, Your Honours: the odds of
3 having a coincidence. No. Our position is clear, Your Honours.
4 Certain names were heard and were shared, and it's easy for anyone
5 who spends time in the Kukes metal factory to use this name. This is
6 our issue.

7 And so what is the odds is not the standard to prove criminal
8 offences and criminal conduct. It is proof beyond reasonable doubt.
9 What are the odds that someone also named Jakup Krasniqi, be it a
10 doctor bandaging the heads of people -- that is the same source that
11 said that. Daut Haradinaj never set a foot in Albania during the
12 war. He was mentioned to be there. Our issue is with the names.
13 Our issue is not with the pain of the victims. We acknowledge that
14 time after time.

15 But who do you put there? Mr. Bardhyl Mahmuti was here. He
16 provided his passport with the stamps. We went through them. This
17 is not the problem. They suffered. Okay. We're sorry for that.
18 Not sorry because we're responsible for that. We're sorry for their
19 pain. But we have to deliver now a verdict on Pjeter Shala and
20 whether somebody who names him and says he is black is right or wrong
21 on that. It's not because we are here in The Hague that Mr. Shala
22 has to pay for it.

23 Regarding the fourth point, Your Honour, on two witnesses and
24 their statements in 2002, 2003 at the ICTY. Yes, it is not in the
25 evidence, Your Honours. It is a deduction that Mr. Gilissen drew

1 from the fact that those witnesses were heard by the investigators,
2 professional investigators of ICTY at that time, people who were
3 specifically dealing with the Kosovo part at the ICTY time, and that
4 no investigations. This is the context in which Mr. Gilissen made
5 those submissions. For years nothing happened. For years, several
6 years, nothing happened. No investigation. Not taken seriously.

7 The next time we hear about these witnesses was, like
8 Mr. Gilissen said, when there was a press media campaign sourced in
9 Kosovo -- but sourced in Serbia, sorry. But we know the names,
10 Michael Montgomery, Jovo Martinovic, those people made articles and
11 all of a sudden things started to happen again. On which topic? The
12 yellow house, the organ trafficking. And we have documents, maybe I
13 don't have the reference right now, where these two same people were
14 mentioned as sources of the organ trafficking. It's a reasonable
15 deduction. Your Honours may agree with it or not, the SPO may agree
16 with it or not, we suspect not, but it is our position, Your Honour.

17 [REDACTED] Pursuant to In-Court Redaction Order F833RED.-

18 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

19 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

20 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

21 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

22 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

23 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

24 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

25 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

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4 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

5 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

6 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

7 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

8 The other point, the forensic. Yes, Your Honours. Maybe I have
9 the report. We agree with the SPO. The position, the anatomical
10 position, the seating position with the legs extended, it is on that
11 page. Our issue is not really that, and we said it when we plead it.
12 We made a PowerPoint -- we saw a PowerPoint where there was a very
13 well done attempt, not attempt in a deceitful way, but to bend
14 non-anatomical positions making the seating positions. Our point was
15 the trajectories don't change when you change the position through a
16 PowerPoint. The experts didn't dare choose or ascertain or determine
17 any other trajectory. You hit at my arm this way, there is a
18 trajectory. You put like this, there are two holes. It's as simple
19 as that. It's physics. The expert didn't do it. We should not do
20 it.

21 And the other point is the sequence. Let's be reminded,
22 Your Honours, first, second, and third was clearly agreed between
23 everyone that is not the chronological sequence. Nobody knows what
24 is the chronological sequence of the shots. And all this, what we
25 are saying, is to say it is unclear. We don't know. Nobody knows.

1 But what is certain is that even some witnesses don't know. It
2 doesn't match. That's the point we are making.

3 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

4 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

5 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

6 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

7 [REDACTED] Pursuant to In-Court Redaction Order F833RED. no, Your
Honours, we need to go to private

8 session for this. Sorry.

9 PRESIDING JUDGE VELDT-FOGLIA: Mr. Court Officer, can you please
10 bring us into private session.

11 [Private session]

12 [Private session text removed]

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23 [Open session]

24 THE COURT OFFICER: Your Honours, we're in public session.

25 Thank you.

1 PRESIDING JUDGE VELDT-FOGLIA: You have the floor.

2 MR. AOUNI: Thank you, Your Honour.

3 The statements of the accused. Again, the point is not the
4 point that we made. We did not refer to the statements when we said
5 that Mr. Shala learned about it in 2016, the death. It was the
6 position. It was our instruction. We never referred at any time
7 because we are at odds with these statements and the way that they
8 are used and the procedural way in which they are used, and they are
9 precisely taken out of context.

10 We are not taking it out of context. We are not selective about
11 it. And what my learned friend from the Prosecution said does not
12 contradict. Years later, yes, 2016 is years later, but this is the
13 only trace we have of it is during those investigations. So it is
14 inaccurate to say that this is a lie. This is our position. You
15 might find some facts are compatible with that, and that's precisely
16 because Mr. Shala didn't lie. He didn't have the privilege of having
17 a lawyer tell him before being interviewed, "Be careful. This is
18 serious," so he doesn't talk like in a café or doesn't take something
19 serious. That he's warned what is a suspect, what it means, what are
20 the legal consequences of that, so he is precise when he says, "If I
21 had caught him a year ago ..."

