

1 Wednesday, 10 January 2024

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.31 a.m.

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

6 Court Officer, can you please call the case.

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

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 I see that on my right-hand side we are in the same composition.
12 And on the left-hand side, I see a slight change.

13 Defence counsel, you have the floor.

14 MR. GILISSEN: Yes, Your Honour. Thank you very much.

15 Mr. Shala is with us. It is the same team except Ms. Chen, who is
16 with us today. Thank you very much.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much. We note
18 that. Very well.

19 Mr. Shala, good morning. Can you confirm that you hear me well?

20 THE ACCUSED: [via videolink] [Interpretation] Good morning. I
21 can hear you very well. Thank you.

22 PRESIDING JUDGE VELDT-FOGLIA: Good. Today we continue with the
23 testimony of Defence Witness 4405, which is Mr. Safet Gashi. We will
24 sit for three regular sessions, and we have our regular breaks, in
25 principle.

1 Before we proceed with the witness testimony, we will give an
2 oral order concerning the Prosecution's supplemental rule notice,
3 Rule 102(3), that is filing 758, which is dated 8 January of this
4 year.

5 And considering the limited numbers of items, we will proceed as
6 follows in order to ensure that the Defence receives the material
7 promptly if they so request.

8 The Defence shall indicate to the SPO which items among the
9 items listed in the notice it seeks to have access to, if any, of
10 course, by way of disclosure or inspection, by today at 1.00.

11 And then the SPO shall provide access to the selected material
12 that does not require redactions by Thursday, 11 January, at 1.00.

13 And should the Defence seek access to and disclosure of
14 Rule 102(3) material that requires redactions, the SPO shall make a
15 request to the Panel by the same day, so Thursday, 11 January, at
16 1.00.

17 Should the SPO wish to dispute the materiality of the evidence
18 indicated by the Defence, it shall seize the Panel by today.

19 And this concludes our oral order.

20 So we can proceed with the testimony of the witness.

21 Court Clerk, could you please usher the witness into the
22 courtroom.

23 MR. AOUINI: Good morning, Your Honour.

24 PRESIDING JUDGE VELDT-FOGLIA: Good morning.

25 MR. AOUINI: Thank you. Just to note for the record that we

1 already requested all the items that are in the notice yesterday, so,
2 yes.

3 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good.

4 MR. AOUINI: Yeah, there are not so many so we requested all of
5 them. We believe they are relevant for us. So I think it's -- the
6 ball is on the hands of the SPO now --

7 PRESIDING JUDGE VELDT-FOGLIA: Very well.

8 MR. AOUINI: -- for disclosure or disputing or redaction. Thank
9 you, Your Honour.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you for this information.
11 Noted.

12 MS. PERGOLO: And, Your Honours, we owe some references to the
13 Defence and the Panel, and I'm happy to provide them now or later, at
14 any other point. I just wanted to come back to that.

15 PRESIDING JUDGE VELDT-FOGLIA: Very well. I would say at a
16 later point because if the witness comes in and we are talking --

17 MS. PERGOLO: Absolutely.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 [The witness takes the stand]

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

21 THE WITNESS: [Interpretation] Good morning.

22 PRESIDING JUDGE VELDT-FOGLIA: How are you today?

23 THE WITNESS: [Interpretation] Very well. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Good.

25 Mr. Shala, can you hear the witness?

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

3 PRESIDING JUDGE VELDT-FOGLIA: Good.

4 Mr. Witness, I remind you that you're still under oath to tell
5 the truth. Do you understand that?

6 THE WITNESS: [Interpretation] Yes, I do.

7 WITNESS: SAFET GASHI [Resumed]

8 [Witness testified through interpreter]

9 PRESIDING JUDGE VELDT-FOGLIA: Good.

10 I will now give the floor to Madam Prosecutor to continue the
11 cross-examination by the Specialist Prosecutor's Office.

12 Madam Prosecutor, you have so far used one hour and 16 minutes
13 for your questioning of the witness. It's close to the time used by
14 the Defence. They have used, to be exact, one hour and 22 minutes in
15 total. We will allow you to go over with the questioning of the
16 witness as long as we see the relevance with a view to the
17 determination of the truth.

18 You may proceed.

19 MS. PERGOLO: Thank you, Your Honours.

20 Cross-examination by Ms. Pergolo: [Continued]

21 Q. Good morning, Mr. Gashi.

22 A. Good morning.

23 Q. I'd like to start by asking a few questions on times, timelines.
24 So, Mr. Gashi, yesterday you told us that you were in Kosovo until
25 February or March "when we were evicted to Albania by the Serbian

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1 forces." And this is transcript page 3899, lines 5 to 6.

2 You also stated that you left Kosovo about three days after your
3 family had left for Albania. And this is at the same page, 3899,
4 lines 18 to 19.

5 Do you remember saying that?

6 A. Yes.

7 Q. Do you recall a particular event that preceded your family's and
8 your departure from Kosovo?

9 A. No.

10 Q. This eviction of your family at the hands of the Serbian forces,
11 did it happen before or after the NATO bombing?

12 A. I can't remember.

13 MS. PERGOLO: Your Honours, can I perhaps then refresh the
14 witness's memory in this regard with his prior statement?

