

1 Friday, 16 June 2023

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.30 a.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Good morning and welcome.

6 Court Officer, can you please call the case.

7 THE COURT OFFICER: This is case KSC-BC-2020-04, The Specialist  
8 Prosecutor versus Pjeter Shala.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 First of all, I kindly ask you to tell me who is present today.

11 Mr. Prosecutor, you have the floor.

12 MR. DE MINICIS: Good morning, Your Honours. For the SPO,  
13 Line Pedersen, Gaia Pergolo, and Filippo de Minicis. Thank you.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 And Victims' Counsel.

16 MR. LAWS: Good morning, Your Honours. I am Simon Laws, counsel  
17 for the victims in this case.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Defence counsel.

20 MR. GILISSEN: Yes, good morning. So I'm Mr. Gilissen. I'm  
21 here with my two counsel, Mr. Aouini and Ms. Cariolou. Mr. Shala is  
22 with us, of course, via videolink. And we are here with our case  
23 manager Dzeneta Petravica, our legal officer Kailin Chen, and  
24 Judit Kolbe and Juliette Healy who are evidence reviewer. Thank you  
25 very much.

1           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

2           And we have a representative of the Registry. You have the  
3 floor.

4           MR. ROCHE: Good morning, Your Honours. As present in the  
5 courtroom, I am Ralph Roche on behalf of the Registry. Thank you.

6           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7           Today we will hear the testimony of Zbynek Dolejsi, who is an  
8 expert witness called by the Specialist Prosecutor.

9           Before we start with the witness testimony, we need to deal with  
10 some procedural matters. We will, firstly, put on record an order we  
11 made via e-mail this week on Wednesday, 14 June 2023. And for that,  
12 we need to go briefly into private session.

13           Madam Court Officer, can you bring us into private session,  
14 please.

15   [Private session]

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1 [Open session]

2 THE COURT OFFICER: We're in public session now, Your Honours.

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

4 The representatives of the Registry will not be attending the  
5 hearing further. We thank you for your participation.

6 MR. ROCHE: Thank you very much, Your Honour.

7 PRESIDING JUDGE VELDT-FOGLIA: We have a second oral order to  
8 render, and we already informed parties and Victims' Counsel about  
9 that. It pertains to filing 547 filed on 13 June and distributed  
10 yesterday.

11 In it, the Defence requests a five-day extension of time limit  
12 to file its request for certification to appeal the Panel's decision  
13 on the Prosecution Motion for Judicial Notice of Facts of Common  
14 Knowledge and Adjudicated Facts. This is filing 538.

15 Yesterday, the SPO communicated that it did not intend to file  
16 any submissions to this request, any response. And the Panel finds  
17 that the Defence has shown good cause, as required by Rule 9(5)(a) of  
18 the Rules. In particular, you have demonstrated sufficiently the  
19 need to dedicate sufficient time to prepare the certification to  
20 appeal request while respecting a number of competing deadlines  
21 related to ongoing litigation on the matter, as well as preparing for  
22 the upcoming evidentiary blocks.

23 The Panel considers that the limited extension of time will not  
24 cause any undue delay to the proceedings. So we grant the request  
25 and, accordingly, we vary the time limit for the Defence to file the

1 certification to appeal Decision 538 to Thursday, 22 June 2023.

2 And this concludes the second oral order.

3 After the examination of the witness, the Panel will issue an  
4 oral order setting the calendar for the next procedural steps.

5 So that we will be doing later on, and that means that we can  
6 now proceed with the testimony of Mr. Dolejsi. Mr. Dolejsi will  
7 testify without protective measures. However, part of his testimony  
8 may be done in private session if needed to protect the identity of  
9 the victims and witnesses at risk on account of the participation  
10 with the Kosovo Specialist Chambers and Specialist Prosecution  
11 Office.

12 We will sit for three regular sessions of one and a half hour  
13 with the normal 30-minutes break. With regard to the lunch, at 1.00  
14 we will assess where we stand with the examination of the witness.  
15 And depending on that, we will have an hour or an hour and a half  
16 break for lunch. And we might add a 45-minute session or not. We  
17 will see how we proceed.

18 Okay. Very well. Court Clerk, could you please usher the  
19 witness into the courtroom.

20 Mr. Prosecutor.

21 MR. DE MINICIS: Your Honour, while the witness is being ushered  
22 in, we will endeavour to do our examination as much as possible in  
23 public session, and we think we can do that by simply going to  
24 private session briefly at the beginning with the witness and  
25 agreeing to call -- to refer to two subjects in his report with a

1 pseudonym. That way, the way we have planned our examination, we  
2 think that is -- at least the direct examination, we will be able to  
3 do it in public session without the need of any private session. So  
4 that's our proposal.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 [The witness entered court]

7 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, please have a seat.  
8 Mr. Dolejsi, good morning and welcome to the Specialist  
9 Chambers. Do I pronounce your name well?

10 THE WITNESS: [Interpretation] My name is Zbynek Dolejsi.

11 PRESIDING JUDGE VELDT-FOGLIA: Dolejsi.

12 THE WITNESS: [Interpretation] Yes, Dolejsi.

13 PRESIDING JUDGE VELDT-FOGLIA: Just assuring myself that I  
14 pronounce it well. You can hear me fine, I notice?

15 THE WITNESS: [No interpretation]

16 PRESIDING JUDGE VELDT-FOGLIA: Very well.

17 Mr. Shala, can you hear the witness?

18 THE ACCUSED: [via videolink][Interpretation] Yes, I hear you  
19 well.

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

21 Mr. Dolejsi --

22 THE WITNESS: [Interpretation] Thank you, well.

23 PRESIDING JUDGE VELDT-FOGLIA: We are going to interrupt for a  
24 small moment because we have a technical issue at the moment.

25 It should be okay now, so we will proceed.

1 Mr. Dolejsi, we had a small technical problem, but I think it  
2 has been resolved now. So today we will proceed with your testimony.  
3 And before we begin, I have several remarks.

4 You are called to testify before the Specialist Chambers in the  
5 case of Mr. Pjeter Shala to assist the Panel to reach a verdict. You  
6 will first take your solemn declaration. And after that, you will be  
7 asked questions by, firstly, the Specialist Prosecutor's Office, the  
8 people with the robe partly in purple. Then you can be asked  
9 questions by the Victims' Counsel, sitting next to the Specialist  
10 Prosecutor's Office. He's representing the victims participating in  
11 this procedure. Then you will be asked questions by the Defence  
12 team, yes, with the robes in red. And then finally, if necessary,  
13 you will then -- finally you can also be asked questions by the  
14 Panel.

15 I will give you some guidance with regard to your testimony,  
16 Mr. Dolejsi. Please listen carefully to each question. If you don't  
17 understand the question, feel free to ask for further clarification  
18 or the question to be repeated.

19 We want you to give your expertise to the best of your knowledge  
20 and to state what your findings and opinions are.

21 Please answer the questions being put to you. If more  
22 clarification from our side is needed, you will be asked.

23 There is also some practical advice, Mr. Dolejsi, I would like  
24 to give you. And that is everything that we say is translated and  
25 recorded, so it is important to speak into the microphone, to speak

1 clear, and to speak at a slow pace. This will allow the interpreters  
2 to translate everything.

3 And you should only start speaking when the question posed to  
4 you has finished. And when a question is asked, please wait five  
5 seconds before you start giving your answer, and this will allow the  
6 interpreters to finalise the interpretation.

7 If I raise my hand, please stop talking. And sometimes we might  
8 ask you to leave the courtroom if we need to discuss something  
9 regarding the content of your testimony in order to avoid influencing  
10 you with any of our questions.

11 Yes, I see you nodding.

12 And if you have a question, if you need a break or you need  
13 assistance, please raise your hand, and then I will give you the  
14 floor.

15 You understood all this?

16 THE WITNESS: Yes.

17 PRESIDING JUDGE VELDT-FOGLIA: Very well.

18 THE WITNESS: [Interpretation] Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: Mr. Dolejsi, I will now ask you  
20 to take your solemn declaration. And I remind you that it is an  
21 offence within the jurisdiction of the Specialist Chambers to give a  
22 false testimony. Do you understand that?

23 THE WITNESS: [Interpretation] Yes.

24 PRESIDING JUDGE VELDT-FOGLIA: Very well.

25 I will now ask you, Mr. Dolejsi, to take your solemn

1 declaration. Please repeat after me.

2 Conscious of the significance of my testimony.

3 THE WITNESS: [Interpretation] Conscious of the significance of  
4 my testimony.

5 PRESIDING JUDGE VELDT-FOGLIA: And my legal responsibility.

6 THE WITNESS: [Interpretation] And my legal responsibility.

7 PRESIDING JUDGE VELDT-FOGLIA: I solemnly declare.

8 THE WITNESS: [Interpretation] I solemnly declare.

9 PRESIDING JUDGE VELDT-FOGLIA: That I will perform my expert  
10 analysis consciously.

11 THE WITNESS: [Interpretation] That I will perform my expert  
12 analysis conscientiously.

13 PRESIDING JUDGE VELDT-FOGLIA: And to the best of my knowledge.

14 THE WITNESS: [Interpretation] And to the best of my knowledge.

15 PRESIDING JUDGE VELDT-FOGLIA: And that I will state my findings  
16 and opinion accurately and completely.

17 THE WITNESS: [Interpretation] That I will state my findings and  
18 opinion accurately.

19 PRESIDING JUDGE VELDT-FOGLIA: And completely.

20 THE WITNESS: [Interpretation] And completely, yes.

21 WITNESS: W04887

22 [Witness answered through interpreter]

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness. You are  
24 now under oath, and we can now proceed with your testimony. I will  
25 give the floor to the Specialist Prosecutor's Office, and they will

1 start.

2 Mr. Prosecutor, you have the floor. I saw that you estimated  
3 two hours. Please give us an update if there might be any changes in  
4 that regard.

5 MR. DE MINICIS: Will do, Your Honour.

6 Examination by Mr. De Minicis:

7 Q. Good morning, Major. We have met before. I am  
8 Filippo de Minicis. I'm a Prosecutor for the SPO, and I will be  
9 conducting your examination this morning.

10 Could you please state your name and surname.

11 A. My name is Zbynek Dolejsi.

12 Q. And your date and place of birth, please.

13 A. 1980, 20 February, Liberec, that's Czech Republic.

14 Q. Could you tell the Panel what is your current occupation.

15 A. At the moment, I am head of the genetics department at  
16 Criminology Institute in Prague.

17 Q. And what is your level of education? Can you tell us about your  
18 studies?

19 A. Bachelor's degree at the faculty of science in Brno, molecular  
20 and cell diagnostics. And then following, a master's degree, study  
21 of molecular biology and genetics.

22 Q. I would like to ask you to explain a little more, if you can, in  
23 terms that we non-geneticists can understand, what your course of  
24 studies entailed, starting with the first one. What did you study in  
25 your molecular and cell diagnostics degree? What is the subject of

1 that study?

2 A. So the subject was general genetics - human, plant, and also  
3 animal.

4 Q. And what about your master's degree, the molecular biology and  
5 genetics? What was the subject matters that you studied doing that  
6 master?

7 A. Apart from general science subjects, the study was focused  
8 especially at molecular biology. It means finding out molecular  
9 processes in cells that have an impact on transcription and amendment  
10 of human cells.

11 Q. And as part of your studies, did your studies also include the  
12 study of genetic material and human DNA?

13 A. Mostly. More than half of the time was devoted to this at the  
14 university during my studies.

15 Q. You told us that you are currently serving as the head of the  
16 genetics department at the criminalistic institute of Prague. Since  
17 when have you been working for that institution?

18 A. I started working in the Institute of Criminalistics in 2004,  
19 and I have been working there until the present.

20 Q. Can you tell the Judges what is the Institute of Criminalistics  
21 Police of the Czech Republic? What does the institute do?

22 A. Well, in the Czech Republic, there are several forensic  
23 laboratories within the police of the Czech Republic. Seven of them,  
24 the Institute of Criminology is overlooking them, it's checking them.  
25 The criminology institute processes expert statement, expert

1 examination for the capital of Prague and for all police units in the  
2 Czech Republic which have -- which are in -- function in the whole  
3 territory; for example, anti-drug centres and organised crime.

4 Q. I forgot to ask. Are you yourself a member of the Czech police  
5 force?

6 A. Yes.

7 Q. And can you tell us what is your rank within the police force?

8 A. [No interpretation]

9 Q. Sorry, could you repeat that because we did not get the  
10 interpretation.

11 A. Colonel.

12 Q. Thank you. Now, is your institute, the Institute of  
13 Criminalistics, linked to any ministry of the Czech government? Does  
14 it work for any government ministry?

15 A. The criminalistic criminology institute is subject to police  
16 presidium, which is subject to the Ministry of the Interior.

17 Q. Is the Institute of Criminalistics part of any international  
18 network of forensic science institutes?

19 A. Yes. Understandably, it's at the present times necessary.  
20 Criminology institute is -- has been since 1998, 1998, a part of the  
21 organisation ENFSI, which is European Network of Forensic Scientific  
22 Institutions, ENFSI.

