

1 Wednesday, 25 October 2023

2 [Open session]

3 [The accused appeared via videolink]

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

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

6 Court Officer, can you please call the case.

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

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

10 And on the right-hand side, we are in the same composition, I
11 see. Yes, thank you. And on the left-hand side, too? Thank you.
12 Very well. That is noted.

13 We continue today with the re-examination of Defence
14 Witness 4754. This is Mr. Mark Shala. And, yes, we will sit for
15 three sessions of one and a half hours with our regular breaks.

16 Court Clerk, could you please usher the witness in.

17 [The witness takes the stand]

18 PRESIDING JUDGE VELDT-FOGLIA: Welcome.

19 Mr. Witness, welcome back to the Specialist Chambers. Can you
20 hear me well?

21 THE WITNESS: [Interpretation] Yes, I can hear you well. Thank
22 you.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Mr. Shala, good morning. Can you hear the witness well and me?

25 THE ACCUSED: [via videolink] [Interpretation] Good morning.

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1 Yes, I can hear you very well.

2 PRESIDING JUDGE VELDT-FOGLIA: And did you also hear the
3 witness?

4 THE ACCUSED: [via videolink] [Interpretation] Yes.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Mr. Witness, how are you today?

7 THE WITNESS: [Interpretation] I am fine. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, I remind you that
9 you're still under oath to tell the truth. Do you understand that?

10 THE WITNESS: [Interpretation] Yes.

11 WITNESS: W04754 [Resumed]

12 [Witness answered through interpreter]

13 PRESIDING JUDGE VELDT-FOGLIA: Yesterday, we completed the
14 questioning by the Specialist Prosecutor's Office and
15 Victims' Counsel. We are now entering a second round, so I will give
16 the floor to the Defence.

17 I understood yesterday that you have some questions for the
18 witness.

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

21 We reviewed the evidence of the witness overnight, and we don't
22 have any further questions for this witness. So just to thank him
23 for attending and his efforts, and no further questions.

24 PRESIDING JUDGE VELDT-FOGLIA: Okay.

25 MR. AOUNI: Thank you.

1 PRESIDING JUDGE VELDT-FOGLIA: Very well. That means that it
2 stops for the parties and Victims' Counsel here, and then it's the
3 turn for the Panel.

4 Mr. Witness, there are now some questions to be posed by the
5 Panel in order to further clarify some parts of your testimony and to
6 further explore some matters.

7 Questioned by the Trial Panel:

8 PRESIDING JUDGE VELDT-FOGLIA: Let me see. Yes. I will start
9 off with a video which I would like to show you, an excerpt of a
10 video, and I would like to ask you if you recognise the person.

11 For that, we need to go into private session.

12 Madam Court Officer, could you please bring us into private
13 session.

14 ~~[Private session]~~[Open Session] *Reclassified Pursuant to F760*

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

16 PRESIDING JUDGE VELDT-FOGLIA: Very well.

17 I will read out the ERN which is 07824901. And then we would
18 start at 5 minutes and 10 seconds, and I think it will be one and a
19 half minutes that we will be looking at this video. And there will
20 be a person talking, and my question to you will be if you know who
21 that person is, and then I will -- I might have some follow-up
22 questions.

23 You may proceed. Thank you, Madam Court Officer.

24 [Video-clip played]

25 PRESIDING JUDGE VELDT-FOGLIA: And we don't have a voice, but

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1 that's not what is most important.

2 [Video-clip played]

3 PRESIDING JUDGE VELDT-FOGLIA: Okay. Madam Court Officer, can
4 you please stop the video, and we can leave it on the screen.

5 Mr. Witness, do you recognise the person in the video?

6 A. This young woman that is reading or somebody else?

7 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] The
8 young woman who is reading.

9 A. No, I don't remember her. Except the two first people who were
10 shown, the first one, I don't remember the name, but the second one
11 was Shefki Avdullahu. So I don't remember the first person that was
12 shown, and this young woman, I don't know her name. I remember the
13 event, though.

14 PRESIDING JUDGE VELDT-FOGLIA: And except you -- we have looked
15 at the woman here. You don't know who she is; correct?

16 A. No, I don't.

17 PRESIDING JUDGE VELDT-FOGLIA: Have you seen this woman at the
18 premises of the Kukes metal factory?

19 A. She looks familiar, but I don't remember her name.

20 PRESIDING JUDGE VELDT-FOGLIA: That was not my question, if you
21 remembered her name. My question was have you seen her in the months
22 April, May, and the part of June that you were at the Kukes metal
23 factory, according to your testimony? Have you seen her?

24 A. I think I did.

25 PRESIDING JUDGE VELDT-FOGLIA: And when you say "I think I did,"

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1 would that have been more times or only once? Can you recall that?

