

All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 Monday, 22 November 2021

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.32 a.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Good morning.

6 Mr. Court Officer, could you please call the case.

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

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Very well.

10 First I will call appearances, starting with the SPO.

11 Madam Prosecutor, you have the floor.

12 MS. D'ASCOLI: Thank you, Your Honours, and good morning. The
13 Specialist Prosecutor's Office today is represented by Prosecutor
14 Cezary Michalczuk; Associate Prosecutor Filippo De Minicis;
15 Case Manager Julie Mann; legal intern Deborah Osborne; and myself,
16 Silvia D'Ascoli, Associate Prosecutor.

17 Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Victims' Counsel, it's your turn.

20 MS. PUES: Thank you, Your Honours. And good morning,
21 Your Honours. And good morning, everybody.

22 The participating victims are represented today by
23 Njomza Haxhibeqiri, my junior legal associate, and by myself,
24 Anni Pues, as Victims' Counsel.

25 Thank you.

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

2 Defence counsel, you have the floor.

3 MR. VON BONE: Good morning, Your Honours. Defence is
4 represented by Mr. Betim Shala, my co-counsel; interpreter and
5 investigator Mr. Fatmir Pelaj; myself, Julius von Bone, counsel. And
6 remote is Mr. Mustafa joining us.

7 PRESIDING JUDGE VELDT-FOGLIA: Very well.

8 Mr. Mustafa, does the connection work okay? Can you hear us
9 fine?

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

11 PRESIDING JUDGE VELDT-FOGLIA: And, for the record, you are
12 appearing in front of Trial Panel I.

13 Today we will hear the testimony of SPO Witness W04391, and I
14 would like to start right away with that.

15 MR. VON BONE: Your Honour, with permission we would like to
16 raise an issue.

17 PRESIDING JUDGE VELDT-FOGLIA: Both. I saw the SPO standing.

18 MS. D'ASCOLI: Yes, Your Honours, we would also like to raise a
19 preliminary matter but in private session. So depend on whether --

20 PRESIDING JUDGE VELDT-FOGLIA: I understand.

21 MS. D'ASCOLI: Thank you.

22 PRESIDING JUDGE VELDT-FOGLIA: Mr. von Bone, would you like to
23 raise it in private or in public?

24 MR. VON BONE: I'll try to do it in public session, Your Honour.
25 I'm not sure whether we are going to speak about the same issue,

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1 Mrs. Prosecutor.

2 Our issue is the filing of 19 November requesting the
3 application of Rule 153(1). I just take a look at the Prosecutor
4 whether that would be the same issue or not.

5 MS. D'ASCOLI: It is not the same issue but we do have a
6 communication also with regard to that filing.

7 MR. VON BONE: Let me -- thank you very much. Let me just
8 continue then for the moment.

9 Your Honour, we're not sure within which time-frame it would be
10 necessary to react on it. We -- considering the time-frame that we
11 have this week, we would ask for some leave to address that issue.

12 In any event, the Defence opposes the request of the Prosecutor,
13 that is, the essence of it, and in particular, the issue is as
14 Rule 153 says that the Panel may admit a written statement of a
15 witness which goes to proof of a matter other than the acts and the
16 conduct of the accused, we are -- we find it, the request, too vague,
17 as to which precise matter this particular request would address the
18 issue.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. Defence counsel.

20 MR. VON BONE: Do we need to go in private session for this?

21 PRESIDING JUDGE VELDT-FOGLIA: No. What I would like you to do
22 is to make a filing on this --

23 MR. VON BONE: Yes.

24 PRESIDING JUDGE VELDT-FOGLIA: -- and not oral submissions.

25 MR. VON BONE: No.

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1 PRESIDING JUDGE VELDT-FOGLIA: So I think that -- I note it here
2 for myself that you have a request by when you should file it in --
3 as a matter taking into account the Rules.

4 MR. VON BONE: Yes.

5 PRESIDING JUDGE VELDT-FOGLIA: That is 1 December. And would
6 1 December be doable for you? Because then we are already in next
7 week. Today we are -- that would Thursday and please correct me if
8 I'm wrong. Wednesday. No, Wednesday, from next week. Then you are
9 supposed to make a filing on the matter.

10 MR. VON BONE: Yeah. Your Honour, with permission, it would be
11 fine if we would be able do that on the Friday. It gives us a little
12 bit more time. We have some other developments as well, and that
13 would give us the proper time to respond. But, in particular, we
14 would like to have a clarity on the specific matter that is being
15 envisaged here in this request. That is basically what we ask for.
16 So that we can even more precisely -- either we can do that in an
17 oral situation where this is being precised, or whether it's not
18 necessary and it is as it is, then, you know, at least we know where
19 we stand.

20 PRESIDING JUDGE VELDT-FOGLIA: Yes. And with regard to the
21 extension, the reasons for requesting an extension for two days, we
22 can always -- but a minimum of reasoning would be appreciated.

23 MR. VON BONE: Yes. We have a full schedule this week. We have
24 also some ongoing issues regarding investigations, regarding some,
25 let me say, issues that might be -- that we run out a little bit of

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1 time for the issues to cover those issues, and this is a full hearing
2 week. We probably work in the weekend or Monday and Tuesday, and
3 Wednesday is a maybe a little bit too short, but we'll give it a try
4 any way to do it on the Wednesday. But if it would be possible, then
5 that would be really helpful for our schedule.

6 PRESIDING JUDGE VELDT-FOGLIA: We need good cause in this
7 aspect, so I heard you. I noted what you said. Thank you.

8 Madam Prosecutor, shall I ask Mr. Court Officer to bring us into
9 private or would you like to make a remark with regard to this filing
10 in public?

11 MS. D'ASCOLI: Yes, Your Honour. Just briefly. Just to add
12 that there will be an addendum to that filing coming up that will be
13 an addendum stating the reasons for the request which were also
14 ordered by the Trial Panel. But then the substance is already all in
15 the main filing. Thank you.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.
17 Mr. Court Officer, could you bring us into private, please.

18 ~~{Private session}~~ [Open session]

19 THE COURT OFFICER: We're in private session, Your Honours.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

21 Madam Prosecutor, you have the floor.

22 MS. D'ASCOLI: Thank you, Your Honours.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 But I think -- does somebody want to comment on this?

15 Victims' Counsel.

16 MS. PUES: No, thank you, Your Honour. The Prosecution has
17 covered it extensively.

18 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, is there
19 something you would like to say on this?

20 MR. VON BONE: [Microphone not activated].

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

22 We go back into public. Mr. Court Officer, could you bring us
23 into public, please.

24 [Open session]

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

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1 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much. Yes. Then
2 we will start with the testimony of SPO Witness W04391.

3 Madam Court Usher, could you please usher the witness into the
4 courtroom.

5 [The witness entered court]

6 PRESIDING JUDGE VELDT-FOGLIA: Please have a seat.

7 Mr. Witness, I'm in front of you. Mr. Witness, I'm sitting
8 here. Good morning.

9 THE WITNESS: [Interpretation] Good morning.

10 PRESIDING JUDGE VELDT-FOGLIA: Welcome to the
11 Specialist Chambers.

12 THE WITNESS: [Interpretation] Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: I understand you can hear me
14 well?

15 THE WITNESS: [Interpretation] Yes.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well. How are you, first of
17 all?

18 THE WITNESS: [Interpretation] I am okay. Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Mr. Witness, today we
20 will start with your testimony, and before we begin I have several
21 remarks for you.

22 First, I will explain the protective measures that have been
23 granted to you for your testimony. You have been assigned a
24 pseudonym, and this means that we will never mention your name but we
25 will only address you as "Mr. Witness" to make sure that the public

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1 does not know your name. I see you nodding. You also have face and
2 voice distortion which means that no one outside the courtroom
3 watching the broadcast can see your face or hear your real voice
4 during the testimony.

5 When you answer questions that will not reveal your identity, we
6 will do so in an open session, and that means that the public can
7 hear what is said in the room. And when you are asked to describe
8 anything that relates specifically to you or to mention facts that
9 may reveal your identity, we will do in a private session, and that
10 means that there is no broadcast and no one outside the courtroom can
11 hear what is said inside the courtroom. And if anything is said
12 during open session that may identify you, we will protect this
13 information. Your testimony will be broadcast with a delay and we
14 can remove any such information from the broadcast that will be seen
15 and heard by the public and from the public transcript of the
16 proceedings.

17 And in addition to these protective measures, three additional
18 special measures were added up upon request by the Witness Protection
19 and Support Office, pursuant to Rule 80(4)(c)(i) and (5) of the
20 Rules, and that's filing F0261 submitted on 19 November 2021. And
21 these special measures are: Attendance of a psychologist during your
22 testimony; and in-court assistance by a support staff member sitting
23 next to you; providing you with reading assistance when necessary;
24 and adapting the ways of questioning, where necessary, meaning that
25 the parties and the Victims' Counsel will do their best to ask clear

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1 and simple questions and will avoid using double negative,
2 confrontational, pressuring or repetitive questions during their
3 examinations. And this decision of the Panel has been shared through
4 CMU with the parties and Victims' Counsel by e-mail dated 19
5 November 2021 at four minutes to 3.00.

6 Are the protective measure I just explained to you, Mr. Witness,
7 clear for you?

8 THE WITNESS: [Interpretation] Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you,
10 Mr. Witness.

11 And to all of us - I do repeat it every time because it is so
12 important - needless to say that we should pay the utmost attention
13 to the protective measures in the course of the examination, avoiding
14 the disclosure of any confidential information.

15 I remind you that this hearing is held in open session unless
16 otherwise decided by the Panel and remind the parties and
17 Victims' Counsel to usual courtroom rules.

18 Mr. Witness, I come now back to you. You are called to testify
19 before the Specialist Chambers in the case of The Specialist
20 Prosecutor versus Salih Mustafa to assist the Panel to reach a
21 verdict. After you have taken your solemn declaration to tell the
22 truth, you will be asked questions by the lawyers for the
23 Prosecution, sitting on the left side with the violet robe. I see
24 you nodding to them. Then we have the lawyers representing the
25 victims admitted to participate in this case. Yes, you are seeing

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1 the victims' team. And then on the other side, the Defence counsel
2 and the team of Mr. Mustafa. That's the other side. And then you
3 see -- here we are, the Judges of the Panel, we will also be asking
4 you questions at the end, after everybody has been asking you
5 questions.

