

1 Monday, 5 June 2023

2 [Open session]

3 [The accused appeared via videolink]

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

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

6 Court Officer, can you please call the case.

7 THE COURT OFFICER: Good morning, Your Honours. This is file
8 KSC-BC-2020-04, The Specialist Prosecutor versus Pjeter Shala.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.
10 Firstly, we will start with calling the appearances.

11 Mr. Prosecutor, you have the floor.

12 MR. DE MINICIS: Good morning, Your Honours. For the
13 Prosecution, Line Pedersen, case manager; Giulia Bianchi, legal
14 consultant; Gaia Pergolo, Associate Prosecutor; Filippo de Minicis,
15 Prosecutor.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 Victims' Counsel, you have the floor.

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

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 Defence Counsel, you have the floor.

23 MR. GILISSEN: Good morning, Your Honour. We are here with
24 Mr. Shala who is with us by videolink from the detention centre. I
25 am here, Mr. Gilissen, with my two co-counsel, Ms. Leto Cariolou,

1 Mr. Hedi Aouini; my case manager, Ms. Dzeneta Petravica;
2 Juliette Healy and Judit Kolbe, two evidence review assistants;
3 Camille Gosson, intern; and Anita Dautaj, intern and translator.
4 Thank you very much.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Good morning, Mr. Shala. Can you hear me well?

7 THE ACCUSED: [via videolink][Interpretation] Good morning. I
8 can hear you very well.

9 PRESIDING JUDGE VELDT-FOGLIA: Good. Yes.

10 Today we will sit for the regular two sessions of one and a half
11 hour. We will have twice a break of 30 minutes, and a lunch break of
12 one and a half hour from 1.00 to 2.30.

13 Before we continue, Defence Counsel, with the examination of
14 Witness 01 by the Defence, could you indicate how much time you think
15 that you will be needing for your cross-examination?

16 MR. AOUINI: Thank you, Madam President. Good morning to all of
17 you.

18 Our best estimate is we are hopeful to finish today. That
19 depends on how it goes and how fast or efficient we can be advancing,
20 but we are hopeful to finish today.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 MR. AOUINI: Chances are within the last session. So when we
23 say "today," it's not the first session. It's not reasonable to
24 believe that we would be done by the first session or second session.
25 Maybe there is a chance within the afternoon session, but I can give

1 Your Honours more indication before lunch of where we stand.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you, Defence
3 Counsel.

4 We will now proceed with the testimony of the witness.

5 Madam Court Usher, could you please usher the witness into the
6 courtroom.

7 [The witness takes the stand]

8 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, good morning.

9 THE WITNESS: [Interpretation] Good morning.

10 PRESIDING JUDGE VELDT-FOGLIA: You can hear me fine?

11 THE WITNESS: [Interpretation] Yes.

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

13 THE WITNESS: [Interpretation] I am well. Thank you.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 Mr. Shala, can you confirm that you can hear the witness?

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

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Today we will continue with your examination, Mr. Witness, by
20 the Defence. I will give them the floor. And I remind you that you
21 are still under oath to tell the truth.

22 THE WITNESS: [Interpretation] Yes.

23 WITNESS: TW4-01 [Resumed]

24 [Witness answered through interpreter]

25 PRESIDING JUDGE VELDT-FOGLIA: Good.

Witness: TW4-01 (Resumed) (Private Session)
Cross-examination by Mr. Aouini (Continued)

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1 Defence Counsel, you have the floor. And if we have to go into
2 private session, please let me know.

3 MR. AOUINI: Thank you, Your Honour. Yes, Your Honour. With
4 your leave, let's go to private session.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Madam Court Officer, can you bring us into private session,
7 please.

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Witness: TW4-01 (Resumed) (Private Session)
Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Witness: TW4-01 (Resumed) (Private Session)
Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Witness: TW4-01 (Resumed) (Private Session)
Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Witness: TW4-01 (Resumed) (Private Session)
Cross-examination by Mr. Aouini (Continued)

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17 [Open session]

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

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

20 Mr. Witness, you will receive now the break. We will see you
21 back at 11.30. And we are going to discuss some other procedural
22 matters, but I think it's better for you then to be ushered out by
23 Madam Court Usher. Thank you for now, and we'll see you back in a
24 while.