2 A. More than once.

3 PRESIDING JUDGE VELDT-FOGLIA: Okay. And can you remember
4 during -- if that would be at the beginning of your stay or at the
5 end of your stay or throughout?

6 A. I think it was at the beginning of my stay.

7 PRESIDING JUDGE VELDT-FOGLIA: And do you know in what capacity
8 she was there?

9 A. I think this was the funeral of members of the KLA, and she read
10 this letter on behalf of the commander of that unit. I can't
11 remember exactly which funeral this was, but I think she read the
12 letter on behalf of the commander. I think she was in the command
13 staff.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay. When -- but only if you
15 remember. I understand it's a long time ago. But when you saw her
16 at the Kukes metal factory, do I understand right that she was -- no,
17 I will make my question more open.

18 When you saw her at the beginning in -- apparently you're not
19 completely sure, but you remember to have seen her at the beginning
20 of your stay. Do you know in what capacity she was there?

21 A. I think she was a simple soldier. I saw her at the beginning.
22 But the images that we saw, this was from the time when members of
23 the KLA had been killed at the beginning of the fighting that took
24 place. And this must have been later, when she held this speech.

25 PRESIDING JUDGE VELDT-FOGLIA: Two follow-up questions. You say

Questioned by the Trial Panel

1 "at the beginning of the fighting that took place." To what fighting
2 are you referring?

3 A. The Operation Arrow.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. So what timeframe are we
5 then talking about?

6 A. We're talking about the end of May, around that time. From the
7 25th to 30th May.

8 PRESIDING JUDGE VELDT-FOGLIA: Yes. And the woman that was
9 reading this letter or this document, she's wearing a blue beret.
10 Could you say anything about the colour of this beret, if it was --
11 if it belonged to a uniform?

12 A. No, that was not something that was different from others
13 because at the time there were different kinds of uniforms. It
14 depended on where they came from. However, the members of the KLA
15 had the caps that the other soldiers are wearing. But perhaps she
16 was given this cap by or beret by somebody else, and maybe she didn't
17 have another one.

18 But it wasn't something unusual. People or somebody would wear
19 something else. So this was not different. This was not any
20 different.

21 PRESIDING JUDGE VELDT-FOGLIA: So it is your testimony that the
22 fact that you would wear a blue beret or blue cap was just random?
23 Was just by chance?

24 A. Yes, by chance. When I returned from Croatia, I had my own
25 uniform from Croatia and a black beret. So I would wear the black

1 beret or the cap as the other -- the same as the other soldiers.

2 There was no special regulation about this because uniform supplies
3 were -- it was difficult to get uniforms, and uniforms would differ
4 from their appearance, colour, so we would use whatever we had.

5 PRESIDING JUDGE VELDT-FOGLIA: Okay.

6 Madam Court Officer, could you please put on the video again so
7 we watch it some more.

8 [Video-clip played]

9 PRESIDING JUDGE VELDT-FOGLIA: We can stop here. We see here
10 somebody with a red beret. Would that signify something?

11 A. No. As I said earlier, there was nothing significant in that.
12 There was a unit called the Atlantic Unit, and they were coming from
13 the United States. They would come with uniforms that they had
14 bought in the United States, and most of them had red berets.

15 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you
16 bring us back to the beginning of the excerpt from the video. Thank
17 you. And then please turn it on again.

18 [Video-clip played]

19 PRESIDING JUDGE VELDT-FOGLIA: I see a great amount of green
20 caps, camouflage design. And then we see one blue cap and one red
21 cap. And your testimony is it's by chance? It's not part of a
22 uniform to indicate that you belonged to a group, a specific group?

23 A. No.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you for this.

25 Madam Court Officer, we can stop this video and pull up another

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1 one, which is 07513802. And then I would like to ask you to go to
2 12 minutes and 40 seconds.

3 [Video-clip played]

4 PRESIDING JUDGE VELDT-FOGLIA: It will be played without sound.

5 [Video-clip played]

6 PRESIDING JUDGE VELDT-FOGLIA: And we see two persons on the
7 right-hand side wearing blue berets.

8 Madam Court Officer, maybe can you go back, and then I will --
9 yes. Maybe one step further. Or we just play it again. That might
10 be easier.

11 [Video-clip played]

12 PRESIDING JUDGE VELDT-FOGLIA: Stop now. Sorry. Yeah. I ask
13 too much. Yeah, now then it gets blurred.

14 But, Mr. Witness, have you been able to see the two persons?
15 They're both wearing a blue beret.

16 A. Yes, the two young women.

17 PRESIDING JUDGE VELDT-FOGLIA: Yes. Two young women with a blue
18 beret. The first woman, so more to us, standing more on -- the first
19 woman counting from the right, did you recognise her?

20 A. Well, the picture is a bit blurred, but I don't know her. No.
21 There were many young women. But I don't remember her.

