

Redactions applied pursuant to F793.

1 Tuesday, 9 January 2024

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.32 a.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Good morning and welcome after
6 the Judicial Winter Recess.

7 Court Officer, can you please call the case.

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

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 Firstly, I kindly indicate to tell us who's present today. We
12 will start with the Specialist Prosecutor's Office.

13 MS. PERGOLO: Good morning, Your Honours. For the SPO,
14 Line Pedersen, Federica Genovesi, Eva Wyler, Filippo de Minicis, and
15 Gaia Pergolo.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 Victims' Counsel, you have the floor.

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

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 And now the Defence, please.

23 MR. GILISSEN: Yes, thank you very much, Your Honour. I am
24 Mr. Jean-Louis Gilissen. We are here with Mr. Pjeter Shala in the
25 detention as usual. We are here with Mr. Aouini, Ms. Cariolou,

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1 Ms. McKay, Ms. Petravica, Ms. Healy, Ms. Kolbe, and Basile Mulera.

2 May I present my wishes for the Happy New Year to the Court. I
3 think it's the moment and the place. Thank you very much.

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

5 Mr. Shala, can you confirm that you can hear me well?

6 Mr. Shala, I did not hear you. Could you say again "yes" or
7 "good morning" just to test?

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

9 PRESIDING JUDGE VELDT-FOGLIA: No, I'm not hearing Mr. Shala.
10 Is everybody else? No, nobody is hearing Mr. Shala.

11 We will look into this, Mr. Shala.

12 [Trial Panel and Court Officer confers]

13 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, could you please turn
14 the microphone on again, or press the button again, and then speak
15 again? It might work now.

16 THE ACCUSED: [via videolink] [Interpretation] Good morning. I
17 hear you very well.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Shala. Then it
19 has been resolved. Good.

20 Today we will hear the testimony of Witness 4405, which is
21 Mr. Safet Gashi. He will give testimony without in-court protective
22 measures.

23 We will sit in regular sessions of one and a half hour. We will
24 have our normal breaks in principle.

25 And before we proceed with our hearing of the witness, I would

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1 like to address a pending issue, and I would like to give a direction
2 with regard to the testimony of the witness we are about to hear.

3 Very well. With regard to the pending procedural matter, we
4 recall that we have issued a decision on the Defence Urgent Request
5 for Psychological Visit and Notice of Request to Call the Evidence
6 Relevant to Sentencing, which is filing 750, which was issued
7 14 December last year. And the SPO and Victims' Counsel were
8 directed, if they so wished, to respond to any request from the
9 Defence to add Ms. Milazzo and her expert report to its list of
10 witnesses and exhibits, and to indicate whether they challenge the
11 qualifications of Ms. Milazzo as an expert or the relevance of all or
12 parts of her report, and if so, which parts, and this all to do by
13 9 January, 12.00.

14 And I will now ask the SPO and Victims' Counsel whether they
15 would like to make their submissions in writing or here in court
16 orally.

17 Madam Prosecutor -- oh, Mr. Prosecutor, please indicate your
18 preference.

19 MR. DE MINICIS: Good morning, Your Honours. We will respond
20 orally.

21 PRESIDING JUDGE VELDT-FOGLIA: Very well.

22 And, Victims' Counsel, what would you prefer?

23 MR. LAWS: Your Honour, we will also respond orally.

24 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then I will now give
25 the floor to the SPO and later to Victims' Counsel to make their oral

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1 submissions.

2 Mr. Prosecutor.

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

4 Your Honours, the SPO does not object to the Defence request to
5 add Ms. Milazzo's report to the exhibit list nor do we challenge
6 Ms. Milazzo's expertise.

7 With regard to relevance, the SPO does not object to the
8 relevance of the report solely for sentencing purposes as far as the
9 psychologist's assessment of Mr. Shala's personal circumstances,
10 individual circumstances, is concerned. And these are, for example
11 the psychologist's assessment concerning his mental health, family
12 situation, education. These circumstances may fall under Rule 163(1)
13 as also found by this Panel in the Mustafa judgment in paragraph 782
14 and 783 and 791 of the trial judgment.

15 Of course, the SPO will make at the appropriate time submissions
16 on the weight, if any, to be given to this assessment, which, of
17 course, would be wholly premature now before the time that the Panel
18 has reached their determination on the charges. We observe in this
19 regard that, of course, some of the psychologist's observations are
20 based on unsworn and untested statements of Mr. Shala, some of which
21 we submit are untruthful and in contradiction with statements he
22 himself gave in the past. But, of course, this will be addressed and
23 submitted once the Panel has reached their determinations on these
24 matters.

25 With regard to relevance, we want to make another observation

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1 which concerns a legal provision the Defence have relied on in their
2 urgent request dated 8 December, and I'm referring to F00743.

3 In addition to relying on Rule 163, the Defence had relied on
4 Article 141 of the Kosovo Law on Execution of Penal Sanctions as an
5 additional legal basis for their request. The Defence did not rely
6 on this provision on their request to add the report to their exhibit
7 list, but because the SPO did not have the opportunity of responding
8 to the first request, we just want to make the record clear on this
9 matter. That Article 141 of the Law relates to pre-sentence reports
10 for the imposition of alternative punishment. That is, punishment
11 alternative to imprisonment.

12 Now, alternative punishment, I just want to make this very clear
13 on the record, is not an available form of punishment. It is not
14 applicable in relation to war crimes, which are amongst the most
15 serious types of crimes, nor is it applicable under the legal
16 framework of the KSC since Article 44 of the Kosovo Law, entitled
17 "Punishments," only lists imprisonment as the main sentence that the
18 KSC may impose on a convicted person. Other forms of punishment such
19 as restitutions or compensations may be imposed in addition to
20 imprisonment.

21 So on this basis, we just want the record to be entirely clear
22 that Ms. Milazzo's report cannot be said to be relevant for the
23 possible imposition of an alternative form of sentence, which is what
24 that provision that the Defence relied on relates to.

25 As I said, there is no punishment alternative to imprisonment in

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1 relation to war crimes.

2 Our last submissions concern the Defence request to call
3 Ms. Milazzo as a witness.

4 The Panel had ordered the Defence, in paragraph 15(c) of its
5 decision F00750, that if it wished to call Ms. Milazzo to testify in
6 addition to tendering her report, they should provide reasons in
7 support of their request.

8 The Defence has only argued, in paragraph 15 of their request
9 F00756, that the live testimony will serve to clarify several aspects
10 of her report and allow the Panel and the parties to question her
11 about her findings and her conclusions.

12 These submissions, Your Honours, are too general, fail to
13 clarify which aspects of her report require clarification, and do not
14 substantiate, in our view, the need to call Ms. Milazzo to testify.
15 The Defence also relied on, in support of its request, on the
16 principle of orality enshrined in Rule 141 of the rules, but their
17 reliance is misplaced because expert evidence is governed by
18 Rule 149. And in relation to expert evidence, the principle of
19 orality is not the rule. A report may be admitted without the expert
20 coming to provide evidence in that regard.

21 So the Defence has not sufficiently substantiated their request,
22 and the SPO position is that unless the Panel sees the need for
23 Ms. Milazzo to appear, that it is not necessary to hear her live in
24 this trial.

25 And this concludes our submissions.

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

2 Victims' Counsel, you have the floor now.

3 MR. LAWS: Thank you, Your Honour.

4 Your Honour, we had the advantage of being able to discuss this
5 matter yesterday with our colleagues in the SPO, and we agree with
6 all of the propositions that have been made by Mr. De Minicis just
7 now, and we have nothing to add.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 We have decided in our decision that we would not entertain any
10 replies of the Defence on this matter, so we will proceed now. We
11 will rule on this matter in due course.

12 And there's also a second thing. There's a direction I would
13 like to give to the parties and Victims' Counsel with regard to this
14 witness, and for that, it's better that we go into private session.

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

17 [Private session]

18 [Private session text removed]

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25 [Open session]

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1 THE COURT OFFICER: Your Honours, we are now back in public
2 session.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 This concludes the Panel's direction, and it means that we can
5 now start with the testimony of Witness 4405.

6 Madam Court Clerk, could you please usher the witness into the
7 courtroom.

8 [The witness entered court]

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

10 THE WITNESS: [Interpretation] Good morning.

11 PRESIDING JUDGE VELDT-FOGLIA: Welcome to the Specialist
12 Chambers.

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

14 PRESIDING JUDGE VELDT-FOGLIA: How are you?

15 THE WITNESS: [Interpretation] I'm well, thanks.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well.

17 Mr. Shala, can you hear the witness?

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

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

21 Mr. Witness, today we will start with your testimony. And for
22 the record, I note here that we had to summons you to ensure your
23 presence in the courtroom today following your refusal to have any
24 contact with the Defence of Mr. Shala.

25 Before we begin with the questions, I have several remarks.

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1 Mr. Witness, you are called to testify before the Specialist
2 Chambers in the case of the Specialist Prosecutor versus
3 Mr. Pjeter Shala to assist the Panel of Judges to reach a verdict.
4 First, you will take your solemn declaration. And after that, you
5 will be asked questions by the Defence counsel for Mr. Pjeter Shala;
6 the lawyers for the Specialist Prosecutor's Office, with the robes
7 partly in purple; the lawyers representing the victims participating
8 in this case, who are sitting on your left-hand, nearest to you; and
9 then by us, the Judges of this Panel.

10 Before you take your solemn declaration, I would like to provide
11 you with some guidance and practical advice for answering the
12 questions that you will be asked.

13 As to the guidance, please listen carefully to each question.
14 If you do not understand, feel free to ask for the question to be
15 repeated.

16 We want you to tell the truth and to tell us what you saw, what
17 you experienced or heard or sensed yourself. If you did not see or
18 hear it yourself but you found out in some other way, you should say
19 so and explain.

20 You may not remember all the details of the offence and that is
21 perfectly fine. Please testify to what you know and what you
22 remember. Do not guess. Do not make things up. It's perfectly fine
23 to say "I don't know," "I don't remember."

24 Please answer the questions being put to you. If more
25 clarification is needed, we will ask you to do so.

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1 And I also remind you that you have the right to object to
2 provide your testimony on issues that might tend to incriminate you
3 pursuant to Rule 151(1) of the Rules of Procedure and Evidence.

4 Do you understand all this?

5 THE WITNESS: [Interpretation] Yes.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay.

7 Regarding the practical advice for your testimony, please take
8 note of the following.

9 Everything we say here is translated and recorded, so it is
10 important to speak into the two microphones in front of you, to speak
11 clearly, and to speak at a slow pace. This will allow the
12 interpreters to translate everything. And this also means that you
13 should only start speaking when the person asking you a question has
14 finished. So please, when a question is asked, wait five seconds
15 before you start answering the question. And this pause of five
16 seconds will allow us to hear the interpretation of what has been
17 said and to have everything recorded. And it's really important that
18 we don't overlap each other when talking.

19 If I raise my hand like this, please stop talking. And I do
20 that in order to avoid that we overlap each other when speaking.

21 Sometimes we may ask you to leave the courtroom if we have to
22 discuss something with regard to a question that has been posed to
23 you. And it is my understanding that you have some knowledge of the
24 English language.

25 Lastly, if you need a break or you need assistance or you want

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1 to say something, please raise your hand and then I will give you the
2 floor.

3 Have you also understood all this, Mr. Witness?

4 THE WITNESS: [Interpretation] Yes, I have.

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

6 Now, Mr. Witness, I will now ask you to take your solemn
7 declaration. I remind you that it is an offence within the
8 jurisdiction of the Specialist Chambers to give a false testimony.
9 Do you understand that?

10 THE WITNESS: [Interpretation] Yes.

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

12 Madam Court Clerk -- yes, you have already provided the text to
13 the witness.

14 Please read the solemn declaration, Mr. Witness.

15 THE WITNESS: [Interpretation] Conscious of the significance of
16 my testimony and my legal responsibility, I solemnly declare that I
17 will tell the truth, the whole truth, and nothing but the truth, and
18 that I shall not withhold anything which has come to my knowledge.

19 WITNESS: SAFET GASHI

20 [Witness testified through interpreter]

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness. You are
22 now under oath.

23 We can now begin with your testimony, and we will start with the
24 questioning by the Defence counsel.

25 Defence counsel, you have two and a half hours for questioning

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1 this witness, and please inform us if there's any change in this
2 regard.

3 You have the floor.

4 MR. GILISSEN: Thank you very much, Your Honour. Thank you.

5 Examination by Mr. Gilissen:

6 Q. Good morning, Mr. Witness. As you know, I'm the Defence counsel
7 of Mr. Shala. We met yesterday during some minutes. So I am
8 Mr. Gilissen, and I will like to ask you some questions on different
9 topics.

10 And the first one is very simple: Are you able enough to
11 provide us with your name and surname?

12 A. Yes. My name is Safet Gashi.

13 Q. Thank you very much. So do you have or did you have a nickname?

14 A. No.

15 Q. Thank you. And what is your date and place of birth?

16 A. 22 May 1975, Kosovo, Prizren.

17 Q. Thank you. So --

18 PRESIDING JUDGE VELDT-FOGLIA: Are we sure of --

19 THE INTERPRETER: 1978, sorry. 1978, sorry.

20 PRESIDING JUDGE VELDT-FOGLIA: Oh, 1978. Thank you.

21 MR. GILISSEN: Thank you very much.

22 I would like to go just for a few questions into private
23 session, please.

24 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you
25 bring us into private session.

