

1 Thursday, 31 March 2022

2 [Open session]

3 [The accused entered court]

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

5 PRESIDING JUDGE VELDT-FOGLIA: Good morning.

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

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

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Let us call
11 appearances.

12 Madam Prosecutor, you have the floor.

13 MS. D'ASCOLI: Good morning, Your Honours. Thank you. The
14 Specialist Prosecutor's Office today is represented by
15 Associate Prosecutor Filippo de Minicis; Case Manager Julie Mann; and
16 myself, Silvia D'Ascoli, Associate Prosecutor.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

18 Victims' Counsel, you have the floor.

19 MS. VOSENBERG: Thank you, Your Honours. Good morning,
20 Your Honours. Good morning, everybody. The participating victims
21 are represented today by myself, Brechtje Vossenbergh, co-counsel.
22 Thank you.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Defence Counsel, you have the floor.

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

1 represented by Mr. Betim Shala, my co-counsel; interpreter and
2 investigator Mr. Fatmir Pelaj; myself, Julius von Bone. Attending
3 today is also Mr. Mustafa in the courtroom.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well.

5 And for the record, you're appearing in front of Trial Panel I.

6 We will continue today with the testifying of Witness 500,
7 Mr. Borovci.

8 Madam Court Usher, can you please usher the witness into the
9 courtroom.

10 [The witness takes the stand]

11 PRESIDING JUDGE VELDT-FOGLIA: Mr. Borovci, good morning.
12 Welcome back to the Specialist Chambers.

13 Can you hear me?

14 THE WITNESS: [Interpretation] Good morning to you and to
15 everybody in the hall.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Did you have time to
17 rest?

18 THE WITNESS: [Interpretation] Yes, I did. Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Very well.

20 Mr. Borovci, I remind you that you are still under oath and you
21 have the obligation to tell the truth. We will now continue with the
22 questioning by the Prosecutor.

23 Madam Prosecutor, you have the floor.

24 MS. D'ASCOLI: Thank you very much, Your Honours. I reviewed
25 what was done yesterday, and we don't have further questions for

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1 Mr. Borovci.

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

3 Victims' Counsel, we already -- yesterday it was indicated by
4 the Victims' Counsel that you did not intend to proceed with any
5 questioning. Is that correct?

6 MS. VOSSENBERG: Yes, thank you, Your Honours. That's correct.

7 PRESIDING JUDGE VELDT-FOGLIA: Very well.

8 Defence Counsel, do you wish to proceed with the redirect
9 examination of the witness?

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

11 PRESIDING JUDGE VELDT-FOGLIA: Microphone, please.

12 MR. VON BONE: Yes, Your Honour. We have a couple of questions.

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

14 WITNESS: HAZIR BOROVCI [Resumed]

15 [Witness answered through interpreter]

16 Re-examination by Mr. von Bone:

17 Q. Good morning, Mr. Witness.

18 A. Good morning.

19 Q. Yesterday, you were shown a photograph of you of Facebook. And
20 on that photograph and that posting was with Mr. Ibrahim Mehmetaj,
21 also known as Bimi to us.

22 PRESIDING JUDGE VELDT-FOGLIA: You have a reference in the
23 transcript, Defence Counsel?

24 MR. VON BONE: The reference? I have the reference of the
25 Facebook post. It's 0032571. And the reference in the transcript is

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1 of the page 79.

2 Q. In that, you were asked the question:

3 "And you told us that you and Mr. Mehmetaj are friends; right?"

4 And then your answer was:

5 "Yes."

6 Line 15 and 16 on page 79.

7 Now, the fact that you are friends with Mr. Mehmetaj,
8 Mr. Borovci, did that make any difference in anything of your
9 testimony here in court yesterday or today?

10 A. What I said yesterday, I can say today too. He was my friend.
11 We are neighbours. We grew up together.

12 Q. Yes. But my question is did it make any difference in the
13 testimony that you gave to the Court here about your whereabouts or
14 any other thing that you said here in court?

