

Additional redactions applied pursuant to F631.

1 Monday, 3 July 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.

10 First of all, I kindly ask you to indicate who is present today.

11 Madam Prosecutor, you have the floor.

12 MS. PERGOLO: Good morning, Your Honours. For the SPO,

13 Line Pedersen, Filippo De Minicis, and me, Gaia Pergolo.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 Victims' Counsel, please.

16 MR. LAWS: Good morning, Your Honours. I'm Simon Laws, counsel

17 for the victims in this case, together with my co-counsel,

18 Maria Radziejowska.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 Defence Counsel, you have the floor.

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

22 Good morning. So we are here with Mr. Shala, as usual he is in

23 the detention centre, and Mr. Gilissen. And we are here with

24 Mr. Hedi Aouini, my co-counsel; Judit Kolbe, that you know perfectly

25 well; and Ms. Dzeneta Petravica, our case manager. Thank you very

Additional redactions applied pursuant to F631.

1 much.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Thank you.

3 Good morning, Mr. Shala. Can you confirm that you hear me?

4 THE ACCUSED: [via videolink] [Interpretation] Yes, I hear you
5 very well.

6 PRESIDING JUDGE VELDT-FOGLIA: Good.

7 Today we will continue with the cross-examination of Mr. Gasior
8 by the Defence. And before we start with the witness testimony, we
9 will issue an oral -- no, even two oral orders.

10 There are some numbers in it, so I will try to speak slowly.

11 The first oral order concerns a request made by the SPO via
12 e-mail on Tuesday, 27 June 2003, at 10.24, pertaining to the
13 assignment of an exhibit number to the document with ERN SPOE00214798
14 till 00214799.

15 The SPO submits that this document constitutes the correct
16 version of a report that the Panel admitted into evidence on
17 20 April 2023 following its decision on the Specialist Prosecutor's
18 Office motion for admission of documentary evidence, and this is
19 filing 492. The ERN of this report is SPOE00134047 till 00134048.

20 The SPO further submits that the original report is now
21 superseded - it doesn't exist anymore in Legal Workflow - by the
22 correct version, and thus requests the Panel to direct the Registry
23 to assign an exhibit number to the new version of it.

24 And taking into consideration the SPO's submissions, the Panel
25 grants the SPO request and directs the Registry to assign an exhibit

Additional redactions applied pursuant to F631.

1 number to the requested document, which is ERN SPOE00214798 till
2 00214799, as well as to its Albanian translation.

3 And the Registry is further directed to add this oral order to
4 the general comments of the document in Legal Workflow.

5 And this concludes our first oral order. So that is taken care
6 of.

7 And the second oral order pertains to the request made by the
8 Defence via e-mail on Tuesday, 27 June 2023, at 13 minutes past 4.00
9 in the afternoon, to add one item to add to its list of material to
10 be used during cross-examination today of W04826.

11 We note that this item with ERN 113841 till 113843 was disclosed
12 by the SPO on Monday, 26 June 2023, in disclosure package 136.

13 Noting that there were no objections raised by the SPO and by
14 Victims' Counsel, we authorise the Defence to add this item in its
15 list of items to be used during the witness's cross-examination of
16 today. And we instruct to amend, the Defence, the list of items and
17 update its presentation queue accordingly.

18 Very well. This concludes the Panel's second order. And that
19 means that we can continue with the testimony of Mr. Gasior.

20 We will have three regular sessions of one and a half hour
21 today. The break is foreseen for either 90 or 60 minutes, I don't
22 know how much time we will be using today, but it should be finished
23 today, due to the availability of the right language interpreters.
24 But I don't foresee any problems in that respect, and I see the
25 Defence nodding in my direction.

Additional redactions applied pursuant to F631.

1 Defence Counsel, could you already give an indication at this
2 moment in time how much time you think the Defence will be needing?
3 And, of course, approximately.

4 MR. AOUINI: Thank you, Your Honour. Good morning to Your
5 Honours, to everyone in and around the courtroom.

6 Depending on the pace in which we go, we anticipate that we will
7 be done within one session.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you very much.

9 Another more technical question I would like to ask, is
10 Transcend work for everybody? That's an issue. And I see also -- so
11 the Panel has difficulties.

12 Madam Prosecutor.

13 MS. PERGOLO: It wasn't working on that position so I had to
14 move here. Now here is working fine. But I'm understand there are
15 some licence issues as well, so I'm not sure, I think probably there
16 is some liaising that is being done in the meantime.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay.

18 And at the side of the Defence?

19 MR. AOUINI: It is working on our side, Your Honours.

20 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you. I will
21 liaise with the Court Officer to see what we can do before we start.

22 [Trial Panel and Court Officer confer]

23 [Trial Panel confers]

24 PRESIDING JUDGE VELDT-FOGLIA: We will follow up on it, and
25 before we can start, I prefer to have Transcend working for

Additional redactions applied pursuant to F631.

1 everybody.

2 [Trial Panel and Court Officer confer]

3 MR. AOUINI: Your Honour --

4 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

5 MR. AOUINI: Yes, can we seek a clarification in the meantime?

6 Can we seek a clarification in the meantime?

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

8 MR. AOUINI: Thank you, Your Honour.

9 In your second oral order we were directed to add the additional
10 document to our list of material. Our understanding is that once it
11 is released, it is the Registry that holds control over the list and,
12 in the past, they were the one adding those additional documents. So
13 we want to know whether we are required somehow to add it, because we
14 might have -- we might not have the necessary controls to add the
15 documents because the presentation queue is released, and usually
16 it's done through the Registry.

17 PRESIDING JUDGE VELDT-FOGLIA: We will follow up on that, but
18 because it is one document and we know about what document we are
19 talking, I don't think there are be any problem.

20 [Trial Panel and Court Officer confer]

21 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, it has been
22 added to the list, so that's taken care of.

23 [Trial Panel and Court Officer confer]

24 [Trial Panel confers]

25 PRESIDING JUDGE VELDT-FOGLIA: For the Panel, Transcend is now

Additional redactions applied pursuant to F631.

1 working.

2 Parties and Victims' Counsel can confirm that they have also
3 Transcend that is working? Very well. Then we can proceed with the
4 testimony of the witness.

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

7 [The witness entered court]

8 PRESIDING JUDGE VELDT-FOGLIA: Please have a seat, Mr. Gasior.
9 Mr. Gasior, good morning.

10 THE WITNESS: Good morning.

11 PRESIDING JUDGE VELDT-FOGLIA: And welcome back. Can you
12 confirm that you hear me fine?

13 THE WITNESS: [Interpretation] Indeed, I can hear you fine.

14 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, have you been able to
15 hear the translation?

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

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Mr. Gasior, how are you today?

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

21 PRESIDING JUDGE VELDT-FOGLIA: Very well. Today, Mr. Gasior, we
22 will continue with the examination by the Defence, and I remind you
23 that you are still under oath to tell the truth.

24 Defence Counsel, you have the floor.

25 MR. AOUNI: Thank you, Madam President.

Witness: Marek Gasior (Resumed) (Open Session)

Page 2163

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 WITNESS: MAREK GASIOR [Resumed]

2 [Witness answered through interpreter]

3 Cross-examination by Mr. Aouini:

4 Q. Good morning, Dr. Gasior.

5 A. Good morning.

6 Q. So, doctor, I am one of the counsels for the Defence of
7 Mr. Shala who is the defendant in this case, and I'll ask you a
8 number of questions to elucidate further details on things that you
9 told us and told the Prosecutor and the Panel last week. Okay?

10 And I will try to do as much as possible in public hearing, so I
11 will ask you, if you remember, to -- that we have determined some
12 information and refer to them by individual A, individual B,
13 individual C. If you don't remember exactly what that refers to, we
14 will go through it together to make sure that we don't have any
15 confusion. Okay?

