

1 Thursday, 12 February 2026
2 [Open session]
3 [Closing Statements]
4 [The accused entered the courtroom]
5 --- Upon commencing at 9.01 a.m.

6 PRESIDING JUDGE SMITH: Mr. Court Officer, please call the case.

7 THE COURT OFFICER: Good morning, Your Honours. This is the
8 file number KSC-BC-2020-06, The Specialist Prosecutor versus
9 Hashim Thaci, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi. Thank
10 you, Your Honours.

11 PRESIDING JUDGE SMITH: Thank you.

12 Good morning, everyone. Welcome. I note that the accused are
13 all present in court today.

14 Today we will continue hearing the closing statements in this
15 case. This morning, we will continue with the closing statement for
16 the Defence for Kadri Veseli. Later today, we will hear counsel for
17 Rexhep Selimi's closing statements. We will follow the agenda as set
18 out in the Panel's order on the closing statements, which is filing
19 F03639.

20 As a reminder, today's hearing is scheduled to conclude at 1645,
21 and breaks are scheduled for half an hour at 10.30, resuming at
22 11.00; an hour and a half at lunch at 1300, resuming at 1430; and
23 then a 15-minute break at 1530, resuming at 1545.

24 Lastly, since the closing statements are being interpreted, the
25 Panel reminds the parties and the participants to speak at a slow

1 pace and to allow the interpreters to catch up, and to be conscious
2 of the tendency to speed up when reading from a text.

3 This concludes the remarks from the Panel. We will now continue
4 with the closing statements from the Defence for Kadri Veseli.

5 Mr. Dixon, you've been allocated four and a half hours, you have
6 three and a half hours left, which means that you are scheduled to
7 finish by no later than 1300 today. And you may proceed when you're
8 ready.

9 MR. DIXON: Thank you, Your Honours.

10 We left off yesterday in my second overall point on the JCE.
11 And as I said at the end of yesterday, I was going to pick up this
12 morning on certain features of those circumstances which the SPO
13 relies on, but which, when they are subjected to scrutiny, amount to
14 nothing. Bearing in mind that the burden is on the SPO to prove
15 those circumstances, and they can't just be based on mere hearsay,
16 rumour, or misrepresented evidence. So let's go through that list.

17 Number of written orders in the evidence from Mr. Veseli to do
18 anything, let alone anything criminal: None.

19 Number of oral orders from him to anyone: None.

20 The SPO will try to claim that there was one instance of an
21 alleged request to Mr. Qadraku from Mr. Veseli at a by-chance meeting
22 around 1 April 1999 and that is somehow an order. It's alleged to
23 be, from Mr. Qadraku's own evidence, a request to check on some
24 troops, a request that, at most, nothing else, nothing to do with
25 intelligence. Mr. Qadraku claimed when he came back after doing

1 that, Mr. Veseli wasn't even there, so he couldn't even report to
2 him. So it's nothing at all.

3 Number of orders given to any intelligence persons anywhere to
4 do anything intelligence-related or anything else: None.

5 Number of persons shown on the evidence to be reporting to
6 Mr. Veseli, and this, obviously, does not include rumours and
7 unsubstantiated claims: None.

8 No evidence of a parallel reporting scheme. The SPO placed
9 great emphasis on that when they presented their case through the
10 evidence. They haven't highlighted it in their oral submissions.
11 It's because it's not there.

12 Number of times he signed anything, it's a grand two,
13 Your Honours. One, the FARK agreement in September 1998 to unite
14 groupings and work together; and then, two, a General Staff document
15 with many signatures on it concerning agreeing to Rambouillet, which
16 says that a final opinion will be pronounced after consulting the
17 zone commanders. That was in March 1999. That's P227. Two
18 positive, constructive documents for the purposes of promoting and
19 achieving peace.