15 A. No, because, as I said, he's my friend, my neighbour.

16 Q. Did you discuss with Mr. Mehmetaj anything regarding what you
17 would testify here in court?

18 A. We have not discussed about the court, but we have discussed
19 political issues because I am an activist of the LDK and he is also
20 an activist of the PAK. So we have discussed together about issues
21 we are dealing with as entities, and we meet. We are neighbours. We
22 are friends. We grew up together.

23 Q. Right. Thank you very much. Did anybody else actually ever ask
24 you to say something that would benefit, in particular, Mr. Mustafa?
25 Did anybody ask you to say that here in court?

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1 A. No.

2 Q. Did you in your testimony that you gave -- did you in that
3 testimony that you gave told the truth?

4 A. I told the truth before you in the statement as well as
5 yesterday and today. Both then and now.

6 Q. Yesterday, there was one -- yesterday, Mr. Borovci, the
7 Prosecution asked you about the date of your arrival in Butovc. It
8 was on page 83, and it is lines 23 to 25.

9 Now, I do not want to go into that discussion again, but I do
10 want to know one thing about you -- about the time that you were in
11 Butovc. At the time that you were in Butovc, was that the time of
12 the Muslim holiday Bajram?

13 A. Yes, it was the 31st, and it -- we stayed there until 12 June,
14 when the NATO forces entered Prishtine and all over Kosovo.

15 Q. As I say, I do not care about the date. I just care about the
16 Muslim holiday event. Okay? And do you recall how, in what
17 circumstances, that Muslim holiday was celebrated, if I can use that
18 terminology within that circumstance?

19 A. Yes. In sign of respect for that holiday of the Muslim
20 celebration Bajram, then yesterday and today I have used the word
21 "celebration." But in the circumstances to which the civilian
22 population were subjected, we couldn't have a real celebration. But
23 we did have or follow that holiday.

24 But unlike our tradition as Muslims, we couldn't do that because
25 we didn't have the conditions or the means to prepare for -- we

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1 lacked the elementary conditions, but we respected it as a holiday,
2 Muslim holiday. But the situation was very serious, and I said it
3 yesterday too. And we didn't expect that a regime - that is, the
4 Serb regime - could observe that holiday when it didn't respect the
5 life of people, let alone Bajram.

6 So I tried to recount what I could about that period about which
7 I testified yesterday and today.

8 Q. Thank you very much. Mr. Borovci, have you ever had any insight
9 in the statements that Mr. Mustafa has made when he was interviewed
10 by the SPO? Yesterday, there was a portion to you shown, but my
11 question is more general. Any of the statements that he gave to the
12 SPO, have you ever gotten any insight in those statements?

13 A. I have to be clear and precise here. I didn't pay much
14 attention to the statements. It was a new thing for me. I read it
15 here, other than through the media outlets through which we were
16 informed, and portals. Otherwise, I didn't have -- didn't pay, you
17 know, special attention. Also maybe because I am convinced of the
18 purity of the figure of Salih Mustafa and his innocence, and thinking
19 that the indictment brought against him --

20 PRESIDING JUDGE VELDT-FOGLIA: Mr. Witness, please stick to
21 answering the question you were posed.

22 MR. VON BONE:

23 Q. And I think you have answered the question, Mr. Witness. Well,
24 unless I -- just to clarify. Could you just say "yes" or "no." Have
25 you had any insight in the statements that Mr. Mustafa ever gave to

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1 the Special Prosecutions Office?

2 A. Only through the portals, the newspapers. And your page. That
3 is what is published in the newspapers. Otherwise, I didn't have any
4 other information from anyone. So as I said, through the media,
5 electronic media.

6 Q. What I meant was yesterday a document was shown to you. Was
7 that the first time that you saw that document? And I mean the
8 document that Madam Prosecutor showed you. And that was a portion of
9 the statement of Mr. Mustafa.