22 Yes, he was confronting police all the time. He was confronting
23 paramilitary all the time in 1998 during the war. They kill him or
24 he kills them. That was war. If a suspect has the privilege of
25 knowing the legal consequences of each single word, we wouldn't be in

1 a situation where some parts of written documents are taken out of
2 context. That is the situation, Your Honours, and Mr. Shala didn't
3 lie.

4 We submitted the position on the knowledge about the death. It
5 is not from the statements. We didn't put any reference to the
6 statements. Let that be clear, Your Honours.

7 Your Honours, I propose to deal with another point. That is a
8 female. I don't think what I say is private, but out of abundance of
9 caution, maybe briefly go there, to private session, so we take no
10 risks.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

12 Mr. Court Officer, can you please bring us into private session.

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23 [Open session]

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

25 Thank you.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Court Officer.

2 Defence counsel, you have the floor.

3 MR. GILISSEN: Thank you, Your Honour. It could be a little bit
4 special, but I need to let some words about 28 years for the
5 sentencing, about this 20 years that's required by the Prosecutor.

6 It's a lot, that's sure. But I fully understand. This kind of
7 sentence is issue of a particular vision, a repressive one. I know
8 it perfectly well. I was prosecutor for the UN, so I fully
9 understand it. Of course, if some crime has been committed, we have
10 to sentence it. That's sure. But I also know the risk that includes
11 such a vision. Blindness, because I think blindness hides a part of
12 the world and the complex reality.

13 I do not wish to be derogatory. That is not the purpose of my
14 remark. But pay attention to the fact that what people need, and
15 particularly in the Balkans, what people need is less language for
16 legitimate repression than a reconciliation discourse. This kind of
17 discourse is the only one that can lead to peace, and we saw it and
18 we know it after so many years of international justice in the
19 Balkans, with the success of the international justice and the
20 failures of the international justice.

21 We have to be careful. We have to be careful. You know,
22 exemplary repression. Okay. Okay. But to claim it? We should
23 first be exemplary ourselves. When I say "ourselves," I say the
24 international community. And we know that in Kosovo it's not a bad
25 word to say it's not a full success. Of course, we know that a lot

1 of perpetrators, a lot of people, executioners, well known, have
2 never been tried and they will never be tried. Never. They died in
3 their bed in Serbia, or they are general or officer in the army, but
4 now they are people who are aged.

5 But for the Kosovan population, I think it's very important to
6 understand that the people who defend them has to be punished if they
7 committed crimes. But do you realise even a second what is the
8 consequences of such a war in 1998 and 1999 on the morality of a
9 society? How much the rules of the morality for every individual in
10 a society are weakened, destroyed, when you are obliged to be a
11 witness, because that's not a choice. When you are obliged to
12 witness rapes, killing, violence on the elderly, on the children, on
13 the women, the houses burning. You lose all. You pass through the
14 borders with no document because they deprive you with your document.
15 Do you realise what is the effect of that?

16 Do you realise that a man, a woman in such condition is not a
17 little bit reduced his own identity in his own way to understand and
18 to live the reality? When you put people in so exceptional
19 situation, can we really be astonished that they react exceptionally?
20 So we have to respond to this kind of question.

21 It doesn't mean if a crime has been committed that the people
22 who made these crimes meant nothing or we have to understand or we
23 have -- no, no, no, no, no. It's more than this. That's more than
24 this. And 28 years? Please. I know The Hague is a city very
25 expensive, but the raise of the price has nothing to do with the

1 raise of the sentences.

2 I don't have the intent to talk about Mr. Ruggiu for genocide,
3 12 years; Mr. Katanga with these child soldiers, 12 years; or even in
4 the ICTY, I have the choice, I have the choice, where so many
5 superiors, politicians who decided to committed the crime by a policy
6 didn't receive 28 years. Please, that's excessive, of course.

7 What I say, and I have the intent to insist on this, not to be
8 long, but to insist on this, international judges in Kosovo, in
9 Mitrovice, has to know this case. For Mr. Krasniqi, eight years.
10 For Mr. Geci, but Mr. Geci was prosecuted on the basis of crimes
11 committed in Cahan, too, 12 years.

12 Do we have to go to the Hague to hear such sentence, an
13 excessive sentence, 28 years? And I could add some elements, but
14 this is in our final brief, so I don't have to focus or develop that.
15 Why to reduce a man? Why to reduce a man for what he could have made
16 during some days, some weeks, not even some several months? Why to
17 reduce a life only to this?

18 This is my vision of the criminal law. This is why I'm a
19 lawyer. That's why I intend to fight for justice. And it is the
20 same if you are in position of the prosecutor or if you are in the
21 position of the defence. I make both. You have a certain vision of
22 humanity, of what must be the life on planet Earth when you live in a
23 society. So if some crime has been committed, you have to sentence,
24 of course, but you have to take care and to take a lot of things on
25 board, as you say usually, on board, and I think a sentence is a

1 message. That's always a message or there is no reason to sentence.

