

1 Monday, 26 June 2023

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 10.10 a.m.

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

6 Court Officer, could 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.

10 First of all, I kindly ask you to tell the Court who is present
11 for today.

12 You have the floor, Madam Prosecutor.

13 MS. PERGOLO: Good morning, Your Honours. For the SPO,
14 Line Pedersen, case manager; Federica Genovesi and Grace Kier, legal
15 interns; Filippo De Minicis, Prosecutor; and me, Gaia Pergolo,
16 Associate Prosecutor.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

18 Victims' Counsel, you have the floor.

19 MR. LAWS: Good morning, Your Honours. I'm Simon Laws, counsel
20 for the victims in this case, together with my co-counsel,
21 Maria Radziejowska.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 Defence Counsel, you have the floor.

24 MR. GILISSEN: Good morning, Your Honours. I'm Mr. Gilissen,
25 the Defence Counsel. We are here with Mr. Shala, who is in the

1 detention centre with us. We are with two co-defenders, Mr. Aouini
2 and Ms. Cariolou; Juliette Healy, including another evidence review
3 assistant, Judit Kolbe; and, of course, our case manager,
4 Ms. Petravica. Thank you very much.

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

6 And good morning, Mr. Shala. Can you confirm that you hear me
7 well?

8 THE ACCUSED: [via videolink][Interpretation] Good morning,
9 Your Honours. I hear you very well.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 Today we continue with the presentation of the evidence by the
12 Specialist Prosecutor; more specifically, we will hear the testimony
13 of Mr. Marek Gasior, who is an expert witness.

14 Before we start with the witness testimony, we need to deal with
15 some pending procedural matters. The first thing is that the Panel
16 will put on record an order made via e-mail last week. This was on
17 Monday, 19 June 2023, and it concerns the use of visual aids by the
18 witness.

19 Having taken note of the SPO's request made via e-mail on
20 19 June 2003, at 18 minutes past 3.00, to authorise the witness to
21 bring into the courtroom and use during his expert testimony skeletal
22 and anatomical models as visual aids, and also having taken note of
23 the fact that the Defence and Victims' Counsel have not raised any
24 objections, the Panel granted the SPO request via e-mail on 19
25 June 2023, at 15.59, and authorises Mr. Gasior to bring into the

1 courtroom and use during his testimony the requested visual aids.

2 This concludes the Panel's order.

3 Secondly, the Panel clarifies that the commencement of the
4 presentation of the evidence called by Victims' Counsel, and any
5 views and concerns of participating victims, is set, in principle,
6 subject to whatever -- to further procedural steps, is set for
7 Monday, 21 August 2023.

8 And lastly, the Panel will address the meeting that took place
9 yesterday between Mr. Gasior and the Specialist Prosecutor's Office,
10 and I will first give the floor to the parties and to
11 Victims' Counsel on this matter if they so wish.

12 And, Defence Counsel, you indicated that you wanted to have the
13 floor on this to make submissions.

14 You have the floor.

15 MR. GILISSEN: Thank you very much.

16 I have two oral requests about that, about the situation we are
17 living just now.

18 In public, I suppose I would like to be in public looking at the
19 topic, I think so.

20 PRESIDING JUDGE VELDT-FOGLIA: Very well. Just be careful if
21 we -- if there would be anything that we need to discuss in private.

22 MR. GILISSEN: Of course. Just the name of --

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 MR. GILISSEN: -- the expert witness, because there's no --

25 PRESIDING JUDGE VELDT-FOGLIA: Very well.

1 MR. GILISSEN: -- protection on that. It's no problem.

2 PRESIDING JUDGE VELDT-FOGLIA: No. No, no.

3 MR. GILISSEN: Thank you very much.

4 So I'm reading because I would like to be really on the point
5 and to be accurate. Okay.

6 So, Your Honours, to our great surprise, as late as yesterday
7 afternoon, we were notified and receive a copy of an Official Note of
8 meeting with Dr. Gasior, referring to a meeting conducted yesterday
9 between this expert witness and the SPO. The so-called note appears
10 to concern or discuss a new interview or new statement with the said
11 expert witness. The interview was evidently prompted by the list of
12 material of the Defence shared with the SPO on Friday, 23 June 2023,
13 as it revisits the expert opinion already provided.

14 The Defence notes the importance of exploring and seeking the
15 truth. The Defence also notes the relevant findings in the witness
16 familiarisation decision issued by the Panel on 24 February 2023.

17 However, providing new material by an expert witness on the eve
18 of his testimony is a flagrant violation of the accused's rights as
19 well as the time limits set by the rules and the framework decision
20 regarding the disclosure of expert reports.

21 Once more, the Defence is presented with a *fait accompli*. We
22 are about to start with the witness testimony, yet the Defence was
23 given no time to discuss the duly disclosed element of expert
24 witness's account with his own expert. The Defence hardly had time
25 to take instructions from Mr. Shala on these new elements. It is, I

1 sustain, unacceptable. I want to say that more unacceptable, it is,
2 I maintain, unfair.

3 This places an excessive burden on the Defence that now face
4 adjusted expert evidence and interferes with the right of the Defence
5 to effectively respond to or -- and challenge the Prosecution case,
6 including the base on evidence having benefit from adequate time and
7 facilities.

8 This last-minute adjustment is at odds with the principle of
9 equality of arms between the parties and the right of the accused to
10 an adversarial argument. The Defence cannot indeed proceed in this
11 manner. Basic principle of fairness requires that the Defence is
12 given a real opportunity to discuss the new element in the expert
13 witness testimony with its own expert and of course obtaining proper
14 instructions from its client. It is the meaning of your framework
15 decision issued 30 April 2021.

16 So we have received a decision issued Friday, Your Honour. I
17 don't know if have I have to speak about now. This is another topic,
18 and I don't want to make something like a mingle between the topics.
19 I suppose you prefer to stop here, and I would like to have the floor
20 after to speak about that.

21 Thank you very much.

22 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you, Defence
23 Counsel.

24 MR. GILISSEN: Just one thing. I would like to conclude, of
25 course.

1 PRESIDING JUDGE VELDT-FOGLIA: Of course. And if I -- if you
2 could ask -- if you could add to your submissions what the -- the new
3 elements that specifically you are pointing at you would like to
4 highlight.

5 MR. GILISSEN: Yes, I fully understand.

6 In our opinion, there is some new information and some details
7 provided in this note, this so-called note. I would like to focus on
8 the page number 1 of the note, point 4 at the end. We were talking
9 about the damage caused by three bullets. Till now, the expert
10 talked about two bullets and the possibility of three. Now we have
11 the sequences of the gunshot. We have a subject died shortly after
12 these bones were damaged. The timing in between the injuries and the
13 death of course is something very new for us. And we are, may I have
14 to say, unable to deal about that without some advice of our own
15 expert.

16 The compatibility with the victim being seat while shot. We
17 have some element, I have to say, page 3 on 16 about a fragment of a
18 bullet. We are not talking about the same victim. We are talking
19 about the other one. We are -- this is new information. No bullets
20 but a fragment of bullets. The X-ray did not reveal any damage of
21 the bone.

22 So the same, it is impossible to know whether he could have
23 walked a few days after the injury on his foot, and that the fact
24 that it is a superficial scar.

25 So all points that we consider that we have to talk, of course,

1 about with our expert, and, of course, to talk about with Mr. Shala
2 to -- to have a mandate from him to be able to tell the things to the
3 Court.

4 And so the Defence, we consider, but it's up to you, is entitled
5 and should be allowed adequate time for prepare its cross-examination
6 for the expert witness whose evidence is scheduled for today. This
7 has become necessary given the last-minute adjustment to his expert
8 evidence that the Defence need to process, analyse and respond to.
9 The Defence need to be provided with a supplement to the expert
10 report so that it can properly address the new element disclosed for
11 the first time in yesterday's Official Note.

12 Thank you very much for your attention.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes, thank you very much.

14 So this -- you say you need adequate time for preparing your
15 cross-examination. And how much time have you envisaged that you
16 would need?

17 MR. GILISSEN: We tried to have a contact with our expert, and
18 we fail. But it was Sunday, of course, Sunday afternoon. We tried
19 today, but it was the time of the hearing, so I cannot say. But in
20 my opinion, a full day, it could be not be not enough. We have to
21 have contact with him, to discuss with him, and then to come back to
22 Mr. Shala.

23 So, in my opinion, 40 hours could be something useful, I think
24 so, if we want to avoid some new kind of problem. It will be
25 ridiculous to come back to you and to say we have a problem. I think

1 so. Thank you very much.

2 PRESIDING JUDGE VELDT-FOGLIA: And, if I understand you right,
3 you would like to receive a supplement to the expert report.

4 Could you further clarify what should be added to that
5 supplement? Because apparently what has been discussed has been put
6 into this note.

7 MR. GILISSEN: Absolutely, Your Honour.

8 But we don't know why, we don't know the cause, the
9 consequences, we don't know the why, may I say. So we would like to
10 have, of course, some technical elements. We are, I hope, able to
11 understand the conclusions, but not the way using by the expert to
12 provide some new information that were not in his reports. This
13 expert, his report, at the first time, at the first glance, we are
14 unable to understand how does work and how he is able to bring us
15 some conclusions, some new conclusions, and I have to say - but it's
16 too soon, but I want to be very clear and transparent - that it's not
17 exactly the conclusions that our own expert provided us with.

18 PRESIDING JUDGE VELDT-FOGLIA: But the expert will be here.

19 MR. GILISSEN: Our own expert.

20 PRESIDING JUDGE VELDT-FOGLIA: No, no, but I mean this expert
21 will be here.

22 MR. GILISSEN: Yes.

23 PRESIDING JUDGE VELDT-FOGLIA: And everything that -- that's
24 only been disclosed. I didn't receive a request that this note will
25 be used in court for now.

1 MR. GILISSEN: Yeah.

2 PRESIDING JUDGE VELDT-FOGLIA: All the questions can be asked to
3 the expert. Just a note from the Panel at this moment of time.

4 MR. GILISSEN: Exactly.

5 PRESIDING JUDGE VELDT-FOGLIA: I will give the floor to the
6 Defence and --

7 MR. GILISSEN: Thank you very much.

8 PRESIDING JUDGE VELDT-FOGLIA: -- to the SPO and then to
9 Victims' Counsel.

10 Very well. You have the floor, Madam Prosecutor.

11 MS. PERGOLO: Thank you, Your Honours.

12 Yes, I would like to raise two points in response to the
13 Defence's objection.

14 First, the decision on witness familiarisation, which is filing
15 435, sets out the framework governing contacts between a calling
16 entity, calling party and its witnesses, including expert witnesses.

17 And paragraph 19 of this decision establishes, and I quote here,
18 that:

19 "Discussions between the calling entity and its expert witnesses
20 may take place at any stage prior to calling such witnesses."

21 So unlike with fact witnesses, there are no temporal or other
22 restrictions to the possibility for the SPO, the calling entity in
23 this situation, to meet with its expert prior to his testimony.

24 During yesterday's meeting, we simply sought clarifications as
25 to the findings in the expert report, and the report the Defence has

1 had for a long time, and we discussed some issues, none of which, in
2 our submissions are new or novel issues, and this with a view to
3 making the expert testimony more efficient and clearer during this --
4 the testimony.