16 A. Individual A --

17 PRESIDING JUDGE VELDT-FOGLIA: Please don't say the name,
18 Mr. Gasior, because we are in public session.

19 THE WITNESS: [Interpretation] So patient A, individual A, was
20 the one on which -- on whom -- whose body I performed the autopsy.

21 Patient B, or individual B and C, these were two individuals,
22 patients whom I examined physically. So I examined -- I performed a
23 physical examination of the bodies.

24 MR. AOUINI:

25 Q. That is perfectly correct.

Witness: Marek Gasior (Resumed) (Open Session)

Page 2164

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 So, doctor, we will start by individual A and the report you
2 made on that individual. Okay?

3 And last Monday, at page 2075, lines 17 to 23, we were
4 discussing the items, the body, the status of the body and items that
5 you have found in the bag that you received to perform the autopsy.
6 And specifically, you mentioned that you have found a gypsum plaster.
7 Do you remember that?

8 A. As I said last week, the autopsy of this individual was
9 performed [REDACTED], and a report was drawn up on
10 the basis of my work on this autopsy, and I have this in front of me.
11 But the autopsy itself, and I'm sorry for that, [REDACTED], I
12 do not remember the autopsy itself.

13 And now answering your question, sir, from the report, it
14 transpires that this patient on the right leg had a gypsum plaster,
15 indeed.

16 Q. Thank you, doctor. I won't embark you in an exercise where we
17 need to remember certain things. If there are some details, I will
18 ask you specifically and guide you to the report to see it. So not
19 to worry about that. Okay?

20 My question was whether you remembered there was a plaster cast
21 and you confirmed it. Okay? And I'm moving on unless you have some
22 precision you want to give us.

23 A. Now, in this report we read that this gypsum plaster had been
24 put on his lower right leg, lower limb.

25 Q. Doctor, this plaster was applied on one part of the leg or the

Witness: Marek Gasior (Resumed) (Open Session)

Page 2165

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 whole leg?

2 A. Now I can answer this question on the basis of the pictures,
3 photographs, contained in the report.

4 MR. AOUINI: Can we look at picture number 12, maybe, at ERN
5 031062.

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

8 MR. AOUINI: Not to be broadcast to the public, of course.

9 Q. Have a look at picture 12, doctor. And can you confirm that
10 this is actually the gypsum plaster you are referring to. And if you
11 could answer the question whether it was applied to one part of the
12 leg, the lower part, as you mentioned, or is it the entire leg?

13 A. Well, looking at photograph number 11 and what we see is the
14 back of the body. So on the autopsy table, this body is lying and we
15 have the posterior view.

16 And as for photograph number 12, we see the gypsum plaster in
17 question. This is what the report evidence tells us.

18 Q. Doctor, have you identified from the items that you received in
19 the bag another equipment or element or item suggesting treatment?
20 Do you remember that?

21 A. So the gypsum plaster on the right leg, and also what was seen
22 there was a catheter, together with a container, a bag, and it's, of
23 course, for urine collection.

24 Q. Thank you, doctor.

25 MR. AOUINI: If we look at the same -- at the following page at

Witness: Marek Gasior (Resumed) (Open Session)

Page 2166

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 photographs 15 and 16 to match the description with the photos maybe.

2 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

3 MR. AOUNI: ERN is 031063, photographs 15 and 16. Thank you.

4 Q. Doctor, if we look at pictures 15 and 16, this is what you refer
5 to as catheter? Can you confirm that?

6 A. This is the end part of the catheter. It ends with a container
7 for excretion collection and it reaches the container by means of
8 this catheter.

9 Q. In the description of remains in the report at page 031050, it
10 is mentioned, just for clarity:

11 "'Surgical Bag' on back with tubes leading into urinary
12 bladder," and it refers to pictures 15, 16, 18, 19, 20, 21, and
13 "picture of removed plastic bag" at picture 57. We are talking about
14 the catheter here as well, eh?

15 A. This description pertained to the catheter, yes.

16 Q. Thank you, doctor. So for extra clarity, can you explain to the
17 Panel what a catheter consists of, for laymen people like us, not
18 forensic people?

19 A. It's a tube which is entered into the urinary bladder, and it is
20 used for urine transport which goes into a plastic bag that is
21 outside of the human body.

22 Q. Thank you very much, doctor.

23 I'm moving to another area of this report which is what we refer
24 to as saponification. Okay? So the saponification of the body.

25 PRESIDING JUDGE VELDT-FOGLIA: Can we take off the photographs,

Witness: Marek Gasior (Resumed) (Open Session)

Page 2167

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 Defence Counsel?

2 MR. AOUINI: Yes, please, Your Honour.

3 Q. So, doctor, you told us about the process of saponification at
4 pages 2074 to 2075 of the transcript. And you mentioned that in this
5 case, the case of this body, individual A, all soft tissues were
6 saponified. Do you remember that?

7 A. Now, in the report we read that the soft tissues of individual A
8 had been transformed after the demise or post-mortem. So this was
9 this fat into wax transformation that is called saponification. And,
10 as I mentioned, it is also called chalk transformation.

11 Q. Do we understand that the body was skeletonised?

12 A. Partly. So it had been partly skeletonised, and partly the soft
13 tissues on individual A had been saponified.

14 Q. Thank you, doctor. For extra clarity, can we say that no soft
15 tissue was left on the body?

16 A. On the body of patient A, there were soft tissues that had been
17 transformed post-mortem, so transformed in a way that we call
18 saponification.

19 MR. AOUINI: Well, with your leave, Your Honour, we would like
20 to call the note that was recently added just to clarify one
21 sentence, so the doctor has the opportunity to explain what is
22 written there about this specific topic. Just for clarity.

23 PRESIDING JUDGE VELDT-FOGLIA: Yes. If you give the ERN number
24 to Madam Court Officer, she can proceed.

25 MR. AOUINI: Thank you, Your Honour.

Witness: Marek Gasior (Resumed) (Open Session)

Page 2168

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 So the ERN is 113841 to 113843. And the first page is the one
2 we need to look at. Not for public broadcast, of course. And we can
3 look at point number 2 at subpoint c.

4 Q. Can you read that, doctor? Yes. Here it says: "There was no
5 soft tissue left on the body." Just for clarity, explain to us what
6 is meant there.

7 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, you have the
8 floor.

9 MS. PERGOLO: Your Honours, just to make reference to the fact
10 that Defence Counsel is pointing to a specific part of the note, but
11 we have also a bullet point just above where there is information
12 provided on the saponification process in particular. I'm happy to
13 read it, but I think it is available to everyone.

14 So I think the two points should be put to the expert together
15 just for him maybe to clarify fully what the scope of the
16 conversation we had was in this specific regard.

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

18 I think that for reason of completeness, if you would not mind,
19 we could add that, but I think that the expert is completely aware.
20 But it's good to have that in the transcript.

21 MR. AOUINI: We're happy to do that, Your Honour.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 MR. AOUINI: Thank you.

24 Q. So point b says:

25 "'Skeletonized' means that there was no flesh on the body, the

Witness: Marek Gasior (Resumed) (Open Session)

Page 2169

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 skin was transformed and saponified."

2 And then point c:

3 "There was no soft tissue left on the body."

4 So just clarify for everyone's benefit, doctor, what you mean by
5 that, the reference to this individual A's body.

6 A. During the examination after the death of the exhumed body, the
7 soft tissues are removed and the rest of skeletal tissues are placed
8 on the autopsy table in the anatomical position, and then the action
9 is taking place in order to establish whether there are any injuries
10 on the skeletal remains. Therefore, in order to examine the skeletal
11 remains, the soft tissues are removed.