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1 ~~[Private session]~~ [Open session] Reclassified pursuant to F793

2 THE COURT OFFICER: Your Honours, we are now in private session.

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

4 Please proceed, Defence counsel.

5 MR. GILISSEN: Thank you very much.

6 Q. Mr. Witness, do you have a criminal record?

7 A. No, I don't.

8 Q. So you've never been sentenced by a tribunal about something?

9 A. Do you mean for this particular case or for another one?

10 Q. No, for something else. Generally speaking.

11 A. Yes, yes.

12 Q. Yes, thank you very much. And what were you convicted for?

13 A. There was an occasion which occurred [REDACTED]

14 [REDACTED].

15 Q. [Microphone not activated]

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

17 MR. GILISSEN: Oh, I'm sorry.

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

19 MR. GILISSEN:

20 Q. It was a case about what? About what [Overlapping speakers] ...

21 [REDACTED]

22 Q. Yes, thank you very much. Thank you very much. And how long
23 did you serve your sentence and where?

24 [REDACTED]

25 Q. Thank you very much.

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1 MR. GILISSEN: We can go back to the public session, please.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Madam Court Officer, can you bring us into public session again.

4 ~~{Open session}~~

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

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

7 We are trying to do something about the image of Mr. Shala
8 because it's a kind of dark image at the moment, and I prefer to
9 see ...

10 [Trial Panel and Court Officer confers]

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

12 In order to see his facial expressions better. But please
13 continue, Defence counsel.

14 MR. GILISSEN: Yes, indeed. He is in the shade. It's not easy
15 to see him, yeah.

16 Q. Thank you very much, Mr. Witness. So I would like to speak
17 about the war and the period before the war. Where were you when the
18 war broke out in 1998?

19 A. In Kosovo.

20 Q. Thank you. And in which part of Kosovo at this moment?

21 A. In the city of Prizren.

22 Q. Thank you very much. And were you working at the time?

23 A. No.

24 Q. And in 1998 -- 1999, I'm sorry -- 1998, first, did you stay in
25 Kosovo?

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1 A. Yes, I did.

2 Q. Thank you. And did your family stay in Kosovo?

3 A. Yes.

4 Q. Is that the same in 1999?

5 A. Until February or March 1999 when we were evicted to Albania by
6 the Serbian forces.

7 Q. Yeah. And did you go with them in Albania at this moment?

8 A. No.

9 Q. Where did you stay, in Kosovo or somewhere else?

10 PRESIDING JUDGE VELDT-FOGLIA: Shall we just have an open
11 question, like where did you go, where did you stay, and then --

12 MR. GILISSEN: Indeed.

13 PRESIDING JUDGE VELDT-FOGLIA: -- he can propose --

14 MR. GILISSEN: Indeed, I agree.

15 PRESIDING JUDGE VELDT-FOGLIA: -- any answer.

16 MR. GILISSEN: I agree.

17 Q. Where did you stay at this moment?

18 A. I left Kosovo about three days later. Three days after my
19 family had left for Albania.

20 Q. And did you go to Albania? Did you arrive?

21 A. Yes.

22 Q. Yeah. And I would like to know did you join the KLA at this
23 moment?

24 A. Yes, I did.

25 Q. Do you remember the period or even the date when you joined the

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1 KLA?

2 A. I can't recall it.

3 Q. And why did you join the KLA at this moment?

4 A. Can you kindly repeat the question?

5 Q. Yeah, I would like to understand the reason why you joined the
6 KLA.

7 A. It was in order to fight against Serbian forces.

8 Q. So it was your free will? It was your own decision?

9 A. Yes.

10 Q. And are you able to remember how old you were when you joined
11 the KLA?

12 A. I might have been 20 or 21 years old.

13 Q. So it was very young. I would like to have your feeling about
14 that.

15 PRESIDING JUDGE VELDT-FOGLIA: What is the question?

16 MR. GILISSEN: I would like to have the feeling of the witness
17 about this age. It's very young to be in a fighting group.

18 PRESIDING JUDGE VELDT-FOGLIA: That's a conclusion. I don't
19 know if that is a --

20 MR. GILISSEN: That's a real question, I would like to have the
21 position of the witness about that, but it's not very important,
22 though. If you prefer, I can ask another question about --

23 PRESIDING JUDGE VELDT-FOGLIA: I would reformulate --

24 MR. GILISSEN: Yeah.

25 PRESIDING JUDGE VELDT-FOGLIA: -- it.

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1 MR. GILISSEN: Yeah.

2 Q. So were you many persons with such an age of 19, 20, 21 in the
3 KLA at this moment?

4 A. There were. There were others who were older, though.

5 Q. And where did you join the KLA?

6 A. I joined in Kukes.

7 Q. You joined in Kukes?

8 A. Yes, I did.

9 Q. Yeah. And in which place in Kukes?

10 A. In Kukes, I was issued a uniform. And if I recall correctly, we
11 were sent to Kolsh or Kalimash where we spent three or four days.

12 Q. So do you remember you provided a statement to some
13 investigators of the SPO or from --

14 A. Yes.

15 Q. Do you remember the explanation you provide at this moment about
16 the place where you enter in contact with KLA?

17 A. Yes, I do.

18 Q. Do you need I quote your answer at this moment to refresh your
19 memory?

20 A. No, there's no need.

21 MR. GILISSEN: With your authorisation, Your Honour, may I quote
22 the answer at this moment of the witness to the investigators?

23 It's a --

24 PRESIDING JUDGE VELDT-FOGLIA: It's not -- what I would like to
25 do is to call up the document and then we proceed as we normally do.

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1 You give the reference --

2 MR. GILISSEN: Exactly.

3 PRESIDING JUDGE VELDT-FOGLIA: -- to --

4 MR. GILISSEN: Exactly.

5 PRESIDING JUDGE VELDT-FOGLIA: -- the Court Officer - please let
6 me finish my sentence - and then you can read it out to him. And --

7 MR. GILISSEN: Absolutely.

8 PRESIDING JUDGE VELDT-FOGLIA: -- ask the question you think is
9 necessary.

10 MR. GILISSEN: Sure. As usual. So it's the document
11 063317-TR-ET Part 1 RED2. It's at page 8. But I'm not sure I have
12 the Albanian version. This is? No.

13 PRESIDING JUDGE VELDT-FOGLIA: If it's okay for the SPO and for
14 Victims' Counsel, then we proceed without the Albanian version. I
15 see a nod, so you may proceed.

16 MR. GILISSEN: Thank you very much.

17 Q. I quote page 8, line 8 to 14. It starts, Mr. Witness, a
18 question --

19 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] Yes,
20 please. Sorry.

21 MR. GILISSEN: Thank you.

22 Q. "Did you go to a specific place to join?

23 "Yes, yes. Yes, I did.

24 "What place was that?

25 "Gorozhup.

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1 "Was there a KLA base, a headquarters? What kind of facility
2 was there?

3 "It was the KLA headquarters."

4 So, Mr. Witness, do you agree with me it's not exactly the same?
5 Are you able enough to explain what is the problem with that?

6 A. You are right, counsel. However, when you ask the questions,
7 you'd better ask me how many times I have been to Albania.

8 Q. Yes, I can ask you the question, and I'll await the information.
9 I await your answer about that.

10 PRESIDING JUDGE VELDT-FOGLIA: Can we -- excuse me. Excuse
11 me --

12 THE WITNESS: [Interpretation] Yes, yes.

13 PRESIDING JUDGE VELDT-FOGLIA: I would like to pull down the
14 document for now, and then we can -- if you want to use it again, we
15 can proceed with showing the document.

16 MR. GILISSEN: Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you --
18 thank you.

19 MR. GILISSEN:

20 Q. So my question is very simple, you know. Do you confirm the
21 statement I just quote before?

22 PRESIDING JUDGE VELDT-FOGLIA: No, no, we cannot. Defence
23 counsel -- no.

24 Madam Court Usher -- Court Clerk, could you please usher the
25 witness out of the courtroom.

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1 Mr. Witness, you will be ushered out for a moment.

2 [The witness stands down]

3 PRESIDING JUDGE VELDT-FOGLIA: Just a short remark from my side,
4 Defence counsel. You asked the witness where he joined the KLA, and
5 he said Kukes. To ask now if he can confirm what he said here is not
6 really following up on your question if he could explain why he now -
7 apparently, I don't know - is saying something different than then.

8 So by asking the question "can you confirm," I don't think you
9 are, to say bluntly, helping the truth-finding. I would approach it
10 in a different way in order to clarify why apparently he's saying
11 something different now.

12 MR. GILISSEN: Yeah, it was [Overlapping speakers] ...

13 PRESIDING JUDGE VELDT-FOGLIA: Yeah, but you cannot ask "can you
14 confirm" --

15 MR. GILISSEN: Yeah.

16 PRESIDING JUDGE VELDT-FOGLIA: -- because that doesn't help this
17 eliciting of information.

18 MR. GILISSEN: Yeah, I was talking about the statement he made
19 before, but, okay, I agree, if it's not clear, we can start in
20 another way. The purpose was to discover, to understand the reason
21 why we have a discrepancy --

22 PRESIDING JUDGE VELDT-FOGLIA: Yes, that I see.

23 MR. GILISSEN: -- or an appearance of discrepancy. Yeah.

24 PRESIDING JUDGE VELDT-FOGLIA: That I see.

25 MR. GILISSEN: Yeah.

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1 PRESIDING JUDGE VELDT-FOGLIA: But I think I made my point and I
2 won't repeat it.

3 Madam Court Officer, can you bring the witness into the
4 courtroom.

5 [The witness takes the stand]

6 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

7 THE WITNESS: [Interpretation] Thank you.

8 MR. GILISSEN: May I? Yeah. Thank you.

9 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, please proceed.

10 MR. GILISSEN:

11 Q. So, Mr. Witness, there is an appearance of a real difference
12 between the statement you gave to the investigators and the words you
13 used in this courtroom. Are you able enough to explain us, first, if
14 you consider there is a difference; and, second, why to have two
15 different statements? Thank you very much.

16 A. There are no two different statements here, Mr. Counsel.

17 Q. Yeah, but I would like -- do you consider it is the same or
18 there is a difference?

19 A. It is the same statement.

20 Q. So Gorozhup is very close, very near from Kukes?

21 A. No, it is not. Gorozhup is inside Kosovo.

22 Q. Yeah. And when you joined the KLA, when you joined the KLA, it
23 was in Gorozhup or in Kukes?

24 A. In Gorozhup.

25 Q. Gorozhup, yes. Thank you very much. And Gorozhup, was it a KLA

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1 headquarter?

2 A. Yes.

3 Q. Yeah. According to you, was it the only one KLA headquarter?

4 A. As far as I was able to tell, yes, that's where our headquarters
5 were.

6 Q. Yes, thank you very much. And, Mr. Witness, please talk us
7 through your arrival, your registration process with the KLA in
8 Gorozhup.

9 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, could we have a
10 timeframe? Because -- somewhat of a timeframe. I can ask it myself,
11 but I prefer to leave it to you. It's your examination-in-chief.

12 MR. GILISSEN:

13 Q. The question is to know when you joined the KLA. You say it was
14 in Gorozhup. And when did you join the KLA?

15 A. As far as I recall, it was March 1999.

16 Q. Thank you. Do I have to understand that you start from the
17 Kosovo to Gorozhup immediately or you make a trip to some other
18 places?

19 A. At Gorozhup.

20 Q. From Prizren directly to Gorozhup?

21 A. Yes.

22 Q. Thank you very much. And when you arrive in Gorozhup, what
23 happened at this moment?

24 A. Nothing happened. There was fighting and so on.

25 Q. Yeah. And you enter in the KLA. Are you able enough to

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1 describe the process to enter in the KLA?

2 A. Yes. You take a solemn declaration, like I did here. You
3 undergo some training of about ten days' duration, you're issued a
4 uniform, and so on.

5 Q. And you sign a document. You meet someone, some officer. Are
6 you able to provide us some more information about that?

7 A. Yes. There was the name, surname, father's name, signature,
8 year of birth.

9 Q. And do you remember which brigade or unit of the KLA you joined
10 at this moment?

11 A. Yes, it was Brigade 128, with Ruzhdi Saramati being commander of
12 the General Staff.

13 Q. Thank you very much. And did you meet him? Did you met him?

14 A. Yes.

15 Q. Yeah, how many times did you met him?

16 A. When he had to give us instructions and so on, yes, I saw him
17 about two or three times roughly.

18 Q. Thank you very much.

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

20 MR. GILISSEN: Exactly.

21 Q. The wish is to understand when you meet him in Gorozhup.

22 A. In 1999, during the war.

23 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you were already
24 giving an answer where he met him --

25 MR. GILISSEN: Don't mind [Overlapping speakers] ...

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1 PRESIDING JUDGE VELDT-FOGLIA: No, but -- no, but you -- I have
2 had already about four closed questions, and now here again you're
3 putting in information that is too limited. So please try to elicit
4 the information from the witness, not information too much guided by
5 you.