15 PRESIDING JUDGE VELDT-FOGLIA: Please proceed, Madam Prosecutor.

16 MS. PERGOLO: May I have then 063317-TR-ET Part 1 RED2, page 14,
17 lines 18, 19 on the screen, please.

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

20 MS. PERGOLO:

21 Q. Mr. Witness, what you see in front of you is the English
22 version, so I'll read it in English and then the translators will
23 translate for you. So line 17, you said:

24 "Let me be clear. When the bombing started, my family went to
25 Albania, fled to Albania, and I went to fight in the war. When NATO

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1 started bombing the place, I joined the war."

2 MS. PERGOLO: May I also have, just for the context, page 12,
3 lines 17 to 21. Can we maybe zoom out a bit. Is this page 12? Can
4 we move up a little bit?

5 Apologies, this is actually Part 2, not Part 1. If we can
6 please have the second part of the statement, the same ERN number.

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

9 MS. PERGOLO: So page 12. Okay. Thank you. Line 17.

10 Q. And, again, Witness, I'm reading here from the SPO interview:

11 "During the first two or three days when NATO started bombing,
12 my family remained in Kosovo. I remained there too. I hadn't joined
13 the war yet. I'd gone into town to buy some cigarettes. When I got
14 back home, my family had already left to go to Albania. I joined the
15 KLA that very day."

16 Mr. Gashi, does that refresh your memory as to a specific event
17 that happened when your family left then?

18 A. Yes, it does. As I said it earlier, I couldn't recall it, but
19 what's said in here is accurate. Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, I remind you that
21 you are here to tell the truth and not to withhold anything about
22 what you know.

23 THE WITNESS: [Interpretation] Nothing.

24 PRESIDING JUDGE VELDT-FOGLIA: Yes. It just raises some
25 questions that something that apparently is so important was so

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1 difficult for you to recall.

2 Please proceed, Madam Prosecutor.

3 MS. PERGOLO: Thank you.

4 Q. So, Mr. Gashi, you confirm that this leaving Kosovo was after
5 the NATO bombardment, which we understand to have started on 24 March
6 1999. So would it be fair to say that you went to Albania on or
7 around the end of March 1999?

8 A. Yes.

9 Q. Thank you very much.

10 MS. PERGOLO: And, Your Honours, this document can be taken
11 down. Thank you.

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

13 MS. PERGOLO:

14 Q. Mr. Gashi, I'd like to clarify something else with you. How
15 many times did you go to Kukes during the period of the war?

16 A. As I said yesterday when answering to this question, only once.
17 It happened only once. I can't recall the date. I just went there
18 to enroll, was issued a uniform, and from there I went to Kolsh or
19 Kalimash.

20 Q. Well, Mr. Gashi, in fact, yesterday during the examination by
21 Defence counsel, you said that you went to Kukes in the month of
22 March 1999 together with five or six comrades to get armaments,
23 weapons. On that occasion, you paused briefly in Kukes to rest, and
24 then you went to Kolsh or Kalimash. And this can be found at
25 transcript page 3911, line 20, to page 3912, line 2.

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1 Do you remember saying that?

2 A. Yes, that's accurate.

3 Q. Then you also explain that in Kukes you received your uniform,
4 and that was the time when you gave your personal details to
5 Commander Ruzhdi Saramati and took the oath in the one-storey
6 building. And this was at page 3956, line 23, to page 3957, line 24.

7 Do you remember saying that?

8 A. Yes, and it's accurate.

9 Q. Thank you. So this takes us to two separate and distinct
10 occasions when you were in Kukes during the war, does it not?

11 A. Yes.

12 Q. However, yesterday you also said something else, again in
13 response to a question from Defence counsel, about joining the KLA.
14 Because then you said - and this is at page 3906, lines 16 to 21 -
15 that you went from Prizren directly to Gorozhup. You said from
16 Prizren you went directly to Gorozhup.

17 This is very different from what you told me, isn't it?

18 A. No, you may have misunderstood it. I went -- first of all, I
19 went to Kukes, from Kukes to Kalimash, and from Kalimash we went to
20 Gorozhup, and that was approximately seven to ten days later. That
21 is what I stated.

22 Q. So then, first of all, Mr. Witness, can you clarify why then you
23 told counsel, Mr. Gilissen, that from Prizren you went directly to
24 Gorozhup? You said that yesterday at the page I said before. Can
25 you explain that?

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1 A. No, what I said was to Kukes. That is where I enrolled, was
2 issued a uniform, and from there we went to Kolsh or Kalimash.

3 Q. Well, perhaps maybe I can just read the full passage.

4 MS. PERGOLO: If that is okay with Your Honours. Just to --

5 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

6 MS. PERGOLO: Thank you. So this is, again, page 3906, line 16.

7 Q. And counsel said:

8 "Thank you. Do I have to understand that you start from the
9 Kosovo to Gorozhup immediately or you make a trip to some other
10 places?

11 "A. At Gorozhup.

12 "Q. From Prizren directly to Gorozhup?

13 "A. Yes."