20 Number of General Staff meetings attended, well, the SPO say
21 there are two: Part of the General Staff meeting on 12 November
22 1998, and then the same meeting referred to above when I mentioned
23 the Rambouillet document, which was signed on 12 March 1999. The SPO
24 referred to these two meetings in their footnote 2083 when they
25 claimed that it was through these meetings that Mr. Veseli

1 perpetrated this JCE. It seems they referred to a third possible
2 meeting as well in April 1999, so it may be three that they are
3 referring to, but that's 3 out of 35 General Staff meetings that the
4 SPO have led evidence on and rely on. And these are meetings of no
5 criminal consequence at all. And there's no evidence of there being
6 any replacement for Mr. Veseli at all of these other meetings, there
7 for him, reporting to him, or that anything was communicated to him
8 each and every time after these meetings. And it can't be assumed,
9 Your Honours. There are alternative inferences such that there was
10 no such ongoing communication. Those alternative inferences are
11 reasonably available, and the Prosecution has not dispelled them.

12 Number of persons he appointed or removed: None.

13 Number of orders to, reports from, dealings with the alleged
14 lower-level persons who've been conveniently shoved in to the JCE,
15 that's Mr. Geci and one other: None.

16 Number of persons interrogated, arrested, or released that he
17 was involved in on any reliable evidence: None.

18 Number of public statements or communiqués drafted, or that he
19 fed into, or that were issued by him, or shown to him, let alone that
20 he even knew about them: None.

21 Number of regulations that he drafted, participated in
22 preparing, saw, dealt with, distributed, actually implemented in any
23 way: None.

24 And the number of days not in Kosovo in the indictment period, a
25 substantial number by contrast. We're talking about months at a

1 time. But the number of contacts he made while there with those in
2 Kosovo whilst abroad based on any reliable evidence, also none.

3 And here it must be taken into account, without giving any
4 weight to the Serbian intercepts, which we have addressed in our
5 brief and which you'll hear more about, it is not proven that
6 Mr. Veseli is mentioned as speaking on any one of them.

7 For contacts from abroad to the General Staff or others by
8 Mr. Veseli, so when he was abroad going back into Kosovo, the SPO
9 relies only on a book by Pal Refsdal for some calls on a single
10 occasion or within the same period, a short period, made while
11 abroad, but these calls were not made by Mr. Veseli. There's no
12 evidence that he was calling anyone. But Mr. Refsdal was not called
13 as a witness. He could have been. His book is pure hearsay as to
14 how this unfolded. It's not corroborated in any way. There's no
15 other evidence to support this alleged fact that Mr. Veseli was in
16 constant contact with the General Staff in Kosovo while he was
17 abroad. The Defence is unable to challenge the maker of the
18 allegation, explore it with him so we're not just left with what he
19 might have said in a book, for whatever reason, but to ask him
20 directly what actually happened, who was involved, what calls were
21 made. The SPO is not entitled to rely on it as a key factor to
22 support their JCE. And this is a repetitive fatal theme throughout
23 the SPO's case.

24 Number of orders issued while he was abroad or reports received
25 there about anything intelligence-related or decisions that were

1 being taken or appointments being made or any actions being taken,
2 even military actions, which are not unlawful, or anything to do with
3 the alleged crimes in this case, or anything of any relevance: None.

4 The list of nothings goes on, Your Honours. The numbers simply
5 don't stack up to a giant criminal conspiracy involving Mr. Veseli.
6 The circumstantial case is paper-thin.

7 Your Honours, my third overall point and this concerns the
8 rights of the victims and the rule of law. The criticisms of the
9 SPO's case that I've made here against Mr. Veseli do not for a moment
10 diminish the suffering of those who have been victimised in Kosovo,
11 some of whom are front and centre of the indictment in this case,
12 including those who I've referred to in my submissions so far who I
13 wasn't able to name because of the protective measures, but I have
14 them firmly in mind.