5 Also this, of course, addressed issues that emerged from the
6 evidence of witnesses heard in this case so far. So we thought that
7 this would just simply help, again, the truth-finding process in this
8 case.

9 It was within our rights to meet with our expert and discuss
10 these matters. We took notes of this meeting, which we submit,
11 respectfully, are not a new report but are of simply an Official Note
12 of this meeting. We promptly disclosed it to the Defence, the Panel
13 and all the parties, and that was within our -- exactly within our
14 rights.

15 The Defence also complained about systematic violations of their
16 rights, but we don't think that there was any such violation, and the
17 Defence has failed to identify any prejudice that the meeting with
18 Dr. Gasior caused to them. Again, our position is that there were no
19 new issues discussed and that any clarifications can be still
20 explored during the examination-in-chief and the cross-examination by
21 the Defence.

22 And this is all we have to say on this matter at the moment.

23 Thank you.

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

25 Victims' Counsel, you have the floor.

1 MR. LAWS: Thank you, Your Honour.

2 Just briefly from us. First of all, we agree with the SPO that
3 a meeting of this kind is not objectionable and certainly isn't
4 precluded by the decision on witness familiarisation, paragraph 19 of
5 which exempts experts.

6 In fact, there is nothing more natural, we would submit, than to
7 want to meet an expert on the eve of his or her testimony. If in the
8 course of that meeting, new topics have emerged, then that's not
9 really the fault of the SPO. It's a fact that has arisen as a result
10 of the expert wanting to add or clarify matters from his earlier
11 reports.

12 The Panel will judge to what extent these are new matters that
13 take the Defence by surprise. All I can say is, and I'm not passing
14 judgment on their assertions, all I can say is that to the extent
15 that there are additional issues raised in this report, we don't need
16 more time and are not seeking any.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much,
18 Victims' Counsel.

19 Defence Counsel, if you would like to have a second round, you
20 are allowed.

21 MR. GILISSEN: Yes, but very shortly, Your Honour. Very
22 shortly.

23 So I don't think and I hope I'm not use with claiming that the
24 right of the Defence are violated in this procedure. I hope I am
25 not. I pretend I am not. So that's why it is exceptional, in my

1 feeling, that we are complaining about a situation.

2 And the second point, and it will be enough, that's -- we have a
3 damage. We are in -- we are fully in a technical matter. We need to
4 have the help and to have a contact with our own expert. If we want
5 to understand and if we want to usefully cross-examine the witness,
6 if we want to be part, if we want to fully be part with the Defence
7 case and including with the defend itself in the procedure, we need
8 this contact.

9 That's what I want to focus first, that we are not using to
10 claim horrible things about the right of the Defence and violation
11 and so on. Please, we let these kind of things to someone else.
12 That's not our habitude, you can say, the way we want to practice,
13 the Defence.

14 Thank you very much.

15 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, for my
16 understanding with -- in relation to your last remark, you're telling
17 us it is not the position of the Defence that there is a structural
18 violation of the Defence rights in this case.

19 MR. GILISSEN: That's what we consider, yes.

20 PRESIDING JUDGE VELDT-FOGLIA: That there is not.

21 MR. GILISSEN: Yeah.

22 PRESIDING JUDGE VELDT-FOGLIA: That you say --

23 MR. GILISSEN: Except [Overlapping speakers] ...

24 PRESIDING JUDGE VELDT-FOGLIA: -- in this case, you feel that
25 the rights are violated, but it was not that you intended to say that

1 there is a structural violation going on.

2 MR. GILISSEN: Yeah.

3 PRESIDING JUDGE VELDT-FOGLIA: Good.

4 MR. GILISSEN: And to answer to your question, to be sure that
5 we understand each other, yesterday we tried to re-write some
6 questions with the new information, including in the notes. I can
7 say that's difficult, and, in my opinion, could be a risk because we
8 are not sure we are fully understanding of all the elements of the
9 new elements provided.

10 Thank you very much.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Madam Prosecutor, is there something you would like to add?

13 MS. PERGOLO: No, Your Honours. Thank you.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well.

15 Victims' Counsel, you have the floor.

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

17 PRESIDING JUDGE VELDT-FOGLIA: Very well. What we will do first
18 now is -- I will give the floor, Defence Counsel, for the second
19 point you wanted to raise with the Panel. We will have a discussion
20 about that, and we will take it then from there.

21 MR. GILISSEN: Kind of you. Thank you very much, Your Honour.

22 So the Defence was notified on Friday that it will be not
23 allowed to cross-examine two Prosecution witnesses who were expected
24 to testify live in this case. We consider this is prejudicial for
25 us. The late notice of this changes has also prejudiced the way the

1 Defence choose to confront previous witnesses and it prejudices the
2 Defence as it was planning to explore particular issues with those
3 two witnesses that right now it cannot do.

4 The change, of course, by the Prosecution at the, may I say,
5 11th hour, means that the Defence has been deprived of valuable time
6 that is, we consider, absolutely required to add elements to the
7 presentation of its case.

8 Any decision on the Defence request for certification to appeal,
9 this decision will be issued after the close of the Prosecution case.
10 This cannot, it seems to us, be accepted. There need to be new
11 scheduling as to how the trial proceeds. We consider that the
12 situation empty the appeal procedure from its purpose or from its own
13 utility.

14 So our request, that the Prosecution case can only be considered
15 because there is some new elements, of course, close after the Panel
16 has decided on the Defence request for certification to appeal the
17 decision allowing the Prosecution not to call the witnesses and not
18 authorise Defence to cross-examination the witness. And according to
19 us, we submit to your Panel that could be until the issuance of a
20 decision of [Indiscernible].

21 Thank you very much for your attention. Thank you.

22 PRESIDING JUDGE VELDT-FOGLIA: "Until the" -- the transcript is
23 not complete.

24 So till what moment in time you request that the SPO case would
25 not be closed?

1 MR. GILISSEN: [Microphone not activated]

2 PRESIDING JUDGE VELDT-FOGLIA: The microphone. Thank you.

3 MR. GILISSEN: Thank you very much.

4 I can rephrase the case, that's the conclusion. The Prosecution
5 case can only be considered closed after the Panel has decided on the
6 Defence request for certification to appeal the decision you issue,
7 and according to us, till the issuance of a decision in appeal, if
8 you want to provide to a possible appeal a full usefulness, may I
9 say.

10 Thank you very much.

11 PRESIDING JUDGE VELDT-FOGLIA: You understand how much time that
12 would entail?

13 MR. GILISSEN: I can -- you can trust me, we hesitate a lot to
14 speak about this problem, but we consider it's a real one. So we are
15 fully understanding the situation. It's a painful one. Really,
16 that's a painful one for everybody. I'm sure of that. But the
17 reality is that we are facing -- we consider we are facing a real
18 problem, and the best thing we have to say and to make, it is to
19 provide you -- to provide you with.

20 PRESIDING JUDGE VELDT-FOGLIA: Noted. Just wanted to assure
21 myself of this last thing.

22 MR. GILISSEN: Yes. Thank you very much.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Madam Prosecutor, you have the floor.

25 MS. PERGOLO: Thank you, Your Honours.

1 Very briefly. We don't think there are any grounds justifying
2 any changes or modifications to the procedural steps, the upcoming
3 procedural steps set out by the Panel during the last hearing, on
4 16 June, through the oral order. So that's our position.

5 Thank you.

6 PRESIDING JUDGE VELDT-FOGLIA: Very well.

7 Victims' Counsel.

8 MR. LAWS: We have nothing to add on this topic, Your Honour.

9 Thank you.

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

11 What the Panel will do now is we will have an adjournment. We
12 will discuss the first issue you brought to the table. And for the
13 second issue, we will come back to that. But we will take another
14 moment for deliberation on that in order to have nobody waiting too
15 long or not longer than necessary here. Yes?

16 Very well. The hearing is adjourned.

17 --- Recess taken at 10.39 a.m.

18 --- On resuming at 11.10 a.m.

19 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

20 So with regard to the first request made by the Defence, what we
21 will do is we will start today with the examination-in-chief and with
22 the examination by Victims' Counsel, if any. And then -- and, of
23 course, it's not the task of the Panel to interfere with any internal
24 organisation from the side of the Defence, but we would suggest to
25 contact today at the earliest opportunity, through one of the members

1 of your team, the expert. And then tomorrow what we will do is we
2 will start the cross-examination by the Defence in the afternoon, at
3 1.30, with two sessions. So we will have a session from half past
4 1.00 till 3.00; a break of half an hour; and then till 5.00.

5 Very well. And for today, what we will do is we will continue
6 until half past 12.00. We have a one-hour lunch break. Then we have
7 a session of one and a half hour, a half-an-hour break, and then
8 another half an hour, and that will bring us until 4.00. And the
9 intention is that we have finalised examination-in-chief and
10 examination by Victims' Counsel. And if it appears to be that things
11 go differently, then we will liaise with the interpretation service
12 to see how -- if they are available to assist us more. Because I
13 think it's important that we have that part finalised so that you,
14 for your cross-examination, have at least that type of information
15 available and then you can proceed with contacting your expert.

16 MR. GILISSEN: Super. Your Honour, I may?

17 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

18 MR. GILISSEN: I would like to make a clarification, just a
19 clarification, Your Honour.

20 At the transcript, page 11 and 12, I note that we are not in the
21 habit as a Defence team to complain with the good reason of breach of
22 Mr. Shala's right. You ask me to clarify it whether there is not a
23 structural violation of the Defence rights in this case, and I
24 understood your question to refer to the specific instance of the
25 late notice at the 11th hour of the new elements in the expert

1 testimony we are going to hear this morning. I responded that we do
2 not consider that this specific instance shows a structural
3 violation. There are structural violations of Mr. Shala's rights in
4 these proceedings as we have repeatedly noted in our submissions,
5 which of course we repeat and highlight at every possible occasion.

6 This instance is an isolated matter. It is late notice of a new
7 element of expert testimony. And if the Defence is allowed adequate
8 time to respond, then itself it would not constitute a violation of
9 Mr. Shala's rights. This is what I meant and is what I mean. But it
10 is better to be clear, I think so.

11 Thank you very much.

12 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, we noted it.
13 Thank you.

14 Yes. We will now proceed -- there is one more point that I want
15 to make, and that is that, in addition to what I just said with
16 regard to the possibilities we have given to the Defence to prepare
17 its cross-examination by allocating them some more time, we would
18 like to insist that, according to the paragraph already mentioned by
19 the SPO of the decision on the witness familiarisation, the
20 limitation of contact between a witness and the calling entity does
21 not apply to expert witnesses. So discussions between the calling
22 party and the expert witness make take place at any stage prior to
23 calling such witnesses. So the Panel doesn't see a violation in this
24 respect of the familiarisation procedure established by the Panel in
25 the present case.

1 Very well. This concludes the remark of the Panel. And that
2 brings us that -- to the moment that we can proceed with the
3 testimony of Mr. Gasior. He will testify without in-court protective
4 measures. However, I alluded already to that before, part of his
5 testimony may be given in private session and if needed to protect
6 the identity of the witnesses and victims that are at risk at account
7 on cooperation with the Specialist Chambers.