10 PRESIDING JUDGE VELDT-FOGLIA: Do you have the reference --

11 MR. VON BONE: Yes, I am --

12 PRESIDING JUDGE VELDT-FOGLIA: -- Defence Counsel? I
13 understand.

14 MR. VON BONE: -- trying to get the reference for you,
15 Your Honour. The reference ...

16 MS. D'ASCOLI: Your Honours, if I --

17 MR. VON BONE: I think --

18 MS. D'ASCOLI: -- can be of assistance?

19 MR. VON BONE: Yes, I think it starts --

20 PRESIDING JUDGE VELDT-FOGLIA: I have also a reference here.

21 MR. VON BONE: I have -- I think it starts at page 97, where the
22 document was pulled up. It was 069404-TR-ET. It is page 97 of the
23 transcript of yesterday, line 23 and 25.

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

25 MR. VON BONE: That is where --

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1 PRESIDING JUDGE VELDT-FOGLIA: That was also the reference --

2 MR. VON BONE: Yes.

3 PRESIDING JUDGE VELDT-FOGLIA: -- I see.

4 MR. VON BONE: Yes.

5 Q. So my question was to you: Was that the first time that you saw
6 that document in your life?

7 A. Yes, it was the first time that I saw it. Yesterday.

8 Q. And do you actually know if -- do you know, actually, what the
9 context was in which the statements that you were shown were given by
10 Mr. Mustafa? Do you know the context in which these were given?

11 A. I don't know.

12 Q. And my question is can you actually know whether these
13 statements were accurate or not?

14 A. I had my reservation, because the two first weeks of April, the
15 beginning of April -- I may not be very careful in terms of one or
16 two days, but the way I said it, I had the opportunity to meet him
17 three or four other days after the 2nd and the 3rd date, that is,
18 April. But then it was the first occasion I met him -- sorry, I saw
19 him on the screen. Otherwise, I didn't know anything about him. It
20 was the first time for me to see him.

21 Q. And what you told here in court about when, in which period, you
22 saw him there in Butovc, was that correct what you stated?

23 A. Because of the time that has passed, something I may not
24 remember it. But if I say something, I am sure about it. This is
25 what I said in my statement, I said yesterday under oath, and I'm

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1 saying today too. That is accurate the way I put it.

2 Q. Thank you very much.

3 MR. VON BONE: Let me consult for a moment, Your Honour.

4 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, a remark from my
5 side. In line 17 of page 8, you say:

6 "And what you told here in court about when, in which period,
7 you saw him there in Butovc, was that correct what you stated?"

8 There has been some questioning about dates and moments in time.
9 I think this is a very general question that embarks a lot and also
10 questions that were posed in order to clarify what dates he meant and
11 what period. So I think this is kind of too large. You should
12 specify in this regard.

13 MR. VON BONE: Well, Your Honour, I actually do not seek to
14 further specify this, because I started already earlier with the fact
15 that I was not interested in the date but just in the event, and that
16 was basically what I wanted to have clarified. And that's all I
17 wanted to make sure.

18 PRESIDING JUDGE VELDT-FOGLIA: That's completely up to you.

19 MR. VON BONE: Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: But I point out to you that it's
21 a very large and general question.

22 MR. VON BONE: Yes.

23 PRESIDING JUDGE VELDT-FOGLIA: So I leave it up to you if you
24 don't want to go into details.

25 MR. VON BONE: Sure. I just want to consult something,

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1 Your Honour.

2 [Specialist Counsel confer]

3 MR. VON BONE: Thank you very much, Your Honour. We have no
4 further questions.

5 Q. I thank the witness for his statements and his testimony and
6 your time.

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

8 I now turn to the SPO. Do you wish to proceed with a rejoinder
9 examination of this witness?

10 MS. D'ASCOLI: No, Your Honours. We don't have further
11 questions. Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Very well.

