

1 Tuesday, 22 March 2022  
2 [Defence Opening Statement]  
3 [Open session]  
4 [The accused appeared via videolink]  
5 --- Upon commencing at 9.32 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you  
7 please call the case.

8 THE COURT OFFICER: Good morning, Your Honours. This is case  
9 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.  
11 First, I will call the appearances.

12 Mr. Prosecutor, you have the floor.

13 MR. MICHALCZUK: Good morning, Your Honours. Good morning,  
14 everyone. The Prosecution is represented today by Silvia D'Ascoli,  
15 Associate Prosecutor; Line Pedersen, the case manager; and my name is  
16 Cezary Michalczuk, I'm the SPO Prosecutor.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

18 Madam PUES, Victims' Counsel, you have the floor.

19 MS. PUES: Good morning, Your Honours. Good morning, everybody.  
20 The participating victims are today represented by  
21 Brechtje Vossenbergh, my co-counsel, and by myself, Anni PUES, as  
22 counsel.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Defence Counsel, you have the floor.

25 MR. VON BONE: Good morning, Your Honours. Defence is

1 represented today by Mr. Betim Shala, my co-counsel;  
2 Mr. Fatmir Pelaj, interpreter and investigator; myself,  
3 Julius von Bone. And joining us via remote is today Mr. Mustafa.

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

5 Mr. Mustafa, can you hear us well?

6 THE ACCUSED: [Via videolink][Interpretation] Yes, Your Honour.

7 PRESIDING JUDGE VELDT-FOGLIA: Very well. And, for the record,  
8 you are appearing before Trial Panel I.

9 And Judge Mikula is participating remotely. Equipment has been  
10 installed in order to allow him to follow remotely the proceedings  
11 both in public and in private and in closed session.

12 Today's hearing is dedicated to the Defence opening statements  
13 as provided for in Rule 126(2) of the rules.

14 And before that, I would like to discuss something.

15 Madam Court Officer, can we please go into private session,  
16 please.

17 [Private session]

18 [Private session text removed]

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1 [Private session text removed]

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9 [Open session]

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

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

12 We will proceed with the Defence opening statement. According  
13 to Panel's order of 9 March, the Defence shall have two hours for its  
14 opening statement. The Defence has been authorised to use some  
15 visual aids and some other tools, which material has already been  
16 disclosed. The Panel highlights that the material will not be shown  
17 to the public.

18 In addition, the Defence has informed the Panel that the accused  
19 will not be making an unsworn statement today.

20 Mr. von Bone, you have the floor.

21 MR. VON BONE: Thank you very much, Your Honour.

22 Your Honour, following the dissolution of Yugoslavia, the  
23 struggle for independence of Kosovo had been shaped in two forms: In  
24 specific movement, as the first from the one covering the period 1990  
25 to March 1998; the resistance movement being the second one. The

1     latter took over from the former, ultimately upon the elimination of  
2     commander Adem Jashari and his extended family, mostly women and  
3     children. This was the biggest incentive to further trigger and  
4     consolidate the resistance in struggling for independence.

5             Adem Jashari is considered as the legendary commander of the  
6     KLA. His patriotic and heroic efforts for the liberation of Kosovo  
7     are still remembered until today in Kosovo. The liberation from an  
8     oppressive and brutal regime.

9             On 5, 6 and 7 March 1998, the military and police forces  
10    attacked the compound of the family of Adem Jashari in Prekaz in the  
11    Drenica area. Serbian forces thought that with the killing of the  
12    entire family of Jashari the resistance of the people and the  
13    population of Kosovo would have been given a definite blow to the  
14    extent that resistance would stop. The mass killing of the 59 people  
15    at the compound of the family Jashari, among them many children, some  
16    of them only as old as 7 years, is one of the worst Serbian regime  
17    crimes ever committed in Kosovo. One of the many crimes that Serbian  
18    forces did in Kosovo. Other people living at the compound, such as  
19    elderly and related family members, were killed in this unprecedented  
20    attack on the two-storey family house located next to the hills in  
21    Prekaz.

22            The attack has left a significant and fundamental mark on the  
23    history of Kosovo in its quest for liberating itself from an  
24    oppressive regime. Most probably, the killing of the entire family  
25    by the Serbian forces became a turning point in the resistance of the

1 people of Kosovo.

2 The brutal attack by an oppressive regime would meet forced  
3 resistance with a broad-based support among the population of Kosovo.  
4 Many, many of the people volunteered to resort to an armed struggle  
5 to free itself of the regime that kept an extremely tight grip on the  
6 population for many years.

7 It was about one year after, on 24 March 1999 - that is, this  
8 week 23 years ago - NATO commenced its air-strikes in order to  
9 liberate Kosovo from the oppressive regime. The NATO air-strikes  
10 lasted until June 1999. The NATO air-strikes were prompted by  
11 Yugoslavia's bloodshed and ethnic cleansing of Albanians, which drove  
12 the Albanians into neighbouring countries. The NATO operations were  
13 a humanitarian intervention which had become necessary when  
14 Yugoslavia refused to signed the Rambouillet Accords. NATO justified  
15 its actions as they were taken in order to prevent a major  
16 humanitarian catastrophe.

17 The NATO attacks on Prishtine of March 24, 1999, are well known  
18 to each of the citizens in Kosovo who survived the conflict. Still,  
19 the Serbian forces did not stop their actions of ethnic cleansing at  
20 that time. It was a pattern of forced expulsion of Kosovo citizens -  
21 ethnic Albanians - from their homes.

22 The most significant date in this context is the large-scale  
23 deportation of Albanians from the train station in Prishtine. It was  
24 on 31 March 1999, another day that is deeply engraved in the minds of  
25 many Kosovo citizens as it was a significant event in Kosovo.

1 It has been described as one of the significant events of the  
2 OSCE report that can be found in the case file. It is about a  
3 neighbourhood of Prishtine being cleansed. It reads as follows:

4 "Multiple but" -- and I cite:

5 "Multiple but unconfirmed reports indicate that ethnic Albanian  
6 families are being forced from their homes systematically by  
7 neighbourhood and being marched to the Prishtine sports stadium.  
8 Some groups are being taken directly to the train station for onward  
9 movement to FYROM."

10 That is Macedonia.

11 "Large groups of armed civilians, some in makeshift uniforms,  
12 these are large groups of armed Serb -- Serbian civilians, were --  
13 some of them were in makeshift uniforms and they are reportedly  
14 involved in these expulsions as well as with the general harassment  
15 of the ethnic Albanians and the looting and vandalism of their homes  
16 and shops. This *modus operandi* is apparently to scare Kosovars from  
17 their residences by burning buildings and firing weapons. After  
18 exit, the Kosovars are herded to the train station in Prishtine for  
19 forward movement to the FYROM border. 7.000 Kosovars were shipped  
20 out during the evening of 31 March and 1 April."

21 It can be found in the case file IT-05-87.1, page 01029, that is  
22 page 164 in the case file, or the number should read 03525497. It's  
23 the same page number as 164.