8 I have given you the sessions in which we will be working.

9 And I ask now Madam Court Usher to bring the witness in. Thank
10 you.

11 Mr. Shala, you raised your hand? I cannot hear you, Mr. Shala.

12 THE ACCUSED: [via videolink][Interpretation] Yes, Your Honour.
13 I am not a lawyer myself, but I have not understood of any changes
14 that have been made. But I believe that, according to the law, I
15 need to understand the changes in the witness statement.

16 So I think that I -- I should have the chance of being notified
17 of the changes because I've had not had any consultation process with
18 me team. I believe I should be informed about that. I am not
19 notified of the changes, of the amendments, and I believe that this
20 is my right. At least I need to be notified of the changes or of the
21 amendments of the statement by the witness, because it's a question
22 of my life here. My life is on the line. Thank you very much.

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

24 Defence Counsel, I leave it to you to make any request in this
25 regard. We have given our decision and we have taken on board the

1 reasoning and request made by you. What is your position in this
2 regard?

3 MR. GILISSEN: My position is the point, Your Honour, I explain
4 you the problem we have with the content of the new information, the
5 need of the expert, but, of course, the need to have a contact with
6 Mr. Shala first. He has to be fully aware about all the
7 consequences, about the content of the new information, of course,
8 and to provide us with a real mandate about that.

9 So I fully understand his reaction. He's not an lawyer, but he
10 could be, I think so. Yeah. So I think we need to have time to take
11 contact with Mr. Shala. So, in my opinion, that's before hearing the
12 testimony of the expert witness.

13 So my request could be to postpone the start of the testimony
14 with the afternoon. We're able to go to the detention centre
15 directly with the postponement of the hearing and to deal with it and
16 to make it in the proper way, I think so, or almost in the proper
17 way, if we could.

18 Thank you very much.

19 PRESIDING JUDGE VELDT-FOGLIA: I will give -- this issue has not
20 been raised before, Defence Counsel. You made the request before,
21 and this was not the request you made to the Panel. At least I
22 didn't understand it in that way.

23 But we will make a second round and we will take it from there.

24 Thank you.

25 MR. GILISSEN: With your leave --

1 PRESIDING JUDGE VELDT-FOGLIA: No --

2 MR. GILISSEN: -- I start to say the expert and Mr. Shala. We
3 can verify it in the transcript.

4 PRESIDING JUDGE VELDT-FOGLIA: You were given a courtesy copy
5 yesterday, wasn't it, at 4.00?

6 MR. AOUINI: Just to add. It's a technical matter, Your Honour.
7 On Sundays we cannot contact the detention centre to be able to have
8 a contact with Mr. Shala. The earliest we could do is this morning,
9 where Mr. Shala called us, and we could only briefly before the
10 courtroom session discuss with him in general terms what is happening
11 and what to expect in the session and what would be our requests.

12 With the business times, we cannot directly contact Mr. Shala.
13 We only contact the detention facility who -- and the agents there
14 very helpfully inform Mr. Shala to contact us either on normal line
15 or the privileged line. So the earliest possibility was today around
16 8.30, where Mr. Shala called, that we could inform him. But we could
17 not have any contact before that, from Sunday -- on the weekends we
18 cannot, after 5.30 we cannot. Usually, Mr. Shala can call us after
19 business hours, but we cannot prompt a call from him if no agent is
20 at the detention centre to inform him that we need to have a contact
21 with him.

22 PRESIDING JUDGE VELDT-FOGLIA: After 5.30.

23 MR. AOUINI: After 5.30 on the days -- the working days.

24 PRESIDING JUDGE VELDT-FOGLIA: Mm-hm.

25 MR. AOUINI: And on the weekend it is not possible. We can

1 call, we try it sometimes, but nobody answers. And we cannot enter
2 into direct contact with Mr. Shala. So we have to wait if he calls
3 us during the weekend or before 9.00 or after 5.30, which happens
4 often, but it is Mr. Shala who calls then.

5 If we cannot transmit a message to him through the detention
6 centre, we may or may not have a contact with him. And the only
7 contact we could have since yesterday was today at 8.30, which was
8 very brief and we were on the way to the courtroom and he had to
9 prepare, so we only had like a few minutes to talk to him about this.

10 PRESIDING JUDGE VELDT-FOGLIA: I would have appreciated a little
11 bit explicit reasoning on this to understand the situation fully, but
12 we will make it -- a round.

13 MS. PERGOLO: Yes, thank you, Your Honours.

14 The SPO's position is again that there are no new issues, no new
15 matters that have emerged from the meeting yesterday. So therefore
16 we don't really see a need to postpone the start of the
17 examination-in-chief. The Defence has been granted by the Panel some
18 more time to deal with anything before the start of the
19 cross-examination, so we think that should be sufficient for them.

20 That's it. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel, you have the
22 floor.

23 MR. LAWS: We have nothing to add on this topic, Your Honour.
24 Thank you.

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

1 What I will propose to do is that we start with the
2 examination-in-chief now, which is only for one hour. Then in the
3 break, you will have the possibility to discuss with Mr. Shala the
4 new issues. I -- so -- and if the Defence would like to have half an
5 hour more, so I will make the break one and a half hour, if that is
6 necessary, you can at least discuss the issues and then we proceed.
7 That's how we're going to do it now.

8 Mr. Shala, during the break, that is in one hour, you will be
9 given the possibility, and I know that this possibility can be
10 arranged for you, to discuss with the Defence team. And you will
11 have -- you will be given time after the hearing today and tomorrow
12 morning to discuss with the team.

13 And I will now give the floor -- no, not -- I will not give the
14 floor, but I will give Madam Court Usher the opportunity to usher the
15 witness in.

16 [The witness entered court]

17 PRESIDING JUDGE VELDT-FOGLIA: Good morning. Please have a
18 seat.

19 Good morning, Mr. Gasior. How are you today?

20 THE WITNESS: Good morning.

21 PRESIDING JUDGE VELDT-FOGLIA: Good morning. You may talk in
22 your own language.

23 THE WITNESS: [Interpretation] Thank you very much.

24 PRESIDING JUDGE VELDT-FOGLIA: Very well. How are you?

25 THE WITNESS: Thanks. Thanks to all member of the staff.

1 [Interpretation] Thank you very much for taking care of me so well.
2 Thank you to the staff of the Specialist Chambers. Thank you very
3 much.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Gasior. Today we
5 will start with your testimony. Can you hear me fine?

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

7 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, can you hear the
8 witness fine?

9 THE ACCUSED: [via videolink][Interpretation] I can't hear the
10 witness at all.

11 PRESIDING JUDGE VELDT-FOGLIA: That is a problem. Then we
12 cannot proceed.

13 We will have somebody looking at it, Mr. Shala.

14 Mr. Gasior, we are now controlling -- you cannot hear us? Can
15 you hear me?

16 THE WITNESS: [Interpretation] Yes, I can hear you.

17 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala cannot hear you, so we
18 are looking into it in order to resolve the problem.

19 [Trial Panel and Court Officer confer]

20 PRESIDING JUDGE VELDT-FOGLIA: I kindly ask the interpreters to
21 interpret what I'm saying in order to see if Mr. Shala can hear me.
22 And then I will ask the witness.

23 Mr. Witness, today we will start with your testimony. This is a
24 test. Yes, Mr. Witness. Today we will start with your testimony.

25 Mr. Shala, can you hear -- please, can you answer if you're

1 doing fine, Mr. Witness? Or can you say, "Test, test." Maybe that's
2 better. Can you say, "Test, test"?

3 Mr. Gasior, can you say, "Test, test"?

4 THE WITNESS: Test, test.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Mr. Shala, could you hear that?

7 THE ACCUSED: [via videolink][Interpretation] No. I can't hear
8 the witness at all.

9 PRESIDING JUDGE VELDT-FOGLIA: Okay. We have to resolve that
10 technical issue before we can proceed.

11 [Trial Panel and Court Officer confer]

12 PRESIDING JUDGE VELDT-FOGLIA: We will introduce a change of
13 plans. In order to be able to resolve the technical problems, I
14 propose in order -- instead of waiting -- sitting and waiting here,
15 that we take our break now till 1.00. Then the Defence has the time
16 to talk to Mr. Shala. This technical issue can be resolved. And we
17 are liaising with the interpreters to see how much time we can use
18 this afternoon because I see the need to finalise
19 examination-in-chief and examination by Victims' Counsel, if any,
20 this -- today. So I think that is the best way to proceed instead of
21 sitting here.

22 Mr. Gasior, I'm very sorry we have made you wait this morning
23 because we had to discuss several issues, and now we are having a
24 technical issue. And that means that we will adjourn the hearing now
25 and then we will start at 1.00, and then I hope we can take it from

1 there. Is that clear for you?

2 THE WITNESS: [Interpretation] Absolutely no problem. Thank you.

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

4 Madam Court Usher, you accompany the witness out of the
5 courtroom.

6 [The witness stands down]

7 PRESIDING JUDGE VELDT-FOGLIA: And in the meantime, Madam
8 Prosecutor, how much time do you think that the SPO will need?

9 MS. PERGOLO: Your Honours, we estimated three hours. I think
10 we will be around that time, maybe a little bit shorter. I will be
11 happy to provide an update maybe as we move along.

12 PRESIDING JUDGE VELDT-FOGLIA: Okay, good. Thank you.

13 Victims' Counsel, could you give an indication to the Panel how
14 much time you would need?

15 MR. LAWS: Your Honour, the answer is either no time at all or,
16 really, just a very few minutes. There are two short issues that
17 we're interested in. They may very well be covered by our colleagues
18 in the SPO.

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

20 Then, Mr. Shala, you will be given the possibility to talk to
21 the Defence team about the issues you would like to discuss with
22 them, and we proceed with the hearing at 1.00, and then I will give
23 you a new time schedule. And I hope that the technical issue will be
24 resolved.

25 The hearing is adjourned.

1 --- Recess taken at 11.37 a.m.

2 --- On resuming at 1.08 p.m.

3 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. I will first check
4 the presence, the composition of the teams.

5 I see SPO in the same composition? Yes, thank you.

6 Victims' Counsel too.

7 And here on my left-hand side also.

8 I hope everything is okay at this side of the table -- that side
9 of the table. Yes. I just was informed that there was a little
10 accident, but everything okay, I hope. I see you nodding. Okay.
11 Good.

12 Very well. We will proceed with the testimony, but I will first
13 check.

14 Mr. Shala, welcome. Can you hear us?

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

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

18 Before I usher the witness in, I would like to give some
19 guidance with regard to the translation. Every time the witness will
20 be speaking, we have to take at least ten seconds into account before
21 continuing speaking in order to be sure that the translation goes
22 through to Mr. Shala. That's -- that's the important thing.

23 And, Mr. Shala, the first few times that the witness will be
24 speaking, I will look at you to be sure that the translation has come
25 through. So if you then would be so kind to lift up your thumb or to

1 clearly nod at me, but maybe a thumbs-up would be the best thing,
2 that I can see that you have heard the translation. And maybe when
3 we are advancing into the examination, we can leave the thumbs-up
4 out, but just for me to check that we are taking it at the right pace
5 in order for you to hear the whole translation. Can we agree on
6 that?

7 THE ACCUSED: [via videolink][Interpretation] Yes, I agree. But
8 I don't understand. Another thing, please.

9 The previous expert, regardless that he was speaking a different
10 language, I could hear his voice while he was speaking and I could
11 also get interpretation. But today I cannot hear the witness at all.
12 Is he speaking or is he not speaking? And that is not okay for me.