6 I would like to provide you with some guidance for answering the
7 questions that you will be asked. Mr. Witness, please, listen
8 carefully to each question and if you don't understand, feel free to
9 ask the question to be repeated. We want you to tell the truth and
10 to tell us what you saw, you heard, you experienced or sensed
11 yourself, and if you did not see or hear it yourself but you found
12 out in some other way, please tell us and explain how. Do not answer
13 questions put to you by simply referring to any prior statements that
14 you gave to the SPO or any other entity. We want you to give the
15 full response to any question here in court before the Judges of this
16 Panel.

17 You may not remember all details of the events and this is
18 perfectly fine. Please testify just on what you remember and do not
19 guess. It's fine to say "I don't know," "I don't remember."

20 Yes? I see you nodding again.

21 So you have understood all this, Mr. Witness?

22 THE WITNESS: [Interpretation] Yes, I understand.

23 PRESIDING JUDGE VELDT-FOGLIA: Okay. And now I would like
24 you -- I would like to give you some practical advice for your
25 testimony.

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1 Mr. Witness, everything that we say here is translated and
2 recorded, so it is important to speak into the microphone, to speak
3 clearly and to speak at a slow pace to allow the interpreters to
4 translate everything. You should only start speaking when the person
5 asking you a question has finished. So when a question is asked,
6 please count in your head up till five and only then give the answer.
7 This pause of five seconds is essential for us to properly hear,
8 translate, and record what you are saying.

9 If you have any questions, if you need a break or you need
10 assistance of any kind, at any time, please raise your hand so I know
11 that you want to say something.

12 THE WITNESS: [Interpretation] Okay.

13 PRESIDING JUDGE VELDT-FOGLIA: You have understood all this,
14 Mr. Witness?

15 THE WITNESS: [Interpretation] Yes.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you. As we
17 must do with every witness, I will now ask you to read your solemn
18 declaration to tell the truth. And I remind you that it is an
19 offence within the jurisdiction of the Specialist Chambers to give a
20 false statement.

21 Madam Court Clerk, can you please assist the witness with his
22 solemn declaration?

23 Please, Mr. Witness, read the text provided to you.

24 THE WITNESS: [Interpretation] Conscious of the significance of
25 my testimony and my legal responsibility, I solemnly declare that I

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1 will tell the truth, the whole truth, and nothing but the truth, and
2 that I shall not withhold anything which has come to my knowledge.

3 WITNESS: W04391

4 [Witness answered through interpreter]

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness. You are
6 now under oath to tell the truth.

7 We can now begin with the testimony of Witness W04391, starting
8 with the questions by the SPO.

9 Madam Prosecutor, you have estimated four hours for your
10 questioning of this witness and I see you nodding to me. Please
11 inform the Panel, as always, of any changes in this regard.

12 You have the floor.

13 MS. D'ASCOLI: I will, Your Honours. Thank you.

14 Examination by Ms. D'Ascoli:

15 Q. Good morning, Mr. Witness.

16 A. Good morning.

17 Q. I am the counsel for the Prosecution who will be directing your
18 examination today.

19 Madam President has already explained you to the protective
20 measures applicable in your case and how we will be using private and
21 open session. And I will also remind you, when we are in open
22 session during my questions, to be careful with certain information
23 so that we apply the utmost care to protecting identifying
24 information.

25 Also a kind reminder that in case you do not understand any of

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1 the questions that I put to you or if you want me to repeat them,
2 please feel free to say so.

3 A. Okay, I will.

4 Q. Okay.

5 MS. D'ASCOLI: Your Honours, if we could please move into
6 private session for the initial part of the examination as it will be
7 dealing with the identifying information of the witness. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Mr. Court Officer, can you bring
9 us into private session, please.

10 ~~[Private session]~~ [Open session]

11 THE COURT OFFICER: We're in private session, Your Honours.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 Madam Prosecutor, you have the floor again.

14 MS. D'ASCOLI: Thank you, Your Honours.

15 Q. Mr. Witness, I will start first with taking your personal
16 details. Can you please state your full name for the record.

17 A. My real name?

18 Q. Yes. Don't worry, we are in private session. No one outside of
19 the courtroom can hear what we are saying. Name -- first name and
20 last name, please.

21 A. My name is [REDACTED]

22 Q. Can you tell us your date of birth, please.

23 A. [REDACTED]

24 Q. And your father's name, please.

25 A. [REDACTED]

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1 Q. Okay. Mr. Witness, I will now ask you some questions about
2 1999, the first six months of 1999. Again we are in private session,
3 so don't worry about giving out personal or identifying information.

4 Do you remember where you were living in April 1999?

5 A. Yes.

6 Q. Where was that?

7 A. In [REDACTED]

8 Q. Was this your regular [REDACTED] home?

9 A. No.

10 Q. Where was your regular [REDACTED] home?

11 A. [REDACTED]

12 Q. So whose house was the one in [REDACTED] where you were staying
13 in April 1999?

14 A. It was the house of [REDACTED]

15 Q. And who was [REDACTED]

16 A. He was the owner of the house where we were staying at the time.

17 Q. I notice -- I note the [REDACTED] Did he have any [REDACTED]
18 [REDACTED] to you?

19 A. No, no.

20 Q. So [REDACTED] in any
21 way?

22 A. No.

23 Q. And can you tell us with whom you were there in [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q. Okay. Were you yourself ever a member of the Kosovo Liberation
11 Army in 1999?

12 A. No. No.

13 Q. Please wait a second until I finish the question and you hear
14 the translation so that we give more time to the interpreters and we
15 don't overlap.

16 A. I apologise.

17 Q. No need to apologise.

18 So was your [REDACTED] ever a member of the KLA?

19 A. No.

20 Q. Do you know whether there were KLA units operating in your area,
21 so between [REDACTED] in 1999?

22 A. Yes.

23 Q. And do you know which specific units these were?

24 A. I don't understand.

25 Q. Do you know if -- you said that there were units, KLA units,

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1 [REDACTED] and my follow-up question was whether you

2 knew which units these were.

3 A. Yes. There was a unit in the village of [REDACTED]

4 Q. Do you know the specific unit, the name, or the function?

5 Anything else you remember. And if you don't, it's not a problem.

6 A. Yes, it was a unit of the Brigade 153 in the village of Zllash.

7 Q. And were you aware of how the KLA was organised in your area
8 besides the name of the unit?

9 A. No.

10 Q. Did you know any other unit besides the Brigade 153 that you
11 mentioned?

12 A. No. I don't remember.

13 Q. Okay. Mr. Witness, what happened to you, if anything, in
14 April 1999 while you were in [REDACTED]

15 A. Yes, I remember it was 1 April 1999.

16 Q. What happened on 1 April 1999?

17 A. May I mention the name?

18 Q. Yes, can you. We are still in private session, so no one
19 outside of this courtroom will hear us.

20 A. That's okay.

21 Around 11.00 in the morning, three people came over to the
22 village of [REDACTED] where we were living at the time. I was in the
23 street. They inquired, asked me questions about [REDACTED]
24 [REDACTED] Those three people were [REDACTED] from the
25 village of [REDACTED] also from the village of

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1 [REDACTED] and he

2 was [REDACTED] So they asked me where [REDACTED] was. I told them
3 that [REDACTED] was in the village of [REDACTED] at home. Then they
left.

4 Q. Did they explain why they were looking for your [REDACTED]

5 A. No, they didn't.

6 Q. And were these people you knew?

7 A. Yes.

8 Q. In what capacity, if any, they came to see you?

9 A. I don't know. They drove a green Mercedes, a four-door car. I
10 think it was a 200 Mercedes. And they were wearing KLA uniforms.

11 Q. Do you know the unit to which they belonged?

12 A. Yes. They belonged to unit 153.

13 Q. Do you remember the colours of their uniforms?

14 A. Yes. Black uniforms with a KLA insignia.

15 Q. Which [REDACTED] if you remember, were present when
16 these three men arrived?

17 A. They had been to [REDACTED] first. They asked [REDACTED]
18 [REDACTED] When they left where [REDACTED] I happened to
19 be in the street. I don't know what they talked to them, but I think
20 they had asked them whether they needed any aid.

21 Q. With whom were you when you met them?

22 A. I was with a friend of mine.

23 Q. Do you remember the [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 A. Yes. Yes, yes, they were [REDACTED]

2 Q. When these three men asked you for [REDACTED] did they
3 show you any document, any paper?

4 A. No.

5 Q. And you said you knew that these men belonged to Brigade 153.
6 Do you know what position, you mentioned [REDACTED] had in the
7 KLA? I mean his official position? Did you know that?

8 A. I knew [REDACTED] from before. He was [REDACTED] of
9 Brigade 153 in Zllash.

10 Q. This is according to your knowledge. This is what you remember
11 of his role; right?

12 A. Yes, yes.

13 Q. What did you tell them when they asked for your [REDACTED]

14 A. I told them that he was home in the village of [REDACTED]

15 Q. And what did they do then?

16 A. They left on their way.

17 Q. Do you know what happened next, after they left?

18 A. The following day, I realised.

19 Q. Do you know whether, in fact, they went to [REDACTED] to look for
20 [REDACTED]?

21 A. No, I didn't know.

22 Q. When you didn't know? When is it that you did not know whether
23 they went to [REDACTED]?

24 A. On the same day. On the same day.

25 Q. Did you find out at any stage whether they, in fact, went to

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1 [REDACTED] to look for [REDACTED]?

2 A. No, I learned about it the following day.

3 Q. Can you tell us what you learned about it and from whom, if you
4 remember.

5 A. The following day, I went home in [REDACTED] I met [REDACTED]
6 [REDACTED] He told me that [REDACTED] had been taken the day before
7 by three people who were -- who had been -- I mean, the persons were
8 [REDACTED] and two other people. My [REDACTED] had asked them what
was

9 the reason for that, and they had told him that they wanted to
10 interview him and then they would let him free.

11 Q. Okay. Did you make any efforts to try and find [REDACTED]
12 [REDACTED] after you learned this from your [REDACTED]?

13 A. Yes.

14 Q. What did you do?

15 A. Together with [REDACTED] I went to the
16 village of [REDACTED] the following day. I met with [REDACTED] There
was
17 a KLA post in the village of [REDACTED] That's where I met with
18 [REDACTED] And we talked about the [REDACTED] I asked him what the
19 reason to take him was. He - [REDACTED] that is - told us that they
only
20 wanted to have an interview with him and they would let him free.

21 Q. Do you remember where this KLA post was in the village of
22 [REDACTED]

23 A. Yes.

24 Q. Where was it?

25 A. [REDACTED]

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1 Q. Do you remember what type of KLA post that was?

2 A. It was near the road to the left. [REDACTED]

3 [REDACTED] There were

4 around ten -- five, five or six soldiers, and [REDACTED] was one of
5 them.