24 Your Honour, the forced expulsion has been reported in the  
25 report of the OSCE called *Kosovo: As Seen, As Told*, in chapter 14,

1 which is in the public domain. According to this report, the OSCE,  
2 from 24 March until 2 April 1999, over 177.500 Albanians arrived in  
3 Albania on 2 April, and 130.000 Kosovo Albanians arrived in Macedonia  
4 and Albania on 2 April.

5 The very, very great majority of these people were forcibly  
6 expelled from their houses. The expulsions were clearly targeted  
7 against Kosovo Albanians and was based on their ethnicity. The OSCE  
8 report describes the typical pattern of forced expulsion of ethnic  
9 Albanians as follows, and I quote:

10 "Typically, Serbian forces would shell a village for some hours,  
11 with the result that Kosovo Albanians hid in basements or fled to the  
12 hills. Then, when the shelling stopped, Serb forces including  
13 police," the Yugoslav army, "VJ ... would enter the village, shooting  
14 into the air. They would break down doors to enter Kosovo Albanian  
15 houses, threaten everyone who had not already fled and order them to  
16 leave, either instantly, within a few minutes, or sometimes within  
17 some hours. Sometimes village elders or religious leaders are  
18 described as negotiating the implementation of Serb demands;  
19 sometimes certain local Serbs were selected to spread the word that  
20 the Kosovo Albanians had to leave; sometimes the first house to which  
21 forces came simply served as an example for the other villagers."

22 I cite once again the OSCE report:

23 "After a village had been cleared, Serbian forces often returned  
24 some days ... later to empty the village again of any," internal  
25 displaced person, "IDPs who had returned and to ensure that there

1 were no Kosovo Albanians left. They would give a renewed ultimatum  
2 to leave with attendant" attacks and "threats and intimidations.  
3 Buses were provided, or people were ordered to go to the railway  
4 station, or convoys were sent and sometimes accompanied to the  
5 border."

6 Displacement took place in various directions. The OSCE report,  
7 once again, described it:

8 "While some of the expelled went directly to the border,  
9 hundreds of thousands Kosovo Albanians were displaced within Kosovo,  
10 often for many weeks. While initially those who were expelled or had  
11 to flee generally fled only a short distance from their homes,  
12 increasingly groups of IDPs found themselves moved around from  
13 village to village and from hill to valley, until eventually large  
14 convoys of tens of thousands of people were formed."

15 "Initially, the hills may have appeared to provide greater  
16 safety than villages which were being shelled, but they also became  
17 dangerous places. In addition to being caught in the cross-fire in  
18 areas where there was fighting between Serbian/Yugoslav ... and the  
19 UCK, the IDPs were also sometimes targeted directly."

20 Your Honour, it is against this background and the context of  
21 the events that took place in Kosovo in the period close to the  
22 indictment. And it is relevant to underline it as the Defence  
23 believes that the internally displaced persons that were seeking  
24 shelter within Kosovo looked for shelter in the Gollak area, the  
25 mountainous area east of Prishtine.



1           The crimes that allegedly took place as described in the  
2 indictment concentrate in the mountainous area called Gollak. The  
3 alleged crimes allegedly took place in the Zllash area. The focus of  
4 the indictment is the period of the 1st until 19th of April, 1999.  
5 And the Defence wishes first to take a look at the area where the  
6 alleged crimes would have taken place.

7           Zllash. There is no defined material in the case file about  
8 Zllash. We know where it is roughly, but there is no clear-cut  
9 demarcation of the area. It is a large area, where the houses are  
10 widespread over the entire area. There is no such thing as Zllash  
11 centre or Zllash village. Administratively, Zllash area falls under  
12 Mramor, which is a rather larger village at the foot of a mountainous  
13 area.

14           To get to Zllash from Prishtine, it is quite a trip, especially  
15 to get to the location of the indictment. It is a trip that goes  
16 through mountains on, most of the time, dirt roads. If it is cold in  
17 the winter and the roads are full of mud, then it is very hard to  
18 travel by car.

19           The locations that the Defence will discuss in the course of the  
20 Defence case will be located on various places. The locations and  
21 the distances between them are deceiving. On the map, one can find  
22 them and the distances can be measured. However, in real life, and  
23 certainly in the period of 1999, these locations were very difficult  
24 to reach.

25           All kinds of factors played a role in this. First of all, the

1 roadblocks and Serbian-controlled areas made it very difficult to  
2 reach places. It could take hours or days, or many times passages  
3 had to go through the night throughout the mountainous areas, where  
4 there is simply no illumination whatsoever to be found. Many times  
5 one would need to go on foot. Obviously, another difficult part of  
6 travelling would be simply that continued clashes among KLA and  
7 Serbian forces would take place. One would need to circumvent these  
8 areas as they were dangerous routes to travel through. It would take  
9 much more time to go from one place to another.

10 At this point, Your Honour, I would like to ask CMU to show the  
11 geographical map with the number DSM-00443.

12 Maybe we can blow it up a little bit in order to have a little  
13 bit of a better understanding and see where we are.

14 Obviously we can see Prishtine. And if we would go from  
15 Prishtine on the map with the cursor to the right, then in the next  
16 block, that is K07 to be exact, so it's the block in the middle, we  
17 can see there Zllash. Indeed, that is where it is -- where the  
18 cursor is. And if we go a little bit southward from Zllash, we will  
19 see the village Mramor indicated. It is in the same block. It is  
20 just a little bit -- that is where it should be. Yes, indeed. Thank  
21 you very much.

22 I would like to indicate a route first eastbound on this map,  
23 and I take the route with the starting point of Prishtine.

24 We take it from Prishtine, and we go eastbound on the big red  
25 route, so to speak, and we will first hit a place called Llukar.

1 Exactly, that would be it. And the next place on the same route  
2 would be Makovc. Then going a little bit downward in the next block  
3 is the place called Grashtice. And from there -- actually, there is  
4 a split on that. There would go ultimately a possibility going to  
5 Zllash, from Grashtice to Zllash. If you would like to indicate  
6 Zllash. Yes. It's there. Thank you very much.

7 If we would go back on the same big red road.

8 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, for my  
9 understanding, the black road --

10 MR. VON BONE: Yeah --

11 PRESIDING JUDGE VELDT-FOGLIA: -- not red --

12 MR. VON BONE: -- is it black or red? On my --

13 PRESIDING JUDGE VELDT-FOGLIA: I would say black.

14 MR. VON BONE: Okay, good.

15 PRESIDING JUDGE VELDT-FOGLIA: Because there is also a red road.  
16 Just ...

17 MR. VON BONE: Okay. Just the black road then.

18 And we stay at Makovc which is the -- yes, from there. If we  
19 would go further down -- further -- follow that road further, then at  
20 some point we see a little bit northward a place called Radashec.  
21 Yes. And following the same road again, we move eventually to a  
22 place called Kecekolle. That's it. And eventually a little bit  
23 further on the same route to Prapashtice.

