

Redactions applied pursuant to F793.

1 Friday, 24 November 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: Good morning, Your Honours. This is case
8 KSC-BC-2020-04, The Specialist Prosecutor versus Pjeter Shala.

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

10 I see that on my right-hand side we are in the same composition.
11 I mean, the Specialist Prosecutor's Office. Yes, Victims' Counsel
12 also. Thank you.

13 And I see at the side of the Defence a change. I give you the
14 floor, Mr. Gilissen, to indicate who is present.

15 MR. GILISSEN: Thank you very much, Your Honour. Your Honours,
16 I am Mr. Gilissen. We are here with Mr. Shala in the detention
17 centre, Ms. Melissa McKay, Ms. Dzeneta Petravica, Ms. Juliette Healy,
18 and Ms. Judit Kolbe. Thank you very much.

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

20 Mr. Shala, good morning. Can you confirm that you can hear me
21 well?

22 THE ACCUSED: [via videolink] [Interpretation] Good morning.
23 Yes, I can hear you well. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, it's good to see you
25 present via videolink today, and the Panel considers it of the utmost

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1 importance that you are present at the court hearings, be it via
2 videolink or in person in the courtroom. And it might be that the
3 latter would allow you to interact with your Defence team in a way
4 that might sometimes suit your needs better. However, I leave it to
5 you to decide that in consultation with your counsels. But let me
6 finish that it's good to have you here.

7 Yes, you have the floor. Please.

8 THE ACCUSED: [via videolink] [Interpretation] Thank you,
9 Your Honour. I just need for a private session, if it's possible --
10 or to go into private session, sorry, not public session.

11 PRESIDING JUDGE VELDT-FOGLIA: Okay. You will explain to us why
12 you want to go into private session as soon as we are in private
13 session? Yes, I see you nodding.

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

16 [Private session]

17 [Private session text removed]

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1 [Private session text removed]

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22 [Open session]

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

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

25 Today we continue with the cross-examination by the SPO of the

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1 Defence witness Ms. Time Kadriaj.

2 Court Clerk, could you please usher the witness in, please.

3 [The witness takes the stand]

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

5 Welcome back, Madam Witness. Can you hear me well?

6 THE WITNESS: [Interpretation] Yes, I can. I can now.

7 PRESIDING JUDGE VELDT-FOGLIA: Very well.

8 Mr. Shala, can you hear the witness?

9 THE WITNESS: [Interpretation] Yes, I can hear her very well.

10 Thank you.

11 PRESIDING JUDGE VELDT-FOGLIA: Good.

12 Madam Witness, how are you today?

13 THE WITNESS: [Interpretation] Okay.

14 PRESIDING JUDGE VELDT-FOGLIA: Madam Witness, I remind you that
15 you're still under oath to tell the truth. Do you understand that?

16 THE WITNESS: [Interpretation] Yes.

17 WITNESS: W04440 [Resumed]

18 [Witness answered through interpreter]

19 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, did I understand
20 well yesterday that you had still five more minutes to go for your
21 cross-examination?

22 MR. DE MINICIS: Yes, Your Honours, approximately. Five to ten
23 minutes, that would be my estimate.

24 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. You have the
25 floor.

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Cross-examination by Mr. De Minicis (Continued)

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1 Cross-examination by Mr. De Minicis: [Continued]

2 Q. Good morning, Ms. Kadriaaj.

3 A. Good morning.

4 Q. Ms. Kadriaaj, yesterday I asked you - I'm referring to page 3607
5 of the transcript, Your Honours - if you believe that people who had
6 been victims of crimes by certain members of the KLA had a right to
7 seek justice, irrespective of their background. And you answered
8 that:

9 "Everyone has the right to seek justice for themselves."

10 That's your position; correct?

11 A. Not just them, but everybody who thinks that their rights have
12 been infringed or violated, in a democratic world, they have the
13 right to seek justice. That is an individual decision.

14 Q. And do you approve of the decision of an individual who tries to
15 seek justice in a court of law if this individual believes he or she
16 has been victim of a crime?

17 A. That is an individual right. An individual's right to seek
18 justice.

19 Q. Do you agree with the exercise of that right by an individual?
20 Do you support that decision of an individual to seek justice if he
21 or she decides to do so?