13 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, I see your point, but
14 we are trying to resolve that now. And please adhere to the
15 instructions I've just given to you. We will make sure that you hear
16 the expert. We will not proceed without you hearing the expert.

17 Very well. Madam Court Usher, could you bring the witness?

18 MS. CARILOU: Your Honours, if I could just very briefly
19 address you before the witness is ushered in.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay.

21 MS. CARILOU: Just to inform the Panel that we managed to
22 contact our own expert in the course of the break. We informed her
23 of the new elements that were disclosed yesterday. I am afraid that
24 she is not available either today or tomorrow to review the new
25 material and have a meeting with us before we can begin our

1 cross-examination of the witness. And, therefore, we would
2 respectfully request one week to prepare -- to have the opportunity
3 to consult with our expert, discuss the new elements that were
4 disclosed yesterday and confront the witness.

5 This is our request.

6 PRESIDING JUDGE VELDT-FOGLIA: I will give the opportunity to
7 the Specialist Prosecutor's Office and Victims' Counsel to give their
8 submissions on that, and our decision on that will be taken at a
9 later moment.

10 Madam Prosecutor, would you like to react on the proposal and
11 request of the Defence?

12 MS. PERGOLO: Yes, Your Honours, just briefly.

13 Again, our position is that there are no changes, really. The
14 clarifications that were, you know, provided yesterday are just in
15 line with the materials and information provided by the expert. And
16 we believe a week actually is quite a wide change or big change in
17 the scheduling at the moment. Also we will have to check
18 availability of interpreters. So there are some logistical steps
19 that we will need to care of in that case.

20 So we think that delaying the cross-examination of a week would
21 be actually too much in line of, you know, our position and what we
22 discussed with the expert.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.
24 Victims' Counsel, you have the floor.

25 MR. LAWS: Thank you, Your Honour. We have nothing to say on

1 this topic. Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then I will ask
3 Madam Court Officer to ask Madam Court Usher to bring the witness in.

4 [The witness takes the stand]

5 PRESIDING JUDGE VELDT-FOGLIA: Please. Please sit down,
6 Mr. Witness.

7 Mr. Gasior, we will now start with your examination, with your
8 testimony.

9 But before we begin, I have several remarks. My first question
10 to you would be can you hear me fine?

11 THE WITNESS: [Interpretation] Yes, I can hear you very well.

12 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, have you heard the
13 reply by the expert?

14 THE ACCUSED: [via videolink][Interpretation] No.

15 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, Mr. Gasior, could
16 you please repeat your reply?

17 THE WITNESS: [Interpretation] What do you mean? Do you want me
18 to repeat that I can hear you very well?

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 I understand, Mr. Shala, that you are not hearing the witness.

21 THE ACCUSED: [via videolink][Interpretation] No. No,
22 Your Honour. I don't hear him. I hear the interpretation after a
23 while, but not the witness.

24 PRESIDING JUDGE VELDT-FOGLIA: But when I -- but you should hear
25 the interpretation. That is what it's all about. It is not that you

1 should hear the witness, because the witness is talking in a language
2 that is not the language that -- not the Albanian language. So we
3 have translation from his language into your language.

4 So it's not about that you hear his voice, but it is about you
5 hearing the translation of what he has said.

6 THE ACCUSED: [via videolink][Interpretation] Your Honour, I can
7 only hear one interpreter, which is very poor, from English into
8 Albanian. For me, it is very poor. The interpretation is very poor.
9 But from what I understand, also the Czech expert who was here
10 earlier, I could hear his voice in the background.

11 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala --

12 THE ACCUSED: [via videolink][Interpretation] I cannot hear this
13 witness at all.

14 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, it's not about hearing
15 the witness, because he is talking in Polish, but it is about hearing
16 the translation in Albanian. That is what you should hear. Please
17 wait, wait before you start talking till I'm finished my sentence.

18 So what you should hear is the translation. So I'm going to
19 proceed now, and we will test if you hear the translation of what the
20 witness is saying. And then in two or three or four minutes, we will
21 reassess how it's going and if you can hear the translation and if
22 you understand the translation.

23 So, Mr. Gasior, I have several remarks. The first one is you
24 are called to testify before the Specialist Chambers in the case of
25 The Specialist Prosecutor versus Pjeter Shala. You will be assisting

1 the Panel of Judges to reach a verdict.

2 You will have to take your solemn declaration. And after that,
3 after having given your solemn declaration, you will be asked
4 questions by the lawyers for the Specialist Prosecutor's Office,
5 within the robes partly in purple; the lawyers representing the
6 victims admitted to participate in the proceedings, sitting next to
7 them; and then by the Defence Counsel of Mr. Shala, with the robes
8 partly in red; and by us, the Judges of the Panel.

9 And I would like to provide you with some guidance for answering
10 the questions that you will be asked. Mr. Gasior, please, listen
11 carefully to each question, and if you don't understand, feel free to
12 ask the question to be repeated.

13 We want you to give your expertise to the best of your knowledge
14 and to state what your findings and opinions are. Please answer the
15 questions being put to you, and if we need more clarification, some
16 follow-up questions will be asked to you.

17 Mr. Gasior, I will also give you some practical advice for your
18 testimony. Everything that we say here is translated and recorded,
19 so it's important to speak into the microphone, to speak clearly, and
20 to speak at a slow pace to allow the interpreters to translate
21 everything.

22 You should only start speaking when the person asking you a
23 question has finished. When a question is asked, please wait, I
24 would say, ten seconds and then give your answer. This pause is very
25 important because it will allow us to properly follow what you are

1 saying.

2 And if I raise my hand, please stop talking, because if I would
3 say it out loud, I would interfere with the interpretation.

4 It could be that sometimes we will ask you to leave the
5 courtroom when it is necessary to discuss something regarding the
6 content of your testimony, and in order not to influence you we will
7 have to discuss it without you. And if you have any questions, if
8 you need a break or otherwise you would like to say something to the
9 Panel, please raise your hand and I will give you the floor.

10 All understood?

11 THE WITNESS: [Interpretation] Yes, everything is clear. Thank
12 you.

13 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, can you hear a
14 translation?

15 THE ACCUSED: [via videolink][Interpretation] Your Honour, yes, I
16 did hear a translation. I don't know whether it was accurate or not.

17 PRESIDING JUDGE VELDT-FOGLIA: We have no reason to doubt the
18 translation of the interpreters. But thank you. And for the next
19 time, could you raise your hand in order to indicate to us that you
20 have heard the translation?

21 Mr. Shala, did you hear my question? We cannot hear you,
22 Mr. Shala.

23 THE ACCUSED: [via videolink][Interpretation] Yes, I heard your
24 question.

25 PRESIDING JUDGE VELDT-FOGLIA: Can we agree on that?

1 Mr. Shala, please put on the microphone. We cannot hear you.

2 THE ACCUSED: [via videolink][Interpretation] Your Honour --

3 PRESIDING JUDGE VELDT-FOGLIA: No, no -- no, Mr. Shala, I just
4 want an answer to my question. Can you please raise your hand if you
5 heard the translation of the expert. That is what we're going to do
6 now. And we will do our utmost that you can follow the proceedings
7 and also everything what the expert has said.

8 Mr. Gasior, we have taken note of your request to bring into the
9 courtroom and use the Atlas of Human Anatomy and a hard copy of your
10 reports, and we have granted your request to have those documents in
11 the courtroom and the Panel has inspected them.

12 With regard to the reports, you need to seek the Panel's
13 authorisation prior to making reference to it, indicating the
14 relevant pages and/or paragraphs you intend on using while are you
15 being examined by the parties and Victims' Counsel, because then we
16 will pull up the specific part of the report so that everybody can
17 look at it.

18 Have you understood all that, Mr. Gasior?

19 THE WITNESS: [Interpretation] Your Honour, yes, I understand
20 everything you've just said.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 Mr. Shala, did you hear the interpretation of the witness?
23 Could you please put on the microphone when you answer.

24 Okay. I see a thumb. So I see it that as an acknowledgment
25 that he has heard it. Very well.

1 Mr. Gasior, I will now ask you to take your solemn declaration.
2 And I remind you that it is an offence within the jurisdiction of the
3 Specialist Chambers to give false testimony. Do you understand this?

4 THE WITNESS: [Interpretation] Yes, I understand, Your Honour.

5 PRESIDING JUDGE VELDT-FOGLIA: Have you heard the
6 interpretation, Mr. Shala?

7 Okay. Please don't wait for me to ask you. As soon as you hear
8 the interpretation, please indicate that you have heard it so that we
9 can proceed at a certain pace.

10 Mr. Gasior, please repeat after me.

11 Conscious of the significance of my testimony.

12 THE WITNESS: [Interpretation] Shall I speak English?

13 PRESIDING JUDGE VELDT-FOGLIA: No, we proceed in Polish.

14 Conscious of the significance of my testimony.

15 THE WITNESS: [Interpretation] Conscious of the significance of
16 my testimony.

17 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala.

18 THE ACCUSED: [via videolink][Interpretation] I didn't hear
19 anything.

20 PRESIDING JUDGE VELDT-FOGLIA: I will repeat it and then we will
21 translate again.

22 Conscious of the significance of my testimony.

23 Please, Mr. Witness.

24 THE WITNESS: [Interpretation] Conscious of the significance of
25 my testimony.

1 PRESIDING JUDGE VELDT-FOGLIA: Have you heard anything,
2 Mr. Shala?

3 THE ACCUSED: [via videolink][Interpretation] Your Honour, yes.
4 I heard you. But I didn't hear him.

5 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, we tested everything
6 before and it worked, so I cannot understand where the
7 misunderstanding is at this moment in time. Could it be -- yes, you
8 may speak but only with regard to if you hear it or not. Please,
9 Mr. Shala.

10 THE ACCUSED: [via videolink][Interpretation] I heard your
11 question and the interpretation I heard, yes.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you. I will proceed now
13 with the whole solemn declaration, waiting every time. Every time
14 when you hear the translation, please lift your hand, because if not,
15 it is going to be unworkable, as you understand. Yeah? Because
16 apparently we have now done it five times, and I have seen that every
17 time you have heard the translation if we wait long enough. And it
18 would be of assistance that every time you hear the translation, you
19 lift your hand.

20 Mr. Witness, Mr. Gasior, we will continue now with the second
21 part of the solemn declaration.

22 And my legal responsibility.

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

24 PRESIDING JUDGE VELDT-FOGLIA: I solemnly declare.

25 THE WITNESS: [Interpretation] I solemnly declare.

1 PRESIDING JUDGE VELDT-FOGLIA: That I will perform my expert
2 analysis consciously.

3 THE WITNESS: That I will perform my expert analysis
4 conscientiously.

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

6 THE WITNESS: [Interpretation] To the best of my knowledge.

7 PRESIDING JUDGE VELDT-FOGLIA: And that I will state my
8 findings.

9 THE WITNESS: [Interpretation] And that I will state my findings.

10 PRESIDING JUDGE VELDT-FOGLIA: And opinion accurately and
11 completely.

12 THE WITNESS: [Interpretation] And opinion accurately and
13 completely.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness. You are
15 now under oath. We can now begin with your testimony, starting with
16 the questioning by the Specialist Prosecutor's Office.