24 From Prapashtice, I would like to indicate one more relevant  
25 place, because it's on that map the easiest to go from Prapashtice

1 downward with the cursor and we will hit a couple of small villages,  
2 ending up at a place called Bullaj. It's B-u-l-l-a-j. It is exactly  
3 where the cursor is now. Thank you very much.

4 I would like to indicate, please, another road. We start again  
5 at Prishtine and we will see eastbound, nearly exactly to the right  
6 where the cursor is now, a place called Sofalija. It is -- I'm not  
7 sure where the cursor is -- yes, yes, that's where it is. And then  
8 afterwards, if we go again to the right with the cursor, in the next  
9 block, we see Butovc. That is, lower Butovc. There is an upper  
10 Butovc and there is a lower Butovc. For the Defence, we believe it  
11 is important to highlight that it is there lower Butovc.

12 If we would go back to that same -- Prishtine as a starting  
13 point, there is also another option to go a little bit south-east, I  
14 would say, that is the place called Matican. Exactly. And from  
15 Matican, following the route or following the road, we end up at the  
16 same Butovc again. Yes. We cannot see a very good road, but I mean,  
17 this is what we wanted to highlight.

18 We would like to, please, indicate some locations which are  
19 northbound from the capital. If we would move Prishtine a little  
20 bit -- if we could move the entire map a little bit less -- a little  
21 bit lower, please. Prishtine, if we can put a little bit lower. If  
22 we can -- yes. A little bit further, please. Yeah, maybe we can  
23 blow it up. Yes. So maybe we can blow it up a little bit further.  
24 Yes, there we are.

25 So there we see in red down at the bottom, that is Prishtine.

1 And if we follow another black road upward, we will see on the left  
2 side of that road -- a little bit further up, a little bit further  
3 up, and a little bit further up. Yes, there from there. From there  
4 you can see on the left side a placed called Barileve. And if we  
5 move the cursor a little bit further up again, we end up on -- yes,  
6 exactly there, on the right side a place called Vranidoll. Towards  
7 the right of Vranidoll, we can see a placed called Rimanishte.  
8 Exactly. And a little bit south of Rimanishte, we can see Sharban.  
9 And if we to the next block, we make a -- a kind of a -- yes. And if  
10 you would please put the cursor up a little bit. Yes. We end up at  
11 the placed called Koliq. Thank you very much.

12 These are the locations that we find relevant for the Defence  
13 case.

14 I would like to ask CMU to get to a next map and that is  
15 DSM-00415. Thank you very much.

16 Now, this map is a little bit -- it stretches a little bit  
17 larger. On this map, if we can blow it up and we look at  
18 Prishtine -- yes, this is a very good -- good way. Then we see  
19 obviously Prishtine. And if we take the cursor to the right,  
20 following the small blue line which demarcated several blocks in this  
21 map, we see there Zllash. Yes, it is there. And a little bit  
22 downward, we see Mramor. Yes. And here we can see on the right,  
23 towards the right of Zllash and a little bit north, we can see a  
24 little bit better Prapashtice.

25 If we would go on this map also a little bit from Prishtine

1 northbound and maybe we can -- maybe we can put Prishtine a little  
2 bit at the lower part of the -- or we cannot blow it up so much  
3 anymore, but, yes, a little bit like that. Maybe we can put the map  
4 a little bit upward so that we can see Prishtine. There's Prishtine.

5 On this map, we -- yes, if we have Prishtine, we see again  
6 northbound -- north-eastbound, that is, we see Prishtine, we see  
7 Llukar there, and we covered already Mramor. And if we can really  
8 now northbound, we will see also a little bit -- yes, further up, we  
9 see Barileve there on the left. And if we would follow the same  
10 route upwards, yes. And could we at that point maybe blow up a  
11 little bit the -- yes. And we go further up. We go further up. We  
12 go further up. There, we will see Llapashtice e Eperme, which means  
13 upper Llapashtice. There is also a lower one. You can see it on the  
14 same map. It is Llapashtice e Poshtem.

15 Anyway, that is just to -- from here, I just want to pin-point  
16 to one more location. To the right, we see a blue lake on the map.  
17 It's a lake. And to the right, on the right side of that lake is a  
18 place called Orllan. Yes. That is a significant location as well.

19 If we can zoom out, as far as I'm concerned, the locations will  
20 indicate much more north, places like Potok and so on. This map just  
21 goes a little bit more northbound than the other map that I just  
22 showed you.

23 Thank you very much, Madam Court Officer.

24 Then we have the geographical issues behind us and we get --  
25 yes, we finished it. We get to the location of the indictment.

1           The indictment centres its focus around a house in which  
2           allegedly people were held, maltreated, even tortured. That house  
3           would have been located at what the SPO calls a compound. It would  
4           be part of a small group of houses on a hilltop within the Gollak  
5           area. One can hardly call this a village. It is just a very tiny  
6           group of structures, with variations of purposes of these structures.  
7           The group of structures can hardly be defined as a village or even a  
8           hamlet. A settlement of houses. It has no particular definition in  
9           the administrative way within the Zllash area.

10           I would like to get back for a moment to the previous  
11           geographical map, the very first one, DSM-00443. In particular, I  
12           would like to -- if we can blow it up, and we need the upper part of  
13           this particular geographical map. And if we can blow it up -- yes,  
14           maybe -- yes, this, I think, will be fine.

15           There's one particular route that I would like to show to the  
16           Panel. The route starts at a place called Surdull which is in the  
17           middle of the square with the number K. Yes, that's exactly where it  
18           is, Surdull. And from Surdull, we go a little bit to the right, up,  
19           yes, to a place called Turucice. And from there on, we can go down  
20           to the place called Orllan.

21           Now let me stop at a moment for a second, because there is an  
22           another way around to go this way, which is from Turucice -- if we  
23           would want the cursor up, please, again. Yes, to the right, in the  
24           next block of L, we can see a place called Rakinice. And from there,  
25           if we go down, we hit -- yes, we go through that little place and

1 there we have -- a little bit more south, yes, yes, Kalatice.

2 From there on, we go back into the square of number K and south  
3 of that, south of that - what is it? - lake, it's a place called  
4 Ballaban. Exactly. That's what I want to highlight. And then from  
5 Ballaban -- we need to move the map upward now. Yes. From Ballaban,  
6 we can go down to Kecekolle, which is exactly there.

7 Thank you very much, Madam Court Officer.

8 From there, I would like to indicated a place called Koliq which  
9 is roughly in the middle of the square, which is exactly in that  
10 place, yes. And from there, westbound to the other square going  
11 towards Rimanishte, yes. And from there going to Vranidoll, which is  
12 more or less on the same level there. And then if we cross the black  
13 road, so to speak, there's a place called Kozarice. And from there,  
14 if we go upward, we will go a little bit further upward, and we maybe  
15 want to move the map a little bit downward. There. There, we are.  
16 We under up again at Llapashtice e Eperme.

17 Thank you very much.

18 Your Honour, we arrived at -- I want to speak about the location  
19 of the indictment. And if we speak about location of the indictment,  
20 we were speaking about the Zllash area.