14 So this is not the same as you're saying today, Mr. Witness, is
15 it?

16 A. Maybe I did not understand the question that Mr. Counsel asked
17 me.

18 PRESIDING JUDGE VELDT-FOGLIA: The question seems very clear.
19 Please proceed, Madam Prosecutor.

20 MS. PERGOLO:

21 Q. You know, Mr. Gashi, actually, yesterday you had initially told
22 Mr. Gilissen the same story that you told me in the afternoon, that
23 is, going to Kukes before Gorozhup. And this can be found at
24 page 3901. But then you suddenly change your story once Mr. Gilissen
25 reminded you about your previous statement to the SPO. Isn't this

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1 the case?

2 A. That's right.

3 Q. Is it right that you suddenly changed your story yesterday? Is
4 that what you're saying now?

5 A. No, no. I did not understand the question. I said it before
6 the Trial Chamber. And as I said, this was in March, I can't recall
7 the exact date, but I went to Kukes where I was issued a uniform, and
8 from there we went to Kolsh or Kalimash. I did not understand very
9 well the question asked by counsel.

10 Q. But the question was very clear, Mr. Gashi. Counsel asked you
11 whether you went directly from Kosovo to Gorozhup and you said yes.
12 I don't know what -- what was unclear to you in that question?

13 A. Maybe I did not understand the question very well, and I'm
14 stating this for the third time. I went to Kukes, was issued a
15 uniform, and we were taken to a place about 30 or 40 kilometres away
16 from Kukes. I can't recall the exact distance.

17 Q. Mr. Gashi, you see, in your SPO statement, in fact, you'd gone
18 so far as to say that during your deployment with the KLA you had
19 never been to Kukes. You had never set foot in Albania. Do you
20 recall saying that in 2019?

21 A. I did. I accept it. But what I meant to say was that I have
22 not been to Kukes but not Albania. Let's make it clear. As I said,
23 I spent about an hour or two in Kukes altogether and no more.

24 Q. I'm afraid you did not say that, Mr. Gashi. And perhaps at this
25 stage I'd like you to maybe read what you said to the SPO in 2019.

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1 MS. PERGOLO: If Your Honours allow.

2 PRESIDING JUDGE VELDT-FOGLIA: Please proceed, Madam Prosecutor.
3 You can give the reference to Madam Court Officer.

4 But before you do that, I give the floor to Defence counsel.
5 Defence counsel, you have the floor.

6 MR. AOUMINI: Thank you, Your Honour. Just to suggest, since we
7 don't have a transcript in Albanian, maybe that we put the portion,
8 the original portion of the audio so maybe the witness listens to the
9 original language. But if it is technically too difficult, maybe we
10 can --

11 PRESIDING JUDGE VELDT-FOGLIA: No, I don't think that is
12 necessary. I don't have any issue with our interpretation unit.

13 MR. AOUMINI: No, not our -- it's just that we don't have a
14 transcript produced in Albanian, so the only option would be the
15 audio. But we won't press too much. We know that it could be
16 technically difficult to find the portion in the audio.

17 PRESIDING JUDGE VELDT-FOGLIA: We will not proceed in that way.

18 MR. AOUMINI: Okay. Thank you.

19 MS. PERGOLO: Your Honours, may I have 063317-TR-ET Part 2 RED2,
20 page 10.

21 PRESIDING JUDGE VELDT-FOGLIA: Please proceed,
22 Madam Court Officer.

23 MS. PERGOLO:

24 Q. So, Mr. Gashi, this is what you told the SPO in 2019, and starts
25 at line 11:

1 "Q. Our understanding is that some of the 128 Brigade assembled
2 near the border but in Albania before starting, initiating the
3 operation.

4 "A. I don't know this. You can tell her she's right, they must
5 have come from Albania. But my two feet have never stepped on
6 Albanian soil. Never."

7 A. What I meant to say, Madam Prosecutor, was Kukes. I must have
8 been taken aback and put it the way it is, and I accept it.

9 Q. Well, Mr. Gashi, you talked about Albanian soil. Not really --
10 we're not discussing here about the Kukes headquarters or anything
11 like that. You were talking about Albanian soil, weren't you?

12 A. I accept it, yes.

13 Q. Mr. Gashi, you said today in answer to my questions that you
14 confirmed that you went to Kukes, so to Albania, twice during the
15 war; is that correct?

16 A. Once. As I said earlier, only once.

17 Q. Well, actually, I presented you with two distinct instances:
18 The time when you went to register, when you took the oath with
19 Commander Saramati; and then you talked about another occasion, the
20 one when you went with five or six comrades to get some weapons.

21 A. It's on the same day. It's the same day in March, the day when
22 we went there from Kosovo. It is the same day.

23 Q. Well, from the way you described these two moments, they appear
24 to be two distinct occasions, and the way you spoke about them
25 appears to be distinct. One in which you took the oath, and you

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1 never spoke yesterday about any weapons there, and then the time when
2 you were passing through Kukes and when you got the weapons, didn't
3 you?

4 A. Madam Prosecutor, all this event happened on the very same day
5 as I mentioned it. From Kosovo, we went to Kukes where we were
6 issued with the uniform and weapons that did not contain any
7 ammunition, because some people were able to use them and some not.
8 That happened on the same day.

9 Q. But then -- and then I'll close it here on this. But,
10 Mr. Gashi, then didn't you just confirm before when I asked you
11 specifically whether these were two distinct occasions, and you said
12 that they were two distinct occasions - this is at page 8 of today's
13 transcript - didn't you?