6 MR. GILISSEN:

7 Q. The next question is where was this training, only in Gorozhup,
8 and did you see this chief of staff only in Gorozhup?

9 PRESIDING JUDGE VELDT-FOGLIA: No. Defence counsel, my -- I
10 will give you the floor, Madam Prosecutor.

11 My question was to know when he met -- he met -- he received
12 instructions from Mr. Saramati, and then you limit it to Gorozhup,
13 and that was not the question.

14 So, good. Madam Prosecutor.

15 MS. PERGOLO: Your Honour, just to place on the record the
16 objection that the counsel keeps leading the witness, as Your Honour
17 has already pointed out. Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 It doesn't not assist the weight of the testimony if you ask
20 these type of leading questions, Defence counsel. And another
21 example is before when you asked him: Did you join the KLA? You
22 could also ask: What did you do in Albania?

23 I mean, please, let us keep this questioning as open as
24 possible.

25 MR. GILISSEN: Okay. Thank you very much.

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1 Q. The training, Mr. Witness, you received was only in Gorozhup or
2 somewhere else?

3 A. It was only at Gorozhup.

4 Q. And this Brigade 12 --

5 PRESIDING JUDGE VELDT-FOGLIA: Please, Defence counsel.

6 MR. GILISSEN: Yeah.

7 MS. PERGOLO: Your Honours, apologies, but the witness before
8 said that the training was in Kolsh or Kalimash, not in Gorozhup. So
9 then here I think counsel is misleading the witness and he's now
10 saying not -- not providing the same version of things that he just
11 gave us before. Thank you.

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

13 Yes, you will get the floor now, Mr. Witness.

14 Please note this point, Defence counsel. If you cite something
15 that the witness has said before, please give the reference. And if
16 you oppose to what Madam Prosecutor has said, then please cite where
17 he did say that it was in Gorozhup.

18 Mr. Witness, what do you want to say?

19 THE WITNESS: [Interpretation] Madam Prosecutor, I did not say
20 that I underwent training at Kukes or Kolsh. I said I went to Kolsh
21 for a period of three to four days, that is.

22 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, please proceed.

23 MR. GILISSEN: Thank you very much.

24 Q. So, Mr. Witness, to avoid a problem or issue about that, where
25 did you receive your training in the KLA?

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1 A. The training was done at Gorozhup.

2 Q. Thank you very much. And do you remember which place this
3 Brigade 128 stayed? Was it only in Gorozhup or in some other places?
4 Are you able enough to explain us?

5 A. I am talking about my brigade, my Brigade 128. I received my
6 training at Gorozhup.

7 Q. So we can consider that Brigade 128 stayed only in Gorozhup or
8 in other places at this moment?

9 A. It stayed in other places too, but I'm not aware where.

10 Q. Okay. That is very clear. Thank you very much. And did the
11 brigade during this period ever move?

12 A. I can say yes, as far as my brigade is concerned.

13 Q. Yeah. And can you -- are you able enough to elaborate about
14 that to provide us some more information?

15 A. Yes. I moved nowhere myself. I had to stay there because there
16 was fighting around.

17 Q. Mr. Witness, which unit composed this brigade? Are you able
18 enough to explain how was it organised, this brigade?

19 A. There was the special unit, the de-mining unit, and other foot
20 soldiers.

21 Q. Yes. And which part of this unit were you in?

22 A. I served with the special unit.

23 Q. In the special unit. And what was the job or the duty of this
24 special unit?

25 A. Our tasks were to be on the front lines. The platoon consisted

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1 of 11 to 15 soldiers.

2 Q. Yeah. And in the front line, were you a fighter or what was
3 your duty? What did you do or what did you made in this -- what did
4 you make in this front line?

5 A. I was a fighter.

6 Q. That's very clear. Thank you very much. So during this period
7 you were in the KLA, do you know a person named Mr. Pjeter Shala?

8 A. I have never known that person and neither have I ever seen him.

9 Q. So during the period of war or generally speaking you never met
10 him or --

11 A. Generally speaking. Generally speaking, I have never seen that
12 person in my life.

13 Q. And did you hear something about this person during the period
14 of war?

15 A. No, never. I swear.

16 Q. Okay. Thank you very much. Have you ever been in Kukes, in
17 Albania, during the war?

18 A. That is what I wanted to come to, Mr. Counsel. Yes.

19 Q. Are you able enough to explain us when?

20 A. I can't remember the exact date, but it was in the month of
21 March 1999 when, in the company of four to five comrades, we went to
22 get armaments, weapons, and that is what I referred to when I said
23 earlier that I had been to Albania.

24 Q. And where did you go in the town of Kukes? In which place?

25 A. We paused very briefly at Kukes just to rest. I did not -- I

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1 did not say that we stayed in Kukes, but it was either in Kolsh or
2 Kalimash, and I cannot recall exactly which.

3 Q. You don't remember which place you were in Kukes?

4 A. I don't.

5 Q. Did you see in Kukes a former factory?

6 A. No.

7 MR. GILISSEN: With your authorisation, Your Honour, I would
8 like to quote one passage of the statement the witness provide to the
9 investigator.

10 PRESIDING JUDGE VELDT-FOGLIA: Yeah, with what purpose?

11 MR. GILISSEN: About his presence in Kukes and the fact he was
12 or not in Kukes.

13 PRESIDING JUDGE VELDT-FOGLIA: Very well.

14 Madam Court Officer, can you please pull up the document when
15 you are given the reference.

16 MR. GILISSEN: So I would like to have 063317-TR-ET Part 2 RED2,
17 page 13, line 3 to 9. Thank you very much.

18 Q. Mr. Witness, I quote one passage of the statement you provide to
19 the investigator in September 2019. You were talking about your
20 family:

21 "Yes, they lived in Kukes."

22 A. Yes.

23 Q. "Were they there all the time?"

24 "I think one of my brothers moved to [RED]. The rest remained
25 in Kukes.

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1 "Did you ever visit them in Kukes?

2 "No. How could I enter there?"

3 And I would like to focus on another passage.

4 MR. GILISSEN: The same document, page 14, line 6 to 13.

5 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

6 MR. GILISSEN: Thank you.

7 Q. "Do you know if civilians were detained at the headquarters of
8 the 128th Brigade in Kukes?

9 "I don't know. I told you earlier -- I told you earlier on, I
10 have never been to Kukes. I was given the weapons. The weapons were
11 brought to me, and the distance would have been something like
12 between here and the hotel where I am now. So I went to pick up the
13 weapons somewhere here, and then I returned back to where my friends
14 were."

15 It was your statement. And I would like to be sure not to
16 commit a mistake and to understand how you manage with these
17 different statement to be sure I am not committing an error. Are you
18 able enough to explain us what exactly was the situation?

19 A. That's accurate. This is what I have stated.

20 Q. So I read in the last passage I quote:

21 "... I have never been to Kukes."

22 And just before I have the feeling you answered you were in
23 Kukes. So are you able enough to explain us this?

24 A. Yes, but not in the headquarters. I was in Kukes but not at the
25 headquarters. I have no knowledge whatsoever where the headquarters

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1 was located in Kukes.

2 Q. So do you have the feeling there were the headquarter of the KLA
3 in Kukes?

4 PRESIDING JUDGE VELDT-FOGLIA: I don't understand the question,
5 Defence counsel.

6 MR. GILISSEN: I think the witness explained us he was not in
7 the headquarter of the KLA in Kukes just before, so I want to be sure
8 I understand properly and not to put in his mouth something he didn't
9 say, and I just want --

10 PRESIDING JUDGE VELDT-FOGLIA: I just --

11 MR. GILISSEN: Yeah.

12 PRESIDING JUDGE VELDT-FOGLIA: No, I genuinely don't understand
13 what your question is with regard to the headquarters.

14 MR. GILISSEN: Yeah. I'm afraid --

15 PRESIDING JUDGE VELDT-FOGLIA: So maybe you can reformulate it.

16 MR. GILISSEN: Yeah, I am afraid of that.

17 Q. Okay. So you told us just before there were a headquarter of
18 the KLA in Gorozhup, if we understood it properly. And then
19 according to you --

20 A. Yes.

21 Q. This is the question. According to you, was there in Kukes
22 another headquarter of the KLA?

23 A. I don't know. I have no knowledge of that.

24 Q. Thank you very much. It's very clear. And just one tiny
25 question about the distance. You were talking in the quotation I

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1 made just before about the distance between the place you were and
2 the hotel. According to you, what was the distance in question?

3 PRESIDING JUDGE VELDT-FOGLIA: Could you specify a little bit
4 more the -- where he was or at least give the reference --

5 MR. GILISSEN: Yeah, it is --

6 PRESIDING JUDGE VELDT-FOGLIA: -- because now it hangs in the
7 air, I'm afraid.

8 MR. GILISSEN: Yeah, it was a quotation I made just before. And
9 we don't know exactly where he was. He told us at the --

10 PRESIDING JUDGE VELDT-FOGLIA: Okay. I see it. It's still on
11 the screen.

12 MR. GILISSEN: Exactly.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes.

14 "The weapons were brought to me, and the distance would have
15 been something like between here and the hotel where I am now."

16 MR. GILISSEN: Yeah, and the --

17 PRESIDING JUDGE VELDT-FOGLIA: And the question to Mr. Witness
18 is: What do you mean between here? Is that your question?

19 MR. GILISSEN: Absolutely.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay.

21 Mr. Witness?

22 THE WITNESS: [Interpretation] The distance? This is something
23 that I wanted to tell you about. The distance is the border from
24 Kosovo to Albania. The nearest village to Albania is Gorozhup. This
25 is what I wanted to say earlier on as well.

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1 In terms of distance, the distance would be from here to the
2 hotel approximately. This would be the distance.

3 MR. GILISSEN:

4 Q. And according to you, how much kilometres, metres between these
5 two places?

6 A. This village, the village that I am talking about, Gorozhup, is
7 3 to 5 kilometres away from the Albanian border.

8 Q. Yeah, thank you very much. And between Gorozhup and Kukes, how
9 many kilometres according to you?

10 A. I don't know that. It's about 35 to 36 kilometres,
11 approximately. That's the distance.

12 Q. Okay. Thank you very much.

13 MR. GILISSEN: We can leave the document, I think so.

14 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, you can pull
15 the document down.

16 And for the record, I would like to note that I went through the
17 testimony of the witness of today with regard to the training, and it
18 is correct, Defence counsel, that the witness - and I am talking
19 about page 17, lines -- about lines 5, 4 - that he talks about "Kolsh
20 or Kalimash where we spent three or four days." "I was issued a
21 uniform." But I didn't read anything about training.

22 Just so when you asked your question, you were correct in not
23 mentioning those two cities.

24 MR. GILISSEN: No, no, that's sure. That's sure. That's why I
25 was a little bit troubled by the answer because this question of

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1 training is a particular one, may I say. Yeah. Thank you.

2 Q. Mr. Witness, at this moment of the war in 1999, were you aware
3 of the allegations that the KLA arrest and detain or detain civilian
4 persons in certain location in Kosovo or in Albania?

5 A. From what I recall, we have never had any dealings with
6 civilians. And I am talking here with regards to the KLA.

7 Q. So do you mean in your own experience or at your knowledge?

8 A. From what I've seen, from what I know, the KLA have never ever
9 dealt with civilians.

10 Q. Thank you very much. And did you receive some orders or
11 training about the possibility to control or arrest some civilian
12 person?

13 A. That's not true.

14 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, just for my
15 understanding, what do you mean when you say "I have never had any
16 dealings with civilians"? What do you mean with "any dealings"?

17 THE WITNESS: [Interpretation] We have had no connections with
18 the civilians, so the only connection we had was with the Serbian
19 soldiers in uniform.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. But it's not about
21 connections or dealings. It's about allegations related that the KLA
22 would arrest and detain civilian persons. The question is if you had
23 anything to do with that or if you know that the KLA had anything to
24 do with that.

25 THE WITNESS: [Interpretation] No. I know that for a fact, and

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1 that's not true, that we have arrested civilians. So we have not
2 arrested any civilians, be them Albanians or Serbs.

3 PRESIDING JUDGE VELDT-FOGLIA: Your answer was a little bit
4 cryptic by using the word "dealings" and "relations," so let's just
5 give things a name when we speak.

6 You have the floor.

7 MR. GILISSEN: Thank you very much.

8 Q. The thing you declared just now, that's because you was in the
9 front line or you never heard about something about the arrest of
10 civilians generally speaking, even after the war?

11 A. No, I have not ever heard this.

12 Q. So thank you very much, Mr. Witness. What did you do when the
13 war ended?

14 A. After the end of the war, I stayed at a camp in vicinity of the
15 outskirts of Prizren, in Nashec, for about five to six days. And
16 from there, I left Nashec, I went to my home, I got the uniform off,
17 and I never went back.

18 Q. Yeah. And did you inform some person, some officer or official
19 from the KLA, you left and enter to -- went to your home?