21 And to this end, I would like to ask the Court Officer to show  
22 DSM-00389.

23 Is that 389? That is 389. It's not the one we're looking for.  
24 We're looking for -- excuse me, DSM -- no, I'll do it like this.  
25 SPOE00213476. Yes.



1 Here we see an aerial photo of the area where we would be  
2 speaking about in the indictment. And we can see that from a very  
3 large distance, and we can see how it is situated. One part, there  
4 is really a more kind of a level field; on the other field, there  
5 is -- on the other side, there is also a lot of forest and mountain  
6 or mountain and forest. We had this.

7 And if we would go to the next aerial photo, it would be  
8 SPOE00213478. Yes.

9 This is that aerial view. It's more a little bit -- we can see  
10 the location better. And if we can kindly blow it up to about, I  
11 don't know, 200 per cent or so. Yeah. A little bit more maybe.  
12 Yes, thank you very much. We used this on many occasions, the  
13 interviews, and we get a good aerial view of the individual  
14 structures that are there.

15 What I want to show, obviously, is -- we can see on the  
16 right-hand side a quite long building. It is, I think, by far the  
17 longest building. It has a kind of a white roof on this picture.  
18 And maybe if the Court Officer would like to -- it is exactly that  
19 building. And just directly straight on to it, there is a building  
20 which seems to have a damaged roof. It is to the left with your --  
21 no, excuse me, yes, if you go to the long building again and you go  
22 to the left with the cursor, yes, that is that particular building.  
23 And that is what, at some point, we will see -- anyway, it's on --  
24 both sides there is a number of structures standing. Obviously if we  
25 go to the right, to the top, there we have a building clearly without

1 a roof anymore standing. And on the opposite side, if we go to the  
2 opposite side of these buildings, yes, we will see a group of  
3 buildings. And if you go a little bit down with the cursor, yes.  
4 That building -- excuse me, a little bit up, please, yes. One down.  
5 Yes, that building. We -- is the only building that is still  
6 standing today. And obviously we'll get to it, the other buildings  
7 that are on that site, we will -- and we have seen them on many  
8 occasions.

9 Then I would like to ask the Court Officer, if we really zoom in  
10 to this location now, to go to the photograph of the SPO. It's  
11 00128388. Thank you very much.

12 It's a photograph which is obviously in the building and it  
13 forms one of the centrepieces of this entire case.

14 Later on, you will see that we have tried through a 3D visual to  
15 reconstruct it, but we will get to that a little bit later.

16 If you would please -- these are obviously the structures which  
17 are on the left-hand side in that compound that we just saw of the  
18 aerial view.

19 If we go to the next photograph, it's 00128405. These are the  
20 SPOE numbers. It's the same three structures that we saw on the  
21 previous photo, however, from a different angle.

22 And if we go to the next photograph, which is SPOE00128392, that  
23 is the structure that we have seen just before. It's on the left  
24 side of the aerial view location.

25 And, lastly, the photograph with number 00128409.

1 Yes, thank you very much, Madam Court Officer.

2 This is the building that we believe on the -- on the aerial  
3 view that we saw earlier, the building without a roof. It is  
4 obviously that the building has no roof.

5 And then, lastly, we would like to show the -- not far away from  
6 this group of buildings -- and we can take out this picture,  
7 Madam Court Officer.

8 Not far away from the group of structures, there's a building  
9 that used to be a school. It was abandoned. It had no such function  
10 in the period of the indictment. It is referred to as the school  
11 building. One would need to go downhill from the group of  
12 structures, the compound, so to speak, in order to reach it. We can  
13 show it with a photograph, and that is SPOE00128412. That is the  
14 school building.

15 And then I would like to go back one more time to the photograph  
16 with the number SPOE00213478. Exactly.

17 Thank you very much, Madam Court Officer.

18 This is the aerial view. The location of the school building  
19 cannot be seen on this photograph, and neither can it be seen on the  
20 previous aerial photograph that we saw. We just have an idea. But  
21 why I want to show this picture is that we kind of try to reconstruct  
22 this entire area in order to get a good idea of what we are actually  
23 speaking about. And, therefore, we tried, Your Honour, to -- we can  
24 move this one away now, this photograph.

25 In order to get a better understanding of the entire location of

1 the indictment, the Defence tried, step by step, to reconstruct the  
2 entire compound. The Defence did this on basis of its own  
3 observations, leftovers of structures of some of -- some  
4 [indiscernible] photographs from the case file, interviews with  
5 people, and a measure -- and measure the entire location with  
6 indications and dimensions that we observed and are available in the  
7 case file.

8 And to this end, I would like to ask the Court Officer to show  
9 the most rudimentary map that we made at the time which is DSM-00386.  
10 Yes. And if we can rotate it. Yes, this side up. It is a very,  
11 very, very basic map that we initially made. There was not much.  
12 There were leftovers. Basically we used mainly some particular  
13 things that were still there. There was a water well. There is a  
14 very big stone which is to the right bottom corner. That's about  
15 where we put it. The tree, which is more or less indicated, which is  
16 on the same level as the big stone was lying, and then this was the  
17 very first thing.

18 Then the next one I would like to ask is to see if you could put  
19 up DSM-00983.

20 Here's a map of the situation. I'm not sure whether we are able  
21 to show -- to show this -- to show two photographs next to each  
22 other. It would be this one and SPOE00213478. Here we are. And if  
23 you could please blow that one up. Our famous blow-up -- blow-up  
24 photo. Thank you very much. There you have about the indications  
25 that we uncovered during our investigations in order to get a good

1 idea of what it is.

2 If we take a look at the left photograph, we see the tall  
3 building on the right side, the long -- the long building. Would you  
4 go there with the cursor, Madam Court Officer. Yes, exactly. And to  
5 the right you see a tree. I say it is a tree. That is the tree.  
6 Yes. And if you look at the map, that is that particular tree, that  
7 is indicated -- I think it says "tree F," yes, exactly. And if we go  
8 -- we follow a straight line, that would go to tree B on the map.  
9 And that would be exactly on the left photograph indicated a little  
10 bit at the bottom -- no -- yes, they are -- that would be it. We  
11 will see it on the video in a bit.

12 And so just to have good indications, we demarcated it by a --  
13 what we call the 48-metre line and 23-metre line. It's just a --  
14 those are the dimensions that we measured ourselves. And this map,  
15 there is a -- there is a map with it also with a legend with the --  
16 this is a millimetre paper, so each square indicates metre then.

17 If we go to another document, it's DSM-00984. Yes. And if we  
18 could maybe put the other photograph next to it of the school  
19 building that we had earlier. That is 00128412. Exactly. Now,  
20 obviously if we compare these, it's hard to see because there is  
21 no -- no -- we have no drones or whatever to use in order to make an  
22 aerial view of this school building. But I can tell you that if  
23 you're standing on these leftovers on the roof, then we measured it  
24 out and we got to this -- these indications of this particular school  
25 building. The entrance of the school building is on the photograph

1 at the opposite side. It is on the map, it would be on the right  
2 side, where the arrow is indicated. Maybe the Court Officer can  
3 pin-point the arrow on the map. Exactly. That would be where the  
4 entrance would be on that side. And what we see on the photograph is  
5 roughly the area which is at the bottom of the map that we see.