6 Q. Were you aware of all of the KLA locations or posts in your
7 area?

8 A. Not at the beginning.

9 Q. And why did you go there? Why did you go to see [REDACTED]
10 specifically?

11 A. To inquire about [REDACTED]

12 Q. Was it because you knew, as you saw him and as [REDACTED]
13 told you, that [REDACTED] was one of those who took [REDACTED]
14 Was it because of that that you went to see him?

15 A. Yes.

16 Q. In that occasion, when he gave you the reasons why they took
17 [REDACTED] did he show you any document, any order of arrest,
18 anything,
19 to justify that?

20 A. No. I asked him to show me an arrest warrant. He replied that
21 it was an order.

22 Q. Did he mention an order by whom or did he only say it was an
23 order?

24 A. No, he didn't mention. He only said, "It's an order."

25 Q. What happened next? What did you do after this meeting with
26 [REDACTED]

27 A. On the same day, we went back to [REDACTED] together with
28 [REDACTED]

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1 [REDACTED]

2 Q. Did you later make any other attempt to try and find [REDACTED]

3 [REDACTED]

4 A. Yes.

5 Q. Can you tell us about it, what you did?

6 A. On the following day, on 5 April 1999, which was [REDACTED]

7 [REDACTED] and I went to the

8 village of [REDACTED] Nobody stopped us on the way. Then we

9 continued our way to Zllash. On the road from [REDACTED]

10 we encountered [REDACTED] He was in a black jeep together with four

11 other soldiers. [REDACTED] stopped [REDACTED]

12 Q. You said you went to [REDACTED] and then you "continued our way

13 to Zllash." And in between these two places, you encountered
14 [REDACTED]

14 My question is: Why were you on your way to Zllash?

15 A. Earlier I had asked around, villagers, where the headquarters of

16 the KLA was, in addition to the village of [REDACTED] and they had

17 told me that it was in Zllash.

18 Q. And had you ever been to Zllash before?

19 A. No, I had never been there.

20 Q. And did you know the location of this headquarters that people

21 told you about? Did you know where it was?

22 A. Not at the time, no.

23 Q. So you were on your way to Zllash because you knew there was a
24 headquarters of the KLA there.

25 A. Yes.

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All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 Q. And what did you want to do in Zllash?

2 A. We met with [REDACTED] on our way [REDACTED] as I told
3 you earlier. [REDACTED] stopped the car. He got off the jeep. We
4 asked
5 him whether we could see [REDACTED] because [REDACTED] on that
6 day. [REDACTED] said, [REDACTED] is in the KLA [REDACTED] zone."

7 We exchanged some words with him and then he grabbed [REDACTED]
8 [REDACTED] by [REDACTED] into the
9 jeep. I stopped him and I said, "No, you can't take [REDACTED]
10 then told us that we would never see [REDACTED] His mates stopped him
11 and told him, [REDACTED] leave it, let's go on our way." And that's
12 what they did.

13 Q. Okay. So this was on the road between [REDACTED]
14 right?

15 A. Yes.

16 Q. Did you continue to Zllash that day or not?

17 A. Not on that day.

18 Q. And how were you about to go? [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. And did you know where to go exactly?

22 A. No.

23 Q. And so I take it that you did not know yourself where KLA units
24 or where this headquarters was located in Zllash, did you?

25 A. No, I didn't know.

26 Q. What happened next?

Examination by Ms. D'Ascoli

All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 staying?

8 A. Yes.

9 Q. So I understand that it was [REDACTED] who went to -- who
10 went to see whether [REDACTED] could be free so that he could
participate

11 into the [REDACTED] I'm rephrasing your -- the question [sic] you
gave

12 at lines 17 to 21 of today's transcript, just for our records.

13 A. Yes.

14 Q. So it was [REDACTED] who went?

15 A. Yes.

16 Q. You were not with him; right?

17 A. No.

18 Q. Okay. I will stick to asking questions that relate to what you
19 did personally, what you experienced personally.

20 Did you make any other -- did you personally make any other
21 efforts to find [REDACTED]

22 A. Yes.

23 Q. Can you tell us about it?

24 A. Yes. [REDACTED] village of

25 Zllash and I found the KLA headquarters. At the entrance, I was

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All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 stopped by the guard, by the guard of the headquarters. I talked to
2 him and I asked him whether I could see [REDACTED] The name of
3 the guard was, if I'm not wrong, [REDACTED] because I can't
4 remember it right now. He told me that I should make a request to
5 see [REDACTED] Then I went back home.

6 On the following day, I wrote the request and I gave it to the
7 same person, and he told me to go there in two days for an answer. I
8 went back in two days, and I got no answer. Then I went back home.
9 I was told that [REDACTED] was a soldier [REDACTED] a KLA soldier
10 [REDACTED]

11 And I was told to write another request again in two or three
12 days, I don't remember it exactly. I went over there. I wrote
13 another request. I met with [REDACTED] who was called
14 [REDACTED] He told me again - that is [REDACTED] again - told me to
15 write down a request. I wrote it down and I submitted it the
16 following day or in two days, I don't remember, and I was told go
17 back there again in two days for an answer, but I never got an
18 answer.

19 Q. At the beginning of your answer, line 15, you say -- you said
20 that the day after [REDACTED] which you -- which you said there was
21 [REDACTED] you [REDACTED] the village of Zllash
22 and found the KLA headquarters.

23 So this was the first time that you had gone to Zllash and visit
24 a KLA location there?

25 A. Yes. Yes, it was the first time.

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All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 Q. And I take it it's not a location you knew before; right?

2 A. No, I had never been there until that time. I'd never been to
3 the village of Zllash.

4 Q. Mr. Witness, was there a Serb offensive in your area in or
5 around April; if you remember?

6 A. Yes.

7 Q. I know it's been a long time. Do you have -- could you locate
8 it in time in April, whether it was beginning, middle, end? If you
9 can.

10 A. If I remember it well, because a long time has passed in the
11 meantime, I think it was 19 of April. That's when the Serb offensive
12 took place in the village of Zllash.

13 Q. Do you remember where you were back then around -- in or around
14 19 April?

15 A. Yes. We were back home at the village of [REDACTED] together
with

16 [REDACTED]

17 Q. What happened that day, if you remember anything specific?

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. Do you know who were these people? Did you know any of them?

22 A. Yes, I knew one of them.

23 Q. Do you remember the name? Again, we are still in private
24 session so it's okay to go into these details.

25 A. Yes. I remember one name, [REDACTED] He lives in

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1 [REDACTED] Then there was [REDACTED]

2 moment. And there were a couple of other people whose names I didn't
3 know.

4 There were about seven to ten people who came from Zllash prison
5 to [REDACTED] and we fed them.

6 Q. Did you at any point learn the names of the others? And do you
7 remember them by chance?

8 A. No. No, I don't remember.

9 Q. No problem. Where did you say these people were coming from?
10 You mentioned Zllash; right? Can you tell us what you learned about
11 that from them.

12 A. Yes. They came from the prison at Zllash village and they had
13 been in that prison together with the [REDACTED]

14 Q. And how did you learn about this, these details?

15 A. They told us.

16 Q. What -- did they tell you anything else in addition to the fact
17 that they were coming from there? Did they say -- anyway, just
18 whether they asked -- they said anything in particular.

19 A. Yes.

20 Q. Just tell us what you remember, in general.

21 A. Yes. We asked them about the deceased, whether they had seen
22 [REDACTED] They answered yes.

23 Q. Did they say where they were held in Zllash?

24 A. Yes.

25 Q. What did they say about the location? If you remember.

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All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 A. Yes, I do remember.

2 Q. If you can tell us what they said about the location. If you
3 remember any detail or the description of the location. If you
4 don't, that's okay.

5 A. Yes. They said that they were all released from the prison
6 except [REDACTED] They said they were held in a barn or a
7 cow-shed or some sort of a cellar. Or we call it, in Albanian
8 "ahur" [phoen], which is a cow-shed.

9 Q. In what conditions were these people? How did they look?

10 A. It was a horrific condition. They were exhausted. They had
11 marked on their faces, scars.

12 Q. What kind of marks or scars did they have?

13 A. From beatings and ill-treatment.

14 Q. You said "horrific condition"; line 25. Can you elaborate on
15 that? Can you explain a bit more so that we understand fully.

16 A. Yes, they had marks on their faces, on their bodies, and they
17 were exhausted and they had not been eating well.

18 Q. What about their clothes, for example? How did these look?

19 A. They were dirty. They were dirty, unwashed.

20 Q. Do you remember any other signs on their body, anything on their
21 hands? Anything you remember about signs you saw on their body
22 besides what you said already.

23 A. No.

24 Q. Did you help them or assist them in any way?

25 A. I'd like to add something, if I may, because I forgot to mention

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1 it.

2 We asked them why wasn't [REDACTED] the deceased, why
3 wasn't he released? And they said that he was not released because
4 his arms and his legs had been broken.

5 Q. Okay. So did you help them or assist them in any way?

6 A. Yes.

7 Q. What did you and/or [REDACTED] do?

8 A. [REDACTED] and I gave them food. They had dinner at [REDACTED]
9 together with us. Some of them left but one of them, and if I'm not
10 mistaken it was [REDACTED] he remained with us for two or three
11 nights.

12 The next day, the Serb offensive came and we went to [REDACTED]
13 in Prishtine, and we remained there in a cellar.

14 Q. Can you tell us what happened later, after these events?

15 A. Yes. On that day, when we went to Prishtine, I slept for one
16 night in Prishtine with [REDACTED] The next day I went back to my
17 village, in [REDACTED] I stayed there with [REDACTED]
18 and a number of other villagers.

19 Q. Can you tell us when you found out what happened to [REDACTED]
20 [REDACTED]

21 A. Sometime later, the staff of the KLA from the 153rd Brigade came
22 to our village, [REDACTED] in our neighbourhood, in
23 [REDACTED] house. At the time it was [REDACTED]
24 [REDACTED] And [REDACTED] and I went met

25 [REDACTED] and asked him, "Are you aware that [REDACTED] arrested

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1 [REDACTED] answered, "I'm sorry, I know

2 nothing about this. Ask [REDACTED] I have not been informed about
this

3 at all."

4 Q. Did you know [REDACTED] already from before?

5 Did you know who they were?

6 A. I didn't know [REDACTED] from before. They said that he come
7 from [REDACTED] perhaps I might have seen him a couple of
8 times. He is from [REDACTED] and I know him. I know him today.

9 Q. And when, for example, did you learn [REDACTED] name and role?

10 Did he introduce himself back then on this occasion?

11 A. Yes, he introduced himself.

12 Q. Did he mention role he had?

13 A. Yes. He answered, "I am [REDACTED] of the
14 153rd Brigade in Zllash."

15 Q. And when you met [REDACTED] on that occasion -- I understand
16 you know him today. But did you know him back then already or how
17 you learned his name?