20 A. Normally is that you have to have the signature of the commander
21 in order for you to leave.

22 Q. Yeah. And did you receive the signature and the authorisation
23 from the --

24 A. Yes, the permission of the commander, and I withdrew. I left.

25 Q. Do you remember the moment or the date you left to enter home?

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1 A. I don't recall the date exactly. What I recall is that it was
2 June, it was approximately the 11th or 12th June.

3 Q. Yes, thank you very much. I would like to know did you receive
4 a pension in quality of former fighter of the KLA?

5 A. No, I did not.

6 Q. Are you able enough to explain us if you asked for such a
7 pension? What happened that you don't have it?

8 A. I asked for it. I asked for the pension, but the commander of
9 the general headquarters said that Prishtine has not accepted about
10 30 to 40 persons that requested the pension.

11 Q. And do you know why you didn't receive this pension?

12 A. Yes, I know that very well. Because I used to work in Kosovo.
13 I didn't prepare the document for a war veteran accordingly because
14 of my personal reasons, and that's the reason why I was not awarded a
15 veteran pension.

16 Q. Okay. Thank you very much. It's very clear.

17 MR. GILISSEN: So I would like to go in private session now,
18 please, with your leave.

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

21 [Private session]

22 [Private session text removed]

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20 [Open session]

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

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

23 It's now time for the first break. Mr. Witness, we will take a
24 break of half an hour. You will be escorted out by the Court Clerk,
25 and we will see you back at 11.30. Thank you for now.

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1 THE WITNESS: [Interpretation] Thank you.

2 [The witness stands down]

3 PRESIDING JUDGE VELDT-FOGLIA: Very well. We will resume in
4 30 minutes. The hearing is adjourned.

5 --- Recess taken at 10.58 a.m.

6 --- On resuming at 11.31 a.m.

7 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. I see no changes
8 at the SPO, no changes at the Victims' Counsel's team, and here at
9 the Defence team neither. We note that. Thank you.

10 Court Clerk, can you please usher the witness back into the
11 courtroom? Thank you.

12 Defence counsel, can you already indicate how much time you
13 think you will be needing still?

14 MR. GILISSEN: It could be around the same time I used till now.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

16 MR. GILISSEN: Thank you.

17 [The witness takes the stand]

18 PRESIDING JUDGE VELDT-FOGLIA: Welcome back, Mr. Witness. Can
19 you hear me fine?

20 THE WITNESS: [Interpretation] Thank you. Yes, I can.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay.

22 Good morning again, Mr. Shala. Can you hear the witness well?

23 THE ACCUSED: [via videolink] [Interpretation] Yes, I can.

24 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, then you have
25 the floor to continue with your questioning.

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1 MR. GILISSEN: Thank you very much, Your Honour. Thank you very
2 much, Mr. Witness. So I would like to go in private session to
3 continue with the same line of questioning.

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

6 [Private session]

7 [Private session text removed]

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Witness: Safet Gashi (Private Session)

Page 3932

Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

Page 3933

Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

Page 3939

Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

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Witness: Safet Gashi (Private Session)

Page 3941

Examination by Mr. Gilissen

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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Witness: Safet Gashi (Private Session)

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Examination by Mr. Gilissen

Redactions applied pursuant to F793.

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6 [Open session]

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

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

9 We have now finished the questioning by the Defence counsel of
10 the Witness 4405.

11 I propose that we first go into a break of -- the usual break of
12 one and a half hour, and that gives the Specialist Prosecution Office
13 the possibility to look for any references it needed for your
14 cross-examination, and then we will proceed.

15 Mr. Witness, we're going to have a break. So in one and a half
16 hour we see you back after lunch. Thank you. And Madam Court Clerk
17 will usher you out of the courtroom.

18 [The witness stands down]

19 PRESIDING JUDGE VELDT-FOGLIA: Very well. Before we go into our
20 break, we noted the objection made by the Defence with regard to the
21 use of some of the items proposed by the Specialist Prosecution
22 Office, and we will, of course, issue an oral order on that aspect.
23 It's about three newly disclosed items.

24 Yes. I saw in your e-mail that you would elaborate on your
25 objections more in court. So, Defence counsel, you will receive the

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1 floor, and after that I will give the floor to the Specialist
2 Prosecution Office, and we will take an oral order on this matter
3 after the break -- or even inform you during the break. That could
4 be helpful for the Specialist Prosecutor's Office.

5 Defence counsel, you have the floor.

6 MR. AOUMINI: Thank you, Your Honour.

7 So our objection in principle is to the use -- the actual use of
8 the statements. And from the outset, we can safely say, from the
9 practice of this Court, that if the information extracted from those
10 statements is put in form of questions, like Mr. Gilissen did on
11 certain aspects this morning, that's not objectionable. So they can
12 explore certain information that are relevant to them.

13 However, the use of the statements and quoting from them and
14 adducing parts of those statements into evidence is what we object
15 to. We believe -- and I can take the example of 4468. This witness
16 was a witness in the -- in the list of the SPO, he was withdrawn, so
17 we don't have any opportunity to test the evidence of this witness,
18 and it is as a result of the choices of the SPO.

19 So today, if it's not on a matter that goes to the credibility
20 of this witness and does not relate to the examination of that
21 witness on topics and to explore other things about the war and the
22 positioning of some brigades or other topics, we would object to the
23 use of that. If they wanted to adduce this kind of evidence, they
24 should call their own evidence, their own witnesses to adduce that
25 evidence.

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1 And it is the same -- another reason for this one and the next
2 one. These people, we heard so far that they don't know, they were
3 not asked about knowing -- about this witness and their knowledge
4 about this witness or any contacts or any ties with this witness.
5 They have not spoke about him. He has not today spoken about those
6 individuals. So we don't see, except for the commander of the
7 brigade, any reason to go into that because we don't see any
8 credibility issue with that.

9 But the main objection is they can elaborate on some topics
10 using questions but not the use of the statements themselves.

11 Coming back to the last part of the objection, which is
12 Witness 0001. We have looked at the pages that are mentioned. We
13 have transcript references that cover the same portions. This is,
14 obviously, the preference and the priority to have the transcript
15 references because those are evidence that he's adduced already,
16 rather than coming back to prior statements from the same individual
17 on the same topics.

18 So we would object to use instead the statements unless there is
19 a practical reason to use the same information from another source,
20 but we don't see any. If there is a transcript reference on those
21 points, why should we go to prior statements that are not in evidence
22 in order to explore certain things?

23 This is what Mr. Gilissen did this morning, referring to the
24 transcripts of testimony rather than prior statements. Sorry,
25 Your Honour.

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

2 objection to the use of the items 6, 8, 10, and 11. Yes.

3 Okay. Madam Prosecutor, you have the floor.

4 MS. PERGOLO: Yes, Your Honours. Thank you very much.

5 We have included these items in our list of materials as we
6 intend to use their content to assess the credibility of the witness.
7 And we have done that in the past, to use information coming from
8 individuals who are not witnesses in this trial to test the
9 credibility of the testimony that is presented.

10 So it would be up, of course, for the Panel to assess these
11 materials and to use them, and that is the purpose for which we
12 have -- we are seeking to make use of them today.

13 With regard to the last two statements, these cover prior
14 statements of a witness in this case. The testimony of this
15 witness -- or let's rather say the relevance of these specific parts
16 of the statements has become relevant and apparent now in light of
17 the testimony of this witness, which is the reason why we are seeking
18 to make use again of the content of the information in these
19 statements for use for -- to question and to challenge possibly the
20 testimony of this witness.

21 So this is our intended use for these materials, Your Honours.
22 Thank you.

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

24 Is there something the -- without reiteration, the Defence wants
25 to say?

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1 MR. AOUNI: Just to say, Your Honours, that our colleagues from
2 the SPO strongly objected to us bringing some further details that
3 are in prior statements when the witness has testified and reproached
4 us not to elicit certain points. Even the last exchange of --
5 request for the Rule 153 that was recently admitted yesterday.

6 So if they wish to elaborate on certain other details from a
7 witness that testified, they have to re-call him. They can use
8 information but not use the statement. So it comes back to the first
9 category that they can use the information, this is the reference
10 point maybe from the presentation queue, but not use the documents
11 themselves. So it will join the first objection that we can use
12 information to ask questions - those are the evidentiary basis for
13 it, we accept that - but not use the documents themselves. And with
14 the difference of the weight to be given for untested prior
15 statements for which we have no opportunity to cross-examine as
16 opposed to the live testimony portions for which we had the
17 opportunity to cross-examine which has a different weight to be used
18 in confrontation with this witness.

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

20 My apologies, Victims' Counsel. I should have given you the
21 floor.

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

24 PRESIDING JUDGE VELDT-FOGLIA: Good.

25 We will take a decision on this. What we will do is that during

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1 the break we will anticipate very shortly what we have decided, and I
2 will put it on record as soon as we are in court, but that is of aid
3 for the SPO to proceed with its preparation.

4 Very well. Then it's now half past 12.00. We resume at 2.00.
5 The hearing is adjourned.

6 --- Luncheon recess taken at 12.25 p.m.

7 --- On resuming at 2.00 p.m.

8 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. We continue with
9 the testimony of Mr. Safet Gashi.

10 I don't see any changes on my right-hand side; left-hand side,
11 the same. Thank you.

12 We note that the schedule for this afternoon will be as follows.
13 We will proceed now with -- for an hour and a quarter, then we have a
14 15-minute break, and then we do another half an hour, and then we
15 finalise, like always, at 4.00. Sometimes 15 minutes can be very
16 useful to complete something. Let us see.

17 Before we continue with the cross-examination by the Specialist
18 Prosecutor's Office, the Panel will issue two oral rulings.

19 The first one pertains to the objections raised by the Defence
20 to the use of items 6 till 8, 10, and 11 contained in the SPO list of
21 materials to be used during its cross-examination of Witness 4405.
22 These objections were conveyed to the Panel, SPO, and
23 Victims' Counsel via e-mail today, 9 January 2024, at 9.55.

24 In addition, the Defence and the SPO have made submissions
25 orally in court earlier today.

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1 First, the Panel notes that items 6 till 8 are relevant to the
2 assessment of the witness credibility.

3 Second, with regard to items 10 and 11, which constitute
4 transcripts of prior statements provided by an SPO witness in this
5 case, the Panel notes that the SPO indicated that the relevance of
6 these items became apparent only after the completion of this witness
7 testimony in court. However, in case the witness has given a prior
8 statement on an issue he also gave testimony in court, and especially
9 when there is a discrepancy between the two, both the prior statement
10 and the testimony in court should be put to the witness for reasons
11 of fairness.

12 Accordingly, the Panel rejects the Defence objections, and the
13 Panel authorises the SPO to use the above-mentioned items during its
14 cross-examination of the witness, bearing in mind the caveat we gave.

15 This concludes the Panel's first oral ruling.

16 And the second oral ruling pertains to the SPO request to use
17 during the questioning of Witness 4405 three newly disclosed items.
18 The first one is a photograph, and I will read out the number,
19 SPOE40010298 and then SPOE40010298-ET; an SPO note with the number
20 109099 till 109099 RED; and a document consisting of open source
21 material, which is SPOE00346180-00346181-ET.

22 The request was made via e-mail on Monday, 8 January of this
23 year at 10.20. The items had been disclosed on Friday, 5 January
24 2024, which is disclosure package 204. And they were added to the
25 presentation queue for this witness.

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1 We did not receive any opposition from the side of the Defence
2 and Victims' Counsel, and we therefore authorise the SPO to use these
3 items during its cross-examination of the witness as they are limited
4 in number and length, we didn't receive any objection from the
5 Defence and Victims' Counsel, the Victims' Counsel and the Defence
6 have had sufficient time to study them, and their use will facilitate
7 the witness testimony.

8 And this also concludes the second oral ruling of the Panel.

9 And then we now can continue with the testimony of the witness.

10 Court Clerk, can you please usher the witness into the
11 courtroom.

12 Good afternoon, Mr. Shala. I trust you heard me well?

13 THE ACCUSED: [via videolink] [Interpretation] Yes, I hear you
14 well.

15 [The witness takes the stand]

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

17 THE WITNESS: [Interpretation] Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Can you hear me fine?

19 THE WITNESS: [Interpretation] Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: Very well.

21 Mr. Shala, can you hear the witness?

22 THE ACCUSED: [via videolink] [Interpretation] Yes, I hear him
23 very well. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you. That's good. That's
25 noted.

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Cross-examination by Ms. Pergolo

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1 Then I will now give the floor to Madam Prosecutor.

2 Please.

3 MS. PERGOLO: Thank you, Your Honours.

4 Cross-examination by Ms. Pergolo:

5 Q. Good afternoon, Mr. Gashi. My name is Gaia Pergolo. I'm one of
6 the Prosecutors of the Specialist Prosecutor's Office. I will be
7 asking you a few questions this afternoon.

8 So I would like to start by clarifying the chronology of events
9 you provided today, and in particular the part when you discussed
10 about joining the KLA. This morning you told us that you were in
11 Kosovo until February or March when you were evicted to Albania by
12 the Serb forces. And this can be found at transcript page 14, lines
13 24 to 25. Is this correct?

14 A. Yes.

15 Q. Then you said that you joined the KLA in Kukes where you were
16 issued with a uniform. And this is at page 16, line 25; page 17,
17 line 4. Is that also correct?