6 Thank you very much, Court Officer.

7 If we -- we can take these out. And we go to DSM-00985. That  
8 is the same as the previous map that we saw with all kinds of  
9 measures, and we were able to recreate this and the area more  
10 accurately, and we showed these to some of the witnesses. The  
11 building with number 1 on this map is the only one still standing  
12 today, and that was there in 1999. We used roof tiles of some of  
13 the -- of the building in order to reconstruct the size of the other  
14 buildings.

15 These days, however, Your Honour, there is hardly anything left  
16 of it. As we can see on the following video footage of the area, we  
17 will be able to see, however, building number 1 on the map we have  
18 just shown you.

19 And then I would like to show DSM-00451. It's a short video.

20 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel --

21 MR. VON BONE: Yes.

22 PRESIDING JUDGE VELDT-FOGLIA: -- we can -- the video won't be  
23 seen in public.

24 MR. VON BONE: No.

25 PRESIDING JUDGE VELDT-FOGLIA: However, we cannot avoid the

1 sound to go out. So if you would like to have it confidential, we  
2 should go into private session.

3 MR. VON BONE: Okay. Then we go into private session,  
4 Your Honour.

5 PRESIDING JUDGE VELDT-FOGLIA: Okay.

6 [Trial Panel and Court Officer confer]

7 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, if there is any  
8 sound accompanying the video, then we mute it and then --

9 MR. VON BONE: That's fine.

10 PRESIDING JUDGE VELDT-FOGLIA: Then we don't have to go into  
11 private. It depends on you.

12 MR. VON BONE: It's better that we do not go into private. We  
13 just leave it with the sound off.

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

15 MR. VON BONE: Yes. Just before you start, this is -- just  
16 before we start, we can see here building number 1 that was on the  
17 map. And you will see a red/white line, just in order to measure, we  
18 took the trees from one to the other, and there we start the footage.  
19 We can start it, yes.

20 [Video-clip played]

21 MR. VON BONE: I think that's it; right? Yes.

22 We zoomed in on two things. The first thing you saw maybe was  
23 the water well which was in the back, a small, round thing; and  
24 obviously the building that was still standing there.

25 So, Your Honour, we -- interestingly, I'm not sure, but ... I'm

1 not sure whether we can take, Your Honour, the photograph -- we can  
2 put next to it. It's SPOE00128388. Yes. Thank you very much.

3 And if we could zoom in on the photograph. Very much more to  
4 the -- yes. Yes. And would you move the picture a little bit to the  
5 left. Yes. And zoom in closer. Yes. Thank you very much.

6 The tree that we see there is probably the tree -- well, I'm  
7 almost sure, the tree that you see on the right side of the footage,  
8 the one on the very right side.

9 Okay.

10 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, the Panel is not  
11 completely sure to understand which tree you are referring to.

12 MR. VON BONE: Okay. If we go to the -- if we see the video  
13 footage as it is now, it is the very first tree on the right side.  
14 No, excuse me. Excuse me. One further. That one -- no. Yes, that  
15 one. It has a split, this tree. And the other tree that is to the  
16 left of it, it's a little bit -- yes. It's a little bit more uphill.  
17 It's the other tree.

18 If we go to now -- please, if you would please show DSM-00389.

19 And this photograph can go away, as far as I'm concerned.

20 Now, this is a 3D remake of the location as we -- as we  
21 understand it. Buildings that we have information about or we have  
22 not information about. If you see the very tall building on the  
23 right, the one that is on the right side of this -- on this  
24 photograph, would you please go with the cursor to that. It's a grey  
25 building. Yes, that one. We have no, really, information about it.



1           The next building upward is -- there is a kind of white -- can  
2 we zoom in on this photo maybe a little bit? Yes, thank you very  
3 much.

4           You can see a kind a veranda or whatever it is. And in the case  
5 file we have also made some measures and indicated in that way. At  
6 the very end is the -- if you would go with the cursor a little bit  
7 up and a little bit down. Yes. A little bit down again. Yeah, to  
8 the right. Thank you very much. There would be the entrance of what  
9 we believe is the building, the white building which we have seen  
10 earlier which was without a roof on the aerial photos that we have  
11 shown.

12           We can zoom out again. You can see on the left the other  
13 buildings standing.

14           The third building from the bottom. Yes. There you see we have  
15 put the tree again and the other tree again. And building number 1  
16 is on it too. It is a little bit up from the building where we are  
17 with the cursor now. Yes, it's the bottom one. Yes, that one. That  
18 one.

19           Thank you very much, Madam Court Officer.

20           So this is kind of an aerial view. Now we have it also on a  
21 field level. That is DSM-00387. That is, more or less, field level.  
22 It's a little difficult to make in three dimensions, this kind of  
23 uphill idea that we have. But it's going uphill anyway. I don't  
24 think there's any -- if we go to the next photograph with DSM-00398.  
25 And if we can put -- sorry. DSM-398. Yes, that one. Exactly. And

1 could we put the map next to it of 985. Thank you very much. Could  
2 you blow up the map a little bit. Thank you very much. Exactly.

3 If the Court Officer can go with the cursor to the photograph or  
4 the 3D photograph, so to speak, and to the very first building, the  
5 black building, so to speak, yes, and go to the bottom right corner.  
6 Yes. From that is the measurement that we took for the 23 metres.  
7 So it's a -- from that exact part. It is a single building that was  
8 standing, and so that's why -- and the roof tiles, measured them, and  
9 it was quite an ordeal that the Prosecutor gave us to do so, to count  
10 all the roof tiles in order to get a clear picture of what the exact  
11 dimension of the centrepiece of this buildings is, obviously. But  
12 that is the way we used it.

13 Okay. I think we are done with this, Your Honour. Thank you  
14 very much.

15 Then, lastly, we would like to show DSM-00410. It's the same --  
16 we're standing at the lower part of this entire compound, and we are  
17 looking uphill. There's a kind of a pole. It's an electricity pole  
18 or not -- any kind of pole with -- it's just a pole standing there.  
19 And we are looking uphill.

20 And then, lastly, if you could please show DSM-00412. And if we  
21 could combine this with SPOE00213478. Yes. And would you please  
22 blow up the photograph, please, Madam Court Officer. Yes, thank you  
23 very much. And put it a little bit down.

24 Here, on the right side, we can see the 3D representation. And  
25 we have this -- if you would go with the cursor to the long structure

1 once again, the grey one, yes. And directly opposing it is that  
2 structure, also grey. Exactly. That is where we see on the left  
3 side of the photograph that particular building. And when we go with  
4 the cursor down, yes, and a little bit further down, it looks as if  
5 there is an entry there, an entrance. Yeah. So -- from there on. I  
6 remember --

7 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel --

8 MR. VON BONE: Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: -- we are approaching 11.00 --

10 MR. VON BONE: Yes, yes.

11 PRESIDING JUDGE VELDT-FOGLIA: -- so I would like to you take  
12 that in account.

13 MR. VON BONE: Yes. We will just finish this part and then take  
14 the break, and then we have some other stuff to do.