13 Victims' Counsel, do you wish to re-examine the witness?

14 MS. VOSENBERG: No thank you, Your Honours.

15 PRESIDING JUDGE VELDT-FOGLIA: Then, we are at the next phase.

16 Mr. Borovci, you have been asked several questions by the
17 parties, and I ask you to bear a little bit more with us because the
18 Panel would also like to ask you some questions to get some
19 clarification with regard to your testimony in court and your prior
20 statements.

21 And I will give to the floor on my colleague on my left-hand
22 side for further questions.

23 Questioned by the Trial Panel:

24 JUDGE BITTI: Thank you, Madam Presiding Judge.

25 I have a few questions for you, Mr. Borovci, and I will refer to

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1 your statement of 31 March 2021, DSM00572. And it's page 3 of your
2 statement to the Defence Counsel. And I'm going to quote what you
3 said:

4 "We come now to the 28th of March, 1999. This was the time,
5 these days and the days before, and I tell you what I heard with my
6 own eyes and ears. Then, the 28th of March, the paramilitary forces
7 came from three different directions."

8 On the same page:

9 "All the houses here in Prishtine got abandoned. So in the 28th
10 of March, 1999, we got accommodated into some uninhabitable houses
11 and stables. Some of us, we accommodated ourselves in the house of
12 Professor Mustafa."

13 On the very same page you repeat three times, and you seem to be
14 very certain about 28 March. Could you explain why you were so sure
15 at that time?

16 A. What I said yesterday, I was certain because I connected it to
17 the holiday of small Bajram. Nothing has changed. Only this
18 placement from the 28th to the 31st. So we stayed there until the
19 31st. Thinking that 28th was the beginning of the Bajram, I put -- I
20 said 28. So on the 31st, we moved out of where we were in Velani.
21 On the 31st, people moved out of other parts of Prishtine. 31st was
22 the date when all of us were displaced, not because we liked it but
23 because we were forced to do that.

24 JUDGE BITTI: Okay. Although at that time you did not refer at
25 all to that Muslim feast in order to put the date at 28.

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1 A. I believe I referred to the Muslim feast. It is in the material
2 of the lawyer.

3 JUDGE BITTI: It is not on that page when you refer three times
4 to 28 March. It is not on the following page, DSM00573.

5 I know what you are going to say, Defence Counsel.

6 The following page when you state:

7 "And this is where you arrive on 28 March?

8 "Yes, and we stayed there in that part."

9 It is actually on the page DSM00575:

10 "When we arrived on 28th of March in Butovc, I did not meet him
11 there. We knew him from before. However, in the period, we call it
12 the little holiday of Muslims, Eid al-Adha. It was most probably on
13 that day that we were expelled."

14 So I understand also that you add a couple of days after this
15 holiday Salih Mustafa came to the professor. So it was shortly
16 after, maybe the 2nd or 3rd of April, or the first week of April.

17 I'm just wondering why, whereas you refer all the time to 28th,
18 but I think that now you have given an explanation, so I will not
19 insist on that.

20 I go now to your statement of yesterday, page 17, lines 2 to 7,
21 where the following is stated. Question:

22 "And when did you actually leave? When was that? How long
23 after that was after the 24 March NATO air strikes? Do you recall
24 the date?"

25 Answer:

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1 "Yes, I remember the date. It was the end of March. In my
2 statement, indeed, I have said 28 March. But since I am under oath,
3 we didn't leave on the 28th but at the end of March. So on 31 March,
4 we were obliged to leave Prishtine."

5 I have a question here. Why do you refer to your previous
6 statement whereas that statement at that time was not put to you by
7 the Defence Counsel?

8 A. I only described the situation, the circumstances in which we
9 had to move out and the reason and the aim why and the date. It's
10 accurate as you put it. I described the situation, the
11 circumstances, the developments, and how we came up to the point of
12 displacement at the end of March; namely, 31 March.

13 JUDGE BITTI: I understand that. But why at that particular
14 moment, responding to the question of the Defence Counsel, why do you
15 refer to your previous statement?