15 The ravages and pain of the war in Kosovo have been immense, a
16 sad fact on which all parties to these proceedings agree. And as the
17 experts who were called by Mr. Laws as Victims' Counsel, that was
18 Dr. Black and Ms. Duhne-Prinsen, explained, nearly 65 per cent of the
19 population experienced traumatic events during the war, leading to
20 approximately 200.000 to 400.000 traumatised individuals, which
21 includes the victims recognised in this case, the 155, and countless
22 others. The experts highlighted that research specific to Kosovo
23 indicates that ten years after the war, and this was taken some time
24 back, the prevalence of post-traumatic stress and depression and pain
25 among the population remain significant. Going on to say that in all

1 cases, it was significantly higher than studies from other post-war
2 countries, including wars like Vietnam. That's at page 8 of their
3 joint report.

4 Now, this clearly requires remedial action, including through
5 the work of this Court. As the experts emphasised, studies show that
6 a very high percentage, 84 per cent of untreated patients in Kosovo
7 still exhibit symptoms years after the war. And as they said, with
8 all conflicts, time does not heal all wounds. The failure to attain
9 justice only exacerbates the pain and suffering.

10 But that failure is only made worse by deceptions of justice.
11 What victims and their families yearn for, as Mr. Laws emphasised, is
12 justice rooted in the truth and reality. The victims know all too
13 well that the worst form of injustice is pretend justice. In
14 striving to end impunity - which is essential, it's not optional -
15 the truth must not be sacrificed, the innocent must not be punished,
16 and our courts must guard their integrity jealously.

17 Even if it takes over five years or longer to get to the truth,
18 as in this case, to that sacred place we must all travel at the end
19 of this trial, now that we finally know how the SPO puts its case on
20 the evidence. Then the length of time expended, while arduous, yes,
21 will be worthwhile, and the ink spilt on thousands of pages of final
22 briefs, and the funds spent on the Court will be vindicated for
23 victim and accused alike and, more broadly, for Kosovo and all its
24 people regardless of their ethnicity, as well as for its neighbours,
25 Serbia and Albania. That will make the outcome of Mr. Veseli being

1 on trial for over five years and being incarcerated for that time a
2 success, not only because an innocent man is set free, but a
3 precedent will be set for generations to look up to. The last thing
4 I know we all here want is for the future generations in Kosovo and
5 the region more broadly not to trust the rule of law because it has
6 been trampled on in this case.

7 Your Honours as the guardians of the rule of law, furnished now
8 at the end of this long trial with the SPO's case against Mr. Veseli,
9 it is Your Honours who stand in the way of the SPO's wild goose chase
10 to ensure that the interests of justice are not subverted.

11 Your Honours are part of a long tradition of international
12 judges who have been appointed to separate fact from fiction in armed
13 conflicts that have plagued the world. This tradition stretches back
14 to Nuremberg at the conclusion of the Second World War, and it will,
15 we hope, reach far into the future. Your judgment will take its
16 place in that history and not be forgotten.

17 However much the SPO have sought to turn Your Honours' heads to
18 convict Mr. Veseli at any cost, we challenge that with legal
19 principle, and we advocate for the rule of law that has underpinned
20 all international courts. Where there's no evidence or very poor
21 evidence, there can be no conviction.

22 One of the enduring qualities of the Nuremberg tribunal, which
23 did face some criticisms, including over victor's justice,
24 partiality, the lack of any appeal, and the admission of vast
25 truckloads of documents, was that it acquitted some defendants, 3 out

1 of the 22. And I refer to two examples of acquittals, obviously not
2 because there's any comparison to our case, but for the purposes of
3 the underlying legal principle applied to evidence presented in any
4 criminal trial.

5 In the case of one acquittal, Hans Fritzsche, a prominent figure
6 in the propaganda ministry, the tribunal held that although he had
7 made strong statements of a propagandistic nature in its broadcasts,
8 and I quote:

9 "The Tribunal is not prepared to hold that they were intended to
10 incite the German people to commit atrocities on conquered peoples,
11 and he cannot be held to have been a participant in the crimes
12 charged. His aim was rather to arouse popular sentiment in support
13 of the war effort."