12 Q. And the pictures that we have in the report is after the body
13 was put in anatomical position; correct?

14 A. Which picture, please?

15 MR. AOUINI: If we could look at picture number 11 at ERN
16 031062, or maybe we have a full page -- maybe you have a full-page
17 picture at 031056.

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

20 MR. AOUINI:

21 Q. Doctor, this is the anatomical position you referred to;
22 correct?

23 A. Yes, it's a picture of the patient after it's been delivered to
24 the mortuary to perform the autopsy.

25 Q. Thank you, doctor. So I'm going to seek some clarifications on

Witness: Marek Gasior (Resumed) (Open Session)

Page 2170

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 another point in your report which is the shots that you observed on
2 the body. Okay?

3 And my question is this: Can you confirm that in the report
4 where there is mentioned two to three shots, and you mentioned to us
5 last week that it was your opinion that it was three shots to that
6 body, do you confirm that no measurements of the holes was made on
7 that report?

8 A. During the examination of the remains, skeletal remains, there
9 were three gunshots into the right knee, from which two went through
10 the knee, through the knee socket, through the bones constituting the
11 knee, and the third shot was the -- was a tangential shot.

12 Q. Thank you, doctor. Just focus --

13 A. Superficial.

14 Q. Thank you, doctor. Just focus with me. My question is: Were
15 there any measurements of the diameters of the holes present in the
16 bone? We see in other reports that there are some centimetres,
17 millimetres, measurements, but here we don't see any. Can you
18 confirm that?

19 A. In this report, with regards to the bones with the visual damage
20 caused -- visible damage caused by the shot, there is a scale
21 measurement with a number and millimetres.

22 Q. Doctor, in the picture we see a scale, that is what we call
23 *légende*, but we don't have the same measurements as in other reports
24 where there is a specific arrow with the precise numbers, nor in the
25 description, about the diameter of the holes in the bones. I'm just

Witness: Marek Gasior (Resumed) (Open Session)

Page 2171

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 trying to clarify whether it is there or not.

2 A. In order to establish the damage, there is always a ruler in
3 millimetres applied which allows to establish the size of the injury.

4 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, I mean, we could
5 go to page 031065, because -- and then to picture 29, because it
6 could be that that is what the witness is referring to. And it's not
7 for me to interrupt in your examination, but I'm under the impression
8 that is he referring to this picture. So we could ask him if he can
9 confirm that and maybe talk with this picture in front of him.

10 MR. AOUNI: Yes, Your Honour. This is my understanding as
11 well.

12 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

13 MR. AOUNI: ERN is 031065, picture 30, if we are talking about
14 the same picture.

15 Q. Doctor, the ruler that you mentioned --

16 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, apologies for
17 interrupting you. But there is one point not clear in the transcript
18 and I would prefer to have that clarified.

19 At page 14, between lines 1 and 4, Mr. Gasior makes reference to
20 the third shot, and I see here a "tangential shot" or "superficial."

21 Could you clarify what you mean with that, Mr. Gasior?

22 THE WITNESS: [Interpretation] It's a shot, a gunshot, which gets
23 onto the fibula and condyle of the femur bone on the side. This shot
24 is visual on the picture number 39.

25 PRESIDING JUDGE VELDT-FOGLIA: That's, for Madam Court Officer,

Witness: Marek Gasior (Resumed) (Open Session)

Page 2172

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 031067.

2 MR. AOUINI:

3 Q. Doctor, are you referring to the green arrow there?

4 PRESIDING JUDGE VELDT-FOGLIA: 39, yes.

5 THE WITNESS: [Interpretation] Yes, it's an arrow which is
6 closest to green.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Gasior, for this
8 clarification.

9 I will now give the floor back to the Defence Counsel.

10 MR. AOUINI: Thank you, Your Honour.

11 Q. And thank you, doctor, for this clarification.

12 Now, you told us that, in your opinion, the time between the
13 gunshots and the death was a short one, and that's at transcript page
14 2095, lines 4, 5 and following. In your assessment, the artery was
15 destroyed, leading to bleeding out, which caused the death, because
16 there is no signs of healing of the bone. So in your assessment, the
17 time between the gunshots and the death was short.

18 Could you help us, if you can, with the assessment of how short
19 an estimate of time, in your assessment, between the gunshot and the
20 death?

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

22 Please, continue, Mr. Witness.

23 THE WITNESS: [Interpretation] The examination of the damaged
24 bones did not show that they were undergoing healing. Therefore, the
25 time between the sustained injury and the death of the patient was a

Witness: Marek Gasior (Resumed) (Open Session)

Page 2173

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 short one.

2 The healing time depends on many factors, amongst which there is
3 an age of the patient. Individual factors play a very important
4 role. And the only thing I can repeat is that it was a short time.

5 PRESIDING JUDGE VELDT-FOGLIA: But - allow me - if you say "a
6 short time," Mr. Witness, is that days, weeks, a month?

7 MR. AOUINI: Hours, minutes?

8 PRESIDING JUDGE VELDT-FOGLIA: If you can, of course. But for
9 us, it is a very vague concept.

10 THE WITNESS: [Interpretation] I would rather tend to say that
11 the time was, at most, few days. Few days.

12 MR. AOUINI:

13 Q. And that is the case even if the wounds are left untreated?

14 A. On the pictures of the damaged bones, there is no visible marks
15 of healing which indicates that the time between the sustained injury
16 and death is a short one.

17 Q. Doctor, do you agree with me that the destruction of a principal
18 artery, like this one, is a life-threatening situation?

19 A. The damage of that artery is a life-threatening damage.

20 Q. Thank you very much. Now I'm moving to a different report.

21 We're going to deal with individual B. So another report of
22 examination, and it's about individual B.

23 Do you need refreshing as to which one of the persons examined
24 is individual B? We're still in public session, so if you need more
25 details, just say you do and then we help you with that.

Witness: Marek Gasior (Resumed) (Private Session)

Page 2174

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 A. When you're referring to Person B, you refer to the report
2 [REDACTED] Pursuant to In-Court Redaction Order F560RED., in the
report?

3 Q. Yes, doctor.

4 PRESIDING JUDGE VELDT-FOGLIA: I have a preference to go into
5 private just for one minute, say the name about who we are
6 discussing, and then come back, just to exclude any misunderstanding
7 in this regard.

8 Madam Court Officer, can you bring us into private session,
9 please.

10 [Private session]

11 [Private session text removed]

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Witness: Marek Gasior (Resumed) (Private Session)

Page 2175

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 [Private session text removed]

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[Open session]

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

15 PRESIDING JUDGE VELDT-FOGLIA: One moment. Yes.

16 [REDACTED] Pursuant to In-Court Redaction Order F560RED.

17 [REDACTED] Pursuant to In-Court Redaction Order F560RED. Am I

18 correct? It suffices that you say yes or no.

19 THE WITNESS: Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that.

21 Please, Defence Counsel, you may proceed.

22 MR. AOUNI: Thank you, Your Honour.

23 Q. So, doctor, last week you told us at page 2120, and we are

24 talking about a head injury here, that this injury is compatible with

25 the proposition that this individual B received a trauma or an injury

Witness: Marek Gasior (Resumed) (Open Session)

Page 2176

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 of some kind or from some kind of object being used.

2 And my question is: Would it be consistent with a hit with a
3 glass bottle, like the Coca-Cola glass bottles that we know?

4 A. The examination of the patient was carried out on
5 [REDACTED]. And the patient, in an interview, said that these
6 are injuries from the year 1999. So these were injuries that he
7 suffered [REDACTED]. During the examination, we
8 could see scars which were described in the report.

9 Q. Thank you very much, doctor. So do we understand correctly that
10 it is impossible to form a conclusive determination of the source of
11 the injury? Do you agree with that?

12 A. The described injuries were a result of a trauma.

13 Q. We also talked about -- you also talked about an injury to the
14 shoulder at page 2121 of the transcript of last Tuesday. And do you
15 agree with me again that it is impossible to make a conclusive
16 determination of the source of the injury, that what caused the
17 injury?