18 A. Yes.

19 Q. Thank you. You also provide us with a timeline of your joining
20 the KLA, and you said that it was March 1999; is that correct?

21 A. Yes.

22 Q. Now, where in Kukes did you join the KLA?

23 A. I did not join there. I only received the uniform, and I was
24 sent to Kolsh or Kalimash. I don't really exactly recall where. It
25 was there that I stayed for about five to six days.

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1 Q. Can you then clarify how this process of receiving the uniform
2 happened?

3 A. There I gave the name, the first name, the last name, the
4 father's name, the date of birth, I was given the uniform, I stayed
5 there for about one hour or two up until the trucks came so that they
6 could transfer us to Kolsh or Kalimash. I'm not sure whether I was
7 in Kolsh or Kalimash. So I think the name of the place was Kalimash.
8 It is located in vicinity to Kukes, so it's about 40 kilometres away
9 from Kukes.

10 Q. And to whom did you give your name, the last name, and all this
11 information?

12 A. To the commander of the General Staff, Ruzhdi Saramati.

13 Q. And can you perhaps give us a few more details about the
14 location where this happened, where you gave this information, where
15 you received your uniform? Just the physical location.

16 A. It is in Kukes. I don't know what the name of that place
17 exactly is. I don't know its name. But it's not where Mr. Counsel
18 said the place is. It was a small place, a one-storey building where
19 I received the uniform. If I'm not mistaken, it was a green colour.
20 So it was a one-storey building, the house where I received the
21 uniform and where I took the oath and I gave my first name and last
22 name. It was there that we stayed for about one hour or two, and
23 then the trucks came and sent us from Kukes towards Kolsh or
24 Kalimash. We divided into two groups.

25 Q. So you said, if I am not mistaken, you talked about a one-storey

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1 building, a house; is that correct? Was it a house?

2 A. Yes, that's correct. It was a small house.

3 Q. And who else was there in addition to Commander Saramati when
4 you took the oath and joined?

5 A. There were many soldiers. About other commanders, it's not that
6 I recognised anyone else but him.

7 Q. Do you know perhaps whether this location had a name or was it
8 referred in any way?

9 A. No, I don't know. I don't know whether that had a name. I
10 don't remember now.

11 Q. Would you be able to just give us some references. Like, I
12 understand you don't know the precise location, but where was this
13 house? Was it in the middle of a field? Was it in the town? Was
14 it -- can you just give us some references?

15 A. It was a bit outside the city. It was outside the city of
16 Kukes. Not very away from it. It was about 2 to 3 kilometres away
17 from Kukes.

18 Q. When you were provided your uniform, did you have to -- you said
19 you took an oath, but did you have to provide any information about
20 your background? Any details?

21 A. No.

22 Q. There was no questions asked to you about who you were, where
23 you came from, nothing at all?

24 A. No. Just the first name, the last name, what I mentioned
25 before. Nothing else.

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1 Q. Were there any other people that day who joined who -- who were
2 with you in that location and also took their uniforms there?

3 A. Yes, yes.

4 Q. How many?

5 A. I didn't really hear you.

6 Q. I'm sorry. My question was how many other people did take
7 uniforms that day?

8 A. Yes, there were other people. There were many KLA soldiers,
9 about 150.

10 Q. And were they all in that house receiving uniforms at the same
11 time?

12 A. No. They would come to register themselves, and this is what
13 happened.

14 Q. Where would they go after that?

15 A. They were sent to other places because there was not enough
16 space there. Like I said, it was a small house. They were
17 transferred to other towns from there. Some of them were sent to
18 Kolsh, others were sent to Burrel, others were sent to Kalimash, and
19 so on.

20 Q. And perhaps just one last question on this location. Did you
21 have an understanding of what was the location used for, this house
22 that you mentioned, normally? I mean, you mentioned you were there
23 for a specific reason, but in general.

24 A. That house was used only to register the soldiers. So that the
25 registers were given -- the soldiers, excuse me, were given their

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1 uniforms. That was all.

2 Q. Thank you. You said this morning that from Kukes, and you had
3 actually just repeated later, you were sent to Kolsh or Kalimash for
4 a few days; is that correct?

5 A. Correct.

6 Q. What did you do there? What did you do in this location where
7 you went for those days?

8 A. We were trained there. Like I told you before, we were trained
9 for about five to six days on how to use the long arms, the mines,
10 bombs. These are the things that we did there.

11 Q. And who provided this training? Who was training you?

12 A. Former officers of the KLA that were trained or that joined the
13 army in the former Yugoslavia.

14 Q. Do you know any names in particular?

15 A. No, I don't remember any.

16 Q. With whom did you go to Kolsh or Kalimash for this training?

17 A. We went together with friends of our army. We were transported
18 by trucks up to Kalimash. And like I said, I was together with
19 friends.

20 Q. Do you know any names of these friends?

21 A. No, I don't remember.

22 Q. So what happened after that? What happened after Kolsh or
23 Kalimash?

24 A. I was trained. It was a wartime. It's not that we received a
25 lot of trainings. We had at the best case scenario five or six

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1 trainings. Again, we were taken by the trucks, we were transported
2 by trucks, and we got off the trucks in a village in Albania. And
3 then we walked on foot up until Gorozhup.

4 Q. So do I understand correctly that from Kolsh or Kalimash, after
5 you completed this training, you walked on foot to Gorozhup? Is that
6 what you said?

7 A. No. I said that they took us by trucks and they transported us
8 from Kolsh or Kalimash up until a village of Bajram Curri or some
9 other place, and it's from that place we walked on foot up until the
10 border with Kosovo.

11 Q. Mr. Witness, what did you find in Gorozhup when you got there?

12 A. I found friends of the national liberation army.

13 Q. What else? What was there in Gorozhup?

14 A. Fightings. Nothing else.

15 Q. So am I correct in saying that if you join -- let's say if
16 you -- you said you went to Kukes at the end of March, then you spent
17 a few days in Kolsh or Kalimash, and then from there you went to this
18 other village at the border, and then you went to Gorozhup. This
19 would have been early April? Do you have a time reference for that,
20 perhaps?

21 A. From what I remember, it should have been March, mid-March.
22 From what I remember now.

23 Q. And, Witness, you mentioned that when you went to Gorozhup, you
24 said you found nothing else. You said you found fightings. So do I
25 understand correctly that at that point you were engaged in

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1 fightings; right? Is that correct?

2 A. Yes, that's correct.

3 Q. Would you be able to explain a little bit more, a little bit
4 better, how was the organisation in Gorozhup when you got there? We
5 understand you were engaged in fighting. What were your daily
6 activities?

7 A. My daily activities were like the daily activities of any other
8 soldier of the KLA. We received instructions. The commanders
9 wouldn't give the instructions to us, but it was the platoon
10 commander that would receive the instructions, and those instructions
11 would then be conveyed to us, to the soldiers.

12 Q. And since you mentioned the platoon commander, who was that
13 actually? Who was your commander, the person from whom you received
14 the orders?

15 A. Commander you mean? Valbon Collaku.

16 MS. PERGOLO: Your Honours, may we have now a document -- I
17 would like to show a document to the witness just to confirm what he
18 just said about this commander and then to understand a little bit
19 the positioning of this commander within the KLA.

20 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, I see you
21 standing.

22 MR. AOUINI: Sorry to interrupt, Your Honour. Maybe you can ask
23 a few questions. We only heard the name now. Ask questions and then
24 if necessary use a document. If the purpose is to have some details
25 about this person. We didn't hear any other questions about this

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1 individual, so we can ask questions and, if necessary, then revert to
2 some documents. This is our suggestion, Your Honour.

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

4 Madam Prosecutor, I think that some more questions could assist
5 before we pull up the document.

6 MS. PERGOLO: Yes, Your Honours.

7 Q. So, Mr. Gashi, you told us you mentioned your commander, and you
8 mentioned his name. I read in the transcript "Verban Collaku," but
9 perhaps can we confirm the first name? Is it Verban or did you say
10 anything else?

11 A. Valbon.

12 Q. Valbon Collaku. All right. Thank you very much.

13 A. Correct.

14 Q. And how many people were in the unit with you, the unit that
15 Valbon Collaku was leading?

16 A. I said this before. The platoon is composed of about 11 to 15
17 soldiers. It depends on how many people are joined in the platoon.

18 Q. And so Valbon Collaku was the platoon commander; is that
19 correct?

20 A. Yes, that's correct. That's the commander of my platoon.

21 Q. From whom was Mr. Collaku receiving his orders?

22 A. From the commander. The commander, the deputy commander, the
23 general commander, the battalion commander. It depends because there
24 are too many commanders.

25 Q. But in this case, do you know from whom Collaku was getting his

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1 orders? The ones that I suppose then he was relaying to you.

2 A. I don't know because the orders were taken via the
3 walkie-talkies.

4 Q. So, again, Mr. Gashi, just a couple more questions on this
5 topic. So do I understand correctly that you received your daily
6 tasks from Commander Valbon Collaku; is that correct?

7 A. That's correct.

8 Q. And in your daily activities, did you work closely together with
9 him or did you only meet him, let's say, when you were getting your
10 tasks?

11 A. I didn't understand the question. Are you talking about the
12 platoon commander?

13 Q. Yes, and apologies if I was unclear. I was just wondering, you
14 know, how many interactions you had with Commander Collaku, whether
15 you just met him on the occasions of receiving your tasks, or whether
16 you were working with him every day, or whether you can give us some
17 information about that?

18 A. We were together non-stop, because the commander was with the
19 group all the time.

20 Q. Thank you. Thank you very much for that. This is helpful.

21 MS. PERGOLO: Your Honours, may I now perhaps use that document
22 just to confirm that the person we are talking about was a part of a
23 broader organisation just to -- for clarity purposes? Would that be
24 a good moment to do that?

25 PRESIDING JUDGE VELDT-FOGLIA: You may proceed. It's not

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1 completely clear for me yet how you want -- for what purpose, but I
2 let you proceed and then ...

3 MS. PERGOLO: I'm happy also to -- we don't need necessarily to
4 do it now. We can also do it at a subsequent moment if Your
5 Honours --

6 PRESIDING JUDGE VELDT-FOGLIA: No, no, for me the moment is the
7 same, but it's not completely clear for me what you want to show --
8 what you want -- how you want to use it to ask a question to the
9 witness. I'm not opposing to it. It's just asking for a little bit
10 more clarification.

11 MS. PERGOLO: I just wanted to confirm whether the witness
12 recognised the name of the commander within a specific organisation,
13 and from there ask some further questions about the unit that this
14 commander was heading.

15 PRESIDING JUDGE VELDT-FOGLIA: Okay. Please proceed.

16 MS. PERGOLO: Thank you. So may we have the first document on
17 the SPO list of materials. The ERN is 058048-058112 at page 2. The
18 same for the Albanian.

19 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you have the
20 floor.

21 MR. AOUNI: Thank you, Your Honour. This document is a
22 structure. It goes way beyond to what this witness would testify
23 about. If they want to elicit a certain structure, they might ask
24 him questions about the names. Otherwise, confirming the name, the
25 name he has already given -- so this witness is not going to

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1 authenticate or give more details or put a seal on a much more
2 elaborate document. Our colleagues could introduce this in a
3 documentary fashion based on other indicia to give it some weight.
4 It's not this witness who can confirm it. They can ask him questions
5 maybe, but we don't see, as much as Your Honours made the comment
6 earlier, why would this come as a basis for questions? They can ask
7 him questions and then independently provide.

8 This is -- this witness is not the author of this document.
9 He's not the one who is going to authenticate it or -- so they can
10 ask about names or what he knows about certain individuals and their
11 positions. That's as much as they can do on the basis of this
12 document.

13 PRESIDING JUDGE VELDT-FOGLIA: I already gave permission,
14 Defence counsel, for this, and I see a little bit of hesitation. I
15 have a little bit of hesitation, too. But I also see some relevance,
16 so I have -- Madam Prosecutor, proceed.

17 MS. PERGOLO:

18 Q. Mr. Witness, today you told us that you were part of a special
19 unit. That's how you called it. Is that correct?

20 A. Yes.

21 Q. So if you could please take a look at this document on the
22 right-hand side of it. I believe it's the third box, if we can call
23 it in that way, from the top. We see the name of Valbon Collaku. Do
24 you see that?

25 A. I don't. I have had four operations and I cannot see very well.

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1 MS. PERGOLO: Would it be possible perhaps to just --

2 THE WITNESS: [Interpretation] Yes, I do. I've found it. I've
3 found it. Forgive me, yes.

4 MS. PERGOLO:

5 Q. Thank you. Thank you very much. Would you be able to read what
6 this document says next to the name of the commander?

7 A. I can't read it, I'm afraid. I can see the name, but I cannot
8 read the rest.

9 Q. Is it better -- any better now?

10 A. Yes. The unit of -- and I'm unable to discern it any further.

11 MS. PERGOLO: Your Honours --

12 PRESIDING JUDGE VELDT-FOGLIA: No, but I think that Madam
13 Court Officer is working on the -- on making it work.

14 THE WITNESS: [Interpretation] Yes, yes, engineer unit, Valbon
15 Collaku. I am able to read it now, yes.

16 MS. PERGOLO:

17 Q. Thank you. Thank you for that. I just wanted to ask you is
18 that your unit? Is that the unit you were a member of?