22 PRESIDING JUDGE VELDT-FOGLIA: Maybe we can play it again,
23 Madam Court Officer.

24 [Video-clip played]

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you. You can stop it.

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1 Mr. Witness, the woman we just saw, in your view, is that the
2 same woman we saw in the other video?

3 A. It looks like the same. But the picture, as I said, was quite
4 blurred, so I couldn't see whether it was exactly her or not. But it
5 looks like one of them is her.

6 PRESIDING JUDGE VELDT-FOGLIA: Yes. And on the video, she was
7 wearing -- now, maybe we -- Madam Court Officer, can we go back and
8 play it again? I don't want to put any words in the mouth of the
9 witness.

10 [Video-clip played]

11 PRESIDING JUDGE VELDT-FOGLIA: And could you please focus,
12 Mr. Witness, on the headwear of the two young women -- or I don't
13 know if they're young, both. What is the colour of the headwear?

14 A. The head?

15 PRESIDING JUDGE VELDT-FOGLIA: Yes, the cap.

16 A. Oh, it's blue. Yes.

17 PRESIDING JUDGE VELDT-FOGLIA: So you say -- again your
18 testimony is that they were both wearing blue but that was a random
19 choice. They received what they got?

20 A. It's just by chance. It's just random, yes. Can I just explain
21 something briefly?

22 PRESIDING JUDGE VELDT-FOGLIA: Of course. I mean, that's why
23 you are here. You see that where my questions are directed at.

24 A. With regard to uniforms and caps --

25 PRESIDING JUDGE VELDT-FOGLIA: Sorry, sorry, Mr. Witness.

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1 Madam Court Officer, you can pull the video down. I think it's
2 better not to have this video like this. Thank you.

3 A. Can I continue?

4 PRESIDING JUDGE VELDT-FOGLIA: You may now.

5 A. I would like to explain something about the uniforms. We did
6 not have much choice in respect to uniforms. We couldn't choose the
7 uniforms we wanted and to have them of the same type, because the
8 uniforms were coming from all over the place - some from the German
9 army, from various countries like Croatia. The ones that are black
10 colour with a white belt, I think those were from Croatia.

11 But in relation to the caps, sometimes the caps would come of
12 the same serial number with a same size, and it was the large size,
13 so only men could wear them because they had a bigger size heads.
14 And there were no available caps for women, and berets and caps were
15 bought especially for them somewhere else in the market. And that's
16 why I say this is random. This is by chance.

17 And in relation to the red berets, the unit that came from the
18 States, they were wearing red berets. The whole unit had red berets.
19 But sometimes somebody would give away their red beret to somebody
20 else as a gift, so that's why some people in the funeral are wearing
21 red berets.

22 So that's the explanation.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness, for this
24 clarification. And then a last question: Would there be a special
25 uniform for medical personnel?

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1 A. All of the medical personnel, when they were not on duty, they
2 also wore the military uniform or fatigues all the time. But when
3 they were on duty, they would wear the uniforms like the white coat
4 if they were a doctor or a nurse. So they would wear that type of
5 uniform, so uniforms that are the medical type for doctors and
6 nurses.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you. I have one more
8 question, but I am going to look up for the reference. And in the
9 meantime, I will give the floor to my colleague on my left-hand side,
10 Judge Bitti, to ask you some further questions.

11 You have the floor.

12 JUDGE BITTI: Thank you, Madam Presiding Judge.

13 Good morning, Mr. Witness. I have a few questions for you. The
14 first question is did Pjeter Shala have a nickname during the war?
15 And I mean 1998, 1999.

16 A. Yes.

17 JUDGE BITTI: Could you tell us what was that nickname?

18 A. His nickname was Ujku, Wolf.

19 JUDGE BITTI: Thank you. Did Pjeter Shala have any role in
20 Operation Arrow?

21 A. Yes. As I've mentioned earlier, when I met him too, he was a
22 simple soldier back then.

23 JUDGE BITTI: He was a simple soldier participating in
24 Operation Arrow or not?

25 A. Yes.

1 JUDGE BITTI: This is not what you said to the SPO in 2019. I
2 would like to go back to what you said, and it's -- maybe we will put
3 it on the screen so that maybe that would refresh your memory. It's
4 083524-TR-ET -- sorry, we can go back to public session.

5 Thank you, Madam Presiding Judge.

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

8 ~~{Open session}~~

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

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 I give the floor to Judge Bitti for further questions.

12 JUDGE BITTI: Thank you, Madam Presiding Judge.

13 Madam Court Officer, could we go to Part 5 of the SPO interview
14 of the witness, and it's 083524-TR-ET, it's Part 5, and it's page, I
15 think, 32. And could you go to the bottom of the page, please.
16 *Voilà.*

17 For the Albanian, it's page 34, lines 19, 20. And I think it
18 is. I would very much ask the interpreters to check if I'm not
19 mistaken.