14 A. No, that's not what I said.

15 Q. Well, you did say that, actually, lines 10 through 12. And
16 this -- and this is, I'm reading back from the transcript, I said,
17 line 10:

18 "Thank you. So this takes us to two separate and distinct
19 occasions when you went -- when you were in Kukes during the war,
20 does it not?"

21 And you answer:

22 "Yes."

23 So didn't you just say that? Are you now changing your version
24 again of the events?

25 A. Madam Prosecutor, it looks like we're not understanding each

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1 other very well, and I'm stating the truth here. I went to Kukes
2 only once and I went from Kosovo, and that all happened on the same
3 day.

4 Q. Thanks, Mr. Gashi. Then I have another question.

5 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor.

6 THE WITNESS: [Interpretation] Yes, please.

7 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness.

8 THE WITNESS: [Interpretation] Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: Please try to answer as accurate
10 as possible as you can in order to avoid that we have any kind of
11 misunderstandings. Do you understand that? Because our --

12 THE WITNESS: [Interpretation] Yes, I do. Yes, I do.

13 PRESIDING JUDGE VELDT-FOGLIA: The weighting of your testimony
14 will be done at a later stage. But I urge you to tell the truth
15 because here we are on, I would say, a fact-finding, a truth-finding
16 mission. And if you're not accurate in your answers, it becomes very
17 difficult. And you have been presented with some possible
18 discrepancies between your prior statement you gave to the SPO and
19 what you said in court, and we will assess that later, but it raises
20 some questions, some serious questions as to what is the truth here
21 now.

22 So I just wanted to remind you of that. And not -- no, you need
23 not to comment on that. I just wanted to remind you. No, you will
24 not be given the floor, and I will now give the floor to
25 Madam Prosecutor.

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1 Madam Prosecutor, you have the floor.

2 MS. PERGOLO: Thank you. Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, the prior
4 document is still up. Do you want to use that?

5 MS. PERGOLO: No, no, we can pull the document down.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7 Madam Court Officer, can you pull it down, please?

8 MS. PERGOLO:

9 Q. Mr. Gashi, I have just one last point on this. You said this
10 was one same episode. But, in fact, again, the way you described
11 this episode yesterday is quite different in the sense that when you
12 mention going to Kukes to get these weapons, you mention going there
13 in convoys to get weapons. So you must have joined the KLA at that
14 point already. Again, aren't we talking here about two different
15 occasions in which you went to Kukes?

16 A. No, we are not, Madam Prosecutor. It's the same case. I said
17 it yesterday that in convoys we were sent to Kukes, we were issued
18 weapons, and that was the single time that I was in Kukes,
19 Madam Prosecutor.

20 Q. Mr. Gashi, then I want to then ask you something else. Why --
21 we read this earlier. Why in 2019 did you deny having been in
22 Albania to the SPO? What reasons did you have to deny even just
23 passing through Kukes to get your uniform? Can you explain that to
24 us?

25 A. Like I said before, I was taken aback. I wanted to say in Kukes

1 but instead I said in Albania. Because I've been in Albania in 1999.
2 So that's what happened.

3 Q. Well, you've been asking about -- you were asked about Albania,
4 about Kukes, about the Kukes metal factory at multiple points in that
5 interview, and you reiterated that you were never there. Was there a
6 reason why you said you were never in Albania during the war?

7 A. That's true.

8 Q. That is true what? Sorry, Mr. Witness. Maybe I am not
9 understanding you at this point.

10 A. It's true that in 2019 the question that was asked of me was
11 related to Kukes and to some factories, but the true thing is that I
12 have not been there. I have only been to Kalimash or to Kolsh.

13 Q. My question was actually a little bit different, Mr. Witness.
14 My question was why you mention never being to Albania and to a
15 specific location in Kukes.

16 A. This is the third time that I am repeating the answer to you. I
17 was confused. I wanted to say or I meant to say that I haven't been
18 to Kukes. I've been to Kalimash or Kolsh. I don't know the exact
19 name, but that's where I've been.

20 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, I just want
21 to -- look, Mr. Witness, as I told you before, I'm not going to weigh
22 your evidence -- your testimony here in court now. We are just
23 listening to you. But you said at several occasions, like
24 Madam Prosecutor has said:

25 "My two feet have never stepped on Albanian soil. I was not in

1 Albania."

2 And then talking about your family:

3 "Did you ever visit them in Kukes?

4 "No. How could I enter there?"

5 And I will not say more. So for us, it's difficult to
6 understand -- and I'm here to understand you, I have no other job to
7 do today. I'm here to understand your explanation that there was
8 confusion, because it's very difficult to deduce from this that there
9 is confusion if you say the same thing on different occasions.

10 Do you understand our position here? We are not here to trap
11 you or anything. I just want to understand what you're telling us.
12 So now you have the floor to explain to us this confusion. Where is
13 this confusion? Please help me understand.

14 THE WITNESS: [Interpretation] Your Honour, I said it before, I
15 was confused. I just meant to say that I did not remain in Kukes,
16 but the fact of the matter was that instead of mentioning Kukes, I
17 said Albania. So this is the answer that I have been giving for the
18 third time now.

19 PRESIDING JUDGE VELDT-FOGLIA: Yes, you are giving it for the
20 third time, but you are still not explaining why on several different
21 moments in time it was not the same -- apparently it's a continuous
22 confusion, and I'm trying to understand that. Only that.