25 THE WITNESS: [Interpretation] Okay.

1 [The witness stands down]

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

3 Defence Counsel, you have the floor for the procedural matters
4 you wanted to raise with the Panel.

5 MR. AOUINI: Thank you, Your Honour. We're in public session,
6 right?

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

8 MR. AOUINI: I shall be careful.

9 Your Honour, the two points are these. We will show a number of
10 pictures that were shown to the witness which he didn't recognise,
11 and we believe that we can do this in public session without
12 referring to the parts of documents that associate names with
13 pictures. That's for your reference. And we can use the transcript
14 references that ascertain that he didn't recognise, when interviewed,
15 those persons.

16 So with your leave, that's the point. We can use this in public
17 session. And being careful to tell the witness if he has something
18 identifying to say or if the situation changes, then we move to
19 private session for him to get the opportunity to explain. That is
20 the first point.

21 PRESIDING JUDGE VELDT-FOGLIA: And in addition, this -- we would
22 then -- or that could be an additional instruction, but I will also
23 give the floor to the Prosecutor, to Mr. Prosecutor, and to
24 Victims' Counsel, that we would instruct the witness only to say
25 "yes" or "no" with regard to the recognition. "Do you recognise this

1 person?" And then he could say "yes" or "no."

2 Let us see on this point -- no, I will first give the floor on
3 everything to the Defence Counsel, and then you will get the
4 opportunity to react, and also Victims' Counsel.

5 And the second point?

6 MR. AOUINI: Just to complete the first point. The idea is to
7 confirm that he didn't recognise in 2019 and also whether he
8 recognises now. If one of the answers is yes, then we can move to
9 private to allow him to do it. And as Your Honour suggested, we can
10 start with a "yes" or "no" to ascertain whether we need to move to
11 private.

12 PRESIDING JUDGE VELDT-FOGLIA: No, I would proceed differently.
13 We would proceed with "do you recognise" and "yes" or "no." And if
14 that would be different from the past, then we take it from there,
15 but not the other way around.

16 MR. AOUINI: Perfectly understood. Yes.

17 The second point, Your Honour, and since we're in public
18 session, I think my learned colleague will understand what we are
19 talking about. He has made an objection at some point about
20 witnesses knowing that other people are witnesses. Okay?

21 So we have one passage that we need to show to the witness about
22 one specific point coming from the statement of another witness. The
23 evidentiary and procedural obstacle that we have, if we put
24 something, an information emanating from the statement of this
25 individual, we have to tell the witness who it is who said this to

1 give him a fair opportunity to comment. If we can't do that, then
2 there is no point in submitting this part of the statement because we
3 cannot give him just the information without the source of
4 information. This would not be a fair way to give him an opportunity
5 to deny or accept.

6 I'm not sure I'm entirely clear, but I would need to go to
7 private session if I need to clarify further.

8 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, we will go into
9 private session for this matter. But before we do that, then I
10 prefer to finalise -- at least have the views on the first matter
11 because that can, I think, be done in public.

12 MR. DE MINICIS: No problem. We have no problem to proceed as
13 suggested with regard to the first matter.

14 As to the second one, though, we'll have something to say.

15 PRESIDING JUDGE VELDT-FOGLIA: Yes.

16 Victims' Counsel, is there anything you would like to add with
17 regard to the first matter?

18 MR. LAWS: No difficulty with regard to the first matter,
19 Your Honour. Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: Good.

21 Madam Court Officer, could you bring us into private session,
22 please.

23 [Private session]

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17 [Open session]

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

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

20 Thank you. We have solved the second point, too. It's now
21 11.00. We will have a half-an-hour break, and then we will resume at
22 11.30.

23 The hearing is adjourned.

24 --- Recess taken at 11.02 a.m.