18 A. These injuries, the result of which were the visible scars, were
19 a result of a trauma.

20 Q. Yes, doctor. I don't want to be unfair. What I'm saying is
21 that, yes, it is a wound or a trauma, but the source, what caused it,
22 what kind of object, is impossible to determine conclusively;
23 correct?

24 A. We can talk only about the following: It is a result of a
25 trauma sustained.

Witness: Marek Gasior (Resumed) (Open Session)

Page 2177

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 Q. Now, dealing with the third injury, that is, one to the foot,
2 you told us last week at page 2123 of the transcript that the scar
3 was "greatly modified." And my question is, here again, with regard
4 to the time and the modification of the scar, you cannot conclusively
5 determine the source of the trauma or injury or wound that caused
6 this scar; correct?

7 MS. PERGOLO: Your Honours.

8 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, is it necessary
9 that I ask Mr. Witness to be ushered out?

10 MS. PERGOLO: No, it's just a correction really. And again, I
11 stand to be corrected, but I think my learned colleague made
12 reference to an injury to the foot. But, in fact, last week at the
13 page that he made reference to we're talking about the leg. So maybe
14 we can double-check the transcript and correct that. I think the
15 expert talked about -- was talking about the leg at that point.

16 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

17 MR. AOUINI: It is my wrong, yeah. The mention was to the leg.
18 We made an objection at the time for the same issue, but it was
19 discussing the leg because that was the description in the report.
20 So I accept that. I'm sorry for that.

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

22 You may proceed.

23 MR. AOUINI:

24 Q. So the injury to the leg, it's also equally impossible to
25 determine the exact source --

Witness: Marek Gasior (Resumed) (Open Session)

Page 2178

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 PRESIDING JUDGE VELDT-FOGLIA: Please put it in a question.

2 MR. AOUINI: Yes.

3 Q. Is it possible to determine conclusively the source of the
4 injury, what caused the injury?

5 A. Yes, this injury was healed and it was as a result of a trauma.

6 MR. AOUINI: With your leave, Your Honour, I would like to focus
7 on one specific photo to ask questions about.

8 PRESIDING JUDGE VELDT-FOGLIA: With regard to which topic?

9 MR. AOUINI: Now the foot --

10 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

11 MR. AOUINI: -- of individual B.

12 So we're looking at the same report, SITF0019134 to
13 SITF00019147, and we're looking at page 9, the top picture, if I'm
14 not mistaken. It's actually the right picture because
15 [Indiscernible], so the right one.

16 PRESIDING JUDGE VELDT-FOGLIA: Can it be made a little bit more
17 lighter?

18 MR. AOUINI: I think the picture is selected. If we de-select
19 it, we can have the colours.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. It will do.

21 Please proceed.

22 MR. AOUINI:

23 Q. Doctor, could you from your observation of this scar to the leg
24 determine the gravity of this injury? Was it serious? Was it
25 superficial? Medium? Can you clarify anything on that?

Witness: Marek Gasior (Resumed) (Open Session)

Page 2179

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 A. It was an injury which covered tissues, soft tissues.

2 Q. Would this injury possibly be qualified as superficial?

3 A. During the examination, the patient was informed that he should
4 take X-ray photos of the foot in order to determine whether there was
5 some injury of the skeletal parts.

6 *[REDACTED] Pursuant to In-Court Redaction Order F560RED.* he came
once again to the

7 forensic facility, and he brought an X-ray photo on which no injuries
8 of the skeletal part of the body was visible. That means that that
9 injury covered only soft tissue.

10 Q. Thank you, doctor. And were you told by the patient, individual
11 B, or people, officers who brought this individual to you, that
12 X-rays were also made before the date of the examination and they
13 returned -- they returned all negative. Were you informed of that as
14 well?

15 A. The patient we are talking about was brought to the forensic
16 facility by two police officers who were present at the forensic
17 facility, but they were not present during the examination of the
18 patient.

19 MR. AOUINI: With your leave, Your Honours, could we --

20 THE WITNESS: [Interpretation] The examination of the patient was
21 carried out *[REDACTED] Pursuant to In-Court Redaction Order F560RED.*,
and the patient was informed about the
22 necessity of X-ray photos to be taken.

23 The note which was compiled during the second examination says
24 that that X-ray -- these X-ray photos were taken on *[REDACTED]*
Pursuant to In-Court Redaction Order F560RED.

25 MR. AOUINI:

Witness: Marek Gasior (Resumed) (Open Session)

Page 2180

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 Q. Now we have the year as well. I was going to clarify. But
2 we're talking about [REDACTED] Pursuant to In-Court Redaction Order
F560RED. Okay?

3 A. Yes, the date was provided, [REDACTED] Pursuant to In-Court
Redaction Order F560RED.

4 MR. AOUINI: Your Honour, with your leave, can we go to one
5 document that mentions the information about prior X-ray on this
6 specific issue to put it on the record.

7 PRESIDING JUDGE VELDT-FOGLIA: Yes, we may. And I suggest to
8 refrain from mentioning dates.

9 MR. AOUINI: Can we please call SITF00372733 and go to the
10 second page, please. The page is at SITF00372734. The ERN I have is
11 SITF00372734.

12 PRESIDING JUDGE VELDT-FOGLIA: 34. I see it 24.

13 [Trial Panel and Court Officer confer]

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

15 MR. AOUINI: No problem, Your Honour. We'll move away from it.
16 I think it's not in the list there.

17 Q. So, again, doctor, were you informed that X-rays were done prior
18 to that date, the year that we just spoke about, X-rays were done on
19 this individual B and they returned negative? Were you told about
20 that from individual B or from the officers that accompanied him?

21 MS. PERGOLO: Your Honours. I'm sorry, but we kindly request
22 that my colleague provides a reference to this other X-ray that is --
23 was allegedly done before the examination. Because we're not sure we
24 can follow, actually.

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

Witness: Marek Gasior (Resumed) (Open Session)

Page 2181

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 I can follow your question, but I was going to ask you the same
2 thing, if we could have a reference, and if you need some time to
3 retrieve it, please.

4 MR. AOUINI: Thank you, Your Honour. I'm reading the ERN that I
5 have. Maybe it has changed in the meantime, but it's SITF00372733 to
6 SITF00372734. It's a two-page document. And it's at the end of that
7 document. I'm ...

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. We will -- I will ask
9 Madam Court Officer to have a look again, to verify if it's the
10 number of the document you are requesting to load up on the screen.

11 MR. AOUINI: I think I understand where the problem comes from.
12 It's not in our list.

13 PRESIDING JUDGE VELDT-FOGLIA: Ah, okay.

14 MR. AOUINI: It's in the Legal Workflow but not in our list.

15 PRESIDING JUDGE VELDT-FOGLIA: I --

16 MR. AOUINI: This is the evidentiary basis, but if we have not
17 put it in the list, maybe we can submit to Your Honours at a later
18 point.

19 PRESIDING JUDGE VELDT-FOGLIA: I agree to bring it, to show it
20 because we are now discussing it, and I will ask the SPO and
21 Victims' Counsel what they think of it. But I don't see a problem in
22 order to further our discussion -- your examination in this respect.

23 MS. PERGOLO: Your Honours, yeah, we don't have an objection.
24 We would like, of course, to be able to see the document. But I
25 think we are now retrieving it ourselves, so ...

Witness: Marek Gasior (Resumed) (~~Private Session~~) (Open Session) Reclassified Pursuant to F631

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

Page 2182

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

2 MS. PERGOLO: Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel.

4 MR. LAWS: We don't object.

5 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you. I was a little
6 quick with my decision. But thank you.

