

1 Thursday, 21 September 2023

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.04 a.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Welcome and good morning.

6 Court Officer, can you please call the case.

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

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

10 I see that the SPO is in the same composition as yesterday
11 afternoon; is that right?

12 MR. DE MINICIS: Correct, Your Honour.

13 PRESIDING JUDGE VELDT-FOGLIA: Okay. Then we note that for the
14 record.

15 And I see the Victims' Counsel's team is in the same
16 composition.

17 MR. LAWS: Your Honour, that's right.

18 PRESIDING JUDGE VELDT-FOGLIA: Very well. And now I go to the
19 Defence team. That's difference from yesterday, so I give the floor
20 to the Defence Counsel to say who is present.

21 MR. GILISSEN: Thank you very much, Your Honour. Good morning.
22 So it is almost the same. Mr. Gilissen. We are here with Mr. Aouini
23 and Ms. Leto Cariolou; Ms. Dzeneta Petravica, our case manager;
24 Juliette Healy and Judit Kolbe, two evidence review assistants; and,
25 of course, with Mr. Shala by videolink as usual. Thank you.

1 PRESIDING JUDGE VELDT-FOGLIA: Very well.

2 For the record, Mr. Shala, you can hear the translation fine?

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

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

6 Today we continue with the presentation of the evidence by the
7 Specialist Prosecutor's Office. We will hear the cross-examination
8 of Defence witness number 6, Mr. Bardhyl Mahmuti, and we will also
9 hear the questioning by Victims' Counsel.

10 The schedule for today will depend on how we proceed. It could
11 be that we are in court till 4.00 and with a shorter lunch break, but
12 let us see how we proceed and we take it from there.

13 Before we proceed with the witness testimony, we would like to
14 issue an oral order regarding the items that the SPO intends to use
15 during the testimony of today's witness, and I will also come back to
16 the latest disclosure that we received some minutes before coming to
17 court.

18 We will first address the request of the SPO regarding the 76
19 items, and then we will turn to the SPO request from yesterday to add
20 the two newly disclosed items to its presentation queue with
21 additional translations we received.

22 The original request. The SPO seeks to use 76 items, 69 of
23 those are newly disclosed. There are different categories, documents
24 and media.

25 The Defence objects to use -- the use of four specific

1 categories listed in its revised e-mail. We received that 20
2 September, so yesterday, at five minutes past 2. They are social
3 media posts, related material, documents related to previous court
4 proceedings. There are books and articles and videos. And your
5 objections are based on lack of relevance. That's our short summary.

6 In order to make efficient use of the time available in court,
7 we received submissions from the parties through e-mail, and we will
8 now issue the oral ruling.

9 Upon careful consideration, we find that the SPO has not
10 established the relevance of certain documents included in its
11 presentation queue to the present case and the charges against the
12 accused, while, in some instances, we were not able to assess the
13 relevance of the items at hand. We will not permit -- and we also
14 already sent an e-mail beforehand in order for everybody to be more
15 prepared which numbers that are. Those are numbers -- and I follow
16 the numbering in the presentation queue. Those are 4, 14, 15, 16,
17 17, 18, 20, 21, 22, 30, 31, 44, 52, 53, and 73.

18 And this is without prejudice to the SPO asking the Panel to
19 reconsider on a case-by-case basis in case the relevance of an item
20 becomes evident during cross-examination. If that is the case, we
21 expect you to justify why you think it should be used, and then we
22 can have a litigation in court regarding the document.

23 Yes. The SPO seeks leave to use two additional documents,
24 namely, two media articles in Serbian language, and they are cited as
25 a source in the book of the witness. It's page 80 and page 81. And

1 you argue, Mr. Prosecutor, that you intend to use these documents to
2 question the witness about the methodology followed by him in writing
3 his book, a matter that was discussed yesterday during
4 examination-in-chief by the Defence of the witness. We have
5 received, as I already said, the English translations this morning,
6 by e-mail at 9 to 5.

7 I would like to give the Defence and Victims' Counsel the floor
8 to react, to respond before we proceed.

9 Defence Counsel, you have the floor.

10 MR. AOUNI: Thank you, Your Honour. Good morning to
11 Your Honours and everyone in and around the courtroom.

12 Your Honour, we just received the documents. We noted the
13 explanation of our colleagues from the SPO. If it relates to
14 specific elements mentioned in the examination-in-chief, we have no
15 objection. That is only relevant if something that has been
16 mentioned by the witness is tested by the opposing party. However,
17 we will have a number of objections on the specific use of other
18 items because we believe the use goes far beyond what is permitted in
19 cross-examination.

20 But for those specific documents and for the intended use, as
21 mentioned by the SPO, we believe this is permissible. The witness
22 has explained methodology. They can explore methodology with him.
23 But we have to be aware of the limits of relevance that we had in
24 examination-in-chief, and the same standards should apply to both
25 parties in terms of what is relevant and what is not.

1 We believe we will come back to certain litigation afterwards on
2 specific items to be efficient.

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

4 Just for clarification, to which items are you referring when
5 you say that you would like -- you intend to relitigate?

6 MR. AOUINI: Your Honours, obviously we want to put our
7 objection when the presentation queue is put, and that's what we did,
8 because when we tried to object to the use of certain documents that,
9 in principle, don't have a problem with the document itself but the
10 use intended by the SPO, this is what we did with the exchange of
11 e-mails on which Your Honours have made rulings.

12 However, we see that some areas, potential areas, are not
13 explored in that. If that becomes apparent that the intention of the
14 SPO is to use certain documents for certain specific purposes, we
15 will have a strong objection.

16 I can give you an example, Your Honours.

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

18 MR. AOUINI: But we can do it on case specific afterwards.

19 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, the Panel will
20 give an oral -- with regard to the use of documents as they are now
21 in the presentation queue. Those documents will -- the SPO will be
22 allowed to use, and in principle there will be no litigation on that.

23 My remark was that if there are documents which we now don't
24 allow for and the use becomes apparent during cross-examination, they
25 are allowed to raise the point. And then, of course, you will be put

1 in a position to react to it.

2 That's how we are going to proceed. And if you have any
3 objection to questions, that's not different than in other occasions,
4 you raise the point, and we will assess it as we normally do.

5 Very well. Victims' Counsel, is there something you would like
6 to add in this respect.

7 MR. LAWS: We certainly don't object to the addition of these
8 documents.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.
10 Then we will proceed with an oral order.

11 We note that the SPO has clearly indicated in what way it
12 intends to use these documents and that the SPO has disclosed the
13 documents immediately after the end of the examination-in-chief
14 during which the issue of the methodology and sources was discussed
15 with the witness. We have taken on board the submissions of the
16 Defence and of Victims' Counsel who don't object. The documents are
17 not lengthy and they are cited as sources in the book of the witness.
18 We find that their addition to the list of materials to be used will
19 cause no prejudice to the Defence.

20 We grant the request for the above reasons.

21 Very well. In light of the above, Madam Court Officer, I
22 instruct you to amend the presentation queue of the SPO according to
23 the above instructions, and it is my understanding that that can be
24 done very quickly. Thank you for that.

25 And that concludes our oral order.

1 And I do have another remark for the SPO in respect of this
2 matter. In the future, if the SPO anticipates to use a large number
3 of items in cross-examination, I think that -- no, more than I think.
4 We urge you to disclose and list such material at the earliest
5 opportunity, both for the other party and for Victims' Counsel and
6 for the Panel, and our preference is not one day before. We would
7 like to avoid rushing and also give due consideration to the matter
8 and also to litigate, if necessary. And we understand that it can
9 happen once, but it would -- we prefer that it doesn't become a way
10 of working because that makes things maybe too complicated.

11 [Trial Panel and Court Officer confer]

12 PRESIDING JUDGE VELDT-FOGLIA: I will finish with these
13 instructions, and then we discontinue for a moment the hearing
14 without leaving the courtroom because we have a technical problem
15 with one of the colleagues. And that is better to have that
16 resolved, and it would be kind of disruptive to have somebody at the
17 back of the table while we are talking.

18 So this would be our -- we would -- this we urge you to do
19 and -- yes.

20 MR. DE MINICIS: Your Honour, we will do our best to accommodate
21 this request, to comply with this respect. In the absence of
22 statements for most of these witnesses, Your Honours, it is difficult
23 to prepare in advance, and we scramble to look through our database,
24 and oftentimes this job continues up until the day before we're due
25 to cross the witness.

1 So if we had statements, we could have perhaps better
2 accommodated this request. But we will do our best, nevertheless.

3 Your Honour, I would have two requests with regard to the ruling
4 just issued by Your Honours in relation to our presentation queue.

5 The first one is to avoid that I end up using a document that
6 Your Honours have stated I shouldn't be using. I have a -- I have
7 the list in my plan. We received the e-mail with the numbers in the
8 presentation queue just before coming to court. I would request 10
9 to 15 minutes to go through my plan and confront it with the
10 presentation queue to weed out and delete the documents that
11 Your Honours have said we can't use. I just want to avoid calling up
12 documents that we have been told not use.

13 PRESIDING JUDGE VELDT-FOGLIA: I think that is not a problem.
14 We can adjourn the hearing for 15 minutes, and I hope that in the
15 meantime the computer of our colleague can be restarted. So that's
16 not a problem.

17 And there was one last point, a very administrative one, that
18 the list of items that the SPO intends to use for cross-examination,
19 for next time, if it would be numbered it will also be helpful
20 because it was a large number.

21 MR. DE MINICIS: By all means, Judge, of course, we'll improve
22 our methodology.

23 Secondly, Your Honour, I heard -- we just heard Your Honours
24 would allow for requests for reconsiderations in relation to single
25 documents during the cross-examination of the witness.

1 Now, I would have a request for reconsideration concerning one
2 document, for which, however, I would need the witness to be escorted
3 out in making the application. I could also make this application
4 now because I think that one document is relevant, especially in
5 relation to another document that Your Honours have left on the list.
6 So with Your Honours' leave, I would make this application now to
7 avoid having to escort the witness out at a later stage.

8 PRESIDING JUDGE VELDT-FOGLIA: We will proceed in that way.
9 Then Defence and Victims' Counsel are put in the possibility to make
10 their submissions, and then we adjourn for the SPO to go through the
11 examination plan and for the computer to be repaired.

12 We will proceed. You have the floor.

13 Defence Counsel, you have the floor first.

14 MR. AOUINI: Sorry to interrupt, Your Honour. Just to respond
15 to this before my colleague makes his request for reconsideration.

16 Just to say that the late disclosure has nothing do with the
17 statements or absence of statements of this witness. We have
18 provided a very accurate summary and what the witness has testified
19 about is exactly that. We have provided disclosure of the document
20 that was the main document we worked on yesterday during the whole
21 morning, and the book, which took part of the afternoon. So we don't
22 accept that, due to the absence of a statement, a dump of 76
23 documents on the eve of the cross-examination was necessary. We
24 didn't make any comments about it, but this has put us as well in a
25 difficult situation.

1 That's the first point.

2 And the second point, Your Honour, we also would like to have
3 the opportunity to ask for reconsideration for the -- for the order
4 to allow certain documents because we believe that we have further
5 submissions to make or to reply to some of the submissions of the SPO
6 as to the relevance, but not only the relevance. And that's why --
7 we accept if we have to do it through the questioning because what we
8 object to is the intentions of the use of certain documents. Some of
9 the submissions of our colleagues on the SPO about allegiance and
10 bias we have to respond to, and we probably also would need to have
11 an opportunity to ask for reconsideration.

12 If you want to hear us, Your Honours, we're ready to do it as
13 well.

14 PRESIDING JUDGE VELDT-FOGLIA: With respect to the first point,
15 you have made your point, but I think that the Panel already made the
16 point. It was clear what the Panel said to the SPO. So we have
17 asked the SPO for next time to do it in a different way.

18 Secondly, we -- no, secondly, I missed something in your
19 presentation. The SPO has requested now -- no, I will give you the
20 floor later on.

21 Would you like to give a further reasoning for the document you
22 would like to use?

23 MR. DE MINICIS: Yes, Your Honour. Thank you.

24 My request, Your Honour, concerns a document with ERN
25 SPOE00209429, which I believe is number 30 in our presentation queue.

1 This is a document containing communiqués number 42 and 43 issued by
2 the Kosovo Liberation Army on 27 February 1998 and published in the
3 LPK publication *Zeri i Kosoves*.

4 Your Honours, we also have listed in the documents for our
5 cross-examination an interview that the witness gave to the Christian
6 Science Monitor on 15 April 1998, that is, 40 days, approximately 40
7 days, after the issuance of communiqué 42.

8 Your Honours, the witness was part of the KLA political
9 directorate. He was involved, as we will be able to show, in the
10 drafting of communiqués. We believe that the witness knew the
11 content of that communiqué. In that communiqué, the KLA took
12 responsibility for the killing of a person named Mustafa Kurti. This
13 person, Your Honour, was a civilian. He was an employee at the post
14 office in Drenoc.

15 Now, when, 40 days later, the witness made statements that the
16 KLA only targeted state officials, we believe that was made in the
17 knowledge that the statement was untrue, or at least in the knowledge
18 that, in fact, there was a different policy by the KLA. To us, this
19 goes to the credibility of the witness, in general, and to the
20 credibility of any statement the witness has made to this Court, to
21 his bias against this whole judicial process and to the reasons why
22 he accepted to be a witness and to come to testify before this Court.

23 So we would like use communiqué 42 in combination the article
24 published in the Christian Science Monitor, and we request
25 Your Honours to consider your decision with respect to that document.

1 Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: And could you indicate which
3 number is the article.

4 MR. DE MINICIS: So I -- the article -- I have the ERN readily
5 available. I don't have my presentation queue in front me. Could I
6 give you the ERN for the time being?

7 PRESIDING JUDGE VELDT-FOGLIA: But for next time, it is helpful
8 as -- that we have both because that ...

9 MR. DE MINICIS: Absolutely. Understood. And apologies.

10 The number, the ERN number is SPOE00341109-00341116. And, in
11 fact, I think there should be number 31 in the -- no. No, no. So
12 that's the ERN number. And the statement I was talking about is to
13 be found at ERN SPOE00341111.

14 MR. AOUINI: Your Honours, it's number 37, if we're not
15 mistaken, in the list.

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

17 MR. AOUINI: We believe it is number 37 in the list, if that
18 could help. If we're not mistaken.

19 PRESIDING JUDGE VELDT-FOGLIA: I don't think the SPO can reply
20 to that now because they don't have the presentation queue in front
21 of them. But I noted it as the suggestion.

22 MR. DE MINICIS: Thank you for the assistance.

23 PRESIDING JUDGE VELDT-FOGLIA: But thank you for assisting us in
24 this.

25 Very well. With regard to your second point, Defence Counsel,

1 we will take that as the issues arise during the examination --
2 during the examination.

3 I will give you now the floor to react to what the SPO has said.

4 MR. AOUINI: Thank you, Your Honour. And sorry to say that, but
5 what the SPO just elucidated now is exactly the point of our
6 objections, Your Honour. The intentions of the SPO today is to
7 elicit evidence that is completely irrelevant to our case. And with
8 all due respect, since we received this disclosure, we were
9 questioning whether this was a mistake in disclosure for Case 06,
10 Your Honour. This has nothing to do with this witness and the
11 evidence of this witness in this case.

12 The credibility issue, Your Honour, has to go to what the
13 witness has said in the box. If they are going to test his
14 credibility about his whereabouts and whether he was in Albania or
15 not, we're happy to sit and listen to it. If they are going to test
16 his credibility about what his -- he has written in his book and his
17 methodology, we will sit and listen to that carefully, Your Honour,
18 and this is completely appropriate.

19 However, Your Honour, KLA policy has nothing to do with this
20 case. The SPO has objected to relevance of some witnesses and
21 evidence related to the brigade. We're not going to bring the
22 directorate now and talk about it. This has nothing doing with this
23 case. It's not part of the case that they have brought, and if they
24 wished to bring this evidence, they should have brought their own
25 witnesses to do that. This is not a fishing expedition for other

1 cases. We strongly object to that.

2 As to the argument of bias, Your Honour. This is not bias.
3 This is the personal opinions in media, social media, about this
4 witness. And this witness does not have to be a friend of this Court
5 or have no political opinions about the institutions, anything that
6 happens in his homeland and something that affects his homeland,
7 Kosovo. This has nothing to do. He has taken the oath, he has
8 spoken about specific facts.

9 And, Your Honour, everybody was here and listened to this
10 witness. He came as an individual. The only mention of his title
11 and his capacity was to explain why he was travelling. We did not
12 explore any matters about what he was doing, his job, his knowledge
13 about certain things. We have brought him for the specific point of
14 bringing comments about the allegations of witnesses of the SPO and
15 nothing other than that.

16 And we remind our colleagues, and Your Honours are certainly
17 aware of that, of the Rule 143 where there is a limit for
18 cross-examination. This is not an opportunity for the SPO to go and
19 try to find other evidence for this case or other cases.

20 This point of bias and alleged allegiance to other accused and
21 -- and we note that they mentioned the Mustafa case. This witness
22 doesn't know Pjeter Shala. What allegiance are we talking about?
23 Are we going to talk about the accused in other cases? We have never
24 mentioned that and the witness has never mentioned that.

25 So we have a very strong objection to the use and intentions of

1 the SPO. We believe this is a dangerous attempt, and we urge you to
2 protected the integrity of these proceedings by not allowing the
3 Prosecutor to go in those areas that have nothing to do with the
4 examination-in-chief.

5 Your Honours have set the limits of relevance with cases
6 yesterday in chief. The standards have to be the same for the other
7 party.

8 Those are our submissions, and we will make those on specific
9 points or specific items as we go item by item, Your Honours. But we
10 really want to put that objection on the record and caution everybody
11 that this is not the objective and the rules don't allow for this
12 kind of exercise in cross-examination. This is not the purpose of
13 cross-examination. This is not the evidence of this witness.

14 Sorry, if I have spoken too fast, Your Honour. I'm sorry.

15 MR. DE MINICIS: If I might be --

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

17 To start with, we already said at the beginning that with regard
18 to the possibility for the SPO to relitigate certain decisions
19 because maybe the relevancy could not completely be assessed by the
20 Panel, we already informed you that you would be given the
21 possibility. Because if we relitigate, it means that we do the
22 round. So, there, I don't think that there is a problem.

23 I will do -- I'll give the opportunity now to Victims' Counsel.
24 We do one more round, and then we will adjourn.

25 Victims' Counsel, you have the floor.

1 MR. LAWS: Your Honour, thank you. We support the application
2 by the SPO, and I am afraid we disagree strongly with the submissions
3 that have just been made on behalf of the Defence.

4 Our submission is this. The issue of credibility of a witness
5 is not limited in the way that has just been described by Defence
6 Counsel. That is to say, it is not limited to the witness's
7 credibility solely in respect of the topics on which he or she has
8 testified. A witness's credibility is to be considered by a Panel in
9 the round. And the clearest possible support for that proposition
10 comes from this. The Defence quite properly have used previous
11 convictions of a witness in order to undermine a witness's
12 credibility. There's no objection to that at all. And the reason
13 for that is that credibility is to be considered broadly. Those
14 previous convictions had no direct relevance to the witness's
15 credibility, and the Panel knows the witness to whom I'm referring.

16 And so it doesn't lie with them at this stage to say that
17 credibility must be so narrowly confined as they have suggested.

18 The position with this witness is, in our submission, this. He
19 has given an extreme opinion about some connection which we've yet to
20 properly explore between somebody, a journalist, in respect to whom
21 he watched an interview, we don't know where he watched it, but three
22 years ago. And that, in his view, has entitled him to express an
23 opinion about events in Kukes. This is, we suggest, far beyond the
24 boundaries of ordinary testimony. And to suggest that a witness who
25 is prepared to make the leaps that he has made can't be questioned

1 about his allegiances and his bias we suggest is misguided.