19 A. Yes.

20 Q. Thank you very much.

21 MS. PERGOLO: That's it for this document.

22 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, for me, now it
23 has been clarified why the document has been shown to the witness.

24 MR. AOUMINI: And apologies, Your Honour. We discovered that
25 this document is already in evidence, so it makes a -- I apologise

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1 for that. Since it is already in evidence, commentary on the witness
2 is --

3 PRESIDING JUDGE VELDT-FOGLIA: No, it's just that we take all
4 submissions at heart, so ...

5 MR. AOUINI: Thank you.

6 PRESIDING JUDGE VELDT-FOGLIA: Good.

7 Madam Prosecutor, you may proceed.

8 MS. PERGOLO: Thank you.

9 Q. Mr. Witness, I would like to go back to what you were saying
10 before talking about your daily activities. So you said you were
11 engaged in fightings. Again, can you just elaborate a little bit --
12 a bit more on that again? If you can describe a typical day, if a
13 typical day was there, which, of course, may be a bit difficult, but
14 if you can just give us some ideas.

15 A. A day would be spent in the company of comrades. Whenever there
16 was any fighting, we'd go to the front lines. And that's how a day
17 would unfold, day in, day out. There were no other activities to
18 note.

19 Q. And, Mr. Gashi, again, if you can perhaps elaborate a bit more.
20 So you were engaged in fighting. Who were you fighting at that time?

21 A. Against the Serbian army.

22 Q. Then I have a few more questions about where you spent that
23 time. So you said that you were in Gorozhup where the fighting was
24 happening against the Serbs. So I've a few more questions about, you
25 know, the physical location, I guess, where you were based off. Were

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1 there any facilities? Can you describe? Were there barracks, were
2 there buildings, were there offices in Gorozhup?

3 A. No. There were a few houses belonging to the population which
4 were uninhabitable. That is where we spent the nights and the rest
5 periods too.

6 Q. Were there any facilities like toilets, for example?

7 A. No. We'd go inside the houses, in the neighbourhood, up in the
8 mountains.

9 Q. So were these abandoned houses that people left behind or were
10 they inhabited?

11 A. Yes, these were houses that had been abandoned by the villagers
12 as a result of the Serbian forces, and that is where we stayed.

13 Q. Were there any other facilities? For example, where did you get
14 your food? Was there a storage room, a kitchen, anything like that?

15 A. No, the food would be bought and it arrived from Albania. It
16 would arrive in the vicinity of the border area. If I remember
17 correctly, it was the logistics people who handled the issue of
18 foodstuffs and armaments and so on.

19 Q. And how often did the logistics people take the foodstuff and
20 equipment to you?

21 A. It depends. As a matter of fact, where food is concerned, we
22 did suffer quite a lot. However, where munitions are concerned, they
23 did arrive on a daily basis from the moment that the logistics became
24 fully operational.

25 Q. Was there, for example, an infirmary or a place where, you know,

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1 wounded people would get assistance?

2 A. Yes, there was one. However, where the injuries were severe,
3 the individual would be sent to Tirana or to some other town nearby.
4 Yes, we did have an infirmary.

5 Q. Sorry, perhaps I am not -- I'm not sure I understand correctly.
6 You said: "Yes, there was one." But when the injuries were severe,
7 they would be sent to Tirana; is that correct?

8 A. That's right, yes.

9 Q. Thanks. But then can you describe the infirmary then if -- what
10 kind of structure was it?

11 A. It was just a house, one of those abandoned homes of the
12 villagers. That's where medical treatment was received by the
13 soldiers. However, those who had worse injuries were sent on board
14 trucks or Pinzgauers, whatever you call them, in the direction of
15 Tirana or elsewhere. Depending on the extent of their injuries, that
16 is.

17 Q. Did you ever witness yourself anyone being injured during
18 combat?

19 A. There were occasions, yes.

20 Q. Can you tell us about at least maybe those occasions that you
21 remember?

22 A. There was heavy shelling towards the KLA on the part of the
23 Serbian forces in which we suffered deaths and injuries.

24 Q. Do you remember when this heavy shelling happened? Was it on
25 one occasion? Was it on multiple occasions? Was there a specific

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1 occasion you remember?

2 A. I can't recall exact dates, but it happened in the month of
3 March. It's not that there was fighting only one day, but there was
4 fighting every single day because Gorozhup is on the border area.
5 The border area is more tightly controlled by the Serbian army.
6 That's where they were stationed in heavy numbers, and that's the
7 area that they shelled, and so on and so forth.

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

9 Madam Prosecutor, just a moment, please.

10 Mr. Shala, are you okay? Did you hear me, Mr. Shala? Are you
11 doing fine?

12 THE ACCUSED: [via videolink] [Interpretation] I have a bit of a
13 headache, but I'm fine. Thanks.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good. We proceed.

15 Please proceed, Madam Prosecutor.

16 MS. PERGOLO:

17 Q. Mr. Gashi, I have a clarification to ask you because you told us
18 today, and just now as well, that, you know, there was shelling on
19 multiple occasions throughout the time you were there. And, in fact,
20 I would like to ask a clarification, something that you said in your
21 SPO interview.

22 And, in fact, in that interview, you were asked whether there
23 was a place where the soldiers would sleep at night, and then -- and
24 to that question you answered that there were actually "no houses
25 where you could stay because NATO was bombing the place and the Serbs

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1 were also attacking the area."

2 And this is Part 1 of the witness statement 063317, page 14,
3 lines 4 to 7.

4 Do you remember saying that?

5 A. Yes, that is correct. It wasn't that every single house was
6 damaged. There were a few which were not and in which we were able
7 to spend the night in. Not every single house had been bombed to
8 ruins.

9 Q. So then -- yeah. And, again, just -- because in that statement
10 you said something a bit more specific. In fact, you said that there
11 were no place where to stay because of the shelling, but today
12 actually you told us there were a few houses where you would sleep at
13 night. So can you perhaps help us understand what you meant, because
14 there seems to be a bit of a discrepancy between what you said before
15 and what you're saying today?

16 A. There were houses which were single-storeyed but they were few
17 in numbers, two or three altogether in that village. So even when we
18 spent the night in there, we were scared that it would come under
19 shelling. The rest of the houses there, however, had been severely
20 damaged.

21 Q. So, Mr. Witness, again here I'm trying to understand here a
22 little bit better your evidence. So you told us that in Gorozhup,
23 you know, there was fighting, there was shelling throughout the time
24 you were there. From what I understand, you also said that there was
25 no proper accommodation. You were staying in the houses that were

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1 not severely damaged. There was no kitchen, the food was brought to
2 you from the logistics people, and, you know, there was no -- well,
3 there was an infirmary but the serious cases would be brought
4 elsewhere.

5 So this sounds, indeed, like a very dangerous place where to be,
6 you know, the front line. So --

7 A. That's right.

8 Q. It doesn't sound like a place where, you know, the KLA would
9 have, let's say, a base or recruitment centre, but it sounds to me
10 that this could be perhaps more of a military outpost on the front.
11 Would that be a more -- a better description, a better way to
12 describe the location where you were at Gorozhup during that time?

13 A. That is right.

14 Q. Thank you. Thank you very much for that. So I'd like to go
15 back to what you talked about the fighting and the heavy shelling.
16 Do you remember a specific occasion and particularly heavy shelling
17 in which the KLA suffered some casualties. You said before that that
18 happened a few times. But do you remember any specific?

19 A. Yes, yes. As I mentioned earlier, I remember it very well. We
20 did suffer injuries and deaths, but the Serbian forces also suffered
21 deaths and injuries too.

22 Q. Do you remember how many deaths did you suffer on that specific
23 occasion?

24 A. From the beginning to the end of the war, there were 27 or 28
25 martyrs from our brigade, from our own brigade, people who were

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1 killed by Serbian forces. And that's a rough number.

2 Q. Mr. Witness, have you ever heard of a specific incident or fight
3 that has been called the battle of Gorozhup?

4 A. No, I haven't.

5 Q. Have you ever heard or have you ever known a person called
6 Sali Saramati?

7 A. Yes.

8 Q. Who is he?

9 A. He's cousins with my commander. My commander was
10 Ruzhdi Saramati, and this guy is called Sali Saramati. He died at
11 the hands of Serbian forces whilst in Gorozhup.

12 Q. Do you remember when he died?

13 A. I don't. I can't recall.

14 Q. Do you have a timeframe reference? Let's say, was it at the
15 beginning of your stay there, towards the end, in the middle?

16 A. I can't recall exactly, but it might have been in the midpoint
17 of my stay.

18 MS. PERGOLO: Your Honours, may I help the witness with a
19 timeframe by using a document that talks about this event?

20 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

21 MS. PERGOLO: May I have item number 4 on the SPO list of
22 materials, ERN 108011 to 108040 in Albanian, and the English is the
23 same ERN ending in ET.

24 PRESIDING JUDGE VELDT-FOGLIA: Please proceed,
25 Madam Court Officer.

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1 MS. PERGOLO: And if we can please go to page 9 of the document.

2 Q. Mr. Witness, this document, and I think it's the second line
3 from top of both the Panel and the English, says -- talks about the
4 battle of Pashtrik in Gorozhup.

5 A. That's right.

6 Q. And it states that:

7 "The 31 May 1999 is a special date. This date reminds us of the
8 most difficult and glorious battle, D-Day. On this day the enemy
9 forces of the South Brigade, as called by the enemy, attacked us."

10 Does that remind you of when the battle of Gorozhup took place?
11 Does that refresh your memory about this event?

12 A. I remember it very well. However, as I said earlier, it wasn't
13 as if there was a battle only on one single day. There was fighting
14 every single day. However, this one is one that is memorable because
15 of the heaviest of bombardments by Serbian forces.

16 Q. Mr. Gashi, you told us in connection with this that
17 Sali Saramati died in battle; is that correct?

18 A. That's right.

19 Q. Do you remember if he was one of the people who died in this
20 specific incident on 31 May?

21 A. I can't say that with any certainty. I do not know the date
22 when he died.

23 Q. Do you know what happened to Sali Saramati's body after he died
24 in Gorozhup?

25 A. No, I don't because the bodies, the corpses, and as well as

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1 injured people, were taken and transported to other areas, to other
2 villages. They were pulled away from the front line and sent off. I
3 don't know what's happened to him.

4 Q. Do you know where were they transported? You said "to other
5 areas, to other villages." Do you know where?

6 A. No, I don't. I don't. I have no knowledge.

7 Q. Do you know if a funeral ceremony was held for Sali Saramati?

8 A. It would have been impossible to have a ceremony during the war
9 because of the fighting. However, after the war, there were numerous
10 such ceremonies of reburial of KLA soldiers.

11 Q. Mr. Gashi, have you ever heard of a person called Mark Shalaj?

12 A. No, never.

13 Q. Mark Shalaj was a KLA member, was involved in logistics in
14 Albania during the war, and he testified in this trial in October as
15 a witness for the Defence. He stated that Sali Saramati was, indeed,
16 as you said, a relative of Ruzhdi Saramati, the commander of
17 Brigade 128, who was killed while fighting during the battle of
18 Gorozhup.

19 MS. PERGOLO: And the reference for everyone is transcript of
20 23 October 2023, page 3001.

21 Q. Mark Shalaj also testified that, after his death,
22 Sali Saramati's body was taken to Kukes and that a funeral was held
23 for him, as well as other deceased soldiers, at the Kukes cemetery.

24 MS. PERGOLO: And this can be found at the same transcript,
25 page -- from 3001 to 3004.

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1 Q. So Mark Shalaj also confirmed that this was a big event, a big
2 happening, in fact. So is it your testimony that you never heard
3 about this funeral for this soldier, Sali Saramati?

4 A. I said that he fell. I can't recall the date. And I said that
5 they have been transferred towards somewhere. This is -- that was my
6 answer. But I don't know where to.

7 If a soldier or a commander were to fall in battle, it would
8 have been impossible for all of us to abandon the front line and go
9 and attend the burial ceremony. Somebody had to stay behind, and I
10 was one of those who did not go. I stayed on the front lines.

11 Q. But then, Mr. Gashi, do I understand correctly that you did know
12 that this funeral took place in Kukes; is that correct?

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

14 THE WITNESS: [Interpretation] No, that's not what I said.

15 MR. AOUINI: Sorry, Your Honour --

16 PRESIDING JUDGE VELDT-FOGLIA: I see Defence --

17 MR. AOUINI: -- he never said that. We don't know where he said
18 that. He said the reburial which we understand is after the war,
19 afterwards, in some other place. But he didn't say he was aware of
20 anything that happened after he fell on the front. He's talking
21 about the front where he was, not after it.

22 PRESIDING JUDGE VELDT-FOGLIA: I think that the witness, just
23 before you indicated, already said that he did not say that.

24 So, Madam Prosecutor, you may proceed.

25 MS. PERGOLO: Yes, Your Honours, perhaps I got a little bit

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1 ahead of myself. But the witness said at page 92, these are lines 15
2 to 19, he said:

3 "... it would have been impossible for all of us to abandon the
4 front line and go and attend a burial ceremony. Somebody had to stay
5 behind, and I was one of those who did not go. I stayed on the front
6 lines."