18 A. I don't remember exactly. Perhaps I might have seen him a
19 couple of times earlier, before that. Once or twice.

20 Q. And do you remember if he also introduced himself on that
21 occasion?

22 A. Yes, he did introduce himself.

23 Q. So I understand, also on this occasion, you did not learn what
24 happened to [REDACTED] So when was it that you found out later
25 on?

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All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 A. After the offensive, if I'm not mistaken, after the NATO
2 bombing, [REDACTED] and I went to Zllash village.

3 Q. And why did you go there again?

4 A. To look for the [REDACTED]

5 Q. Why did you think he would be there?

6 A. Because the prisoners that were released told us that it was
7 only [REDACTED] that had remained there. Nobody else remained
8 there.

9 Q. Was your [REDACTED] body ever found?

10 A. Yes, it was found.

11 Q. Where was it found?

12 A. In a grave.

13 Q. Where was this grave?

14 A. It was about 200 or 300 metres from the Zllash prison.

15 Q. So it was in Zllash?

16 A. Yes.

17 Q. And who found it?

18 A. [REDACTED]

19 Q. By himself or with someone else?

20 A. On that day, he was alone.

21 Q. Do you know how he found this grave?

22 A. I may stray a bit from the question. When I went there with
[REDACTED]

23 [REDACTED] to the barn where they had been kept, we found [REDACTED]
ID

24 card, a jacket, his jacket, and in that barn there were some IV drips
25 for the prisoners in that barn.

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1 Q. So you're saying you, together with [REDACTED] went to the
2 barn where [REDACTED] had been kept.

3 A. Yes.

4 Q. Do you remember when was this, for example, compared to when the
5 grave was found? When in time you and [REDACTED] went to the barn.

6 A. Must have been a week or ten days before we found the grave.

7 Q. And later, you said that it was [REDACTED] alone who found the
8 grave. Did he ever tell you how he found it?

9 A. Yes.

10 Q. What did he tell you about it?

11 A. [REDACTED] went for several days on end to Zllash, to [REDACTED]
12 through the woods, to look for him.

13 Q. Did he ever explain to you how he found this specific grave? If
14 he did and you remember. Otherwise, it's not a problem.

15 A. Yes, I remember.

16 Q. Just tell us what you remember about it.

17 A. I remember [REDACTED] getting up in the morning. I think it was
18 on 5 or 6 July. Probably the 6th. And he said, "Wake up, [REDACTED]
I

19 found [REDACTED] And I asked him, "Where, [REDACTED] I think perhaps
20 somebody had told him where the grave was, but he didn't wanted to
21 put anyone in danger so he told us that he had dreamt about it.

22 Q. You said "perhaps somebody had told him where the grave was" -
23 line 12 - is this something you guessed from his behaviour or is this
24 something he actually -- [REDACTED] actually told you?

25 A. No, I just assumed. He didn't tell me.

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1 Q. So you did not know or you do not know, you did not find out
2 how, in fact, [REDACTED] [sic] had managed to locate the grave of
3 [REDACTED] correct?

4 A. [REDACTED] said that allegedly he had dreamt about it.

5 Q. So that morning he told you he knew -- [REDACTED] told you he
6 knew where the grave was located. What did you do? What happened
7 next?

8 A. Yes. We went to the place [REDACTED] told us he was and we found
9 him in that grave on 6 July 1999, if I'm not mistaken.

10 Q. So did you personally go to the location of the grave of
[REDACTED]

11 [REDACTED] together with [REDACTED]

12 A. Yes.

13 Q. Was anyone else with you, with you and [REDACTED]

14 A. Not that day, no.

15 Q. So tell us what happened that first day when you and [REDACTED]
16 went to the location of the grave.

17 A. That day, [REDACTED] and I went there and we dug the grave. We
18 saw that it was [REDACTED] there, and there were two bodies in the
19 grave. That day, we left him in the grave.

20 Q. Can you describe how you saw that it was [REDACTED] there?

21 A. Because of the clothes he was wearing, but also he had a
22 [REDACTED] and that's how we recognised him.

23 Q. How much did you have to dig the grave in order to uncover
[REDACTED]

24 [REDACTED]

25 A. It was about 20 to 30 centimetres deep, not more than that.

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All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 Q. How much did you uncover of the body?

2 A. Yes.

3 Q. What parts of the body did you uncover?

4 A. The whole body. We saw the body, [REDACTED] body, and also
5 another body which was there with him.

6 Q. And you recognised [REDACTED] you said. Did you -- was the
7 other body anyone who looked familiar to you? Did you recognise the
8 second body as well?

9 A. No, we didn't recognise him.

10 Q. Did you uncover also the other body?

11 A. No, we didn't. We left it there. We left both bodies there.

12 The next day, we went together with [REDACTED]
13 [REDACTED] went early in the morning to the OSCE office to notify them
14 and KFOR. I'm not too sure whether it was KFOR or OSCE. And they
15 only sent a person to take pictures.

16 On 6 July, we went and took the body of [REDACTED]
17 and myself, [REDACTED]

18 [REDACTED] He is also deceased. We unburied the body. And in
19 relation to the other body, we notified KFOR that there was another
20 body there, left in the grave.

21 Q. Okay. Thank you. We will go into the details of this second
22 day. I have some additional questions regarding the first time you
23 went to the grave and saw -- found [REDACTED] body and a second
24 body.

25 You said you did not recognise the second body. Could you see

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1 anything at all of this body? His features, clothes? Anything you
2 remember.

3 A. No. And I don't remember.

4 Q. That's perfectly fine. What did you do before leaving the grave
5 on this first occasion?

6 A. We covered both bodies in that grave. The first day, I mean.

7 Q. So did you leave the grave as you found it, with cover --
8 covering again with soil?

9 A. Yes.

10 Q. Thank you, Mr. Witness. I think it is time for the break, so I
11 will do that and we will continue after it.

12 MS. D'ASCOLI: Your Honour, this would be a good point to stop.
13 I notice that it is some minutes earlier, but I think it is a good
14 point in time.

15 So I will ask to go back to open session, please.

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

17 Mr. Court Officer, can you bring us into public, please.

18 [Open session]

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

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

21 Madam Court Usher, could you please accompany the witness out of
22 the courtroom.

23 Mr. Witness, we will take a break of 30 minutes. We see you
24 back at 11.30. Thank you.

25 THE WITNESS: [Interpretation] Thank you.

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1 [The witness stands down]

2 PRESIDING JUDGE VELDT-FOGLIA: I will now have also -- I will
3 now have a request for the Victims' Counsel. I will do that in
4 public. Then we will go into private for a matter, and then we will
5 go to public to adjourn for the next half an hour.

6 Victims' Counsel, you may also respond to the Rule 153 request,
7 filing F0169, paragraph 40, and your deadline is also for
8 1 December from the other week, from next week. And our question
9 would be if you also would like to have an extension of the deadline
10 considering our full hearing week this week. It is up to you.

11 MS. PUES: Thank you for your consideration, Your Honours. We
12 will be fine. We can file our observations by the 1st of July.

13 PRESIDING JUDGE VELDT-FOGLIA: December.

14 MS. PUES: Sorry. Yes, 1st of December was what I meant. Thank
15 you.

16 PRESIDING JUDGE VELDT-FOGLIA: Of course. Thank you,
17 Victims' Counsel.

18 Mr. Court Officer, could you bring us into private, please.

19 ~~[Private session]~~ [Open session]

20 THE COURT OFFICER: We're in private session, Your Honours.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you. I have been informed

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED].

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1 And my question for Defence counsel would be: Could you provide
2 us a new list with material the Defence intends to use for
3 cross-examination [REDACTED]?

4 Then we have a list, because if not, we are without lists and that's
5 not what we want.

6 MR. VON BONE: Yes. And we will also include two ERN numbers
7 that were missing on that same document.

8 We will do that shortly, after the break probably.

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

10 Mr. Court Officer, can we go back into public, please.

11 [Open session]

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

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 We will break and we will resume in 30 minutes. The hearing is
15 adjourned.

16 --- Recess taken at 11.01 a.m.

17 --- On resuming at 11 .31 a.m.

18 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. Appearances.

19 For the SPO, I see the same composition.

20 That is also for the Victims' Counsel team.

21 And the Defence counsel, I see --

22 MR. VON BONE: Mr. Pelaj will join us later.

23 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you. And

24 Mr. Mustafa is also connected with us via videolink. Very well.

25 Before I usher the witness in, I will deliver an oral order with

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1 regard to the Defence request for extension of time to respond to SPO
2 filing F0263. The Panel notes the submissions of the Defence which
3 requests an extension until Friday, 3 December 2021, to respond to
4 the rule request filed by the SPO on 19 November 2021 on account of
5 the full schedule of court hearings and overlapping Defence work
6 during current week 22 to 26 November 2021.

7 In accordance with the Rule 76 of the Rules, the deadline for
8 any response would normally be Wednesday, 1 December 2021. The Panel
9 considers that good cause is shown within the meaning of Rule 9(5)(a)
10 of the Rules. In particular, the extension request is modest, only
11 two days, and as stated by the SPO, there will be an addendum to the
12 SPO request which, therefore, requires consideration for the purposes
13 of any Defence response. Therefore, the Panel grants the request and
14 orders the Defence to file a response to filing F0263 by Friday, 3
15 December 2021.

16 This concludes the oral order.

17 Very well. Madam Court Usher, could you bring the witness in,
18 please.

19 Madam Prosecutor, please.

20 MS. D'ASCOLI: Your Honour, while the witness is being brought
21 in, just to let the parties know that I think I will be done with the
22 direct examination within this session.

23 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you very much.

24 [The witness takes the stand]

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

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1 THE WITNESS: [Interpretation] Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: I will give the floor again to
3 the Specialist Prosecution Office to continue with the requesting.

4 Madam Prosecutor, you have the floor.

5 MS. D'ASCOLI: Thank you, Your Honours.

6 Since the next questions will also pertain to identifying
7 details, may I ask the Trial Panel to go into private session,
8 please.

9 PRESIDING JUDGE VELDT-FOGLIA: Yes, of course, Madam Prosecutor.

10 Mr. Court Officer, could you bring us into private session,
11 please.

12 ~~[Private session]~~ [Open session]

13 THE COURT OFFICER: We're in private session, Your Honours.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 Madam Prosecutor, please proceed.