23 But my question was clear. You have given your answer for now.
24 And I will give the floor back to Madam Prosecutor. Thank you.

25 Madam Prosecutor, you have the floor.

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1 MS. PERGOLO: Thank you, Your Honours.

2 Q. So, Mr. Gashi, you told us today that you received the weapons
3 and uniform in Kukes. Is that what you told us today; right?

4 A. Yes, that's true.

5 Q. But, again, see, that's not what you told the SPO in 2019,
6 because at the time you said that you received your uniform and
7 weapon in Gorozhup. Didn't you say that?

8 A. I don't remember this.

9 MS. PERGOLO: Your Honours, may I use again a prior statement to
10 refresh the witness's memory on this point?

11 PRESIDING JUDGE VELDT-FOGLIA: Yes, you may proceed.

12 Madam Court Officer, as soon as you have the reference, you may
13 pull it up.

14 MS. PERGOLO: Thank you. Can I have then the ERN number
15 063317-TR-ET Part 1 RED2, page 11, lines 19 to 21.

16 Q. Mr. Gashi, at the time you were asked:

17 "You said you received uniforms and weapons. Was it right there
18 at that moment that you were given uniforms and weapons?"

19 And you answered:

20 "Yes, yes, in Gorozhup."

21 A. Madam Prosecutor, I don't know how somebody can join the war
22 without having weapons. I'm telling you the truth, and the truth is
23 that I have taken the weapons in Kukes.

24 Q. Well, Mr. Gashi, perhaps you can tell us how someone can join
25 the war without weapons, because you have been in the war. So how is

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1 it possible then? How do you explain that?

2 A. Yes, Madam Prosecutor, I can explain that to you. The war in
3 Kosovo has been over for 25 years now. Therefore, it is impossible
4 for me to mention the exact dates, where, when, because things can be
5 forgotten all the time.

6 Q. Well, Mr. Gashi, getting weapons and uniforms doesn't seem a
7 detail for a soldier in a war but ...

8 PRESIDING JUDGE VELDT-FOGLIA: Can we pull document down?

9 MS. PERGOLO: Yes. Yes, Your Honours. Thank you.

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

11 MS. PERGOLO:

12 Q. Again, Mr. Gashi, would you agree with me that there is quite a
13 difference between what you said to the SPO in 2019 and what you told
14 us today?

15 A. There can be a difference. I accept that. However, it's
16 possible for people to forget. Because I have been here in September
17 2019, whereas I thought that I was here in April 2019 instead of
18 September. So one can forget. Five years have passed by. Because
19 now we are talking about events that have happened 25 years ago. I
20 have forgotten.

21 Q. Thank you, Mr. Gashi. I'll move on to another area. Yesterday
22 you were asked by the Defence about training with the KLA, and you
23 said twice that you only received training in Gorozhup.

24 And this was at page 3909, lines 1 to 3; page 3909, from line 24
25 to page 3910, line 1.

Witness: Safet Gashi (Resumed) (Open Session)
Cross-examination by Ms. Pergolo (Continued)

Page 4019

1 Then in cross-examination you said that you trained in Kalimash.
2 You said that you were trained on how to use the long arms, the
3 mines, the bombs. And this is at page 3960, lines 8 to 10.

4 Do you remember saying that yesterday? Sorry, Mr. Witness, I
5 didn't hear your answer.

6 A. I remember that very well. We were trained in Kalimash but in
7 Gorozhup as well. So we had some training in both locations. That's
8 true, Madam Prosecutor.

9 Q. However, Mr. Witness, you said something quite different in your
10 SPO statement again in 2019. Then you said that actually you didn't
11 train at all. You said you were a hunter, that you knew how to use
12 weapons, that you didn't have time to do training because you were at
13 war. Do you remember that?

14 A. That's true.

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

16 MS. PERGOLO: Absolutely, Your Honours. The reference is 0 --
17 again is the prior statement of the witness, 063317 Part 1 RED2,
18 page 11.

19 PRESIDING JUDGE VELDT-FOGLIA: I would like to have that called
20 up.

21 MS. PERGOLO: Yes, of course. It's, sorry, line 22 of page 11.
22 Shall I read it, Your Honours?

23 PRESIDING JUDGE VELDT-FOGLIA: I think that is instructive for
24 the witness.

25 MS. PERGOLO:

Witness: Safet Gashi (Resumed) (Open Session)

Page 4020

Cross-examination by Ms. Pergolo (Continued)

1 Q. So, Mr. Gashi, you were asked on that occasion:

2 "Q. Did you receive any training?"

3 And you answer:

4 "The people that knew how to use a weapon didn't need to receive
5 any training. I didn't need to receive any training myself, because
6 I was a hunter before the war."

7 MS. PERGOLO: And if we could please move to page 12, the
8 following page.

9 Q. And then you were asked:

10 "What about training as a soldier? It's different than being a
11 hunter."

12 And you answer:

13 "Yes, yes, but I didn't train. I didn't receive training."

14 MS. PERGOLO: And if we can scroll further down on the same
15 page, line 19.

16 Q. And then you were asked again:

17 "What about just military, you know, formations, how to
18 communicate between different units? Regular armies are taught all
19 sorts of things about how to operate as an army. Were you taught any
20 of those things?"