2 You don't sentence an animal. It's not able to understand. You
3 sentence a man. Criminal law is made for men, for women, and we must
4 apply it with humanity. And the message in a sentence, of course,
5 is, of course, to punish, but it's to the person you decide to
6 sentence but to the society, too. And I think that in these
7 conditions, which is very difficult conditions, we know, in Kosovo,
8 we need a court to sentence the crime which has been committed or
9 which could have been committed, but we have to deliver a speech to
10 open the possibility to be able to make peace. And that's why an
11 excessive sentence is without a sense. Not too less. Please, not
12 too much. Proportionate sentence in a humanisation message.

13 Thank you very much, Your Honour.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

15 We have now completed the comments of the Defence to the
16 responses of the Specialist Prosecutor's Office and Victims' Counsel.

17 I propose that we now take our break till 2.00, so one and a
18 half hour. And then we proceed with the questions of the Panel, if
19 any, and with the closing statements on the reparations. And we see
20 how this afternoon proceeds, where we will end at the end of this
21 afternoon.

22 The hearing is adjourned.

23 --- Luncheon recess taken at 12.24 p.m.

24 --- On resuming at 1.59 p.m.

25 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

1 The same composition at the side of the Specialist Prosecutor's
2 Office. Also for Victims' Counsel. And let me see, also at the
3 Defence counsel's side.

4 MR. GILISSEN: Yeah, almost the same composition. We have the
5 same members of the team with us.

6 PRESIDING JUDGE VELDT-FOGLIA: Very well.

7 MR. GILISSEN: Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Good. Now, that is noted, then.

9 We have completed the comments of the Defence to the response of
10 the Specialist Prosecutor's Office and the Victims' Counsel. And
11 because from the side of the Panel there are no questions, we will
12 proceed now with the closing statements on reparations.

13 I will first give the floor to Victims' Counsel, and then to the
14 Defence, and then there will be a possibility for response and
15 comments.

16 Victims' Counsel, you have the floor.

17 MR. LAWS: Thank you. And good afternoon to Your Honours.

18 We've set out the many different ways in which the victims in
19 this case have been harmed in an impact statement, and we have made a
20 request for what we see as appropriate reparations in a separate
21 filing.

22 Together, those two filings run to something over 30.000 words.
23 And in compliance with the Trial Panel's instructions, we will not be
24 repeating those written submissions, but instead focusing on a reply
25 to the Defence response to the reparations request, which is filing

1 819. And it's going to assist Your Honours to have sight of that
2 document as I make my submissions.

3 What we say about the response is simply that it has the law
4 wrong. And I'm going to take you, if I may, to what we submit is the
5 paragraph in which the legal analysis of the Defence takes the wrong
6 turn, and then explain why we say that is an incorrect position for
7 them to have arrived at. It's paragraph 15 of the Defence response,
8 and it reads as follows:

9 "In light of the above" -- and citations have been made from the
10 jurisprudence.

11 "In light of the above, as established in international
12 jurisprudence, the accused may only be held responsible to repair any
13 harm directly caused by a crime for which he is convicted. He cannot
14 be held responsible to repair the harm not directly caused by a crime
15 for which he is convicted; nor can he be expected to repair any harm
16 caused by crimes or acts carried out by other KLA members during the
17 relevant time period."

18 And it's the third of those propositions, we submit, which is in
19 error.

20 So the paragraph has three propositions to make. The first is
21 that the accused may only be held responsible to repair any harm
22 directly caused by a crime for which he has been convicted. That, we
23 submit, is uncontroversial. By the time the Panel reaches the issue
24 of reparations, the accused has inevitably been convicted of at least
25 one crime. The Panel will then be considering the impact of that

1 crime on the victims, and then it will consider the appropriate
2 reparations. So we regard this proposition as correctly stating the
3 law, and we say there is no scope for, nor any need for, further
4 explanation.

5 The second proposition in paragraph 15 is that the accused
6 cannot be held responsible to repair the harm not directly caused by
7 a crime for which he is convicted. What we say about that is that
8 this situation doesn't arise on the facts of this case. There is no
9 claim for harm not caused by a crime for which the accused is not
10 charged.

11 However, it seems to be the case that the Defence are suggesting
12 that there needs to be a causal link between the *actus reus* of a
13 crime committed by the accused personally. And this underpins the
14 third proposition made by the Defence, which is this: Nor can he be
15 expected to repair any harm caused by crimes or acts carried out by
16 other KLA members during the relevant time period. We say that that
17 is contrary to the law.

18 What it is doing is putting forward a scenario which purports to
19 be in contradiction of proposition one, but it introduces a wholly
20 new feature: Crimes or acts by other KLA members.

21 And we submit that the short answer to this proposition is this:
22 It depends on whether the other members were co-perpetrators either
23 as those that the accused aided or abetted or as part of a joint
24 criminal enterprise or otherwise.

25 If the others were jointly involved with him, and let's stay

1 with JCE liability for the moment, the law, we say, is crystal clear.
2 The JCE members are all jointly and severally liable for the harm
3 caused by their crimes.