2 This witness's credibility is really to be viewed in all
3 possible lights available to the Panel. That's what we submit, with
4 respect.

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

6 Mr. Prosecutor, you have the floor.

7 MR. DE MINICIS: I will be very brief because Victims' Counsel
8 has already covered of much of what I wanted to say. I will just
9 observe two things. That Rule 143(3), which was quoted by the
10 Defence, states:

11 "Cross-examination shall be limited to the subject-matter of the
12 direct examination and matters affecting the credibility of the
13 witness."

14 This is also a well-known principle. When exploring
15 credibility, it's not limited to the matters -- it's not the
16 credibility of the things he said solely in direct examination. It
17 concerns the credibility -- a more broad concept of credibility as
18 observed by Victims' Counsel.

19 Secondly, the Defence cannot think to bring a witness here who
20 made these very extreme statements and shield him from a credibility
21 assessment which can be based on a number of issues, be that criminal
22 record or false statements made in the past on matters that are
23 related to the subject matter in this trial.

24 So we maintain our point that we should be able to explore these
25 matters, and we maintain our request for reconsideration with regard

1 to communiqué 42.

2 PRESIDING JUDGE VELDT-FOGLIA: But I think we have said it all
3 now. If you're going to say something new, Defence Counsel, I must
4 say that -- we are starting a new round. You see that. Because we
5 end there.

6 What has not been said yet?

7 MR. AOUINI: Two points, Your Honours. I'm glad
8 Victims' Counsel mentioned the criminal record because we were not
9 allowed to use the criminal record and we were told to do it through
10 documents. We could not explore it with that witness they mentioned.
11 That's a very good example. And it was for a different thing than
12 credibility. It was for bad character, possible injuries and
13 involvement in some criminal activities of relevance.

14 To the point of the SPO, this is what we say. This is not a
15 credibility test. What they are attempting to doing is that -- to
16 try to show that this individual is not a legitimate person to be a
17 witness. How does that relate to his whereabouts? We accept the
18 methodology of the books. Okay. But his past -- and if the attempts
19 say this is not a suitable person to become a witness in this case --

20 PRESIDING JUDGE VELDT-FOGLIA: But now you are repeating
21 yourself. I heard that. No, but I -- if you say it once, I promise
22 you I hear it. So please don't repeat it --

23 MR. AOUINI: No, it's --

24 PRESIDING JUDGE VELDT-FOGLIA: -- because it's not necessary in
25 this court.

1 MR. AOUNI: Yeah, but the point is we say this is not what they
2 call credibility. They are disguising this as credibility and it is
3 not credibility. Personal opinions and those kind of things are an
4 attempt for the legitimacy of this person to be a witness. Not
5 credibility. Not whether he is to be trusted or not on what he
6 testified.

7 Thank you, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Victims' Counsel.

10 MR. LAWS: May I just respond very briefly to the suggestion
11 that the Defence were not allowed to use the previous convictions of
12 the witness to whom I just referred.

13 I'm sorry, that -- we've just responded to and the Panel has
14 dealt with the Rule 130 motion in which it seems, at least to my
15 memory, there was reference to those convictions. So it is, we
16 suggest, very difficult for the Defence to say they have not been
17 allowed to use them.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 MR. DE MINICIS: I think if memory serves me well, Your Honour,
20 Victims' Counsel, during the examination of this witness -- sorry,
21 Defence Counsel, we simply agreed that we don't object to the
22 tendering in evidence of the criminal record and they just decided to
23 tender it without pursuing the -- without asking any questions on it.
24 They were not forbidden. I don't recall there be anything in the
25 record prohibiting them from exploring the criminal record of a

1 witness in this trial.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well. We leave it for here.

3 It is ten minutes past 9.30, so we come back at 10.00.

4 The hearing is adjourned.

5 --- Break taken at 9.40 a.m.

6 --- On resuming at 10.31 a.m.

7 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

8 We have been deliberating and we have now a change of our
9 morning structure, I would say. We will now continue for one and a
10 half hour till 12.00, and then we will have an hour break for lunch.
11 Good.

12 Back to where we left before we adjourned. And I look at my
13 right-hand side. Same composition. That goes for the
14 Victims' Counsel and also for the Defence. So that's on record.
15 Very well. Yes.

16 We deliberated on the points that lay before us for discussion.
17 We have received a request by the SPO to use two documents, which are
18 number 30 and number 37, in combination. Item 30 is on the list of
19 the Panel and that is the -- is an item that we have not allowed to
20 be used this morning, according to our oral order. We have allowed
21 for item 37.

22 Having heard the arguments of the parties and Victims' Counsel
23 in this instance, we are of the view that the explanation by the SPO
24 meets the relevant standard, taking into account that, in accordance
25 with Rule 143(3) of the Rules of Procedure and Evidence, matters

1 affecting the credibility have to be understood broadly. And that's
2 the reason they are allowed to use it. However, this is without
3 prejudice for the Defence to raise anything that they deem necessary
4 in this respect.

5 And then the Panel would like to reiterate that Rule 143(3) of
6 the Rules of Procedure and Evidence clearly establishes - and I'm
7 just reading out what is said in the Rules of Procedure and Evidence
8 - that matters affecting the credibility of the witness are not
9 limited to the subject matter of the examination-in-chief. So it
10 speaks for itself.

11 Secondly, the criminal history of the witness is available for
12 the Panel for its determination at the end of this trial. So it is,
13 I would say, in colloquial language, in.

14 And without now going back to how the testimony of the witness
15 we are discussing went, I just want to cite the transcript of 5 June,
16 page 1837 till 1842, where the discussion with regard to admitting or
17 not certain questions was done, and I think that speaks for itself
18 how it went.

19 So -- but it is in, that document, anyway.

20 Last point for the SPO. The Panel directs you also for next
21 time that if documents should be read in combination, it is useful
22 for the Panel and for the parties and for Victims' Counsel to be
23 informed. And I have heard what you said before about any
24 difficulties you might have encountered, but it adds to our
25 possibility of assessing beforehand what is the relevance of certain

1 documents.

2 MR. DE MINICIS: Of course, Your Honours. We'll make sure to do
3 that.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well.

5 Then we are at the point that we can call the witness in. No
6 further points to raise with the Panel? No. Good.

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

8 [The witness takes the stand]

9 PRESIDING JUDGE VELDT-FOGLIA: Good morning, Mr. Mahmuti.
10 Welcome back to the Specialist Chambers.

11 THE WITNESS: [Interpretation] Good morning.

12 PRESIDING JUDGE VELDT-FOGLIA: Can you hear me well?

13 THE WITNESS: [Interpretation] Yes, I can.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well. We started later and
15 that was envisaged this morning due to some procedural matters. How
16 are you today?

17 THE WITNESS: [Interpretation] I'm good.

18 PRESIDING JUDGE VELDT-FOGLIA: Very well. Mr. Mahmuti, you are
19 still under oath to tell the truth. You understand that?

20 THE WITNESS: [Interpretation] I do.

21 PRESIDING JUDGE VELDT-FOGLIA: Yesterday we completed the
22 questioning by the Defence. I will now give the floor to the
23 Specialist Prosecutor's Office for their cross-examination.

24 I have noted that the Defence has used two hours and, let's say,
25 quarter of an hour for its examination-in-chief. You are expected to

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2599

Cross-examination by Mr. De Minicis

1 adhere to that time.

2 You have the floor.

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

4 WITNESS: BARDHYL MAHMUTI [Resumed]

5 [Witness answered through interpreter]

6 Cross-examination by Mr. De Minicis:

7 Q. Good morning, Mr. Mahmuti. I would like to begin by asking you
8 a few questions about how you became a witness for the Shala Defence.
9 Do you recall the time when you were first contacted by the Defence
10 for Mr. Shala?

11 A. I don't recall exactly when.

12 Q. Would it have been a month ago or a year ago, approximately?

13 A. It was not before a year ago, certainly, but I can't tell you
14 exactly when.

15 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, I don't understand
16 your answer. Was it a year ago, more than a year ago, or was it some
17 months ago?

18 THE WITNESS: [Interpretation] Several months ago. Some months
19 ago.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

21 MR. DE MINICIS:

22 Q. Since the first time you were contacted by -- after you were
23 contacted by the Defence, did you meet in person with the
24 representatives from Mr. Shala's Defence team?

25 A. I met in person during a very brief meeting, but I met and I had

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2600

1 to interrupt the meeting due to reasons that have nothing to do with
2 these proceedings but were private matters.

3 Q. And after -- did this meeting in person take place after the
4 first contact was made; and, if so, do you recall how long after the
5 first contact was made?

6 A. This was the only physical contact we had, in the course of
7 which I provided them with my books, we discussed some matters
8 related to the content of my books, and the remainder of our contacts
9 was done through the phone. From what I can remember.

10 PRESIDING JUDGE VELDT-FOGLIA: I see that the question was
11 different from the answer. I don't think that the Mr. Witness
12 understood the question rightly.

13 MS. CARILOU: Your Honours, good morning. Yes. I would just
14 like to ask our learned friend what is the purpose of these questions
15 because, depending on the answer, we may have an objection as to the
16 relevance of this line of questioning.

17 PRESIDING JUDGE VELDT-FOGLIA: I think it's a very -- I think it
18 is a very common question to ask what -- how they came into contact
19 with the Defence. I don't think that we need any litigation on that.

20 MR. GILISSEN: Yes, but may I, Madam President.

21 Yes. With the way we had contact with the witness, yes. But
22 not to introduce the question about the -- our work. That's inside
23 the Defence work, of course, and this is a protected matter, I
24 consider.

25 PRESIDING JUDGE VELDT-FOGLIA: But the question was something

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2601

Cross-examination by Mr. De Minicis

1 different than the answer.

2 MR. GILISSEN: No, no. That's -- that's why I --

3 PRESIDING JUDGE VELDT-FOGLIA: I think that the question was
4 very legitimate, how much time after and then -- and that was the
5 reason that I raised it, because I saw that we received another
6 question than what was asked.

7 MR. GILISSEN: Yeah. I think we are on the edge and that's why
8 I prefer to say now take care not to go too far. That's what I
9 prefer to say.

10 PRESIDING JUDGE VELDT-FOGLIA: Yes. That is the role of all of
11 us. Thank you.

12 MR. DE MINICIS: Your Honours, I am well aware of the privileged
13 nature of the communication of the Defence work product, but there
14 are some questions that I'm allowed to ask and I will be asking them
15 to the witness.

16 PRESIDING JUDGE VELDT-FOGLIA: But we did not get the answer to
17 your question.

18 MR. DE MINICIS: I will ask that.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay, good.

20 MR. DE MINICIS:

21 Q. Mr. Mahmuti, you told us that the first time -- I seem to
22 understand that the first contact happened by phone; is that correct?

23 A. Correct.

24 Q. How long after the phone contact you had with the Defence did
25 you meet in person with representatives of the Defence team?

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2602

Cross-examination by Mr. De Minicis

1 A. I don't remember.

2 Q. Are you able to tell the Panel whether it was a matter of days,
3 weeks or months?

4 A. The technical aspects you're referring to did not have any
5 importance in the way I function or work, and, therefore, this is the
6 reason why I don't remember them.

7 Q. But --

8 PRESIDING JUDGE VELDT-FOGLIA: Then -- no. Try to answer the
9 questions, and you just told us that it is some months ago that there
10 was a first contact. So unless you're sharing with us that there are
11 memory problems, a slight indication if it was one day after or a
12 month after should be possible, Mr. Witness.

13 So please answer the questions of Mr. Prosecutor. And it's not
14 about one day more or less, but approximately.

15 THE WITNESS: [Interpretation] I have no problems -- I don't have
16 any issues with my memory. But I remember things I'm interested in.
17 I don't remember when the call took place and how much time after
18 this call we met.

19 MR. DE MINICIS:

20 Q. Very well. I'll move on.

21 Before receiving -- before making the first contact, before
22 receiving the first -- in fact, there's some additional question I
23 want to ask.

24 The first contact you had with the Defence, did the Defence
25 reach out to you or was it you who reached out to them?

1 A. The Defence contacted me, because I didn't even know who were
2 the members of the Defence team of Mr. Pjeter Shala.

3 Q. At the time you were contacted, the time that they made a
4 telephone contact with you, were you aware of the charges brought by
5 the SPO against Mr. Shala?

6 A. I was aware to the extent that this information was made
7 available, publicly available, in the media.

8 Q. So were you aware of -- what information did you have at the
9 time? What did you know about the case against Mr. Shala?

10 A. In relation to the charges filed against Pjeter Shala, I learned
11 about this from the media in general terms, and I never went to the
12 official web page of the Specialist Chambers to inquire or search
13 more specifically what was this about.

14 Q. After you had your first meeting with the Defence, in fact, your
15 first contact by phone, did you try to find out more information
16 about what the case was about?

17 A. Since during our first contact we discussed the content of my
18 book, I did not inquire any further in relation to the charges filed
19 against Pjeter Shala.

20 Q. Did the Defence not provide you with an overview of the case
21 during your meeting or at any later point?

22 A. We discussed with the Defence team only the content of my book,
23 and none of the elements related to the file or the case of
24 Pjeter Shala was ever discussed during our meetings. They -- I
25 explained to them everything about my political journey without

1 knowing the reasons or utility of this data to them.

2 MS. CARILOU: Apologies for interrupting. However, we are now
3 discussing the contents of meetings with the Defence team.

4 PRESIDING JUDGE VELDT-FOGLIA: For next time, it's good -- it is
5 sufficient that you ask the floor and then I will give you the floor.
6 And this is -- it will facilitate our exchanges. Yes?

7 What is your position on that?

8 MR. DE MINICIS: Your Honour, I don't think that I inquired
9 about any privileged information, just whether the witness was
10 informed about the case. I don't think that this qualifies as
11 privileged information. I didn't ask what questions they asked of
12 the witness or what aspects they discussed, whether he just knew the
13 general nature of the case.

14 MR. GILISSEN: With your leave, Your Honour. This is not the
15 Defence case. We are not accused. I cannot [Overlapping speakers]
16 ...

17 PRESIDING JUDGE VELDT-FOGLIA: I don't hear you well. Sorry. I
18 will put it louder.

19 MR. GILISSEN: Yeah. This is not the Defence case. We are not
20 accused. They are talking question about the way we used to
21 investigate and to work. About the witness, I don't have any
22 problem. But we are talking about us. And I consider that really is
23 a privileged matter you are in the core of. You don't have a look at
24 it. You don't have a look at it. Even if you are very at ease to
25 ask some questions, the real question is the kind of work we made

1 with the witness and it cannot be. That's really a privileged
2 matter, I consider. Yeah.

3 PRESIDING JUDGE VELDT-FOGLIA: I think that what can you ask is
4 what he knows, what the witness knows about the case. I think that
5 that is enough. And there is a border line and we were getting real
6 close so ...

7 MR. DE MINICIS: Understood, Your Honour.

8 Q. Do you remember -- you told us that the meeting was short. Do
9 you remember approximately how long the meeting lasted before you had
10 to leave for private reasons, which I don't want to ask you about?

11 A. I don't think it lasted more than 30 minutes. After which I
12 excused myself. Because they had travelled all that way to meet me.
13 However, I had some imperatives I had to attend to, and, as a result,
14 the whole meeting lasted half an hour. If I'm not mistaken. This
15 took place last summer. I don't recall the exact date. And, again,
16 these are specifics that I did not memorise. Had I had the
17 opportunity to remember exactly the date of our meeting, I would
18 share that with you today, obviously.

19 Q. And did you -- was a statement taken from you during that
20 meeting?

21 A. During that meeting, we discussed the content of the book and,
22 in particular, the pillars on which I based my argumentation
23 regarding the functioning of the Serbian secret service. These were
24 the matters we focused on. And also to make sure that all the
25 sources I had used for this work were reliable sources. This is what

1 I remember.

2 I don't remember any other specifics. To my -- from what I can
3 remember, I did not sign any statement, and these were the topics we
4 discussed.

5 Q. And one last question on this. Was anybody taking notes as the
6 meeting took place?

7 A. I don't recall. There were two representatives from the Defence
8 team. I don't remember taking notes. This was rather a conversation
9 as for what I could see or -- between intellectuals who wanted to
10 know whether what I have stated in my book is true and whether it can
11 be substantiated.

12 Q. Thank you. Moving on. You told us at that the time you met you
13 did not know the nature of the case against the accused. Now,
14 between that meeting and today, yesterday, the time came to testify,
15 did you take the opportunity to acquaint yourself with the nature of
16 the case through publicly available documents?

17 A. I guarantee you, despite being under oath, that none of the
18 files connected to all the Prosecution cases, Specialist Prosecutor
19 Office cases, I have read none of those. For the same reason, that
20 when I read all the -- the inventions and fabrications published in
21 the media in relation to the charges, it -- this causes distress in
22 me. And this was the reason I refused to read this and to condition
23 myself. I came here without any prejudices and to testify about
24 everything I know and only about what I know.

25 Q. Very well. Mr. Mahmuti, you testified yesterday that --

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2607

Cross-examination by Mr. De Minicis

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

2 MR. DE MINICIS: Yes.

3 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. Yes,
4 Defence Counsel, you have the floor.

5 MR. AOUBINI: Thank you, Your Honour. And apologies for
6 interrupting. But we want to place on the record that our colleagues
7 have attempted to cast doubt on our ethics and the way we work and to
8 explore with the witness a potential misrepresentation and misconduct
9 by the Defence. We want to put it on the record and we take great
10 exception of that. Despite what they said they would attempt to do
11 with the witness. Thank you, Your Honour.

12 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, do you want to
13 react or do you want to continue?

14 MR. DE MINICIS: No, I'd like to continue, Your Honour. Thank
15 you.

16 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

17 MR. DE MINICIS: Actually, I would just like to add that the
18 Defence does not give evidence in the case. We ask that of the
19 witness because that's what's evidence in the case and that is what
20 the Judges can rely on. I'll move on now.

21 PRESIDING JUDGE VELDT-FOGLIA: Now I give the possibility to
22 Defence Counsel to react.

23 MR. AOUBINI: Very shortly, Your Honour.

24 No, we disagree. We have made representation -- all the lawyers
25 here are in the bar, take an oath. When we have made representation

1 that we didn't take statements and didn't take notes, that was clear,
2 from lawyers. And we're going to privileged area just to explore
3 misconduct. They should have put that case before they asked
4 questions to the witness.

5 We really are disturbed by this matter, Your Honour. Thank you.

6 MR. DE MINICIS: I continue.

7 Q. You said that during the war you didn't know Mr. Pjeter Shala.
8 And that would be at page 2516 of yesterday's transcript. Is that
9 correct?

10 A. It's entirely accurate. I will give you only one example,
11 Your Honour, with your permission. In November --

12 PRESIDING JUDGE VELDT-FOGLIA: No, Mr. Witness. Thank you for
13 offering the possibility to give an example, but I will leave it to
14 the Prosecutor, to Mr. Prosecutor, to see if -- what he wants to
15 explore. Yeah?

16 MR. DE MINICIS:

17 Q. Did you have the opportunity to acquaint yourself, to meet
18 Mr. Pjeter Shala after the war?

19 A. I have never met Pjeter Shala, be that before, during or after
20 the war.

21 In November 2021, I visited The Hague, visited the detainees
22 there. I filed an application for the people I knew, to visit them.
23 In the course of that visit, I did not file an application to visit
24 Pjeter Shala because I had nothing to discuss with a man whom I did
25 not know.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2609

1 Q. Very well. I understand. Thank you very much. Now, this
2 brings me to the people you went to see at the Detention Unit.