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

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Procedural Matters

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3 [Open session]

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

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

6 We will now proceed with the continuation of hearing Witness 01.

7 Madam Court Usher, can you bring the witness in, please.

8 [The witness takes the stand]

9 PRESIDING JUDGE VELDT-FOGLIA: Welcome back, Mr. Witness.

10 THE WITNESS: [Interpretation] Thank you.

11 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, did you hear the
12 witness?

13 THE ACCUSED: [via videolink][Interpretation] He didn't say
14 anything to be heard. I can hear you, though.

15 PRESIDING JUDGE VELDT-FOGLIA: Okay.

16 Mr. Witness, can you repeat your answer? I think you said,
17 "Thank you."

18 THE WITNESS: [Interpretation] Yes, I did say "thank you."

19 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, did you hear the
20 witness?

21 THE ACCUSED: [via videolink][Interpretation] Yes, I did hear him
22 very well.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Then we will proceed.

25 Mr. Witness, I will give the floor to Defence Counsel, and he

Witness: TW4-01 (Resumed) (Private Session)
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1 will continue with your examination.

2 Defence Counsel, you have the floor. And we are in public
3 session.

4 MR. AOUINI: Thank you, Your Honour. I believe we have to go to
5 private session for our --

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

8 [Private session]

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Cross-examination by Mr. Aouini (Continued)

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Cross-examination by Mr. Aouini (Continued)

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Witness: TW4-01 (Resumed) (Private Session)
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25 [Open session]

Witness: TW4-01 (Resumed) (Open Session)
Cross-examination by Mr. Aouini (Continued)

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

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

3 Defence Counsel, you are given the floor to show the photographs
4 to Mr. Witness. Please call the ERN numbers to Madam Court Officer.

5 MR. AOUINI: Thank you, Your Honour. So SITF00012895 to
6 00012913. Please, let's go to picture -- show only the picture at
7 page 19. So let's go straight to page 19.

8 Q. Mr. Witness, do you recognise anyone in this series of pictures?

9 A. They don't look familiar to me, no.

10 MR. AOUINI: We can take down this document and go to another
11 one, with your leave. ERN 059113 to 059144, straight to page 10.

12 Q. Do you recognise this picture?

13 PRESIDING JUDGE VELDT-FOGLIA: Can you see it, Mr. Witness? Is
14 it big enough?

15 THE WITNESS: [Interpretation] I can't remember. Maybe I know
16 him, but I can't remember.

17 MR. AOUINI: I'm going to ask a specific action to be done, that
18 we put this document to the side and then come back with page 14,
19 straight, without scrolling into it. So we only appear -- yes, page
20 14.

21 Q. Do you recognise this picture, Mr. Witness?

22 A. I can't remember.

23 MR. AOUINI: The following page, please, 15.

24 Q. The same question, Mr. Witness. Do you recognise this picture?

25 A. This person resembles the one from [REDACTED] Pursuant to In-Court
Redaction Order F00531RED.. The one that

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1 was maltreated in Kukes. He looks like him.

2 Q. Mr. Witness, do you confirm that in 2019 when you were shown
3 this picture, you didn't recognise this picture? If you have
4 extensive information regarding to yourself, we might need to go to
5 private session. But you can answer by "yes" or "no." Do you
6 remember that in 2019 you were shown this picture and you didn't
7 recognise it? That's the question.

8 A. I don't remember for then. But as I look at the picture now, he
9 looks like the person from [REDACTED] Pursuant to In-Court Redaction
Order F00531RED. area, [REDACTED] Pursuant to In-Court Redaction Order
F00531RED.. Because he was
10 mistreated. He looks very much like that person. Very much
11 resembles that person. [REDACTED] Pursuant to In-Court Redaction Order
F00531RED.

12 [REDACTED] Pursuant to In-Court Redaction Order F00531RED.

13 Q. Don't give information. Don't give information.

14 A. No, no.

15 MR. AOUINI: Maybe private session if he is going to give
16 details, but my question is very specific about 2019 at this stage.
17 So I can read the passage from the prior statement, and that's the
18 point I'm making.