7 I will ask Madam Court Officer to look in Legal Workflow and to
8 load it up.

9 MR. AOUNI: Thank you. And apologies.

10 It's in the -- at the end of the document on the next page, the
11 last paragraph. And if we are going to read it, we might need to
12 move to private session.

13 PRESIDING JUDGE VELDT-FOGLIA: Okay. Madam Court Officer, can
14 you bring us into private session, please.

15 ~~[Private session]~~ [Open Session] Reclassified Pursuant
to F631

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

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.
18 Defence Counsel, you have the floor.

19 MR. AOUNI: Thank you, Your Honour.

20 Q. So I will read to you, doctor, this information and you tell us
21 whether you were privy to this information, whether somebody, the
22 individual B or the officers gave you this information. Okay?

23 I will read it first:

24 "A premise has to be made and precisely that our witness in
25 question has previously already undertaken some X-ray exams on the

Witness: Marek Gasior (Resumed) (~~Private Session~~) (Open Session) Reclassified Pursuant to F631

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

Page 2183

1 [REDACTED],

2 and as of a result they were all negative. There was no diagnosing
3 stating or confirming that he had sustained any kind of injuries or
4 wounds in the past. So far these original copies of X-rays and
5 medical reports are still in our posses."

6 PRESIDING JUDGE VELDT-FOGLIA: Can we also cite the date of this
7 letter. It's at the beginning.

8 MR. AOUNI: [Microphone not activated]

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you. It's ten minutes to
14 11.00, just for your information.

15 MR. AOUNI: We are almost there. But we will try to finish
16 this one and check.

17 PRESIDING JUDGE VELDT-FOGLIA: I'm not trying to make you hurry
18 up. Just information.

19 MR. AOUNI:

20 Q. So the question is very simple, doctor. Were you informed of
21 this information? Yes or no?

22 A. I have no note or information about this info on those previous
23 photos, X-ray photos, having been taken.

24 Q. Thank you, doctor. This is very clear.

25 MR. AOUNI: Your Honour, I'm embarking on the last topic, which

Witness: Marek Gasior (Resumed) (~~Private Session~~) (Open Session) *Reclassified Pursuant to F631*

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

Page 2184

1 is very short. I don't know if Your Honours want to take the break.
2 It might take maybe ten minutes, so we will go slightly maybe over
3 the time. So I'm in your hands, Your Honour, whether to take the
4 break now or try to finish it already.

5 PRESIDING JUDGE VELDT-FOGLIA: We take the break now and then we
6 continue after the break. We take ...

7 MS. PERGOLO: Your Honours, just a point before, since we are
8 now moving into the break and then, from what I understand, moving to
9 another point later. We just wanted to put on the record that this
10 report that has been put to the doctor seems to draw some general
11 conclusions that are not really medical conclusions here. Based on
12 an X-ray, what was read was no diagnosis stating or confirming any
13 kind of injuries, and this goes against everything that the witness
14 has been testifying so far. Of course, we don't understand -- and we
15 don't want to delve too much into this, but we don't understand how
16 from an X-ray there would have been this conclusion that there were
17 no injuries on soft tissues, which, of course, we understood from the
18 doctor's expertise that, of course, are two distinct matters - the
19 soft tissues and the bones.

20 So we just wanted to put this on record that we think that the
21 conclusion that stands now, this is not a medical conclusion and,
22 again, as we heard, stands in contrast to what the expert has been
23 testifying so far. That's just for the record. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor. And
25 you will have the opportunity in re-direct to clarify if you think

Witness: Marek Gasior (Resumed) (~~Private Session~~) (Open Session) Reclassified Pursuant to F631

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

Page 2185

1 that is necessary any further on this issue.

2 MR. AOUINI: If we may, Your Honour.

3 PRESIDING JUDGE VELDT-FOGLIA: Yes.

4 MR. AOUINI: We believe it wasn't the best method to make all
5 these submissions in front of the witness right now. They had the
6 opportunity to do cross-examination. If they have submissions, they
7 could have made it at another point. They could explore it, soft
8 tissues, no soft tissues.

9 And the investigator is making observation of medical
10 conclusions. It's not the investigator making medical conclusions.
11 We shouldn't have this debate in front of the witness. It is very
12 unfortunate.

13 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, you have the
14 floor to proceed -- oh, no, not. We're go into a break. That was
15 the moment, yes. Very well. It is five minutes to ...

16 [Trial Panel and Court Officer confer]

17 PRESIDING JUDGE VELDT-FOGLIA: It's five minutes to 11.00. We
18 will have the break till 11.30.

19 Madam Court Officer, can you bring us into public session,
20 please.

21 MR. AOUINI: And we can take down the document.

22 [~~Open session~~]

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

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

25 A remark I would like to make with regard to the discussion we

Additional redactions applied pursuant to F631.

1 just -- or the exchange we just had is that we have an expert in
2 front of us, and let us take on board that he is not going to be
3 influenced by this type of remarks. But for next time, I do prefer
4 that we have a discussion of this kind not in the presence of the
5 witness.

6 Mr. Witness, Mr. Gasior, we are going to have a break till
7 11.30. Thank you. And we see each other back in half an hour.

8 [The witness stands down]

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Usher.
10 The hearing is adjourned.

11 --- Recess taken at 10.56 a.m.

12 --- On resuming at 11.29 a.m.

13 PRESIDING JUDGE VELDT-FOGLIA: I don't see Mr. Shala. But
14 welcome to all others present. And while we are waiting for
15 Mr. Shala, I will just check who is present. I think we can do that
16 for now, and hopefully he will be back right away.

17 I see that are you in the same composition, the SPO. The
18 Victims' Counsel too. And that goes for the Defence.

19 [The accused entered court via videolink]

20 PRESIDING JUDGE VELDT-FOGLIA: Welcome, Mr. Shala. This was a
21 little bit later than we expected.

22 THE ACCUSED: [via videolink] [Interpretation] I apologise,
23 Your Honours. It wasn't my fault. The door was closed.

24 PRESIDING JUDGE VELDT-FOGLIA: I did not hear well what you just
25 said. Oh, the door was closed. Okay. Very well. It's good to have

Additional redactions applied pursuant to F631.

1 you here. Then we can proceed.

2 Let me see. Therefore, I call the witness in.

3 And in your absence, Mr. Shala, we confirmed that we are in the
4 same composition as when we finished before the break. So that's on
5 record.

6 We have a question and it's at -- it's about the transcript.
7 Let us go to -- it was on 10, 4. I'm going there now. The catheter
8 was being discussed. And then apparently - let me see - the witness
9 said the catheter is a tube going to the urinary bladder. But let us
10 see which line it is exactly. I don't see it. Hmm. Apparently what
11 should be added -- 10, 11. Okay, here. At page 10, line 11: "It's
12 a tube which is entered into the urinary bladder," and apparently it
13 should be added "through the urethra." That was apparently said.

14 I see Defence Counsel standing. Please, you have the floor.

15 MR. AOUMINI: Thank you, Your Honour. It could be our omission,
16 but we didn't hear that it was through the urethra. What we know is
17 that there are two ways of introducing catheters - one through the
18 stomach wall and one through the urethra. So if Your Honours wish,
19 we can clarify that.

20 PRESIDING JUDGE VELDT-FOGLIA: Yes. Because apparently we have
21 received a note with regard to the interpretation, and so I think it
22 would be helpful if we put that question again with regard to the
23 explanation. Yes, very well.

24 Then we can proceed with the cross-examination by the Defence.
25 And I will ask Madam Court Usher to bring the witness in, please.

Witness: Marek Gasior (Resumed) (Open Session)

Page 2188

Procedural Matters

Additional redactions applied pursuant to F631.

1 Thank you.

2 The fact that you did not hear it, Defence Counsel, can be due
3 to the fact that there was a problem with the interpretation.