16 MS. D'ASCOLI: Thank you, Your Honours.

17 Q. Mr. Witness, we finished off before the break describing the
18 first time you went with [REDACTED] to the location where
19 the grave of [REDACTED] was found. And then you said that
20 there was also a second occasion in which you went, so I will now ask
21 you about that.

22 Before then, before that, can you just describe how the area
23 where the grave was looked like, the place where the grave was
24 located?

25 A. It was part meadow, part forest. I can't -- perhaps not

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All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 400 metres, but 300 metres away from the prison.

2 Q. And you refer to the -- you referred to the prison as a barn.

3 Is that what you mean?

4 A. Yes.

5 Q. So you said the second time you went again with more people.

6 Can you tell us, if you remember, with whom did you go the second

7 time you went to the location of the grave of [REDACTED]

8 A. Yes. It was [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 THE INTERPRETER: The interpreters didn't catch the first name

12 but the last name was [REDACTED]

13 THE WITNESS: [Interpretation] And then OSCE also sent over a

14 photographer.

15 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, you said that the

16 interpreter -- no, excuse me. The interpreter has said that he

17 didn't catch the first name from the [REDACTED] Could you repeat
that?

18 THE WITNESS: [Interpretation] [REDACTED]

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Witness.

20 MS. D'ASCOLI:

21 Q. Do you remember how you went to the location of the grave? By

22 which means of transport, I mean.

23 A. We rode in a tractor.

24 Q. And by "we," you mean you and [REDACTED] you mentioned?

25 A. Yes.

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1 Q. Mr. Witness, I will now ask the Trial Panel to move into open
2 session for a few questions describing how the exhumation went, what
3 you saw, et cetera. Please remember not to mention [REDACTED]
4 name or the name of -- the names of any of [REDACTED] And
5 just, you know -- just answer the questions that I ask. And, in any
6 case, don't worry because, should anything come out, we have the
7 means to correct that and redact it from the public record. Is that
8 okay?

9 A. That's okay.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor. And
11 I can add to that that, at the moment, there's nobody in the public
12 gallery, so nobody could hear anything. Good.

13 Mr. Court Officer, could you bring us into public session,
14 please.

15 [Open session]

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

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Court Officer.
18 Madam Prosecutor, please proceed.

19 MS. D'ASCOLI: Thank you, Your Honours.

20 Q. Mr. Witness, what did you do on the second occasion when you and
21 others went to the grave?

22 A. We exhumed the body. We identified that that body was [REDACTED]
23 [REDACTED] We noticed that his legs and his arms were broken and, if
24 I
25 remember it well, there were three bullet-holes at the back of his
back -- of his head.

Examination by Ms. D'Ascoli

All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 Q. Do you remember if the body was covered in anything?

2 A. Yes.

3 Q. In what? If you remember.

4 A. His clothes, but also in a blanket.

5 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, I would like to
6 go for a moment into private.

7 MS. D'ASCOLI: Yes, Your Honours.

8 PRESIDING JUDGE VELDT-FOGLIA: Mr. Court Officer, could you
9 bring us into private, please.

10 ~~[Private session]~~ [Open session]

11 THE COURT OFFICER: We're in private session, Your Honours.

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

13 Mr. Witness, I would kindly ask you not to mention [REDACTED]
14 [REDACTED] so not mention [REDACTED] That would be a better --
15 so it's not a problem. We took it away, but you just say "the
16 person."

17 THE WITNESS: [Interpretation] I apologise.

18 PRESIDING JUDGE VELDT-FOGLIA: You should not -- you don't have
19 to apologise. It's complicated for everybody and we do our utmost.

20 Madam Prosecutor, I see you standing.

21 MS. D'ASCOLI: Yes, it was just to say that I didn't mention it
22 but we will asking for a redaction of that. I'm sure Your Honours
23 already took care of that. And, yes, we will try to continue.
24 Otherwise we will move back to private session.

25 PRESIDING JUDGE VELDT-FOGLIA: Yes. And the reason I -- we went

Examination by Ms. D'Ascoli

All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 into private is just to make sure that -- yeah, it is evident why we
2 went into private. Good.

3 Mr. Court Officer, would you please bring us back into public
4 session.

5 [Open session]

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

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

8 Madam Prosecutor, please proceed.

9 MS. D'ASCOLI: Thank you, Your Honours.

10 Q. Mr. Witness, so you said you and others exhumed the body, that
11 the body was covered in a blanket. Can you describe anything else
12 you saw on the body?

13 A. When we folded the blanket out, unfolded the blanket out, we
14 noticed that his legs and his arms were broken, and we also saw that
15 there were three or four bullet-holes at his back.

16 Q. Can you tell us how you noticed that his legs and arms were
17 broken?

18 A. It was obvious. When we moved them, it was obvious that they
19 were broken. When we picked up the body, you could tell that the
20 limbs were broken.

21 Q. Can you describe any other signs you saw on the body?

22 A. Also the bullet-holes at the back of the body.

23 Q. Any other marks or signs?

24 A. No.

25 Q. What did you do with the body? You said you exhumed it. Can

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1 you take us through the steps, please. And please remember we are in
2 open session.

3 A. We exhumed the body and we put the body into a coffin.

4 Q. How did you leave the grave, the area of the grave, when you
5 left, after moving the body?

6 A. Another body was there, remained there. We covered it and we
7 informed the OSCE or KFOR.

8 Q. So I understand you did not exhume the other body; right?

9 A. No, we didn't.

10 Q. And did you leave the soil, the grave, you said, covered? So
11 does that mean in the same way you found it?

12 A. Yes.

13 Q. Did this second time, did you see this second time any --
14 anything, any details regarding this other body that was in the
15 grave?

16 A. No.

17 Q. So I understand, the other body was not uncovered at all, in any
18 parts?

19 A. It was covered in a blanket.

20 Q. Was it covered in -- you said a blanket. Was this a similar
21 blanket to the one that covered the first body?

22 A. Yes. No. No, there are two separate blankets. One blanket for
23 one body.

24 Q. Could you tell whether it was a male or female body?

25 A. I don't remember.

Examination by Ms. D'Ascoli

All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 Q. That's fine.

2 MS. D'ASCOLI: Your Honours, could we please go into private
3 session because the next set of questions will again imply
4 identifying details, please.

5 PRESIDING JUDGE VELDT-FOGLIA: Mr. Court Officer, could you
6 bring us into private session, please.

7 ~~{Private session}~~ [Open session]

8 THE COURT OFFICER: We're in private session, Your Honours.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Court Officer.
10 Madam Prosecutor, please proceed.

11 MS. D'ASCOLI: Thank you, Your Honours.

12 Q. Mr. Witness, you mentioned that -- you said at line 19, 20 of
13 today's transcript, "We informed the OSCE or KFOR."

14 My question is, if you remember, who did that?

15 A. [REDACTED] did.

16 Q. Okay. Thanks. You said that the body was put in a coffin.
17 Where was the body of [REDACTED] brought or buried to?

18 A. We buried him on [REDACTED] in [REDACTED] in
19 [REDACTED]

20 Q. So this is the [REDACTED]

21 A. In the graveyard plot pertaining to [REDACTED]

22 Q. Okay. Was the body ever removed from this [REDACTED] in
23 [REDACTED]

24 A. No.

25 Q. Was it ever exhumed or forensically analysed by any

Examination by Ms. D'Ascoli

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1 international agencies, like KFOR, OSCE, UNMIK, as far as you know?

2 A. No. No, this was not done.

3 Q. Mr. Witness, I'm now going to show you three documents, three
4 death certificates that you brought during one of the interviews with
5 the Specialist Prosecutor's Office.

6 MS. D'ASCOLI: Can I please ask Mr. Court Officer to call up
7 document marked with ERN 077823-077828, RED3. This document is
8 listed at tab 8 of the list of exhibits for this witness. If can I
9 please have page 3 on the screens.

10 Q. Mr. Witness, do you see -- can you see this document on the
11 screens?

12 A. Yes.

13 Q. Can you tell us what it is and whether you recognise any
14 handwriting on the top part of the document?

15 A. Yes. This is the death certificate of [REDACTED]
16 [REDACTED]

17 Q. Do you recognise the handwriting on the top part, right-hand
18 side, close to the 077 number in red? Do you recognise that
19 handwriting?

20 A. No.

21 Q. Is this one of the documents you brought to the interview with
22 the Specialist Prosecutor's Office?

23 A. Yes, it is.

24 Q. Isn't the signature on the top part your own one? Maybe it's
25 not visible.

Examination by Ms. D'Ascoli

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1 MS. D'ASCOLI: Make we can enlarge it a bit. Just under
2 24 August 2020 on top.

3 A. I can see it now.

4 MS. D'ASCOLI:

5 Q. Do you recognise that?

6 A. Yes, I do. This is my signature.

7 MS. D'ASCOLI: Can we move to the next page, please.

8 Q. This is another death certificate; correct? Is it one of those
9 you also brought --

10 A. Yes. Yes, it is. It is [REDACTED] certificate.

11 MS. D'ASCOLI: Can we move to the next page, please.

12 Q. What about this other certificate, sir?

13 A. This is the death certificate pertaining to [REDACTED]
14 [REDACTED]

15 Q. Can you tell us where these certificates, where they were
16 obtained from?

17 A. From the local office in [REDACTED]

18 Q. And do you confirm that these three certificates we looked at
19 are copies of the original documents you brought to the interview
20 with the Specialist Prosecutor's Office?

21 A. Yes.

22 Q. Mr. Witness, I will now move to the last set of questions of my
23 examination today.

24 So after the exhumation and burial of the body of [REDACTED]
25 [REDACTED] did you have any fears, any concerns connected to what had

Examination by Ms. D'Ascoli

All redactions applied are pursuant to Orders F493, F509 and CRSPD107

1 happened to him, to [REDACTED]

2 A. Yes, we have fear even today.

3 Q. Can you elaborate on that?

4 A. Well, we have always lived in fear, in stress. I don't know how
5 to describe fear.

6 Q. And what was the impact that [REDACTED] had on you and
7 [REDACTED] in the months, years after the event?

8 A. The consequences were horrible. We do not feel free to go to
9 work, to go to the city.

10 Q. And in terms of how that affected you personally?

11 A. Yes, it has affected me personally a lot. I have always lived
12 in fear and under stress.

13 MS. D'ASCOLI: Your Honours, I will just consult for a few
14 minutes with my colleagues to see whether there's anything else we
15 want to cover.

16 PRESIDING JUDGE VELDT-FOGLIA: Okay. Please proceed.

17 [Specialist Prosecutor confers]

18 MS. D'ASCOLI: Thank you, Your Honours. I don't have further
19 questions, so we can go back to open session and I will say that
20 that's the end of my direct examination.