3 You said that you're not familiar with the indictment in this
4 case. Are you familiar with the public indictment, that is, the
5 accusation, brought against Mr. Thaci, Mr. Veseli, Mr. Krasniqi and
6 Mr. Selimi? Are you familiar with those charges?

7 MS. CARILOU: With your leave, Your Honour, the relevance of
8 this question is not clear to us.

9 PRESIDING JUDGE VELDT-FOGLIA: I will ask Mr. Prosecutor to give
10 that.

11 MR. DE MINICIS: Your Honours, I'm happy to the explain, but the
12 witness will be need to be excused for this purpose.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes, I was thinking of that.
14 Thank you.

15 Madam Court Usher, could you usher the witness out.

16 Mr. Witness, you will be escorted out. Thank you.

17 [The witness stands down]

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

20 MR. DE MINICIS: [Microphone not activated]

21 PRESIDING JUDGE VELDT-FOGLIA: Okay, good.

22 MR. DE MINICIS: It can. Your Honours, the witness, as we will
23 be showing later in our cross-examination by putting to him certain
24 statements and -- that he's made on media and Facebook posts, has
25 made very specific and assertive statements on the fact that cases

1 before this Court are a fabrication by the Serbs, that this Court is
2 political. These statements appear even more surprising coming from
3 someone who states not to even have read the indictments or any of
4 the documents issued by this Court.

5 I believe that the Panel should be able to assess the
6 statements -- the posts, Facebook posts by the witness and other
7 statements in light of his knowledge of the cases. Because one thing
8 is to cast a judgment about something that you know, and another
9 thing is to cast judgment about something that you ignore and you
10 don't know.

11 So this is the relevance of these questions for us, Your Honour.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 MR. AOUINI: Your Honour, we fully disagree and maintain this is
14 absolutely not relevant. These statements, as we said, were personal
15 opinions or comments made in the private sphere of media and social
16 media. So if it is surprising to the Prosecutor, he should probably
17 ask him under oath. But this is not surprising because this is
18 personal. It's not based on some research. What we have explored is
19 a book he wrote about, with sources. This something very different.
20 And we are not in Case 06, Your Honour. We are absolutely not on
21 Case 06.

22 Ms. Cariolou, I think, will have some additional comments.

23 MS. CARILOU: Only to add that the witness's political opinions
24 or otherwise are not relevant to the indictment in this case. And we
25 do have an objection and maintain our objection we made in writing as

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2611

1 to the relevance of eliciting this sort of evidence in cross.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay.

3 [Specialist Prosecutor confers]

4 PRESIDING JUDGE VELDT-FOGLIA: We will continue and we allow for
5 the question. We think it is relevant in this respect.

6 Madam -- oh. Madam Court Usher is asked to bring the witness
7 back in.

8 [The witness takes the stand]

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

10 THE WITNESS: [Interpretation] Thank you.

11 PRESIDING JUDGE VELDT-FOGLIA: Very well. I will give the floor
12 back to Mr. Prosecutor. Thank you.

13 MR. DE MINICIS:

14 Q. So we've established that you had not acquainted yourself with
15 the indictments, read public documents issued by this Court.

16 Now, before coming here - and this may have been on 18
17 September, I'm not certain - did you publish on social media the fact
18 that you were coming to give evidence in the case against
19 Pjeter Shala?

20 A. Yes, I did. I posted in order to avoid any attempts for
21 journalists to be able to contact me through the telephone or social
22 media. It is -- that post is just an objective statement of
23 information that does not prejudice anything to do with the person or
24 the proceedings here.

25 Q. Well, further to your public announcement, has anyone approached

1 you to discuss your upcoming testimony in this case, other than the
2 Shala Defence?

3 A. Not even Mr. Shala's Defence team attempted to contact me after
4 that post, and no one else has attempted either. I did not want to
5 communicate with anyone, for that matter.

6 Mr. Pjeter Shala's Defence, as far as I know, did not have the
7 right to contact me as part of -- as part of this procedure, with the
8 exception of the occasion which was -- which lasted only a few
9 seconds, and it was before my testimony here, right behind.

10 Q. Of course. And I did not mean to imply there was any improper
11 contact after the cut-off line.

12 Mr. Mahmuti --

13 A. The question, however, hinted that maybe Mr. Shala's Defence had
14 contacted me. That was what the question was about. At least in
15 translation. I understood that to mean as -- as a question on
16 whether I was contacted after that. This is -- this implicitly meant
17 what I'm trying to say, and I wanted to make it clear that the
18 Defence team has not contacted me.

19 PRESIDING JUDGE VELDT-FOGLIA: Mr. Mahmuti, that must have been
20 an issue in translation because in our understanding, and we can read
21 out the question again, that was -- for me, it was not implicated.
22 It was a question because it was posted on social media. If anybody,
23 not implicating necessarily the Defence, anybody had contacted you.

24 No, you don't have to -- but that is -- and maybe in translation
25 something happened, I don't know. But I want this on record.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2613

1 THE WITNESS: [Interpretation] Your Honour, the translation left
2 it open, and I am just citing here exactly the words: With the
3 exception of Mr. Shala's Defence, has anyone else contacted you? And
4 that's why I gave the explanation that I gave because the hint was
5 there that maybe the Defence team had contacted me.

6 PRESIDING JUDGE VELDT-FOGLIA: No, don't -- I will ask you not
7 to repeat yourself, because what you just said I already heard. Once
8 is enough. I hear very well. And, secondly, I gave you already what
9 we have read in the transcript.

10 Mr. Prosecutor, please proceed.

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

12 Q. Mr. Mahmuti, yesterday you provided some evidence about what
13 your role was during the war in 1998 and 1999. I have some further
14 questions about that.

15 Yesterday you told us, at page 2486, that before the war you
16 were a member of the LPK, that is, the People's Movement of Kosovo.
17 Is that correct?

18 A. Before and during the war. During the war I had two posts:
19 Member of the Steering Council of the People's Movement; and the
20 political representative of the Kosovo Liberation Army.

21 Q. Thank you for clarifying that. I appreciate it.

22 Are you familiar with the publication called *Zeri i Kosoves*?

23 A. Yes.

24 Q. Was this publication affiliated in any way with the LPK?

25 A. *Zeri i Kosoves* was the only newspaper which was totally

1 dedicated to the political defence of the Kosovo Liberation Army. It
2 was, in a manner of speaking, spiritually my newspaper. I have
3 identified with the writings and articles in that newspaper.

4 Q. So are you familiar with the publications *Zeri i Kosoves* in the
5 years 1998 and 1999 during the war effort?

6 A. A number of them, not all of them. Largely due to the fact that
7 I was travelling all the time, making contacts all the time with
8 people, be it in my capacity as political representative of the KLA
9 or member of the Steering Council of the LPK. The dynamics of the
10 war as it unfolded in Kosovo has made it impossible for me to be able
11 to read every single article in that newspaper. The dynamics, in
12 fact, dictated the fact that maybe over 90 per cent of those articles
13 I wasn't able to read.

14 Q. Thank you. You told us yesterday, at page 2487, that you
15 would -- if you had to put a date on when you became a member of the
16 KLA, that would be June 1998; is that correct?

17 A. From the moment when I was appointed as a political
18 representative of the KLA, on -- dealing in diplomatic circles,
19 meetings with American delegations and so on, this happened in
20 June 1998. This does not mean, however, that I joined the KLA on
21 that particular date because the LPK - let me make it quite clear -
22 was the political organisation that created the KLA and supported it
23 politically.

24 Q. Thank you. And I understood your testimony yesterday. I just
25 -- if had you to put a date, yesterday you said, "I would choose

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2615

1 June 1998."

2 And you've repeated now that your role was that of a political
3 representative. Did you receive at any point a formal or public
4 appointment to that position?

5 A. Yes, I did. It's contained in the political statement of
6 August 1998, which announced which were the six representatives of
7 the KLA. If I am not wrong, this would be communiqué number 7.

8 Q. You were not wrong. You are correct, Mr. Mahmuti. And who
9 appointed you to that role?

10 A. I don't know how significant this is about this case. If it is
11 necessary, I shall answer this question.

12 PRESIDING JUDGE VELDT-FOGLIA: As long as I don't prohibit it,
13 you are instructed to continue answering the questions of
14 Mr. Prosecutor.

15 THE WITNESS: [Interpretation] There are two interviews that
16 Xhavit Haliti has given. Xhavit Haliti is one of those six people.

17 MR. DE MINICIS:

18 Q. We'll go to who the members of this group were. I just would
19 like to know who appointed you to this role. If you need a little
20 preamble, please do, but let's focus on the question.

21 A. I was focused in giving that question. In the two interviews
22 that Xhavit Haliti has given as a political representative of the
23 KLA, he has explained that he authorised me to speak on behalf -- to
24 meet American delegations as a representative of the
25 Kosovo Liberation Army.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2616

1 PRESIDING JUDGE VELDT-FOGLIA: I think that the transcript is
2 not saying exactly what the -- what Mr. Witness has said. Let me
3 see. "In the two interviews that he has given as" -- who was the
4 representative of the KLA, Mr. Mahmuti, in this sentence or --

5 THE WITNESS: [Interpretation] Xhavit Haliti, who was also a
6 political representative of the KLA.

7 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you. That is
8 clarified. And I see that you understand also when I talk English.
9 Very well.

10 MR. DE MINICIS:

11 Q. Was that appointment not announced, though, by the General Staff
12 of the Kosovo Liberation Army?

13 A. There is a communiqué, and I can't recall which one exactly,
14 there is one communiqué that says that Bardhyl Mahmuti has met
15 foreign diplomatic representatives, without giving any details.
16 However, that is no political appointment. The political appointment
17 came through the communiqué of August 1998, which clarified that
18 Bardhyl Mahmuti is amongst the six political representatives of the
19 Kosovo Liberation Army.

20 MR. DE MINICIS: Maybe we can clarify this point by calling up
21 the communiqué that Mr. Mahmuti is talking about.

22 PRESIDING JUDGE VELDT-FOGLIA: Number 7.

23 MR. DE MINICIS: Number 7.

24 PRESIDING JUDGE VELDT-FOGLIA: Number 7. Very well.

25 Madam Court Officer, if you receive the information --

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2617

Cross-examination by Mr. De Minicis

1 MR. DE MINICIS: Your Honour, I'm just going to recite the ERN
2 to be sure because I may not have the queue -- presentation queue
3 numbers fully up to date.

4 The English version would be U000-8992-U000-8992-ET.

5 PRESIDING JUDGE VELDT-FOGLIA: Not too quick.

6 MR. DE MINICIS: I'm sorry. So the ERN is U000-8992-U000-8992
7 for the original version. For the English version, there is a
8 additional -ET in the end.

9 PRESIDING JUDGE VELDT-FOGLIA: Please proceed. I was looking at
10 the stenographer just to be sure.

11 MR. DE MINICIS: Waiting for the document to be on the screen.

12 PRESIDING JUDGE VELDT-FOGLIA: Yes, yes, I had to give my
13 permission --

14 MR. DE MINICIS: Oh, yes.

15 PRESIDING JUDGE VELDT-FOGLIA: -- but I was communicating with
16 the stenographer.

17 MR. DE MINICIS:

18 Q. Mr. Mahmuti, can you see the document on the screen? The
19 quality, I'm afraid, is not the best but I believe it's legible.

20 PRESIDING JUDGE VELDT-FOGLIA: Can you read it? Yes.

21 THE WITNESS: [Interpretation] Yes, I can.

22 MR. DE MINICIS:

23 Q. I believe it's the third paragraph. It's the third line in
24 English, and it states:

25 "... the General Staff makes it known to the public that

1 Jakup Krasniqi, Xhavit Haliti, Bardhyl Mahmuti, Hashim Thaci, Faton
2 Mehmetaj and Sokol Bashota are the political representatives of the
3 KLA."

4 At the end of the communiqué, the declaration, below the date it
5 says:

6 "General Staff of the Kosovo Liberation Army."

7 So on this basis I am asking you: Who did formally appoint to
8 you that role? Was it not the General Staff of the Kosovo Liberation
9 Army?

10 A. We are getting into an argument that I need a lot of time to
11 talk about because the answer cannot be a "yes" or a "no" answer. We
12 need to be able to differentiate fundamentally between what we wanted
13 to tell the world, i.e., that we were an organised structure, and the
14 historically reality that we lived through. If you want me to give
15 an answer, you ought to allow me the time to elaborate on that
16 dimension.

17 Q. We don't need elaborating. We can agree to -- that's what this
18 document states, though. It is issued in the name -- on its face, it
19 is issued in the name of the KLA General Staff. Would you agree with
20 that?

21 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

22 MR. GILISSEN: I would like to understand the quality of the
23 link between the information concerning the Case 06 and the link with
24 the Shala's case. The way that government, the people organise the
25 KLA is nothing to see with Mr. Shala, I think so.

1 committed in that case have a connection with the broader policy of
2 the KLA, although we don't -- our joint criminal enterprise is
3 formulated differently from that in Case 06. But there is a
4 relevance here, in addition to establishing the witness credibility.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 MR. GILISSEN: Thank you very much.

7 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel -- I see two
8 almost -- two Defence Counsels standing so -- no, no. Mr. Aouini,
9 you have the floor.

10 MR. AOUINI: Yes. Thank you, Your Honour.

11 We just heard my dear colleague self-defeat his own argument.
12 If this is not evidence for Case 06, what is this, the policy? Even
13 though they frame their JCE differently and this has nothing do with
14 Case 04, then they will be permitted. And this is what we warned you
15 of in the beginning of our discussions this morning, Your Honour.
16 This is a disguised exercise for credibility, but this is an attempt
17 to elucidate evidence for Case 06. And if that is the case, we have
18 to bring the Defence Counsel for Case 06 so they can represent any --
19 their clients for any evidence that is mentioned here. Because the
20 use of this evidence -- and the witness specifically said: This is a
21 document, the face of the document, if you want me to answer, I will
22 have to answer very long answers to explain the reality.

23 We are not representing the other accused in the other cases.
24 They have interests. This is not -- again, Your Honours, this is
25 absolutely not a credibility exercise. They can go straight to his

1 posts, his opinions, political opinions or otherwise. This is
2 attempting to lay out policy and structures and things that go beyond
3 anything that happened in Kukes. Anything. And this is not
4 permissible.

5 We urge you, Your Honour, to protect the integrity of these
6 proceedings. This is not the way it should happen, Your Honour.
7 With due represent, Your Honour.

8 MR. GILISSEN: [Microphone not activated]

9 PRESIDING JUDGE VELDT-FOGLIA: You may, and then I will give the
10 floor to Mr. Prosecutor.

11 MR. GILISSEN: Thank you very much.

12 I fully agree with Mr. Prosecutor to establish a position of the
13 witness inside the KLA. The rest, that's fishing. No fish in our
14 case to nourish the case number 06. No need. No need. And I ask
15 one more time: What is the link?

16 Yesterday you decided - and I respect that - a hard quality of
17 the link between the information we would like to obtain and to use
18 and the witness in the Case 04.

19 And now I have really the -- the fishing, that's -- we are in a
20 shop. We are on the sea and they are able to fish some information
21 that nothing to see with the case of Mr. Shala. And it's not -- as
22 Mr. Aouini -- and I finish with that. It's not a question of
23 reliability or something like that. No, no. That's really fishing,
24 I said. I insist on that.

25 And, really, I didn't appreciate the attack again today from

1 just before.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. That we --

3 MR. GILISSEN: I was ready to quit the hearing, because enough
4 is enough. There is some limits. We are professional. We are not
5 criminals.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay. Nobody has said that,
7 Mr. Gilissen, no -- and nobody has accused you of that.

8 Mr. Prosecutor, I will give you, if you think that it is
9 necessary, the floor once more in this respect to rebut. If not, I
10 will say what I have to say.

11 MR. DE MINICIS: It's again on credibility, Your Honours. The
12 position that this witness had, the people that he was close to and
13 cooperated with will be very relevant to assess the veracity of
14 certain statements that he's made. So this is eminently relevant for
15 credibility.

16 On top of that, Your Honours, it is our position this witness
17 has an evident bias against these institutions and which we intend to
18 prove, and that that bias also stems from the position he had and the
19 allegiances he had during the war.

20 So this is the relevance to our line of examination. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you. What is clear -- no,
22 no. We will cut it here. I have understood your position very well,
23 Defence.

24 We are not - let that be put on record - we're not going to
25 litigate anything with regard to Case 06. Of course not. I don't

1 for now see any intention of that. And by your remarks, I think that
2 the SPO knows that and has heard it now again from you. And I'm not
3 afraid that that will happen. And if there is a beginning of
4 litigation with regard to Case 06, the Panel is here to say no.

5 The explanation that has been provided with regard to the
6 questions we have heard up till now, with regard to the position of
7 this person in the KLA, I think they are relevant for questions to
8 come, and we have admitted two documents at the beginning of this
9 session in relation to that. So I will allow for that, and I will
10 not be every time giving a long explanation whether we will allow or
11 not. But, for now, I see the relevance. But your caution is taken
12 on board. It is clear that we have our own task to perform here.
13 But for now, I don't think that anybody was crossing any line.

14 Madam Court Officer, could you ask Madam Court Clerk to bring
15 the witness back.

16 And, in the meantime, Mr. Prosecutor, you may refer to the ERN
17 numbers. That is something that doesn't change in time.

18 [The witness takes the stand]

19 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, thank you. Thank
20 you for your patience. It will be a little bit of coming and going,
21 and I ask your understanding for that.

22 I will give the floor now back to Mr. Prosecutor.

23 MR. DE MINICIS:

24 Q. So, Mr. Witness, my question, I will repeat it. Can we agree
25 that, on its face, the document is issued in the name of the

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2624

Cross-examination by Mr. De Minicis

1 General Staff of the Kosovo Liberation Army?

2 A. What might appear as black and white to someone, i.e., that can
3 you see there the General Staff of the KLA --

4 Q. But we are interested in the black and white. Right now --

5 A. -- and the reality --

6 Q. Right now I want to know, this is issued in the name -- the
7 document there is issued in the name of the General Staff of the
8 Kosovo Liberation Army, is it not?

9 A. I wanted to explain that we had the wish to function even better
10 than any NATO Member State. However, the reality cannot be included
11 in any of the rainbow colours, let alone black and white. In
12 reality, what we claimed to be as a serious party in all diplomatic
13 meetings and the difference with the reality on the ground are two
14 things that are probably diametrically opposed to one another.

15 Q. Mr. --

16 PRESIDING JUDGE VELDT-FOGLIA: No, no, sorry, Mr. Prosecutor.

17 You were losing me here, Mr. Witness. We see on the paper --
18 because I just want to have a clear answer. And I will give you the
19 floor to elaborate some more, because apparently you feel the need to
20 explain something to us.

21 But I see here written "General Staff of the Kosovo Liberation
22 Army" on this document. So apparently this was issued by the
23 General Staff. That's what we read here. And we take that.

24 And you are saying and I have heard you saying "black and white"
25 and "reality." I don't want a vague elaboration. What is it that

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2625

Cross-examination by Mr. De Minicis

1 you want to say? Because apparently you want to say that it was not
2 the General Staff who issued this communiqué? Is that what you want
3 to say? But then say it and make it clear. But now we are in this
4 nowhere, and I don't want to lose time on that.