17 Madam Prosecutor, you have estimated three hours. Please inform
18 the Panel if there are any changes in this regard. And I kindly ask
19 you to take on board the pace we need in order to assure us that
20 Mr. Shala hears the translation. And I will be watching also the
21 screen in order to see that Mr. Shala confirms every time that the
22 expert gives a reply and a translation has come to Mr. Shala.

23 MS. PERGOLO: We will do so, Your Honour. Thank you.

24 WITNESS: MAREK GASIOR

25 [Witness answered through interpreter]

Witness: Marek Gasior (Open Session)

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Examination by Ms. Pergolo

1 Examination by Ms. Pergolo:

2 Q. Good afternoon, Dr. Gasior. Today I will be asking you
3 questions on behalf of the Specialist Prosecutor's Office. We will
4 start by discussing your background and qualifications and then we
5 will move on to discuss some reports you have authored which are
6 relevant to the present case.

7 We will do most of this in public session, but when we need to
8 discuss protected information we will move into private session.

9 MS. PERGOLO: Your Honours, for now we can continue in public
10 session.

11 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, just to check
12 with Mr. Shala.

13 Mr. Shala, have you heard everything Madam Prosecutor has said
14 to the witness? Very well. Thank you.

15 Please proceed.

16 MS. PERGOLO: Thank you.

17 Q. Mr. Witness, can you please state your name and surname.

18 A. My name is Marek, my surname is Gasior.

19 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, wait.

20 Mr. Shala, did you hear the translation? Okay. I would kindly
21 ask you to indicate it as soon as you hear it in order for us to have
22 a certain pace.

23 MS. PERGOLO:

24 Q. What are your date and place of birth?

25 A. I was born on 20 June 1946 in Brzeziny, in the territory of

1 Poland.

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

3 Mr. Shala, I will not be continuously asking. For now, I have the
4 impression that it is working fine at this pace, so if any problems
5 arise, please let the Panel know. Thank you.

6 Please proceed, Madam Prosecutor.

7 MS. PERGOLO:

8 Q. What is your current occupation?

9 A. At the moment, officially, I am a retired person. I have an
10 entry on the list of experts in the Lublin court in the forensic
11 medicine, and I'm on that list of experts which was created by the
12 presiding judge of the District Court in Lublin, Regional Court in
13 Lublin.

14 Q. Since when have you been working as an expert in forensic
15 medicine for the District Court of Lublin?

16 A. As a witness expert, I've been working for the District Court in
17 Lublin. I started in the 1980s, when I was working for the forensic
18 department of the medical academy. And the entry into the list of
19 experts is prolonged every five years on the application of the
20 interested person. At the moment, I am entered into that list until
21 the end of the next year, which is until the end of 2024.

22 Q. Thank you, Dr. Gasior. What does your job as expert in the
23 field of forensic medicine for the District Court in Lublin entail?

24 A. At the moment, the things that I deal with, I'm being called by
25 the police to the sites of where the bodies were found in order to

1 carry out a preliminary examination, external examination, to produce
2 - if it is possible - a preliminary opinion regarding the issues
3 whether there are any visible injuries on the body of a patient and
4 what they would suggest.

5 Furthermore, the bodies of the person, patient, is being sent to
6 the forensic site where my colleagues are carrying out the autopsy.
7 And usually, I come in and I am present during the autopsies of my
8 patients, those autopsies that are carrying out by younger
9 colleagues.

10 And also, for the courts, I give my opinions based on submitted
11 files for the cases, criminal cases and civil cases, bearing in mind
12 different aspects of forensic medicine.

13 Q. Thank you. Thank you, Dr. Gasior. I think we can for now stop
14 here. Maybe we will resume some of this and discuss some of these
15 other aspects in a bit.

16 But I would now like to ask you another question. What is your
17 level of education?

18 A. In 1978, I completed the medical academy in Lublin. As a
19 student, it's difficult to say that I was working, but I established
20 contacts with the medical academy, forensic medical academy
21 department, and I started to work as an assistant there in the
22 forensic medical department. After four years, I got a post-graduate
23 specialisation and the right to use the title as a forensic medical
24 expert, and I have been using that title until today.

25 And, furthermore, at the biology department of the University of

1 Nicolaus Copernicus in Torun, in 1996, I defended my doctorate in the
2 area of anthropology. And Nicolaus Copernicus university, Nicolaus
3 Copernicus university in Torun, granted me the title of Ph.D., Doctor
4 of Sciences in biology and anthropology.

5 Q. Thank you. Thank you very much for that. Prior to working as a
6 forensic medical doctor, an expert, as you have explained to us, at
7 the District Court of Lublin, what was your occupation?

8 A. I was working in the forensic medical department. After my
9 studies, I started work in the forensic medical site, where I got my
10 contacts and established my contacts already as a student.

11 Q. Dr. Gasior, I --

12 MR. AOUINI: Excuse me. Just for the transcript, please.
13 Apologies to my colleague. At page 39, line 19, we have the area of
14 the doctorate defended that is "of tology." I believe I heard
15 anthropology, but let's correct this since we have it.

16 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. I
17 noted biology and anthropology as the two areas in which the expert
18 received his doctorate.

19 MR. AOUINI: Page 39, line 19 says "of tology."

20 PRESIDING JUDGE VELDT-FOGLIA: Yes. We note it. And thank you,
21 Defence Counsel.

22 Yes, we may proceed.

23 MS. PERGOLO:

24 Q. Dr. Gasior, can you tell us perhaps something a bit more
25 specific about your occupation between the period of November 2008

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1 and November 2012. What was your job during that period, if you
2 remember?

3 A. Until 2008, I was working as a forensic expert doctor for the
4 United Nations. The mission of the UN in Kosovo, in 2008, was
5 replaced by the European Union's mission. And in the year of 2008,
6 doing the same job at the same place, I was working for four years
7 for the European Union.

8 Q. And can you please explain briefly what your role as a forensics
9 expert doctor for the UN in Kosovo initially and then for the
10 European Union entailed? What activities did you carry out as part
11 of that job?

12 A. With regards to my job for the international organisations, I
13 started in the year 2000. I was working for the International
14 Tribunal, ICTY for Yugoslavia. And in 2000, in the year 2000, I
15 started work in the morgue at Rahovec in Kosovo, and I was working
16 there from June until the autumn of the year 2000.

17 In 2001, I was sent to the mission of the ICTY Tribunal and I
18 was working in the morgue of Visoko near Sarajevo, and later, in the
19 autumn of 2001, in the morgue of Sanski Most near the border of
20 Croatia.

21 Q. Dr. Gasior, perhaps maybe you can focus on, in particular, your
22 experience in Kosovo. Just briefly, if you can concentrate on that
23 part of your work as an expert, just covering briefly the activities
24 that you had in that role.

25 A. Working in Kosovo, I was -- I was working in the forensic sites,

1 carrying out autopsies of exhumed human remains and also autopsies of
2 people who perished, fresh bodies. Moreover, I was part of a team
3 that was carrying out training in the area of forensic medicine for
4 the doctors from Kosovo who were put in charge of that forensic
5 medical site.

6 Q. Thank you, Dr. Gasior. And I know you have extensive experience
7 and you worked in multiple other jobs at the national and
8 international level, but for now I will not be asking you further
9 questions because your CV will be available to the Panel.

10 MS. PERGOLO: And, Your Honours, further to the procedure that
11 you have set out in the Decision on the Conduct of Proceedings at
12 paragraph 61, we would seek to tender into evidence and to admit the
13 CV of the expert. And I provide the ERN number for that, if that --
14 if this way of proceeding is what the Panel envisages.

15 PRESIDING JUDGE VELDT-FOGLIA: You may do that after, in a
16 separate filing, but not tendering in court.

17 MS. PERGOLO: Will do. Thank you, Your Honour.

18 Q. Dr. Gasior, we have now concluded this first preliminary part
19 about your qualifications, and I would now like to discuss with you
20 some reports that you prepared in the past that are relevant to the
21 present proceedings.

22 MS. PERGOLO: Your Honours, may I have please have on the screen
23 the first report for the purpose of having the witness authenticate
24 this report. And I'm happy to provide the ERN number for that.

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Please proceed.

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1 MS. PERGOLO: So it is 031049 to 031095 RED2.

2 And this report should not be broadcasted to the public.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Please proceed, Madam Court Officer.

5 MS. PERGOLO: Your Honours, may we please briefly move into
6 private session for -- just to discuss some protected information.

7 PRESIDING JUDGE VELDT-FOGLIA: Yes, we will.

8 Madam Court Officer, could you bring us into private session,
9 please.

10 [Private session]

11 [Private session text removed]

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1 [Private session text removed]

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15 [Open session]

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

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

18 Please proceed, Madam Prosecutor.

19 MS. PERGOLO:

20 Q. Dr. Gasior, did you prepare this report?

21 A. Yes, I have prepared it.

22 Q. If you look at page 4, and again if the Court Officers could
23 please facilitate that, it is also -- it is actually the previous
24 page compared to the one we have in front of us at the moment.

25 Do you recognise the signature there?

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1 A. Yes, I do recognise it. It is my signature.

2 Q. Did you personally conduct the examination described in this
3 report?

4 A. In every case of every autopsy, I have personally carried out
5 the inspection of the patient in order to establish given injuries,
6 and this also has happened in this case.

7 Q. Thank you. Dr. Gasior, can you please explain what was the
8 purpose of the examination, the autopsy that you conducted in this
9 specific case?

10 A. The work in the morgue looked in such a way that I had
11 received -- as any other forensic expert, we were receiving plastic
12 body bag with a number, and I never knew what it contains. And the
13 patient in that bag was sent first -- when it was brought over to the
14 forensic department of medicine, it went into the cold room and it
15 was waiting its turn. And from the cold room, it was transported to
16 a room where there were placed the X-ray machines in order to check
17 and look out for metal parts which could remain inside. And in this
18 instance, from the notes, it stems that -- that no missile or any
19 other metal fragments were found. And the examination, X-ray
20 examination, didn't -- didn't show any metal fragments detected or
21 bullets.

22 Q. Thank you, Dr. Gasior. Maybe --

23 A. Therefore, there were no pictures taken.

24 Q. Sorry. We will just take this step by step. If I can just
25 briefly stop you here for a few preliminary questions before moving

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1 into this part that you were just starting to talk about.

2 You mentioned just now that in this case -- the work in the
3 morgue and in this case - this is at transcript page 44, lines 24 to
4 25 - you received in a plastic bag with a number and you didn't know
5 what it contained.

6 My question is: Did you receive any information about this
7 individual or anything concerning the reasons why this person was
8 there in advance or contextually with receiving the human remains?

9 A. Working in the morgue, I received plastic -- a plastic bag with
10 a number.

11 Q. Thank you. And when conducting the autopsy, did you follow a
12 specific protocol or guidelines that, for example, were in place in
13 the morgue where you were working?

14 A. The methodology of the work was worked out in the year of 2000
15 in the morgue of Rahovec, Visoko, and this methodology we were trying
16 to continue during the work in Prishtine.

17 Q. Thank you, Dr. Gasior.

18 So you also told us - and again this is at page 45, lines 5 to
19 4, that from -- 4 to 6, actually - from the cold room, the body was
20 transported to a room where they were placed in the X-ray machine.
21 And I think you started commenting on the results of that X-ray
22 examination.