23 Q. And what does this membership entail? Does it, for instance,  
24 entail cooperation with other foreign forensic institutes?

25 A. Well, it's part of the cooperation. It means exchange of

1 information. Then there are common procedures being agreed in the  
2 course of our work. The aim is for all of those institutions having  
3 a common approach, looking for the best way forward to achieve good  
4 results.

5 Q. Does the Institute of Criminology -- is it work used in criminal  
6 proceedings in the Czech Republic? Is it involved with that type of  
7 work?

8 A. Yes. All our expert opinions and statements and outputs are  
9 commonly used in our court proceedings. They are part of the  
10 evidence materials. At the same time, we are entitled to carry out  
11 revision -- a revision statement for -- of other expert opinions.

12 Q. You told us what your job title is as the head of the genetics  
13 department. Can you now tell us what that job consists of? What are  
14 your tasks and duties as the head of the genetics department at the  
15 Institute of Criminalistics, Prague?

16 A. Apart from standard expert activity, I carry out inspection of  
17 outputs of my colleagues. I ensure the functioning and operation of  
18 our department.

19 Q. Does your job also include DNA testing?

20 A. Yes, yes. This is a standard expert activity.

21 Q. And as part of your job, have you ever provided evidence in a  
22 court of law concerning DNA testing performed by you or your  
23 laboratory?

24 THE INTERPRETER: The interpreter asks the question to be  
25 repeated. Thank you.

1 MR. DE MINICIS: Of course.

2 Q. As part of your job, have you ever provided evidence before  
3 today in a court of law in relation to DNA testing performed by  
4 either you or your laboratory?

5 A. Yes, this is part of our work, to defend our findings in front  
6 of the court.

7 Q. Thank you, Colonel. I'm now done with your background, and I'd  
8 like to move on to discussing certain reports.

9 Now, Colonel, did you compile a DNA identification report in  
10 December 2009 in relation to which I contacted you last year?

11 A. Yes, I did.

12 MR. DE MINICIS: Your Honours, at this point I would like to  
13 call up the report on the screen. The ERN is SITF00012453 to  
14 00012464, and that is the version that contains the original Czech  
15 language of the report. While for the English, although it is  
16 contained in that part, we'd like to call up the revised version,  
17 which is SITF00012456 to 12458-ET.

18 PRESIDING JUDGE VELDT-FOGLIA: And the background of calling the  
19 statements up -- the reports up?

20 MR. DE MINICIS: Well, we have called this witness, Your Honour,  
21 to introduce his evidence, his reports, as instructed by the Court,  
22 in evidence. So I'd like first for the witness to authenticate the  
23 report and then move on to ask him a few questions on its contents.

24 PRESIDING JUDGE VELDT-FOGLIA: Very well.

25 Madam Court Officer, please proceed with calling up the report.

1 MR. DE MINICIS: If we could please scroll the report down to  
2 get to the Czech version, which I believe starts at page 3. No,  
3 that's page 4 then. I'm sorry. Yes.

4 Q. So, Colonel, is this the report that you compiled in December  
5 2009?

6 A. Yes, I believe so.

7 Q. And did you --

8 MR. DE MINICIS: Can we move to page 6 of the document, please.

9 PRESIDING JUDGE VELDT-FOGLIA: Mr. -- is everything clear to  
10 you?

11 THE WITNESS: [Interpretation] Yes, it is.

12 PRESIDING JUDGE VELDT-FOGLIA: Good.

13 Please proceed, Mr. Prosecutor.

14 MR. DE MINICIS:

15 Q. And, Colonel, do you see the current page? It has your name on  
16 it. And do you recognise the signature on top of that name?

17 A. Yes, that is my signature.

18 Q. Did you perform the analysis described in that report?

19 A. Yes.

20 Q. And can you tell the Court what kind of analysis you were tasked  
21 to do in relation to that report.

22 A. It was a standard request to determine biological kinship, where  
23 we were given reference materials of potential biological parents and  
24 a fragment of a tissue of an unknown dead body.

25 Q. Thank you, Colonel.

Witness: W04887 (Private Session)

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Examination by Mr. De Minicis

1 MR. DE MINICIS: Your Honours, could we very briefly move into  
2 private session, please.

3 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you  
4 bring us into private session, please.

5 [Private session]

6 [Private session text removed]

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1 [Private session text removed]

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4 [Open session]

5 THE COURT OFFICER: We're in public session, Your Honours.

6 PRESIDING JUDGE VELDT-FOGLIA: Please proceed, Mr. Prosecutor.

7 MR. DE MINICIS: Thank you, Your Honour.

8 I would kindly ask the Court Officer if we can scroll the report  
9 one page up in the Czech version, and it would be page 2 in the  
10 English. One second, Your Honours, my screen.

11 Q. Now, we're back in public session. Colonel, you told us that  
12 the examination that you were asked to do was a standard examination  
13 in which you were given reference materials of potential biological  
14 parents and a fragment of a tissue of an unknown body.

15 Now, in your report, I see that on the page that you have in  
16 front of you under paragraph 2, it says: "For the expert examination  
17 has been presented," and then there are three materials.

18 Are these the materials that you were given to perform the  
19 examination?

20 A. Yes.

21 Q. The report, under the same heading, states:

22 "All items were handed over together, with the request for the  
23 expertise in undamaged condition to Criminology Institute of Prague  
24 on 8 September 2009."

25 Could you elaborate a little on what this means in terms of the

1 materials being delivered to you in an undamaged condition?

2 A. Every time in our reports we state whether the submitted  
3 materials were damaged or undamaged. That means that all submitted  
4 boxes, envelopes, or any security packaging were closed, sealed,  
5 undamaged, that it hasn't been opened or damaged, any of the  
6 packaging for the transport has not been damaged.

7 Q. Thank you. Now, can you tell the Court what did you do with  
8 these materials in order to perform the analysis that you were  
9 requested to do?

10 PRESIDING JUDGE VELDT-FOGLIA: Could you please wait a moment,  
11 Mr. Dolejsi.

12 Madam Court Officer, could we zoom in a little bit.

13 Is this also good for you, Mr. Prosecutor?

14 MR. DE MINICIS: That's actually better, Your Honour. Thank  
15 you.

16 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. Thank you.

17 You may proceed. And I ask you to re-ask the question for  
18 Mr. Dolejsi, please.

19 MR. DE MINICIS: I will.

20 Q. Now, so you were asked to determine whether there was a  
21 biological kinship, you told us, between the people who were the  
22 source of these materials.

23 Now, without going into -- trying to strike a balance into the  
24 detail -- scientific detail that you will go into your answer, could  
25 you explain to the Court, after receiving the materials, what was the

1 next step that you performed in order to achieve the task that you  
2 were given?

3 A. In the case of the reference materials of the two people, we  
4 isolated the DNA, we extracted DNA from the material. And after  
5 that, we established the DNA profile of the fragment -- of the  
6 tissue. Because that tissue was showing signs of humidity, it was  
7 placed in an apparatus, in a box that carries out the drying out of  
8 the tissue. It's a kind of dryer. Because this drying effect was  
9 failing to occur, that meant that it was an evidence of  
10 saponification. That happens very often when lipid fat, for example,  
11 sodium hydroxide, and at that moment, the so-called saponification  
12 takes place.

13 That would also be in evidence that this skeletal fragment were  
14 subjected to extract of samples which happens in a way that bone is  
15 cut using a saw. And the dust, kind of sawdust of that bone are  
16 diluted in a special solution that decalcifies the cells so that we  
17 can get to the cell DNA.

18 Q. And did you --

19 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, sorry to  
20 interrupt you.

21 Just, Mr. Dolejsi, for our understanding, if you speak about  
22 evidence of saponification, what do you mean with that? And try to  
23 explain it as simple as possible as you can in lay terms.

24 THE WITNESS: [Interpretation] That means that the bone was  
25 always covered in kind of slimy, humid, wet substance on the surface.

1           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

2           THE WITNESS: [Interpretation] And because it was in such a bad  
3 state, it had been subjected to several sample extractions, and we  
4 had to take several samples so that we could achieve at least partial  
5 DNA from those samples.

6           MR. DE MINICIS:

7           Q. So this was my next question. Did you succeed in extracting a  
8 DNA profile from the bone?

9           A. We succeeded at just a partial DNA profile, which means that we  
10 haven't been able to determine all markers that are normally subject  
11 to the analysis. The markers that we analyse mean that, in layman  
12 terms, we measure the length of the DNA of the section of the DNA,  
13 how long are these sections. The longer the DNA section is, more  
14 often they get -- they break, degrade in these samples, and then it  
15 makes it impossible to exactly determine their exact length.

16          Q. So you told us that you were not able to determine all markers  
17 that are normally subject to the analysis. How many markers are  
18 normally ideally measured for this type of analysis?

19          A. At that time, we were using the kit PowerPlex 16, and that name  
20 also contains the number of the markers we determine.

21          Q. That would be 16 is the number of markers then?

22          A. [In English] Yeah.

23          Q. And under these circumstances that you have described, how many  
24 markers were able to analyse as extracted from that bone?

25          MR. AOUINI: Sorry, Your Honour.

1           PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, before we  
2 proceed, is the nature of your question, it's something that it's  
3 better to usher out Mr. Expert?

4           MR. AOUINI: No, Your Honour. It's references to the  
5 transcript. I'm sorry for my colleague, but sometimes he goes a  
6 little bit ahead of what's said by the expert, mentioning blood and  
7 bone, which is not mentioned specifically by the expert. We have  
8 tissue and we have materials. So we better be careful with going too  
9 ahead of ourselves.

10          PRESIDING JUDGE VELDT-FOGLIA: Could you give the exact place in  
11 the transcript? Because we can then verify and put it on record in  
12 order to have the exact wording by the expert.

13          I agree with you that we have to be as precise as possible, but  
14 it would assist us to have an example in order to rectify, if you  
15 think it's necessary.

16          MR. AOUINI: I have page 16, line 9, where my learned colleague  
17 mentioned blood before, because the expert didn't mention what kind  
18 of material the biological Subject A and B were, what kind of  
19 materials. This could be clarified but not suggested already. We  
20 let the expert do it. Same for the material for the unknown tissue.  
21 I think so far, but I stand to be corrected, so far we mentioned  
22 tissue.

23          PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor.

24          MR. DE MINICIS: Your Honour, I'm not sure about the blood, but  
25 as for the bone, first, it's specified in the report, and we've

1 already gone through that section, and I seem to recall that he  
2 talked about crushing the bone. But it certainly is in the report  
3 that the sample that we've been discussing now that have gone through  
4 saponification was bone.

5 PRESIDING JUDGE VELDT-FOGLIA: That was also my understanding.  
6 Victims' Counsel, you have the floor.

7 MR. LAWS: The reference to bone by the witness is at page 19,  
8 at line 9 and 10.

9 PRESIDING JUDGE VELDT-FOGLIA: So with regard to the bone,  
10 Defence counsel, that part, is that satisfactory now in the record?

11 MR. AOUNI: Yes, I withdraw the bone. I'm sorry.

12 PRESIDING JUDGE VELDT-FOGLIA: Very well.

13 MR. AOUNI: I was too quick for that.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 And, Mr. Prosecutor, we might clarify the point of the type of  
16 tissue that was shared with the laboratory.

17 MR. DE MINICIS: Yes, for the two known subjects.

18 PRESIDING JUDGE VELDT-FOGLIA: Yes, please.

19 MR. DE MINICIS: Of course.

20 PRESIDING JUDGE VELDT-FOGLIA: For the known subjects, yes.

21 MR. DE MINICIS: Yes, yes.

22 Q. Colonel, you told us that for the unknown subject, you extracted  
23 the DNA from a piece of bone. And what biological material did you  
24 extract the DNA profiles from with regard to the two known subjects,  
25 Subject A and Subject B?

1 A. From the description, it says that we were given a red and brown  
2 stain on textile. At that time, we were doing reference material in  
3 a standard way, either a swab from the mouth, and that's from the  
4 inside of the mouth, and in some cases what's given for -- as a  
5 reference material, for example, also blood.

6 These stains that were given to us were tested just to determine  
7 whether it was blood with the strip called hemaphein which determines  
8 whether there is -- it's blood.

9 Q. And did you in fact determine that to be blood?

10 A. When trying to determine whether that was specifically human  
11 blood, at the same time we were not trying to determine a blood  
12 group. The precedence was given to genetic analysis which is more  
13 accurate. For the purposes of genetics as such, it really isn't that  
14 important to decide whether the reference material is blood or sperm  
15 or saliva or tissue.

16 PRESIDING JUDGE VELDT-FOGLIA: Two points.

17 Mr. Prosecutor, your question has not been recorded in the  
18 transcript, so I ask you to repeat your question just for  
19 clarification purposes.

20 And I would direct the witness to give an answer to your  
21 question, because you asked specifically what it was.

22 MR. DE MINICIS:

23 Q. So the question that I asked was whether you were, in fact, able  
24 to determine whether the biological material provided to you was  
25 blood or not. You have explained to us how that is not as important

1 as you may think. But just a simple answer: Do you know if the  
2 material - and for the clarity of the record - if the materials in  
3 the tampons from the known subjects was blood or anything else? Do  
4 you recall if you determined that?