5 So what do you want to say on this? And I will cut you if you
6 are elaborating on something vague.

7 MR. AOUINI: Your Honour, sorry. It is written "fake," I think
8 you met "vague." Sorry for that.

9 PRESIDING JUDGE VELDT-FOGLIA: No, vague. Thank you. No, I did
10 not say "fake." Thank you. Thank you.

11 THE WITNESS: [Interpretation] Let me explain that, based on the
12 convictions and beliefs of the diplomatic parties, we put the name of
13 an entity, General Staff, to create the impression that we are an
14 organised structure with a command. However, the reality is
15 completely different. And this is why I used that expression that --
16 saying that what seems to be black and white -- simple as black and
17 white was done for the purpose of creating the impression that we had
18 a serious -- that they had serious partners in front of them to go
19 further in the -- and find a resolution to the conflict of Kosovo.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you, Mr. Witness. I
21 will give back the floor to Mr. Prosecutor because he is doing the
22 cross-examination, but I urge you, for next time, just try to give --
23 instead of talking like we are doing a lecture here, just focus on
24 the answer. And if we need some more information, we will get that,
25 we will ask you for that.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2626

Cross-examination by Mr. De Minicis

1 Mr. Prosecutor, you have the floor.

2 MR. DE MINICIS:

3 Q. Now, still on your role as a political representative, yesterday
4 you told us that in that role you travelled around Western states and
5 the United States and to maintain diplomatic contacts with the
6 purpose of legitimising the KLA war. And that would be page 2488.
7 Is that correct?

8 A. Entirely correct.

9 Q. Would it be correct to say that you acted as a sort of KLA
10 spokesperson outside of Kosovo, sort of a foreign spokesperson for
11 the KLA?

12 A. No. If needed, I can explain why no. I will explain.

13 The spokesperson explains, tells what somebody else did. The
14 government spokesperson tells about the government work. A
15 spokesperson is a speaker as well. I was instead one of those who
16 tried to reason politically that the war of the Albanian people was
17 just and that the Kosovo Liberation Army was carrying out a just
18 liberation war. This is different from -- so there's a difference
19 between the spokesperson and the political representative.

20 Q. I'm asking because that's how Mr. Jakup Krasniqi defined you in
21 other proceedings before the ICTY. He stated:

22 "I was the spokesperson for the KLA in Kosovo. While abroad,
23 publicising the policy of the KLA to the West and Germany,
24 Switzerland, and other European countries, for these countries it was
25 Bardhyl Mahmuti."

1 So you would agree with that statement?

2 A. The declaration we have on our screen contradicts what might
3 have been translated from an evidence given by Mr. Krasniqi in the
4 ICTY. I was only a political representative of the Kosovo Liberation
5 Army. There was only one spokesperson. Jakup Krasniqi was the
6 spokesperson, and he was at the same time political representative of
7 the KLA. The political declaration here proves that the first person
8 mentioned here is Jakup Krasniqi in his capacity as a political
9 representative of the KLA.

10 PRESIDING JUDGE VELDT-FOGLIA: We can move on, I would say.

11 MR. DE MINICIS: I will move on, Your Honour.

12 Q. Now, you told us how you travelled abroad with the aim of
13 garnering support and advocating for the cause of the KLA. In
14 addition to that, did you also discuss other matters with the -- with
15 members of the international community?

16 PRESIDING JUDGE VELDT-FOGLIA: Can you indicate what -- why
17 you're asking this question? Because now you're -- now it's, for me,
18 not completely clear where you want to go. And if the witness has to
19 leave, we do that.

20 MR. DE MINICIS: Maybe I can reformulate the question to
21 witness. It will become clearer for Your Honours.

22 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

23 MR. DE MINICIS: If it doesn't -- yes.

24 PRESIDING JUDGE VELDT-FOGLIA: Because ...

25 MR. DE MINICIS:

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2628

1 Q. Mr. Witness, did you discuss, for instance, issues related to
2 the capture and release of prisoners of war in your capacity as a
3 political representative of the KLA?

4 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, you have the
5 floor.

6 MR. AOUBINI: Your Honour, this is exactly what we have been
7 repeating. What is the relevance of this to the guilt or innocence
8 of Mr. Shala? We brought whereabouts, not his role and who he
9 discussed with and why. They have the passport. They can go through
10 it and explain why, but not what. This is Case 06. Your Honours, we
11 are scared of how it is going.

12 Thank you, Your Honour.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

14 MR. DE MINICIS: It will become relevant at the next question,
15 Your Honours. And it is part of the credibility matters that we've
16 discussed earlier. The next question will become more relevant.

17 PRESIDING JUDGE VELDT-FOGLIA: Now what we will do is we will
18 usher the witness out, you give an explanation, and then we proceed.

19 Mr. Witness, thank you for your patience. Madam Court Usher
20 will usher you out.

21 [The witness stands down]

22 PRESIDING JUDGE VELDT-FOGLIA: You have the floor,
23 Mr. Prosecutor.

24 MR. DE MINICIS: Thank you, Your Honours.

25 The witness denies that the KLA was targeting civilians in any

1 shape or form, in fact. We have a document which -- we need to go
2 into private session for this.

3 PRESIDING JUDGE VELDT-FOGLIA: Yes.

4 Madam Court Officer, can you bring us into private session,
5 please.

6 MR. AOUINI: Can we please have a transcript reference of this.

7 MR. DE MINICIS: Of what?

8 PRESIDING JUDGE VELDT-FOGLIA: I don't have -- I didn't hear
9 your question.

10 MR. AOUINI: Denying KLA having something to with civilians this
11 is what my colleague is saying, that the witness is denying something
12 about civilians. Can we have a transcript to relate to. Because if
13 we're going to put documents and then other documents, this is not
14 cross-examination based on what is coming out.

15 The credibility of what, Your Honours? Really --

16 PRESIDING JUDGE VELDT-FOGLIA: Can you reformulate your
17 question, Mr. Aouini, because I don't understand you for now.

18 But please reformulate and then ...

19 MR. AOUINI: Sorry, Your Honours. It's just that the
20 transcription is not complete. At page 50 --

21 PRESIDING JUDGE VELDT-FOGLIA: You have to wait. [Microphone
22 not activated].

23 Sorry, Defence Counsel, to cut you off. We cannot have
24 discussions while we are going into private session. So we have to
25 wait.

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

[Open session]

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

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

19 And with regard to the document which is for now excluded, this
20 does not mean that it is admitted now. So if you want to use it, we
21 first will be discussing it.

22 MR. DE MINICIS: Your Honours, I will only call it up if I can
23 put the proposition that is in the document to the witness. If the
24 witness denies that conversation having taken place, I believe we
25 have good grounds to request that the documents be allowed to be

1 used.

2 PRESIDING JUDGE VELDT-FOGLIA: Yes. But then we will first
3 discuss it.

4 Very well, Madam Court Officer, can you bring -- can you ask
5 Madam Court Usher to bring the witness in.

6 [The witness takes the stand]

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

8 I give the floor to Mr. Prosecutor.

9 MR. DE MINICIS:

10 Q. Mr. Witness, did you ever engage in -- with the international
11 community with regard to the capture and release of prisoners of war
12 by the Kosovo Liberation Army?

13 A. Prisoners of war is not an adequate term if it is translated
14 like that. We discussed, talked about soldiers made prisoners in
15 Shala e Bajgores, at the time when they were made prisoners, and it
16 was made public that six or seven soldiers - I don't recall exactly -
17 were captured by the KLA. And American diplomats contacted me and,
18 at the time, we discussed as to how these soldiers would be released.
19 As --

20 Q. Thank you. Thank you. Now, in addition to that, did you ever
21 discuss with members of the international community the arrest by the
22 KLA of Kosovar Albanian civilians?

23 A. Because of the Serbian propaganda, questions of this nature were
24 asked as well. However, the answer was categorically clear which is
25 that there were no such prisoners held by the Kosovo Liberation Army.

1 Q. Is it your statement that the Kosovo Liberation Army never
2 detained civilians?

3 A. In what sense you're using the word "detention"? What do you
4 imply by "detention" or "holding"?

5 Q. The commonly understood meaning of somebody being deprived of
6 their personal liberty, sir.

7 A. With respect to these matters, I don't remember having discussed
8 them with foreign diplomats. At the time, I did not take any notes
9 in relation to the diplomatic meetings, with the exception of the
10 public communiqués which I signed myself. There are a number of
11 communiqués within the diplomatic group that were made public. When
12 I made public the content of the talks that I held with the
13 representatives from Western states, it was never mentioned in
14 this -- in these declarations that the matter or issue of persons
15 held by the Kosovo Liberation Army was discussed.

16 Q. Let's go step by step, Mr. Mahmuti, because you have not
17 answered my question. I asked you if it is your position that the
18 KLA never detained civilians. You asked me what I meant by
19 detaining, and then you have not answered my question.

20 Is it your position that the KLA never detained civilians in the
21 commonly understood meaning of that word?

22 A. To my knowledge and what for I can remember, no.

23 Q. So is it your testimony that even today you are unaware of
24 civilians being detained by members of the Kosovo Liberation Army?
25 Is that your testimony?

1 A. To this day, I stand by my position that everything that has
2 been submitted by commissions prepared by the Serbian secret services
3 led by Milovan Drecun, documents given to the ICTY or to the
4 Specialist Prosecutor's Office, are fabrications which purpose is to
5 discredit the pure nature of the Kosovo Liberation Army war.
6 Everything that comes from this commission which brags about that
7 they directed the Prosecution as to how they should lead their
8 investigations, I don't believe any of this, and I have never
9 discussed this matter with my friends.

10 Q. Very well. Thank you. We will explore this answer of your
11 further.

12 MR. DE MINICIS: But for now, Your Honours, I would like to go
13 into private session to put a document to the witness concerning his
14 personal interactions with members of the international community
15 with matters that we have just discussed.

16 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. We
17 will discuss it further when we are in private session.

18 And we are five minutes before our moment of the break.

19 Very well. Madam Court Officer, can you bring us into private
20 session, please.

21 Now, Mr. Shala has left us.

22 MR. AOUINI: Your Honour, can we have the document --

23 ~~[Private session]~~ [Open Session] *Reclassified Pursuant*
to F744

24 THE COURT OFFICER: Your Honour, we're now in private session.

25 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, yes, you will get the

1 floor. I don't hear you.

2 THE ACCUSED: [via videolink][Interpretation] I need only one
3 minute to go to -- to use the bathroom, please.

4 PRESIDING JUDGE VELDT-FOGLIA: Yes, please go, Mr. Shala.

5 THE ACCUSED: [via videolink][Interpretation] Thank you.

6 PRESIDING JUDGE VELDT-FOGLIA: Of course.

7 MR. AOUINI: Thank you, Your Honour. Can we ask for the
8 document, the ERN of the document or a number so we can follow.
9 Thank you.

10 MR. DE MINICIS: Yes. The ERN of the document is -- just going
11 to double-check that I give you the correct one, that I give counsel
12 the correct one. It is 075522 to 075551.

13 MR. AOUINI: Thank you, Your Honours. So this is the same
14 document we discussed a little bit earlier, number 4 and 5, I think,
15 in the presentation queue.

16 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] ... to
17 be -- this is, if I understand well -- is this number 4?

18 MR. DE MINICIS: [Microphone not activated].

19 PRESIDING JUDGE VELDT-FOGLIA: Yes, yes, but then we cannot have
20 for now the witness present.

21 MR. DE MINICIS: No --

22 PRESIDING JUDGE VELDT-FOGLIA: What we will do is, because we
23 are almost at the moment of the break, we will go back to public
24 session. We will usher Mr. Witness out and then you will have a
25 break of an hour, like we all will have. We can go back into private

1 session to at least have an exchange of views on this document. And
2 with the information provided by parties and Victims' Counsel, we
3 will adjourn for the upcoming hour, and then we come back with our
4 decision. So that's how I would like to proceed.

5 Mr. Shala, I see that you're back.

6 THE ACCUSED: [via videolink][Interpretation] Yes, I am. Thank
7 you.

8 PRESIDING JUDGE VELDT-FOGLIA: Of course.

9 Madam Court Officer, can you bring us into public session again.
10 Thank you.

11 ~~[Open session]~~

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

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

14 Very well. We will have a break for an hour, Mr. Witness, like
15 I already said in private session, but I say it again for the people
16 that are not in this courtroom but in the public gallery or
17 elsewhere. We will have a break until 1.00. I wish you a good
18 lunch, and then we see each other back. Thank you for now.

19 Thank you, Madam Court Usher.

20 THE WITNESS: [Interpretation] Thank you. Enjoy your lunch as
21 well.

22 [The witness stands down]

23 PRESIDING JUDGE VELDT-FOGLIA: I will not give you the floor
24 yet, Mr. Prosecutor, because we are waiting for Mr. Shala.

25 MR. DE MINICIS: Maybe Mr. Shala understood we are taking a

1 break. I don't know.

2 PRESIDING JUDGE VELDT-FOGLIA: Hmm. No, no, no, no. I think
3 he -- you're back, Mr. Shala. We don't want to be losing you all the
4 time.

5 THE ACCUSED: [via videolink][Interpretation] I apologise, but I
6 thought this was the lunch break. I'm sorry.

7 PRESIDING JUDGE VELDT-FOGLIA: Maybe I was not clear. Five
8 minutes more.

9 We have to go back into private session for this part.

10 So, Madam Court Officer, if you would be so kind to bring us
11 back.

12 [Private session]

13 [Private session text removed]

14

15

16

17

18

19

20

21

22

23

24

25

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14 [Open session]

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

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

17 Mr. Prosecutor, there was still one question pending with regard
18 to the time you think you will be needing still for cross.

19 MR. DE MINICIS: Yes, Your Honour. I am afraid this will also

20 depend on how many interruptions we get in our -- in the course of

21 our examination, because now Your Honours have made it clear that

22 matters related to credibility can be explored with the witness.

23 Now, counsel continues standing up, stating that this doesn't relate

24 to the case, this doesn't relate to the case. We're exploring

25 credibility, we're exploring whether the witness is truthful in his

1 statement -- was truthful in his statement, whether he is truthful in
2 what he says he knows or doesn't know. And this goes to credibility.

3 Now, if we're not interrupted again with the same frequency, I
4 think that we might need another hour, something between an hour an
5 hour and a half, tops. But if that is if we are allowed to proceed
6 without undue interruptions.

7 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you for that.

8 We should always have a kind of Plan B when it comes to
9 management of proceedings. So I would invite all present to consider
10 nothing is -- nothing is sure yet, but just to look in agendas for
11 next week, Wednesday afternoon and on Friday. That is just for now,
12 and let us see where we go this afternoon. Yes? Good.

13 Is there anything you want to raise with the -- yes, I see
14 Victims' Counsel.

15 MR. LAWS: May I say, before that plan takes root, Your Honour,
16 that both myself and my co-counsel are travelling to meet victims at
17 the conclusion of the hearing next Wednesday and we won't be back in
18 this country until Sunday.

19 PRESIDING JUDGE VELDT-FOGLIA: So much for Plan B. We will
20 consider plan C.

21 Very well. Is there something else you would like to raise with
22 the Panel? No?

23 MR. AOUINI: About the interruptions, if you want to hear us, we
24 are trying to do our job. It is not a pleasure for us to be standing
25 and -- and I can say for myself, be standing and sitting. But we

1 have to do our job and we have to be allowed. We don't think it is
2 undue interruptions. It is absolutely not the intention. And we
3 have made very clear and we stand on our position that the areas that
4 are explored are not credibility, they are not relevant, and this
5 goes beyond what we have to accept in terms of credibility exercise.

6 So thank you, Your Honour.

7 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, let me then
8 repeat. And maybe words are not so strong as actions, and the
9 actions of this Panel have been up till now that I don't think there
10 have been any limits to what you have been able to raise with regard
11 to what has been discussed in this courtroom. So I think that the
12 point you made is clear, but there is no reason to doubt that you're
13 not getting the floor enough and that anybody is saying anything with
14 regard to the fact that you're standing and sitting all the time
15 because you want to make your submissions with regard to what is
16 asked.

17 No -- shall we leave it here?

18 MR. AOUNI: It's not directed.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. We adjourn till ten
20 minutes past 1.00.

21 --- Luncheon recess taken at 12.10 p.m.

22 --- On resuming at 1.12 p.m.

23 PRESIDING JUDGE VELDT-FOGLIA: Welcome back this afternoon. SPO
24 is in the same composition. Yes.

25 Victims' Counsel's team too.

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2648

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2649

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2650

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2651

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2652

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2653

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2654

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2655

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2656

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)

Page 2657

Cross-examination by Mr. De Minicis

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Bardhyl Mahmuti (Resumed) (Private Session)
Cross-examination by Mr. De Minicis

Page 2658

1 [Private session text removed]

2

3

4

5

6

7

[Open Session] *Reclassified Pursuant to F744*

8 Q. So moving on from this. Earlier on we discussed about
9 *Zeri i Kosoves*, the publication, and you have also told us today -
10 and this is page 56 of the provisional transcript - that you yourself
11 signed a number of communiqués issued on behalf of the
12 Kosovo Liberation Army; is that correct?

13 A. I would have said this? Never.

14 MR. DE MINICIS: If I may, Your Honours, just briefly go back.
15 But it may be ...

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

17 MR. DE MINICIS: Page 56, Your Honour, starting from line 9.

18 "At the time I did not take any notes in relation to the
19 diplomatic meetings, with the exception of the public communiqués
20 which I signed myself. There are a number of communiqués within the
21 diplomatic group that were made public. When I made public the
22 content of the talks that I held with the representatives, it was
23 never mentioned in this ..."

24 So I was referring to that. From the -- please explain.

25 A. I request to rectify and say things exactly as I said that. I

1 spoke about information. The group did not issue communiqués.

2 MR. DE MINICIS: Sorry. Perhaps we are still in private
3 session?

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

5 MR. DE MINICIS: At this point, as far as I'm concerned, we can
6 move out. I have exhausted the questions on the document which was
7 protected.

8 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] yes, it
9 is a good idea to go into public session.

10 Madam Court Officer, can you bring us into public session,
11 please.

12 ~~{Open session}~~

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

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 Mr. Prosecutor, you have the floor.

16 MR. DE MINICIS:

17 Q. So repeat the question. I understand from your previous
18 testimony at page 56 of the provisional transcript that you had
19 authored a number of communiqués. And I'm asking you also the
20 question now whether you have in fact ever authored a political
21 communiqué on behalf of the Kosovo Liberation Army?

22 A. There is a mistranslation. I was a, as a representative of the
23 diplomatic group, co-signatory and the person who compiled, drafted
24 the information reflecting the content of the meetings with the
25 diplomatic corps. I have -- Bardhyl Mahmuti has never drafted or

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2660

1 signed any KLA communiqué.

2 Q. Then I would like you to -- to put to you a Facebook post of
3 yours and I would like to discuss it with you in this regard and help
4 me understand your role in drafting communiqués. Because from the
5 Facebook post that we have, I understood otherwise.

6 MR. DE MINICIS: Your Honours, could we have this document shown
7 to the witness, please. It would be SPOE00301736 --

8 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, please
9 proceed.

10 MR. DE MINICIS: -- to SPOE00301754. And the ERN is at 301739.

11 MR. AOUNI: Can I help with the presentation queue, Your
12 Honour, number? Number 12 in the presentation queue, if we're not
13 mistaken. 12 and 13.

14 PRESIDING JUDGE VELDT-FOGLIA: I think we have them on the
15 screen, Defence Counsel. But thank you for being so prompt to add.

16 And I was informed that the ERN number is the most reliable
17 source, although we in our order today have given the numbers in the
18 presentation queue. But they change, they could change, and the ERN
19 numbers are fixed so ...

20 MR. DE MINICIS:

21 Q. Mr. Mahmuti, this concerns your reaction to somebody having
22 accused you of being the author of political communiqué number 59 and
23 that was Mr. Gani Geci. And you denied on Facebook that you were the
24 author of that communiqué. However, in that Facebook post, and I'm
25 reading from the Facebook translation: "At that time" --

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2661

1 You wrote:

2 "At that time, I clarified that the communiqué through which the
3 Kosovo Liberation Army unilaterally declared a cease-fire to give the
4 opportunity for the Kosovo issue to be solved by dialogue had been
5 composed at the NATO headquarters in Brussels. I dictated the
6 communiqué from NATO headquarters by telephone to a member of the KLA
7 General Staff, Mr. Kadri Veseli, who, during that day, with certain
8 modifications made it public."