14 That's at page 526 of the judgment.

15 And in the case of another found not guilty, the diplomat
16 Franz von Papen, the tribunal held that although he used intrigue and
17 bullying as the minister to Austria in the plan to strengthen the
18 Austrian Nazis and undermine those who opposed them, these actions
19 were not criminal. Perhaps not the best way of operating but not
20 criminal. That's at page 519 of the judgment.

21 Now, as I've noted, even though World War II and the Kosovo
22 conflict, as far as the KLA is concerned, are plainly not even
23 remotely comparable, the universal legal principle of actual
24 criminality being a necessary element for any convictions shines
25 through. Importantly, where there was insufficient evidence that

1 certain accused on trial in Nuremberg actually participated in a
2 criminal way in the alleged war crimes or crimes against humanity, or
3 that it had not been shown that they were central to any criminal
4 plans, they were set free. That showed it was a genuine legal
5 process in which the presumption of guilt was sincerely respected
6 despite the murders of millions of civilians. It cemented the
7 court's legacy.

8 That has been the same for other international courts like the
9 ICTY, the ICTR, and the ICC.

10 It is unfortunately the acrobatic lengths to which the
11 Prosecution case loops when there's no evidential foundation against
12 my client that does send the chills down the spine. It riles against
13 that proud tradition of past and present courts. And one can only
14 imagine how my client must feel in prison, anxious that a case will
15 somehow stick just because a case has been put. It is the words of
16 Cardinal Richelieu, the Chief Minister to King Louis XIII from the
17 1620s, which are as unnerving today as they were then. And I quote,
18 he said:

19 "If you give me six lines ... by the hand of the most honest of
20 men, I will find something in them which will hang them."

21 It is the notion of using snippets of information, rumour and
22 speculation, scraps of paper, propaganda, finger-pointing, feuds,
23 untested claims, laced together in ways that suit a certain outcome
24 to convict of a crime regardless of whether the person actually did
25 it. The American equivalent being: A prosecutor can indict a ham

1 sandwich.

2 This danger is especially there in a chaotic guerrilla war where
3 there are few conventional records, only bits of paper; where
4 propaganda levels and bragging rights are running sky high, both
5 those who were fighting and those on the outside who were commenting
6 on it, and then all the commentary much later on as well; and where
7 fingers are being pointed at every direction; and trust has sadly
8 broken down throughout society.

9 The danger is especially there when the accused is the head of
10 intelligence. That, without needing any evidence, may conjure up the
11 fiction of a mystery man in the shadows who is prone to commit
12 crimes. This generalised thinking goes, well, don't intelligence
13 people collect information on others and use it against them? Aren't
14 they licensed to kill in the fictional style of James Bond, with the
15 number 007? You know these guys all like their numbers, don't they?
16 It is these oversimplified impressions and intuitions, maybe even
17 subconsciously at play, that could be deployed to spin a narrative of
18 guilt. But it remains nothing more than unsubstantiated spin. That
19 brings no justice to either the victims or to Mr. Veseli.

20 Your Honours, now my fourth overall point, which is the
21 staggering irrationality of this Prosecution as reflected in the
22 SPO's closing submissions. And even with Your Honours' interventions
23 along the way, perhaps seeking to keep it on track, the Prosecution's
24 case against Mr. Veseli has gotten no better and made no more sense.
25 And I'll touch on this point briefly, too, under this heading.

1 Diving into the detail of the brief and the endless footnotes,
2 which I'll come to in my last section today, is, to put it mildly, a
3 somewhat tedious and mind-numbing task. I don't envy anyone who is
4 going to have to go through all of that. This is where the SPO want
5 to drag us all as they do not have a clear case that is supported.
6 If there was anything in this case, it would be possible to summarise
7 it with a simple, clear, transparent outline of the evidence. There
8 would be no need for a final brief shrouded in a morass of footnotes
9 which are either irrelevant or unsupported or exaggerated, selective
10 or incomplete, citing only the parts the SPO likes; but the parts
11 they don't like or where the witness didn't agree with them or where
12 there was other evidence, it's just not there.