4 The case of Ntaganda is cited by the Defence, but the citation
5 is, with respect, a highly selective one. In fact, the trial chamber
6 in Ntaganda came to a conclusion which is directly contrary to the
7 proposition put forward by the Defence.

8 And if I could have, please, slide 23 from our PowerPoint.

9 "... 'in principle, the question of whether other individuals
10 may also have contributed to the harm resulting from the crimes for
11 which the person has been convicted is irrelevant to the convicted
12 person's liability to repair that harm.' Accordingly, 'it is not,
13 *per se*, inappropriate to hold the person liable for the full amount
14 necessary to repair the harm.' The focus, in all cases, should be
15 the extent of the harm caused by the crimes for which the person was
16 convicted and the cost to repair such harm, rather than the person's
17 role in the commission of the crimes and the mode(s) of liability for
18 which the person was convicted.

19 "Accordingly, the Chamber finds Mr. Ntaganda liable to repair
20 the full extent of the harm caused to the direct and indirect victims
21 of all crimes for which he was convicted, regardless of the different
22 modes of liability relied on in the conviction and regardless of
23 whether others may have also contributed to the harm.

24 "As to the shared liability of Mr. Ntaganda and his
25 co-perpetrators in the crimes for which he was convicted, including

1 Mr. Thomas Lubanga, the Chamber notes that they are all jointly
2 liable *in solidum* to repair the full extent of the harm caused to the
3 victims. Responsibility *in solidum*, as noted by the Appointed
4 Experts, entails the corresponding right for any of the
5 co-perpetrators who may have repaired, in full or in part, the harms
6 caused to the direct and indirect victims, to seek to recover from
7 the co-perpetrators their proportionate share."

8 And for those who are listening perhaps outside the courtroom,
9 the expression "*in solidum*" means joint and several liability.

10 Those conclusions in those three paragraphs are, we submit, very
11 plainly the direct opposite of the proposition that is relied upon by
12 the Defence that he can't be expected to repair any harm caused by
13 crimes or acts carried out by other KLA members during the relevant
14 period. That is not what this case decides, and it's not what the
15 appeals chamber decided either.

16 If we could go to slide 24, please.

17 "The Appeals Chamber recalls that:

18 "A convicted person's liability for reparations must be
19 proportionate to the harm caused and, *inter alia*, his or her
20 participation in the commission of the crimes for which he or she was
21 found guilty, in the specific circumstances of the case.

22 "The Appeals Chamber further held that the above finding 'does
23 not mean, however, that the amount of reparations for which a
24 convicted person is held liable must reflect his or her relative
25 responsibility for the harm in question *vis-à-vis* others who may also

1 have contributed to that harm.' The Appeals Chamber clarified that,
2 in principle, the question of whether other individuals may also have
3 contributed to the harm resulting from the crimes for which the
4 person has been convicted is irrelevant to the convicted person's
5 liability to repair that harm. While a reparations order must not
6 exceed the overall cost to repair the harm caused, it is not, *per se*,
7 inappropriate to hold the person liable for the full amount necessary
8 to repair the harm."

9 And we don't have it on a slide, but if one were to read on to
10 paragraph 271 in the appeals chamber judgment, the appeals chamber
11 says this:

12 "The Appeals Chamber finds that the Trial Chamber correctly
13 imposed joint and several liability."

14 In other words, endorsing the approach set out on our slide 23
15 of the trial chamber.

16 In fact, and it reinforces the point, but it's not necessary for
17 the argument, but I'll mention it as we have it to hand, the law goes
18 further than this.

19 In Katanga, the accused was found liable for harm that was
20 caused by people who were not even in the joint criminal enterprise.
21 Others took part in an attack who were not part of a JCE with the
22 accused Katanga. And notwithstanding that, and it's paragraph 166 of
23 the trial chamber's judgment in that case, notwithstanding that, the
24 accused was still held liable for the full extent of the harm that
25 had been caused.

1 And so for those reasons, we say that paragraph 15 in its third
2 proposition leads the Panel away from a correct understanding of the
3 law, and the position is as stated. It is simply not relevant that
4 others in a JCE may have also caused harm.

5 And if one stops to think about it, it's a proposition of law in
6 respect of reparations which is entirely consistent with the basis
7 for a joint criminal enterprise itself. In a joint criminal
8 enterprise, the actors become responsible for one another's actions
9 and misdeeds because they're all seeking a common purpose. And so it
10 shouldn't come as a surprise that when it comes to reparations, it's
11 not open to an individual actor to say, "Well, I only caused this
12 aspect of the harm, not that aspect of the harm." That would reduce
13 the law to an absurdity, and that, we respectfully submit, is not
14 what will happen here.

15 That's what I wanted to say about the law so far as other actors
16 is concerned.

17 May I just add this. At paragraph 21 in the Defence filing, it
18 is said that:

19 "The acts outlined above which allegedly resulted in
20 [Witness 01] suffering physical harm were not carried out by the
21 Accused. It has not been demonstrated that they were carried out by
22 the Accused, they may have been carried out by other KLA members at
23 the Kukes metal factory whose acts and/or omissions, if any, do not
24 engage the Accused's liability."