9 And then it continues.

10 So my question is: From this post of yours I understood that
11 you, in fact, at least dictated this communiqué over the phone. Did
12 you or did you not do that?

13 A. The translation is entirely inaccurate. I ask that the Court is
14 provided with my Facebook post exactly as -- how it is written and so
15 you can then see how my statement was manipulated. It is not true.

16 At the NATO headquarters with -- in the presence of Clark,
17 Richard Holbrooke and Larry Rossin, in their presence was compiled,
18 drafted a communiqué for a cease-fire after the talks that Holbrooke
19 had held in Belgrade. I did not draft that communiqué. The
20 authorities present there prepared that, Richard Holbrooke dictated
21 it, Larry Rossin wrote it.

22 I did not accept to issue a communiqué in the name of the KLA
23 from Brussels. I tried to have these communicated from Kosovo and
24 not statements from the West for one reason. Because communiqués
25 issued by Brussels or somewhere else would have resulted -- the truth

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2662

1 would have come out, meaning that these were drafted in Brussels or
2 somewhere else and not in Kosovo. The translation read by -- just
3 read by the Prosecutor is inaccurate.

4 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, you have the
5 floor.

6 MR. AOUBINI: Thank you, Your Honour. Just we suggest to read
7 later on on the same passage when it mentions "I repeat again what I
8 said." Because it contains the contradiction as well and what the
9 witness just said. So for full context, we should read one or two
10 paragraphs later because it's relevant for context.

11 MR. DE MINICIS: [Microphone not activated] paragraph -- is it
12 the one starting "I repeat again what I said to Gani Geci"? That
13 concerns communiqué 59. It does not concern the communiqué -- the
14 Political Declaration 12. In fact, I believe it was that the witness
15 is discussing earlier the one that was dictated to the -- from the
16 NATO headquarters. The context, full context will make it clear.

17 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

18 MR. DE MINICIS:

19 Q. So we will try to provide an original post. Did you or did you
20 not -- if you authored it or not, did you dictate that communiqué
21 over the phone or not?

22 A. I dictated the communiqué, which was a request from NATO and the
23 United States. I did not write it.

24 Q. Thank you very much. We can move on.

25 And to whom did you dictate the communiqué?

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2663

Cross-examination by Mr. De Minicis

1 A. I dictated it to Kadri Veseli, from what I can remember. If I'm
2 not mistaken. Because it's been a quarter of a century since then
3 and there is a possibility for me to be confused on some matters.

4 PRESIDING JUDGE VELDT-FOGLIA: We acknowledge that, Mr. Witness.
5 We know it's a long time ago, and you testify here to the best of
6 your knowledge. We take note of that.

7 MR. DE MINICIS: So I'm moving on.

8 Q. So, Mr. Mahmuti, today we discussed your role within the Kosovo
9 Liberation Army, your dealings with internationals. I'd like to
10 discuss with you some statements of yours that you made with regard
11 to KLA policies on the targeting of civilians.

12 MR. DE MINICIS: Your Honours --

13 Q. Mr. Mahmuti, this is a long time ago, so the document could
14 help, but I'm going to try to first ask the witness.

15 Do you remember giving an interview to a magazine named the
16 Christian Science Monitor on 15 April 1998? It's a long shot, a long
17 time ago, but do you remember?

18 A. First of all, I want to clarify that I don't speak English, and
19 I did not have the opportunity to give such interviews. I don't
20 remember having given any interviews to any American newspaper, if
21 this is an American newspaper. I've never given any interviews to
22 any such media.

23 MR. DE MINICIS: Your Honours, could we please pull up on the
24 screen SPOE00341109 to 00341116.

25 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, please

1 proceed.

2 MR. DE MINICIS: It's a very small font so we might need to
3 enlarge it a little bit. And I am afraid we only have an English
4 version of this document, so I will read it with the help of the
5 translators who will convey its content to Mr. Mahmuti.

6 Q. Now, according to page 1 of this document, you, together with
7 Jashar Salihu and Bilall Sherifi, spoke in an interview with this
8 publication, the Christian Science Monitor.

9 My first question is: Do you know Mr. Salihu and Mr. Sherifi?

10 A. With Jashar Salihu and Bilall Sherifi, we've held many
11 conferences with the reporters and journalists at the seat of the
12 United Nations in Geneva. I know both of them personally. Jashar
13 Salihu is deceased now. He is a man who's been recognised a hero of
14 Kosovo.

15 Q. Now, this publication is date 15 April 1998. According to the
16 last paragraph that we see now on the screen, it states that:

17 "The three," referring evidently to you, Mr. Salihu and
18 Mr. Sherifi, "spoke openly for the first time in an interview with
19 the Monitor about KLA strategy, views, and the support from Albanian
20 communities around the world."

21 Does this in any way refresh your memory about having spoken
22 with this publication in 1998?

23 A. The date of 15 April makes me doubt the veracity of this.
24 Because I can guarantee the Court, the meetings I had in -- I can
25 provide the Court with date meetings and the dates I had these

1 meetings in Paris during this period of time. I don't recall
2 exactly. This can be found in -- on the Internet. Meetings I had
3 with intellectuals, Bernard-Henri Lévy, [indiscernible], Herzog. So
4 during this period of time, it is highly likely that I was there.
5 Because for this interview to be published on 15 April, I'm -- should
6 have given the interview on 14 April. So I am not certain, but if
7 I'm given five minutes' time to search on the Internet I could find
8 out.

9 In this period of time, including 15 April, I was in the heart
10 of Paris where I held numerous meetings with French intellectuals.

11 PRESIDING JUDGE VELDT-FOGLIA: I understand well this passage as
12 cited by Mr. Prosecutor does not refresh your memory that you have
13 ever given such an interview. Is that a good summary of what you
14 have just said?

15 You never gave this interview. Is that what you are saying?

16 THE WITNESS: [Interpretation] The date of 15 April makes me
17 doubt the veracity and the accuracy of this, meaning that I was part
18 of this interview. I'm not certain though. I can verify and I can
19 bring you evidence as to my whereabouts at the time. It's just the
20 date of 15 April that makes me doubt it.

21 Besides, I don't know the content of the interview because I
22 don't have the translation here. However, the date --

23 PRESIDING JUDGE VELDT-FOGLIA: No, but the content -- sorry.

24 The content has been for a small part shared with you. But I
25 will give the examination back to Mr. Prosecutor. But for him to

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2666

Cross-examination by Mr. De Minicis

1 elaborate. But the interview gives some more information about
2 where, apparently, it has been conducted.

3 Anyway, Mr. Prosecutor, you have the floor.

4 MR. DE MINICIS: If I may have just a brief minute, Your Honour.

5 PRESIDING JUDGE VELDT-FOGLIA: Mm-hm.

6 MR. DE MINICIS: Now if we could go to the next page,
7 Your Honour.

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

9 MR. DE MINICIS:

10 Q. The third paragraph on this page states that:

11 "The interview with the three former political prisoners was
12 arranged by the main US operative, an immigrant from Kosovo who has
13 relatives in the KLA and meets regularly with their leaders in
14 Europe. It was held late last week in Aarau, a village 30 miles from
15 Zurich, at the 'Voice of Kosovo,' a newspaper published by members of
16 their party who were given political asylum in Switzerland in the
17 early 1990s."

18 Does this refresh your memory, Mr. Mahmuti, about your
19 participation in this interview?

20 A. The mention of the offices of the newspaper The Voice of Kosovo
21 in Aarau proves that what is written here with respect to me is not
22 true. I have never given an interview, ever given an interview to
23 any foreign reporters in the offices of a newspaper *Zeri i Kosoves*,
24 The Voice of Kosovo. This is absolutely certain. I was not present
25 in any interviews, not only with these, but with any foreign

1 reporters in the premises of *Zeri i Kosoves* in Aarau.

2 Q. You were residing in Switzerland at the time, were you not?

3 A. Yes, I was in Switzerland. The seat of Aarau of the
4 *Zeri i Kosoves* newspaper is 250 kilometres away from my place of
5 residence. So I wouldn't have accepted to travel 500 kilometres at
6 the time. I had -- I held regular press conferences at the seat of
7 the United Nations and I gave very few individual interviews.

8 Q. Well, I'll proceed. According to this interview, which -- my
9 first question is: Do you categorically deny having taken part to
10 this interview, or do you allow for the possibility that it did
11 happen and you don't recall today about it?

12 So is it your testimony, "I never gave this interview"; or are
13 you saying, "I don't recall," but you will allow for the possibility
14 that it did, in fact, take place?

15 A. I am certain, 100 per cent, that I have never given any
16 interviews to any foreign reporters in the premises, offices of the
17 newspaper *Zeri i Kosoves* in Aarau.

18 Q. So this article which puts you together with two persons that
19 you know in the country where you were residing, made it all up. You
20 never -- nothing that is written in here with regard to your
21 participation in this interview is correct. That's your testimony
22 today.

23 A. Without knowing the entire content, I can guarantee that nothing
24 in there is true as far as I'm concerned. However, I don't know the
25 entire content. But I have never given any interviews to any

1 reporters in the offices of the newspaper. Bilall Sherifi is alive.
2 You can ask him. There are members of the editorial board of *Zeri i*
3 *Kosoves* who are alive and can testify that Bardhyl Mahmuti never gave
4 any interviews from the offices of *Zeri i Kosoves* in Aarau to foreign
5 reporters.

6 Q. So I'll move on. I will just put to you one passage from this
7 interview. You can tell us whether perhaps it refreshes your
8 recollection and then we can discuss about its content.

9 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

10 MR. AOUINI: We object, Your Honour. It is abundantly clear it
11 has nothing to do with the content as the witness said. It is about
12 the place, the date, and the offices of that newspaper. So how can
13 we put to him things that he denies?

14 MR. DE MINICIS: Your Honours, the witness stated: "Without
15 knowing the entire content, I can guarantee" -- I'm just going to put
16 to him some more content and then I'm going to ask him, in any event,
17 whether he agrees with that statement that is attributed to him.

18 MR. AOUINI: But what the witness is saying Your Honour - excuse
19 me - is without needing to go through the content. He has other
20 criteria to say he never been in this interview. That's not him
21 requesting content to be refreshed. That's absolutely not the case.
22 He said: Without knowing anything from the context, I can guarantee
23 you that this is not true.

24 PRESIDING JUDGE VELDT-FOGLIA: But what I see that
25 Mr. Prosecutor is doing, that by putting information to him with

1 regard to the content of this interview, in order to see if maybe --
2 maybe not there but maybe somewhere else it -- maybe there's a wrong
3 about where it was taken, the interview. He is trying to refresh the
4 member of the witness. That's how I see it.

5 Please proceed.

6 MR. DE MINICIS:

7 Q. So this is the quote that this article attributes to you.

8 MR. DE MINICIS: And this would be the next page, Your Honour,
9 ERN ending with -111. If we could -- thank you.

10 Q. Now, The article states:

11 "'The UCK,'" or the KLA, "'has killed only members of the
12 repressive state structure,'" said Mr. Mahmuti, using the KLA's
13 Albanian-language acronym. 'One thing must be clear, the repressive
14 state structure is formed by officials in uniform ... and without
15 uniform.'"

16 My first question is: Do you recall making this statement to
17 the journalists from the Christian Science Monitor; yes or no?

18 A. An identical statement was published by the media after a
19 meeting that I had in Geneva about Gelbard. Gelbard asked me how
20 could it be explained that there are civilians amongst those killed,
21 and I stated word for word that the Kosovo Liberation Army targets
22 the repressive organ members. And I said that the organs of
23 repression are composed of people in uniform as well as people
24 without the uniform. And I said that the KLA has never had that as a
25 goal.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2670

1 This was a public statement. These journalists might have made
2 use of it to come up with this article. I have not given any such
3 statement to any journalist. This is a statement that has been made
4 publicly after I had a meeting with Gelbard in Geneva, the ambassador
5 of the United States in Geneva, Mr. Gelbard. Journalists could have
6 made use of it.

7 Q. With respect --

8 PRESIDING JUDGE VELDT-FOGLIA: No, no. Mr. Witness, thank you
9 for this reply, because this has been clarifying for now.

10 I have one question in this regard. Were you aware that this
11 article existed?

12 THE WITNESS: [Interpretation] No. No. Given that I don't read
13 English, I wouldn't have been able to know about it. But I know that
14 that statement was published by various media outlets, because this
15 was one of the statements that was a source of friction between
16 Gelbard and the Kosovo Liberation Army. Because during the meeting
17 that we had, he said that he had not described the KLA as a terrorist
18 organisation but had said that the KLA had undertaken terrorist
19 actions, and that is why he had sought clarification from me.
20 Clarification regarding the killing of people like -- if I may be
21 permitted one more second, Your Honour.

22 PRESIDING JUDGE VELDT-FOGLIA: No, no, I have one question. No,
23 no, I have more question. When was that meeting where you said that?
24 Can you remember when that was?

25 THE WITNESS: [Interpretation] Yes. June 1998.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2671

Cross-examination by Mr. De Minicis

1 PRESIDING JUDGE VELDT-FOGLIA: Okay. Now, I leave it for here.

2 Mr. Prosecutor, you have the floor.

3 MR. DE MINICIS:

4 Q. But this article is dated 15 April 1998. So you're saying that
5 these statements you made in a meeting which took place in June 1998?
6 Is that what you're saying? I'm just asking you to clarify because I
7 don't understand.

8 A. I am clarifying what I said and what was published in the media.
9 I said I had made similar statements in all the press conferences
10 that I had with all journalists. I repeated the same to Gelbard, I
11 repeated it in Brussels, in all centres in Paris, and all over the
12 place.

13 Q. Very well. So June 1998 you accept that you made this
14 statement; correct?

15 A. From the month of March 1998 until June 1999, I held over 30
16 press conferences with journalists at the United Nations headquarters
17 in Geneva, and I have repeated the same thing all over. I cannot
18 recall exactly when I repeated that, but it was a stance that I
19 mentioned time and time again, that the KLA has not killed civilians,
20 that is.

21 Q. Do you recall having made this statement in June 1998? That's
22 what you're saying now. You may have made it other times, but you
23 recall an instance in June 1998 where you made this statement; is
24 that correct?

25 A. I used to say before June. I said that in a book that was

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2672

Cross-examination by Mr. De Minicis

1 published in France which is called "The Birth of the Armed
2 Struggle," and I have been repeating it throughout since the month of
3 March.

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

5 MR. DE MINICIS: Thank you.

6 Q. Now --

7 PRESIDING JUDGE VELDT-FOGLIA: Sorry. My microphone was not on.
8 We now have an answer and now we can move on.

9 MR. DE MINICIS:

10 Q. Could you provide -- could you explain to us who are the people
11 without uniform that the KLA was targeting? Would that include
12 civilians, Kosovar Albanian civilians? Would that include Kosovar
13 Albanian civilians?

14 A. No. The *Blood Libel* book has photographs of two people who are
15 not wearing uniform but who served under the Serbian police and which
16 Serbia alleged that they were Serbian. However, they were forced
17 later to admit that they were part of their forces.

18 Q. Okay. Now, Mr. Mahmuti, so it is your statement that at the
19 time the KLA was not targeting any Kosovar Albanian civilians; is
20 that correct?

21 A. Entirely correct.

22 Q. That's enough for now.

23 MR. DE MINICIS: Your Honours, I am done with this document.

24 PRESIDING JUDGE VELDT-FOGLIA: And I think that also the witness
25 has been clear on this subject --

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2673

1 MR. DE MINICIS: Yes --

2 PRESIDING JUDGE VELDT-FOGLIA: -- so I would not now dwell too
3 much on the topic except if you have something very concrete to put
4 to the witness.

5 MR. DE MINICIS: Yes. I have one document that I would like
6 discuss with the witness. And this would be SPOE00209429 to -- just
7 that's the ERN. It is one-page document. SPOE00209429-00209429 in
8 the Albanian. And then for the English there is -ET revised.

9 PRESIDING JUDGE VELDT-FOGLIA: Can you explain to us the
10 purpose --

11 MR. DE MINICIS: Yes --

12 PRESIDING JUDGE VELDT-FOGLIA: -- in this respect?

13 MR. DE MINICIS: -- Your Honour. Well, the purpose is that this
14 is it a communiqué of the Kosovo Liberation Army, for the Kosovo
15 Liberation Army, that indicates the killing of a person whom we know
16 to be a civilian. So this goes directly to the credibility -- or the
17 reliability of what the witness has just stated.

18 PRESIDING JUDGE VELDT-FOGLIA: Very well. Please proceed.

19 I see in my left eye that Defence Counsel is standing.

20 Defence Counsel, are you standing?

21 MR. AOUINI: Yes, Your Honour. Sorry.

22 PRESIDING JUDGE VELDT-FOGLIA: Okay. You have the floor.

23 MR. AOUINI: I am being told that this was one of the documents
24 that were not allowed.

25 MR. DE MINICIS: This was the document that was reconsidered by

1 the Panel.

2 PRESIDING JUDGE VELDT-FOGLIA: Yes, yes.

3 MR. AOUINI: Okay. Then Your Honour --

4 PRESIDING JUDGE VELDT-FOGLIA: But thank you to be on top of it.

5 MR. AOUINI: Yes. One request for further explanation. We have
6 been listening carefully. We don't see how, and we would welcome
7 explanation how the SPO is going to use these questions and answers
8 to say at a later point: I have a point about credibility relevant
9 to what the witness has to be evaluated on credibility on. We don't
10 see any link to that.

11 PRESIDING JUDGE VELDT-FOGLIA: But we see the link and we
12 have -- so we will proceed. This is a topic that we have now been
13 discussing for several times. But I note it that you don't agree and
14 you don't see the link. But there is a link. But we have to assess
15 where it goes. That is for sure.

16 MR. DE MINICIS:

17 Q. [Microphone not activated] ... *Zeri i Kosoves*, the publication
18 that we discussed earlier, and we have the publication of two
19 political communiqués: Number 42 and number 43.

20 Now, communiqué number --

21 A. I cannot --

22 MR. DE MINICIS: Your Honours, if it could be --

23 THE WITNESS: [Interpretation] It's illegible. Can we zoom in in
24 the Albanian, please?

25 PRESIDING JUDGE VELDT-FOGLIA: Is it now better, Mr. Witness?

1 THE WITNESS: [Interpretation] Yes, it's clearer. Thank you.

2 MR. DE MINICIS:

3 Q. So this communiqué, as we can see at the top of the page, was
4 published on 5 March 1998. That is at least 40 days before the
5 publication of the article attributing that quote to you. This is
6 even longer before the conference where you may have stated those
7 things in June.

8 Now, the communiqué starts off by saying -- can you read now,
9 Mr. Mahmuti, or would you like to have it larger?

10 A. Yes, yes, it's fine.

11 PRESIDING JUDGE VELDT-FOGLIA: Is it 43?

12 MR. DE MINICIS: 42, Your Honours.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes, but now we're looking at 43,
14 so we have to --

15 MR. DE MINICIS: Oh, yes. I apologise. And if we could --

16 Q. Can you read communiqué 42 now? Is it legible?

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

18 THE WITNESS: [Interpretation] Yes.

19 MR. DE MINICIS:

20 Q. So:

21 "By decision of the KLA Central staff our units carried out a
22 series of attacks in January and February against the Serbian police
23 forces and their collaborators."