5 A. We did not perform a specific test for human blood.

6 Q. Were you able to extract DNA profiles from the tampons of the  
7 known subjects?

8 A. Yes, we determined complete DNA profiles.

9 Q. Now, going back to my question before we had this little  
10 interruption. You told us the state of the bone sample and the  
11 procedure you went through to extract the DNA profile. Did you  
12 eventually manage to extract a DNA profile from that bone?

13 A. Yes, we did manage. Like I said, we managed to determine a  
14 partial profile of the DNA.

15 Q. Yes, of course. You had already answered that. You told us  
16 that ideally at the time with the software you were using you would  
17 have looked for 16 markers. How many markers were you, in fact, able  
18 to extract to determine from that bone?

19 A. We managed to determine nine autosomal markers, nine autosomal  
20 markers from the autosomal DNA.

21 Q. Now, told us that you were able to extract complete profiles  
22 from Subject A and Subject B, and an incomplete profile of nine  
23 markers from the bone fragment. With these DNA profiles, were you  
24 able to perform the tasks that you were given; that is, to determine  
25 whether there was biological kinship between Subject A and B and the

1 person from whom the bone fragment was extracted?

2 A. Yes. At that time, we were using our calculation, and we didn't  
3 find any markers that would exclude kinship, a kinship of parent and  
4 biological descendant, speaking about the two reference materials  
5 provided.

6 Q. So what was your conclusion, in layman's terms, as to whether  
7 there was biological kinship between the fragment source and  
8 Subject A and Subject B?

9 A. I think that you can find this on the following page of my  
10 witness statement, in other words, expert's opinion.

11 MR. DE MINICIS: Your Honours, could we --

12 THE WITNESS: [Interpretation] If I may ask you.

13 MR. DE MINICIS: Yes, of course.

14 Could we please scroll one page down and show to the witness his  
15 findings on the next page.

16 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, please  
17 proceed.

18 THE WITNESS: [Interpretation] We were able to state that we made  
19 a comparison of the DNA profiles from reference materials - i.e.,  
20 Subject A and Subject B - and we also state that they correspond with  
21 the biological parents of the donor of the bone fragment. The  
22 probability that we calculated using our software equalled 1 to  
23 70.000, probability rate was 1 to 70.000. That means that 1 out of  
24 70.000 randomly selected individuals would not be excluded as a  
25 potential descendant of the two subjects in question.

1           At the same time, and due to the quality of the bone fragment,  
2 we made recommendation to produce a skull, because we supposed that  
3 part of the skull or teeth could give better results in profiling the  
4 DNA. They could render an undamaged DNA profile.

5           MR. DE MINICIS:

6           Q. I have two follow-up questions to finalise my questions on this  
7 report. The first one is whether you, in fact, ever received any  
8 skull, any bone taken from a skull, or any sample which was in better  
9 condition based on which you could repeat your analysis?

10          A. I'm not aware of the fact that the criminology institute  
11 received any other sample in connection to this particular case.

12          Q. And my second question is --

13          MR. DE MINICIS: And here, Your Honours, if I may be allowed,  
14 I'll try to put it a bit more in layman's terms with regard to the  
15 statistical probability that the witness has provided. That may  
16 require me, not leading, because he has already provided the  
17 question, but asking the witness if my understanding is correct.

18          PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

19          MR. DE MINICIS:

20          Q. So with regard to the statistical probability you have provided,  
21 this is my understanding, and please tell me if my understanding is  
22 correct. What you told us, in my understanding, means that if you  
23 were to take -- so you tested the bone fragment which was given to  
24 you against Subject A and Subject B, and you determined the  
25 possibility of biological kinship.

1           Now, we can measure the strength of that determination through  
2           the statistical probability which you provided, which is if you were  
3           to take a bone sample at random from 70.000 -- if you were to take  
4           70.000 randomly chosen people and take a bone sample from each of  
5           them, statistically one of them could also not be excluded to be a  
6           descendant of Subject A and Subject B. This is my understanding.

7           A. Exactly.

8           Q. Thank you. I've finished my questions with regard to your 2009  
9           report.

10           PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, you can  
11           bring the documents down.

12           MR. DE MINICIS:

13           Q. In 2023, did you personally conduct a second analysis of the  
14           possible biological relationship between Subject A and Subject B, on  
15           the one hand, and the person from whom the bone fragment was  
16           extracted, on the other?

17           A. Yes, I did.

18           Q. Did you write a report about this second analysis?

19           A. Yes, I did. It was a part of my response, of my reply.

20           MR. DE MINICIS: Your Honours, could I please have the report on  
21           the screen to follow, by and large, the same procedure that we  
22           followed with the previous report.

23           PRESIDING JUDGE VELDT-FOGLIA: Yes, you may.

24           Madam Court Officer, could you please --

25           MR. DE MINICIS: I'll provide the ERN.

1           PRESIDING JUDGE VELDT-FOGLIA: -- pull the evidence up as soon  
2 as you have the reference.

3           MR. DE MINICIS: The ERN of the report here is 110670 to 110674.  
4 And this, Your Honours, is only in English. There is no Czech  
5 version of it. We have an Albanian version but ...

6           PRESIDING JUDGE VELDT-FOGLIA: Not necessary to pull it up now.

7           Thank you, Madam Court Usher.

8           Please proceed, Mr. Prosecutor.

9           MR. DE MINICIS:

10          Q. So you stated that you did and it was part of your response. In  
11 fact, as we may see from the report --

12          MR. DE MINICIS: If we could zoom in a little bit, please.

13          Just -- yes, yes.

14          Q. The beginning of the report states that it's addressed to me,  
15 and you refer to my request sent via e-mail on 22 December 2022.

16          Now, Colonel, can you explain to the Judges here the way in  
17 which you conducted this second analysis.

18          A. The original report was in a hard copy. And according to our  
19 internal rules, this hard copy was the destroyed after ten years.  
20 Nevertheless, we managed to restore the original data. That means  
21 the DNA profiles in numerical form. The forensic genetics and  
22 genetics in general is developing greatly, and I'm happy for that.  
23 This is a continuous development which brings new methods in place  
24 and also the statistical evaluation of our results develop.

25          While, in 2009, we were using Excel software for our

1 calculations, nowadays we use commercial software applications which  
2 we dispose with. That's why I made the calculation with the same  
3 data using CODIS software which is a standard software used by most  
4 forensic laboratories.

5 This software rendered the following results: The probability  
6 rate in terms of the kinship equals 99.99998 per cent. In layman  
7 terms, that means that approximately 1 out of 11 million randomly  
8 chosen individuals would not be excluded as a potential descendant of  
9 those subjects.

10 At the same time, we could state something what was not included  
11 in the original expert's opinion; namely, that the Y chromosome  
12 analysis in Subject A rendered same results as the analysis of Y  
13 chromosome of the bone fragment. In 2009, we did not state this fact  
14 in our report. Why? We were not able to include it into our  
15 statistical results. That was just a supporting analysis.

16 Y chromosome is inherited from father to his descendant. That  
17 means that the father and the son have the same Y chromosome profile.  
18 This serves not an individual identification. It only serves a group  
19 identification. That is why we did not state this fact in the  
20 original report. This information only helped us to confirm our  
21 results then.

22 Q. Thank you, Colonel. A couple of follow-up questions. The first  
23 one is the data that you used to draw this 99.9, and so on, per cent  
24 results, is this data shown anywhere in your report?

25 A. You do have in mind the previous report from 2009?

1 Q. No, the data -- the DNA profile data that you used to make this  
2 new calculation, is this present in the report that you sent us? Is  
3 it specified?

4 A. I think that the DNA profiles of the subjects, of the two  
5 subjects, and the partial DNA profile were stated in the annex  
6 attached to our report.

7 MR. DE MINICIS: Could we please scroll down the document to  
8 page 3, Your Honour.

9 PRESIDING JUDGE VELDT-FOGLIA: I see it has already been done.

10 MR. DE MINICIS:

11 Q. Is this the data that you used for your calculations, Colonel?

12 A. Yes, it is.

13 Q. Can this data be used by another expert, a third-party expert,  
14 to verify the accuracy of the results stated in your report?

15 A. Yes, certainly.

16 Q. And this is just a curiosity of mine. Perhaps the Judges will  
17 want to know too. I see that the table states "Locus" on the  
18 left-hand side, and under that column there are nine lines, starting  
19 with D3S, D19, D2S. Earlier on you told us you were able to extract  
20 nine markers from the bone samples. Are these the markers that you  
21 took into consideration for your analysis? Are these the nine  
22 markers that you were able to extract?

23 A. Yes, those are the nine autosomal markers.

24 Q. Thank you. Now, my second question concerns the analysis of the  
25 Y chromosome that you told the Judges about. Is that a separate

1 analysis that you performed compared to the one that you performed to  
2 draw the 99.9 per cent conclusion on biological kinship?

3 A. Yes, it is. So a standard analysis to establish a DNA profile  
4 determines markers on various chromosomes. These are the loci. When  
5 performing the Y chromosome analysis, we only try to determine the  
6 markers, the loci, on one single chromosome; thus, a pro and con of  
7 the chromosome. It's only inherited alongside the male paternal  
8 line.

9 Nowadays, statistical software applications are able to include  
10 this fact as well, and they are also able to match likelihood ratio.  
11 It's just a different approach of the statistical evaluation of our  
12 results.

13 Q. Thank you.

14 MR. DE MINICIS: Could we go back to page 1 of the report,  
15 please.

16 PRESIDING JUDGE VELDT-FOGLIA: Before we do that,  
17 Mr. Prosecutor, I would like to go to line 22 on page 30, and then --  
18 but maybe it's better to start at line 21 at the end:

19 "When performing the Y chromosome analysis, we only try to the  
20 markers ..."

21 I did not get that sentence.

22 THE WITNESS: Of course.

23 PRESIDING JUDGE VELDT-FOGLIA: But maybe something was left out  
24 in the translation or in the transcription into the transcript.  
25 Determine? Maybe it could be the word "determine"?

1 MR. DE MINICIS: So my understanding, but we will -- let's ask  
2 the witness.

3 Q. Colonel, you told us -- we're just trying to clarify the  
4 transcript. This is scientific jargon, so we want to be sure we  
5 understand it. You said that -- the transcript reads:

6 "When performing the Y chromosome analysis, we only try to the  
7 markers, the loci, on one single chromosome ..."

8 That's what is recorded in the transcript. Does that reflect  
9 your answer, or could you perhaps try to restate it so that we have  
10 it again in the transcript?

11 A. Apologies, I can't see my original output. I, therefore, am not  
12 sure what part of text you are referring to.

13 MR. DE MINICIS: Perhaps, Your Honour, I can try to ask the  
14 question by telling the witness what my understanding of that is and  
15 to see whether we can --

16 PRESIDING JUDGE VELDT-FOGLIA: I would suggest, and we can go to  
17 your alternative -- I see that Mr. Shala is not there anymore, so I  
18 will not proceed before verifying what has happened.

19 MR. AOUNI: Your Honour -- sorry.

20 PRESIDING JUDGE VELDT-FOGLIA: Mr. Dolejsi, we don't have the  
21 accused, Mr. Shala, via videolink with us, so that's the reason I  
22 don't want to proceed.

23 Mr. Shala, you are back with us.

24 THE ACCUSED: [via videolink][Interpretation] I apologise, but I  
25 needed to go to the bathroom urgently.

1           PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Shala. For next  
2 time, just inform us that you're not here with us, because for us  
3 it's very important, of course, that you can follow the whole  
4 proceedings, although your Defence lawyers are here with us. Good.

5           Mr. Prosecutor, I propose to re-ask the question, the second  
6 question, and then receive an answer from Mr. Dolejsi.

7           MR. DE MINICIS: Okay.

8           Q. Colonel, I will re-ask the question. I think that is the  
9 easiest way, as suggested by the Judge.

10          PRESIDING JUDGE VELDT-FOGLIA: Sorry, Mr. Prosecutor. I  
11 received some guidance on a specific technical matter.

12          MR. DE MINICIS:

13          Q. So the question that I asked you before and that you are kindly  
14 asked to answer again is whether the analysis on the Y chromosome  
15 haplotype is a separate analysis from the one that you conducted to  
16 determine the results of 99.9 per cent stated in your report.

17          A. Yes, it was a supportive analysis that is carried out in  
18 kinship.

19          PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, I suggest that  
20 you put to the witness how you understood this specific phrase, and  
21 then we see what the witness answers. So it's page 30, line 21 till  
22 23.

23          MR. DE MINICIS: Yes.

24          Q. So I understand that to perform the standard analysis, you check  
25 markers on a number of different chromosomes. While for the Y

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1 chromosome haplotype analysis you only check the markers on one  
2 single chromosome, that is, the Y chromosome; is that correct?