23 Can you please perhaps resume from there and tell us again what
24 did this X-ray examination show in this case?

25 A. The X-ray machine that we were able to use in Prishtine, it was

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1 a fluoroscope which allowed to establish the presence of metal parts.
2 And in practice, it looked in such a way that a body bag together
3 with a body was transported to the X-ray machine and then underwent
4 the examination. And if there was nothing, then no pictures were
5 taken. If there was a fragment of metal established, then the
6 picture was taken and that part was recovered during the autopsy.

7 Q. Thank you. And, again, I think you mentioned just earlier that
8 - page 45, lines 9 to 10 - in this case, the X-ray did not show any
9 metal fragments or bullets. Is that correct?

10 A. In my report, there is a notation or note that the whole body
11 underwent an X-ray examination and there was no fragment of bullets,
12 missiles or metal fragments.

13 Q. Thank you. After the X-ray examination and when, I guess, you
14 started your examination, what was the status of the body when you
15 started examining it?

16 A. So the body was moved to the autopsy table, and then the entire
17 team of experts would examine the body, and a photographer would take
18 pictures before the autopsy, during the autopsy, and after the
19 autopsy. This team was composed -- this was about post-mortem
20 examination. So this was composed of a photographer, anthropologist,
21 sometimes his assistant, also a photographer's assistant - and
22 sometimes these were local people - a police officer who made a list,
23 a register of all the exhibits or artefacts found next to the body.
24 And as for the anthropologist, we had the age, gender and stature of
25 the dead person taken down. And now the body was disposed of or soft

1 tissues were removed. We were looking at injuries in the bone system
2 so that we can find the reason, the cause of death.

3 I would receive a report from the anthropologist, the police
4 officer's report, the photos taken by the photographer, the forensic
5 photographer, and I would write a final report in which I was
6 supposed to specify the cause of death.

7 And this was the case also here, in the case before us.

8 Q. Thank you, Dr. Gasior. And if you can just describe - maybe I
9 will take you some of the pictures in the report shortly - but what
10 was the status of the body when you saw it? What characteristics
11 could you observe on the body itself?

12 A. Usually a report -- well, the first chapter would be put in the
13 report, and in this chapter you would have a general description of
14 the remains from the bag. In this particular case, in this plastic
15 bag, the remains -- there were remains of a single person. They were
16 in transition, so what is called saponification. So this is a
17 fat/wax transformation which we technically called saponification,
18 and this is the state in which I found the remains.

19 Q. And, Dr. Gasior, does this process of saponification have to do
20 with the decomposition? Can you maybe elaborate briefly on that.

21 A. Indeed. This process which is called fat and wax transformation
22 or saponification, as I said, may take place when the remains are in
23 a moist, humid environment, usually at low temperatures, without a
24 presence of oxygen. This process sometimes takes place when the
25 remains are in water or, for example, in some conditions, in an

1 environment that is humid. And for this saponification to happen on
2 the remains so we have this fat/wax transformation and this requires
3 some time. In forensic medicine, it is assumed that this period is
4 at least six months. It may be longer.

5 Q. Thank you, Dr. Gasior. I have a question. So you just
6 explained to us what happened, like the saponification process. I
7 would like to ask you whether there were any tissues on this body
8 that you were examining. And by "tissues," I mean skin, vessels or
9 anything like that.

10 A. Well, in ordinary language in forensic medicine, we call it a
11 chalk transformation. Why? Because the remains are white and
12 fragile. They crumble easily. It's never the case that all the
13 organs will be transformed or decomposed in a specific way. Patterns
14 are different, but you can -- in this case, you can see on the
15 pictures, actually the entire body, all the soft tissues were
16 saponified.

17 Q. Thank you for that. Did you find anything else on the body,
18 let's say, aside from the bones and, you know, in the status you just
19 described? Was there anything else that you could identify on the
20 body itself that you can explain to us?

21 A. Yes. Clothes that were secured by the police officer on site.
22 Additionally, on the right lower limb it was found plaster. Plaster
23 was found, plaster of gypsum, on this right leg and we removed it.
24 Then the soft tissues were removed as well. The bones were placed in
25 the anatomical position and the remains were simply subject of visual

1 inspection.

2 Q. Dr. Gasior, I would now like to show you some of the pictures in
3 the report and ask you to confirm your findings.

4 MS. PERGOLO: May I, Your Honours, please have within the same
5 report the page with ERN number 031056. I believe it should be
6 probably the fifth page of the report.

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

9 MS. PERGOLO: And perhaps it can be zoomed out just a tiny bit.
10 Thank you.

11 Q. Dr. Gasior, does this picture show the body, the mortal remains,
12 with the clothing that you mentioned earlier?

13 A. Well, according to the description, the remains were in clothes,
14 or they were clothed. This is the anterior view, and on the right
15 leg you see this plaster I was mentioning before.

16 Q. Thank you.

17 MS. PERGOLO: And perhaps to help us understand or see, let's
18 say, the right leg, can we please have the following photograph.
19 It's just the following page with ERN 031057.

20 Q. And I understand this to be a photograph from the back of the
21 body; is that correct?

22 A. This view is the posterior view, so we see the back, yes.

23 Q. And, Dr. Gasior, you told us that you found a plaster. This is
24 at page 49, lines 12 to 13, a plaster of gypsum that you subsequently
25 removed.

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1 exhibit? Thank you.

2 THE COURT OFFICER: Your Honours, the markings made by the
3 witness will receive Registry number REG00959.

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

5 MS. PERGOLO: So if we can then have again the report on the
6 screen and at page 031062.

7 Q. Dr. Gasior, can you please take a look at picture number 12?

8 MS. PERGOLO: And perhaps the Court Officer can zoom a little
9 bit into this picture number 12. Maybe that will help the expert.

10 PRESIDING JUDGE VELDT-FOGLIA: And all of us.

11 MS. PERGOLO: And everyone else, yes.

12 Q. Dr. Gasior, does this picture represent the plaster that you
13 were describing earlier and that was removed from the right leg?

14 A. Yes, it looks like a plaster, gypsum plaster, and in the
15 description we read and it looks like it is the right leg, indeed.

16 MS. PERGOLO: May we have for the same purpose also the
17 following page, pictures 12 -- sorry, 13 and 14.

18 Q. Dr. Gasior, would these pictures also be a representation of the
19 plaster?

20 A. According to the description on the photos, the photos 13 and 14
21 represent, indeed, a gypsum plaster.

22 Q. Thank you very much.

23 MS. PERGOLO: Your Honours, I think we can probably conclude
24 here and break for the moment as I would like -- the next topic will
25 be -- we'll be moving on to some other findings, so perhaps it's a

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1 good moment now to break. But I see my colleague has -- has
2 raised --

3 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. Thank
4 you. I understand for now you have concluded this part of your
5 examination and we will proceed with your examination after the
6 break.

7 Defence Counsel, you have the floor.

8 MR. AOUINI: Thank you, Your Honour.

9 Just a point of clarification about the description mentioned
10 twice by the witness. Are we looking at ERN 031060 to be able to
11 follow or another reference? Just for the clarity of what
12 description means.

13 MS. PERGOLO: Your Honours, I believe, and maybe -- I don't know
14 if it was recorded incorrectly on the transcript, but the page was
15 031063 and the pictures were 13 and 14. I believe it was a --

16 PRESIDING JUDGE VELDT-FOGLIA: It is what we have on the screen,
17 Defence Counsel. But maybe can you clarify where the
18 misunderstanding maybe is or maybe there has been a wrong citation.

19 MR. AOUINI: Your Honour, at page 52, lines 9 and 10, there is a
20 mention of description and we don't see description in the photos. I
21 assume the description referred to by the expert is the one that is
22 in the preceding two pages before, that is, a list.

23 So I just need that we all be clarified to what description the
24 expert is referring to. And a reasonable understanding would be that
25 there is a list at ERN page 031060 which contains a description of

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1 many items. Maybe that's it, or maybe not, but we should clarify it
2 because the pictures don't contain any descriptions.

3 PRESIDING JUDGE VELDT-FOGLIA: Before I give you the floor,
4 Madam Prosecutor, I will give the floor to the witness. Apparently
5 he wants to clarify something.

6 Please, you have the floor, Mr. Gasior.

7 THE WITNESS: [Interpretation] It is a very good question, and
8 your question refers to the description of photos. Our photographer
9 was very detailed in his work, so he would describe every single
10 photo in detail.

11 So to answer your question, well, you will find this answer to
12 your question on page 031058.

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

14 Madam Court Officer, could you bring up that page.

15 Madam Prosecutor, I allow you to take it from here.

16 MS. PERGOLO: Thank you, Your Honour.

17 Q. Dr. Gasior, you made reference to a description, indeed, as
18 Defence Counsel has pointed out. Can you perhaps in this page that
19 we have in front of us show us where this description is included,
20 perhaps by using also the photograph number or ...

21 PRESIDING JUDGE VELDT-FOGLIA: You may proceed, Mr. Gasior.

22 THE WITNESS: [Interpretation] Okay. So we have -- had an
23 excellent photographer, Alain Wittmann, was his name.
24 Alain Wittmann. He was an excellent forensic photographer providing
25 training for local photographers. He was perfect in his work and

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1 this is exactly the page that testifies to it.

2 So photographs from 1 to 10, you see they were taken by
3 Alain Wittmann. And photographs 11 to 28, well, they were taken by
4 Ibrahim X, a local photographer.

5 So this -- the photograph number 12, so the gypsum plaster that
6 is called "cast" here, this was taken by a local photographer, the
7 local photographer named by me, but supervised by Alain Wittmann.

8 PRESIDING JUDGE VELDT-FOGLIA: Could you answer the question
9 where we can find the description, the description to the photographs
10 you mentioned.

11 THE WITNESS: [Interpretation] Well, first you have the date,
12 then photo number, then who took this photo, and then the last column
13 which is called or headed "description."

14 PRESIDING JUDGE VELDT-FOGLIA: And do I then understand rightly,
15 Mr. Gasior, that we have an indication of photo 12, 13, and 14, and
16 that those are the descriptions you are referring to?

17 THE WITNESS: [Interpretation] Indeed.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Defence Counsel, does that clarify your question?

20 MR. AOUNI: Absolutely, Your Honour. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Then, Mr. Gasior, we will have a
22 half-an-hour break, a little bit less, till 3.00. Madam Court Usher
23 will usher you out, and we will see you back at that moment. Thank
24 you very much for now.

25 [The witness stands down]

1 PRESIDING JUDGE VELDT-FOGLIA: The hearing is adjourned till
2 3.00.

3 --- Recess taken at 2.35 p.m.

4 --- On resuming at 3.06 p.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Very well. Yes, I see that the
6 SPO is in the same composition. Goes the same for the
7 Victims' Counsel. And the Defence also. Very well.

8 Before the break, I made a comment about -- I said pictures 13
9 and 14, but it should be 12, 13, and 14 that have been used, just for
10 the record.

11 Today, we will reschedule how we will proceed today. We will
12 continue till 4.00, because I only want to make use of extra time of
13 interpretation if I see that it will bring us to a certain -- if it
14 is really necessary to push. And so I prefer to continue till 4.00,
15 which is the regular time, and then tomorrow you will be given the
16 opportunity to continue.

17 And tomorrow we will also give an oral order on your request.
18 Yes?

19 So that's how we're going to proceed.

20 Very well. Then, Madam Court Usher, if you would be so kind to
21 bring the witness in, then we can continue with the examination.