24 Now, a distinction is made here between police, on the one hand,
25 and their collaborators on the other. What did -- did this second

1 category relate to? To what category of people did it relate?

2 A. Collaborators are members of the organs of repression, namely,
3 here, the police. So those who had worked alongside the police
4 forces and put themselves at the disposal of those who had occupied
5 Kosovo. So collaborators in this instance would be those people who
6 had offered services to the occupiers of our people.

7 Q. So they're different from the police; correct? They're not
8 police forces. They're a different category?

9 A. They form part of this structure that repressed the population.
10 They are part of the organs of repression.

11 Q. Now, if you read a bit further down, and this is the last topic
12 on this document, it states:

13 "On 13 February 1998, Mustafe Kurti, a collaborator of the
14 occupier, was assassinated."

15 Do you know who Mustafa Kurti was, Mr. Witness?

16 A. No, I don't know him personally. But I trusted what was
17 written.

18 Q. If I told you that he was an employee at the post office in
19 Drenoc at the time he was killed, would you consider that not to be a
20 civilian?

21 A. If I can turn this question upside-down and ask what assurances
22 have you got that this person did not work within these structures,
23 these organs of repression, that is?

24 Q. Would somebody employed by the post --

25 PRESIDING JUDGE VELDT-FOGLIA: Excuse me. Just a reminder that

1 we have to slow down our pace and, more specifically, we have to wait
2 a little bit more between answers and questions. That goes both for
3 the SPO and the witness. Because, if not, we have overlapping
4 speakers, and that complicates very much the work of the stenographer
5 and the interpreters. So I know in the heat of the moment it is
6 complicated, but please try to pay attention to that.

7 MR. DE MINICIS:

8 Q. Now, you were a member of the political directorate of the KLA.
9 You dealt with issues of policy. You once even dictated a communiqué
10 --

11 MR. GILISSEN: I'm sorry, I'm sorry. With your leave, Madam
12 President.

13 I don't find the proof this person was an employee in the post
14 office.

15 MR. DE MINICIS: I put to that the witness. We will be happy if
16 requested to do so by the Panel, to submit evidence about it. He
17 was -- there is evidence in private session in other proceedings as
18 well as evidence from relatives of this person of what his employment
19 was at the time. I put that -- this is a proposition that the
20 Prosecution puts to the witness. If requested to do so we are happy,
21 more than happy, to submit the evidence we have in that regard.

22 PRESIDING JUDGE VELDT-FOGLIA: Does it suffice for now --

23 MR. GILISSEN: No. I would prefer to have the document before
24 talking about that --

25 PRESIDING JUDGE VELDT-FOGLIA: But that, at this moment in time,

1 is not possible. But I see the point you want to make, although it's
2 not our case. I mean, it is tested in a different -- but I see the
3 point you want to make, and then you could make any submissions on
4 that. But we -- I will come with a more formal order on that.

5 And I see that your colleague is not standing anymore.

6 MR. AOUINI: Sorry, Your Honour. Just to add this is coming
7 from another case and going back to another case, and this is what we
8 warned [Overlapping speakers] ...

9 PRESIDING JUDGE VELDT-FOGLIA: No. We are not going to get into
10 that, Defence Counsel.

11 MR. AOUINI: Sorry, Your Honour.

12 PRESIDING JUDGE VELDT-FOGLIA: Yes.

13 MR. DE MINICIS: I'm almost done with this topic and then I will
14 be moving on to my last topic for the cross-examination.

15 PRESIDING JUDGE VELDT-FOGLIA: Yes, please proceed.

16 MR. DE MINICIS:

17 Q. So you were involved in dissemination of policy for the KLA.
18 You told us earlier that you once dictated a communiqué. When the
19 communiqué came out, indicating the killing of individuals from your
20 organisation, could you not see it fit to seek information as to who
21 the persons who were killed in the organisations were? You were okay
22 with that, without seeking additional information, or did you try to
23 understand who it is the organisation was targeting?

24 PRESIDING JUDGE VELDT-FOGLIA: We're not going to allow this
25 question.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2679

Cross-examination by Mr. De Minicis

1 MR. DE MINICIS: Very well. I'll move on.

2 Q. So it is your testimony that you did not know the identity of
3 this person, Mustafa Kurti, at the time this communiqué was issued?

4 A. I did not.

5 Q. Now, Mr. Mahmuti, today you stated, pages 56 and 57 of
6 provisional transcript --

7 PRESIDING JUDGE VELDT-FOGLIA: Do we still need the --

8 MR. DE MINICIS: No, we no longer need the document.

9 PRESIDING JUDGE VELDT-FOGLIA: Okay, we can take that off.

10 Thank you.

11 MR. DE MINICIS:

12 Q. That you denied any knowledge of civilians being detained by the
13 KLA. You stated that -- at least that you're not aware of any
14 instances; is that correct?

15 A. That's right.

16 PRESIDING JUDGE VELDT-FOGLIA: Yes. We had that question
17 already several times. Or is it a step up?

18 MR. DE MINICIS: It's a step up.

19 PRESIDING JUDGE VELDT-FOGLIA: But if it is a step up, then you
20 just say it's a step up. Because I think he answered this question
21 already several times --

22 MR. DE MINICIS: Yes, it was to --

23 PRESIDING JUDGE VELDT-FOGLIA: -- with the same answer.

24 MR. DE MINICIS: Just to introduce the next question.

25 Q. Which is: Are you familiar with the trial held against

1 Latif Gashi, Rrustem Mustafa and other accused for crimes which were
2 found to have been committed in the Llap zone of the
3 Kosovo Liberation Army? It's a public judgment.

4 A. I have not read the judgment or followed the proceedings because
5 I was fully satisfied -- regardless of the fact of who the judiciary
6 were there, but I was fully satisfied that those proceedings were
7 carried out on the basis of fake witnesses.

8 Q. So it is your testimony today that the conviction of Mr. Gashi
9 and Rrustem Mustafa was based on the testimony of fake witnesses; is
10 that correct?

11 A. If permitted, I can bring numerous examples before the Trial
12 Panel of Albanians who have been convicted on the basis of fake
13 witnesses. Those who have testified against innocent people. There
14 are occasions -- forgive me, allow me to finish. There have been
15 occasions where people have admitted to carrying out crimes and it
16 later transpired that not only did they not carry out those crimes,
17 but that they were coerced into an admission. So in the context of a
18 situation where Serbian authorities have offered evidence to the
19 courts that were set up under UNMIK, all these cases, for me, are
20 suspect.

21 Let me give you one example, Your Honour. And I can give you
22 evidence. There are 27.000 pages --

23 Q. That suffices. Just another example. Are you familiar with the
24 judgment issued by the District Court of Mitrovica against Sabit
25 Geci, Riza Alija, and others?

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2681

1 PRESIDING JUDGE VELDT-FOGLIA: We will repeat that. But first I
2 will give the floor to Defence Counsel.

3 MR. AOUINI: Your Honours, we don't deal with cases that don't
4 have specific ties with this case. We were not allowed. No party
5 should be allowed.

6 MR. DE MINICIS: If I may --

7 MR. AOUINI: That was the limit on fabrication of evidence. We
8 were not allowed to go to any cases related to fabrication of
9 evidence that would not relate directly to Shala. Why are we doing
10 this one?

11 PRESIDING JUDGE VELDT-FOGLIA: That was in a different context,
12 Defence Counsel.

13 Anyway, I will go back to Mr. Prosecutor. I did not hear your
14 question well.

15 MR. DE MINICIS: My question was whether the witness -- whether
16 it is the witness's testimony that also the judgment in the case
17 guest against Sabit Geci and others, which concerns crimes committed
18 in Kukes, northern Albania, whether also that one is based on
19 fabrication by Serbs and thus a fabricated judgment.

20 Q. Is that also your testimony?

21 PRESIDING JUDGE VELDT-FOGLIA: No, wait. Before the witness
22 answers.

23 Please proceed, although I want to make a comment to Defence
24 Counsel.

25 Could you clarify why this would not be related to the case?

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2682

1 Why you say it is not relevant?

2 MR. AOUINI: No, Your Honour, we were not allowed to go to a
3 number of cases on fabrication on the topic and so that's -- that was
4 the basis of my objection. Now my learned colleague is talking about
5 one specific case that is related, and that's different. It's the
6 first time we speak about something that is relevant somehow.

7 PRESIDING JUDGE VELDT-FOGLIA: That I leave to you as an
8 observation. This Panel has been -- this Panel has been admitting
9 relevant questions, but because your remark was that you are
10 objecting to the question of Mr. Prosecutor, and you apparently heard
11 the question of Mr. Prosecutor, I did not hear him well. Now the
12 question has been repeated. And now can I say to you that this
13 specific question, and I thought that your remark was on that topic,
14 is linked to the case. So -- because I'm listening to you. So if
15 you make an observation and you don't agree, I want to sort that out
16 if I think it is necessary.

17 So in this case, there is, and you acknowledge that.

18 MR. AOUINI: Yes. The Geci judgment is about Kukes so that's
19 not --

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good. Good.

21 MR. AOUINI: But we pick our moments to speak and then it was
22 related to the previous case. Apologies, but the observation is
23 valid for what is before that.

24 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you also for that
25 clarification.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2683

1 MR. DE MINICIS:

2 Q. I'm asking these questions because there are a number of
3 judgments, public judgments for trials which had gone through
4 appeals, retrials, and are well-known facts in Kosovo. And for
5 somebody like you who publishes a book alleging fabrication of cases
6 or crimes, one would expect for you at least to have perused the
7 judgment in these cases in order to have more informed and broader
8 basis to draw your conclusions.

9 So have you, for instance, read the judgment in the case against
10 Sabit Geci, Riza Alija and others?

11 A. Your Honour, may I be permitted two minutes to clarify?

12 PRESIDING JUDGE VELDT-FOGLIA: I'd like to you reply to the
13 question. You have a question and could you please reply to that.

14 THE WITNESS: [Interpretation] That's what I'm doing. From --

15 MR. DE MINICIS:

16 Q. Have you read that judgment, Mr. Mahmuti, and then I will --
17 perhaps you can explain. Have you read the conclusions of the court
18 of the District Court of Mitrovica in the public judgment of 29
19 July 2011?

20 A. No judgment or criminal case which has been based on 27.000
21 pages of information offered by the Serbian secret services to UNMIK
22 has not been read by myself there. The chief of the Serbian secret
23 services --

24 Q. Have you read it or have you not, Mr. Mahmuti? It's a yes or no
25 question.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2684

1 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] We
2 should not overlap when speaking.

3 Mr. Witness has finished. Mr. Prosecutor, you may now ask the
4 question.

5 MR. DE MINICIS:

6 Q. Have you read or have you not read that judgment? Because your
7 answer is very complicated. I didn't understand it. Did you or did
8 you not open the judgment and leaf through the pages and read it?

9 A. You will not be able to understand it if you won't permit me to
10 explain. I need to explain.

11 PRESIDING JUDGE VELDT-FOGLIA: No, but there is a question. Did
12 you read the judgment?

13 THE WITNESS: [Interpretation] I have not read a single judgment
14 that is based on trumped-up charges fabricated by Serbia because
15 they've all been based on evidence and witnesses that had been
16 prepared beforehand by Serbia. I do not read about trumped-up cases.

17 PRESIDING JUDGE VELDT-FOGLIA: And, Mr. Prosecutor, for the
18 honour of the truth, on page 102, lines 1 to 3, the witness also has
19 said:

20 "No judgment or criminal case which has been based on 27.000
21 pages of information offered by the Serbian secret service to UNMIK
22 has not been read by myself there."

23 So I think he has now answered this question twice. So his
24 answer is clear.

25 MR. DE MINICIS: Yes.

1 Q. Now, you talked about methodology at the beginning of your
2 research. Do you consider it a sound methodology to form and publish
3 an opinion about something without having read it before?

4 A. Yes, I do. Because I have read the statement by the chief of
5 the Serbian secret services who says that, "If you do not free me
6 up" -- and he has been sentenced to 40 years for crimes committed in
7 Serbia, not Kosovo. And he said, "If you do not free me up, I shall
8 publish the list of civilian Serbs and Albanian -- Serbs, Albanians
9 and members of other ethnicities who have been killed by the secret
10 services and which have been blamed on the Kosovo Liberation Army."
11 And he says -- and this is the chief of the secret services. He
12 says, "If I were to publish that list, the entire Serbian state would
13 fall on its knees. The horrible crimes have been committed," he
14 said. I was not interested in whether the name was Nazim Bllaca or
15 what -- permit me one second, please.

16 I am not -- I don't care if it's Nazim Bllaca or Slavko Nikic,
17 somebody in uniform, a colonel of the Serbian police.

18 PRESIDING JUDGE VELDT-FOGLIA: You have made your point on this
19 topic. This is enough here.

20 MR. DE MINICIS: I think I'm done with this part, Your Honours.
21 I've elicited enough evidence. I just have some -- one last part to
22 go through. Probably 15 to 20 minutes.

23 PRESIDING JUDGE VELDT-FOGLIA: Hmm, yes.

24 Defence Counsel, you have the floor.

25 MR. AOUINI: Excuse me, Your Honour.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2686

1 PRESIDING JUDGE VELDT-FOGLIA: Yes.

2 MR. AOUINI: Just to correct and refer to the transcript at page
3 2539 -- because we were discuss --

4 PRESIDING JUDGE VELDT-FOGLIA: 25?

5 MR. AOUINI: 2539. So yesterday in chief at page 2539, lines 21
6 to 25, when we were speaking about methodology, the witness clearly
7 said that his methodology was to rely on the Serbian sources
8 themselves. So to put him now why he is not reading judgment from
9 Kosovo in broad terms is not a contention as to his methodology. He
10 has applied one methodology to use Serbian sources to explain what he
11 explained in his book. Let's put it generally. So his sources, he
12 limited himself and he said, I think, 95 per cent or 97 per cent of
13 his sources are the Serbian sources as not to display any bias. His
14 book is about this is what the Serbians say about their own cases.
15 [Overlapping speakers] ...

16 PRESIDING JUDGE VELDT-FOGLIA: Where you want to go for this --

17 MR. AOUINI: No. As far as methodology that has been submitted
18 --

19 PRESIDING JUDGE VELDT-FOGLIA: No, no, but where do you want to
20 go, because you will be allowed to make these observations when
21 necessary, but with this observation where you want to go now --

22 MR. AOUINI: I wanted to put this on the --

23 PRESIDING JUDGE VELDT-FOGLIA: -- with regard to the Panel.
24 Because we are here in court. We have a witness here. What do you
25 want with this observation?

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2687

1 MR. AOUINI: I want to put this on the record, Your Honour,
2 after the question because the question was about methodology. So
3 when we read the transcript at a later point, I made the reference to
4 what it corresponds to in the methodology.

5 PRESIDING JUDGE VELDT-FOGLIA: Yeah, but this is not the moment
6 to make these kinds of observations.

7 MR. AOUINI: Sorry, Your Honours.

8 PRESIDING JUDGE VELDT-FOGLIA: And it is legitimate to make an
9 observation, but if you want a question not to be asked, that is
10 good. But if we are going to comment on the answers and on the
11 questions, I don't think that we should do.

12 MR. GILISSEN: With your leave. We have to be fair with the
13 witness. We cannot say it with the right hand we are talking about
14 your methodology, and with the other hand to speak about something
15 else.

16 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, the question is
17 legitimate to ask why certain information was not taken into
18 consideration. What the outcome of that is for the methodology he
19 has used, that's something different. And how it will influence or
20 be weighted at the moment of weighting his testimony is something
21 different.

22 But for now, the question is legitimate, and your colleague
23 started making a point on something which I think that now is not the
24 moment. That was the point. And I would like to leave it here
25 because we have to continue with this witness, because I see that --

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2688

Cross-examination by Mr. De Minicis

1 MR. GILISSEN: I fully agree.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. But then --

3 MR. GILISSEN: For the question, okay. But the reference to the
4 methodology, I cannot agree.

5 PRESIDING JUDGE VELDT-FOGLIA: Yeah, but the point has been
6 made.

7 MR. GILISSEN: [Overlapping speakers] ...

8 PRESIDING JUDGE VELDT-FOGLIA: The point has been made.

9 And for this Panel, it is enough to hear the same point made
10 once and not twice.

11 Mr. Prosecutor, please proceed.

12 MR. DE MINICIS: Your Honour, will there be a break or do we
13 continue until --

14 PRESIDING JUDGE VELDT-FOGLIA: Yes, I think it is good to have a
15 break for everybody.

16 15 minutes, yeah, so a short break. Thank you for mentioning
17 that.

18 Mr. Witness, we will have a break of 15 minutes and then we
19 continue until 4.00. Bear with us a little bit more, and thank you
20 for your efforts this afternoon. Yes? Good.

21 Madam Court Usher will accompany you.

22 THE WITNESS: [Interpretation] Thank you. I have all the
23 patience in the world if my contribution here is going to be of any
24 value to elucidate things.

25 [The witness stands down]

1 PRESIDING JUDGE VELDT-FOGLIA: So 15 minutes.

2 The hearing is adjourned.

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

4 --- On resuming at 2.53 p.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. I see that, on the
6 right-hand side, the SPO is in the same composition.

7 The same goes for the Victims' Counsel.

8 And here on my left-hand side, yes, Mr. Aouini, thank you.

9 Mr. Shala is here with us.

10 So we can proceed. Let me do some estimation or some planning
11 before we call the witness in. I noted that the SPO indicated that
12 it will still need some 20 minutes, did I -- or half an hour.

13 MR. DE MINICIS: Hopefully even 15 -- no, no, I'm trying to say
14 maybe even less than that.

15 PRESIDING JUDGE VELDT-FOGLIA: Let us see that.

16 Victims' Counsel, how much time would you need?

17 MR. LAWS: Your Honour, as we've seen with the SPO's
18 cross-examination, that's rather going to depend on the witness and
19 on the interruptions. But I would think realistically somewhere
20 between 20 minutes and 40 minutes.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay, very well.

22 And then will we go for a second round?

23 MR. GILISSEN: Until now, no second round, I think so.

24 PRESIDING JUDGE VELDT-FOGLIA: Good. Let us see where we stand.
25 I will -- anyway, thank you for this information, Defence Counsel.

1 Next Tuesday afternoon, if there would be the need to proceed,
2 would the Defence be available?

3 MR. GILISSEN: I'm afraid I'm not, Madam President. I'm afraid
4 I am not, really. I have a real appointment and it's fixed until a
5 long time and it's difficult for me to avoid it.

6 PRESIDING JUDGE VELDT-FOGLIA: Hmm. Yes --

7 MR. GILISSEN: Even with my best, you can trust me.

8 PRESIDING JUDGE VELDT-FOGLIA: No, I do trust you. And it's not
9 possible to have the members of your team as co-counsel being here in
10 court.

11 MR. GILISSEN: We will try to discuss about it to provide you a
12 [Overlapping speakers] ...

13 PRESIDING JUDGE VELDT-FOGLIA: I'm trying to see when this
14 witness could come, and we have courtroom availability issues to take
15 on board. Of course, we should have to see if the Defence witness,
16 of course, is available.

17 We already inquired with Victims' Counsel. Can we put on record
18 that you would be available, Victims' Counsel?

19 MR. LAWS: On Tuesday, certainly, Your Honour. And clarifying
20 what I said earlier, Your Honour raised the possibility of Wednesday
21 and Friday, and I told you we were flying on Wednesday after court
22 which is correct. But we were anticipating that Case 06 would sit
23 all day. So we will be free and available to attend on Wednesday but
24 not on Friday.

25 PRESIDING JUDGE VELDT-FOGLIA: Okay. It is good that you

1 clarify that because I misunderstood what you said.