20 THE INTERPRETER: No, you are not, Your Honour.

21 JUDGE BITTI: Thank you. So that's it. Line 19, 20.

22 And then so the first line on page 32, line 25 says:

23 "Did Pjeter Shala have any role in Operation Shigjeta?"

24 Which I think is Operation Arrow.

25 And then could you go to the following page, please,

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1 Madam Court Officer.

2 And then your answer was:

3 "Nothing. Not a single role."

4 So you were very affirmative, I would say. So could you tell me
5 if he had a role or not, because, frankly speaking, there is a
6 contradiction between what you just -- I see a slight contradiction.
7 Could you explain, please.

8 A. Yes. Back then, too, the way I understood the question is the
9 same as in to say did he play a role, which in Albanian means did he
10 hold a particular position. In other words, if as a KLA member, if
11 they didn't have, say, a commanding position, then their role was as
12 a simple soldier. They wouldn't have any other role. That's how I
13 understood the question back then, and that's how I understand it now
14 too.

15 So I do not know whether this is related to the interpretation
16 or a mistake or if it's my understanding, but this is how I
17 understand it to be.

18 JUDGE BITTI: So the word "nothing," because in English it is
19 said "nothing" --

20 A. I took it to mean that he did not have any position at all.
21 This is how I understood the question that was asked, the question
22 that was asked of me.

23 JUDGE BITTI: Okay. And do you know if he had any participation
24 in this Operation Arrow; when and where?

25 A. Yes. And I have stated this. When we met for the first time,

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1 when he obtained the weapon and he went to the front, up until his
2 return, which was, I'm sure, in that direction. So he took part in
3 the fighting.

4 JUDGE BITTI: But what you said --

5 A. So I personally have not seen him.

6 JUDGE BITTI: Okay. So you have no personal information whether
7 he participated in Operation Arrow. But what I don't understand is
8 that you're telling me that you met him in April and then he was
9 going to the front, but in April, Operation Arrow did not start in
10 April. So could you clarify? Because I don't follow what you are
11 saying.

12 A. No, Operation Arrow started in May.

13 JUDGE BITTI: So in April he didn't go to participate in
14 Operation Arrow, so how do you know that in May he was participating
15 in Operation Arrow? I don't understand.

16 A. Well, our units were in their positions at all times from the
17 beginning. Although, the fighting itself, Operation Arrow, started
18 in May. That said, the positions were from early on, since his
19 arrival.

20 JUDGE BITTI: So according to you, although you have no personal
21 information, did you hear when exactly what it -- was he eventually
22 participating in Operation Arrow? What is the timeframe?

23 A. No, I haven't heard, and I do not know personally.

24 JUDGE BITTI: Okay. So you didn't hear anything about his
25 eventual participation in that operation, and you don't know if he

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1 did participate?

2 A. No.

3 JUDGE BITTI: Okay. Thank you. I will go to another topic.

4 Mr. Witness, you were the chief of logistics for the
5 Operation Arrow. Was that a demanding job?

6 A. Yes. Logistics work is very tiring. It is very difficult. And
7 given my own experience from the past, my career in the past too in
8 the armies I have served in, I have noticed that logistics is tough
9 because -- and you may know this from people who have been involved
10 in the military, because in every single army the key role is played
11 by logistics. The way, especially when it comes to the more recent
12 wars, they always -- they always try to do away, eliminate with -- do
13 away with the logistics. Because if there were no logistics, what
14 would the strength of a soldier on the front line be if they did not
15 have any logistical support?

16 So it depends obviously from the army, but in the war, I would
17 say five to ten logistics people serve a soldier in the front,
18 because the soldier requires all of the supplies such as clothing,
19 food, uniforms, ammunition, weapons, obviously also the place where
20 they would need to rest, transport, fuel, anything and everything
21 that they would need to be able to fight and for them to have all the
22 logistical help. But also in terms of medical support, because the
23 medical support, also finances, too, went through logistics. So all
24 of this is actually done by the logistical section.

25 So a lot of diversity in the work, complex too, and very

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1 difficult.

2 JUDGE BITTI: So there was a lot of pressure on your shoulders
3 during the entire Operation Arrow, I guess.

4 A. Yes, there was. That said, I had extensive experience in
5 Croatia because it was also during the Croatian war, which took much
6 longer than the Kosovan war. I had extensive experience there. And,
7 therefore, I didn't encounter a lot of problems. Of course, there
8 were problems, major ones as well, in particular in terms of supply
9 because, as I've mentioned in the past as well, it's not like we had
10 a particular base for our materials where everything would come in
11 smoothly, for instance. There were cases when our soldiers who, for
12 several days, had to deal with dry food, for instance. So they
13 didn't really have the opportunity to have proper cooked food but
14 eating out of tins or whatever there was in our warehouses.