3 A. Yes.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Thank you,  
5 Mr. Dolejsi.

6 MR. DE MINICIS: Your Honours, if we could just have the report  
7 where the results are stated, that would be page 1.

8 PRESIDING JUDGE VELDT-FOGLIA: Please proceed,  
9 Madam Court Officer.

10 MR. DE MINICIS: And scroll down a little. This zoom out is  
11 good.

12 Q. Now, my question is similar to the one that I asked you about  
13 the results expressed in the first report, which gave a possibility  
14 of 1 to 70.000. Now, this, in layman terms, give us a possibility of  
15 1 in 11 randomly selected unrelated individuals. My question is,  
16 maybe repetitive, but for clarity, does this mean that if you took a  
17 bone sample from 11 million randomly selected individuals,  
18 statistically that would be one -- in one -- just one case in which  
19 you could not exclude kinship?

20 A. Yes, you may understand it this way.

21 Q. Now, you told us that you conducted this separate Y chromosome  
22 haplotype analysis. How does that analysis -- how do these findings  
23 stand in the light of that analysis?

24 A. Those results of analysis of Y chromosome, as I said, may be  
25 used also for other type of statistical calculation which is the

1 ratio of -- likelihood ratio. It's a statistical approach where we  
2 calculate the match of the standard markers. At the same time, we  
3 calculate in the probability of match Y chromosome.

4 Q. Just to make sure we all understand the terminology. Is the  
5 likelihood ratio that you drew through the standard analysis, the one  
6 indicated in the, one, two, three -- fourth paragraph of your report,  
7 so the 99.9 per cent number, is that what you called the likelihood  
8 ratio?

9 A. No. It was a statistical calculation that was used in 2009  
10 where we tried for better clarification express the likelihood of the  
11 random match. In this calculation, we try for lay -- public --  
12 clarify for how a big group of people may -- there may be a random  
13 match where we would randomly find one bone which would correspond to  
14 being a possible descendant.

15 At present, the criminology institute standardly uses for  
16 evaluation of biological kinship so-called probability ratio, which  
17 means that we have all the results in one statistical output.

18 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, at page 34, line  
19 13, the question:

20 "How does that analysis -- how do these findings stand in the  
21 light of that analysis?"

22 I'm not sure that we got a real answer to that, but I leave it  
23 to you. But for the moment, it doesn't seem to me --

24 MR. DE MINICIS: Of course, Your Honour. I am getting there. I  
25 will ask that as a next question.

1 Q. Now, does the analysis of the Y chromosome, does it lend support  
2 or not to the findings that you drew through the standard analysis  
3 methodology?

4 A. Yes. Y chromosome analysis means it's the same chromosome  
5 profile of the Y chromosome of Person A and the bone fragment. So  
6 undisputedly, it support the results.

7 Q. And is it possible -- if you were to combine the two analysis to  
8 produce a number, how would that affect the 11 million randomly  
9 selected individuals' result?

10 A. The likelihood 1 to 11 million is for your idea,  $1:10^6$ . And if  
11 we combine those likelihoods, it's the likelihood ratio. It's a  
12 statistical model where two hypotheses are being compared, put in  
13 layman terms. The hypothesis is that the two persons are parents or  
14 are not parents of the person in question.

15 In this case, it's like the scales of justice have two bowls and  
16 we judge them. So our hypothesis supports that, in this case, if we  
17 combined the results of the standard analysis STR markers, which is  
18 99.998, and the results of the analysis Y chromosome analysis, we get  
19 a result of the likelihood ratio that our results support the  
20 hypothesis and make it stronger. Meaning they are parents  $1^{10}$  as  
21 opposed to they are -- that they are not parents. That the result  
22 while using -- when using the same results are alternatively of --  
23 there is an opponent. It's a standard statistical model that is used  
24 in CODIS software.

25 Q. So if I understand it correctly, by combining what you told us,

1 and please tell me if my understanding is not correct, but you told  
2 us by combining the standard analysis with the Y chromosome analysis,  
3 the possibility that there is parental relationship is 1 to the power  
4 of 10 more likely than it is not?

5 A. Yes. The hypothesis that they are parents is 10 to the power of  
6 10 stronger thanks to the DNA analysis.

7 Q. Thanks.

8 MR. DE MINICIS: Your Honour, I see that we are at the time for  
9 a break. I actually have only two questions left, and then I would  
10 finish my examination.

11 PRESIDING JUDGE VELDT-FOGLIA: I think, anyhow, it's better to  
12 break up now and then to continue after the break.

13 MR. DE MINICIS: Very well.

14 PRESIDING JUDGE VELDT-FOGLIA: Yes.

15 Mr. Witness, we are going to proceed now with a half-an-hour  
16 break, and we will see you back then. I will ask Madam Court Usher  
17 to usher you out. Thank you.

18 [The witness stands down]

19 PRESIDING JUDGE VELDT-FOGLIA: We will resume in 30 minutes.  
20 The hearing is adjourned.

21 --- Recess taken at 11.01 a.m.

22 --- On resuming at 11.30 a.m.

23 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. I see the SPO in  
24 the same composition, Victims' Counsel, and on the left side also  
25 too.

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1 I see that Mr. Shala is now also with us.

2 Can you hear me fine, Mr. Shala?

3 THE ACCUSED: [via videolink][Interpretation] Yes, I hear you  
4 very well.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Good. Then we  
6 continue with the examination of the witness.

7 Madam Court Usher, could you usher the witness in, please.

8 [The witness takes the stand]

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 Mr. Dolejsi, welcome back.

11 THE WITNESS: Yes.

12 PRESIDING JUDGE VELDT-FOGLIA: I will now give the floor again  
13 to Mr. Prosecutor to continue with the examination.

14 You have the floor, Mr. Prosecutor.

15 MR. DE MINICIS: Thank you, Your Honour. I really just have one  
16 or two questions left, and then I will be done.

17 Q. Colonel, at page 28 of today's transcript, you stated that in  
18 2009 you used Excel for calculations while now you use software which  
19 is standardly used for these type of calculations which is called  
20 CODIS; is that correct?

21 A. Yes.

22 Q. I wanted to ask you something about your 2009 report.

23 MR. DE MINICIS: If we could please have on the screen  
24 SITF00012453 at page -- that would be, I believe, in the Czech  
25 version, it would be page 2, so 1, 2, 3, 4 -- page 5 of the document.

1           PRESIDING JUDGE VELDT-FOGLIA: Please proceed,  
2 Madam Court Officer.

3           MR. DE MINICIS: And this would be found, Your Honours, page 2  
4 of the English version. Just a clarification for me that perhaps  
5 also will assist the Panel.

6           If we can scroll a little bit down -- yes, that is fine for the  
7 English. That is also fine now for the Czech version.

8           Q. Under "Methods," section number 2, the third paragraph, you  
9 mention PowerPlex 16 from the Promega Company. Can you tell the  
10 Panel what that is, PowerPlex 16? Just because I thought -- my  
11 understanding is that you used Excel for the calculations at the  
12 time, and I saw that and I wanted to ask you if you could clarify for  
13 the Panel what that is.

14          A. For our methodology, we use different kits, different solutions,  
15 chemicals. And in this methodology, we only mention the kit  
16 chemical -- the chemical kit which is used for the analysis of  
17 autosomal loci STR. At that time, I believe that on the market -- on  
18 the world market, there were only these two firms, if I'm not  
19 mistaken: Applied Biosystems which I believe used to provide a kit  
20 called Identifiler and a firm called Promega which used to provide  
21 the PowerPlex 16 kit. It's just a nomenclature, a name, for the  
22 commercially available kits that would analyse the markers that we  
23 need.

24          Q. And what is the, if you can just clarify for me, the different  
25 roles? What do you use PowerPlex 6 for and what do you use the Excel

1 sheet for?

2 PRESIDING JUDGE VELDT-FOGLIA: PowerPlex 16.

3 MR. DE MINICIS: 16. Sorry, yes.

4 THE WITNESS: [Interpretation] We mention only the commercial  
5 kits that are used by the laboratory. The programme, macros in  
6 Excel, in our Excel, we used just for calculating a kind of  
7 probability of a kinship match. It's not mentioned here. It was  
8 just a macro we had in Excel.

9 MR. DE MINICIS:

10 Q. My last question on this to see. My understanding of this was  
11 that you -- PowerPlex 16 is used in the process of the extraction of  
12 the DNA profiles, while Excel is then used to calculate the kinship  
13 based on the profile that you extracted. Would that be correct?

14 A. Yes, it would be possible to say it that way.

15 Q. Thank you. I have one last question, and it concerns your 2023  
16 report.

17 MR. DE MINICIS: If we could please have on the screen 110670,  
18 please.

19 PRESIDING JUDGE VELDT-FOGLIA: Please proceed,  
20 Madam Court Officer.

21 MR. DE MINICIS: Page 2. If you can scroll just a little bit  
22 down. Yes.

23 Q. I wanted to ask you -- I earlier asked you if you had performed  
24 this analysis and generated this report yourself, but I see here the  
25 report is signed by Colonel Libor Predota, Head of Division. Could

1 you tell us who Mr. Predota is and what role he had in this report?

2 A. The questions that you sent to our office, to the police of the  
3 Czech Republic, are in a standard way worked on and compiled at the  
4 presidium of the police. The Colonel Predota, I assume, is the head  
5 of the department for international affairs. So the Institute of  
6 Criminology -- well, the presidium of the police would send your  
7 request to our division. We collaborated it, we worked on it, and  
8 then we sent it on. And he passed on the result. He's the guarantor  
9 of the official translation of the official writing and sending of  
10 the response.

11 Q. Thanks very much, Colonel.

12 MR. DE MINICIS: These were all my questions, Your Honours.

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

14 We have now completed the questioning of Mr. Dolejsi by the SPO.

15 Before we continue, I will ask you Madam Court Officer to  
16 provide us with the ERN numbers that have been allocated to the items  
17 the witness has -- that has been -- oh, no, we didn't have any  
18 marking. No, no, no, so we don't have to do that. Apologies for  
19 that. No.

20 Then we will continue with Victims' Counsel. Do you have any  
21 questions for the witness?

22 MR. LAWS: Thank you, Your Honour. We accept the colonel's  
23 evidence and we have no questions in relation to it.

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

25 Then I turn to the Defence.

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1 Defence counsel, would you like to continue with  
2 cross-examination --

3 MS. CARILOU: Thank you, Your Honours.

4 PRESIDING JUDGE VELDT-FOGLIA: -- of the witness?

5 MS. CARILOU: Yes, indeed.

6 Cross-examination by Ms. Cariolou:

7 Q. Good morning, Mr. Witness. I am Leto Cariolou, and I will be  
8 putting some questions to you on behalf of Mr. Shala, who is the  
9 accused in this case. I will focus my questions mainly on your  
10 methodology, but first let me please clarify two issues with you.

11 I understand, and you confirmed to us earlier, and that was at  
12 transcript page 11, lines 15 to 16, that since 2004, you worked for  
13 the genetics department of the criminology institute of the  
14 Czech Republic. That's correct, right?

15 A. Yes.

16 Q. I would be grateful if you could explain to the Judges what is  
17 your experience specifically in kinship analysis?

18 A. I am sorry. I don't understand. What specifically do you have  
19 in mind?

20 Q. Your report provides a ratio of probability in kinship, and I  
21 was wondering if you could help the Judges understand your experience  
22 in preparing such reports focused on kinship.

23 A. I am sorry, but I don't understand exactly the question.

24 Q. I --

25 A. Could you perhaps reword it, formulate it in different words?

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1 Q. Your reports focus on the probability that A and B are related  
2 to the person from whom the bone fragment was taken. Can you please  
3 explain your experience in providing reports using this specific  
4 expertise in kinship analysis.

5 A. It's a standard method in the field of genetics, and I believe  
6 since 2017, the Institute of Criminology identifies all unknown dead  
7 bodies in the Czech Republic. It's based on the instructions of the  
8 president of the police.

9 Q. Thank you, Mr. Witness. So I understand that your institute is  
10 regularly involved in providing this sort of analysis. How about  
11 yourself? Could you please expand on your specific expertise in this  
12 sort of analysis that you have provided in this report?

13 A. I am unable, from the top of my head, to give you the exact  
14 number of such cases I worked on.

15 Q. Thank you, Mr. Witness. Let's move on to the second  
16 clarification I wanted to discuss with you.

17 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel.

18 MS. CARILOU: Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: I would like to take the floor  
20 for a moment.

21 MS. CARILOU: Sure.

22 PRESIDING JUDGE VELDT-FOGLIA: And that is with regard to a  
23 request you made yesterday with regard to -- that was yesterday at  
24 1804, to add two documents to the list of items to be used with the  
25 witness. And I refer to the documents with numbers 113508 until

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1 113509, and also the document DPS00162 until 00236.

2 And we grant that request, Defence counsel, because both items  
3 were only disclosed yesterday, and you have notified to the Panel at  
4 the earliest opportunity that you would like to use them. And we  
5 didn't receive any objections from either the SPO and  
6 Victims' Counsel. So you may use them for your cross-examination.  
7 And this concludes my oral order.

8 You may proceed.

9 MS. CARILOU: Thank you, Your Honours.

10 Q. So, Mr. Witness, just to move on to the second clarification I  
11 needed from you. Is your institute accredited as complying with the  
12 ISO requirements for the competence of testing and calibration  
13 laboratories?