19 PRESIDING JUDGE VELDT-FOGLIA: And that can be done in public?

20 MR. AOUINI: Yes, Your Honour.

21 PRESIDING JUDGE VELDT-FOGLIA: Please refrain from mentioning
22 the date of the statement.

23 Please proceed. I will allow for a few minutes, if the
24 interpreters allow me. Yes. Yes, I see a nod. So please.

25 MR. AOUINI: Yes, so it's ERN 083219-TR-ET Part 8 Revised. The

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1 page is page 23, and we are looking at lines 13 to 16.

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

4 MR. AOUINI:

5 Q. Line 13 reads:

6 "I've never -- I've never seen this person. I don't know who he
7 is.

8 "And if you can again sign and put the date on, and this will be
9 Exhibit 9."

10 That's the passage.

11 MR. DE MINICIS: And what is the question?

12 MR. AOUINI:

13 Q. I have asked the question: Do you confirm that you didn't
14 recognise this picture when it was shown to you? Not today but on
15 the moment that we don't mention.

16 PRESIDING JUDGE VELDT-FOGLIA: I propose to ask the witness.
17 Could you comment on why you did not recognise this picture back
18 then?

19 THE WITNESS: [Interpretation] Your Honours, I have sore eyes,
20 and I still do. I did not have glasses with me. I have two pairs of
21 glasses that I use for two years now. And now I remembered - and I'm
22 repeating myself - this is -- he resembles the person who was the
23 injured party then. This is memory here in my head, and it's quite
24 loaded.

25 PRESIDING JUDGE VELDT-FOGLIA: If I understand you well, you say

1 I have glasses now and I can see more clear?

2 THE WITNESS: [Interpretation] Yes, I had problems with eyesight.
3 The glasses that were prescribed to me are on nervous basis. If I
4 get very nervous and cannot concentrate, then I use them. It affects
5 my eyesight.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness.

7 Defence Counsel, do you have more questions on this specific
8 point? And you are allowed, but we can also proceed at half past
9 2.00. It's not that we have to cut off here.

10 MR. AOUNI: No, only one -- thank you. No, Your Honour. I'm
11 done with this. Only one comment on put on the transcript, but
12 that's it for this topic, and we can do it after the witness leaves.

13 PRESIDING JUDGE VELDT-FOGLIA: Very well.

14 Mr. Witness, we are going to break up to have the lunch break.
15 We see each other at 2.30. Try to take on some rest, and see you
16 back then. Thank you.

17 THE WITNESS: [Interpretation] Thank you.

18 [The witness stands down]

19 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, the comment --
20 thank you, Madam Court Usher.

21 Defence Counsel, the comment you want to make, is it a comment
22 you would like to make in public or in private?

23 MR. AOUNI: I don't think it identifies him, so we can say it
24 in public. Just to mention that the witness today, when he responded
25 to that question, wasn't wearing any glasses. That's the comment.

1 That's all.

2 PRESIDING JUDGE VELDT-FOGLIA: Before we go into -- before we
3 adjourn, is there something the SPO, Victims' Counsel, and Defence
4 wants to raise with the Panel?

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

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

7 MR. AOUNI: Just maybe the estimate of where we stand.

8 I believe we will definitely need the whole session. It's
9 borderline whether we finish towards the end of the session or
10 sometime in tomorrow. But we didn't make enormous progress in terms
11 of pace this morning. So that's the position.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much for giving us
13 an update. Then we will break and we will resume at half past 2.00.
14 Thank you.

15 The hearing is adjourned.

16 --- Luncheon recess taken at 1.08 p.m.

17 --- On resuming at 2.31 p.m.

18 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

19 We will proceed now with the examination by the Defence. And at
20 the end of the day, Mr. Prosecutor, I will ask you how much time you
21 will need to -- depending on where we stand with the examination by
22 the Defence, for redirect, after the cross for redirect, because the
23 Panel is willing to allocate the time that is needed for the Defence.