16 A. I referred to the date of 31st because 24 March, the date of the
17 strikes, until the 31st, every day there were important developments.
18 Not a day passed by without an important event, but I focused on the
19 main ones.

20 JUDGE BITTI: Okay. My second question, in relation to what you
21 said, is that you explained to the Defence Counsel:

22 "But since I am under oath, we didn't leave on the 28th but at
23 the end of March."

24 Why do you make this relation between being under oath and that
25 it was 28th and not 31st? Could you explain that?

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1 A. Your Honour, this is precisely the principle of justice that I'm
2 trying to demonstrate. Correcting the 28th to the 31st of March, it
3 is just to serve justice, to serve the truth. It has nothing to do
4 with hiding something. I'm just going back with my memory to the
5 events. And the displacement to Butovc from Prishtine happened not
6 on the 28th but on the 31st of March. I argued it in a just and
7 clear way, but if there is anything that is still not clear, I'm most
8 willing to help you.

9 JUDGE BITTI: Thank you. I will go back, however, now to
10 another part of your statement yesterday. It's page 23, lines 11 and
11 12. And you said:

12 "But we met, I think, during the second half of April ..."

13 But then on page 24, lines 17 and 18, you refer to meeting or
14 meetings with Mr. Salih Mustafa, and you refer to the first week of
15 April until 15th, 16th, 17th April. So did you meet with him between
16 2nd or 3rd and 17th April, or did you meet with him in the second
17 half of April?

18 A. Your Honour, if there's a mistake in the interpretation, you can
19 see that. But I'm sure what I said. On the 2nd and 3rd was the
20 first meeting whereas the other meetings -- I did not say that we met
21 in the second part. What I said was that it can be until the second
22 part of the month of April, which means until the 15th or 16th. The
23 other meetings that I had with Mr. Salih Mustafa were three or four.

24 I did not see or meet him on a daily basis. He was staying with
25 the Sopi family. I was staying with the Recica family. The location

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1 where I was positioned, that vulnerable and dangerous point, when I
2 would end my guard duty, I would go back to Recica family. There
3 were occasions when, on the way back, I would go through the house of
4 Mustafe Sopi; that is, the house of his house, because there were
5 several Sopi houses, but this one was the house of Smajl Sopi.

6 So this is what I was trying to explain. And I stated this
7 clearly yesterday, and I am explaining it further today.

8 JUDGE BITTI: Thank you. Indeed, on page 26, lines 9 and 10,
9 you say:

10 "... Mustafa stayed unless -- this I didn't see ..."

11 So you didn't see him every day. That's for sure. Thank you
12 for that.

13 My next question is: On page 35 of what you said yesterday,
14 lines 9 and 10, you explained that you were collecting information
15 and passing it to Isa Kastrati. And then you said:

16 "... they had their own line ..."

17 So there was a line of reporting within the KLA. Am I correct
18 in saying that?

19 A. Yes, that's correct. Again, here, either you did not ask for an
20 answer or it's the interpretation. First, we would pass the
21 information to Isa Kastrati - and I'm talking about the period of
22 1998 - and to Mustafe Sopi. But in 1999, we passed the information
23 to Mustafe Sopi. Meaning, I personally would pass the information to
24 Isa Kastrati, because he was a chairman of the branch, I was the
25 vice-president of the branch.

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1 Whereas Mustafe, I knew him from earlier. I've known him for 40
2 years. He was my professor. So Mustafe had connections with
3 Salih Mustafa; whereas Isa Kastrati had connection with the Llap
4 operational zone, and he had more knowledge than I and the other
5 comrades had. In case this was not clear or was not understood
6 properly by you, or in case I did not explain it properly, or in case
7 if it's the interpretation, that's why I'm repeating now what I said
8 yesterday.

9 JUDGE BITTI: No, I think now you are much clearer. Thank you
10 very much. So there was two lines of reporting. One which went to
11 Salih Mustafa, and the other one which went to the Llap operational
12 zone. That's what you are saying?