13 There should be no need to have to rummage around in the fringes
14 of the piles and piles of bar table documents and multiple hearsay
15 and rumour and gossip in a final brief. Get some proper evidence if
16 you want to prosecute a case. Instead, we're all driven to the edge
17 of madness in having to check every footnote and the precise
18 references it contains and how it might relate to some other shred of
19 evidence or not, to try to see whether it may amount to anything.
20 Nitpicking our way through who said what to someone else about what
21 someone else had said to them or not. I mean, it's a Prosecution
22 plagued with irrationality in so many ways and thus not proved.

23 And here, Your Honours, is just a top ten of that.

24 Number one. Starting from the very basics in any criminal case.
25 Those who did the DNA examinations and a large part of the pathology

1 were not called by the SPO. Rather, they got others to review those
2 findings and come and talk about those findings. I mean, why?

3 Number two. No original documents produced at all. All copies.
4 And no effort is made by the SPO to get them as the Serbian
5 authorities nonchalantly failed to even respond. All of our efforts
6 to say, "Could we please have these originals?" They were so keen
7 for this Court to get going, throwing evidence at it, but when we as
8 the Defence said, "Well, can we actually look at the originals of the
9 evidence?" not even an answer. Serbian officials who could have
10 testified about how these documents were collected were dropped from
11 the witness list. I mean, why?

12 Three. Witnesses were called by the SPO as witnesses of truth
13 in support of their case, but then they were simultaneously attacked
14 as witnesses the Court cannot rely on. We see lists of those near
15 the end of the SPO brief. So they are truthful people when the SPO
16 likes their answers but liars when not. I mean, how can a court ever
17 be asked to rely on parts of a witness's testimony to convict beyond
18 reasonable doubt while at the same time being told they cannot be
19 trusted at all on other matters, they were lying under oath to you,
20 concealing crimes. That's what the Court was set up to do, to
21 prosecute those crimes. They were concealing them but still telling
22 the truth. It defies belief.

23 Four. The SPO have delayed and delayed putting their case on
24 the evidence, saying they are not under an obligation to do so until
25 the end in their closing submissions. I mean, what world can a

1 prosecutor say to an accused who is in prison, "I will tell you at
2 the end of my case what is the case against you"? And then even when
3 they do, as I highlighted yesterday in that one example, we still
4 don't know what their case is. They're still hedging their bets on
5 the hearsay arguments, hoping that one of them will stick somehow.
6 This happened with so many of the witnesses from the KLA and others
7 too. Does the SPO say they are reliable or not telling the truth and
8 therefore unreliable, or are they also part of this broad JCE which,
9 as pleaded, could include anyone in the KLA? It's because they've
10 got no evidence that they have to do this.

11 Look at their approach to Mr. Zyrapi, for example, who
12 Mr. Misetic highlighted yesterday. I'll only add a few further
13 points. For the first time in their final brief, the SPO submit that
14 he was not in the General Staff inner circle to which the accused
15 belonged, whatever that means. I mean, is there a circle now within
16 a circle? It was never put to him by the SPO to test it, or anyone
17 else. The SPO are now saying this for the first time because they
18 know it looks stupid to rely on Mr. Zyrapi as a good witness, a good
19 person at the heart of the General Staff on the one hand, and yet, on
20 the other, how could there be a JCE based on collectivity of the
21 General Staff which excludes this honest man who is not a criminal.
22 So in a stroke, a single sentence, the SPO just write him out of the
23 General Staff as somebody who was an outsider.

24 But then they still want to rely on parts of his testimony that
25 suit them. Such as, well, he is reliable when he says that

1 Mr. Veseli's duty would have been to receive reports on collaborators
2 from the zones and inform the legal sector. Suddenly, again,
3 Mr. Zyrapi is at the heart of it, in the inner circle, explaining how
4 the system worked. Leaving aside, of course, that he said that this
5 reporting about collaborators never actually happened, and other
6 witnesses have confirmed this. But the SPO has cited that over and
7 over and over again as somebody who would have known. How can he
8 know if he's not intimately involved. His evidence, in fact, is
9 cited some 992 times in the SPO brief. So suddenly he counts again.