22 A. As I said, it's their right to seek justice, and nobody has the
23 right to deny them that right.

24 Q. Okay. Well, because I found a media article reporting some
25 statements of yours dated 3 April 2023, which is the date when the

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1 trial against Hashim Thaci, Rexhep Selimi, Kadri Veseli, and
2 Jakup Krasniqi started in this very courtroom here.

3 I would like to discuss this article in light of the answers you
4 gave us yesterday, and you confirmed now, about the right to seek
5 justice. I'd like to discuss the content of this article with you.

6 MR. DE MINICIS: Your Honours, could I please have -- we also
7 have an Albanian version of this article, so perhaps we could put
8 them side by side. The Albanian is 116107-116107. And it's the same
9 ERN for the English version but with -ET in the end.

10 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, please
11 proceed.

12 MR. DE MINICIS:

13 Q. So, Ms. Kadriaj, this is an article written by Lulzim -- please.

14 A. I've forgotten my glasses.

15 PRESIDING JUDGE VELDT-FOGLIA: Okay. I understand that. Madam
16 Court Usher will either go and get them for you or will accompany you
17 in order for you to accompany her, because maybe you know better
18 where they are. Yes? Please, go with -- you can go with Madam Court
19 Usher to get your glasses, and we wait for you here.

20 THE WITNESS: [Interpretation] Thank you.

21 [The witness stands down]

22 [The witness takes the stand]

23 PRESIDING JUDGE VELDT-FOGLIA: Welcome back, Madam Witness.

24 Mr. Prosecutor, you have the floor again.

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

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Cross-examination by Mr. De Minicis (Continued)

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1 Q. Ms. Kadriaj, I'd like to draw your attention to the fourth
2 paragraph, the longer one, the one at the bottom of the page.

3 Now, first of all, do you recall giving this interview on
4 3 April 2023? Do you confirm having given this interview to
5 Mr. Lulzim Gajtani of the Dukagjini publication?

6 A. I have given a lot of interviews because I'm a public figure,
7 I'm an MP, and I'm non-stop exposed to various media. So I'm reading
8 it here, and so I'm just reading it now.

9 Q. Please take your time. Do you want to read it first so that you
10 can confirm to us that these are, in fact, your statements? Are
11 these your statements, Ms. Kadriaj?

12 A. Yes.

13 Q. Thank you. Now, in the third paragraph -- the fourth paragraph,
14 the last one, the longer one, there are a number of statements of
15 yours reported. I'd like to start with the first one where you are
16 quoted as having stated that:

17 "'... it is an injustice to put on trial those who waged a just
18 and a liberation war.'"

19 That's the English translation. Now I'd like you to help me
20 understand -- I'd like you to help me understand what you mean there.
21 Do you believe that having fought a just war exempts people from
22 being held accountable of crimes that they may have committed in the
23 course of the war they fought?

24 A. You have misunderstood. Because without a final verdict, I
25 cannot really judge anyone. It is my personal opinion, and I still

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1 believe it because there were other KLA members who were tried by
2 this Court and were also declared innocent. So until there is a
3 decision by the Court, you cannot call them guilty. For me, they are
4 liberators, they continue to be liberators, and this is my
5 perception.

6 Q. The presumption of innocence is a sacred principle that applies
7 before this Court and, in general, before every criminal court. But
8 what you're quoted as having stated here is that "it is an injustice"
9 - an injustice - "to put on trial those who waged a just and a
10 liberation war."

11 Now, I trust -- you're a member of parliament. I trust you know
12 the function of a trial. The function of a trial is to establish
13 whether somebody is, in fact, criminally responsible for a crime. So
14 do you consider that it is unjust to ascertain, to set in motion the
15 mechanisms necessary to find out if somebody has committed a crime
16 when it comes to former members of the KLA? Is that your view?

17 A. We did not have data or charges that were then made by the
18 former KLA leaders. I have said that there are perhaps fabricated
19 facts. I do not know who these witnesses are and what type of
20 justice is actually calling them to account. So this is the Court.
21 And that is the reason why I, as an MP of the Assembly of Kosovo, did
22 not vote in favour of the law for a specialised chamber.