4 [The witness takes the stand]

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

6 Mr. Gasior, can you confirm that you hear me fine?

7 THE WITNESS: [Interpretation] Yes, I can hear you fine.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Mr. Shala, did you hear the translation of the words of the
10 witness?

11 THE ACCUSED: [via videolink] [Interpretation] Yes, I heard it
12 very well. Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Good. Then we can proceed.

14 I will do the clarifying question, Defence Counsel.

15 Mr. Gasior, I will ask you for a clarification because we
16 realised that in the interpretation from Polish into English maybe
17 something got lost, so we want to be sure to have everything in the
18 transcript.

19 You were asked to explain for laymen what a catheter consists
20 of. And then you told us: "It's a tube which is entered into the
21 urinary bladder ..."

22 And then apparently in the translation what got lost was the
23 words you said "through the urethra." Can you confirm that you said
24 that?

25 THE WITNESS: [Interpretation] So the catheter is introduced into

Witness: Marek Gasior (Resumed) (Open Session)

Page 2189

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 the body through the urethra.

2 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. I
3 think that that suffices, but if you would like to have more
4 clarification. I don't see -- nothing from Victims' Counsel.

5 Thank you, Mr. Gasior. I will now give the floor back to the
6 Defence Counsel so he can proceed with his questions.

7 You have the floor.

8 MR. AOUINI: Thank you, Your Honour.

9 Q. Before we move to the last topic we have, doctor, let me ask a
10 couple of follow-up questions about the catheter, if I may.

11 So you told us that the catheter was introduced through the
12 urethra. Is that something that you observed on the body, where the
13 tubes were leading or where they were applied?

14 A. This was a general comment, how it's done.

15 Q. Now my question, is there another way to apply catheter through
16 the stomach wall, for example?

17 A. Usually the catheter is introduced into the urinary bladder. In
18 some special cases, it can be also introduced into the urinary
19 bladder in a way different than through the urethra.

20 Q. And from what you could observe from the state of the body, was
21 that -- was there any observation that could lead you to determine
22 the way this one was applied or not, or it was just the item that you
23 found?

24 A. I just ascertained the fact that the catheter was found in the
25 body of this individual.

Witness: Marek Gasior (Resumed) (Private Session)

Page 2190

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 Q. Thank you, doctor.

2 MR. AOUINI: I'm moving to my last topic, Your Honour, with your
3 leave.

4 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

5 MR. AOUINI: Thank you very much.

6 Q. Now, doctor, we are moving to the last topic, which means the
7 last individual, the individual that we called individual C. And if
8 it may help you, we can proceed the same way as earlier; that is, go
9 to private session, put to you the cover page of the report so you
10 can see the number and everything without mentioning that later on in
11 the public session. Is that agreeable to you?

12 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. We
13 will proceed into private session and then we will proceed as
14 indicated.

15 MR. AOUINI: Thank you, Your Honour. So may we call --

16 [Private session]

17 [Private session text removed]

18

19

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21

22

23

24

25

Witness: Marek Gasior (Resumed) (Private Session)

Page 2191

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 [Private session text removed]

2

3

4 [Open session]

5 THE COURT OFFICER: Your Honours, we're now back in public
6 session.

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

9 MR. AOUNI: Thank you, Your Honour.

10 If we may stay in the report, of course, not being broadcast to
11 the public, but to the second page, just to put the sentence about
12 the topic we are going to talk about with the -- with the expert.
13 Page 2, please.

14 PRESIDING JUDGE VELDT-FOGLIA: And so, for the record, with
15 regard to individual C.

16 MR. AOUNI: Yes. The paragraph we need is "Information
17 received from the patient." So we can focus on that paragraph and I
18 will read just one sentence.

19 Q. Doctor, this is the information provided by the individual C
20 that is mentioned in the report, and what we see here, and I want you
21 to confirm it, is this individual C mentioned to you:

22 "I was beaten on the sole of feet and in all the body."

23 And it's in the middle of that paragraph.

24 And my question is this: Do you confirm, doctor, that
25 individual C didn't mention to you, doctor, that his leg or foot was

Witness: Marek Gasior (Resumed) (Open Session)

Page 2192

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 broken or that he sustained fractures in his leg?

2 A. The information that is put in the report, this is the
3 information, indeed, received from the patient before we proceeded
4 with his physical examination.

5 MR. AOUINI: Your Honour, with your leave, if we go to the
6 following page, to the conclusions -- the external examination
7 actually, just before the conclusion on that page 3, we would like
8 to --

9 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated]. 95
10 are the last numbers of this document you want to have on screen.

11 MR. AOUINI: Yes, Your Honour.

12 PRESIDING JUDGE VELDT-FOGLIA: Please proceed, Madam Court
13 Officer.

14 MR. AOUINI:

15 Q. So, doctor, you have gone through the bullet points with our
16 learned colleague from the SPO, but there was one mention after the
17 bullet points that reads:

18 "No evidence of previous injuries on right foot."

19 It's written "food," but we understand it means "foot," and a
20 mention of pictures 21 and 22.

21 Do you confirm, doctor, that upon examination you found no
22 traces of any fractures or, in fact, no injuries to the foot, right
23 foot?

24 A. The right foot, pictures 21, 22, well, there is this note "no
25 evidence of previous injuries on right -- on the right foot." Well,

Witness: Marek Gasior (Resumed) (Open Session)

Page 2193

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 this note, this sentence means that such injuries were not visible.

2 They were not visible from the outside.

3 Q. Did you request X-rays on this occasion from patient C?

4 A. This patient was informed or was -- yes, I gave him a
5 recommendation to go and have an X-ray performed.

6 Q. Did you receive any X-rays?

7 A. There was no information in the report to the effect that he
8 reappeared at this department where I worked, so I have no knowledge
9 of his -- of his X-ray examination, whether those pictures were taken
10 or not. No knowledge.

11 Q. Thank you, doctor.

12 Now, last week at page 2129, lines 23, 24 of the transcript, you
13 discussed marks on the skin and on the body of individual C, if you
14 remember, and you explained that they could have been caused as a
15 result of contact with something of high temperature. Do you
16 remember that?

17 A. Yes, I do remember.

18 Q. If we look at the information provided by this individual C that
19 is mentioned in the report, this individual C mentioned
20 electroshocks, that he was subjected to electroshock.

21 And my question is this: Those scars, superficial scars to the
22 skin that you observed that could be as a result of contact with high
23 temperature, could it be possible if we imagine a scenario where the
24 body of an individual or this body is receiving electroshocks or a
25 Taser hit, if you understand what I mean, that they would cause

Witness: Marek Gasior (Resumed) (Open Session)

Page 2194

Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 similar scars or scars of this type?

2 A. The information we received from the patient was put into the
3 report.

4 And now during the examination itself, I concluded or I found
5 the presence of superficial scars that could have been a consequence
6 of burns. Those scars can be seen in the relevant photos.

7 Q. Thank you, doctor. What I'm after is, is it possible that these
8 burns could be caused with some -- by some electrical shocks or
9 contact with something that had has electricity, like a Taser? If
10 you can't conclude that, please tell us so.

11 A. I cannot answer your question. I'm not able to.

12 Q. Thank you, doctor.

13 MR. AOUINI: Just, Your Honour, if you allow me a moment.

14 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

15 [Specialist Counsel confer]

16 MR. AOUINI: Thank you, Your Honour. I think we are done with
17 our questioning. I will try my best to thank the doctor in his
18 mother language. I will do my best.

19 Q. *Dziekuje*, Mr. Witness.

20 MR. AOUINI: Thank you very much, Your Honour, and Mr. Witness.

21 PRESIDING JUDGE VELDT-FOGLIA: As a gesture of appreciation.

22 Then we will proceed to see if there is a necessity for a second
23 round.

24 Madam Prosecutor, would the SPO like to have a rejoinder -- a
25 re-direct, excuse me? Yes, please proceed with the conferring of

Witness: Marek Gasior (Resumed) (Open Session)

Page 2195

Re-examination by Ms. Pergolo

Additional redactions applied pursuant to F631.