22 And, Madam Prosecutor, and also for all -- for the other party
23 and participant present, with regard to the CV and the report, you
24 can submit that at the same time as you're submitting the evidence
25 used with this witness in a written filing. Just to be clear on

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1 that.

2 [The witness takes the stand]

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

4 Mr. Gasior, we will continue now with your examination by the
5 Specialist Prosecutor's Office.

6 I give the floor to Madam Prosecutor.

7 MS. PERGOLO:

8 Q. Welcome back, Dr. Gasior. Before the break, we were looking at
9 a photo log that is included in your report.

10 MS. PERGOLO: And could we please perhaps go back to that page
11 of the report, which is 031058.

12 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

13 MS. PERGOLO:

14 Q. Dr. Gasior, can you please confirm that this photo log lists all
15 of the photographs that were taken of the body parts and of the items
16 that were found in the body bag you received at the morgue.

17 A. The images and the log, or the list of the images, were taken by
18 Alain Wittmann, the photographer, and the local photographer by the
19 name of Ibrahim Shabani. I received the photos and list of the
20 images taken.

21 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, just one
22 question.

23 Mr. Shala, did you hear the interpretation? Thank you.

24 Please proceed.

25 MS. PERGOLO: Thank you.

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1 Q. Dr. Gasior, I would now like to take you to another part of your
2 report and, in particular, at your findings at page 031050.

3 MS. PERGOLO: If we could perhaps have that on the screen.

4 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

5 MS. PERGOLO: And if we can please scroll toward the bottom of
6 the page.

7 Q. Dr. Gasior, I see that in this page of the report under the
8 heading "Old/Healed Injuries," the third bullet point makes reference
9 to the "right ribs, number 4, 5 and 6," where you indicated "bone
10 callus, secondary to ante-mortem fracture."

11 Can you please show us on the skeletal model that you took with
12 you where these ribs are located?

13 A. These are the ribs on the right-hand side described as follows:
14 4, 5 and 6. Right ribs number 4, 5, and 6. 4, 5 and 6. These are
15 three ribs. You could see scars on them suggesting a fracture. The
16 location was visible on the front side one-third of the rib between
17 the sternum and where the rib ends. So this is where the fracture
18 happened -- fractures.

19 THE INTERPRETER: The witness corrects himself.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Gasior. For the
21 record, I would like to add to what you have said, that you have been
22 pointing at the right side of the skeleton and that you were counting
23 from the top. Can you confirm that?

24 THE WITNESS: [Interpretation] Yes, ribs are counted from the
25 top.

1 PRESIDING JUDGE VELDT-FOGLIA: Yes. This may seem superfluous
2 to you, but when you point at the skeleton, it is not transcribed in
3 the transcript. So if we, all of us, the parties and
4 Victims' Counsel, and the Panel, read it afterwards, it might be less
5 clear. So everything that you point out to us, try to verbalise it
6 in addition and, if not, I will try to add. Yes?

7 Madam Prosecutor, you may proceed.

8 MS. PERGOLO:

9 Q. Dr. Gasior, can you please explain to us how you established
10 that the fractures on the ribs you just identified were old or healed
11 injuries as you indicated in your report?

12 A. You can see scars in the bones which confirms that the fracture
13 healed. Basically it regrew. Or grew back, if you like.

14 Q. Dr. Gasior, would you be able to confirm that this scar in the
15 bone which regrew or grew back, as you just told us, is this what you
16 called the bone callus on your report?

17 A. Indeed, yes, it's a bone callus.

18 Q. Thank you, Dr. Gasior. I would now like to draw your attention
19 to the conclusions in your report.

20 MS. PERGOLO: And this can be found at ERN 031052. If we could
21 please have that on the screen.

22 Q. We can see in the report that it is indicated that in your
23 opinion the cause of death was: "Gunshots to the right leg."

24 Dr. Gasior, earlier today - and I will look for the reference
25 and provide it to the Panel in a moment - you told us that the X-ray

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1 examination that was performed on the body, when it came to the
2 morgue and after being taken from the fridge, showed neither bullet
3 nor metal fragment.

4 My question is then: How could you establish that this body was
5 hit by bullets?

6 MS. PERGOLO: And the reference is at pages 46 and 47 of today's
7 transcript.

8 THE WITNESS: [Interpretation] In image 29, 30, 3-0, and the
9 following, up until 51, 031065 until 031069 --

10 MS. PERGOLO: Your Honours, maybe we can, if that's of help,
11 maybe call up these pages that the witness is making reference to on
12 the screen for everyone's benefit. If you would like to proceed in
13 this way.

14 PRESIDING JUDGE VELDT-FOGLIA: Yes. Because for now it was not
15 clear where we were heading at.

16 Yes, Madam Court Officer, could you please start -- we cannot
17 have them all at the same time, but could you please pull up the
18 first page, 031065.

19 And, Madam Prosecutor, I would suggest that you guide the
20 witness to, first, give the answer and then extract it with the
21 pictures.

22 MS. PERGOLO: Yes, Your Honours.

23 Q. Mr. Witness, before -- we will proceed in this way. Perhaps
24 before making reference to the pictures, would you be able to first
25 elaborate, just explain to us orally, verbally, the answer to my

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1 question so -- that I will repeat. How could you establish then that
2 this body was hit by bullets?

3 A. There were three shots into the left --

4 THE INTERPRETER: The witness corrects himself.

5 THE WITNESS: [Interpretation] -- right leg. And the result of
6 those gunshots were injuries in the bones making up the right knee.

7 Can I show it on the model, please, where the gunshot wounds or
8 injuries are located?

9 PRESIDING JUDGE VELDT-FOGLIA: You may.

10 THE WITNESS: [Interpretation] If you look at the first one, you
11 can see the distal femur, you can see the entrance here, and then the
12 exit on the back, the rear side. That was the first one.

13 PRESIDING JUDGE VELDT-FOGLIA: And for my understanding,
14 Mr. Gasior, this is called, where you were pointing at, this is
15 called the distal femur? That specific part?

16 THE WITNESS: [Interpretation] Exactly. That is the distal part
17 of the femur.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Please proceed.

19 THE WITNESS: [Interpretation] The gunshot, second gunshot,
20 affected the proximal part of the femur. The exit was on the rear,
21 on the back.

22 Number 3 now. Tangential shot. Hang on, I need a minute.
23 Condyle of the femur.

24 PRESIDING JUDGE VELDT-FOGLIA: Where is that?

25 THE WITNESS: [Interpretation] The femur has two condyles --

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1 THE INTERPRETER: Microphone, please. The interpreter can't
2 hear very well.

3 PRESIDING JUDGE VELDT-FOGLIA: Wait.

4 THE WITNESS: [Interpretation] So you've got the lateral condyle
5 on the side and the medial condyle.

6 PRESIDING JUDGE VELDT-FOGLIA: I think it would be also useful
7 to extract it with the pictures we have in the report.

8 MS. PERGOLO: Yes, Your Honours, I was going exactly there. And
9 maybe with your permission, I would like to show maybe one of the
10 pictures and ask the witness to mark these bones and parts of the
11 body exactly as he mentioned them in this picture for clarity.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 MS. PERGOLO: So can we maybe zoom -- this is the same page that
14 we have in front of us, but it's picture 29, at the bottom of the
15 page. Maybe if we can zoom in a tiny bit. Thank you.

16 Q. Dr. Gasior, would you be able to mark with a number 1 the femur
17 on this picture.

18 MS. PERGOLO: And perhaps we have the -- if that can be
19 facilitated. Thank you.

20 THE WITNESS: Make a circle?

21 PRESIDING JUDGE VELDT-FOGLIA: Yes, you may make a circle.

22 THE WITNESS: [Marks]

23 MS. PERGOLO:

24 Q. And can you please maybe add a number 1 to the femur that you
25 just identified.

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1 A. [Marks]

2 Q. Would you also be able to mark with the number 2 the patella.

3 A. [Marks]

4 Q. And with the number 3, the tibia.

5 A. [No interpretation].

6 Q. Dr. Gasior, can you please perhaps add a number 3 to the last
7 sign you put to the tibia, close to it, so we will -- it will be
8 easier to identify.

9 And finally with the number 4, the fibula.

10 A. Yes, fibula.

11 PRESIDING JUDGE VELDT-FOGLIA: For my understanding, you marked
12 with 3 the fibula -- no. You marked with 3 the tibia, sorry. But
13 the tibia is not only where you marked it but it's the whole bone,
14 from my understanding, that ...

15 THE WITNESS: [Interpretation] Yes. This is the tibia, this is
16 the thicker one. And the fibula is on the side. Here you've got the
17 patella and the femur.

18 PRESIDING JUDGE VELDT-FOGLIA: Yes. And the femur, what you
19 indicated with the number 1, it is not only the circle you put around
20 the whole but that's the whole bone? Yes.

21 THE WITNESS: [Interpretation] Yes, indeed, the whole bone.

22 PRESIDING JUDGE VELDT-FOGLIA: Yes. Just for reasons of
23 clarity. Because the four -- okay.

24 He is standing again. Very well.

25 So the numbers 1, 2, 3, and 4 are the names of four bones, yeah,

1 in the human body, and you indicated to us with numbers parts of
2 these bones. That's how I understood it. And I -- Madam Prosecutor,
3 I say it because now you were aiming more at how the different bones
4 of the body were named, and I'm not sure if the witness completely
5 understood that that was your aim and, therefore, I tried to clarify.

6 MS. PERGOLO: Yes, thank you, Your Honours. Exactly. I was
7 trying to first have this explanation so we can make reference
8 perhaps to these body parts a bit more easily. But now I would like
9 to go back to my initial question building up on what the witness
10 said.

11 Q. Because when I asked you how could you establish that this body
12 was hit by bullets, you started talking about injuries. And then my
13 next question would be: Could you please identify - and I know that
14 you have circled already those parts - but -- or, rather, could you
15 confirm that the two parts that we see encircled in this image are
16 the wounds created by those bullets?

17 So we can see, I think, a hole on the femur, number 1; and a
18 hole on the tibia, number 3.

19 A. Number 1, gunshot to the femur in the distal part; number 3, is
20 tibia, right part.

21 Q. Thank you, Dr. Gasior. So do I understand correctly that from
22 the nature, from the size of these injuries, you could conclude that
23 these were caused by bullets?

24 MR. AOUINI: Sorry, Your Honour. The question was asked twice
25 and we received no answer for it. We hesitate to intervene. So it

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1 should not it be suggested to the expert. He was asked about it and
2 he should be given probably a third opportunity to establish how he
3 could conclude to that, not suggesting that that is the reason he
4 concluded those were bullets. I mean, let's take it in the
5 appropriate manner, please.

6 PRESIDING JUDGE VELDT-FOGLIA: But what is the -- in your view,
7 I'm trying to follow you, why is it not appropriate what has been
8 asked here?

9 MR. AOUINI: Your Honour, the expert was asked twice how he
10 could conclude that those injuries came from bullets, twice. And we
11 didn't receive an answer, unfortunately. So we should not suggest
12 now an answer and ask him to confirm. We should do it step by step.

13 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, what is your
14 reaction to that?