15 JUDGE BITTI: Did the pressure on you increase when the
16 Operation Arrow really started in May?

17 A. Yes. Every so often, the number of KLA members would increase
18 because there was general mobilisation at the time. So there was
19 quite a large number of KLA members, although I cannot tell you the
20 exact number. The data is out there as to the number of KLA members
21 that participated in the war.

22 There were also different directions. The road transport was
23 very tough because of the conditions of the roads, especially to get
24 the supplies to the front line. Because sometimes to get to that
25 particular soldier, for instance, to the front lines, people would

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1 have to actually go on foot because vehicles couldn't get through.
2 So sometimes people -- our people would have to carry the particular
3 supplies, part of the road would be actually done on horse or donkey
4 or whatever we could find from the people living in the villages in
5 that area of Albania.

6 JUDGE BITTI: Thank you, Mr. Witness.

7 Taking into consideration the pressure that you had on your
8 shoulders, I would like to go back to what you said on page 2969 of
9 the transcript, line 18 to 21, especially when you describe a relaxed
10 meeting with Pjeter Shala, having a coffee. Could you explain to us
11 how was it possible, taking into consideration the pressure that was
12 on you, to have such a relaxed meeting?

13 Mr. Witness, did you understand the question?

14 [Trial Panel and Court Officer confers]

15 JUDGE BITTI: Mr. Witness, the reference I gave was to the
16 transcript, so you will not find it on your screen. On your screen,
17 it was a different document, so don't look. It was just a question.
18 I was just making a reference to what you said when you referred to a
19 relaxed meeting, having a coffee with the accused, but you will not
20 find it on your screen.

21 It's just -- so, please, if you could answer my question. Do
22 you want me to repeat it?

23 A. No, no need. Apologies for that. I thought something would
24 come up on the screen, the transcript, and that is why I was waiting
25 to give you an answer.

1 When it comes to your question and Pjeter Shala, not just with
2 him but also every so often, despite the major work that we had to
3 deal with, we would also find a moment to also relax ourselves,
4 because sometimes it's important for one to relax as well. Perhaps
5 in the evening we have gotten together, for instance, with other
6 members of the staff, and we would just try and relax.

7 When I said that, first of all, it wasn't a lengthy meeting.
8 But when you do meet someone after many years have passed, you do
9 have the opportunity to meet them and have a coffee and, of course,
10 you feel a bit more relaxed, like you're taking it easy. But that's
11 what I meant. That is the meaning of what I said.

12 JUDGE BITTI: Okay. Thank you very much, Mr. Witness.

13 Madam Presiding Judge, I have finished. Thank you very much
14 again.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Judge Bitti.

16 Madam Court Officer, can we go for a short moment into private
17 session for one further question.

18 ~~[Private session]~~[Open Session] *Reclassified Pursuant to F760*

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

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

21 Mr. Witness, bear with us a little bit more. A question about a
22 person we already discussed, Time Kadriaj. Was she a nurse or a
23 doctor?

24 A. Well, after the war, I managed to get to know Time better. And
25 I know that after the war she did not continue with her career but

1 she moved to another career in the political sphere. And to this
2 day, she's still an MP of the Kosovan parliament, and I've seen her
3 several times. I've had the opportunity to meet her after the war,
4 in Kosovo too. But, actually, a couple of times I also saw her in --

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

6 I think, Mr. Witness, that my question has not been clear. My
7 question was if Time Kadriaj -- during the war, what was her function
8 to your knowledge? A nurse or a doctor?

9 A. I think she was a doctor.

10 PRESIDING JUDGE VELDT-FOGLIA: That is what you said, indeed, in
11 your testimony before the SPO, Part 8, page 12, line 12. And I will
12 cite the number, 083524-TR-ET, 083524-TR-ET.

13 But in the transcript I noted that you indicated - and I will
14 give the reference - that she was a nurse, and I just wanted to
15 clarify.

16 A. But that is the reason why I started explaining it that way.
17 I'm not clear to this day whether she was a doctor or a nurse as
18 such, because now she's involved in politics. But I think back then,
19 when she was in Koshare, I think, her role was as a doctor.

20 PRESIDING JUDGE VELDT-FOGLIA: The reference is page 28, lines
21 14 to 19, and page 33, lines 12 to 22.

22 It was just for me to clarify, and you have said that you don't
23 really know. You think she was a doctor but could also have been a
24 nurse. That's what you say now.

25 Very well. We can go back into public session.

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1 ~~[Open session]~~

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

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

4 I now turn to the parties and to Victims' Counsel. Do you wish
5 to ask the witness any further questions related to the topics put by
6 the Panel to the witness? So please confer.

7 [Specialist Prosecutors confer]

8 [Specialist Counsel confer]

9 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated] ...
10 Defence Counsel, you have the floor.