10 But then at the very same time the SPO says Mr. Zyrapi is not
11 being honest about his knowledge of KLA criminality. What he says is
12 not credible in that regard. And why not? They say because of his
13 role, so he's lying because of his role, he must have known about
14 crimes. So in the blink of an eye, he's central again. He must be
15 lying about criminality because he must have known because he's such
16 a high-up person. The SPO never put to him he was being dishonest.
17 Now, of course, the SPO have to say this otherwise their whole case
18 on knowledge within the General Staff about all of these crimes, this
19 general case, it falls apart.

20 And then in yet another twist the SPO digs out that old
21 chestnut, intimidation. Whenever in a corner with nowhere to go,
22 play the intimidation card. With no evidence whatsoever, and that's
23 the key -- of course, if there's evidence of it, it's a different
24 matter. But with no evidence whatsoever, and without ever having
25 explored this matter with Mr. Zyrapi when he was here before

1 Your Honours, they now blurt out he's lying because of
2 self-preservation in a long-standing climate of intimidation. This
3 is a man that they seek to rely on to convict. They cite him nearly
4 a thousand times. They use his corroborators general statements over
5 and over again, but then say his evidence and the truth of it are
6 tainted by intimidation. Why would he say anything that could
7 potentially be used to claim that collaborators were pursued by the
8 General Staff if he was so petrified to protect himself?

9 And yet, the SPO want not just to ride two horses but five all
10 at the same time. They want to say he is a truthful, knowledgeable
11 insider, but not in the inner circle, yet lying about criminality as
12 he must have known in his central role, but he's right about
13 collaborators, but nevertheless he was intimidated.

14 Why do they do this? It's because they have no case against
15 Mr. Veseli, and they have to flick-flack in all directions, like in a
16 circus tent, to come up with something against him. Desperation
17 leads to the ridiculous in our submission.

18 And if the SPO says to Your Honours, well, they've had to be
19 innovative in these big, testing international cases, where there all
20 kinds of dynamics at play, that is not a credible answer. Where
21 there is no evidence, the only proper course that a prosecutor should
22 follow is don't bring the case. Standards cannot be lowered under
23 the guise of fighting for justice and ending impunity, or for
24 whatever other reasons.

25 Number five, Your Honours. Persons who allegedly could have

1 given evidence to support the Prosecution case bizarrely were never
2 called as witnesses in the trial. So, for example, witnesses who the
3 SPO claim say my client was involved in some way in any criminality
4 were not called. Instead, they called persons who heard this second-
5 and third-hand.

6 For the persons taken away that I referred to yesterday, the
7 source witness who the SPO rely on was not called to testify. Why?
8 His account, when relayed as hearsay by another witness who did
9 testify, did not even confirm that Mr. Veseli was involved. Was this
10 the reason he was not called, he would not say Mr. Veseli had
11 anything to do with it, which he did not? This underlines again the
12 need to have him in person in court to examine him. There is no
13 reliable evidence other than a collection of hearsay of this
14 allegation and all the others.

15 Sixth. The SPO dropped witnesses whose evidence was used for
16 confirming the indictment and who could have provided relevant
17 evidence to Your Honours. We have calculated that at least 13
18 witnesses, including internationals, who could have given evidence
19 about important issues, including intelligence matters, were cut
20 altogether.

21 Now, of course, the Prosecution has a wide discretion, there is
22 limited time, they've got to narrow it down, but why did these
23 particular witnesses who could have given this evidence suddenly not
24 feature when they had featured at the outset to get the indictment
25 confirmed in the first place?