14 A. Yes.

15 Q. Since when is your institute so accredited as ISO compliant?

16 A. I am unable to give you the exact date. I can't tell you the  
17 exact date. I assume 2010. Sorry, I'm unable to give an exact date.  
18 I would just be guessing.

19 Q. Thank you, Mr. Witness. The reason I'm asking is because, if  
20 I'm not mistaken, your 2023 report does not mention whether you are  
21 accredited as complying with the ISO requirements, does it? Your  
22 2023 report.

23 A. That is possible. It was a standard answer to an inquiry. The  
24 normal correspondence does not normally include a reference to our  
25 accreditation.

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1 Q. Thank you, Mr. Witness. Now, let's continue with a different  
2 subject and focus on your 2009 report.

3 MS. CARILOU: And could I please ask the Court Officer to pull  
4 it for our screens. The report has ERN SITF --

5 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you ask me, and  
6 then I can give her --

7 MS. CARILOU: Ah, sorry.

8 PRESIDING JUDGE VELDT-FOGLIA: -- because if --

9 MS. CARILOU: Yes.

10 PRESIDING JUDGE VELDT-FOGLIA: -- we do that in that way, it  
11 keeps the procedure organised. Yes?

12 So, Madam Court Officer, you may proceed.

13 MS. CARILOU: So the ERN number is SITF00012453, and this  
14 should not be transmitted to the public. And if we can focus on the  
15 second page and zoom on the top on the point 2.

16 Q. Mr. Witness, in that section you list the material presented for  
17 examination; is that correct?

18 A. Yes.

19 Q. The first item listed is marked with a name of a male individual  
20 that we previously called A, and the second is marked with the name  
21 of a female individual that we previously decided to refer to as B.  
22 As we said earlier, we must not disclose their names to the public.

23 Now, in your report, you state that these items were handed over  
24 to your institute in September 2009. Can you confirm that that's the  
25 case?

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1 A. Yes.

2 Q. Your report does not contain information as to whether A and B  
3 were identified prior to sampling; is that correct?

4 A. No, it doesn't contain it. If the requesting subject, the  
5 requesting authority -- can I -- can I continue? Can I continue?

6 PRESIDING JUDGE VELDT-FOGLIA: You may. You may.

7 But I have a question for you, Defence counsel.

8 Please continue, Mr. Dolejsi. You may. Please.

9 THE WITNESS: [Interpretation] Normally, when the requesting  
10 authority or body asks any request with a reference material, the  
11 requesting party gets the reference material. They identify who they  
12 get the reference material from. We then just receive the sample  
13 that's marked with the number -- with a number or whatever. Whether  
14 that's marked with -- labelled with A or a number, that is not up to  
15 us to pronounce on.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Dolejsi.

17 Defence counsel, my question has been answered. So it's --

18 MS. CARILOU: Thank you, Your Honour.

19 PRESIDING JUDGE VELDT-FOGLIA: -- enough like this.

20 MS. CARILOU:

21 Q. Mr. Dolejsi, your report contains also no information as to how  
22 A and B were identified prior to sampling; right?

23 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, could you try to  
24 formulate it just as a question to the -- it's implying what you --

25 MS. CARILOU: Yes. Yes, Your Honour.

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1 PRESIDING JUDGE VELDT-FOGLIA: -- what you want to know.

2 MS. CARILOU:

3 Q. Mr. Witness, does your report contain any information as to how  
4 A and B were identified prior to sampling?

5 A. The identification of the subjects before a sampling of the  
6 reference material are performed by the requesting party. We are  
7 just the ones who process the samples. If I understood the question  
8 correctly.

9 Q. Yes, yes. You --

10 MS. CARILOU: Sorry, Your Honour.

11 Q. That was, indeed, my question. Now, does your report contain  
12 any information as to who took those samples?

13 A. If we are looking at the same report, I don't believe so.

14 Q. Thank you, Mr. Witness. And does the report explain when and in  
15 what circumstances those samples were taken?

16 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, rather asking  
17 things that are not in the report, I would propose to ask questions  
18 about issues that are in the report.

19 MS. CARILOU: I understand, you --

20 PRESIDING JUDGE VELDT-FOGLIA: No, no, I'm very serious about  
21 this, because now this is the third question about what is not, and  
22 you can see what is not. So I would like to hear questions about  
23 what is, and I would like you to ask questions, if you have, to  
24 clarify what this witness can tell us.

25 MS. CARILOU: Of course, the chain of custody, Your Honours, is

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1 important. There is no information in the report --

2 PRESIDING JUDGE VELDT-FOGLIA: Yes.

3 MS. CARILOU: -- concerning that and --

4 PRESIDING JUDGE VELDT-FOGLIA: No, but we can see. And you  
5 don't need the witness for that to establish that.

6 MS. CARILOU: Thank you, Your Honours.

7 Q. Now, turning to a different subject. Are the electropherograms  
8 of the DNA profiles of A and B available to you?

9 A. Those DNA profiles are only in the numerical form.

10 Q. That's right. But are these available to you?

11 A. Do you mean the numerical representation of these --

12 Q. Yes.

13 A. -- DNA profiles? Yes, they are also part of the annex where  
14 there is the calculation of the software CODIS, which is the annex  
15 that was with the report dating from 2023 where you do have the  
16 numerical representation of the DNA profiles.

17 Q. Mr. Witness, you agree with me that the annexes of your reports  
18 do not include the electropherograms of any of the DNA profiles  
19 analysed; is that correct?

20 A. That is correct. They are not included. We did not include  
21 those in the report.

22 Q. My question is are these available to you? Do they exist at  
23 your institute? Do you have them?

24 A. No, not anymore. The report itself, including entire documents,  
25 was destroyed after ten years. It was -- was destroyed.

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1 Q. You've earlier confirmed that although the hard copy of the  
2 report was destroyed after ten years - and I'll find the transcript  
3 reference later on - you still had access to the numerical analysis  
4 in electronic form; is that correct? Which is what you used in 2023.

5 A. That is correct. This numerical information is part -- is  
6 included in our database.

7 Q. Thank you, Mr. Witness. Now, in your report, you also list a  
8 fragment of a bone that was delivered to you in September 2009. The  
9 report does not mention who obtained this fragment and from where.

10 PRESIDING JUDGE VELDT-FOGLIA: That's not a question. So please  
11 ask a question about -- if you want, about a fragment of the bone.

12 MS. CARILOU: Right. So if we can turn to the second part of  
13 the 2009 report. If we could show on our screens the section that  
14 follows heading number 2, which is marked as "Method."

15 Q. Mr. Witness -- I'll wait for the document to be ...

16 PRESIDING JUDGE VELDT-FOGLIA: Before we proceed with the  
17 document, the reference about the destruction of the report is page  
18 28, lines 11 and 12. So we have that now.

19 And, Madam Court Officer, please -- yes, you already went to the  
20 page. Thank you.

21 Please proceed, Defence counsel.

22 MS. CARILOU:

23 Q. Now, Mr. Witness, you confirmed earlier on, and that was at  
24 transcript page 20, line 13, that the DNA typing kit which was used  
25 for your analysis was PowerPlex 16. And this is what we see in the

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1 third paragraph of the report that we have on our screen.

2 For clarity, can you please explain how many loci can be  
3 investigated using this DNA typing kit?

4 A. Can you repeat your question, please?

5 Q. Of course. For clarity, you've touched upon this subject  
6 before. But for clarity, could you please confirm how many loci can  
7 be investigated using the DNA kit PowerPlex 16? How many loci can be  
8 investigated?

9 A. It is also possible to simply make a simple calculation or count  
10 the number 16 loci in total. It's 15 autosomal loci plus amelogenin  
11 plus 6.

12 Q. Thank you, Mr. Witness. And can you please confirm how the  
13 various alleles for a specific DNA profile were verified. Just to be  
14 clear, I'm interested in the threshold that you or your lab used for  
15 identifying the alleles in your electropherograms.

16 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel -- no, wait,  
17 wait, Mr. Witness.

18 For the record, I think we need to repeat your question at page  
19 49, line, what is it, 20 till 22, because I think there's something  
20 lacking -- no, in 23, there's something lacking.

21 MS. CARILOU: Certainly. I'll repeat my question.

22 Q. My question was whether the witness could confirm how the  
23 various alleles for a specific DNA profile were verified. And I just  
24 clarified that I'm interested in the threshold levels that were used  
25 by you or your institute for identifying the alleles in your

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1 electropherograms.

2 A. At that time, and based on the verification, we used the minimal  
3 threshold of 50 RFU units in the sequenator. And in case of such  
4 complicated profiles as well as traces, only those alleles are  
5 reported that repeat at least twice out of three repeats.

6 Q. Thank you, Mr. Witness. That's clear.

7 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, we go back to  
8 page 49, your question at line 16, I see that the answer Mr. Witness  
9 has not been completely -- is not completely in the transcript.

10 So your last question was:

11 "How many loci can be investigated?"

12 And then the witness says:

13 "It's also possible to simply make a simple calculation or count  
14 the 16 loci in total."

15 He says: "It's 15 autosomal loci, but you see," and then it's  
16 not complete. So I would like to have a complete answer of the  
17 witness. But maybe already, by reading it out, he can complete it  
18 without you doing it.

19 Please proceed.

20 THE WITNESS: [Interpretation] Yes, the last locus is amelogenin  
21 that serves to determine the sex of the subject.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 You may proceed.

24 MS. CARILOU: Thank you, Your Honours.

25 Q. Mr. Witness, can you confirm that you have analysed the samples

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1 from A and B as well as the bone fragment using the 16 loci of  
2 PowerPlex 16?

3 PRESIDING JUDGE VELDT-FOGLIA: Very well.

4 Mr. Prosecutor, can we proceed with the witness in the courtroom  
5 or not?

6 MR. DE MINICIS: Yes, I believe so, Your Honour.

7 PRESIDING JUDGE VELDT-FOGLIA: Okay. Please.

8 MR. DE MINICIS: I think that I explored this in my direct  
9 examination. The witness explained that they obtained complete  
10 profiles for Subject A and B, but only 9 loci for the source of the  
11 bone fragment.

12 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, is there a  
13 follow-up question on that?

14 MS. CARILOU: There is, Your Honours.

15 PRESIDING JUDGE VELDT-FOGLIA: But then maybe you can do the  
16 follow-up question.

17 MS. CARILOU: Is it possible for the witness to confirm that he  
18 basically obtained the full profile for A and B using PowerPlex 16,  
19 just for clarity? And also --

20 PRESIDING JUDGE VELDT-FOGLIA: Now, that is in the report, and  
21 he said it before, that he used PowerPlex 16. So that we have on  
22 record. So I would proceed then with the next question.

23 MS. CARILOU: Right.

24 Q. You confirmed twice earlier on that you obtained a partial  
25 profile from the bone fragment. When you typed the DNA samples for

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1 the bone fragment, how many loci produced a result?

2 A. It was possible to verify, and I think it's in the annex, it was  
3 possible to verify nine loci.

4 PRESIDING JUDGE VELDT-FOGLIA: So, Defence counsel, that was  
5 exactly what Mr. Prosecutor said.

6 MS. CARILOU: Yes, Your Honours. I understand.

7 Q. Mr. Witness, could you please confirm which specific loci  
8 produced a result? Could you identify this for us?

9 A. I really can't remember. Could you please show me the annex  
10 where you have the loci identified with the names or titles or  
11 abbreviations? If you allow me to take a look at the annex and the  
12 respective page, I could then specify the loci.

13 Q. Mr. Witness, I don't have the annex related to your 2009  
14 analysis. There is the annex that perhaps could be of use which was  
15 attached to your 2023 report.

16 MS. CARILOU: And perhaps we could bring that to our screens.  
17 This is the --

18 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, would that be  
19 useful?

20 THE WITNESS: [Interpretation] Yes, it would.

21 PRESIDING JUDGE VELDT-FOGLIA: Then, Madam Court Officer, could  
22 you please proceed.

23 MS. CARILOU: That is ERN 110672 -- well, it's 670 for the 2023  
24 report. And then if we focus on page 3, which is ERN 110672, we have  
25 a chart which is named "Reverse Parentage Statistics."

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1           PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, can you see it on  
2 the screen?

3           THE WITNESS: [Interpretation] Yes, I can. And in the first  
4 column, Locus column, individual markers are listed. These are  
5 individual loci that were analysed and that produced the results,  
6 rendered results.

7           MS. CARILOU:

8           Q. And this is a data you obtained using PowerPlex for the purposes  
9 of your 2009 analysis; is that correct? Just so that I understand  
10 your evidence clearly. The data set out in this annex is the data  
11 you obtained using the DNA kit PowerPlex 16 in 2009?

12          A. Yes, these are results that were used for the statistical  
13 calculation. And obviously -- and the annex shows it as well. In  
14 case of the DNA profiles of Subject A and Subject B, not all markers  
15 are stated -- not all markers that were analysed are stated here.  
16 The reason is that for the sake of a statistical calculation, these  
17 data cannot be used because you cannot compare them with the bone  
18 markers which were not rendered.