24 MR. DE MINICIS: Thanks.

25 PRESIDING JUDGE VELDT-FOGLIA: And the same goes for

Witness: TW4-01 (Resumed) (Open Session)
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1 Victims' Counsel.

2 Okay. Let us see. Yes, the same composition this side.

3 No changes for the Defence. No? Okay. Good. Then we noted
4 that.

5 Then the moment is there that we can bring in the witness.

6 Very well. Madam Court Usher, could you please proceed.

7 [The witness takes the stand]

8 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, welcome.

9 THE WITNESS: [Interpretation] Thank you.

10 PRESIDING JUDGE VELDT-FOGLIA: Very well.

11 Mr. Shala, can you confirm that you heard the witness?

12 THE ACCUSED: [via videolink][Microphone not activated]

13 MR. AOUNI: I think that the microphone of Mr. Shala didn't
14 activate.

15 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, apparently your
16 microphone was not activated.

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

19 PRESIDING JUDGE VELDT-FOGLIA: Good.

20 THE ACCUSED: [via videolink][Interpretation] I hear very well.

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

22 Then the floor is to Defence Counsel, please.

23 MR. AOUNI: Thank you, Your Honour.

24 Q. Good afternoon, Mr. Witness.

25 A. Good afternoon.

Witness: TW4-01 (Resumed) (Private Session)
Cross-examination by Mr. Aouini (Continued)

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1 Q. So we will continue with some persons, individuals' names, the
2 same topic.

3 MR. AOUINI: And my next question should go to private session.

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

6 [Private session]

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Cross-examination by Mr. Aouini (Continued)

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Witness: TW4-01 (Resumed) (Private Session)
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Witness: TW4-01 (Resumed) (Private Session)
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22 [Open session]

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

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

25 Mr. Witness, we are going to adjourn for today. Thank you for

1 your testimony today. We will proceed tomorrow. Please take some
2 rest. Don't discuss your testimony with anybody. And we see you
3 back tomorrow in court at 9.30. Thank you very much for today.

4 THE WITNESS: [Interpretation] Thank you.

5 [The witness stands down]

6 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, coming back to
7 the time used. Our directions in this regard are the actual time
8 used by the SPO. So our reference point is not the estimated time.
9 But, anyway, we give the time to the Defence that you think is needed
10 and we think is needed. But the reference point is the actual time
11 used.

12 Very well. 4.00. We will proceed tomorrow. But before we
13 adjourn for today, I am going to see if there are some points left.

14 MR. DE MINICIS: Nothing from us, Your Honour --

15 PRESIDING JUDGE VELDT-FOGLIA: No.

16 MR. DE MINICIS: -- at this time.

17 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, tomorrow we will
18 finalise in the first session, apparently, with the
19 cross-examination. Is the SPO ready to proceed right away or would
20 they want some time to evaluate what has been said in
21 cross-examination?

22 MR. DE MINICIS: Your Honours, at this time we would be ready to
23 proceed after counsel finishes with our redirect, which, as things
24 stand now, we don't anticipate would take long. Within half an hour,
25 I would say, we should be able to complete any redirect that we may

1 have. But we want to see the remaining topics that Defence Counsel
2 has and perhaps reconsider Your Honours' offer at that time.

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

4 Victims' Counsel, for you the same question, if there's anything
5 to raise with the Panel, and if you would be able to proceed right
6 away, and how much time you would be needing.

7 MR. LAWS: Nothing to raise, Your Honour. Thank you. As to the
8 amount of time, I imagine that the Prosecution will, I'm sure, cover
9 the most important points, so I'm going to have to wait and see to
10 some extent. But if I do need any time, it won't be very long.

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

12 Defence Counsel, would you like to raise something with the
13 Panel?

14 MR. AOUINI: Nothing from our side, Your Honour. Thank you.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

16 Then I wish you a good evening. And the hearing is adjourned.

17 --- Whereupon the hearing adjourned at 4.05 p.m.

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