11 MR. AOUINI: Thank you, Your Honour. Thank you for the offer to
12 ask further questions. We will have one clarification on one
13 discrete point about the timing of Arrow and soldiers being in the
14 front, if we are allowed.

15 PRESIDING JUDGE VELDT-FOGLIA: If you keep it to what we have
16 been asking.

17 MR. AOUINI: Absolutely.

18 PRESIDING JUDGE VELDT-FOGLIA: It's clear that we want to give
19 the opportunity if questions came as a kind of surprise or they need
20 further clarification for your case and for the SPO and for
21 Victims' Counsel, to give that opportunity.

22 Please, you have the floor, Defence Counsel. And we can remain
23 in public is the question? Okay.

24 MR. AOUINI: Yes. Yes, Your Honour.

25 PRESIDING JUDGE VELDT-FOGLIA: All right.

1 MR. AOUINI: Thank you.

2 Re-examination by Mr. Aouini:

3 Q. Mr. Witness, good morning. We had spoken just earlier with
4 Judge Bitti about the Operation Arrow and its start between 25 May
5 and 30 May. My question is this: To your knowledge, was there
6 soldiers in the front positioned and was there any fighting before
7 the official start of the Operation Arrow itself?

8 A. Yes. In one direction, yes.

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

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

14 Whereas in terms of the other directions, some were -- had
15 already taken their positions, but there was no direct fighting
16 involved up until the beginning of the operation. So they were just
17 preparing. And a small number had already taken their positions,
18 whereas the others were in training centres preparing for
19 Operation Arrow.

20 MR. AOUINI: If you allow me a final moment to confer.

21 PRESIDING JUDGE VELDT-FOGLIA: Please, Defence Counsel.

22 [Specialist Counsel confer]

23 MR. AOUINI: One final question with the uniforms, maybe.

24 PRESIDING JUDGE VELDT-FOGLIA: Yes, please.

25 MR. AOUINI: Thank you.

1 Q. Mr. Witness, to your knowledge -- again, you spoke to us that it
2 was random, depending on size, the availability of uniforms, what any
3 given soldier would wear. But to your knowledge, from what you
4 recollect, was there any attempt from a specific sector, like a
5 medical sector, to try at least to distinguish themselves from other
6 types of soldiers through uniforms, berets, or any kind of gear that
7 they would be wearing?

8 A. No, there weren't any. There were no attempts to make this
9 distinction, other than the medical staff when they were carrying out
10 their medical work and when they were wearing their own uniform, and
11 I mean the white coats, for instance. In particular, when they
12 served in the field hospitals, there they would wear their own
13 uniform, the white coats.

14 Q. Just to understand. You are talking about the white *blouse* that
15 we normally see doctors and people and medical staff wear? That's
16 what you mean?

17 A. Yes, yes, yes.

18 Q. Thank you very much, Mr. Witness.

19 MR. AOUINI: Thank you, Your Honours.

20 PRESIDING JUDGE VELDT-FOGLIA: Very well.

21 [Specialist Prosecutors confer]

22 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, you have the
23 floor.

24 MS. PERGOLO: Yes, Your Honours, thanks again also for the offer
25 for this opportunity. We also have one question as a follow-up.

Witness: W04754 (Resumed) (Open Session)
Further Cross-examination by Ms. Pergolo

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1 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

2 MS. PERGOLO: Thank you.

3 Further Cross-examination by Ms. Pergolo:

4 Q. Mr. Witness, when Operation Arrow started, did the unit under
5 Ruzhdi Saramati take any specific direction or specific position to
6 the front?

7 A. Yes.

8 Q. Which one was that?

9 A. His direction -- or number 4 direction was the one
10 Kukes-Gorozhup-Qafe-Morine.

11 Q. Thank you. Thank you, Mr. Witness.

12 MS. PERGOLO: This concludes our questions.

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

14 Thank you, Madam Prosecutor.

15 Victims' Counsel, do you have questions?

16 MR. LAWS: Your Honour, we have no further questions. Thank
17 you.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 So, Mr. Witness, we have reached the end of your testimony, and
20 I would like you -- I would like to thank you for the efforts you
21 have put into giving your testimony in the last three days. So thank
22 you very much.

23 I remind you that you should not discuss your testimony before
24 the Kosovo Specialist Chambers with anybody, and I wish you a safe
25 trip home. And I will ask Madam Court Usher to accompany you out of

1 the courtroom.

2 It depends on what you want to say, but please.

3 THE WITNESS: [Interpretation] Can I just express my opinion, my
4 free opinion?

5 PRESIDING JUDGE VELDT-FOGLIA: No. No, that's -- it's not the
6 moment anymore, so you can go with --

7 THE WITNESS: [Interpretation] Thank you. Good day to everyone.

8 [The witness withdrew]

9 PRESIDING JUDGE VELDT-FOGLIA: Before we adjourn till
10 20 November, we will proceed with issuing two oral orders with
11 regard, one, to sentencing procedure, if applicable, of course, and
12 the admission of material into evidence, respectively.