15 It is difficult to see, but if we blow up further the left  
16 photograph, and blow it up a little bit further again -- is that  
17 possible?

18 THE COURT OFFICER: No.

19 MR. VON BONE: No. Okay. Just right where the cursor is, if  
20 you would go a little bit up with the cursor and to the left, it's  
21 hard to see on the picture. It's hard to see on the picture.

22 I just wanted to say that we saw there the shadow of the pole  
23 that is standing there. That is why we positioned that, that  
24 electricity pole or whatever pole it was, right there. And that  
25 thing is still standing there. It is visible on the picture. If we

1 blow it up, then that is a possibility.

2 Your Honour --

3 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, for my  
4 understanding. You said the shadow of the pole?

5 MR. VON BONE: Yes. That's right. Yeah. Indeed. If we blow  
6 up the photo --

7 PRESIDING JUDGE VELDT-FOGLIA: Yes.

8 MR. VON BONE: -- indeed you can see the shadow. That's why we,  
9 indeed, were able to locate that pole on the 3D representation right  
10 there. Because the tree, we have put it on the 3D representation,  
11 but that tree is not anymore there, but we were able to get that  
12 electricity pole, or whatever pole it was. And when we were looking  
13 at this left photograph and we blew it up, there is four aerial  
14 photos and we blow it up, then we can see that pole standing. So  
15 that is why -- where this pole comes from.

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

17 MR. VON BONE: Your Honour, I must say I will conclude this part  
18 and this is the best moment to stop as well.

19 We have made a last visit also to this location, and we have  
20 noticed that the area is apparently under construction. There is  
21 some new, brand new white buildings standing there or near that  
22 location, and it looks as if it is under a kind of redevelopment of  
23 some sort.

24 Your Honour, I think that this is the exact moment where I think  
25 it is best to stop and to take a break. We won't be that long

1 anymore, but I think it's best to take a neutral moment to do that at  
2 this moment.

3 I thank you very much for your attention.

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

5 After the break, we will come back to the question I put to you at  
6 the beginning --

7 MR. VON BONE: Yes.

8 PRESIDING JUDGE VELDT-FOGLIA: -- then we will just go for a  
9 short moment into private session --

10 MR. VON BONE: Yes.

11 PRESIDING JUDGE VELDT-FOGLIA: -- and come back. And depending  
12 on the outcome, I might give also an oral order.

13 MR. VON BONE: Right.

14 PRESIDING JUDGE VELDT-FOGLIA: And then we will continue with  
15 the opening statement of the Defence. And in the end, I will get  
16 back also to the SPO with a small question regarding a filing or a  
17 presentation of evidence list of this morning.

18 So for now, we adjourn for half an hour.

19 MR. VON BONE: I hope we establish a telephone meeting with my  
20 client. Thank you very much.

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

22 --- Recess taken at 11.00 a.m.

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

24 PRESIDING JUDGE VELDT-FOGLIA: I don't see an established  
25 connection with Mr. Mustafa.

1 Very well. Welcome, Mr. Mustafa. We didn't have the connection  
2 with you yet.

3 Let me see. Yes. For the record, we are in the same  
4 composition as before the break.

5 Madam Court Officer, can we go into private session.

6 [Private session]

7 [Private session text removed]

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[Open session]

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

20 PRESIDING JUDGE VELDT-FOGLIA: To put it on the record. Thank  
21 you, Defence Counsel. The Panel has taken note of your submissions.

22 And Madam Court Officer, can we please go back into private  
23 session.

24 [Private session]

25 [Private session text removed].

1 [Private session text removed]

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15 [Open session]

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

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

18 Defence Counsel, you have the floor. You may continue with your  
19 opening statement.

20 MR. VON BONE: Yes, Your Honour. Thank you very much.

21 Just two more pictures, photographs to go, and then I continue  
22 with something else.

23 That is the photograph which has the number SPOE00128388; and  
24 the second one, which might go next to it, is SPOE00128392.

25 Yes, maybe we could zoom in a little bit on the left one. A

1 little bit. Just a little bit. Thank you. And zoom in a little bit  
2 on the right one. Yes.

3 Now, Your Honour, maybe it's easier to see on the left side. We  
4 see the tree with the split in the -- on the left side of the door of  
5 this house. This is what we indicated earlier as the tree that we  
6 mentioned and which is visible on the maps as well. You can see the  
7 tree on the right side too. And this building, obviously, we believe  
8 it's to be just a normal, regular building of whatever use it is.  
9 And, anyway, it is not some sort of cowshed or any kind of thing that  
10 we've heard throughout the entire proceedings, in our view. This is  
11 what I wanted to speak about on these issues lastly. We can  
12 continue, we can remove the screens, and -- thank you very much.

13 Your Honour, as I said, during the last visit that we had, we  
14 have noticed that there is a very big change in the situation there.  
15 There is a redevelopment or reconstruction of that site.

16 Then the Gollak area and Zllash. The Gollak area and, within  
17 it, the Zllash area are, as we saw earlier, located east of  
18 Prishtine. As the Defence opened this statement with the findings of  
19 the report of the OSCE, this mountainous area is rather near  
20 Prishtine, relatively near, I should say. After the NATO strikes,  
21 people fled wherever they could, and among the areas was the Gollak  
22 area and Zllash. People would take shelter and find accommodation  
23 within the houses of residents of that area.

24 Now we turn to the BIA. Your Honour, Salih Mustafa was the  
25 commander of the BIA unit. This unit carried out its functions



1 mainly with the help of civilians. People who would loan their homes  
2 or part of their homes to the unit so that information could be  
3 accumulated from enemy forces, displacements of those forces, or  
4 simply the houses, that the houses could be used for stockpiling  
5 material that was needed for the people to get by in the conflict.  
6 As the Defence already indicates, the area of operation of the BIA  
7 would be the urban areas, primarily in Prishtine. BIA members could  
8 stay in a house of civilians in order to rest or to make a stopover  
9 in times that they would be on the move.

10 The Defence disputes the entire idea that there would be a base  
11 in Zllash. The word "base" suggests as if the entire compound would  
12 be under the control of BIA. This inference is entirely wrong.  
13 Zllash would be for BIA people the same as anywhere else. They could  
14 stay in Zllash in order to have a rest. It was for them a safe  
15 house, a relatively safe location which was shared by other KLA  
16 units. After intensive work in the urban areas, the BIA members need  
17 to have a safe house or to have a secure and safe rest relatively far  
18 from their area of operations.

19 The SPO constructs its case around this and makes it look as if  
20 the BIA unit, or Salih Mustafa, would be there and run the entire  
21 compound and a detention centre. It is entirely wrong what the SPO  
22 stated in its pre-trial brief; namely, that BIA used this location as  
23 its headquarters. The area of operations of BIA was not even in  
24 Zllash, so why on earth would they have a headquarters set up there?  
25 BIA had no operations. They had nothing do in Zllash. They could

1 occupy maybe a room there when operations in towns were so intensive  
2 that they could take a rest in the hills.