2 MR. LAWS: I probably didn't explain as well as I should have
3 done.

4 PRESIDING JUDGE VELDT-FOGLIA: So Wednesday afternoon. We will
5 not go into that. For now, it is Tuesday afternoon.

6 MR. AOUBINI: If Your Honour wants to know the information that
7 we have about the witness himself? Would that help --

8 PRESIDING JUDGE VELDT-FOGLIA: Oh, if you have that I --

9 MR. AOUBINI: The information that we have is that he is
10 scheduled to fly back at the end of the week, of this week. So if
11 next week, we will have to see, but it will have to be through
12 videolink then.

13 PRESIDING JUDGE VELDT-FOGLIA: Okay. Because he will already be
14 back home.

15 MR. AOUBINI: Exactly. I don't know if it is Saturday or Friday,
16 but at the end of the week. That was what we know from WPSO.

17 PRESIDING JUDGE VELDT-FOGLIA: But our question then would be if
18 he could make himself available to be here on Tuesday. I mean, plane
19 tickets can be rescheduled. So it is more about his availability on
20 Tuesday to be here and then to fly back on Wednesday. That would be
21 the question for the witness.

22 Very well. And the SPO.

23 MR. DE MINICIS: We are available any day next week,
24 Your Honour.

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

1 And then a double-check for -- but I think it could have been a
2 misunderstanding from my side. But Wednesday afternoon, would there
3 be availability from -- yes, yes. And from the Defence part on
4 Wednesday afternoon? So not Tuesday, but Wednesday?

5 MR. GILISSEN: I have to check to be sure, but I will answer
6 before the end of the hearing.

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

8 Yes, then we will proceed with the last part of the
9 cross-examination.

10 Madam Court Usher, could you usher the witness in, please.

11 And we have to try to talk -- to speak slower and wait more
12 time. And that's also directed to the Panel. That would be to me.

13 [The witness takes the stand]

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

15 THE WITNESS: [Interpretation] Thank you.

16 PRESIDING JUDGE VELDT-FOGLIA: We will proceed with the last
17 part of the cross-examination by Mr. Prosecutor.

18 Mr. Prosecutor, you have the floor.

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

20 Q. Mr. Witness, do you have a Facebook account?

21 A. Yes.

22 MR. DE MINICIS: Your Honours, one of the documents that
23 Your Honours have decided I could not use is, in fact, the home page
24 of the witness's Facebook account. I had it in my -- that would be
25 SPOE00341041. I had put it in my list just to authenticate that that

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2693

1 is his Facebook account but -- and I'm happy to do so if Your Honours
2 would prefer. Otherwise, I can just proceed by showing the posts
3 that I'm interested in.

4 PRESIDING JUDGE VELDT-FOGLIA: I don't think it is necessary to
5 show that page. But it was not for us at first sight clear, but with
6 this explanation it makes sense. If -- we have now heard the
7 evidence of the witness that he has a Facebook account. We can also
8 pull it up if there is no objection from the side of the Defence.
9 No, I see them nodding.

10 Just to have a clean record on that, that we can verify that
11 indeed that we are looking at the Facebook account that is
12 Mr. Mahmuti's.

13 MR. DE MINICIS: Now, the ERN would be SPOE00341041-00341042.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Yes, you can proceed.

15 MR. DE MINICIS: And the first page of that ERN range, please.

16 Q. Mr. Mahmuti, is this your Facebook page profile?

17 A. Yes.

18 Q. Thank you.

19 MR. DE MINICIS: Your Honour, we can take the document down.
20 And could I please have on the screen the post that we captured from
21 the -- we took from the witness's Facebook account. It's dated 11
22 November 2020. That would be just a few days after arrests conducted
23 by the SPO. The ERN is SPOE00341067-00341067. The English has the
24 same ERN but with an -ET in the end.

25 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

1 MR. DE MINICIS: Could you perhaps enlarge the original so that
2 the witness can read it.

3 Q. Mr. Witness, this is statement of yours that you posted on 11
4 November 2020, and it reads:

5 "Specialist Chambers and Specialist Prosecutor's Office have
6 nothing in common with justice institutions. They are a political
7 criminal enterprise with the aim to convict the liberation war of
8 Kosovo people."

9 Do you recognise the statement as a statement that you yourself
10 posted on your Facebook profile?

11 A. This is a statement taken out of a wider context which needs to
12 be explained. Otherwise, they can just -- a statement out of a
13 context can be interpreted as a self-incriminating statement.
14 Therefore, I need to explain the context in which this statement was
15 written.

16 PRESIDING JUDGE VELDT-FOGLIA: But is the answer to the question
17 that you recognise it as a statement you have posted?

18 THE WITNESS: [Interpretation] This is a synthesis of a wider
19 writing --

20 PRESIDING JUDGE VELDT-FOGLIA: No, no, no, no. You --

21 THE WITNESS: [Interpretation] Yes, it's a statement that
22 requires to be further clarified.

23 PRESIDING JUDGE VELDT-FOGLIA: That is something to be seen, but
24 I want to hear from you if you can confirm if this is a statement
25 posted by you. That's not so difficult a question. There is a "yes"

1 or a "no" or "I don't know."

2 THE WITNESS: [Interpretation] Yes, yes.

3 PRESIDING JUDGE VELDT-FOGLIA: "Po," so yes.

4 MR. DE MINICIS:

5 Q. And also it seems to me, and correct me if I'm wrong, but isn't
6 this the entirety of what you posted on that day for your audience on
7 Facebook or is there more that we can't see in that post?

8 A. This is a writing that has been published in the press and the
9 synthesis of that article is here. The article is wider and it
10 provides a full reasoning that led me to this finding.

11 Q. That's what you posted -- that's all you posted for your
12 audience on Facebook on that day; correct?

13 A. The article was published in all the media in Kosovo and I did
14 not want to upload it here. That article -- I can provide that
15 article for you to see it.

16 Q. No, I understand. But I chose to provide this sound bite to
17 your audience in choosing what to draw from your article. You didn't
18 choose other parts. You chose to post this. Correct?

19 A. Precisely for this reason there is a need for clarification.
20 Otherwise, it can be considered as a self-incriminating which as --
21 as per Rule 151.1 of the rules. I --

22 PRESIDING JUDGE VELDT-FOGLIA: Sorry, I want to understand. Why
23 would this be self-incriminating?

24 THE WITNESS: [Interpretation] So this --

25 PRESIDING JUDGE VELDT-FOGLIA: No, no, but I mean, could you

1 answer my question.

2 THE WITNESS: [Interpretation] This portrays my political stances
3 here.

4 PRESIDING JUDGE VELDT-FOGLIA: No --

5 THE WITNESS: [Interpretation] For me to qualify a legal entity
6 as a criminal enterprise can be perceived as a mistake which I have
7 made. So in practical terms, if I were just to admit and say yes, it
8 would equal to me self-incriminating. Therefore, this needs to be
9 clarified.

10 PRESIDING JUDGE VELDT-FOGLIA: I don't see any
11 self-incrimination in the sense of the article you just cited. So we
12 will stay away from that for sure. I would not worry about that.

13 Mr. Prosecutor.

14 MR. DE MINICIS: Thank you. I think we can move on to -- I'm
15 done with this document, Your Honour, and I would like to move on to
16 the next one.

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

19 MR. DE MINICIS:

20 Q. It's an interview that I understand you gave on 23 February 2022
21 during the RTK Prime TV show. And do you -- first of all, do you
22 recall taking part to the talk show called RTK Prime on 23
23 February 2022? Because if not, I can refresh your memory with
24 another post of yours.

25 PRESIDING JUDGE VELDT-FOGLIA: In my recollection, there was a

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2697

Cross-examination by Mr. De Minicis

1 post where that was announced and we did not admit for it because we
2 did not see the relevance of announcing that there was a television
3 show.

4 MR. DE MINICIS: I had included it just in case that the witness
5 could not remember and that -- but if the witness remembers
6 participating, it's not necessary for me to request Your Honours to
7 reconsider that decision.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay.

9 MR. DE MINICIS:

10 Q. Do you remember taking part to that show, Mr. Mahmuti?

11 A. I remember very well taking part in this discussion, debate.
12 However, I don't know what have you taken out of that debate. If you
13 have the entire show, you will see my positions. However, if you
14 take, extract specific statements out of -- taken out of the context,
15 they could be misinterpreted.

16 MR. DE MINICIS: This is the penultimate document that I need to
17 show to the witness. I will have another one after this and then I'm
18 done. Just to give the Panel an idea of how long we have left.

19 Now if we could please have SPOE00341152-00341158. That would
20 be the Albanian version. For the English, the range is
21 SPOE00341153-SPOE00341156-ET.

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

23 MR. DE MINICIS: It's to put to him --

24 PRESIDING JUDGE VELDT-FOGLIA: And the purpose of this document?

25 MR. DE MINICIS: Is to put to him statements that he made during

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2698

Cross-examination by Mr. De Minicis

1 that show and to authenticate them.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Please proceed, Madam Court Officer.

4 MR. DE MINICIS: Now, Your Honours in the title of this -- this
5 broadcast, this talk show, as it was advertised on the Facebook page
6 of Mr. Mahmuti, is *Gjykata Speciale*, which I understand means
7 Specialist Chambers. So the topic was the Specialist Chambers.

8 Now at ERN -- so for the Albanian it would be SPOE00341154, the
9 last paragraph.

10 THE WITNESS: [Interpretation] I could not read it. Can you zoom
11 in, please. The first part.

12 MR. DE MINICIS:

13 Q. Yes, we're getting to the right page.

14 A. I understand.

15 Q. And I would like to draw your attention to the last paragraph.

16 MR. DE MINICIS: Now, in English, it is the next page that the
17 one that is being shown right now. It's the last paragraph.

18 Q. Now, your opinion is that:

19 "'The aim of putting the Kosovo liberation war in the accused
20 dock and making KLA responsible for crimes stitched-up in the labs of
21 the Serbian secret services, is only political. The aim is to punish
22 this war, and precisely to rewrite the history of what happened in
23 Kosovo to the detriment of the Albanian people and to the detriment
24 of Kosovo's independence,' said Mahmuti."

25 Now, my first question is, Mr. Mahmuti: This is a statement

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2699

Cross-examination by Mr. De Minicis

1 that you made without having read any of the publicly available
2 judicial documents issued by this Court; is it correct?

3 PRESIDING JUDGE VELDT-FOGLIA: Shall we first make if he made
4 this statement?

5 MR. DE MINICIS: By all means, Your Honour.

6 Q. Did you make this statement during RTK Life? Then we can talk
7 about context. But are your words in that show fairly reproduced in
8 this article?

9 A. Yes, I have said them. These are accurate statements. However,
10 as it is stated here, everything that was taken as evidence from the
11 secret services to qualify the Kosovo Liberation Army as a joint
12 criminal enterprise was inadmissible because when the head of the
13 commission in Serbia who gave evidence to the Prosecution office says
14 that they directed the Prosecutor's office to conduct their
15 investigations, the purpose is for the KLA and the Albanian people to
16 be put in the accused's dock. This was my position at the time and
17 this is my position now.

18 Q. Thank you, Mr. Mahmuti. And again, is my understanding correct
19 that in making this statement -- when you made this statement you
20 still had not read, for example, judgments or indictments or other
21 publicly available judicial documents issued by this Court; correct?

22 A. I have read the stance of the Serbian government bragging
23 about -- bragging about the evidence they have given and provided. I
24 suffice myself reaching this political position.

25 Q. Thank you, Mr. Mahmuti.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Cross-examination by Mr. De Minicis

Page 2700

1 MR. DE MINICIS: Your Honours, I'm done with this document. I'm
2 moving on to my last document.

3 Now, Your Honours, this is another Facebook post by Mr. Mahmuti.
4 I have two or three questions. First, with regard to its authorship
5 and then -- and then I have two or three questions and I'm putting it
6 to him for the same reasons as I put the other posts, if I may be
7 allowed to proceed.

8 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

9 MR. DE MINICIS: The ERN would be SPOE00341144-00341147, and
10 that's the Albanian.

11 For the English, it is SPOE00341144-SPOE00341145-ET.

12 PRESIDING JUDGE VELDT-FOGLIA: Yes, you may proceed. But,
13 meanwhile, Mr. Prosecutor, the purpose is to authenticate these posts
14 and?

15 MR. DE MINICIS: [Microphone not activated] ... to ask the
16 witness about -- some questions about the meaning of that post, the
17 basis for that post, and his stance today on that post.

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

19 MR. DE MINICIS:

20 Q. And this is the last Facebook post of yours that I will ask you
21 to comment on, Mr. Mahmuti.

22 Now, this is a Facebook post. Can you read it?

23 A. Yes, I can.

24 Q. Dated 16 December 2022. It is the date in which the Kosovo
25 Specialist Chambers issued judgment convicting Salih Mustafa, and

1 this is currently on appeal, but convicting Salih Mustafa for counts
2 of arbitrary detention, cruel treatment, torture, and murder
3 committed against Kosovar Albanian civilians. It is worth noting
4 that on this date, the publicly available version of the judgment was
5 not yet available. I think it was published for the first time in
6 January.

7 Now, you stated, and I quote:

8 "The unjust conviction of Nazim Haradinaj, Hysni Gucati and
9 Salih Mustafa is testimony that the court established on the basis of
10 a political stitch-up was not set up to remove the defamatory charges
11 against the KLA but to put it in the accused's dock and convict it:

12 "There will be no justice without dismantling this political
13 stitch-up!"

14 Do you still stand by this statement today, Mr. Mahmuti?

15 A. I stand by it, and there is a need to further clarify, as you
16 asked, Mr. Prosecutor, for explanations.

17 The issue of beliefs of some people in Kosovo that the Court
18 would be created, established with the purpose of elucidating and
19 shining light on the innocence of the KLA. At the time I was against
20 the establishment of this Court. I launched a public appeal to all
21 MPs of the Assembly of Kosovo. I expressed my political views and
22 positions, indicating that there's no place in the world where a
23 court is created to prove whether somebody is guilty -- is innocent
24 or guilty. A court is established to shed light on crimes committed.
25 In Kosovo, there were crimes. Crimes against civilians, murders,

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2702

Cross-examination by Mr. De Minicis

1 irrespective of their ethnic -- ethnicity. And over 10.000 Albanians
2 were killed. This needs to be elucidated. And in this case, the
3 Court would be more than necessary.

4 However, when those responsible, starting from the head of the
5 Serbian state and the secret -- Serbian secret service, which admits
6 that they have committed so many crimes that this would bring the
7 Serbian state to its knees, without --

8 PRESIDING JUDGE VELDT-FOGLIA: No, but now you're repeating
9 yourself. That, we have heard, so I don't want to hear that again
10 because, for me, it is clear. So then can you just refer -- no. We
11 stop here. Because I see the background of your -- of this
12 statement, but I prefer not to go into it again because we have it on
13 record several times.

14 MR. DE MINICIS:

15 Q. Again, how would you feel comfortable stating that the charges
16 are defamatory without having read the reasons for which these
17 charges were considered to be true? And I remind you that the
18 victims were Kosovar Albanians in this trial.

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

20 MR. AOUBINI: Thank you, Your Honour. Your microphone.

21 PRESIDING JUDGE VELDT-FOGLIA: Allow me.

22 Mr. Mahmuti, before you answer the question, I first want to
23 give the floor to Mr. Defence Counsel. You have the floor.

24 MR. AOUBINI: Thank you, Your Honour.

25 We object to the Prosecutor asking the witness for his level of

1 comfort on political opinions shared in his sphere on TV shows or on
2 Facebook. He explained that it is a political opinion. He wanted
3 several times to explain the background, the political background.
4 There is a gentleman who has been involved in the public affairs for
5 so long. In TV shows, in Facebook posts, he has posted opinions. He
6 is asked about it. Let him explain the political background of it,
7 but not the level of -- he is not making a statement to a court of
8 justice to say: How are you comfortable making those opinions?

9 We have to put that into context. Those are personal political
10 contributions to his public affairs of the country that he belongs
11 to, as many people, holding office or not, have done throughout the
12 history of -- in Kosovo.

13 PRESIDING JUDGE VELDT-FOGLIA: I will interrupt you now, Defence
14 Counsel, because, if I understand you right, you are objecting to the
15 question asked, which has already also been answered.

16 Is that -- and now the next question.

17 MR. AOUINI: I don't think it was answered, Your Honour.

18 PRESIDING JUDGE VELDT-FOGLIA: But then I don't understand very
19 well the point you are making.

20 MR. AOUINI: Your Honour, the question is: How do you feel
21 comfortable? There's not a question, Your Honour.

22 PRESIDING JUDGE VELDT-FOGLIA: So we then just ask the
23 Prosecutor to reformulate the starting of the sentence.

24 Could you reformulate your question in this aspect.

25 MR. DE MINICIS:

Witness: Bardhyl Mahmuti (Resumed) (Open Session)

Page 2704

Cross-examination by Mr. De Minicis

1 Q. How could you --

2 PRESIDING JUDGE VELDT-FOGLIA: Because I see the point of the
3 Defence Counsel that the question is -- for what it starts with,
4 could be sharper. So please.

5 MR. DE MINICIS:

6 Q. Don't you think that to draw a conclusion on whether the charges
7 against someone are defamatory, it would be helpful to read the
8 reasoning of a judgment, the statements of witnesses, Kosovar
9 Albanians who have testified in this court of law, on the basis of
10 which a Trial Panel has reached a conclusion? Would not -- that
11 would that not be helpful in reaching the conclusions that you have
12 reached for apparently all the trials and all the judgments that we
13 have discussed today?

14 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, did you understand
15 the question?

16 THE WITNESS: [Interpretation] The fact that I'm here today in
17 front of this Court testifies to the fact that I make -- I discern
18 between my political -- my political beliefs and judicial
19 proceedings. I accept the judicial proceedings as such and that's
20 why I have accepted to come and say what I know in relation to these
21 proceedings.

22 But the moment I come here and I'm confronted with a number of
23 political positions, I am surprised how the Specialist Prosecutor's
24 Office never distanced itself from the position of Milovan Drecun,
25 who says that, "They didn't know what to do. I told them how to act

1 and how to approach the KLA -- against the KLA."

2 PRESIDING JUDGE VELDT-FOGLIA: No, but this is not an answer to
3 the question, Mr. Witness.

4 So, Mr. Prosecutor, I don't know if you want to pursue this --

5 MR. DE MINICIS: I would like to pursue a little more,
6 Your Honour.

7 PRESIDING JUDGE VELDT-FOGLIA: Okay. But then please try to
8 keep the witness to answering your question. Because I'm here now
9 telling him that that's not an answer, so -- and if you say it's also
10 interesting, that was not your question.

11 MR. DE MINICIS:

12 Q. You have expressed opinions, that can be political, that can be
13 personal opinions, to your public, on Facebook, in your role as a
14 public figure in Kosovo through your personal Facebook account, and
15 you have made it clear today that the opinions that you expressed
16 about the proceedings before this Court were expressed without the
17 benefit of having read any of the documents issued by this Court.
18 Only one side, only what this person said during an interview or your
19 perusal of Serb sources.

20 My question is: Don't you think that it would have been more
21 appropriate and would help you to reach a more reliable conclusion to
22 also read the judgments, read what the witnesses, the Kosovar
23 Albanians in this case had to say, before calling the charges
24 defamatory, political, and created by the Serbs?

25 MR. GILISSEN: [Microphone not activated]. I don't understand

1 the use of the word "defamatory." I already have the wish to say it
2 before, but I don't consider it is defamatory. This is the opinion
3 of the -- free speech from the witness. We agree, we disagree, we
4 are disappointed, we are upset. But defamatory, I don't even aware
5 there is a complaint, a procedure, so why to use the word
6 "defamatory."