25 Now, in part I've already dealt with that proposition because

1 we're dealing here with a case of joint perpetration. But so far as
2 the proposition that the accused didn't commit any of the acts at the
3 Kukes metal factory, which runs through the submissions of the
4 Defence on this topic, we respectfully submit this: That by the time
5 the Panel is considering reparations, a conviction has been entered
6 in respect of one or more crimes. At that stage, it doesn't matter
7 at all that the Defence assert that the accused is not guilty. It
8 doesn't matter what they say, nor what the Prosecution say, nor what
9 we say. We are beyond the point of argument. And so the
10 much-repeated submission that the accused was not guilty and didn't
11 commit any of these acts are by this stage beside the point.

12 Your Honours, I'm going to deal now with the issue of material
13 harm with regard to two of the victims in the case, and I'm afraid
14 that I can only do that in private session.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

16 Mr. Court Officer, could you please bring us into private
17 session.

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13 [Open session]

14 THE COURT OFFICER: Your Honours, we're in public session.

15 Thank you.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 Victims' Counsel, you have the floor.

18 MR. LAWS: Thank you, Your Honour.

19 The last point I want to deal with is at paragraph 16 of the
20 Defence response, where it is suggested that the amounts claimed by
21 us relating to the harm are, and I'll quote, "excessive and
22 disproportionate."

23 With the one exception of the medical expenses that I've just
24 dealt with and which we don't rely on, there is no attempt by the
25 Defence to engage with the amounts themselves. There's no attempt to

1 say how our approach to the figures is wrong or how the final figures
2 are out of keeping with comparable situations.

3 Indeed, so far as material harm is concerned, with regard to
4 Witness 01, the figure that we propose is a modest one even against
5 the assessment of the Defence expert. It's much less than half the
6 figure that the Defence expert considers to be reasonable, if there
7 is to be an order for reparations reflecting the material harm to
8 Witness 01.

9 And we suggest, quite tellingly, there is no attempt to say what
10 the actual amounts should be. If, as the Defence say, they should be
11 lower than those claimed because they are excessive and
12 disproportionate, then what are the right figures? We respectfully
13 suggest it's one thing just to say they're excessive and
14 disproportionate. What should they be and why? What basis is
15 proposed for lower figures?

16 We have argued our figures, and we say that, in particular, they
17 are in every case in line with the figures that were decided to be
18 appropriate in the Mustafa reparations order. And so we reject the
19 claim that they are in any way excessive or disproportionate, and we
20 suggest that the reason why there has not been an attempt to propose
21 alternative figures is because the amounts themselves are
22 proportionate, justified, and fair.

23 And those are the submissions that I should like to make in
24 respect of reparations, Your Honour. Thank you.

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

1 Now the moment is there to turn to the Defence for its closing
2 statements on reparations.

3 Defence counsel, you have the floor.

4 MR. GILISSEN: Thank you very much. I would like to have the
5 lectern to be able to work properly. Thank you very much,
6 Your Honour. Thank you.

7 About reparation, let us be clear once and for all: Mr. Shala's
8 Defence intends to respect the pain and suffering that people have
9 endured. And, therefore, the principle of compensation for damage
10 suffered as a result of the commission of one or more crimes cannot
11 be contested or called into question, that's sure.

12 But, of course, this presupposes that any form of reparation is
13 linked to damage that is proven to have been caused by or at the time
14 of the commission of the offence. As things stand, however, we have
15 noted that claims are generally, not for all, but generally not
16 accompanied by any justification whatsoever.

17 Finally, the rare occasions when explanations are given in
18 relation to a loss, they are unreliable or based on unjustified
19 assumption or even improbable projection. How do you think that
20 people coming back from concentration camp made when they will come
21 back?

22 I have in my family some people who were obliged to come back in
23 Belgium after being detained in this place in Germany, and it was
24 very difficult for them, of course, but they were obliged to come
25 back to work. Other time, okay. But this is the reality. So that's

1 a very difficult thing to be obliged to manage what is the part of
2 the damage, if there is any, and what is the choice of some people to
3 consider that they have to stop to work.

4 And in the situation of Witness 01, I saw that this incapacity
5 to go to the work was not an incapacity to go to the café to shoot or
6 to beach and to beat some people. So things are delicate. I don't
7 say, I refuse to say there is nothing. I have to say we have to be
8 prudent to deal with this thing.

9 I believe that we have largely developed our observation on this
10 subject in our final brief, and that's without doubt. We can refer
11 to it in order to avoid any repetition. However, it seemed to me
12 that the observation and arguments set out in our final brief can be
13 supplemented by a more general reflection that concerns any
14 reparation process in the order claim.

15 This reflection is inspired by a fundamental principle that must
16 never be forgotten in this delicate area of compensation for the
17 consequences of effect of damage over time. I'm referring to the law
18 of entropy. This is the second principle of thermodynamics. It is a
19 law that applies to everything, including human beings. It is very
20 simple. Naturally, everything that is organised and composed tends
21 to wear out, to degrade, to destroy and decompose.