19           So that means that in this very annex, you only find markers  
20 which can be used for the calculation or determination of biological  
21 kinship.

22          PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, I am under the  
23 impression that the witness did not completely understand your  
24 question, so I suggest to repeat it.

25          MS. CARILOU: Or perhaps take the witness back to my original

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1 question.

2 Q. I was trying to refresh your memory, perhaps, with showing you  
3 that list. But my original question, and what I was interested --

4 PRESIDING JUDGE VELDT-FOGLIA: No, I -- no, no.

5 MS. CARILOU: Sorry.

6 PRESIDING JUDGE VELDT-FOGLIA: No. My question was to repeat  
7 your question and to ask that question, because apparently you wanted  
8 an answer to that.

9 MS. CARILOU: Well, my question --

10 PRESIDING JUDGE VELDT-FOGLIA: You asked him --

11 MS. CARILOU: Yes.

12 PRESIDING JUDGE VELDT-FOGLIA: -- if he used that kit. That's  
13 what you wanted to know. And that was for the fourth time, I think,  
14 you asked it to him.

15 MS. CARILOU:

16 Q. What I wanted to know is the data in this annex, in the third  
17 page of the 2023 report, is the data which was obtained by analysing  
18 the profiles using PowerPlex 16?

19 A. Yes, that's true.

20 Q. Thank you, Mr. Witness.

21 MS. CARILOU: Can we please -- sorry.

22 Q. And you managed to produce -- my question was: Could you please  
23 confirm specifically which loci produced a result for the purposes of  
24 your 2009 analysis?

25 A. You mean the reference samples or the bone sample?

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1 Q. For the bone fragment. I'm focusing now on the bone fragment.

2 A. The loci where we were able to verify the alleles are mentioned  
3 in the column on the left. In these markers, we verified the  
4 reported alleles. At this moment, I'm not sure whether you want me  
5 to name them?

6 Q. Yes, please. If you could confirm the loci that are referred to  
7 there, which, if I understand your evidence correctly, are the loci  
8 for which you produced a result using PowerPlex 16 in 2009. Just for  
9 clarity.

10 PRESIDING JUDGE VELDT-FOGLIA: But is your question -- because I  
11 would like to understand, too. Are you asking the question if, for  
12 example, the first row, D3S --

13 MS. CARILOU: Yes.

14 PRESIDING JUDGE VELDT-FOGLIA: D3S1358, if that --

15 MS. CARILOU: Was analysed, and all of them, all of the nine  
16 loci referred to here were analysed using PowerPlex 16. This is  
17 really my question.

18 PRESIDING JUDGE VELDT-FOGLIA: But has that not been answered?

19 MS. CARILOU: If -- if -- if --

20 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, please. Can you  
21 answer that question?

22 THE WITNESS: [Interpretation] All these loci -- Your Honour, are  
23 you asking me about the answer in the question regarding this loci --

24 PRESIDING JUDGE VELDT-FOGLIA: Yes.

25 THE WITNESS: [Interpretation] -- in entirety?

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1           PRESIDING JUDGE VELDT-FOGLIA: Apparently yes.

2           THE WITNESS: [Interpretation] No, I don't think so. I think  
3 that we made repeated analyses using other kits.

4           PRESIDING JUDGE VELDT-FOGLIA: I don't think that that's the  
5 question.

6           MS. CARILOU: Yes --

7           THE WITNESS: [Interpretation] Which at that time, if I'm not  
8 mistaken ...

9           MS. CARILOU: Shall I take it step by step, Your Honours?

10          PRESIDING JUDGE VELDT-FOGLIA: I am under the impression that  
11 this question has been answered.

12          I would say -- the question is -- no, let us see and then I will  
13 give you the floor. Please ask your question once again to the  
14 witness in the same formulation you did before, and then I will -- I  
15 might take it from there.

16          MS. CARILOU:

17          Q. So the data related to the loci listed on page 3 of your 2023  
18 report, is that data obtained by your analysis in 2009 performed  
19 using the DNA kit PowerPlex 16?

20          A. Yes, now I got your question. I know where you're heading for  
21 with your question. Yes. We used the PowerPlex 16 kit in a standard  
22 manner. And in order to verify certain analyses and repeated  
23 analyses, we used other kits of another company, competitor to  
24 PowerPlex. At this moment, I can't say whether it was Identifiler,  
25 SEfiler, whatever these brand names can be. I can't remember anymore

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1 what kit we used.

2 Q. Thank you, Mr. Witness. I understand exactly what you mean.  
3 However, to assist the Panel to follow this, could you please -- so  
4 you have given us earlier the loci tested with the PowerPlex 16  
5 system. And we can perhaps pull the manual that was added to our  
6 list yesterday.

7 MS. CARILOU: And if we could zoom in to page 2 of the manual  
8 of the PowerPlex 16 system. That is ERN DPS00162.

9 PRESIDING JUDGE VELDT-FOGLIA: Okay. Two things. First, I  
10 would like to know the purpose, yes? And then we can decide to pull  
11 it up.

12 MS. CARILOU: Yes, Your Honours. The witness has just  
13 confirmed that the data that we have here, the information that we  
14 have related to the various loci, the nine loci that are listed on  
15 this page, have been obtained using -- well, I don't want to add my  
16 analysis. Have not only been obtained using PowerPlex 16.

17 PRESIDING JUDGE VELDT-FOGLIA: I have read --

18 MS. CARILOU: I just --

19 PRESIDING JUDGE VELDT-FOGLIA: I read that he said to verify  
20 these results other kits were used.

21 MS. CARILOU: Just to clarify this, if I could just show to the  
22 witness the PowerPlex 16 manual to show -- to determine which loci  
23 are actually analysed by this kit, by this DNA kit. And then it  
24 would become clear which cannot, and then I can point to the two that  
25 are not analysed through PowerPlex. And then, perhaps, I can ask the

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1 witness to clarify how he obtained the data, the relevant data.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

3 If the ERN number has been given, then we can pull up the  
4 document.

5 MS. CARILOU: Yes, if we could scroll, apologies, to the second  
6 -- if we could scroll down -- is this the second page? Yes. A bit  
7 down to the second paragraph of the description -- sorry, is this the  
8 first page? This is the first page, I believe. We have to go to the  
9 second page. Right. So if we could focus on the second paragraph.

10 Q. Mr. Witness, perhaps you can confirm for us which loci can be  
11 analysed using PowerPlex 16 for the record and for our understanding  
12 of your evidence? Is my question clear?

13 A. These are loci stated in the paragraph. Did I understand your  
14 question correctly? Yes?

15 Q. Yes, indeed. In your 2009 report, and in the manual, we see the  
16 16 loci that can be analysed using PowerPlex 16. Is this correct?  
17 Is my understanding correct? They are the same loci?

18 A. Yes.

19 Q. Right. So is locus D19S433 included in the loci that you can  
20 analyse using PowerPlex?

21 A. No.

22 Q. Thank you, Mr. Witness. And is locus --

23 A. [In English] And the second locus is D19.

24 Q. Sorry, I missed the interpretation of ...

25 A. [Interpretation] And I assume the second locus that you want to

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1 ask me about is D19. It is not included in the PowerPlex 16 kit as  
2 well. It's not included there. The question --

3 Q. No, just for the record, so D19S433 is not -- cannot be analysed  
4 using PowerPlex 16. We agree on that?

5 A. No.

6 Q. Yes. And D2S1338 can also not be analysed using PowerPlex 16;  
7 correct?

8 A. No.

9 Q. Thank you, Mr. Witness. And I would like you to explain, and  
10 you have partly explained this already, but for the Panel, how did  
11 you obtain the data for the two loci that are referred to in this  
12 annex since we have confirmed that these were not obtained through a  
13 PowerPlex 16 analysis? Thank you.

14 A. Maybe we could have got to it in a faster way. In my report in  
15 2009, there are not stated all methods used. Also, it does not state  
16 the type of cyclus used. It doesn't mention what kit was used for Y  
17 chromosome analysis. Those data are not stated.

18 In my expert output and in my expert statement, we are not under  
19 duty to state all information achieved throughout our expert  
20 activity.

21 As regards those complicated samples, therefore, other  
22 application kits were used from the competition company to achieve as  
23 many results as possible. Unfortunately, because this report has  
24 been shredded, I'm unable to tell you retrospectively what kit was  
25 used. I assume it was either Identifiler kit or SEfiler kit.

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1 Q. Thank you, Mr. Witness. It is, yeah, unfortunate that the --  
2 yes. In any event, you stated earlier that you had to repeat the  
3 analysis of a sample from the bone fragment a number of times. Could  
4 you please clarify how many times did you repeat this analysis?

5 A. Yes. In total, there were about five samples taken. The bone  
6 was cut more times.

7 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, before we  
8 proceed, I would like to have a clarification on a prior point from  
9 Mr. Witness.

10 If we understood now right, the two loci mentioned earlier by  
11 Defence counsel, PowerPlex 16 was not used to analyse it, yes? I  
12 understood from you, and we have this here on record, that you told  
13 the Panel:

14 "We used the PowerPlex 16 kit," this is page 57, line 1 to 4,  
15 "in a standard manner. And in order to verify certain analysis and  
16 repeated analyses, we used other kits of another company, competitor  
17 to PowerPlex."

18 That was the moment that I understood, and maybe I  
19 misunderstood, that it was used to verify, so to control if prior  
20 results were correct. And what I now understand from the questioning  
21 by Defence counsel, that it were all - how would I say it? - *ab*  
22 *initio* tests.

23 MS. CARILOU: Perhaps the witness can answer already, or  
24 perhaps I can guide him to respond to the --

25 PRESIDING JUDGE VELDT-FOGLIA: No, I --

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1 MS. CARILOU: Yes.

2 PRESIDING JUDGE VELDT-FOGLIA: -- would like to have a straight  
3 answer to see the -- maybe -- the floor is to you, Mr. Witness.

4 THE WITNESS: [Interpretation] Thank you. So in a standard  
5 manner, kit PowerPlex 16 was used in our laboratory. It was used in  
6 a standard manner for all samples and reference materials. In  
7 exceptional circumstances, when that was necessary to find out,  
8 verify, test the results, then a competitive kit from another company  
9 was used. That kit provides very similar results. The only  
10 difference is that the loci observed by us are composed in a  
11 different manner and enables us to get -- obtain the shorter sections  
12 of DNA fragments.

13 PRESIDING JUDGE VELDT-FOGLIA: This does not really answer my  
14 question, Mr. Witness. And I will just put it again, because I think  
15 there must be a clear answer to my question.

16 The two loci mentioned by Defence counsel, and I can read them  
17 out again to you, which were D19S433 and D2S1338, did you use another  
18 type of kit to analyse that?

19 THE WITNESS: [Interpretation] Yes, yes. Those two loci were  
20 part of another kit.

21 PRESIDING JUDGE VELDT-FOGLIA: It's not that that was a  
22 verification. It was a new analysis. You did not have any results  
23 on those two loci yet.

24 THE WITNESS: [Interpretation] I'm thinking how to formulate my  
25 answer in simple terms. Kits that are -- were used by us, or have

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1     been used by us, have most loci that are the same. If we are to  
2     verify an allele, and we repeat the analysis, if we are to -- if we  
3     want to verify the loci stated here, we can use PowerPlex 16.

4             If we use a competitive kit, most of them are also verified in  
5     that kit apart from two loci. Those kits differ. PowerPlex 16 have  
6     to -- tend to -- they intend to --

7             THE INTERPRETER: The interpreter didn't catch.

8             THE WITNESS: [Interpretation] The competitive have D19 and D2.  
9     The rest of the loci were the same. If we wanted to verify the  
10    results of D2 and D19, so in order to be able to report them, we used  
11    the competitive kit. And it was used twice in order to twice verify  
12    the allele, the number that was reported.

13            It is not the case that alleles would be confirmed by a  
14    competitive kit. It's not a condition. The condition was for the  
15    allele to be -- to appear to be reported twice within two different  
16    analyses, be it the same analysis or the competitive kit is not a  
17    condition. Was it understood?

18            PRESIDING JUDGE VELDT-FOGLIA: Thank you. For now, this  
19    clarifies the specific passage from the transcript. And I will now  
20    give the floor to Defence counsel to continue with her examination.

21            You have the floor.

22            MS. CARILOU: Thank you, Your Honour. Perhaps just a follow-up  
23    and last question on this matter. Perhaps it could assist if the  
24    witness could confirm whether he can obtain any data on the two loci  
25    that were identified using PowerPlex. Just to confirm that this is

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1 no verification but this is a new analysis that was obtained, unless  
2 this is clear for the Panel.

3 PRESIDING JUDGE VELDT-FOGLIA: No, no, I think that the witness  
4 has gone into the matter of whether or not it is a new analysis, but  
5 you can ask your question.

6 MS. CARILOU: Okay.

7 Q. So just a simple question: Can you analyse the two loci which  
8 were identified before, which I can repeat for the record, D19S433  
9 and D2S1338, can you obtain any data related to this loci using  
10 PowerPlex 16?