1 colleagues.

2 [Specialist Prosecutor confers]

3 MS. PERGOLO: Yes, Your Honours, I have just have a brief
4 question for the expert.

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

6 Re-examination by Ms. Pergolo:

7 Q. Dr. Gasior, you earlier told us at transcript page 22, line 14,
8 in relation to the injury to the foot, that that injury was an injury
9 covering soft tissues, and that what's you told us today.

10 MS. PERGOLO: And I would kindly ask the expert, with your
11 leave, Your Honours, to confirm that the injury we're talking about
12 is the one showed in a specific picture, just to be clear, If that is
13 okay.

14 PRESIDING JUDGE VELDT-FOGLIA: Please proceed.

15 MS. PERGOLO: So may I have, please, SITF00019134. And this is
16 at page ending in ERN 143.

17 Q. Dr. Gasior, can you confirm that these are the injuries that you
18 were referring to when talking about the scars on the soft tissue of
19 the foot?

20 A. We are talking now about the patient which we described as
21 patient B.

22 Q. That is correct. And apologies for not taking you there
23 earlier. But, yes, that's exactly the case.

24 A. These are the injuries about which I wrote in the report.

25 Q. Thank you for that.

Witness: Marek Gasior (Resumed) (Open Session)

Page 2196

Further Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 [REDACTED]

2 [REDACTED]

3 Q. Thank you, Dr. Gasior.

4 MS. PERGOLO: I think that's -- that concludes our re-direct,
5 Your Honours. Thank you.

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

7 Victims' Counsel, do you have further questions for the witness?

8 MR. LAWS: It would have been the same as that question you just
9 heard, so no. Thank you.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 And, Defence Counsel, did something come up with regard for your
12 rejoinder? You have the floor.

13 MR. AOUINI: Yes, Your Honour, if we are allowed. And to be
14 most efficient, we go straight to the point that was mentioned, and I
15 would like to call one document to further clarify this point. At
16 ERN 113843. It's part of the ERN 113841 to 113843. So this is the
17 last page of that document. If we look at paragraph 19 onwards.

18 Further Cross-examination by Mr. Aouini:

19 Q. Doctor, I would like to read to you more qualifications that you
20 gave with regard to the question that was just put to you by my
21 learned colleague, and I will read it to you and ask you to confirm.

22 So paragraph --

23 MR. AOUINI: With your leave, Your Honour, can I?

24 PRESIDING JUDGE VELDT-FOGLIA: You may proceed.

25 MR. AOUINI: Thank you.

Witness: Marek Gasior (Resumed) (Open Session)

Page 2197

Further Cross-examination by Mr. Aouini

Additional redactions applied pursuant to F631.

1 Q. Paragraph 19:

2 "Based on the scar on the leg, which is superficial, it's
3 impossible to say if it was caused by a gunshot wound, but that
4 cannot be excluded."

5 Paragraph 20:

6 "Based on the scar on the foot, we cannot exclude that it was
7 caused by a gunshot wound, but it is difficult to determine what
8 caused it."

9 Paragraph 21:

10 "The 30 degrees angle reported at SITF00019144 was between the
11 two scars on the foot."

12 And paragraph 22:

13 "Gasior also explained that when a scar moves over the bone that
14 means that it is a superficial scar."

15 Do you confirm what is written here, doctor?

16 A. When examining a patient, I wanted to talk about scars, scars.
17 Scars result from a healed injury. And it is extremely difficult to
18 precisely state on the basis of a scar and indicate what was a tool
19 used to cause that injury, the scar of which is visible during the
20 examination. That's why it cannot be excluded that this injury
21 resulted as a hit that was -- that we were talking about.

22 Q. Thank you, doctor.

23 MR. AOUINI: It is clear for us, Your Honour, so we have no
24 further questions.

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

Witness: Marek Gasior (Resumed) (Open Session)

Page 2199

Questioned by the Trial Panel

Additional redactions applied pursuant to F631.

1 quite differently and behaves in a different way towards the bone
2 than the same scar after a passage of several or several dozen
3 months.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you. You confirmed how I
5 understood it, but I just wanted to be sure.

6 I have another question and then I will give the floor to one of
7 my colleagues.

8 Mr. Gasior, last week, and I will give the reference for the
9 record, it was transcript of 27 June, page 2112, line 22, till page
10 2113, line 11, you were asked if you were able to conclude in what
11 position the patient was - and I am referring to the individual A -
12 when that person was shot at. And you indicated that you were not in
13 a position to do that.

14 My question to you is, Mr. Gasior, if the injuries - and I mean
15 then the shot holes on the leg - would they be, if you can say that,
16 compatible with a person that has been standing? And I would have
17 the same question for if he would be sitting.

18 A. It is very difficult to reply. We could talk about the position
19 of a person when he received the first shot. According to what we
20 call an ordinary observation, after the first shot was received, then
21 we are not able to say what was the position of the patient.

22 PRESIDING JUDGE VELDT-FOGLIA: But I'm not asking you for a
23 reply to the question if you can confirm if he was sitting or
24 standing or in what position he was. I just would like to know if
25 you -- if the injury you saw, and then with regard to the first shot,

Witness: Marek Gasior (Resumed) (Open Session)

Page 2200

Questioned by the Trial Panel

Additional redactions applied pursuant to F631.

1 if it was compatible with the person standing or sitting, or lying,
2 even.

3 A. It cannot be excluded.

4 PRESIDING JUDGE VELDT-FOGLIA: I will not insist on this point.

5 I will look -- and I know that my left-hand side, Judge Bitti,
6 has another question or even more for you, so I will give him the
7 floor.

8 Please.

9 JUDGE BITTI: Thank you, Madam Presiding Judge.

10 Dr. Gasior, today, page 8, line 8, and we were speaking about
11 patient A, you said the patient on the right leg had a gypsum
12 plaster.

13 And on page 17 of today's transcript, line 10, also with regard
14 to patient A, you said the injury sustained was a life-threatening
15 injury.

16 Could you explain to us the following: Could that gypsum
17 plaster have been in any way useful with regard to the
18 life-threatening injury suffered by patient A?

19 A. The patient A was delivered to us, to the mortuary after the
20 exhumation being carried out. And on the right lower limb he had a
21 gypsum plaster. The patient's examination was carried out in such a
22 way that there were removed the artefacts; that is to say, clothes,
23 gypsum plaster and other items, and the bones were cleared from the
24 remnants of the soft tissue.

25 The patient was placed on the table in the anatomical position

Witness: Marek Gasior (Resumed) (Open Session)

Page 2201

Questioned by the Trial Panel

Additional redactions applied pursuant to F631.

1 and then the examination -- the skeletal remains were examined. And
2 in the report, I described the injuries that were visible then.

3 JUDGE BITTI: Very well. And you said that he suffered a
4 life-threatening injury and you said that apparently his artery was
5 destroyed. Am I correct in what I just said?

6 A. The direction of the shot in the lower right limb is placed in
7 the area where the artery goes. That is to say, this gunshot caused
8 the destruction of the artery and, as a result, there is a bleeding.

9 JUDGE BITTI: Okay, thank you. With such a bleeding, is a
10 gypsum plaster a useful solution to treat that patient, according to
11 you?

12 A. The artery goes in between the fossa or between the condyles of
13 the femur bone. So the shot caused the damage to the bones and to
14 the arteries, and that's why the artery was damaged. But the plaster
15 cast was on the outside. Only a correct and quick chirurgical,
16 surgical intervention could create a chance of saving a patient.