13 We will start with the last one. That is an oral ruling in
14 relation to Victims' Counsel's request for admission of expert report
15 and associate material, which is filing 625, dated 25 August 2023.

16 Victims' Counsel requests the admission into evidence of the
17 following documents used during his examination of expert witnesses
18 Karin Duhne-Prinsen and Dr. Chayèn Lozano Parra, both from the
19 *Instituut voor Mensenrechten en Medisch Onderzoek*, iMMO:

20 A, the CVs of both experts; and, B, the forensic medical
21 examination report produced by the two experts, along with its
22 Albanian translation.

23 The Defence does not object to the admissibility of this
24 material, and this is filing 636, dated 4 September 2023.

25 The present ruling is made pursuant to Rules 132, 137, 138, and

1 149(4) of the Rules. And the Panel refers also, by way of
2 background, to its decision which is filing 598, dated 21 July 2023.

3 The Panel finds that the expert report is relevant as it
4 contains information regarding the harm suffered by one of the
5 victims participating in proceedings as well as the impact of such
6 harm on the victim.

7 The report is authentic as it bears a number of indicia of
8 authenticity (dates, signature, and logo of IMMO), and was
9 furthermore authenticated by both authors - expert witnesses Karin
10 Duhne-Prinsen and Chayèn Lozano Parra - during their testimony in
11 court.

12 Finally, the Panel finds that the expert report has probative
13 value which is not outweighed by the prejudicial effect to the
14 Defence. And the Panel notes in this regard that the Defence has had
15 the opportunity to cross-examine the expert witness and does not
16 oppose the admission into evidence of their reports.

17 The Panel therefore admits the expert report into evidence. The
18 Panel's finding extends to the Albanian translation of the report.

19 With regard to the document containing the CVs of both expert
20 witnesses, with ERN V4010045 till V4010048, the Panel considers this
21 item to be available to the Panel for the purpose of its deliberation
22 for the judgment on the guilt or innocence of the accused.

23 And then to summarise. The Panel grants Victims' Counsel
24 request; admits into evidence the expert report and its Albanian
25 translations. The ERN numbers are V4010023 till V4010044 and

1 V4010023 till V4010044-AT. Further, it considers item ERN V4010045
2 till V4101148 to be available to the Panel for the purpose of its
3 deliberation for the judgment on the guilt or innocence of the
4 accused. And we instruct the Registry to assign exhibit numbers to
5 all of the above items for the purpose of maintaining an accurate
6 record of the proceedings pursuant to Article 40(5) of the Law and
7 Rule 24(1) of the Rules and to classify them as confidential.

8 This concludes our first oral ruling.

9 Then we have a second oral ruling, which pertains to the
10 sentencing procedure that the Panel will adopt in the present case,
11 and it's rendered pursuant to Rules 159(6) and 163 of the Rules of
12 Procedure and Evidence before this Court.

13 Following an order from the Panel dated 16 June 2023, the Panel
14 received submissions from the parties and Victims' Counsel on 25
15 August, 31 August, and 1 September 2023, respectively, on the
16 sentencing procedure the Panel should adopt in the present case, in
17 the event the accused is found guilty of one or more crimes charged.
18 And these are filings 627, 630, and 633, respectively.

19 The SPO and Victims' Counsel submit that, in the event the
20 accused is found guilty, the Panel should determine the appropriate
21 sentence together with the pronouncement of the trial judgment,
22 pursuant to Rule 159(6) of the Rules.

23 Victims' Counsel has also informed the Panel that he will not
24 present additional evidence for the purpose of sentencing.

25 Madam Prosecutor, do I understand correctly from your

1 submissions that you also do not intend to submit any additional
2 evidence for the purpose of sentencing?

3 MS. PERGOLO: Not at this time, Your Honours.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5 The Defence submits that, in the event the accused is found
6 guilty, the Panel should determine the appropriate sentence in a
7 separate procedure, pursuant to Rules 162 and 164 of the Rules. And
8 the Defence argues, in particular, that a separate sentencing
9 procedure would allow it to present targeted submissions that are
10 tailored to the Panel's legal and factual findings and, thus, make a
11 better use of its limited time and resources. And the Defence
12 further indicates that it will present evidence related to the
13 sentencing during the presentation of its case, and that it reserves
14 the right to request the Panel to hear additional evidence, if
15 necessary, should the Panel decide to proceed with a separate
16 sentencing procedure.