21 And you answer:

22 "No, because it was wartime and we didn't have many
23 opportunities to train at all."

24 So, Mr. Gashi, how is it that in 2019 you said you didn't train
25 at all, but today you're saying that actually you trained in two

Witness: Safet Gashi (Resumed) (Open Session)
Cross-examination by Ms. Pergolo (Continued)

Page 4021

1 locations, both in Albania and in Kosovo? Why is that?

2 A. Yes, that's true. It's true that I've been trained. I accept
3 that. But I haven't been trained that much, because the people that
4 knew how to use weapons, like I said yesterday, those people could
5 join the war immediately without having any further experience with
6 the army. That is something that I said yesterday as well.

7 Q. Yes, but you didn't really answer my question. My question was
8 why did you say -- or did you not say in 2019 that you did train?
9 Why did you deny that to the SPO? You said: No, I didn't train.
10 You said that twice.

11 A. That's true. I've forgotten. That's the reason.

12 Q. And why did you say that you didn't train? Is there an
13 explanation for that?

14 A. I have forgotten. This is what I said. So I have forgotten to
15 give you that detail in the interview of 2019. We had some training,
16 but we didn't train for longer than a week. It was about a week to
17 ten days. That is something that I said yesterday as well.

18 Q. Well, you had forgotten then but you are remembering now. And,
19 again, as we've seen, you've been asked actually more than one time
20 during that interview, and you seem to have been very assertive about
21 not being trained at all at the time, weren't you?

22 A. Yes, that is true. But I have forgotten to tell you about this.
23 I told you yesterday, nonetheless, that I have been trained,
24 Madam Prosecutor.

25 Q. Thank you, Mr. Gashi.

1 MS. PERGOLO: Your Honours, for the next questions can we please
2 move into private session if we have -- yes, please.

3 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you
4 bring us into private session, please. And can we bring the document
5 down, please.

6 [Private session]

7 [Private session text removed]

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

Page 4024

Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

Page 4033

Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

Page 4037

Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

Page 4039

Cross-examination by Ms. Pergolo (Continued)

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Witness: Safet Gashi (Resumed) (Private Session)

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Cross-examination by Ms. Pergolo (Continued)

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15 [Open session]

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

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

18 Mr. Witness, we are now going to have a break. We will resume

19 at 11.35. Take some rest and then we will continue afterwards.

20 Thank you for your efforts now.

21 THE WITNESS: [Interpretation] Thank you, Your Honour.

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

23 [The witness stands down]

24 PRESIDING JUDGE VELDT-FOGLIA: What we will do is we will now

25 break, but then afterwards, I will go into private session and you

1 will be able to put your comment on record.

2 And then at the beginning of -- just after the break, I will
3 also ask you to give us your references that you wanted to give us
4 earlier today. Yes? That's -- yes?

5 MS. PERGOLO: Yes, Your Honours.

6 MR. AOUINI: Yes, Your Honours. Maybe we can do it in public
7 also, the comments.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. But then we do everything
9 together --

10 MR. AOUINI: Yes.

11 PRESIDING JUDGE VELDT-FOGLIA: -- and then we take now the
12 break.

13 MR. AOUINI: Yes, absolutely.

14 PRESIDING JUDGE VELDT-FOGLIA: The hearing is adjourned.

15 --- Recess taken at 11.04 a.m.

16 --- On resuming at 11.35 a.m.

17 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. Let me see. Yes.
18 SPO's in the same composition, Victims' Counsel too. And here, we
19 have one person less or missing?

20 MR. AOUINI: Hello, Your Honours. Ms. McKay is performing work
21 in the office, so she's not with us here in the courtroom. Thank
22 you.

23 PRESIDING JUDGE VELDT-FOGLIA: Very good. We note that with
24 respect to who is present in the courtroom. Very well.

25 Yes. I will first give the floor to the Defence in order to put

1 on record the submission they wanted to make.

2 MR. AOUINI: Thank you, Your Honour. And after reflecting,
3 because we're going to give a couple of examples, we might need to go
4 to the private session to give it justice. Thank you.

5 PRESIDING JUDGE VELDT-FOGLIA: Very well.

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

7 [Private session]

8 [Private session text removed]

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1 [Open session]

2 THE COURT OFFICER: Your Honours, we are back in public session.
3 Thank you.

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

5 Madam Prosecutor, please, you have the floor to provide us with
6 the reference.

7 MS. PERGOLO: Yes, Your Honours. Thank you. So this part was
8 discussed yesterday at transcript page 3995, lines 8 to 14. And with
9 regard to Idajet Gashi being part of Brigade 128 under
10 Ruzhdi Saramati, the reference is ERN 065236-TR-ET Part 2 RED,
11 page 8, lines 1, 2.

12 On Idajet Gashi being in Valbon Collaku's unit, it's the same
13 ERN number, page 9, lines 11 to 15.

14 On joining the KLA at the Kukes metal factory, the same ERN,
15 page 22, lines 6 to 19.

16 On fighting in Gorozhup, the same ERN, page 27, lines 11 to 13;
17 and page 30, lines 16 to 17.

18 On being in Kukes before going to Gorozhup, the same ERN,
19 page 30, lines 12 to 25.

20 And on being on the de-mining unit under Valbon Collaku, the
21 same ERN, page 19, lines 1 to 3.

22 And these were all the references, Your Honours.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Defence counsel, if there is something missing, then I will hear
25 from you. Thank you.