11 A. No, the kit does not contain those two loci.

12 Q. Thank you, Mr. Witness. It was just for clarity.

13 So, therefore, only seven of the loci that are listed on the  
14 same page, this is page 3 of the 2023 report, only seven of the loci  
15 that are listed there were analysed with PowerPlex? Just to be sure  
16 that we understand your evidence correctly.

17 A. I don't know. Can I have a look again at the list?

18 Q. Of course.

19 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]

20 THE INTERPRETER: Microphone for Your Honour, please.

21 PRESIDING JUDGE VELDT-FOGLIA: Could you please put up the annex  
22 of the 2023 report. And, if necessary, Defence counsel can assist  
23 you with the ERN number.

24 MS. CARILOU: Indeed. That is 110672.

25 THE WITNESS: [Interpretation] Indeed, I do not remember what all

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1 loci are contained identifier -- are containing an identifier. But I  
2 assume that D --

3 THE INTERPRETER: The interpreter didn't manage to catch all the  
4 numbers.

5 THE WITNESS: [Interpretation] There are also -- I'm not sure  
6 whether they are part of the identifier, but they are part of the  
7 PowerPlex, so they are part of the analysis by PowerPlex 16.

8 MS. CARILOU:

9 Q. I'm sorry, Mr. Witness. Part of your response was not entirely  
10 translated. Could I just confirm that your evidence is that seven of  
11 the loci that are referred to in this list were not analysed with  
12 PowerPlex 16?

13 MR. DE MINICIS: No, I --

14 THE WITNESS: [Interpretation] They were analysed.

15 PRESIDING JUDGE VELDT-FOGLIA: That's what I understood too.

16 MS. CARILOU: Sorry, seven were analysed. Apologies. Yes,  
17 seven were analysed. Yes.

18 Q. Two were not, and there are nine, so seven were analysed with  
19 PowerPlex.

20 MS. CARILOU: Thank you, Your Honour.

21 THE WITNESS: [Interpretation] Yes.

22 MS. CARILOU:

23 Q. And, Mr. Witness, this means that the data for nine loci which  
24 were analysed with PowerPlex in 2009 is missing from this analysis;  
25 correct? From this list.

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1 A. [In English] I don't understand --

2 PRESIDING JUDGE VELDT-FOGLIA: Now the question is getting --

3 MS. CARILOU: Not clear.

4 PRESIDING JUDGE VELDT-FOGLIA: -- not clear.

5 And wait, let us wait. We give the floor to Mr. Prosecutor.

6 And is it better that we usher the witness out?

7 MR. DE MINICIS: No, for me, it is just a matter of stating the  
8 record correctly. My understanding is that this is the data that was  
9 analysed in 2009. There was no new raw materials in 2023.

10 MS. CARILOU: That's my understanding as well. The question is  
11 where did this data come from, and I think we've just confirmed that  
12 the data related to two out of the nine loci did not come from a  
13 PowerPlex 16 analysis. We're not sure from which analysis the data  
14 came from.

15 And I just wanted to confirm with the witness.

16 Q. Since PowerPlex analyses 16 loci, the data for nine loci is  
17 missing from the data that you list here in your 2023 report; is that  
18 correct?

19 A. [Interpretation] Can you please repeat and define your question,  
20 please.

21 PRESIDING JUDGE VELDT-FOGLIA: For me, I want to give -- I want  
22 to give you all the floor necessary to examine the witness on  
23 specific points, but it must be also for the Panel possible to follow  
24 where you base your question on. And for now, I cannot completely  
25 understand, so it must be clarified --

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1 MS. CARILOU: Apologies, Your Honour. I'll --

2 PRESIDING JUDGE VELDT-FOGLIA: -- before you put your question  
3 to the witness.

4 MR. DE MINICIS: If I may, I just also want to say that the  
5 witness has already explained that while PowerPlex analyses 16 loci,  
6 because they were only able to extract nine from the bone, it only  
7 made sense to have analysis with regard to nine here, but then two of  
8 which were extracted with another kit.

9 So just I wouldn't want to go backwards on matters that the  
10 witness has already explained as to why there are just nine loci  
11 specified there.

12 PRESIDING JUDGE VELDT-FOGLIA: Yes. So your question to the  
13 witness now -- I would like you to put the question to the Panel, and  
14 then we can discuss it.

15 MS. CARILOU: We've established, if you like, that with  
16 PowerPlex 16, we can get data for 16 loci.

17 PRESIDING JUDGE VELDT-FOGLIA: Yes.

18 MS. CARILOU: And we know -- we have here data concerning seven  
19 loci that were analysed with PowerPlex 16. So the information  
20 related to nine loci, which is not set out here, so 16 --

21 PRESIDING JUDGE VELDT-FOGLIA: So you mean seven --

22 MS. CARILOU: -- minus 7.

23 PRESIDING JUDGE VELDT-FOGLIA: -- and two.

24 MS. CARILOU: No. 16 --

25 PRESIDING JUDGE VELDT-FOGLIA: Yes.

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1 MS. CARILOU: -- that are all the loci that can be --

2 PRESIDING JUDGE VELDT-FOGLIA: Yes.

3 MS. CARILOU: -- tested with PowerPlex, minus the seven that we  
4 have listed here --

5 PRESIDING JUDGE VELDT-FOGLIA: Yes.

6 MS. CARILOU: -- there are nine loci. And if it's helpful to  
7 the Court, I can read which loci this concerns. There are nine  
8 loci --

9 PRESIDING JUDGE VELDT-FOGLIA: Wait, yes --

10 MS. CARILOU: -- that were analysed with PowerPlex 16 in 2009,  
11 but the information related to that loci is not listed in his report.  
12 And I just want to --

13 PRESIDING JUDGE VELDT-FOGLIA: You just want to turn it around?

14 MS. CARILOU: No. No, no, it's a different issue. But I just  
15 want to confirm that my understanding is correct with the expert, of  
16 course, because -- yes, I see that --

17 PRESIDING JUDGE VELDT-FOGLIA: But you -- you are making a kind  
18 of calculation, if I understand you right. You're saying there were  
19 nine eventually analysed with this specific kit, yes, of which two  
20 not, because that's what the witness told us. And there were another  
21 six.

22 MS. CARILOU: Your Honours, if I could assist. We have here on  
23 the annex --

24 PRESIDING JUDGE VELDT-FOGLIA: Yes.

25 MS. CARILOU: -- we have nine loci. PowerPlex analyses 16.

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1 Two were not analysed with PowerPlex --

2 PRESIDING JUDGE VELDT-FOGLIA: Two of these nine.

3 MS. CARILOU: Two of these nine. So seven were analysed with  
4 PowerPlex 16.

5 PRESIDING JUDGE VELDT-FOGLIA: Yes.

6 MS. CARILOU: This leaves us with nine additional loci which  
7 are not listed here.

8 PRESIDING JUDGE VELDT-FOGLIA: Yes. And then I repeat, that is  
9 a kind of turning it around. This is just making a calculation.  
10 It's -- or not?

11 MS. CARILOU: I would just like --

12 PRESIDING JUDGE VELDT-FOGLIA: It's 16 without seven --

13 MS. CARILOU: Yes.

14 PRESIDING JUDGE VELDT-FOGLIA: Minus seven.

15 MS. CARILOU: Absolutely. Yes, yes.

16 PRESIDING JUDGE VELDT-FOGLIA: So I don't see the need, if you  
17 already have done this whole analysis of 16, nine, and then from the  
18 nine seven, to turn it around and to make the question. And if you  
19 can point out to me what is the relevance, we can make this  
20 calculation. But for now, I don't see what it adds to what we have  
21 learned until now.

22 MS. CARILOU: Your Honour, I would just like to have confirmed  
23 by the witness, who has done the relevant analysis, that the data for  
24 nine loci, which I don't need to identify, is not included in the  
25 2023 report. This is what I would like to ask the witness.

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1           PRESIDING JUDGE VELDT-FOGLIA: I'm going to see if the witness  
2 understands the question.

3           Can you explain to me the purpose or the relevance? Because  
4 what you're heading at, for me, is a kind of calculation.

5           MS. CARILOU: It is, Your Honours, but --

6           PRESIDING JUDGE VELDT-FOGLIA: And I don't -- and that  
7 calculation, you can make it on the basis of the information the  
8 witness has provided to us. So --

9           MS. CARILOU: Your Honour, you're absolutely right. It is a  
10 calculation. However, I'm not an expert. So I would like to have  
11 the expert confirm that our understanding is correct, that, in fact,  
12 there is data related to nine loci which is not presented here in  
13 this --

14          PRESIDING JUDGE VELDT-FOGLIA: No --

15          MS. CARILOU: -- report. This is the question.

16          PRESIDING JUDGE VELDT-FOGLIA: No, no.

17          MR. DE MINICIS: Your Honours, if I may, just for the record, be  
18 clear. It is our position that we already have an answer to that  
19 question. The witness stated that these loci were not analysed here  
20 because they could only be extracted from Subject A and Subject B,  
21 not also from the bone fragment.

22          On that basis, they could not draw a comparison between the two,  
23 so they only analysed the loci --

24          PRESIDING JUDGE VELDT-FOGLIA: Available.

25          MR. DE MINICIS: -- available.

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1           PRESIDING JUDGE VELDT-FOGLIA: There are nine loci available.  
2           That's the point of departure. So I will not allow for this  
3           question.

4           MS. CARILOU: Thank you, Your Honours.

5           And now moving on to, perhaps, the last question that we have.  
6           Q. We talked before about the availability of the electropherograms  
7           of A and B, of a DNA profile related to A and B. I am wondering, are  
8           there electropherograms of the DNA profile from the bone fragment  
9           available to you? Either at your lab or -- do you have these at your  
10          disposal?

11          A. No, those are only -- only exist in the numerical form that we  
12          actually provided as the annex.

13          PRESIDING JUDGE VELDT-FOGLIA: This question has been --

14          THE WITNESS: [Interpretation] These are the results, the  
15          numerical representation that was the basis for the statistical  
16          calculations.

17          PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, this question  
18          has been asked in the same way, and I'm trying to look for the  
19          reference, and we got the same answer.

20          MS. CARILOU: Perhaps I'm mistaken. I believe I've asked  
21          before for A and B, and now I was asking for the bone fragment.  
22          Apologies if I'm mistaken.

23          PRESIDING JUDGE VELDT-FOGLIA: No, maybe you -- and then I owe  
24          you maybe apologies if that is the case. I mean ...

25          MS. CARILOU: In any event, this concludes our

1 cross-examination. We have no further questions.

2 Q. Thank you, Mr. Witness.

3 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

4 Is there a necessity for the SPO to have a redirect?

5 [Specialist Prosecutors confer]

6 [Trial Panel confers]

7 MR. DE MINICIS: We have no redirect for this witness,

8 Your Honour.

9 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]

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

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

12 Before I go to the Defence, Mr. Witness, is there something you  
13 would like to say or to add before I give the floor to the Defence if  
14 they have another question?

15 THE WITNESS: [Interpretation] Maybe once more I would like to  
16 clarify the question.

17 PRESIDING JUDGE VELDT-FOGLIA: It's for us to decide.

18 [Microphone not activated].

19 THE WITNESS: [Interpretation] In 2009 in the report, we did not  
20 include all the analysis that we used. Not even the analysis of Y  
21 chromosome is included. And that's because, although we did provide  
22 all these analysis, and that is why we managed to receive the results  
23 for the two loci that are not part of the PowerPlex 16. That's why  
24 we have them. These results are obtained from the same sample.

25 We don't have the actual -- when we have the sample, we apply

1 various analysis. The results are reported in the numerical form,  
2 and then they are used for the statistical evaluation and calculation  
3 of the kinship.

4 I hope that this way I clarified the question.

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

6 Thank you, Mr. Witness.

7 Defence counsel, is there a question from you in rejoinder?

8 MS. CARILOU: If I could just a last -- two minor points.

9 Further Cross-examination by Ms. Cariolou:

10 Q. Do you have at your disposal any data from your 2009 analysis  
11 that is not -- that has not been included in the 2023 report? In any  
12 format, in electronic format or in any format. Do you have any data  
13 obtained from the 2009 analysis at your disposal today?

14 A. We managed to recover the data from CODIS related to the Y  
15 chromosome analysis, but I don't believe that is part of the annex.  
16 I believe that's 11 markers of the Y haplotype. That's the same for  
17 Subject A and the bone fragment. But that would be all that we  
18 managed to recover.

19 MS. CARILOU: [Microphone not activated].

20 And just one very small clarification for the record, if not  
21 anything else. I believe that there's a small typing error in the  
22 2009 report. Perhaps we can just have it clarified with the witness  
23 now we have him here.

24 PRESIDING JUDGE VELDT-FOGLIA: Please, Madam Court Officer,  
25 could you pull up the report.

1 MS. CARILOU: And for completeness. If we could have the  
2 2009 report, the second page, that bears ERN SITF00012454. And if we  
3 can look at the part that reads "Method."

4 Q. Just very quickly. Mr. Witness, perhaps you can confirm that  
5 the loci -- the second loci referred to in the second line of the  
6 third paragraph, it reads there "D2S11." You see it? That there's a  
7 small typing error, and that should actually read "D21S11"? Just for  
8 the record.