13 A. No, Your Honour. I said in the beginning, during 1999, we
14 informed Isa Kastrati. I'm trying to be -- to speak more slowly. We
15 also informed Mustafe Sopi. These two, they were not separate lines,
16 because we stayed together with Isa and with Mustafe, in Mustafe's
17 house or in the houses of other families. Whereas later I gave the
18 information to Mustafe Sopi because Isa was no longer there. He left
19 for Llap operational zone.

20 JUDGE BITTI: Okay. And do you know to whom Mustafe Sopi was
21 reporting?

22 A. We didn't know this at the time. I said this yesterday. I'm
23 repeating it today. We did not know to whom Isa or Mustafe were
24 reporting to. But the logic was that Isa had connection with the
25 Llap operational zone, because he was familiar with that area, he had

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1 friends or school friends from the past, or friends that he was with
2 in prison. And Mustafe told us that Salih Mustafa was his pupil,
3 that Salih Mustafa was imprisoned. He told us that Salih Mustafa was
4 of a good family.

5 So he told us all these things before we ourselves knew
6 Salih Mustafa. He would explain to us that he was a patriot and so
7 forth. So based on this information, we would not ask for any other
8 explanation in order to protect Mustafe and ourselves.

9 JUDGE BITTI: Thank you very much, Mr. Borovci. Thank you very
10 much.

11 I have no further questions, Madam Presiding Judge.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 What I will do with regard to the question referring to the
14 transcript on page 23, lines 11 and 12, I will request the language
15 service units if they can revise the translation with regard to
16 during the second half of April and to prepare a note on it.

17 Having said that, Mr. Borovci, we have reached the end of your
18 testimony. I would like to thank you for your efforts you have put
19 in giving your testimony, and I am sure it will help us in our
20 efforts to find the truth. So thank you for that.

21 THE WITNESS: [Interpretation] Thank you, Your Honour, and all
22 your staff. I request Your Honour, Presiding Judge -- I'm not asking
23 for mercy from you. I'm just asking for justice. And I'm deeply
24 convinced that you will take a just decision, that you will
25 thoroughly analyse all the witnesses, that you will not fall prey of

1 witnesses that are false and manipulated, and that you will analyse
2 carefully all the circumstances in which we operated. And I hope
3 what we went through, not a single nation will have to go through.

4 Once again, I greet you all. I greet Mr. Salih Mustafa as well,
5 whom I consider innocent.

6 Thank you very much, Your Honour, Presiding Judge. We tried
7 to --

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

9 THE INTERPRETER: Microphone, please.

10 PRESIDING JUDGE VELDT-FOGLIA: Now it's enough. I gave you some
11 space, Mr. Borovci, but don't overstep the line. So I wish you --

12 THE WITNESS: [Interpretation] Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: -- a safe journey home. And I
14 remind you not to discuss your testimony before the Specialist
15 Chambers with anyone.

16 Madam Court Usher will now usher you out.

17 [The witness withdrew]

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

19 Madam Prosecutor, is there something that you would like to
20 raise at this moment in time?

21 MS. D'ASCOLI: Nothing further, Your Honours. Thank you very
22 much.

23 PRESIDING JUDGE VELDT-FOGLIA: Very well.

24 Victims' Counsel?

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

1 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

2 MR. VON BONE: Nothing, Your Honour.

3 PRESIDING JUDGE VELDT-FOGLIA: Very well.

4 So, now, if we have nothing -- and if there's nothing else to
5 raise, and also not from the side of the Panel, we will resume next
6 week, that will be 4 April, 9.30, with the testimony of Witness 600.

7 And I thank the parties and I thank the Victims' Counsel for
8 their attendance. And I also thank, for this morning's session, the
9 interpreters, the stenographer, the audio-visual booth, and the
10 security.

11 The hearing is adjourned.

12 --- Whereupon the hearing adjourned at 10.13 a.m.

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