Witness: Safet Gashi (Resumed) (Open Session)
Questioned by Victims' Counsel

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1 Good. Then we proceed with the testimony of Witness 4405.

2 Madam Court Clerk, could you please bring the witness into the
3 courtroom. Thank you.

4 [The witness takes the stand]

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

6 THE WITNESS: [Interpretation] Thank you.

7 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, did you hear the reply
8 of the witness?

9 THE ACCUSED: [via videolink] [Interpretation] Yes, I did.

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

11 Mr. Witness, we have concluded your questioning by the
12 Specialist Prosecutor's Office, and we will now proceed with the
13 further examination. I will now see if Victims' Counsel has
14 questions for you.

15 Victims' Counsel, would you like to proceed with an examination?

16 MR. LAWS: Yes, please, Your Honours, I would. Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: Very well.

18 Mr. Witness, the floor is now given to Victims' Counsel for his
19 questioning.

20 You have the floor.

21 Questioned by Victims' Counsel:

22 Q. Good morning, Mr. Witness. I'm going to ask you some more
23 questions about one topic that you have been asked about already
24 today.

25 MR. LAWS: But we're going to need to move into private session

Witness: Safet Gashi (Resumed) (Private Session)
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1 for that, Your Honour.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Mr. Court Officer, can you bring us into private session,
4 please.

5 [Private session]

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Questioned by Victims' Counsel

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Questioned by Victims' Counsel

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Questioned by Victims' Counsel

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Witness: Safet Gashi (Resumed) (Private Session)
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6 [Open session]

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

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you. We have now completed
10 the questioning of the witness by Victims' Counsel.

11 Defence counsel, do you want to put something on record? And if
12 it's needed, then we can go back into private session.

13 MR. AOUBINI: Your Honour, it was to suggest that we cut to the
14 chase. We understand there are two possibilities of explanation. We
15 should have put both of them, and we would have won a lot of time.
16 But one of the possibilities has been put ultimately, and that's what
17 I was going to suggest is to actually go directly, not that to cut
18 it. When I said "roaming around," make it -- cut to the chase and
19 suggest -- because it was somehow misleading to put compassion and
20 the other explanation in the same question. I cannot say more in
21 public, but --

22 PRESIDING JUDGE VELDT-FOGLIA: No, that's the reason that I
23 suggested to you to go into private. Then you can say as much as you
24 want. But it was not -- if it would have been misleading, we would
25 not have proceeded.

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1 MR. AOUINI: Thank you, Your Honours.

2 PRESIDING JUDGE VELDT-FOGLIA: Good.

3 Very well. Then, Defence counsel, do you wish to proceed with a
4 redirect examination of the witness?

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

6 PRESIDING JUDGE VELDT-FOGLIA: Very well.

7 Then it stops here with regard to the parties and
8 Victims' Counsel. I will now confer with my colleagues to see if we
9 have any questions for you, Mr. Witness.

10 [Trial Panel confers]

11 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, you will be asked
12 questions by the Panel, and I will give the floor to Judge Bitti on
13 my left-hand side and he will proceed with some questions for you.

14 You have the floor.

15 JUDGE BITTI: Thank you, Madam Presiding Judge. And I think we
16 have to go to private session.

17 PRESIDING JUDGE VELDT-FOGLIA: Very well. Mr. Court Officer,
18 can you bring us into private session, please.

19 [Private session]

20 [Private session text removed]

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18 [Open session]

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

20 Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 I turn now to the parties and to Victims' Counsel. Do you wish
23 to ask the witness any further questions related to the topic just
24 discussed by Judge Bitti?

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

1 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel.

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

3 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel.

4 MR. AOUBINI: [Microphone not activated]

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

6 Mr. Gashi, we have reached the end of your testimony, and I
7 would like to thank you for the efforts you have put in answering the
8 questions. Thank you very much.

9 I remind you that you shall not discuss with anyone your
10 testimony given before the Specialist Chambers. Do you understand
11 that?

12 THE WITNESS: [Interpretation] Yes, Your Honour. I understand it
13 very well.

14 PRESIDING JUDGE VELDT-FOGLIA: I wish you a safe travel home.
15 Madam Court Clerk will now assist you out of the courtroom.

16 THE WITNESS: [Interpretation] Thank you.

17 [The witness withdrew]

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Clerk.

19 Madam Prosecutor, could you give the Panel the references to the
20 propositions? Then we have them on record today.

21 MS. PERGOLO: Yes, Your Honours. Apologies. I was just
22 discussing this matter with my colleague.

23 So I do have the references to the propositions put by us to the
24 witness today at page 39, and it is correct that some of these
25 references come from prior statements of the witness. But our

1 position is also that some of these need to be read in conjunction
2 with his in-court testimony.

3 And perhaps, Your Honours, to give the references I would
4 request to go into private session just out of -- thank you.

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

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

7 [Private session]

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11 [Open session]

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

13 Thank you.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Yes.

15 Then we have another oral ruling. It's the Defence request to
16 admit the evidence of Witnesses 4405, 4441, 4280, and 4440 pursuant
17 to Rule 153 of the rules. That's filing 644 dated 11 September 2023.