21 PRESIDING JUDGE VELDT-FOGLIA: Mr. Court Officer, could you
22 bring us into public session, please.

23 [Open session]

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

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

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1 Madam Prosecutor, you have the floor.

2 MS. D'ASCOLI: Thank you, Your Honours.

3 Q. Mr. Witness, that was -- those were my questions and I don't
4 have further questions for you at the moment.

5 MS. D'ASCOLI: Thank you, Your Honours.

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

7 For reasons of organisation, we are going to have a slight
8 change of the programme, and that means that it is my intention to
9 have a break now for lunch till 1.30 or a quarter to 2.00 and then we
10 continue with the interrogation, starting with the Victims' Counsel,
11 and then with the Defence counsel.

12 Madam Court Usher, could you please usher the witness out of the
13 courtroom.

14 Mr. Witness, we will now have a lunch break till quarter to
15 2.00.

16 THE WITNESS: [Interpretation] Okay.

17 [The witness stands down]

18 PRESIDING JUDGE VELDT-FOGLIA: We will now break and resume at a
19 quarter to 2.00 --

20 MR. VON BONE: Excuse me.

21 PRESIDING JUDGE VELDT-FOGLIA: Oh. We don't adjourn yet.
22 Please, Defence counsel. You have the floor.

23 MR. VON BONE: Yes, Your Honour, thank you very much. If it
24 would be for the Defence, it would be our preference that we start
25 questioning with this witness tomorrow, as we have a little bit more

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1 time to prepare and to -- yeah, just that, actually.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you, Defence
3 counsel.

4 [Trial Panel confers]

5 PRESIDING JUDGE VELDT-FOGLIA: Then my next question would be to
6 the Victims' Counsel. What is your position on this with regard to
7 your own questioning for today?

8 MS. PUES: I would be ready to pose my questions either after a
9 short break now or after the lunch break, and I don't envisage that
10 possibly to take longer than half an hour more or less. Probably
11 even less given that some of the impact of the crime has been covered
12 by the Prosecution questions already.

13 PRESIDING JUDGE VELDT-FOGLIA: Okay, very well. Thank you.
14 Then we will proceed -- oh, Madam Prosecutor, please.

15 MS. D'ASCOLI: Just in relation to the Defence counsel's
16 request. Unless good cause is shown, I think our preference would be
17 that we continue today, or at least that we start cross-examination.

18 PRESIDING JUDGE VELDT-FOGLIA: Okay. Would you like to --
19 Victims' Counsel, please.

20 MS. PUES: Well, there is one aspect -- are we in open or
21 private session?

22 PRESIDING JUDGE VELDT-FOGLIA: We are in public session.

23 MS. PUES: In that case, may I request switching to private for
24 a moment, please.

25 PRESIDING JUDGE VELDT-FOGLIA: Mr. Court Officer, could you

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1 bring us into private session.

2 ~~{Private session}~~ [Open session]

3 THE COURT OFFICER: We're in private session, Your Honours.

4 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel, please proceed.

5 MS. PUES: Thank you very much.

6 Well, I can add that from the perspective of both witnesses who
7 are testifying this week, they're both keen to go back as soon as
8 they can because they need to basically [REDACTED]
9 [REDACTED] which is something they're both very concerned about. And
10 therefore for the well-being of both witnesses who, I believe,
11 [REDACTED] a sort of structure of questioning that is as
12 timely as possible and as short as possible is warranted. And,
13 therefore, if we can keep it as compact, within a day, within a day
14 and a half, as possible, that would be very beneficial for their
15 well-being. Something which I think is important to take into
16 consideration.

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

18 Defence counsel, would you like to submit something more?

19 MR. VON BONE: Well, Your Honour, I think if we would cover
20 tomorrow's morning session, then I think probably we will finish by
21 that time. So I would say we would probably cover it until 12.30 or
22 so. I think that would be -- that we'd finish our questioning. So I
23 don't think that it really causes a big disruption of anything, and
24 it's just that we have a little bit more time to prepare,
25 transcripts, in relation to some of the issues that are brought up,

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1 so that's why I would like to do that. I think maybe - I'm not sure,
2 but usually the Panel asks questions too - we can finish probably
3 tomorrow with this witness.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.
5 Madam Prosecutor, please.

6 MS. D'ASCOLI: Yes. It's in relation also to the list of
7 documents notified. We can probably do this just before the
8 beginning of cross-examination and let the time first to the
9 Victims' Counsel for her examination. But we also had some remarks
10 about the documents listed and the way the Defence counsel plans to
11 put these statements. So maybe we can also discuss that before the
12 beginning of cross-examination.

13 PRESIDING JUDGE VELDT-FOGLIA: I think it would be a good idea
14 if the Prosecution would already at this moment in time share its
15 observations on this point because then we can consider them.

16 MS. D'ASCOLI: Of course, Your Honours. We are in a private
17 session, so I will do it in a private session because of the nature
18 of remarks.

19 PRESIDING JUDGE VELDT-FOGLIA: To be honest, a part of our
20 discussion could have been done in public, I realise, and my
21 attention was also called to it, but I didn't want to interrupt that
22 we were discussing it. So now we are in private and please proceed.

23 MS. D'ASCOLI: Thank you, Your Honours.

24 It is in relation to the fact that the list of documents for the
25 cross-examination of this witness lists a number of transcripts and

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1 statements of protected witnesses before the Court. So we have --
2 okay, leaving aside, of course, the weight that such exercise could
3 have, which is, you know, something that, of course, we leave to the
4 Trial Panel, we would expect the Defence counsel to put questions in
5 a general way so that those questions do not identify specific people
6 as being witnesses before this Court.

7 So since it is not clear to the SPO the way in which transcripts
8 and statements of protected witnesses in this case can be used, the
9 extent to which this is material that can be put to another witness,
10 we wanted to raise those issues so that it is clear in which way --
11 you know, the limits within which this can be done. And I said,
12 again, leaving aside matters of weight of such an exercise. Thank
13 you.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor. You
15 have brought it up and it is a point that the Panel would also have
16 been raising in order to discuss it, so thank you for your views.

17 Victims' Counsel, would you like to bring in submissions on this
18 point?

19 MS. PUES: Not at the moment, Your Honour.

20 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, would you --
21 could you give your view or do you want to comment on this?

22 Oh, Madam Prosecutor, you're standing again.

23 MS. D'ASCOLI: Yes, sorry, Your Honours. I didn't -- I should
24 have added as well, in relation to the explanations of why
25 cross-examination should start tomorrow, that we still didn't hear of

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1 a good cause being shown. But that's another matter. Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. Defence counsel, the
3 question is if you would like to -- although I think you already gave
4 us an explanation why you would like to do the cross-examination
5 tomorrow, but if you could add something to that, if there is
6 something else to add, please do so.

7 And the Specialist Prosecution Office has brought forward the
8 point of how the interrogation with regard to the testimonies of the
9 protected witnesses who have testified already before this Court and
10 will do, how you were envisaging to proceed, having in mind that we
11 should not identify those protected witnesses.

12 MR. VON BONE: Well, as far as the identification of any
13 protected witness, that, of course, will not be done. And whether it
14 is done, it would be done so in private session. So that is how I
15 will proceed regarding that matter.

16 As far as the documents is concerned --

17 PRESIDING JUDGE VELDT-FOGLIA: Wait, wait.

18 MR. VON BONE: Yeah.

19 PRESIDING JUDGE VELDT-FOGLIA: Again, as far as the
20 identification of any protected witness, of course, will not done.
21 Would be done in private session.

22 The point is that the protected witness in court should not be
23 aware of the identity of the testimonies of the protected -- not of
24 the testimony but of the names of the protected witness you are
25 putting forward to him to comment on. So it's a delicate question

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1 because sometimes you cannot just ask "did he say that," because then
2 the other person would know that, the witness know, yes, it's that or
3 that person.

4 So it's not only about going into private session. It's much
5 more than that.

6 MR. VON BONE: Well, I can say on that issue that we will most
7 probably ask who has visited the house of this particular witness.

8 Your Honour, are we in private session?

9 PRESIDING JUDGE VELDT-FOGLIA: Yes, we are.

10 MR. VON BONE: Okay. And in relation to that, I would simply
11 try to establish with this witness whether he has noticed or made any
12 observations regarding the people who have visited this -- the house
13 of this witness. And that is upon the arrival of the people who were
14 released, without mentioning those people's names. He --

15 PRESIDING JUDGE VELDT-FOGLIA: And without saying --

16 MR. VON BONE: And without saying the pseudonym or anything.
17 But obviously there is some people that the witness spoke about, and
18 I believe that there was also another person that he spoke about,
19 that he knew that person. And it is just the observations that he
20 has regarding those people that we want to clarify on that issue.

21 That is for, I think, most of the people that are listed --

22 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel --

23 MR. VON BONE: Yes.

24 PRESIDING JUDGE VELDT-FOGLIA: I like to give -- to answer you
25 in order to have a discussion on this. So then you --

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1 MR. VON BONE: I will not [overlapping speakers] --

2 PRESIDING JUDGE VELDT-FOGLIA: You should not say, "This person
3 said that he was at your place."

4 MR. VON BONE: No, no.

5 PRESIDING JUDGE VELDT-FOGLIA: "Can you confirm that?" That
6 would not be a way to approach this.

7 MR. VON BONE: Unless it is a person that he has named in his
8 previous statements before by himself. Then it is obvious that that
9 person might have been attending or not attending.

10 PRESIDING JUDGE VELDT-FOGLIA: Okay. I have --

11 MR. VON BONE: We do know -- we can go about in age difference
12 between people that were coming to the house, length, description of
13 such people, in order to be at a later stage able to, well, see who
14 this person might mean. For sure -- excuse me, Your Honour. For
15 sure he has mentioned one person that he mentioned.

16 Sorry. I just need something to drink.

17 PRESIDING JUDGE VELDT-FOGLIA: Please take a little bit of
18 water, and in the meantime, I first give the floor to the
19 Victims' Counsel because she was already standing before.

20 Victims' Counsel, please.

21 MS. PUES: Yes, Your Honour. Thank you very much.

22 I have two remarks, and maybe it is quite useful that we are
23 discussing the Defence's examination here at the moment in private to
24 avoid any unnecessary interruption when the Defence is conducting the
25 examination.

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1 There is one point where I want to emphasise, given the
2 vulnerability of the witness, and I think everyone in the room can
3 feel the pressure he is under, that the Defence -- or that
4 Your Honours may remind the Defence of the need to avoid any
5 unnecessary repetition. We have heard this morning already quite
6 extensively what the witness has said about the day when the group of
7 people came to his house after the release from the prison. Of
8 course, there is, I think, one specific question that the Defence may
9 have with regard to who attended, given that specifically one name
10 was mentioned by the Defence -- by the witness.