23 Q. Okay. But I don't think I got an answer from you. If there are
24 people coming forward, victims, stating that they have been a victim
25 of a crime --

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

2 Mr. Prosecutor, I will give the floor to the Defence counsel.

3 MR. GILISSEN: Thank you very much, Your Honour. I don't think
4 my learned friend has to slice the idea of the witness. The idea is
5 very clear, and it's a no. We have some phrases because the idea is
6 complex, and to take some words, as we -- all of us know that. If
7 you take some words in an idea, you are able to hang everybody, even
8 in this courtroom.

9 So the best, of course, is to ask the witness to talk about all
10 the ideas expressed in this paragraph and not to take only some,
11 solely some words, destroying the whole idea. I think so. That's my
12 feeling. Thank you very much.

13 PRESIDING JUDGE VELDT-FOGLIA: Two comments on that. I think
14 that Mr. Prosecutor can proceed with this line of questioning. And
15 in this courtroom, nobody -- although I see that it is an expression
16 you tried to use, but nobody is hanged. We just try to elicit
17 information to the best of our possibilities.

18 You may proceed.

19 MR. DE MINICIS:

20 Q. Ms. Kadriaj, let's try to focus. It's actually a simple answer.
21 You may say that you've been misquoted, that you didn't mean that, or
22 you meant that. But do you consider it an injustice if there is
23 people coming forward saying, "We've been victims of crimes," there
24 is an investigation, and some people are identified as possible
25 perpetrators of these crimes - in this case, that might be Mr. Shala

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1 or the other accused there - do you think it's an injustice to set in
2 motion the process by which their responsibility can be ascertained,
3 whether the claims of the victims can be ascertained? Do you think
4 that that's an injustice? Is that what you meant by your statement?

5 And my question is very precise, so please let's -- you wrote
6 that it's an injustice to put people on trial. Not to convict them
7 without evidence. No conviction yet. But to put them on trial. Is
8 that your position?

9 A. It is the Court that will decide as to their innocence or
10 whether they're guilty. And if you look at the final paragraph, I
11 have said that Kosovo has supported the Court. And my view was that
12 I believe in the innocence of the KLA soldiers because they have
13 always responded to the summons that they have sent to them. No
14 single KLA soldier who has been summoned to this Court has failed to
15 appear --

16 PRESIDING JUDGE VELDT-FOGLIA: Madam Witness, Madam Witness,
17 please answer the question because you know, as we know, that you're
18 not answering the question. And maybe you find it a difficult
19 question, but you are not now answering the question.

20 MR. DE MINICIS:

21 Q. Yes or no, do you consider it an injustice to initiate a trial
22 to ascertain whether the claims of the victims are, in fact, truthful
23 and whether these people are responsible? Is that unjust in your
24 view; yes or no? Just do you stand by this statement or not?

25 A. No, please, I would like to comment on this. I think it is an

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1 injustice, and I have mentioned this in the final paragraph, because
2 we have seen that there are facts -- or, rather, fabricated facts
3 that have been paid for by the Serbian regime for these charges,
4 slandorous charges against the KLA leaders.

5 Q. Okay. Now, are you aware that there have been a number of
6 trials, and I'm not going to mention them all, just a few, where
7 courts have found that former members of the KLA were responsible for
8 grave, serious crimes against Kosovar Albanians? And I'm talking
9 about the trial against Sabit Geci, Riza Alija, and others, Xhemshit
10 Krasniqi, Latif Gashi, or Haradin Bala at the ICTY in the trial that
11 involved also Mr. Limaj and Izak Musliu who were acquitted. Are you
12 aware that these people were found guilty? That the claims of the
13 victims in these trials were found to be true? Are you aware of
14 that?

15 A. I have followed the news but not in detail because of my
16 personal involvement at work. I couldn't follow, say, the court
17 sessions or those court sessions. But when a decision has been -- a
18 verdict has been given by the court, I think that everybody has
19 supported it. If those people have committed crimes, then those
20 sentences have been given to them, so they have responded to the
21 justice system.

22 Q. Okay. So do you consider -- basically, the fact that, you know,
23 there have been trials in which the claims of the Kosovar Albanian
24 victims have been found to be legitimate, and people, former KLA
25 members, some KLA members have been found to be guilty, do you think

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1 it's unjust to proceed with a trial in this courtroom to ascertain
2 whether the claims of the victims in this case or in other cases are,
3 in fact, also legitimate claims? Is that unjust?

4 A. If you're alluding to this article in front of me, I haven't
5 talked about those cases when justice has been rendered. It's about
6 the case of the arrest of the leaders of the KLA who, to this day,
7 are being tried and there is still not a final court decision on
8 them.