22 Entropy, a law that causes everything to wear out.

23 And there is no reason why there is or there should be
24 compensation where they would have been loss anyway. That's the only
25 element I would like to add to our final brief. Thank you very much

1 for hearing me.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

3 I now turn to Victims' Counsel.

4 Victims' Counsel, would you like to -- do you have any response
5 on the Defence submissions?

6 MR. LAWS: Yes, I do.

7 PRESIDING JUDGE VELDT-FOGLIA: Then you have the floor.

8 MR. LAWS: Thank you very much.

9 Well, first of all, for most of what I said, I was concentrating
10 on the law and whether it is correct that the accused can be held
11 liable for the acts of his co-perpetrators in a joint criminal
12 enterprise. And unless it's covered by the second law of
13 thermodynamics, I don't think that I heard a response to that part of
14 my submission, which is addressing the repeated assertion in the
15 Defence filing that the accused cannot be held liable for the acts of
16 others.

17 Are we to understand that the Defence agree in relation to that?
18 That would help us, because I can stop making submissions. But I've
19 made the submissions. There's been no response to it. And that's
20 the main reason why I wanted to say anything at all this afternoon.
21 So I'm in difficulty replying to it because there hasn't, it seems to
22 me, been an argument put up against it.

23 So I'd invite the Court to say: Let's clarify that now. Is
24 that just an omission or is it agreed that the law is as I've
25 suggested it is in relation to the liability of the accused for the

1 acts of others in a JCE?

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

3 I leave it to Defence counsel to either give a comment or not on
4 this specific issue.

5 MR. GILISSEN: Yes, I think the best, Your Honours, is to hear
6 Ms. Cariolou about that. Thank you.

7 PRESIDING JUDGE VELDT-FOGLIA: And then we are in the comments
8 of the Defence --

9 MR. GILISSEN: Yes, thank you.

10 PRESIDING JUDGE VELDT-FOGLIA: -- on Victims' Counsel's
11 response.

12 MR. GILISSEN: Yes, thank you. But what I wanted to
13 underline --

14 MR. LAWS: I'm so sorry --

15 MR. GILISSEN: -- my close colleague made his job, explained it
16 perfectly well. Let's be very clear about that. So absolutely no
17 reproach from us. Thank you.

18 MR. LAWS: Your Honour, I was going to say some other things
19 too. I was going to invite the Court to clarify the Defence's
20 position. But I wanted to say some other things apart from in
21 relation to the law in reply if I may.

22 PRESIDING JUDGE VELDT-FOGLIA: You have the floor,
23 Victims' Counsel.

24 MR. LAWS: Thank you very much.

25 So far as our claim for reparations not being accompanied by any

1 supporting arguments, can I remind the Panel of the report of
2 Dr. Lerz which is a closely argued analysis of the position so far as
3 material harm is concerned in relation to both Witness 01 and 4733.
4 And I'm not going to take the Panel through it. You have the
5 documents. I'm afraid we couldn't disagree more with the assertion
6 that we haven't argued our position. We've argued it by reference to
7 the position in Kosovo and the Supreme Court's guidance on
8 compensation. We've argued it in relation to all of the evidence
9 that's been put before the Court. And we've argued it in relation
10 not only to the Mustafa case but to cases before a number of other
11 courts and tribunals as well.

12 So I'm afraid we can't agree with Mr. Gilissen about that.

13 Choice. Choice to stop working. I'm not going to repeat the
14 physical difficulties that 4733 had nor his psychological
15 difficulties, but it is obvious, we suggest, that it wasn't a choice
16 of his not to work. And the same observation applies with equal
17 force to Witness 01. These are not people who have thought to
18 themselves, "Well, if I just do nothing, perhaps one day I'll be
19 compensated." There was no prospect at the time that those two men
20 stopped their working lives of a court of this kind having the power
21 to order reparations, and it is not through idleness that they have
22 suffered financially. It's through being very grievously mistreated
23 at the hands of this accused and others.

24 And so that's the reply that I wanted to make. Thank you,
25 Your Honour.

1 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

2 Thank you, Victims' Counsel. There was a misunderstanding with
3 regard that -- on whether you were finished or not.

4 MR. LAWS: I'm finished now. Thank you.

5 PRESIDING JUDGE VELDT-FOGLIA: Very well.

6 Now, we can hear the comments of the Defence to the latter.

7 MS. CARILOU: Your Honours, thank you. Just perhaps a
8 clarification is required.

9 When we stated the evident fact that Mr. Shala cannot be held
10 liable nor ordered to repair harm caused by others, we meant others
11 who cannot be considered jointly liable. And I believe that this
12 clarifies our position. Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Are there anymore comments from
14 the side of the Defence?

15 MR. AOUINI: Excuse me, Your Honour. Excuse me, Mr. Gilissen.
16 Just to correct something on the transcript. When Mr. Gilissen
17 referred to our submissions on reparations in the final brief, it is
18 actually in the response to the reparations, and I think everyone
19 understood it. It was just a slip of the tongue. Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that addition.

21 Defence counsel, are the comments of the Defence with the remark
22 of your co-counsel the conclusion of your comments?