18 Having heard all four witnesses live, the Panel rejects the
19 request as moot. It's just to not leave it pending.

20 This concludes the second oral order.

21 And then we have a third oral order concerning the Defence
22 request to amend its witness and exhibit list and to call a
23 psychologist witness to testify in person, and this is filing 756
24 dated 4 January of this year.

25 Having taken note of the parties' and participants' submissions,

1 including yesterday in court, the Panel decides as follows.

2 We grant the Defence request to amend its witness and exhibit
3 list, pursuant to Rule 119(5) of the rules, seeing that the request
4 was submitted promptly after Ms. Milazzo's expert report was
5 finalised, the report is relevant for the purposes of sentencing, and
6 there is no objection from the SPO or Victims' Counsel in this
7 regard.

8 The Defence shall submit its amended witness and exhibit list by
9 Friday this week, so by Friday, 12 January 2024.

10 Second, with regard to the second request, we reject the Defence
11 request to call the expert to testify in person. Beyond making
12 generic submissions, the Defence has not further substantiated what
13 aspects of her report would need clarifying and what questions it
14 would seek to ask to the expert.

15 We further note that neither the SPO nor Victims' Counsel
16 challenged the report or the expert's qualifications, and they do not
17 seek to examine the witness. We don't see a need to call the expert
18 to testify live.

19 Accordingly, the Panel will proceed to rule on the admissibility
20 of her report as envisaged in Rule 149(3) of the rules.

21 We find the report to be relevant for the purposes of sentencing
22 as it contains an assessment of Mr. Shala's individual circumstances.
23 The report is authentic, it's been dated, it is signed by the expert,
24 has probative value, and its probative value is not outweighed by its
25 prejudicial effect. We therefore admit the expert report into

1 evidence. This extends to both the French and the English version.

2 We further consider the CV of the expert to be available for the
3 purposes of its deliberation and the judgment.

4 And we thereafter instruct the Registry to assign exhibit
5 numbers to the report, it's ERN DPS01735 till DPS01757 and
6 DPS01758-DPS01781, and the ERN number of the CV is DPS01730-DPS01734,
7 for the purposes of maintaining a accurate record of the proceedings
8 pursuant to Article 40(5) of the Law and Rule 24(1) of the rules and
9 to classify these documents as confidential.

10 And this concludes the third oral ruling.

11 And the fourth oral ruling concerns the presentation of evidence
12 in rebuttal by the SPO.

13 We have taken note of the filing of the SPO, F740, dated
14 8 December 2023, notifying us that it did not intend at that point to
15 present evidence in rebuttal. I also recall that in an oral order
16 dated 29 November 2023, we stated that you would be allowed to modify
17 this filing, if you so wish, after the closing of the Defence case.

18 We direct the SPO to file any request to present evidence in
19 rebuttal, if it so wishes, by Wednesday, 17 January 2024. And in the
20 interest of an efficient conduct of proceedings, and to the extent
21 that any request to present evidence in rebuttal concerns non-oral
22 evidence, we also direct you to make any request to tender such
23 evidence into the case record at the same time.

24 Responses may be filed by Friday, 19 January 2024. And the SPO
25 may reply, if it so wishes, by Tuesday, 23 January 2024. And this

1 is, of course, subject to the Defence closing its case on Monday,
2 15 January 2024 as envisaged in our oral order of 29 November 2023.

3 And this concludes the Panel's oral order.

4 There will be further deadlines, of course, regarding the
5 upcoming procedural steps, and we will give them to you in due
6 course. Let me first finalise this part.

7 Yes. Then I turn to parties and Victims' Counsel to see if
8 there's anything left to raise with the Panel.

9 Madam Prosecutor.

10 MS. PERGOLO: No, Your Honours, not on our part. Thank you.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Victims' Counsel.

13 MR. LAWS: Your Honour, we were just going to ask whether it's
14 possible to have some guidance as to the sitting days in the
15 immediate future.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 MR. AOUINI: Yes, Your Honour. Just to seize the moment to
18 announce that today we'll be filing our crime site request
19 submissions, today.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay.

21 MR. AOUINI: If all goes well. Thank you.

22 PRESIDING JUDGE VELDT-FOGLIA: Very well. That's one of our
23 pending decisions.

24 Victims' Counsel, with regard to your guidance as to the
25 upcoming sitting days, we have one scheduled for the 19th and the

1 22nd. And in principle, we will not be sitting, but we will give you
2 an official notice between tomorrow and the day after tomorrow just
3 to see if there would be anything pending that would need -- would be
4 easier to do it in court than to do it in a written way. That's the
5 reason that we have left it open, but we will not keep those days too
6 long hanging in the air without knowing if we will be sitting or not.

7 MR. LAWS: Your Honour, that's very helpful. Thank you very
8 much.

9 PRESIDING JUDGE VELDT-FOGLIA: Good. Yes. Thank you.

10 Then I thank the parties and Victims' Counsel for their
11 attendance today. And I also wish to thank the colleagues of the
12 Court Management Unit, the interpreters, the colleagues of the
13 audio-visual booth, and the stenographer, and the people of security
14 for their assistance today.

15 The hearing is adjourned.

16 --- Whereupon the hearing adjourned at 12.50 p.m.

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