7 And perhaps I -- my understanding was that the witness then did
8 know that the burial ceremony took place, but perhaps I -- as I said,
9 perhaps I had got ahead of myself in this regard. I can ask the
10 witness.

11 PRESIDING JUDGE VELDT-FOGLIA: We can ask the witness. You will
12 get the floor, Mr. Witness.

13 And to the Defence counsel, that is also how I understood it,
14 but we have now heard from the witness that he might have meant it in
15 a different way. So we will just give the floor to Madam Prosecutor
16 to further explore it.

17 MS. PERGOLO:

18 Q. Mr. Witness, can you perhaps clarify. You said -- and, again,
19 I'm going back to what you told us, that you said that he fell, that
20 he died; is that correct? You knew that; right? Right.

21 A. Yes.

22 Q. And then you also talked about a burial ceremony. Is that --

23 A. I did not. You did. You said that there was a burial ceremony.
24 I said I did not know. What I said earlier was that they had been
25 transferred but I did not know where to. Whilst about reburial, I

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1 was referring to the period after the war when people were exhumed
2 and then reburied at Landovice, and that is after the war. Yes.

3 Q. Thanks for the clarification. So then you never heard of a
4 burial ceremony for Sali Saramati at the time of the war? A ceremony
5 taking place at the time of the war, I mean.

6 A. No, I have not heard of it.

7 Q. I'm asking, Mr. Witness, because we know from another Defence
8 witness who came to testify in this trial, Zijadin Hoxha, that many
9 soldiers from Ruzhdi Saramati's brigade participated in this funeral
10 at the Kukes cemetery. He said that they left the front line to
11 attend the funeral and then returned back to the front line.

12 MS. PERGOLO: And this is at transcript 20 November 2023, pages
13 3273 to 74.

14 PRESIDING JUDGE VELDT-FOGLIA: Can we take the document down
15 that's on the screen?

16 MS. PERGOLO: Oh, yes, of course.

17 PRESIDING JUDGE VELDT-FOGLIA: Then we do that.

18 MS. PERGOLO: Absolutely, Your Honours.

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

20 MS. PERGOLO:

21 Q. So, Mr. Witness, again, is it your testimony today that you did
22 not hear let alone participate in this funeral that took place for a
23 fellow Brigade 128 soldier who, like you, fought in Gorozhup during
24 the war? Is that your evidence?

25 A. Yes, this is my evidence. This is something that I said before

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1 as well. I have not heard of it. I have not been present there, but
2 I have remained in the front line. This is what I said. I don't
3 know.

4 Everybody can give their testimony. Zijadin Hoxha or somebody
5 else, I mean, they know for themselves on whether they have gone
6 there or not. Whereas for myself, I can tell you that I have not
7 attended that.

8 Q. Thank you, Mr. Gashi.

9 Mr. Gashi, I would like to go back, in fact, to the document
10 that was previously on the screen discussing the operations in 1999.

11 MS. PERGOLO: Your Honours, if we can have again item number 4
12 of the list of materials.

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

14 With a view to?

15 MS. PERGOLO: To ask a few questions about the timeline. But
16 perhaps before doing that, I will ask the witness a couple of other
17 additional questions.

18 Q. Mr. Gashi, you said today that the commander of Brigade 128 was
19 Ruzhdi Saramati. That was the commander of the brigade; correct?

20 A. Correct.

21 Q. And you also said that you met him a couple of times --

22 A. Yes.

23 Q. -- during the time you were in the war; is that correct?

24 A. Two or three times perhaps. I think this is what I said. Not
25 two times, but two to three times.

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1 Q. Did you meet him upon joining? At the moment you joined, you
2 said, in March, was it one of the occasions in which you met him?

3 A. Yes, that was the first time, at the time that I joined the KLA.
4 And I met him a couple of more times. Two or three times if I'm not
5 mistaken, I've met with him at the front lines.

6 Q. So the first time would have been at the house in Kukes; is that
7 correct?

8 A. Yes, correct. I met with him there only once. I gave my first
9 name, my last name, I took the oath.

10 Q. And do you remember when the other times that you met him at the
11 front lines? When was that again? If you can give us a timeframe.

12 A. From what I remember, once he came and held a meeting for the
13 soldiers. And then there was another time, one or two times during
14 the end of the war. After KFOR left the country, he convened a
15 meeting telling us not to shoot bullets, to keep discipline. I mean,
16 these are the things he talked about.

17 Q. So the time in which he came and he held a meeting for the
18 soldiers, can you describe to us what was that meeting about?

19 A. It was a normal meeting, telling us how to react towards the
20 Serbian forces, these types of things. This was the kind of
21 information that was shared. No other information.

22 Q. So this meeting was held during the fighting, let's say, you
23 said; right? While the fighting was happening and it was explained
24 to you how to react to --

25 A. Yes.

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1 Q. Was he giving combat instructions? Is that what the meeting was
2 about?

3 A. Yes, correct. Because there were no fightings all the time.
4 There were some cease-fires, for one hour, two or three hours. That
5 is what happened.

6 Q. And, again, just to confirm, where did this meeting take place
7 again?

8 A. In Gorozhup. In vicinity to the border.

9 Q. Mr. Gashi, I'm asking these questions about Ruzhdi Saramati
10 because there are evidentiary material in this case indicating that
11 Ruzhdi Saramati, in fact, only came to Gorozhup after 24 May 1999 as
12 he took his position on the third operational direction in the
13 context of Operation Arrow.

14 Can you explain to us how would you have met with him any time
15 before that?

16 A. Can you explain repeat the question once again?

17 Q. Absolutely. There is evidentiary material in this case
18 indicating that Ruzhdi Saramati only moved to Gorozhup after 20 May
19 1999 and this was in the context of a specific operation called
20 Operation Arrow. Have you ever heard about Operation Arrow?

21 A. Yes. So the pseudonym was Brigade Arrow for Brigade 128. So
22 like I said, I have met once for the first time with Ruzhdi when I
23 went to Kukes. So when I went to get registered. But there were a
24 couple of other times that I met him during the fightings. About the
25 exact dates, I can't recall them.

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1 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, just for your
2 information --

3 MS. PERGOLO: Yes.

4 PRESIDING JUDGE VELDT-FOGLIA: -- that we are five minutes
5 before our short break.

6 [Specialist Prosecutors confer]

7 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you have the
8 floor.

9 MR. AOUINI: Thank you, Your Honour. In the meantime, maybe we
10 can request a specific reference of the evidentiary material
11 suggested. Also, the status of the person giving this evidentiary
12 material is relevant to Your Honours, and confirmation from our
13 colleagues that this was the first and -- probably the first time
14 this individual would have gone there, like, that he never went to
15 Gorozhup before, because that can also become relevant.

16 This seems to be elucidating a discrepancy. Well, there is one
17 specific date and the rest is not specific. So from both sides we
18 need to have clarity.

19 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, I see you
20 nodding. You will give -- you will proceed with giving us the
21 references.

22 MS. PERGOLO: Yes, Your Honours. In fact, some of the
23 references that I mentioned are also some of the documents that I
24 would like to put to the witness, so I'm just wary of the time. I
25 don't know whether to embark on this exercise now or whether we could

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1 go into the break maybe a bit earlier and resume a bit earlier so
2 that we don't interrupt the flow of questioning, if that is
3 agreeable.

4 PRESIDING JUDGE VELDT-FOGLIA: Yes, we may proceed in that way.
5 And we have, of course, the day of tomorrow.

6 Can you indicate to the Panel how much time the
7 cross-examination will take in your estimation?

8 MS. PERGOLO: Your Honours, I believe it may take at least
9 another half hour, but I would like to take the break to reassess
10 where I am. I'll provide you a more precise assessment after the
11 break if that is okay.

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

13 And for now, Victims' Counsel, could you already indicate to the
14 Panel if you will be having questions for the witness? At this
15 moment in time, of course.

16 MR. LAWS: I do have some questions. Whether or not they're
17 covered by my colleague for the SPO remains to be seen.

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

19 Then we will -- you would like to say something, Defence
20 counsel?

21 MR. AOUNI: Excuse me, Your Honour. Just to note for the
22 record the use of the Facebook post by another individual, we want to
23 place on the record that we make all our reservations as to the
24 weight that would be given to this person's Facebook post, and this
25 person is not called, we have noticed. Although, the topic is

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1 relevant.

2 And also on the same line, on the same vein, the status of the
3 evidentiary material just referred to, that is suspect evidence,
4 evidentiary material, is also to be taken into account as to any
5 weight to what is the relevance of that. We don't have that witness
6 to test anything with him. So anything put on the basis of those
7 sources has to be considered.

8 We wanted to put that on the record, Your Honour. Thank you.

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

10 Now, we will go for a break for 15 minutes.

11 Madam Court Clerk, could you usher the witness out.

12 Mr. Witness, we see you back in a quarter of an hour. Thank
13 you.

14 [The witness stands down]

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you. The hearing is
16 adjourned till half past 3.00.

17 --- Recess taken at 3.14 p.m.

18 --- On resuming at 3.33 p.m.

19 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. Yes, Mr. Shala is
20 here with us.

21 Can you hear me, Mr. Shala?

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

24 PRESIDING JUDGE VELDT-FOGLIA: Good. Noted. Thank you.

25 We are in the same composition. And on this side too. Yes,

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1 very well. Good.

2 We will proceed with the cross-examination by the Specialist
3 Prosecutor's Office. Can you inform the Panel how much time you
4 think you will be needing?

5 MS. PERGOLO: Yes, Your Honours. I think I believe I will be
6 around 45 minutes or a bit more, so I will cover as much as I can
7 today. And if not, we will continue tomorrow.

8 PRESIDING JUDGE VELDT-FOGLIA: We will. We will continue
9 tomorrow. And for your information, tomorrow we will finalise with
10 some oral orders with relation to our proceedings.

11 Madam Court Clerk, could you please bring the witness in.

12 [The witness takes the stand]

13 PRESIDING JUDGE VELDT-FOGLIA: Welcome back, Mr. Witness. Bear
14 with us a little bit more today. We will continue till 4.00, and
15 then we will proceed with your testimony tomorrow morning again.
16 Yes?

17 I will now give the floor to Madam Prosecutor.

18 Mr. Shala, I cannot ask you now if you can hear the witness.
19 But as soon as the witness starts talking, please raise your hand if
20 you would not hear his voice. Okay?

21 THE ACCUSED: [via videolink] [Interpretation] Yes, I understand.

22 PRESIDING JUDGE VELDT-FOGLIA: Very well. Madam Prosecutor,
23 please proceed.

24 MS. PERGOLO:

25 Q. Welcome back, Mr. Gashi. So during the time you spent in

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1 Gorozhup, did you ever leave the front lines to go somewhere else?

2 A. Personally, no.

3 Q. So you never left for any reason at all?

4 A. I did not. I moved from village to other villages to do checks,
5 and so on and so forth. I moved in the vicinity, in the area, but
6 not elsewhere.

7 Q. Thank you. Did your unit ever move away from the front lines?
8 Your special unit you talked about today.

9 A. No, it didn't.

10 Q. Mr. Gashi, I'm asking you these questions because we heard
11 evidence in this case about certain events and I'd like to put these
12 to you. So, you know, before you were talking about logistics;
13 right? And as I mentioned, we actually had here testifying for the
14 Defence Mark Shalaj, who was the chief of logistics for
15 Operation Arrow.

16 Mark Shalaj told us that Ruzhdi Saramati, who you told us was
17 the commander of Brigade 128, went to the front line in the direction
18 of Gorozhup sometime after 20 May 1999.

19 MS. PERGOLO: And the reference for everyone is at 23 October
20 transcript of hearing pages 2990 to 3001.

21 Q. And Mark Shalaj explained that this happened, so the moving of
22 Saramati's group to Gorozhup, after May, because while there were
23 groups already positioned on the front lines from earlier, the
24 fighting of Operation Arrow in the directions -- that they were not
25 at Koshare. So all of the other directions only started at the end

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1 of May 1999.

2 So, Mr. Gashi, I'm putting it to you that, in fact, there was no
3 fighting in Gorozhup before 20 May 1999, didn't it?

4 A. Yes, there was.

5 Q. Well, Mr. Gashi, Mark Shalaj was the chief of logistics for
6 Operation Arrow and he seemed to have quite extensive knowledge of
7 this operation. He travelled to multiple locations, you know, to the
8 training centres, to the front line, he was also in Koshare himself,
9 and, in fact - and this is reference transcript at 25 October 2023,
10 page 3148 - that in fact the fighting in Koshare, in the Koshare
11 direction, already started in April 1999, but, again, he said that in
12 all other directions the fighting only started at the end of May.

13 How do you explain that, what he told us about the fighting
14 starting only then?

15 A. Everybody is free to say whatever they like. Somebody might
16 come here and say that the fighting only began in June after the
17 arrival of NATO. However, there has always been fighting in the
18 Pashtrik area from March onwards.