23 MR. GILISSEN: Yes, I think so. Thank you very much.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

25 Then we are at a point of the questions from the side of the

1 Panel.

2 I will have a short look at my colleagues. There has been a
3 deliberation on this specific point.

4 [Trial Panel confers]

5 PRESIDING JUDGE VELDT-FOGLIA: There are no questions from the
6 side of the Panel.

7 At this juncture, I want to address the accused and ask him if
8 he confirms his position that he wants to exercise his right under
9 Article 135(4) of the rules to speak last.

10 So, Mr. Shala, can you confirm that you wish to address the
11 Panel and speak last as previously indicated by your counsel?

12 THE ACCUSED: [Interpretation] Yes, Your Honour. Apologies, do I
13 need to stand up or can I stay seated?

14 PRESIDING JUDGE VELDT-FOGLIA: Yes, then you have now the --
15 then you have now the floor, Mr. Shala.

16 THE ACCUSED: [Interpretation] Yes, Your Honour. I had a lot to
17 say, but most of it was expressed by my lawyers, and I'm grateful to
18 them for that. There are, however, a number of things that need to
19 be said. I believe that I'll be clear.

20 I know that I will first answer to the Victims' Counsel who
21 said, and I noted this down, he lost his job in 2008. Now, the war
22 did not end in 2008 for him to lose his job. The war ended in 1999.
23 So he worked until 2008, [REDACTED] Pursuant to In-Court Redaction
Order F833RED.

24 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

25 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

1 [REDACTED] Pursuant to In-Court Redaction Order F833RED. I was not
that source nor was anyone else.

2 With respect to Witness 4733, was he at that moment in time
3 retired or was he still active, working? Because it seemed to me
4 that the Prosecutor said that person had retired in 1993. Now, if he
5 was retired, he wouldn't go back to work, unless it is wartime, but
6 the war was over. Again, his damage was not caused by the KLA or by
7 myself. So he lost his job because his country, his state
8 institution, Serbia, withdrew from the country and as a result he
9 lost his job.

10 Now, the fact that we need to compensate the victims? Yes, I
11 agree that every victim must receive compensation. I fully agree
12 with that.

13 However, we first need to identify which victim. If we play a
14 lottery, we need a ticket proving that we played. Or if I go to the
15 EuroMillions office and say I -- we can't go there and say I won the
16 lottery but I don't have any -- a ticket to prove that I won the
17 lottery. So we have a person saying that he underwent a medical
18 treatment but there is no proof to that. What century are we living
19 in? There is no medical treatment given in the world without any
20 supporting documents provided for that. Nowhere else in the world
21 this can happen, or in Kosovo.

22 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

23 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

24 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

25 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

1 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

2 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

3 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

4 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

5 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

6 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

7 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

8 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

9 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

10 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

11 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

12 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

13 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

14 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

15 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

16 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

17 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

18 [REDACTED] Pursuant to In-Court Redaction Order F833RED. I don't
think they would. I think we should apply

19 logic and see how -- what is the veracity of what is being said here.

20 I would not go into more details.

21 My life was ruined. I think I might be mistaken, or maybe it
22 was an interpretation mistake, the Prosecutor said that I was
23 shameless. My lawyers reassured me that this was an interpretation
24 mistake because in English it was not like that. I apologise. What
25 I received in my ears was that an immoral, shameless person. I have

1 never been sentenced or found guilty for an immoral act. I am 61
2 years old, and I have never engaged in any immoral acts.

3 My life, I had a simple life. Very simple life. Ordinary one.
4 But this was ruined, destroyed. We enjoyed respect within the
5 Albanian community, my spouse and myself. My spouse for whom I feel
6 so sorry, because she's suffered so much after this tragedy. I don't
7 need to say it publicly here because you know it very well. You have
8 documents to that effect.

9 I don't know what I have to pay and why I have to pay it. And
10 to trust this witness when -- and I can say this publicly, and when
11 he says Hashim Thaci was the driver of Pjeter Shala. The minister of
12 defence, Azem Sylja, would have been my bodyguard. I can guarantee
13 you that Hashim Thaci doesn't even have a driver's license even
14 today. And now we're supposed to trust this witness?

15 I don't know. I don't have much to say. I am not a lawyer. I
16 did not study law to express these things, to understand them. But
17 to trust the Prosecutor who's proposing you and suggesting you that
18 -- that nothing coming from any other court proceedings should be
19 considered but only what I am submitting. The Prosecutor, if he were
20 to present this evidence to some artificial intelligence, this poor
21 evidence, the artificial intelligence system would get confused and
22 -- completely confused, let alone human beings in flesh and blood
23 like we are here.

24 In Case 06, a person testified, and this was a completely,
25 entirely exonerating testimony, evidence, for me, and we provided

1 that to you, but now you can see what we can read in that evidence.
2 Look at this. It's all blackened out. But this is exonerating for
3 me. And here it's totally black. [REDACTED] Pursuant to In-Court
Redaction Order F833RED.

4 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

5 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

6 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

7 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

8 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

9 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

10 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

11 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

12 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

13 I am not very intelligent or smart because had I had the
14 position that they're claiming I had, I wouldn't be here. I was in
15 Belgium for five years, I worked for five years, and I'm proud for
16 that because I managed to educate, to raise my kids, to send them to
17 school and do the best I could. And to end up being said that the
18 prime minister at that time, Hashim Thaci, the minister of defence,
19 being in the position that it's claimed they were, this is the
20 situation I'm in.