11 Now, it is one thing to potentially ask or confront the witness
12 with his own statement in which he mentions this name and says
13 something along, "Yeah, I remember," or "I can't recall off the cuff
14 just now." But it is another thing then - and I think this is what
15 would be prohibited - to say, "This particular person has told us
16 here" --

17 PRESIDING JUDGE VELDT-FOGLIA: But that I -- Victims' Counsel, I
18 already I said that. So I think that we have discussed and that's
19 clear. That's clear. For me, at least, I said that to the Defence
20 counsel very explicitly.

21 MS. PUES: Okay, thank you. In that case -- because for me,
22 what the Defence said, it did sound as if the mere fact that a name
23 has been mentioned may then permit him to also refer to the
24 transcript with the statement of that specific witness.

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

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1 Madam Prosecutor.

2 MS. D'ASCOLI: Thank you, Your Honours. Yes, we had two points.

3 The first was along the same lines as those raised by the
4 Victims' Counsel. It wasn't clear to me that the exercise that the
5 Defence counsel was going to get into implied not using at all the
6 statements. So when the Defence counsel said at line 16/17 today,
7 "Unless it is a person that he has named," meaning that the witness
8 has named, "in his previous statements before by himself."

9 So let's just be clear that this still -- the fact that the
10 witness knew the name of a certain person and mentioned that name,
11 this still doesn't allow us or the Defence counsel in
12 cross-examination to put to the witness the statement before this
13 Court of that person whose name the witness knows and to identify him
14 as a witness, not only in these proceedings but also as a witness who
15 previously gave statements whatsoever.

16 So that was a point of clarification, along the same lines that
17 the Victims' Counsel had.

18 And then the follow-up is that then it is still not clear to the
19 SPO what -- the extent to which the Defence counsel intends to use
20 transcripts of other witnesses because if the purpose was to clarify
21 certain aspects of the witness evidence, then the SPO doesn't see the
22 need to notify those transcripts.

23 So I think we haven't clarified yet what use will be made of
24 transcripts or statements of other witnesses. Thank you.

25 PRESIDING JUDGE VELDT-FOGLIA: But could you be, Madam

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1 Prosecutor, for me a little bit more specific. Because, and then I
2 also look to the Defence counsel and I hope you will agree with me,
3 that it's clear that you can -- you will not or you should not put to
4 the witness any information from statements of witnesses that have
5 testified before this Court or have given an SPO -- statement before
6 the SPO that allows the witness here in our courtroom today to
7 identify from whom that information is coming. I mean, there we
8 agree on --

9 MR. VON BONE: [Microphone not activated] We agree.

10 PRESIDING JUDGE VELDT-FOGLIA: I mean, there is no doubt on
11 that. So I think that point is clarified. That's one part of the
12 statements that were listed on the list of the Defence that they
13 intend to use for cross-examination.

14 But there are other witness statements too on that same list.
15 Are you referring to those? And if you are referring to those, I
16 don't exactly know what your question is, Madam Prosecutor.

17 MS. D'ASCOLI: No, no, Your Honours. I was referring to
18 statements and transcripts of protected witnesses in this case.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. Then I think that, on that
20 point, that is clarified.

21 I still have a question for the Defence counsel. And I noticed
22 that you were giving submissions, so maybe you would like to add
23 something more to what you wanted to share with the Panel and the
24 parties -- the SPO and the Victims' Counsel.

25 But the question I still have, and that's -- sorry, Defence

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1 counsel, that's more for the SPO. Does the SPO in this regard object
2 to confronting this witness, W04391, with the SPO witness statement
3 of [REDACTED] That it would be clear for our
4 witness today in court that we are talking about them, because both
5 [REDACTED]

6 Is there an interest not to disclose that?

7 MS. D'ASCOLI: No, Your Honours, that is -- I mean, it is clear
8 that the witness on the stand knows about [REDACTED] testimony and
9 knows about the statements that [REDACTED] gave, although, of course,
10 he might not know the details of these statements.

11 Again, I think it's a matter that goes just to the weight of the
12 exercise. Ultimately it is Your Honours', the Trial Panel's duty in
13 terms of assessing the credibility, consistencies, et cetera, of the
14 witnesses. So it is just about -- it was just about not identifying
15 witnesses and making sure that it doesn't come out that other people
16 have been giving statements, whether to the SPO -- even if they're
17 not being used yet or they have not been used at all.

18 But in relation to the two witnesses that Your Honour has
19 mentioned, that's okay.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good, very well.

21 Let me see. What we now will do. It's now half past 12.00.

22 I will first go into public session.

23 [Open session]

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

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

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1 What we will do now is, I propose to break till 2.00. Then we
2 have -- then we will give some guide-lines just to be clear and to
3 sum up also in public where the Panel stands with regard to the
4 examination of -- of using the material proposed by the Defence,
5 because we have been discussing a lot in private but I think it is
6 very important that this is made clear where the parties stand and
7 the Victims' Counsel and where the Panel stands. So with a view to
8 our public function that will then be set out.

9 Then I will give the floor to the Victims' Counsel to proceed
10 with her questioning.

11 And then what we will do, taking into consideration that the
12 questioning by the SPO has been shorter than foreseen and I think
13 it's not -- it's good to start tomorrow at 9.30 with the
14 cross-examination by the Defence counsel. And I noted that you said
15 that you -- yes.

16 On the time that you will -- that will be allocated to the
17 Defence with regard to the duration of the testimony, I will come
18 back also after lunch because I think some words have to be said on
19 that too.

20 So that is it for now.

21 You will send us the list with the material. Thank you.

22 I wish you a good lunch, and then we see each other back at
23 2.00.

24 The hearing is adjourned.

25 --- Luncheon recess taken at 12.30 p.m.

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1 --- On resuming at 2.00 p.m.

2 PRESIDING JUDGE VELDT-FOGLIA: Good afternoon. We will now
3 continue with the hearing of the testimony of the witness.

4 But, first, we will do appearances. I -- yes, we are in the
5 same composition.

6 MS. D'ASCOLI: Yes, Your Honour, same composition as earlier.

7 PRESIDING JUDGE VELDT-FOGLIA: The same for the Victims' Counsel
8 team. Thank you.

9 And the Defence counsel.

10 MR. VON BONE: Fatmir Pelaj will not join us. He will be
11 joining tomorrow.

12 PRESIDING JUDGE VELDT-FOGLIA: And the rest of the composition
13 is the same. Thank you for that.

14 Before the break, we discussed in private session the issue of
15 how the parties and the Victims' Counsel should conduct their
16 examination when wishing to confront a witness with information
17 provided by other protected witnesses in this case.

18 In this respect, the SPO has submitted that this should be done
19 in a general way so as not to identify vis-à-vis the witness him or
20 herself and not only vis-à-vis the public, specific people as being
21 witnesses before this Court. And the Panel will now provide some
22 guidance on the use of prior statements or testimonies of two
23 distinct categories of individuals: SPO protected witnesses, that is
24 the first group; and third persons who provided evidence to judicial
25 authorities but were not SPO witnesses in this case.

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1 Now, with regard to the first category, the parties and the
2 Victims' Counsel shall -- and that's also for the Panel, shall pay
3 the utmost attention to the manner in which they formulate their
4 questions in which they intend to confront the witnesses in court
5 with the evidence of other SPO protected witnesses. This is so
6 because we shall not reveal the identity of SPO protected witnesses
7 not only to the general public but also to the witnesses testifying
8 in court in line with the protective measures adopted.

9 Accordingly, any reference to prior statements or testimonies of
10 the SPO protected witnesses, whether in public or private session,
11 shall not identify those witnesses. No exception is foreseen in this
12 procedure. However, the Panel is mindful that for Witness [REDACTED]
13 the
14 situation is particular. Accordingly, and noting that the SPO does
15 not object to that, the parties and the Victims' Counsel may confront
16 this witness directly with the statements of [REDACTED],
17 including mentioning their identities. The same holds true for
18 Witness [REDACTED], whom we will be hearing later this week.

19 With regard to the second category, the Panel recalls the
20 general climate of witness interference and intimidation prevailing
21 in Kosovo as well as the need to preserve the integrity of the SPO
22 investigations. Accordingly, the parties and Victims' Counsel shall
23 not refer to the names of these individuals, nor to any identifying
24 information, whether in public or in private session. Should a party
25 or Victims' Counsel wish to confront the witnesses in court with
 evidence originating from third persons such that requires revealing

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1 their identity, they must first identify a specific reason or ground
2 to do so and the Panel will decide thereafter.

3 So this is our guidance for this matter.

4 We will now proceed to the interrogation by the
5 Victims' Counsel. You informed us that you would be needing half an
6 hour, less or more.

7 And to the Defence counsel, tomorrow you will be starting at
8 9.30. And you will be allocated one session, so one and a half
9 hours, to do the cross-examination.

10 Yes. That is it for now. I will ask Madam Court Usher to usher
11 the witness in. Thank you.

12 [The witness entered court]

13 PRESIDING JUDGE VELDT-FOGLIA: Please be seated.

14 Welcome back, Mr. Witness.

15 THE WITNESS: [Interpretation] Thank you.

16 PRESIDING JUDGE VELDT-FOGLIA: I will now give the floor to the
17 Victims' Counsel for her questioning.

18 Victims' Counsel, you have the floor.

19 MS. PUES: Thank you, Your Honours.

20 Questioned by Victims' Counsel:

21 Q. And good afternoon, Mr. Witness.

22 Thank you, first of all, for your informative testimony this
23 morning. As the counsel representing the participating victims, I
24 would now like to ask you some further questions.

25 MS. PUES: But before I do so, I will ask that we move into

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1 private session, please.

2 PRESIDING JUDGE VELDT-FOGLIA: Mr. Court Officer, can we go into
3 private session, please.

4 ~~{Private session}~~ [Open session]

5 THE COURT OFFICER: We're in private session, Your Honours.

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

7 Victims' Counsel, please proceed.

8 MS. PUES: Thank you very much.

9 Q. Now, we are now in private session, which means none of the
10 information we hear here will be broadcast like it was this morning,
11 so you can speak much more freely and you can also mention names.

12 Now, there is one issue where I would like to follow up on what
13 you have been speaking about this morning. You were telling us about
14 the day when some people, as you said, from the Zllash prison
[REDACTED]

15 [REDACTED] And you were asked whether you remembered names, which
16 you could not, and I would like to refresh your memory on one
17 specific part of your interview that you gave to the Office of the
18 Prosecutor about that specific day.