3 Salih Mustafa has pleaded not guilty to the charges. He has  
4 never harmed in any manner any of the witnesses that testified for  
5 the SPO. He vehemently denies that he did do anything wrong against  
6 any of them. The victims, whatever they might have lived, are simply  
7 wrong and have never identified the accused. If they have been  
8 detained or maltreated, it was certainly not by Salih Mustafa, nor  
9 has it ever been under or through his orders.

10 Salih Mustafa had no authority whatsoever in the Llap  
11 operational zone and had no authority whatsoever over Brigade 153  
12 that operated in the area of Zllash.

13 Salih Mustafa has never detained anybody.

14 Salih Mustafa has never maltreated anybody.

15 Salih Mustafa has never killed anybody, nor has he anybody ever  
16 ordered to do so.

17 Salih Mustafa is, with many others, a patriot and fought for the  
18 liberation of his country against one of the most oppressive regimes  
19 in modern history.

20 *[REDACTED] Pursuant to In-Court Redaction Order F359RED*

21 *[REDACTED] Pursuant to In-Court Redaction Order F359RED*

22 *[REDACTED] Pursuant to In-Court Redaction Order F359RED*

23 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

24 MR. VON BONE: Yes.

25 PRESIDING JUDGE VELDT-FOGLIA: We are in public session, so this

1 is a topic that is not for public session.

2 MR. VON BONE: Then I would like to ask you to go into private  
3 session.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay.

5 MR. VON BONE: Thank you.

6 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can we go  
7 into private session, please.

8 [Private session]

9 [Private session text removed]

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1 [Private session text removed]

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4 [Open session]

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

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

7 Defence Counsel, please proceed.

8 MR. VON BONE: Thank you very much, Your Honour.

9 Your Honour, the charges against Mr. Mustafa are arbitrary  
10 detention of a number of individuals, cruel treatment, torture, and  
11 murder. We reiterate once again that Mr. Mustafa did never commit  
12 these crimes.

13 On 4 February 2022, the SPO closed its case. The SPO called a  
14 number of witnesses that spoke about their detention, maltreatment,  
15 and spoke about the conditions in which they had been kept.  
16 Salih Mustafa did nothing against any of these people. He does not  
17 know them, he has no motive to harm them in any manner, and he had no  
18 authority in the area. He was not part of the Brigade 153 who was  
19 stationed in the area of the indictment. In sum, Salih Mustafa had  
20 nothing to do with any of these people.

21 [REDACTED] Pursuant to In-Court Redaction Order F359RED

22 [REDACTED] Pursuant to In-Court Redaction Order F359RED

23 [REDACTED] Pursuant to In-Court Redaction Order F359RED

24 Another witness that the SPO called testified that Salih Mustafa  
25 had nothing to do with the maltreatment of anyone.

1 We do not believe, Your Honour, that any of the witnesses that  
2 have been brought by the SPO were victims of Salih Mustafa. Most of  
3 the witnesses never knew Mr. Mustafa. None of them identified him  
4 properly. The witnesses have dropped a name without knowing who the  
5 person was, describing a person in detail or have never known him  
6 before the war. Neither have they known him after the war.

7 We, therefore, believe that the SPO failed to produce evidence  
8 to meet the criterion necessary to prove beyond a reasonable doubt  
9 that Mr. Mustafa should -- that Mr. Mustafa committed the crimes as  
10 charged in the indictment. The accusations are false, and  
11 Mr. Mustafa should be acquitted of the crimes for which he is  
12 indicted.

13 The Defence does not need to prove that Mr. Mustafa has not  
14 committed these crimes; but, nevertheless, we do present a case. The  
15 Defence cannot give a day-by-day or a minute-by-minute account of the  
16 whereabouts of Mr. Mustafa. That cannot even be demanded and cannot  
17 be reconstructed after such a long time.

18 But in the coming weeks, the Court will hear the testimony of  
19 people who will speak about his whereabouts, on the one hand, and the  
20 situation in Zllash, on the other hand.

21 The Zllash compound is the heart of this entire case, and we  
22 have witnesses who were on the ground in that period of time of the  
23 indictment, of the time indicated in the indictment, to be precise.  
24 I truly hope that the SPO will listen to what the Defence witnesses  
25 have to say and hope that the SPO will reconsider its position, to

1 listen with an open ear and to see with an open eye what others say  
2 about the accused, about the situation in Zllash, in order to shed  
3 light on the truth of the matter in the case at hand.

4 The SPO failed to investigate any of the alleged co-perpetrators  
5 mentioned in the indictment. The Defence wonders whether this was on  
6 purpose or out of fear of hearing something else that might hurt the  
7 case, their case. The Defence believes that these people could have  
8 been tracked down and find them. We can draw an inference that for  
9 some reason the SPO simply failed to do that.

10 Your Honour, I want to conclude. The Defence shall present  
11 evidence. We have a strong conviction that Mr. Mustafa is not guilty  
12 to the charges, based on the material that we were able to  
13 accumulate. We do not have to prove innocence, as a person is  
14 presumed innocent until proven, beyond a reasonable doubt, that a  
15 person has, indeed, committed the crimes of the indictment. The  
16 Defence is convinced and stands firm on its position that Mr. Mustafa  
17 is innocent and must be acquitted of all charges.

18 Your Honour, I conclude my opening statement with that, and I  
19 thank you for your attention.

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

21 This concludes the opening statement of the Defence Counsel.

22 Tomorrow we will continue with the hearing of the first Defence  
23 witness. And with a view of the hearing of tomorrow, I would like to  
24 discuss the following with the SPO.

25 The Panel received an e-mail this morning from the SPO, at 8.48,

1 in which the SPO informed the Panel, the Defence and Victims' Counsel  
2 that it has released the presentation queue for the Defence Witness  
3 200 with a set of documents and its translation into English to be  
4 used during the cross-examination of Defence witness. Yes. The  
5 Panel notes that the material dates back as far as 2003 for some  
6 items and includes as well social media posts and media article dated  
7 between 2014 and 2021, and some of which do not seem to have been  
8 previously disclosed by the SPO. And the Panel notes that pursuant  
9 to paragraph 31 of the Decision on the Conduct of Proceedings, which  
10 is filing 170, the parties and Victims' Counsel may only use material  
11 which has been disclosed and notified in Legal Workflow during the  
12 questioning of a witness. Otherwise, leave of the Panel must be  
13 sought by means of an oral or a written request indicating why the  
14 material to be used was not previously disclosed. And the  
15 Panel would like to know if these items are newly discovered and why  
16 they have been discovered only at this moment in time and what is the  
17 relevance of such material for the purposes of your  
18 cross-examination.