17 JUDGE BITTI: Okay. Thank you, doctor. So I understand that
18 the gypsum plaster alone could not have saved his life. The only
19 thing which would have saved his life would have been to bring him to
20 hospital. Am I correct in what I say?

21 A. And he should have been correctly and quickly treated surgically
22 and medically. But this plaster, gypsum plaster was placed on the
23 outside.

24 JUDGE BITTI: Okay. And, therefore, could not have saved his
25 life. That's what you want to tell me?

Witness: Marek Gasior (Resumed) (Open Session)

Page 2202

Questioned by the Trial Panel

Additional redactions applied pursuant to F631.

1 A. The gypsum plaster itself, which was put outside, would not stop
2 the intense bleeding from a damaged artery.

3 JUDGE BITTI: Thank you very much, doctor. Thank you very much.
4 I have no further questions.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 [Trial Panel confers]

7 PRESIDING JUDGE VELDT-FOGLIA: Mr. Gasior, there are no further
8 questions from the side of the Panel, and that means that we are now
9 at the end of your testimony here in court.

10 I would like to thank you for all the efforts you put into
11 giving your testimony and for the several days that you came to the
12 court. I am sure that it will be of assistance for this Panel to
13 find the truth.

14 So thank you very much. I remind you that you should not
15 discuss your testimony with anybody. And I wish you a good and safe
16 trip home. And I will ask Madam Court Usher to usher you out in.

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

18 [The witness withdrew]

19 PRESIDING JUDGE VELDT-FOGLIA: Very well. There is a point left
20 with regard to the skeleton and the skull. The Panel would like to
21 call this skeleton and the skull into evidence so -- they were used
22 by Mr. Gasior during his testimony so that seems, for us, enough
23 reason to do that.

24 Madam Court Officer, could you please allocate to these two
25 visual aids an exhibit number. And then we can start with the

Additional redactions applied pursuant to F631.

1 skeleton, and then the second number, the second exhibit number will
2 be for the skull.

3 THE COURT OFFICER: Your Honours, the first visual aid, the
4 skeleton, will receive Exhibit C00001.

5 And the second visual aid, the skull, will receive
6 Exhibit C00002.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.
8 Defence Counsel, I see you standing.

9 MR. AOUINI: Apologies. Just for a suggestion from past
10 experiences with using material in the courtroom. We put the
11 suggestion that certain demonstrations that were made by the expert
12 could be retrieved in screenshots from the video recording of the
13 hearing and could be screenshotted and then introduced as exhibits
14 when the expert is pointing to certain points. It has been done in
15 the past in other proceedings, so we put the suggestion if that is
16 useful for anybody.

17 PRESIDING JUDGE VELDT-FOGLIA: It would, for sure, avoid going
18 back to the lengthy recordings we have and search for the specific
19 parts.

20 I will ask what Madam Prosecutor thinks of this suggestion.

21 MS. PERGOLO: Thank you, Your Honours. Yes, it's a good
22 suggestion. We will see if we can make use of it when looking at the
23 exhibits to be tendered. So maybe revising the video of the
24 testimony and see whether we can make some screenshots. I don't know
25 if that was the suggestion on how to proceed, but we will take that

Additional redactions applied pursuant to F631.

1 on board.

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

3 Victims' Counsel, is there anything you would like that add in
4 this respect?

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

6 PRESIDING JUDGE VELDT-FOGLIA: Okay. I have not even asked it,
7 Madam Prosecutor, but thank you for looking into this to see if it is
8 possible to have these screenshots uploaded on Legal Workflow. And
9 then, yeah, how to proceed in a more technical way, we will see when
10 it is necessary.

11 Very well. Is there anything that the SPO wants to raise with
12 the Panel?

13 MS. PERGOLO: Yes, Your Honours, just an organisational matter
14 for the expert witness tomorrow. We have revised our time estimates
15 slightly and we believe we will be able to be done within one hour.
16 So should a little bit shorter than we were initially thinking.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you. Thank you for
18 giving us already the update today.

19 Victims' Counsel, you have the floor.

20 MR. LAWS: No, nothing from us. Thank you, Your Honour.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 And Defence Counsel.

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

24 So Ms. Cariolou is able to ask the questions to the next expert,
25 but we face a problem. She is retain in another town because she

Additional redactions applied pursuant to F631.

1 came back from the expert. She met the expert during the weekend,
2 and she was obliged to stay there because the plane had a problem.
3 So usually she would be here at the end of the afternoon, but I want
4 to introduce this idea and to -- you are fully aware of about the
5 situation. So I cannot -- I expect that she will be ready, of
6 course, for tomorrow, but wait and see. As soon as we have some
7 information, I provide it to the Registry to be sure to avoid any
8 problem.

9 PRESIDING JUDGE VELDT-FOGLIA: But for me to clarify - and maybe
10 to see if we can already think of a solution now - if I understand
11 well, the problem is that she is not here at the moment, so tomorrow
12 morning she would not be able to be in court to ask the questions to
13 the witness. That's the point.

14 MR. GILISSEN: Exactly. She is stuck in München.

15 PRESIDING JUDGE VELDT-FOGLIA: I see two solutions. That one of
16 you ask the questions, and another solution could be that we look at
17 the possibilities of a videolink. But I don't know if that is
18 possible because that entails a lot more than just setting up a Zoom
19 meeting. But my first suggestion would be, is not one of the
20 colleagues in the possibility to ask the questions?

21 MR. GILISSEN: First, I hope she will be there.

22 PRESIDING JUDGE VELDT-FOGLIA: Of course, of course. We think
23 in Plan B. In Dutch we say to govern is to look ahead. We are not
24 governing here, but we have to look ahead in order to make things
25 work.

Additional redactions applied pursuant to F631.

1 MR. GILISSEN: Of course. We will raise the issue inside the
2 team. We will provide an information and an answer at the best we
3 can, but today, of course, as soon as possible. I think so.

4 PRESIDING JUDGE VELDT-FOGLIA: You can make a request in that
5 respect and we will take a decision on that.

6 MR. GILISSEN: But we will provide any information to the
7 Registry as soon as we have one. No problem. Thank you very much.

8 PRESIDING JUDGE VELDT-FOGLIA: So, in principle, we will adjourn
9 until tomorrow, 9.30, to hear Witness 4875. And if there is a
10 request from the side of the Defence, we will rule on it.

11 But I urge you to discuss internally if the specific questions
12 cannot be asked by one of you. I think that would have the
13 preference, if she would not be here.

14 MR. DE MINICIS: Your Honour, just on this point. Just to
15 inform Your Honours that my understanding is that the witness has a
16 pretty busy schedule with his academic endeavours and then another
17 commitment, so it may not be possible to, for example, schedule him
18 for another day.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 MR. GILISSEN: With your leave, Your Honour.

21 PRESIDING JUDGE VELDT-FOGLIA: Of course.

22 MR. GILISSEN: I just want to say that Ms. Cariolou was not late
23 with this flight. She is victim of an emergency landing. That's
24 why.

25 PRESIDING JUDGE VELDT-FOGLIA: No, but that I see, and I -- you

Additional redactions applied pursuant to F631.

1 have noticed that there is no blame, of course, from our side.
2 However, I see three Defence Counsels in the team, and so one of the
3 -- one of the reasons is, I would say, that one counsel could step in
4 for the other one. And I understand that depending on the topic,
5 there are certain terrains of expertise; but, on the other hand, we
6 are also discussing here the ongoing of these proceedings. And
7 without even taking on board what the SPO has said, I think that
8 there must be very good reasons in order to postpone the scheduled
9 hearing for tomorrow morning.

10 Good. If there is nothing else to raise today, we, in
11 principle, meet tomorrow morning at 9.30.

12 And the hearing is adjourned.

13 --- Whereupon the hearing adjourned at 12.25 p.m.

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