17 The Panel, Defence, is not persuaded by the submissions of the
18 Defence, and we note at the outset that the Rule 159(6) of the Rules
19 clearly establishes a presumption that, in the case the accused is
20 found guilty of one or more crimes, the sentence to be imposed should
21 be pronounced at the same time as the trial judgment. And your
22 arguments have not convinced the Panel to depart from this
23 presumption.

24 And, first -- we will address them. First, the fact that the
25 Defence will have to address different possible outcomes in terms of

1 modes of liability and mitigating and aggravating circumstances is
2 not particular to this case and is not, in itself, unfair. This
3 already was and will be the case in proceedings before the Court.
4 The Defence will have sufficient time to make its submissions and
5 present its evidence, and has been fully appraised of the charges
6 against the accused and the alleged facts.

7 Second, the SPO and Victims' Counsel, for now, do not have
8 additional evidence to present for the purposes of sentencing, and we
9 noted that the Defence too intends to present evidence relevant to
10 sentencing during its case. This militates in favour of pronouncing
11 the sentence at the same time as the trial judgment in case of a
12 conviction, rather than having a procedure afterwards.

13 And third, and last, to the extent that the Defence refers to
14 the practice of other courts or tribunals, the Panel recalls that the
15 Specialist Chambers apply their own law and rules, which differ in
16 this respect from the legal texts of other courts.

17 So in light of the foregoing, the Panel does not see any reason
18 to proceed in the present case in accordance with Rules 162 and 164
19 of the Rules. So, therefore, in the occasion the accused is found
20 guilty of one or more crimes charged, the Panel will determine the
21 appropriate sentence with the pronouncement of the trial judgment, in
22 accordance with Rule 159(6) of the Rules.

23 Accordingly, the Panel orders the Defence to present any
24 evidence on sentencing, including by disclosing it in Legal Workflow,
25 during the upcoming presentation of its case and to file requests

1 tendering such evidence at the latest by the closing of the Defence
2 case, pursuant to Rule 131 of the Rules. And the date for closing of
3 the Defence case will be set later at the appropriate time.

4 In addition, the Panel directs the SPO to submit the criminal
5 record of the accused as well as any other record of previous
6 convictions for criminal offences, in accordance with Rule 163(3) of
7 the Rules, at the latest by closing of the Defence case.

8 Finally, we direct the parties and Victims' Counsel, should they
9 wish to do so, to address matters related to sentencing in their
10 final trial briefs, in the statement on the impact of the alleged
11 crimes on victims participating in the proceedings, and/or in their
12 respective closing statements.

13 And submissions should address the following matters: One, the
14 gravity of the crimes charged and their consequences, the accused's
15 personal contributions of the crimes, the individual circumstances of
16 the accused, and the mitigating and aggravating circumstances related
17 to those factors, as set out in particular in Article 44(5) of the
18 Law on the Specialist Chambers and Prosecutor's Office and
19 Rule 163(1) of the Rules.

20 It should also address any proposed sentence to be imposed
21 pursuant to Rule 163(4) of the Rules, and any other relevant
22 information that may assist the Panel in determining an appropriate
23 sentence.

24 And this concludes the Panel's second oral ruling.

25 And then if there's anything to raise with the Panel, now is the

1 moment.

2 Mr. Prosecutor.

3 MR. DE MINICIS: Good morning, Your Honour. So this concerns
4 scheduling for the next evidentiary block.

5 So we understand there are seven Defence witnesses, if I'm not
6 wrong, currently left to be heard by this Panel. Two of them are
7 currently scheduled for the next block. Five them are subject of a
8 summons.

9 We understand the need for flexibility in order to ensure that
10 we make maximum use of courtroom time and also to ensure that the
11 trial proceeds at as fast a pace as possible. But to the extent that
12 it's possible, the SPO would request to be informed, if possible, in
13 advance of the next block of what witnesses we might expect to hear
14 with some days in advance, if that is logistically possible and
15 feasible for the Panel. Compatibly, of course, with the difficulties
16 that we understand there are in organising these summonses.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor. I
18 will come back to that. I will first make the round and then we will
19 get back to that.

20 Victims' Counsel.

21 MR. LAWS: No, nothing to raise. Thank you, Your Honour.

22 MR. AOUINI: Yes, Your Honour. On the same matter.

23 PRESIDING JUDGE VELDT-FOGLIA: At this moment, I think it's good
24 that we go into private.

25 MR. AOUINI: Okay.

1 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you
2 bring us into private session, please.

3 [Private session]

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20 [Open session]

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

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

23 Now that we have discussed the schedule for the upcoming
24 evidentiary block, and we promise that we would keep you updated for
25 what is to come in that week, we will adjourn the hearing till 20

1 November.

2 But before doing that, I want to thank the interpreters for
3 their hard work the last few days, and the stenographer, the
4 audio-visual booth, and the security.

5 The hearing is adjourned.

6 --- Whereupon the hearing adjourned at 10.58 a.m.

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