15 MS. PERGOLO: Yes, Your Honours. I was trying to get there step
16 by step. I am trying in an open way to ask the witness to guide us
17 through that analysis. I am probably -- think that the expert has a
18 lot of medical knowledge that perhaps sometimes we are not, of
19 course, to follow merely. Maybe there are some details that are --
20 I'm happy to --

21 PRESIDING JUDGE VELDT-FOGLIA: How could you see from the
22 injury, and then you could proceed.

23 But I would like to make a point just for the transcript. My
24 attention was called to line -- page 63, line 7, the number 4, the
25 tibia does not appear in the transcript. So I would like to have a

1 confirmation from Mr. Gasior that the number 4, yeah, not the tibia,
2 but the number 4, could you say what -- what is the name of that
3 bone? Because it does not appear in the transcript. And I see the
4 Defence nodding.

5 THE WITNESS: [Interpretation] This is fibula.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you. That's now on record.

7 And, Madam Prosecutor, you may proceed with asking the witness
8 with regard to how he could establish that.

9 [Specialist Prosecutor confers]

10 MS. PERGOLO:

11 Q. Dr. Gasior, so you concluded in your report that the cause of
12 death was gunshot wounds. So my question is again: By looking at
13 this picture 29, how could you conclude, how did you reach the
14 conclusion you reached about the gunshot wounds? Can you perhaps
15 explain us this particular aspect?

16 A. On the picture number 29, in the part of -- distal part of femur
17 noted as number 1, in that place there is a shotgun injury with its
18 entrance at the front, leading to the back.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. I will take it from here.

20 Mr. Gasior, you say it is a gunshot wound. And we are very
21 interested to know where you base your finding on that that is a
22 gunshot wound and not something else.

23 THE WITNESS: [Interpretation] On the picture number 29, there is
24 a visible oval cavity from which there are the fraction lines, or
25 cracks. And this picture represents the bone, the distal femur, from

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1 the anterior side.

2 The gunshot wounds on the bones, in this case, are characterised
3 by the fact that, as a result of the gunshot, there is a cavity of an
4 oval shape; and the exit from the bone, which is visible on the
5 pictures 43, 44, is bigger, larger than the entry wound, is of a
6 shape -- may I use an English term which is being used, bevelling.
7 That is to say, it's getting larger within the trajectory of the
8 bullet which is visible on the pictures 43, 44.

9 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you
10 bring us to pictures 43 and 44.

11 And then I will give it back to you, Madam Prosecutor.

12 Please, Madam Prosecutor.

13 MS. PERGOLO:

14 Q. Dr. Gasior, can you -- you mentioned this picture. Can you
15 show -- can you tell us what -- what we can see in these pictures, 43
16 and 44?

17 A. What is visible, the back part, a distal part of the femur from
18 the back. As I mentioned, it's got the condyle, lateral condyle.
19 And in the middle, if I may use a description that we use in
20 forensics from Latin, fossa intercondylaris. It's a cavity between
21 the condyles.

22 And on these pictures, one other thing is visible, a
23 fragmentation of the distal part of the femur which is -- which has
24 been examined after the reconstruction. That is to say, after gluing
25 back together the fragmented parts of the bone.

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1 MS. PERGOLO:

2 Q. [Microphone not activated]

3 PRESIDING JUDGE VELDT-FOGLIA: Please, mic.

4 MS. PERGOLO: Yes.

5 Q. Thank you for these explanations.

6 I would now like to ask you: Can you explain how the gunshot
7 wounds to the right leg that you just described would have caused
8 individual A's death?

9 A. With regards to the exhumed bodies -- excuse me, patients that
10 had lost their lives sometime before the exhumation of the --
11 exhumation of the body, there is a -- after the death, dissolution of
12 the soft tissue. And in the advanced stage of those changes, we are
13 not able to say. But in this particular case, here you see fossa
14 intercondylaris, this cavity between the condyles. And on the left
15 leg there is a visible -- this red thing, this is an artery which is
16 supplying the whole limb, lower limb, and it goes ideally inside that
17 cavity that is where there is an outlet or exit of the bullet that
18 we've been talking about.

19 So as we speak about the common sense, this bullet caused the
20 total destruction of the artery and the bleeding.

21 Q. Thank you for that, Dr. Gasior.

22 And can you just give us a few information about -- you
23 mentioned this artery, and you mention also that it is supplying the
24 whole limb.

25 Can you just explain to us the -- perhaps why the bleeding from

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1 this artery would have caused the death of this individual.

2 A. The gunshot wound with the total destruction of the artery
3 causes bleeding. And on these pictures we do not see the proofs of
4 that -- that the bone had been undergoing healing. So the time
5 between the gunshot itself and the death was a short one.

6 Q. Thank you, Dr. Gasior.

7 I would now like to ask you something about the trajectory of
8 the bullets. And in particular, I would like you to comment on the
9 findings that we can find at page 3 of the report.

10 MS. PERGOLO: And if we may please have a that on the screen, I
11 will guide the witness to the specific part of the report.

12 PRESIDING JUDGE VELDT-FOGLIA: Please proceed, Madam Court
13 Officer.

14 MS. PERGOLO: The ERN is 031051.

15 Q. And in your report, we see this indication that there was one
16 shot from front to back, plus/minus in horizontal level. The second
17 one from front to back and from down to upward. And the third one
18 from front to back, up to downward and slightly from medial side to
19 lateral.

20 Now, my question is: How were you able to establish this
21 trajectory that you indicated in this page?

22 A. All of the injuries that are seen within the skeletal part are
23 being described according to anatomical position of the patient.

24 It's the position of the one that you can see on this model. So it
25 is upright. The limbs, the lower limbs are straight. The upper

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1 limbs alongside the corpus, and hands in a frontal way positioned.

2 All the injuries on the body or within the bone structure are
3 described according to the position, anatomical position of a human
4 being.

5 Q. Thank you, Dr. Gasior. Perhaps my question was not completely
6 clear.

7 If we take, for example, your findings with regard to the first
8 shot, let's say -- let's call it first shot. You indicated that this
9 shot came from front to back in a horizontal level. How could you
10 say that this shot came from front to back?

11 A. It is a gunshot which we have marked as number 1, and it is
12 visible on the pictures where there is a in -- entrance of the wound
13 and more or less at the same level the exit at the back, which
14 indicates that the trajectory of the bullet was more or less
15 horizontal.

16 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, I see Defence
17 Counsel standing.

18 You have the floor.

19 MR. AOUINI: Apologies, Your Honour. Just to --

20 PRESIDING JUDGE VELDT-FOGLIA: No, not at all.

21 MR. AOUINI: Just to clarify before we go more into this.

22 My learned colleague said dealing with the first shooting. This
23 might become an issue. We have to clarify if first, second and third
24 is the sequence, temporal, or just a numbering? Because this might
25 be an issue at some point. For 1, 2, 3, or first, second, is it a

1 sequence of temporal -- maybe we need to clarify this further before
2 we go further on this.

3 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, please proceed.
4 What was your intention with the 1, 2, 3?

5 MS. PERGOLO: I was just going to -- I was just following,
6 really, the bullet points in the reports --

7 PRESIDING JUDGE VELDT-FOGLIA: Yes.

8 MS. PERGOLO: -- and if we can all agree on using one, second,
9 third, just for references because this is what is provided in the
10 report. If the Defence agrees, we can proceed in that way without,
11 at the moment, making further inferences as to anything. I was just
12 using the language, really, that the doctor used in the report.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes. I see Defence Counsel
14 nodding. And it was also my understanding that we were not talking
15 about a temporary line but the order as presented in the report. So
16 we are clear on that.

17 You have the floor, Madam Prosecutor.

18 MS. PERGOLO:

19 Q. Dr. Gasior, I would like to go back briefly to what you just
20 told us, and I believe this must have been at page 70, yes, I think
21 line 1 to 2. You talked about an entrance and an exit that you saw
22 on the bone.

23 So does -- did your observations as to these two points,
24 entrance and exit, how was it relevant to your conclusions about the
25 trajectory of the bullets?

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1 A. The gunshot that was marked in the report as number 1 was more
2 or less in the position of horizontal position more or less at the
3 same level.

4 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, may I suggest
5 just to ask, because I think that is the essence of your question,
6 how did you know that this was the entrance and how did you know what
7 was the exit hole?

8 I think that that is the gist of your question, although I think
9 we have touched on it before. But I think that is the essence of
10 your question.

11 And I'm looking at the clock. We are five minutes from 4.00.
12 So please, if you need some more minutes in order to finalise this
13 part, please proceed. But we are getting at the end of the hearing
14 of today.

15 MS. PERGOLO: Thank you, Your Honours. Yes, so I will rephrase
16 this question perhaps in more clearer terms.

17 Q. So, Dr. Gasior, indeed, how can you tell which one was the entry
18 and exit point of the bullet in the bone?

19 A. The picture 42, page 031067 --

20 PRESIDING JUDGE VELDT-FOGLIA: Please proceed, Madam Court
21 Officer, with pulling that picture up.

22 THE WITNESS: [Interpretation] Yes, exactly that, 42. More or
23 less, the oval cavity and the cracks line going from that cavity,
24 that's the entrance.

25 And the exit, what I said before, is of a larger diameter and

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1 has a crater-like widening, which is visible on pictures 43, 44.

2 Next page, 68.

3 PRESIDING JUDGE VELDT-FOGLIA: Please proceed, Madam Court
4 Officer.

5 THE WITNESS: [Interpretation] 43, picture 43, shows the exit at
6 the back side of the bone.

7 MS. PERGOLO:

8 Q. Thank you, Dr. Gasior. I think now this is now clear.

9 MS. PERGOLO: And I see that we are two minutes before
10 4.00 p.m., so I would rather perhaps stop here and continue tomorrow
11 with some more questions on this part.

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

13 [Trial Panel and Court Officer confer]

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

15 Before we continue with ushering out the witness, Madam Court
16 Officer, could you please provide us with an ERN number that have
17 been allocated to the items that have -- of the item that the witness
18 has marked during his examination by the SPO, please.

19 THE COURT OFFICER: Your Honour, marking made by the witness on
20 picture 031065 will be assigned Registry number REG00960.

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

22 Mr. Witness, Mr. Gasior, we will continue with your examination
23 tomorrow morning at 9.30. So thank you for your efforts today. Try
24 to take some rest, and then we see each other tomorrow morning in
25 court again.

1 Madam Court Usher will accompany you.

2 [The witness stands down]

3 PRESIDING JUDGE VELDT-FOGLIA: Very well. Before we adjourn for
4 today, may -- can the SPO give an estimation of how much time they
5 think they will still be needing tomorrow.

6 [Specialist Prosecutor confers]

7 MS. PERGOLO: Your Honours, I think based on the pace at which
8 we have been proceeding today, I believe we will probably need the
9 full three hours. So I think today we used an hour and 15 minutes.
10 We will be another one hour and ten, probably.

11 PRESIDING JUDGE VELDT-FOGLIA: Good. Thank you. Thank you for
12 that.

13 And Victims' Counsel, I take on your board your prior answer to
14 this --

15 MR. LAWS: Thank you, yes.

16 PRESIDING JUDGE VELDT-FOGLIA: -- so I think the Court is
17 informed enough. Thank you.

18 Good. Tomorrow we will meet at 9.30.

19 The hearing is adjourned.

20 --- Whereupon the hearing adjourned at 4.02 p.m.

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