21 I have one more thing that I absolutely need to say. I did not
22 cause any damage to these persons. I did not put them in danger.
23 Drecun says: Thanks to the bravery of our men, their courage, and
24 our position, our point of view, we managed to send to The Hague all
25 the criminals of the KLA, the terrorists of the KLA. Now, Milovan

1 Drecun said these words in the parliament, and he said: We did all
2 this without spending a penny, but we did this thanks to the bravery
3 of our men, our people. Now, my question is who are his people,
4 their people? Does he -- so they haven't paid, but somebody else
5 probably needs to pay.

6 I never referred to anyone, never labelled anyone that that
7 person is the employee of one or the other because I don't have
8 evidence.

9 4743, [REDACTED] Pursuant to In-Court Redaction Order F833RED.
10 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
11 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
12 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
13 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
14 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

15 Now, I don't know what I am to be blamed for, but since 1999
16 these persons haven't worked. [REDACTED] Pursuant to In-Court
Redaction Order F833RED.
17 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
18 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
19 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
20 [REDACTED] Pursuant to In-Court Redaction Order F833RED.
21 [REDACTED] Pursuant to In-Court Redaction Order F833RED. I didn't
22 even know who he was. I'm saying this under oath.

23 The Prosecution hinted that or said that I knew him from
24 earlier. I am stating this under oath that before 2016 I did not
25 know he was dead. Why? Because I was not following. I was not in a

1 position to follow the cases. You can prove this, that I did not
2 have satellite TV on my home. I did not have anything. I worked
3 all -- I would work all day. In the evenings, I was home. I had no
4 means to know this.

5 Now, to say that I went there every year and I would have
6 learned about developments in courts and what was happening? No, I
7 was not aware of this. I heard that he had been convicted, but I did
8 not know. I heard that people were convicted, but I did not know the
9 details: Who, what about, or who were the victims, or anything else.
10 When I was interviewed in 2016, this was about organ trafficking and
11 horrible things.

12 And, yes, indeed, I stated that I gave some slaps to them. I
13 said it publicly. I'm not one of the people who would evade their
14 responsibilities. I said this. I did this when I was told who they
15 were and why they were there. Now, I had to defend -- I did give
16 them some slaps to protect and defend my face and my reputation and
17 their reputation.

18 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

19 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

20 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

21 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

22 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

23 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

24 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

25 *[REDACTED] Pursuant to In-Court Redaction Order F833RED.*

1 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

2 [REDACTED] Pursuant to In-Court Redaction Order F833RED.

3 I'm not saying I'm an angel myself. But with respect to what
4 you're trying to charge me with, I have absolutely no connection,
5 absolutely no responsibility, nor did I have any knowledge.

6 Therefore, I have two children who are under medical treatment,
7 my wife is under medical treatment, my life is ruined and destroyed,
8 and I thank you for the justice you're putting in place and the
9 justice you're showing to the world.

10 This is all I had to say, Your Honour. My life is in your
11 hands. I'm not asking for mercy, but I'm asking for a fair and
12 logical judgment. I'm not asking for mercy because I haven't done
13 anything to ask for mercy. If a person has to be found guilty or
14 convicted for participating in a war, then you need to bring here
15 16.000 Kosovo Liberation Army members. But with respect to the
16 liability in the criminal joint enterprise as it alleged, no. If you
17 need to convict me because I was a member of the Kosovo Liberation
18 Army, then yes, bring 16.000 people here. If -- I warn all those
19 16.000 Kosovo soldiers at a minimum that they will -- this can or
20 will happen to every single one of them if this is the justice we're
21 serving.

22 I thank you. This is all I had to say.

23 PRESIDING JUDGE VELDT-FOGLIA: Very well.

24 Before closing this case, I turn to the parties and to the
25 Victims' Counsel in order to see if there's anything you would like

1 to raise with the parties.

2 Mr. Prosecutor.

3 MR. DE MINICIS: No, Your Honour. Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel.

5 MR. LAWS: No, thank you, Your Honour.

6 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel.

7 MR. GILISSEN: No, thank you, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Good. Thank you.

9 In that case, I declare the case, pursuant to Rule 136 of the
10 rules, closed. And according to this rule, at this stage no
11 submissions may be made and no evidence may be submitted unless
12 exceptional circumstances and showing good cause exists. And this,
13 of course, does not include any matters that needed regular review,
14 like the detention of Mr. Shala.

15 And then on behalf of this Panel, I thank the parties and the
16 Victims' Counsel for their contribution and for their assistance and
17 their attendance since the transfer of the case to this Panel. I
18 thank the interpreters, the audio-visual booth, the stenographer, and
19 the security, the people from CMU, and also all the people in and out
20 the courtroom working for the Registry for their invaluable
21 assistance throughout this trial.

22 We will issue a schedule sufficiently in advance to the issuance
23 of the judgment, and that means that now the hearing is adjourned.

24 --- Whereupon the hearing adjourned at 3.06 p.m.

25