1 Seven. Key witnesses upon whom the charges against Mr. Veseli
2 were based from the outset never attended to testify. Your Honours
3 will recall waiting and waiting for W4747 to give evidence. And even
4 though he had been very public in the media about his accusations, he
5 did not attend Court to face questions. And yet the SPO still relies
6 on him without any actual corroboration as though it doesn't matter.
7 I mean, what a comfortable way to prosecute. Let's do it all on
8 paper without exposing your witnesses to being shown to be liars. I
9 mean, why bother even having a trial at all? I mean, the Prosecution
10 were just, in our view, too eager to turn 4747 into a written
11 submission and not have him here. I mean, they knew how he was going
12 to be torn apart in his web of lies.

13 Number eight. Three members of the JCE were called by the SPO
14 to give evidence for the Prosecution: Sylejman Selimi,
15 Rrustem Mustafa, and Shukri Buja. No explanation has been given as
16 to why they are in the JCE and other leaders are not, a point made
17 already. Nothing was put to them about their contribution when they
18 came to testify, and we are none the wiser today. You'd have thought
19 if they are key to the JCE, what the Prosecution should at least try
20 to do is tease out what their criminal role was and how it related to
21 my client. This irrationality matters as the SPO relies on their
22 testimony to try to convict Mr. Veseli without for a moment taking
23 into account that they could be seeking to protect themselves. Not a
24 matter explored with them. I mean, they are alleged to be war
25 criminals, and two of them are, in fact, convicted of crimes after

1 all. How can the SPO, with a straight face, build any part of their
2 case on them?

3 For example, the SPO relies on Mr. Sylejman Selimi for a part of
4 his UNMIK interview concerning Mr. Veseli's alleged connection to
5 Mr. Geci even though the particular allegation arising in that
6 interview is not charged in this case, hasn't been charged anywhere,
7 in fact, and went nowhere, and Mr. Selimi explained to Your Honours
8 in full what he meant by what he had said. But importantly, even if
9 Your Honours don't believe him, as I explored with him in
10 cross-examination, he had every reason to drop someone else into this
11 particular nasty allegation, to say: Look over there, intelligence,
12 intelligence, not me. A key matter that the SPO completely failed to
13 address with him. I had to do it to protect my client's rights.
14 Despite all this, the SPO merely ploughs on and cites just one small
15 side of his testimony and blindly states that it is reliable to the
16 high criminal standard. There is no other reliable evidence of
17 Mr. Veseli being in charge in any way of Mr. Geci and directing him
18 in relation to any of the crimes alleged, or at all.

19 There's also another Geci that the Prosecution sought to link to
20 Mr. Veseli, not the same Sabit Geci in the JCE, another Sabit Geci,
21 but they throw it in anyway. I'll return to that later when I do a
22 few of the footnotes.

23 Then, ninth, the SPO's approach to eliciting evidence on
24 documents and admitting them was completely back-to-front. When
25 there was a witness who could comment on the document, they don't

1 show the witness the document, or they don't call a witness who could
2 actually answer something about the document. Once again, are they
3 afraid of the answer? Let's rather bar table it, much, much safer
4 option, and then just argue that it's all reliable.

5 And when there was a witness who said, look, I know nothing
6 about this document, I mean, how many times did that happen,
7 Your Honours? You remember me standing up and objecting. How many
8 times did it happen, witness knows nothing about the document, the
9 SPO just pressed ahead and argued, well, you don't need a link to the
10 person there as long as they can give you some information in general
11 about it. Or even worse, as long as they don't have any reason to
12 dispute the document, it goes in. Often it was purely an exercise in
13 reading the document, having nothing to do with the person there,
14 nothing to do with the provenance of the document at all.

15 But then the SPO also said when seeking to resist the admission
16 of documents from the Defence side that a link to the witness was,
17 indeed, needed. When it suited them, they used that argument. There
18 was an objection, for example, at T26886.

19 The essential point, without getting into the backwards and
20 forwards of this, is that the SPO have to authenticate and prove
21 these documents if they want to rely on them for the truth of their
22 contents. And the most important thing for Mr. Veseli is whether
23 they've proved he ever received any of these documents or saw them,
24 that any of them passed over his desk, that he did anything about
25 them, that he followed up, if he even had even seen them, not that

1 that's even shown. The mere fact of the existence of a document,
2 even if authenticated in some way, does not establish it was actually
3 sent, received, reviewed, implemented, acted on it. It doesn't show
4 the system in practice if it just sits there on Your Honours' desk as
5 a document. Your Honours have to check that for each and every
6 document that is used against my client. I will highlight a few of
7 them as I'm going along, but each and every one has to be viewed
8 through that overall flaw, that irrationality, number nine, in their
9 case.