19 Mr. Prosecutor, you have the floor.

20 MR. MICHALCZUK: Your Honours, thank you very much.

21 As a matter of brief explanation, we indeed have added certain  
22 items which were not previously on the Prosecution exhibits list.  
23 Most of those points relate -- they are simply the Facebook postings,  
24 Facebook photographs, Facebook material, open-sources information.  
25 And similarly to the case of Fatmir Humolli that we had a few weeks

1 ago before this Panel where we also used similar Facebook  
2 information, also with the first Defence witness we are going to use  
3 certain public information as we believe that we might need them for  
4 us to better assess -- or to assist the Panel with the assessment of  
5 this witness's credibility.

6 This is the reason why these items are on -- in the presentation  
7 queue for our cross-examination.

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

9 THE INTERPRETER: Microphone, Your Honour.

10 PRESIDING JUDGE VELDT-FOGLIA: The moment of disclosure, so  
11 today, this morning, and not earlier.

12 MR. MICHALCZUK: Your Honours, we were -- as we were preparing  
13 for the examination -- for the cross-examination of this witness, we  
14 simply spent the recent days reviewing all information available.  
15 Also in view of what is in the statement of the first Defence  
16 witness. And then we realised that we might need these documents,  
17 simply. But we will use them only if necessary. That's why they are  
18 on the presentation queue. Depending how the course of the  
19 examination will proceed --

20 PRESIDING JUDGE VELDT-FOGLIA: Okay.

21 MR. MICHALCZUK: -- with this witness.

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

24 Victims' Counsel, would you like to bring forward submissions?

25 MS. PUES: No, thank you, Your Honours.



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

2 Defence Counsel, would you like to react?

3 MR. VON BONE: Yes, Your Honour.

4 We oppose that this material that is so lately disclosed will be  
5 able to become part of the proceedings. This -- whatever the  
6 material is, we find it, most of it, irrelevant to any of the facts,  
7 the circumstances of the case, the accused, or whatever. So,  
8 therefore, there is no merit in the material that is now being  
9 presented.

10 I do not even see what any personal information might add to the  
11 credibility of a witness. It will not change in any manner --

12 PRESIDING JUDGE VELDT-FOGLIA: Sorry. I didn't -- I didn't hear  
13 what you said.

14 MR. VON BONE: I -- we fail to see what the material actually  
15 would do or change about the facts, about the circumstances, or about  
16 the accused. The witness, whatever he says in his private life,  
17 is -- it is not a relevant item to seek material out of a private  
18 person's things in order to say, well, therefore, he becomes -- that  
19 discredits in any manner whatever he has lived. He has made  
20 statements to the Defence, to the Prosecution, and I think it is best  
21 to limit the scope of the examination to that as well.

22 So we oppose the material that has been requested. And it's not  
23 the first time that we have this on the very last moment. And if it  
24 is -- if it would be granted anyway, I really hope that it will be  
25 for the very last time that we have this. We have now become known

1 about the witnesses, who they are from the Defence, and so on, and,  
2 therefore, such material should not be introduced at the very last  
3 moment. There's hardly anything to prepare on it.

4 So that's all we have to say about it.

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

6 Yes, please, Mr. Prosecutor.

7 MR. MICHALCZUK: Your Honour, my apologies for taking the floor  
8 again.

9 I would like to say one thing about the late disclosure. We are  
10 not going -- maybe I was not clear when I started my first  
11 representation on this issue. But we are not -- we don't intend to  
12 add these materials to the SPO exhibits. It's not our intention.  
13 The sole intention is to use them for the purpose of  
14 cross-examination, and nothing but this, to assess the credibility.

15 We believe, and this is my counterargument as to the relevance  
16 of these materials, we believe that they -- a close relationship to  
17 the accused of the first Defence witness is of relevance and also the  
18 issue of his potential attitude toward this is Court is also  
19 relevant. Again, they are closely tied to the credibility issue, but  
20 not only.

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

22 MR. MICHALCZUK: Thank you.

23 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel.

24 MS. PUES: Thank you, Your Honours. Only very, very briefly.  
25 Facebook is hardly private. It's media. It's a media outlet, a

1 social media outlet and as such it has to be treated. And certainly,  
2 if I understood previous submissions right, it is not covered by any  
3 privacy grounds.

4 That's just a thought to take into consideration.

5 Thank you.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.  
7 Defence Counsel.

8 MR. VON BONE: We cannot see, actually, what the SPO selects  
9 from Facebook and what he does not select, so we really don't see  
10 what -- whatever merit would be in that. So I don't think it is  
11 proper to argumentatively pick some posts that a party or -- might --  
12 might find that is in some form touching on his credibility.

13 That is only one thing.

14 Whatever the views of a person might be over the Court, over the  
15 SPO, or over the Defence, or over the accused, I really don't see  
16 what that would -- what that would do to detriment of actually the  
17 testimony of the person. It is not that we are looking, oh, what is  
18 your feeling about this or what is your feeling about that. No, it  
19 is: What did you see, where were you, with who were you, when were  
20 you there, what did you see, what did you not see, what did you  
21 experience, what did you do, and not what are the internal views or  
22 externalised in -- through any kind of media outlet and then say,  
23 well, it is because you have this or that view that probably you're  
24 not a credible witness.

25 I think we should assess always the witnesses on what they have

1     seen, heard, done, experienced. This is what we need. And anything  
2     else is rather irrelevant.

3             Thank you very much.

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

5             I will render an oral order on this, I will call it, request.

6             The Panel notes that disclosure of new material from the SPO  
7     took place on the day before the testimony of the Defence Witness  
8     200. This provided indeed limited time for the Defence to  
9     familiarise itself with the material. The Panel considers, however,  
10    that the SPO gathered such material after the final list of witnesses  
11    from the Defence had been filed on 14 March, which is filing 343, and  
12    it has requested leave of the Panel today indicating why such  
13    material was not previously disclosed. The Panel notes that for  
14    testing the credibility of the witness, the SPO can use information  
15    which are not related to the charges.

16            So, therefore, the Panel authorises the SPO to use such material  
17    during the cross-examination of the Defence Witness 200, and further  
18    decides that the Defence, if it so wishes, will be given some  
19    additional time during the breaks, by extending the breaks in order  
20    to study such material and consult with Mr. Mustafa to prepare its  
21    examination.

22            This concludes my oral order.

23            Now, I will ask the parties and the Victims' Counsel if there's  
24    anything else to raise for tomorrow.

25            Mr. Prosecutor.

1 MR. MICHALCZUK: No further points.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Victims' Counsel.

4 MS. PUES: Nothing from us. Thank you.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Defence Counsel.

7 MR. VON BONE: Nothing, Your Honour. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Okay. If there's  
9 nothing -- there's not anything else to raise, we will resume  
10 tomorrow for the first Defence witness.

11 And I thank the parties and the Victims' Counsel for their  
12 attendance. And I also thank the interpreters, the stenographer, and  
13 the people of the audiovisual booth, and the security for their  
14 assistance.

15 The hearing is adjourned until tomorrow, 9.30.

16 --- Whereupon the hearing adjourned at 12.07 p.m.

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