19 Q. Well, Mr. Gashi, in fact, I'm putting this to you because
20 Mark Shalaj is not the only one, of course, to say that the fighting
21 happened on the Gorozhup direction only at the end of May. And, in
22 fact, I'm putting to you that you yourself went to Gorozhup only
23 after 20 May and right before that you were in Kukes actually. Isn't
24 that the case?

25 A. I haven't been to Kukes. I said it earlier, too. I was not in

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1 Kukes. I was in Kalimash. I was not in Kukes.

2 Q. Mr. Gashi, you talked today about your special unit, and you
3 mentioned that there were 11 members, 11 to 15 members in it;
4 correct?

5 A. Yes.

6 MR. GILISSEN: I'm sorry. I'm sorry, please.

7 PRESIDING JUDGE VELDT-FOGLIA: Yes, Defence counsel. You have
8 the floor.

9 MR. GILISSEN: Yeah, I would like to provide the witness with
10 the statement of Mr. Shala, because Mr. Shala is talking about the
11 Operation Arrow --

12 PRESIDING JUDGE VELDT-FOGLIA: No, wait, wait, wait. Before you
13 start going into the content, we have to usher the witness out.

14 MR. GILISSEN: Yeah.

15 PRESIDING JUDGE VELDT-FOGLIA: If not, there is no use.

16 MR. GILISSEN: Yeah.

17 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, you will be ushered
18 out in order to be able to discuss what can be put to you in your
19 questioning.

20 [The witness stands down]

21 PRESIDING JUDGE VELDT-FOGLIA: I will give you the floor,
22 Defence counsel, and then I will come back to you, Madam Prosecutor,
23 regarding how to put to the witness your case.

24 Defence counsel, you have the floor.

25 MR. GILISSEN: Yeah, I would like to be sure that the witness

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1 receive a fair information. In my opinion, Mr. Mark Shalaj was
2 talking about the Operation Arrow starts in May, but he never said
3 that there is no fightings before the Operation Arrow.

4 I don't know where lies this information, and I would like to
5 see which document or which statement of Mr. Mark Shala the
6 Prosecutor is using just now. Thank you very much.

7 PRESIDING JUDGE VELDT-FOGLIA: So it's not so much that you want
8 to put the statement to the witness as much as that you want to know
9 the source of the information the Prosecution is putting to the
10 witness.

11 Madam Prosecutor, please can you give the reference. And if you
12 have the document in front of you, you can also read it out to us.

13 MS. PERGOLO: Yes, Your Honour. So the reference is the one I
14 already provided, but I'm happy to repeat. It's the transcript of
15 hearing 25 October 2023, page 3141, and it starts at line 6 -- or,
16 well, 9, we can read it from there. This was a question from
17 Judge Bitti asking:

18 "But what I don't understand is that you're telling me that you
19 met him in April ..."

20 We are talking about Mr. Shala's presence.

21 "... and then he was going to the front, but in April,
22 Operation Arrow did not start in April. So could you clarify?
23 Because I don't follow what you are saying."

24 And then the witness answered:

25 "No, Operation Arrow started in May."

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1 Judge Bitti:

2 "So in April he didn't go to participate in Operation Arrow, so
3 how do you know that in May he was participating in Operation Arrow?
4 I don't understand."

5 And Mark Shalaj answered:

6 "Well, our units were in the positions at all times from the
7 beginning. Although, the fighting itself, Operation Arrow, started
8 in May. That said, the positions were [there] from early on, since
9 his arrival."

10 And this continues.

11 Then at the following page, line 5:

12 "My question is this: To your knowledge, was there soldiers in
13 the front positioned and was there any fighting before the official
14 start of the Operation ... itself?"

15 And the answer:

16 "Yes. In one direction, yes.

17 "Q. Can you help us with which direction or which general area?

18 "A. That was in the Koshare direction. They started off much
19 earlier on, so I think it was around April. And the fighting there
20 had already started earlier on, so I think they started off either on
21 the 9th or 10th April, if I'm not wrong.

22 "Whereas in terms of the other directions, some were -- had
23 already taken their positions, but there was no direct fighting
24 involved up until the beginning of the operation. So they were just
25 preparing. And a small number had already taken their positions,

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1 whereas the others were in training centres preparing for
2 Operation Arrow."

3 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, what is your
4 submission on this or your reaction?

5 MR. GILISSEN: Yeah, we have the same source. I was reading the
6 document that I have it at hand, and I think that -- I submit that
7 Mr. Mark Shalaj is talking about the Operation Arrow and only the
8 Operation Arrow. It doesn't mean that there is no contacts between
9 the different fighters, from the one hand, the Serbian ones and from
10 the KLA on the other hand. And even in March or April, just before
11 the Operation Arrow, I think so we cannot generalise the information
12 about the Operation Arrow, or Shigjeta, on all the fightings, all the
13 contacts. We know that before the Operation Arrow, there were some
14 very hard and rough fightings. Mr. Shala was injured in these
15 fightings, so we have to be careful not to have a strict
16 understanding or interpretation of the word using by Mr. Shala about
17 and only about the Operation Arrow.

18 That's why I say we have to be very careful.

19 PRESIDING JUDGE VELDT-FOGLIA: Is there something
20 Madam Prosecutor wants to add to this discussion?

21 MS. PERGOLO: No, Your Honours. Just to say that Mark Shalaj
22 gave this very clear evidence, and I think we're entitled to explore
23 this with the witness. Mark Shalaj talked -- was appointed in April
24 for this very specific operation. He talked extensively about all
25 the bases he visited for the preparation for this specific operation.

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1 He told us that the fighting in Koshare started in April, but in the
2 other directions there was no fighting during the time he was there.
3 We know he was there since the very beginning of April. So he was
4 the chief officer of logistics and he was informed of the details of
5 these operations. So this is the extent that we believe we are
6 entitled to put to the witness. We believe it's a fair
7 representation of what we said, and we are entitled to explore this
8 with the witness.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 Victims' Counsel, is there something you would like to add --

11 MR. LAWS: No, thank you --

12 PRESIDING JUDGE VELDT-FOGLIA: -- to this --

13 MR. LAWS: -- Your Honour.

14 PRESIDING JUDGE VELDT-FOGLIA: -- discussion? Okay.

15 You may proceed as long as you make very clear to the witness
16 that this is what Mark Shala is saying. And in this same line, when
17 you said to the witness "I put to you," I prefer that you make it
18 more clear that it is the position of the Specialist Prosecutor's
19 Office, that it's your view that he was not there because I don't
20 want to be any unclarity in this respect.

21 MS. PERGOLO: Absolutely, Your Honour. Will do.

22 PRESIDING JUDGE VELDT-FOGLIA: Then we will proceed.

23 Madam Court Officer, could you ask Madam Court Clerk to usher
24 the witness back in.

25 [The witness takes the stand]

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

2 THE WITNESS: [Interpretation] Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: I will give the floor again to
4 Madam Prosecutor, and we have still ten minutes before we conclude
5 today.

6 MS. PERGOLO:

7 Q. Mr. Gashi, so you told us today that you never left the front
8 lines and that your unit never left the front lines. Do you know a
9 person called Idajet Gashi going by the nickname Giga, or Giga?

10 A. Yes.

11 Q. Who is he?

12 A. A soldier from my city, Prizren.

13 Q. Was he also involved in the war with you?

14 A. Not with me.

15 Q. Do you know what unit he was a member of?

16 A. No, I don't.

17 Q. Have you ever met him during the war?

18 A. Once, yes.

19 Q. And where was that?

20 A. It wasn't during active fighting, but it was one day when there
21 wasn't when I met him.

22 Q. And where was this meeting?

23 A. Gorozhup. Near Gorozhup. Near Albania, in a village near
24 there.

25 Q. Can you provide us with a date or a time reference for that?

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1 A. No, I cannot remember.

2 Q. Do you perhaps remember whether it was closer to the beginning
3 of your deployment with the KLA or towards the end, the middle?

4 A. It may have been towards the middle. Not at the beginning,
5 though. Towards the middle, yes.

6 Q. Do you have an idea of what month would that have been, roughly?

7 A. I can't remember. I swear.

8 Q. Mr. Gashi, again, we have evidentiary material indicating that
9 Idajet Gashi was also a soldier in the Brigade 128 under
10 Ruzhdi Saramati. He also fought in Gorozhup, and he was a member of
11 Valbon Collaku's unit whose responsibility was to clear the way at
12 the front lines for other units to proceed.

13 Idajet Gashi first joined the KLA in March or April 1999 in
14 Kukes at the Kukes metal factory.

15 MS. PERGOLO: And I'm happy to provide a reference for this,
16 which is ERN 065236-TR-ET Part 2 RED, page 7, line 9; page 9, lines
17 13 to 15; page 18, lines 21 to 25; and page 19, lines 1 to 3.

18 Q. We have information that after registering and joining at the
19 Kukes metal factory, Idajet Gashi undertook training in Kalimash, and
20 that after some other deployments --

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

22 Thank you. I see Defence counsel standing.

23 You have the floor, Defence counsel. And do we have to usher
24 the witness out?

25 MR. AOUINI: I don't think at this moment.

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1 PRESIDING JUDGE VELDT-FOGLIA: Okay.

2 MR. AOUINI: It's about the references. We have received
3 multiple. They seem to talk about Nashec, not Kukes. So we have
4 received multiple ones. Can we be indicated which reference refer to
5 Kukes, this specific point we are talking about, please?

6 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness.

7 THE WITNESS: [Interpretation] Madam Prosecutor is asking a
8 question and not allowing me to give an answer. She asked me if I
9 knew Giga or whatever his pseudonym was. However, as far as I know
10 that person, he was not part of my platoon. That is what I had to
11 say.

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

13 Madam Prosecutor, could you give -- could you answer the
14 question of Defence counsel? And we are almost at the end of today's
15 hearing.

16 MS. PERGOLO: Yes, Your Honours. Some of the references are
17 page 30, line 13, to page 32, line 24. And then there is also
18 page 20, lines 17 to 18; page 22, lines 8 to 21; page 4, lines 19 to
19 20. I believe all of this covers the topics that I'm now asking the
20 witness about.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay. But my understanding was
22 that, Defence counsel, you were asking for a specific reference to
23 Kukes, but apparently it's a broader issue the Prosecutor is
24 covering.

25 MR. AOUINI: Yes, Your Honour, and that's the problem, because

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1 the question now is about Kukes and mobilising in Kukes. For this
2 individual, we received a panoply of references that goes from
3 Gorozhup to Nashec to Kukes. This is not a witness in our case. We
4 don't know what this person has said, whether he was in the same
5 battalion before or not or after. We just get a few references here
6 and there. And this is not a witness. We cannot test it. We don't
7 know that much about it because we have bits and pieces of lines and
8 pages of certain things.

9 But I see that in page 20, at least, the last reference I
10 captured, page 20 there is a reference that this individual signed up
11 first in Kukes.

12 "Where did you" --

13 PRESIDING JUDGE VELDT-FOGLIA: But wait --

14 MR. AOUINI: -- "first sign up?"

15 PRESIDING JUDGE VELDT-FOGLIA: Wait. The witness is here. So
16 if you're going to cite --

17 MR. AOUINI: That was the question --

18 PRESIDING JUDGE VELDT-FOGLIA: If you're going to cite, then we
19 cannot discuss it in front of him.

20 I think our time is up.

21 Mr. Witness, we will continue with your cross-examination
22 tomorrow. Thank you very much for giving your testimony today. I
23 remind you that you shall not discuss your testimony before the
24 Specialist Chambers with anyone. See you in courtroom again
25 tomorrow, and I hope you can get some rest this evening. Thank you.

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1 Madam Court Clerk --

2 THE WITNESS: [Interpretation] Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: -- will assist you out of the
4 courtroom.

5 [The witness stands down]

6 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, what is your
7 concrete request to the Specialist Prosecution Office for tomorrow?
8 And then I can see how to rule on that, if needed.

9 MR. AOUINI: Your Honour, for each evidentiary material, since
10 now our objection is rejected, that they give us the specific
11 reference as a basis of that question. That this individual signed
12 up in Kukes now we found. But we received a panoply of references
13 which doesn't help us to follow.

14 But it's also to verify that we are talking about the same
15 timeframe, about the same issues, because on the same page we see
16 that this person was part of two brigades, and he mentions five or
17 six places where he was in a period of a month and a half in the
18 front and Gorozhup. So maybe we need to know a little bit more to be
19 able to follow this. And that comes to our issue, which is using the
20 statements of individuals that are not witnesses in our case.

21 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] ...
22 going to go into that because we have rejected your objection.
23 However, I trust that the Prosecution service takes on board to be --
24 with regard to the specific questions to give specific references.
25 I'm sure that that will not be a problem tomorrow.

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1 So, yes, then we leave it here. Before I adjourn the hearing
2 for today, is there anything the Specialist Prosecutor's Office would
3 like to raise with us?

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

5 PRESIDING JUDGE VELDT-FOGLIA: Very well.

6 Victims' Counsel?

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

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Defence counsel?

10 MR. GILISSEN: No, thank you very much.

11 PRESIDING JUDGE VELDT-FOGLIA: Okay.

12 Very well. Then we proceed with our hearing tomorrow. And I
13 wish you a good evening, and we adjourn for today.

14 --- Whereupon the hearing adjourned at 4.01 p.m.

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