9 A. [In English] Yes. [Interpretation] Yes, that would be a typing  
10 error. It is the locus D21.

11 Q. Thank you. We have no --

12 PRESIDING JUDGE VELDT-FOGLIA: No, please continue.

13 MS. CARILOU: We have no further questions, Your Honour.

14 PRESIDING JUDGE VELDT-FOGLIA: Now that we are at the phase of  
15 corrections, I owe you my apology, because you were indeed -- at page  
16 47, line 18, when you were talking about the electropherograms, you  
17 referred to A and B and now you were referring to the bone. So for  
18 the record, we have that straight. Yes? Very well.

19 I will now check with my colleagues.

20 [Trial Panel confers]

21 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, we don't have any  
22 questions from the side of the Panel. So that means that we are at  
23 the end of your testimony before the Specialist Chambers.

24 I would like to thank you very much for your testimony here in  
25 court. I believe it will be of assistance for finding the truth. I

1 wish you a good trip home. I remind you that you should not discuss  
2 with anyone the content of your testimony you have given. And allow  
3 me to thank you again.

4 Madam Court Usher will usher you out.

5 THE WITNESS: [Interpretation] Thank you very much for the  
6 opportunity to explain any possible uncertainties or unclear matters.

7 [The witness withdrew]

8 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you, Madam  
9 Court Usher.

10 Before we adjourn, we will have an oral order, as I informed the  
11 parties and Victims' Counsel. Very well.

12 This is an oral order setting the calendar for the next  
13 procedural steps. And that is the closing of the SPO case; the  
14 Victims Preparation Conference; Victims evidence, view and concerns;  
15 the Defence Preparation Conference; and opening of the Defence case.

16 The present order is order pursuant to Article 40(2) of the Law  
17 and Rules 9(5)(a), Rule 116(1), Rule 119, and Rule 129 of the Rules.

18 The Panel sets Wednesday, 6 July 2023 as the target date for the  
19 closing of the SPO case. Before closing its case, the SPO shall  
20 submit any remaining application for the admission of material under  
21 Article 37 of the law or other material.

22 Also before the closing of the SPO case, and following the  
23 completion of the testimony of the last SPO witness, the parties and  
24 Victims' Counsel shall file their application for the admission of  
25 material used during their respective questioning of the last SPO

1 witness. And that is the witnesses to be heard between 26 June and 5  
2 July.

3 So it means that you will not have, for these witnesses, a week  
4 from completion of the evidentiary block as set out in the decision  
5 461, paragraph 56. And we kindly ask you to organise accordingly.  
6 The objections and observations, if any, shall be filed within the  
7 five-day limit we have set out in the decision 461, paragraph 56.

8 So on 6 July, by 4.00, the SPO shall file a written notice,  
9 pursuant to Rule 129 of the Rules, informing the Panel, the Defence,  
10 and Victims' Counsel that there are no more witnesses to be called or  
11 other evidentiary material to be presented and closing its case. And  
12 this is, of course, subject to the last SPO witness concluding his or  
13 her testimony on or before 5 July.

14 Defence counsel, I now turn to you. My first question, I have a  
15 question for you, if you are already in a position to inform the  
16 Panel whether you intend to file a motion under 130 of the Rules to  
17 dismiss any or all of the charges and whether you intend to present a  
18 case pursuant to Rule 119(1) of the Rules?

19 And if the Defence cannot say it now, in that case, you shall  
20 inform the Panel, the SPO, and Victims' Counsel whether you intend to  
21 submit a motion under Rule 130 of the Rules to dismiss any or all of  
22 the charges, and whether you intend to present a case, at the latest  
23 and immediately after the SPO has filed the Rule 129 notice and no  
24 later than that.

25 Defence counsel, you have the floor.

1 MR. GILISSEN: Yes, Your Honour. I prefer to wait before  
2 providing you an answer, and I will be more accurate to answer with  
3 the date you provided with us. Thank you.

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

5 Then, subject, of course, to a Rule 130 request and the outcome  
6 of that, we have to organise already for possible procedures after  
7 that subject to the outcome of a possible Rule 130 motion.

8 Should you decide to present a case, and in order to organise  
9 the proceedings efficiently and expeditiously, we set the following  
10 procedural steps and time limits for the presentation of your  
11 evidence.

12 First, Defence counsel, you shall file your list of witnesses  
13 and exhibits containing the information set out in Rule 119(2)(a) and  
14 (b) of the Rules by Monday, 17 July 2023.

15 And then by 19 July 2023, you shall also permit the SPO and  
16 Victims' Counsel to inspect and copy any statements, documents,  
17 photographs, and other tangible objects in the Defence custody or  
18 control which are intended for use by the Defence as evidence at  
19 trial.

20 You should provide the SPO and Victims' Counsel the statements,  
21 if any, of all witnesses the Defence intends to call at trial and all  
22 statements taken which the Defence intends to present at trial, and  
23 to provide the SPO the exhibits that the Defence intends to present  
24 at trial as set in Rule 104(5) and (7) of the rules.

25 The Defence shall liaise with the SPO prior to filing the list

1 of exhibits in order to gather, where possible, any SPO objections  
2 regarding the authenticity of the Defence exhibits to be presented,  
3 as stipulated in Rule 190(2)(b) of the Rules. And this is without  
4 prejudice for the SPO to raise any objection to the overall  
5 admissibility of any exhibits should this be submitted to the Panel  
6 during the remainder of the trial.

7 The Defence shall further comply with the Panel's directions in  
8 the Decision on the Conduct of Proceedings, which is decision 434.  
9 And the specific paragraphs relevant are paragraphs 27, 28, 30 until  
10 33, 35, 56, 64, 68 and 69.

11 Second, I recall for specifically -- for everybody, but  
12 specifically for Victims' Counsel, that the Panel's plans are to hear  
13 evidence called by Victims' Counsel and any views and concerns of  
14 victims starting on 21st or 22nd August 2023. It will depend on the  
15 amount of time needed by Victims' Counsel if we start on 22 August.

16 And immediately thereafter, within the same week, we wish to  
17 convene the Defence Preparation Conference, and the preparation  
18 conference will be held in the presence of the SPO, Victims' Counsel.

19 And, Defence counsel, if you would like to have an *ex parte*  
20 session, please inform the Panel and we will proceed accordingly.

21 Should your rule, if any, motion be granted, we will vacate, of  
22 course, the hearing days in August, and we will no longer hear any  
23 evidence from Victims' Counsel or hold a Defence Preparation  
24 Conference. That goes, of course, without saying.

25 Let me see.

1 MR. AOUINI: Excuse me, Your Honour.

2 PRESIDING JUDGE VELDT-FOGLIA: Yes. No, I said --

3 MR. AOUINI: The rule.

4 PRESIDING JUDGE VELDT-FOGLIA: No, I think I made a small -- I  
5 made a mistake.

6 Anyway, should your Rule 130 motion be granted, and if you file  
7 one, of course, we will vacate the hearing days in August. Very  
8 well.

9 Third, we set Monday, 18 September 2023, for the opening of the  
10 Defence case. Again, this is subject to the outcome of Rule 130  
11 motion, if any.

12 Victims' Counsel, I turn to you. We already set the relevant  
13 deadlines for you, and I refer to our oral order of May 4th. We have  
14 also stated that envisaged evidence by Victims' Counsel and any views  
15 or concerns of victims to be presented, it is preferable to be done  
16 in the week of the 21st till 25th August.

17 Victims' Counsel, do you find a need to have a Status Conference  
18 regarding the presentation of evidence and views and concerns of the  
19 victims?

20 MR. LAWS: Your Honour, the short answer is I don't think it  
21 will be necessary. And I can tell Your Honour, and Your Honour's  
22 colleagues, where we are in terms of preparation. We will meet the  
23 deadline of 30 June, and we won't be asking for an extension for the  
24 submission of our evidence.

25 The witnesses that we intend to call on either the 21st or 22nd

1 August have been warned of those dates and are available, and we  
2 think it's highly unlikely that we'll be calling any victims to  
3 present their views and concerns.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. It could also be that we  
5 would start the 22nd and then we would proceed --

6 MR. LAWS: Sorry, Your Honour.

7 PRESIDING JUDGE VELDT-FOGLIA: It could also be that we start  
8 the 22nd --

9 MR. LAWS: I'm so sorry.

10 PRESIDING JUDGE VELDT-FOGLIA: -- and then proceed the 23rd, so  
11 their availability -- let me put the question differently. The  
12 availability of the witnesses, is that for the whole week?

13 MR. LAWS: We have told the two individuals concerned that they  
14 should make themselves available for the 21st and 22nd August. We  
15 thought that those were the dates that had been allocated for their  
16 evidence.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay.

18 MR. LAWS: I'm very happy to see if they can also come on the  
19 23rd.

20 PRESIDING JUDGE VELDT-FOGLIA: Yes, that would be a request --

21 MR. LAWS: Yes, certainly.

22 PRESIDING JUDGE VELDT-FOGLIA: -- on our part.

23 Very well. Victims' Counsel, if you change your mind, the Panel  
24 could organise a Status Conference on Friday, 7 July. So I leave it  
25 there as an option, and we have noted your answer, but for you to

1 know, if the need arises.

2 MR. LAWS: Thank you, Your Honour.

3 PRESIDING JUDGE VELDT-FOGLIA: And if you would like to do that,  
4 Victims' Counsel, please inform the Panel at the earliest opportunity  
5 that that would be -- so for now, we don't organise anything, but  
6 please inform us at the earliest opportunity if you would like to  
7 have one.

8 MR. LAWS: Yes, of course. Thank you.

9 PRESIDING JUDGE VELDT-FOGLIA: I now come to the last point.

10 The Panel considers it appropriate to receive submissions by  
11 Friday, 1 September 2023, in accordance with Rule 159(6) of the  
12 Rules, from the parties and Victims' Counsel as to whether -- of  
13 course, in the event the accused is found guilty of one or more  
14 crimes charged, as to whether the Panel should determine the  
15 appropriate sentence with the pronouncement of the trial judgment or  
16 should proceed in accordance with Rule 162 and 164 of the Rules.

17 And the parties and Victims' Counsel shall also make submissions  
18 on whether they have additional evidence that they wish to submit for  
19 the purpose of sentencing, including whether they wish to call  
20 witnesses for these purposes. And this is, of course, without  
21 prejudice to the Panel's determination of whether the accused is  
22 guilty or not guilty. We are just trying to organise everything in  
23 the most efficient way.

24 Should the parties and the Victims' Counsel not be in a position  
25 to submit the requested observation at this stage, they shall file

1 submissions stating the reasons therefore. In any case, the Panel  
2 shall receive submissions on this matter at the latest by the closing  
3 of the Defence case pursuant to Rule 131 of the Rules.

4 Is everything clear on the matter? I see Mr. Prosecutor  
5 nodding. The whole team nodding. Yes.

6 MR. DE MINICIS: Yes, Your Honour. Everything is clear. If I  
7 may take this opportunity just to request a clarification. At page  
8 74 of the transcript, Your Honour set the date for the closing of the  
9 Prosecution case for Wednesday, 6 July.

10 Now, 6 July happens to be a Thursday. So I wanted to just, for  
11 clarity, to know what day Your Honour intended to set for the close  
12 of our case.

13 PRESIDING JUDGE VELDT-FOGLIA: Thursday, 6th, in that case.  
14 Because it is the understanding of the Panel that the 5th might be  
15 the day that we finalise with the examination of the witness, and we  
16 wanted to give the Defence and Victims' Counsel and SPO the time to  
17 finalise anything that had to come up with regard to evidence, and  
18 especially for the SPO.

19 MR. DE MINICIS: Thank you, Your Honour. Now the record is  
20 clear. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you. And thank you for  
22 making the point.

23 Victims' Counsel, is everything clear to you?

24 MR. LAWS: It is, Your Honour. Yes. If I can just correct the  
25 transcript of something that I said, at page 78, line 17. It says:

1 "We will need the deadline of 30 June."

2 I said:

3 "We will meet the deadline of 30 June."

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you for this correction.

5 Defence counsel, is everything clear?

6 MR. GILISSEN: That's very clear, Your Honour. Thank you very  
7 much.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. This concludes  
9 today's hearing, if the parties and Victims' Counsel don't have  
10 anything to raise with the Panel anymore. No?

11 MR. DE MINICIS: Nothing further, thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

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

14 MR. GILISSEN: No. Thank you very much.

15 PRESIDING JUDGE VELDT-FOGLIA: No.

16 MR. GILISSEN: Excepting Ms. Cariolou perhaps?

17 MS. CARILOU: No, thank you, Your Honours. I just  
18 [Indiscernible].

19 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then I thank the  
20 parties and Victims' Counsel and the Registry, who already left, for  
21 their attendance. And I want to thank the interpreters and the  
22 stenographer and the security and the audio-visual booth for their  
23 assistance today.

24 The hearing is adjourned until 26 June at 9.30.

25 --- Whereupon the hearing adjourned at 1.07 p.m.