7 MR. DE MINICIS: Because the witness used it --

8 MR. GILISSEN: As it was an objective situation --

9 PRESIDING JUDGE VELDT-FOGLIA: Shall we wait for each other.

10 MR. GILISSEN: Yes. Thank you.

11 MR. DE MINICIS: Your Honours, it was used by the witness by in
12 his Facebook post.

13 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, that was the
14 answer. It is used by -- the SPO says it's used by Mr. Witness
15 himself.

16 MR. DE MINICIS:

17 Q. If you want to answer my question, that would be my last
18 question.

19 A. I can reassure you that as soon as I find the time, I shall read
20 all the judgments, the public judgments, and I shall give you my
21 assessment as to on the basis of which arguments they have been
22 reached. Without reading them, I abide by my political positions.
23 It is my inalienable right to express my views and what I think about
24 things.

25 Q. Thank you, Mr. Witness, for your patience.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2707

1 MR. DE MINICIS: Your Honours, this concludes my
2 cross-examination.

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

4 Then I will give the floor, after that we have now completed the
5 cross-examination by the Specialist Prosecutor's Office, to
6 Victims' Counsel.

7 You may proceed.

8 MR. LAWS: Thank you very much, Your Honour.

9 Questioned by Victims' Counsel:

10 Q. I'm going to start by asking the witness some questions about a
11 document which, for obvious reasons, I'm not going ask to be put on
12 the screen. But it may help to follow my questions if people, if my
13 colleagues opposite and the Panel want to open the document. It is
14 item 2 on our presentation queue. Again, not to be displayed. And
15 it is ERN is SITF00018740 to 00018767. And it is page 3 of the
16 document, which is SITF00018742.

17 PRESIDING JUDGE VELDT-FOGLIA: But is it to be discussed in
18 public, Victims' Counsel?

19 MR. LAWS: Yes, we can discuss it in public, Your Honours, and I
20 will be corrected if I'm wrong. But I'm just going to try to ask
21 some short questions in relation to some of the information here.

22 PRESIDING JUDGE VELDT-FOGLIA: Okay. But you don't want it to
23 be pulled up. I mean, it's a different approach than we have done up
24 till now, so I just want to have clear what your intention is.

25 MR. LAWS: My intention is, if Your Honour looks at the page

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2708

1 that I've identified, at the fourth paragraph, it begins with a name,
2 with witness's name, and then there's some information about it. And
3 I want to see if I can ask the witness some questions about whether
4 that information applies to him. It's not intended to be anything
5 other than an opportunity for him to confirm what is here. But, as I
6 say, it can't be put onto the screen.

7 PRESIDING JUDGE VELDT-FOGLIA: But the witness is not allowed to
8 see the document. Is that what I understand?

9 MR. LAWS: If I show the witness the document, it will identify
10 the source, potentially.

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

12 MR. LAWS:

13 Q. Mr. Mahmuti, just a little background, please, sir. I'm going
14 to ask you some questions. I'm the Victims' Counsel in this case,
15 and good afternoon to you.

16 A. Good afternoon.

17 Q. Thank you. The question I'm going to ask you first is one that
18 can you answer "yes" or "no."

19 Did you establish a political party in Macedonia?

20 A. Yes.

21 Q. Thank you. Was that the Albanian Democratic Union?

22 A. Yes.

23 Q. And that was founded in 2007 by you, was it not?

24 A. Yes.

25 Q. You are originally from Macedonia and from the town of Tetovo;

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2709

1 is that right?

2 PRESIDING JUDGE VELDT-FOGLIA: Can we stick to open questions.

3 MR. LAWS: Your Honour, of course. I don't suppose that I could
4 mislead him about his place of birth. I didn't think it would be
5 contentious. I apologise if it was.

6 Q. Where were you born, please? Where do you come from?

7 A. I was born in Tetovo.

8 Q. Thank you very much. In the decade after the war, did you
9 appear on television in Kosovo at all?

10 A. Yes, very often. Be it in Kosovo, be it in Albania, be it in
11 Macedonia.

12 Q. Thank you.

13 MR. LAWS: Those were the questions that I wanted to ask about
14 that document.

15 Q. I want to ask you next, Mr. Mahmuti, about the town of Kukes.

16 You told us yesterday - and it's page 2514 in the transcript at
17 line 20 - you told us that you had gone to Kukes in May of 1998. Do
18 you remember that?

19 A. Yes.

20 Q. Can I just ask you how you remember that it was May of 1998?
21 What had taken you to Kukes?

22 A. We were dealing with the issue of mobilisation for the
23 liberation war. I remember the month of May because in that month,
24 in 1998, I was told to return to Switzerland to meet American
25 delegations, which occurred in June 1998. This is what enables me to

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2710

1 place myself in Kukes at that time.

2 Q. Thank you. On that visit in May of 1998, did you go to a place
3 called a metal factory at Kukes?

4 A. I wasn't even aware of the existence of a metal factory in
5 Kukes. I have never been to a place called a metal factory in Kukes.

6 MR. LAWS: I wonder if we could just show some photographs of
7 the building in question, with Your Honours' leave. They're number 1
8 in our presentation queue. It's SPOE400010264 to 400010559.

9 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel, I see the
10 Defence Counsel standing.

11 So you have the floor.

12 MR. AOUNI: Can we please know on what basis this is being
13 shown to the witness and for what purpose, please.

14 MR. LAWS: I'm in Your Honours' hands. I don't know of any rule
15 that says I have to disclose the stipulated purpose behind every
16 question. I'm asking him about his knowledge of the Kukes factory
17 and I want to show him some photographs. I can take it further, but
18 the witness will need to withdraw.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. We withdraw the witness.

20 Madam Court Usher, could you bring the witness out.

21 Mr. Witness, you will be ushered out for a few minutes.

22 [The witness stands down]

23 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel -- sorry,
24 Victims' Counsel.

25 MR. LAWS: Thank you, Your Honour.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2711

1 This witness was in Kukes, he says, in May of 1998. And as the
2 Panel knows, we're interested in May of 1999. But he was in the town
3 that we're interested in, and I want to ask whether he went to the
4 location that we're interested in and he said no, he wasn't even
5 aware of it. I want to be in no doubt with him that this is not a
6 misunderstanding. So I want to show him some photographs that may
7 jog his memory if he has been to this location. And if he says he
8 hasn't, well, then that's an end of it. We'll know.

9 But it, with respect, seems to me a wholly legitimate thing for
10 me to do.

11 PRESIDING JUDGE VELDT-FOGLIA: I have heard your reasoning and
12 it seems completely normal. Completely legitimate.

13 Madam Court Officer, could you bring the witness in. Thank you.
14 At least ask Madam Court Usher to bring the witness in.

15 [The witness takes the stand]

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

17 Please proceed, Victims' Counsel.

18 MR. LAWS: Thank you, Your Honour. Shall I repeat the ERN of
19 the photographs? It's SPOE400010264 to 400010559. And if we could
20 have, with Your Honours' leave, please, the first of those
21 photographs on the screen.

22 Q. So I'm just going to show you some photographs, Mr. Mahmuti, and
23 see if it jogs your memory.

24 In this photograph, we're looking from inside the compound that
25 is the metal factory through some gates. Can you see the gates there

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2712

1 and the road beyond?

2 A. Yes, I do see the iron gate as well as the road beyond.

3 Q. Thank you.

4 MR. LAWS: Could we have the next photograph, please.

5 Q. So here we're looking into the area that was once occupied by a
6 metal factory.

7 A. I see it.

8 Q. Have you ever been to that location, Mr. Mahmuti?

9 A. Let me be clear. I arrived in Kukes late in the evening. It
10 was made clear to me that night that I needed to return to Tirana.
11 Xhavit Haliti called me and gave me no explanation. We were staying
12 at a house in Kukes. In the morning, I set off on an SUV. I was on
13 my own and I arrived in Tirana. In Tirana, I was told to return to
14 Switzerland where I would have to meet the American delegation. I
15 did not see a building like this, and the road that you described to
16 me on that picture is not familiar. I can reassure you that I did
17 not set foot in those locations that you mentioned, with the
18 exception of that house where I spent a night.

19 MR. LAWS: Let's just turn on, if we may. Can we see the next
20 photograph. And the next one, please. And the next one again. And
21 I think it's one more. Can we have one more, please?

22 Q. Yes. That building, is that building at all familiar to you?

23 A. I gave you my answer, that during my stay in Kukes I did not see
24 a single building. I only arrived late. I spent the night there and
25 I returned the day after. I travelled all day. In the evening I met

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2713

1 Xhavit Haliti, and I was assigned the task to be in charge of being
2 able to represent the platform of the Kosovo Liberation Army in front
3 of the American delegation.

4 Q. Thank you. Do you remember how you travelled to Albania on that
5 occasion in May of 1998?

6 A. I can't recall exactly.

7 Q. Well, would it have been by plane into Rinas airport, by boat
8 into Durres, or by some other method?

9 A. I can't recall. There were two options, though. Either taking
10 the train up to Bari and from Bari to Durres, or flying from Zurich
11 to Tirana. And I can't recall exactly, so I cannot give you an
12 answer. I never thought that I might be required to remember this,
13 so I didn't research it. But I can't recall how I travelled, no.

14 Q. I understand.

15 A. If you're interested on my journey from Tirana to Kukes, I can
16 tell you about it. The roads were appalling and it took us 16 hours.

17 Q. I'm not interested in it. I can assure you that I'm not
18 interested it, and if I was, I would ask you, sir.

19 But I am interested in this journey in May of 1998 which you've
20 been telling us about. Was your passport always stamped when you
21 went into Albania?

22 A. As far as I know, yes. Let me clarify, though. You asked me
23 when I had been to Kukes, not when I arrived in Albania. Because I
24 could have arrived in Albania in the month of April and gone to Kukes
25 in May. So let us be clear about it. But am certain that I was in

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2714

1 Kukes in May.

2 Q. Yes. I was just asking you whether your passport was always
3 stamped when you arrived in Albania. Can we just be clear about
4 that. Is it a "yes" or a "no" or a "don't know"?

5 A. As far as I know, my passport was stamped on every single
6 occasion when I entered or left.

7 Q. Did people at this -- let's move on.

8 In the time of the war, did people cross into Albania without
9 going through a border crossing?

10 A. Not from Western countries going to Albania, no. Because there
11 is a sea to go through.

12 Q. Yes, I am aware there is a sea. Thank you. But what about
13 going from Kosovo into Albania and from Albania into Kosovo? Was
14 that done at this time by using paths that did not take you through a
15 border post?

16 A. You're asking a question on which I have no data. I don't know
17 how other people made their way in or out. I personally did not do
18 it.

19 Q. Do you really say that? You don't know if the KLA went from
20 Kosovo to Albania or from Albania to Kosovo in ways that would avoid
21 detection? Are you saying you really don't know that? Is that your
22 sworn evidence, Mr. Mahmuti?

23 A. No, that's not what I stated. If you want to ask if Bardhyl X
24 or Y or Z has made this crossing, I don't know. But it is publicly
25 known that the entire arsenal that went for the support of the

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2715

1 Kosovo Liberation Army, it crossed borders that were other than the
2 customs points. But if you're asking me concretely, I cannot give
3 you a single example about a certain person who did this or who did
4 that.

5 Q. It was routinely crossed, that border, by other people, wasn't
6 it? I'm not talking about you at the moment, but other members of
7 the KLA crossed that border in a clandestine manner, didn't they?

8 A. Generally speaking, the answer is yes. In more concrete terms,
9 how that happened, I cannot tell you about it because I never did
10 that myself.

11 Q. I want to move on to 1999.

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

13 MR. LAWS: Yes, we can take the picture down. Thank you,
14 Your Honour.

15 PRESIDING JUDGE VELDT-FOGLIA: You can bring the picture down,
16 Madam Court Officer.

17 MR. LAWS:

18 Q. In April of 1999, you were in Albania; is that right?

19 A. Yes.

20 Q. And did you also go later in the year 1999 to Albania but not to
21 Kukes?

22 A. Later up until which point? 1999 would be from May until the
23 31st of December.

24 Q. Yes. Did you go -- in the whole of 1999, did you go to Albania
25 after April?

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2716

1 A. I went into Albania in June. And after the end of the war, I
2 went to Prishtine from Albania. After the end of the war, I went
3 several times to Albania in my capacity as minister of foreign
4 affairs of the provisional government. I cannot recall the dates,
5 though, because these were for official meetings at the level of the
6 prime minister, president, prime minister, Speaker of Parliament and
7 other political representatives.

8 Q. When you were in Albania in April and in June of 1999, were you
9 aware that the KLA had a base in Kukes?

10 A. When I went to Albania, I was there in my capacity as member of
11 the Steering Council of the People's Movement for Kosovo. I did not
12 go to Albania as a representative of the Kosovo Liberation Army,
13 because Xhavit Haliti was the one who represented the
14 Kosovo Liberation Army in Albania.

15 Q. Mr. Mahmuti, just bear with me. That's not the question that I
16 asked you at all. Shall I repeat it? And you can answer it, if you
17 wish to, yes or no.

18 When you went to Albania in April and in June of 1999, were you
19 aware that the KLA had a base at Kukes?

20 A. I had no knowledge about the organisation of the KLA in Albania
21 and how the weapons supplies were done. It was an issue that did --
22 did not include me and for reasons of confidentiality. It was a
23 question of secrecy according to the weapons supplies, and so on and
24 so forth, and I did not pay any attention to issues that were not
25 related to my job.

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2717

1 And the answer is that I know nothing about the organ -- the
2 existence of the bases in Albania or the organisation of the KLA
3 there.

4 Q. You say you had no idea that the KLA had established a base in
5 Kukes; is that right?

6 A. Correct.

7 Q. Very well. I'm going to move on to my last topic, and it's not
8 going to take very long. I'm going to try and do, if I can be
9 allowed just a little bit of leeway, I'm going to try and do it --

10 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] We
11 don't have leeway, Victims' Counsel, today, and so if we cannot
12 finalise this last part ...

13 MR. LAWS: I'll try. With Your Honours' leave, I'll try.

14 Q. Mr. Mahmuti, I am the Victims' Counsel in this case. You
15 understand that that is my role.

16 A. I understand it very well.

17 Q. Is it your view that there are, in fact, no victims in this
18 case?

19 A. It is not. You have misunderstood me. There are civilian
20 victims and they are numerous. The issue is who has killed them.
21 And there is incontestable evidence. There are people called Nazim
22 Bllaca who been ordered by the secret services to kill Albanians,
23 Serbs and others. There is another one called Slavko Nikic, wearing
24 the KLA uniform, and he has killed and he admits it. He has put on
25 the cover page of his book a picture of himself wearing a KLA

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2718

1 uniform.

2 There is other evidence of civilians who have been killed. All
3 victims need their protection. All victims need justice. And I have
4 the highest praise for all counsel who defend the victims. The issue
5 here is to try and find the perpetrators of this tragedy.

6 Q. So do I understand you correctly that you believe that people
7 were harmed at Kukes but that it was the Serbs who did it? Is that
8 what you're saying?

9 A. I am convinced that regarding people in Kukes, this is a
10 fabrication by Serb secret services. The person who has submitted
11 files to the Specialist Prosecutor's has said that they have given
12 them the names of six detention centres in northern Albania. He does
13 not mention them one by one, but it --

14 MR. LAWS: Can I interrupt the witness?

15 PRESIDING JUDGE VELDT-FOGLIA: Yes, please.

16 MR. LAWS:

17 Q. You have told us that I don't know how many times. I'm asking
18 you a very specific question.

19 Are you saying that your view is that there were casualties but
20 that it was Serbs who did it?

21 A. I'm talking about victims in Kosovo.

22 Q. I'm not asking you about victims in Kosovo.

23 A. Fabricated evidence for outside Kosovo --

24 Q. Well, look, I'm asking you, if it is not clear already,
25 specifically about Kukes. Is your belief, Mr. Mahmuti, as you sit

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2719

1 there today, that there are victims but that it is the Serbs who
2 committed the crimes against them?

3 Could you answer that "yes" or "no."

4 A. I gave my answer that I do not believe that there have been any
5 victims in Kukes. This is all a fabrication by Serb secret services,
6 and that remains my position.

7 PRESIDING JUDGE VELDT-FOGLIA: Good. If you're not done,
8 Victims' Counsel, we have to stop here. But I will allow for, of
9 course, another moment.

10 MR. LAWS: I've got one question. Can I do it? And then I will
11 be done.

12 PRESIDING JUDGE VELDT-FOGLIA: Yes.

13 I see that Defence Counsel is standing. No, Defence Counsel is
14 sitting.

15 MR. LAWS:

16 Q. Mr. Mahmuti, do you think it's possible that you have closed
17 your mind to the truth?

18 MR. AOUINI: [Microphone not activated]

19 PRESIDING JUDGE VELDT-FOGLIA: Overruled.

20 THE WITNESS: [Interpretation] Can I answer?

21 PRESIDING JUDGE VELDT-FOGLIA: Of course you can answer.

22 MR. LAWS:

23 Q. Please do.

24 A. No. I swear that had I had the slightest suspicion of the
25 implication of Pjeter Shala in any crime I wouldn't have come here to

Witness: Bardhyl Mahmuti (Resumed) (Open Session)
Questioned by Victims' Counsel

Page 2720

1 testify. My conscience is clear about his innocence. I have come
2 here to testify about the fabrications done by the Serbs and based on
3 sources by the Serbs, by the person who says that they have proffered
4 evidence to the Prosecution's office. I wouldn't have come to defend
5 Pjeter Shala or anybody else on earth, because I myself, I am a
6 victim of a former regime. My father was a victim of the former
7 regime. And I know very well what it means to be a victim.

8 MR. LAWS: Those are my questions. Thank you, Your Honour.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 Defence Counsel, would you like to go for a second round?

11 MR. GILISSEN: No. Thank you very much. Kind of you.

12 PRESIDING JUDGE VELDT-FOGLIA: No? Good.

13 Very well.

14 [Trial Panel confers]

15 PRESIDING JUDGE VELDT-FOGLIA: Mr. Mahmuti, we have reached the
16 end of your testimony, and I would like to thank you for the efforts
17 you have put in these two days to give your testimony, and I believe
18 it will assist us in reaching a verdict. Thank you very much.

19 THE WITNESS: [Interpretation] Thank you. I thank the Trial
20 Panel for giving me the opportunity to tell you about what I know and
21 whatever remain -- was said in closed session shall remain here.

22 Thank you very much.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Please -- please put
24 on your -- I remind you that you shall not discuss your testimony
25 before the Kosovo Specialist Chambers. Yes? You understand that?

1 Court Usher, can you please assist the witness.

2 [The witness withdrew]

3 PRESIDING JUDGE VELDT-FOGLIA: Good. Is there anything the
4 Specialist Prosecutor's Office would like to raise with the Panel at
5 this moment in time?

6 MR. DE MINICIS: No, Your Honours. One brief remark. We -- I
7 never meant during my examination to question the professionalism of
8 the Defence with whom we've had a long-standing cooperation,
9 fruitful, and whose professionalism I have no doubts about it. We
10 were here to test the witness's evidence and that's all we did. But I
11 just want to put on the record that we have no doubts about the
12 professionalism of the Defence team that works on this trial.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you. That's noted.
14 Victims' Counsel.

15 MR. LAWS: No, nothing from us. Thank you, Your Honour.

16 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

17 MR. GILISSEN: Absolutely nothing. Thank you very much.

18 PRESIDING JUDGE VELDT-FOGLIA: Good.

19 Then we will adjourn. We will sit again, we will reconvene in
20 the week of 2 October to hear two witnesses in that week.

21 And then we will adjourn after we have given my big thanks to
22 the stenographer who worked very intensely today, and our
23 interpreters, the audiovisual booth, and our security.

24 The hearing is adjourned.

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