9 Q. And do you consider this trial, the fact that they're being
10 tried, to be an injustice? Yes or no?

11 A. I have stated that if this is based on fabricated facts by the
12 Serbian regime, I consider that injustice.

13 Q. But you don't know that. You don't know that; right? You don't
14 know that. I mean, there's been other trial, there were no
15 fabrications. People were convicted on the basis of testimonies that
16 were found to be credible. You don't know the evidence in this
17 trial. You said you were busy with your job. Like, you don't know
18 if they're fabricated.

19 So is it an injustice to put people on trial? Not to convict
20 them based on fabrications. That may be an injustice. But to put
21 them on trial to see, to verify the claims of the people who say, "We
22 have been victims," is that an injustice?

23 A. For as long as the opposite is not confirmed, I stand by my
24 position.

25 Q. Thank you, Ms. Kadriaj.

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1 MR. DE MINICIS: [Microphone not activated]. I have no further
2 questions.

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

4 Madam Witness, we will now proceed with the questioning by
5 Victims' Counsel if he has any questions.

6 Victims' Counsel.

7 MR. LAWS: Your Honour, we have no questions. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 So Victims' Counsel has indicated that he has no questions, and
10 I will now proceed to go to the Defence team again to see if they
11 have -- if they want to have a second round of questions for you.

12 Mr. Gilissen.

13 MR. GILISSEN: Thank you very much, Your Honour. We don't need
14 it. Thank you very much.

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

16 I will confer with my colleagues and I will get back to you.

17 [Trial Panel confers]

18 PRESIDING JUDGE VELDT-FOGLIA: Madam Witness, there are no
19 questions from the side of the Panel. So that means that we end with
20 your testimony here. I would like to thank you for your testimony
21 yesterday and today and the efforts you have put in this testimony.
22 So thank you.

23 I wish you a safe travel home. And I recall that you should not
24 discuss your testimony with anybody. And Madam Court Usher will now
25 accompany you out of the courtroom.

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1 [The witness withdrew]

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

4 [Private session]

5 [Private session text removed]

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[Open Session] *Reclassified pursuant to F793*

16 PRESIDING JUDGE VELDT-FOGLIA: I have still an oral order to
17 give with regard to Witness 4280. It's one of the upcoming witnesses
18 for next week. Yes?

19 We informed, the Panel, at half past 2.00 on 16 November, that
20 was via e-mail, that Mr. Witness 4280 was going to testify in the
21 week of the 27th till 1 December via videolink. Yes? And we have
22 recorded this correspondence under number 137, and we still owe you
23 the reasons why we have decided to proceed in this way.

24 We refer to our Decision 482/RED, paragraph 12 to 14, which is
25 the applicable legal framework. We have taken note of the Registry's

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1 assessment and its recommendations [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 And I refer to the Registry's filing 721 in this regard.

6 We are satisfied, as a Panel, that the available technology
7 allows the witness to be examined under the same conditions as he
8 would be in the courtroom and that the testimony via video-conference
9 would not be prejudicial to or inconsistent with the rights of the
10 accused. So we decide to hear this witness via video-conference from
11 the same venue as previously chosen to -- which we already found to
12 be conducive to giving a truthful and open testimony.

13 We order the Registry to make the necessary arrangements for
14 Witness 4280 to testify via video-conference.

15 And this concludes our oral ruling.

16 And we can go back into public session, please.

17 ~~{Open session}~~

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

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

20 Next week, we will give an overview of pending oral orders we
21 might be giving and also procedural steps, but we will be -- try to
22 be complete in that aspect.

23 Furthermore, I will do the usual round to see if there's
24 anything the parties and Victims' Counsel want to raise with the
25 Panel.

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

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

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

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.
5 Defence counsel.

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

7 PRESIDING JUDGE VELDT-FOGLIA: Good.

8 Then we will adjourn till next Monday at 9.30. We will then
9 proceed with the testimony of the Defence Witness 403. Yes?

10 And then before I adjourn, I want to thank our interpreters and
11 Mr. Stenographer, the security and audiovisual booth, and also to
12 thank the parties, Victims' Counsel, and the Registry for their
13 attendance.

14 The hearing is adjourned.

15 --- Whereupon the hearing adjourned at 10.03 a.m.

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