19 MS. PUES: Could we please get up on the screen the interview
20 with the ERN 060723-TR-ET, Part 1, and at page 36, from line 20 to
21 roughly 23. Thank you.

22 Q. Now, Mr. Witness, you probably see both versions of the
23 transcript of that interview in front of your screen in Albanian and
24 in English. However, I'll also read to you just a very small section
25 on which I would like to ask you a question.

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1 In --

2 A. Okay.

3 Q. Okay. In the context of speaking about this specific day, when
4 the people from Zllash [REDACTED] you were asked names. And
5 now in line 20, you were asked the name [REDACTED] And you
6 answered: "Yes."

7 And the next question that was posed to you was: "What about
8 [REDACTED]"

9 And your answer to that: "That [REDACTED] -- that [REDACTED]
was in
10 prison there too."

11 Do you remember that you said that in your interview?

12 A. Yes.

13 Q. And was that correct?

14 A. Yes. Yes, and I know [REDACTED] even today.

15 Q. Thank you. In this same document on the next page --

16 MS. PUES: And could I please ask that we move to page 37,
17 line 6 and following.

18 PRESIDING JUDGE VELDT-FOGLIA: But for my understanding, the
19 document in Albanian, is that the translation? No.

20 MS. PUES: I am not sure. I can't understand Albanian.

21 PRESIDING JUDGE VELDT-FOGLIA: No. Because I don't understand
22 Albanian neither, but I think that it is surely not the same.

23 I see the Defence counsel standing. Please.

24 MR. SHALA: Yeah, I wanted that to say. So English version it
25 is not same this Albanian. So it is not corresponding the pages. In

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1 Albanian version is different page.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay.

3 Can I propose then that we use for now only the English version
4 like we have been doing and then there is, of course, interpretation
5 into Albanian and that will provide the language services we need.

6 MS. PUES: Absolutely. That's absolutely fine by me.

7 PRESIDING JUDGE VELDT-FOGLIA: Okay.

8 MS. PUES: Thank you.

9 Q. Now, Mr. Witness, so in that same interview, just a little bit
10 further on, you were further asked, and this is now line 6 on page 37
11 for your references:

12 "Did they mention a name [REDACTED]

13 And your answer was: "Yes."

14 And you were asked: "What about that name?"

15 And then: "I don't remember. I don't know."

16 But do you remember that the name [REDACTED] -- or, no, let
17 me ask differently.

18 Do you remember that you were asked whether the name
19 [REDACTED] was mentioned?

20 A. I don't remember.

21 Q. Okay. Thank you. Then we leave that. Thank you, though, for
22 your information on this.

23 And with that, let me move to questions that relate to the
24 impact of the crime on you and [REDACTED] And you already
25 mentioned this morning, when questioned by Madam Prosecutor, that you

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1 feel fear even till today. That's, in particular, transcript
2 page 46, line 14 and following. You also mentioned that you do not
3 feel free.

4 And I would like to follow up on this with some more questions.
5 And I appreciate that this might be very emotional for you. This
6 would be very, very understandable, but it's important for us to
7 fully understand how it has affected you.

8 Let me first ask you with regard to your own person, what you
9 personally have experienced, your own stress. How does this stress
10 affect you?

11 A. I can't start to describe how bad it is. I feel I'm not free.
12 I live in stress. I don't feel I can go freely onto the streets or
13 go to work because of stress.

14 Q. Does this feel -- or does this stress also affect your health;
15 for example, your sleep?

16 A. Yes. Yes, it has affected me. It happens that since this thing
17 happened, I can't sleep for more than two hours at night. Even when
18 the trial started here in the Specialist Court, it's only two hours'
19 sleep that I get every night. At most. I can't sleep more than
20 that. And this is only because of stress.

21 Q. And I believe that will leave you -- or how does this leave you,
22 the lack of sleep? Exhausted? Tired? I don't know. Could you try
23 to describe what this does to you?

24 A. I feel exhausted all the time. I feel weak. And every day is
25 the same. Every day.

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1 Q. Thank you. And how has it influenced the way you live your
2 life? How has it changed your way of life, for example, in any way?

3 A. Yes. Yes, my life has changed totally.

4 Q. Would you like to try to describe to us how this is the case,
5 given that we don't know how you lived before, how you have lived
6 since?

7 A. Yes, I'll try to explain.

8 Before the war, I was the happiest man in the world. Now I am
9 the weakest man in the world. I don't know how to go out. I don't
10 go to restaurants. I don't go to places to listen to music. I can't
11 go to [REDACTED] or [REDACTED] to have a conversation with them. I
12 just stay at home. From the time that this has happened, I just stay
13 at home.

14 I don't know how to explain it any better.

15 Q. Thank you. I think you're doing well in trying to explain this
16 to us. Thank you for that.

17 And did the fear and the stress also affect your ability to
18 work?

19 A. Yes, it has affected me. I go to work at [REDACTED]
20 and if I see a car following me -- or not following me but just
21 behind me, I fear that something will happen. And as you know,
[REDACTED]
22 [REDACTED] so
23 this puts us under a lot of stress. A lot of stress.

24 Q. Thank you, Mr. Witness. Now, we also heard about [REDACTED]
25 [REDACTED] and had a brief look at the death certificate of [REDACTED]

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1 [REDACTED] today, and I'm sorry I've got to mention that. Take a deep
2 breath first.

3 How did the fate and the killing of [REDACTED] affect [REDACTED]
4 [REDACTED]

5 A. Very badly. A death is a death, but because of this case,
6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 I'm sorry, I can't describe it any further. But it's terrible.
10 I can't utter the words. And we feel very bad and we're expecting
11 for this case to be resolved.

12 Q. Could I ask you, just for me to better understand, when you say,
13 "I can't utter the words," what do you mean with that?

14 A. Because I feel distressed.

15 Q. Thank you, Mr. Witness. Thank you for that.

16 Now, possibly equally difficult is my question, then, not just
17 with relation to [REDACTED] but also with regard to [REDACTED]
18 [REDACTED]

19 [REDACTED] Were they --

20 A. Yes.

21 Q. -- also affected; and, if so, how?

22 A. Yes, they were affected. Because [REDACTED] was threatened
23 on [REDACTED] on the street. And that affected me a lot. And
24 [REDACTED] has left home.

25 Q. What happened to [REDACTED] How was he threatened?

26 A. [REDACTED]

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1 [REDACTED]

2 [REDACTED].

3 [REDACTED]

4 [REDACTED] I will take this justice to the end. I will
5 seek justice to the end.

6 Q. Did they also threaten [REDACTED] himself? Because now you
7 mentioned they, as I understood you, requested you to leave the
8 country. Perhaps you can recall what they said to [REDACTED] or what
9 [REDACTED] said to you?

10 A. No. They threatened [REDACTED] on my behalf, "Take care of
[REDACTED]

11 [REDACTED] He didn't say anything else and he left.

12 Q. Okay. Thank you. So just to be clear on that, do you relate
13 this incident to [REDACTED] and to your activities to shed
14 light on what happened to [REDACTED]

15 A. Yes, yes. That was the only reason.

16 Q. Thank you. And what about your [REDACTED]
17 How do they feel, or what is your experience on how they feel the
18 stress, the fear?

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q. As a last question, actually, already, do you -- actually, ever
23 since your [REDACTED] left or had to leave because of the threat that
24 you mentioned earlier, have you seen him again since?

25 A. No.

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1 Q. Thank you, Mr. Witness. Those were my questions. Thank you
2 very much. And I hope you manage to have a bit of a break later.
3 Thanks.

4 A. Thank you.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.
6 Mr. Court Officer, can you bring us into public session, please.

7 [Open session]

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

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 Mr. Witness, I see that it has been very demanding for you. For
11 now, we have completed the questioning of you by the SPO and by the
12 Victims' Counsel. What we will be doing now is that we will adjourn
13 till tomorrow and then at 9.30 we will continue. I hope you will get
14 some rest this afternoon and this evening.

15 Please don't discuss your testimony given so far with anybody,
16 and then we will see you back tomorrow in the morning.

17 The Court Usher will accompany you out of the courtroom.

18 [The witness stands down]

19 PRESIDING JUDGE VELDT-FOGLIA: Does the Specialist Prosecution
20 Office have anything to raise with the Panel?

21 MS. D'ASCOLI: Yes, Your Honours. Just a scheduling matter. We
22 were going to send an e-mail, but since we're here, it is probably
23 quicker to communicate it orally. We will take less time with the
24 next witness, W04390. This witness was initially scheduled for two
25 hours. So we will probably be half of that time or an hour, hour and

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1 a half, depending on whether the witness gives straightforward
2 answers or not.

3 Thank you.

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

5 Victims' Counsel, is there something you would like to raise
6 with the Panel for now?

7 MS. PUES: Thank you, Your Honours, there isn't. Thanks.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Defence counsel, do you want to raise something with the Panel?

10 MR. VON BONE: Yes, Your Honour, an entirely different issue
11 that I would like to ask.

12 In the beginning of this month, we had a witness. My counsel
13 and interpreter and investigator were at that time not able to
14 attend, and it was apparently not possible to go through a remote
15 link, videolink. And we were just wondering, would there be any kind
16 of format in which that would be possible to do that, attendance via
17 remote link in Kosovo?

18 Now, I do not know what exactly were the things, but if there
19 would be any possibility, not now but in the future if that would be
20 the issue, then, of course, that would be very helpful. Now, if
21 there is any - what can I say? - protective measure issue or issue
22 regarding whether they would be in an appropriate place for that,
23 would it be possible to let them, in, for example, Kosovo, be at the
24 location which would make it possible to do that?

25 So just it is not we want to have -- we need an answer now or

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1 so, but just we were wondering for any future occasion if that would
2 be possible, what modifications or what conditions would be possible
3 to do that.

4 That is the only issue that we wanted to raise, and that's all
5 for now.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. We
7 noted your request and we will look into it to see whether it is
8 possible and if it would be possible, under which conditions.

9 MR. VON BONE: If I may. For example, maybe there is an office
10 of the Prosecution in Kosovo that could be -- could facilitate it,
11 more or less, or a court that could do that. We are just checking
12 into the varieties of possibilities that might enable such a -- such
13 attendance.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay. Defence counsel, I will
15 come back to this matter.

16 Okay. If the parties and the Victims' Counsel have anything to
17 raise with the Panel, we will resume tomorrow.

18 I thank the parties and the Victims' Counsel, and I thank the
19 interpreters, and the stenographer, and the security, and the
20 audio-visual booth for their assistance today.

21 The hearing is adjourned until tomorrow morning, 9.30.

22 --- Whereupon the hearing adjourned at 2.34 p.m.

23

24

25