10 Number ten. We even in this case had a person who guarded the
11 accused in prison, with access to their cells, who then became a
12 prosecutor of them, accusing them in court as he called witness
13 evidence.

14 That is just a top ten. And it is, in our submission, quite a
15 ten at that. There's more.

16 International trials, Your Honours, are a rarity, especially
17 nowadays. The opportunity should not have been wasted by the SPO
18 putting my client on trial. What would other countries like Ukraine,
19 Sudan, Palestine, Afghanistan, Myanmar, Venezuela, Iran, and many
20 others do to have the chance for justice that the SPO has been handed
21 here on a plate, through the full cooperation of Kosovo, and instead
22 the SPO bring an ill-conceived case against only one side in the
23 conflict.

24 It is of significance, we say, Your Honours, that Kosovo has
25 initiated and supported this international Court. It is a small

1 country. The proceedings here concern events over 25 years ago and
2 are not being watched very much outside of Kosovo. But in an
3 international landscape where states withdraw from international
4 courts who are now being investigated, or they just don't sign up in
5 the first place, or when they do they fail to cooperate with the
6 court, or even worse, they impose sanctions on the judges of courts,
7 Kosovo's commitment to justice must be commended, and it deserves its
8 proper place amongst the nations of the world and nothing less than
9 wholesale respect for the rule of law.

10 As I have stressed, the legacy of this Court for Kosovo is huge
11 for the rule of law and for future reconciliation, even for a small
12 country that is not at the centre of the world's attention or
13 grabbing the headlines like so many other distressing conflicts at
14 the moment.

15 The Serbian authority's support for the Court must also be
16 considered, particularly in order for forensic purposes to assess the
17 evidence that they have provided to the Court. As I have stressed,
18 it is intellectually dishonest to argue that you can disregard the
19 Serbian policy and domination while assessing whether the KLA
20 essentially had a similar policy going in the other direction at the
21 same time. I mean, the plausibility of that KLA alleged policy has
22 to be looked at in the wider context. You can't ignore what Serbia
23 was doing as though they are ships passing in the night. This is
24 classic doublespeak from the SPO.

25 The evidence shows that a system of apartheid was practiced by

1 Serbia at this time. This is a system that originated in
2 South Africa, which was fortunately ending that system there in the
3 early 1990s as it was tragically going in the other direction,
4 escalating, in Kosovo. And while laudably the perpetrators
5 apologised in South Africa and sought reconciliation, in Kosovo the
6 Serbian architects of the policy and those who had implemented it,
7 they instead accused the very persons who suffered under that system
8 and demanded that they be put on trial for their own alleged policy.
9 Indeed, they provided the purported evidence to have it done at the
10 international courts, so they could say: Well, you see, we told you,
11 these KLA, they're all thugs, they are terrorists with a big criminal
12 plan, and we were justified in what we did in Kosovo. In essence,
13 the repressive system of apartheid should be validated.

14 Now, the assessment of the quality of that evidence provided in
15 that way from the Serbian authorities must surely take into account,
16 as it would have in South Africa, as it would have in Ukraine, surely
17 take into account those particular origins and motivations. And our
18 brief deals in detail with the evidence that was handed over by those
19 authorities. We've got sections looking at the notebooks and other
20 documents, regarding their authenticity, chain of custody, and what
21 they show.

22 And, Your Honours, this is obviously different. As the
23 Appeals Chamber noted in the intercepts appeal, the stage of
24 admissibility, which they upheld, is one matter. This is different
25 now to looking at whether it's been proven beyond reasonable doubt.

1 And the Appeals Chamber said that it would be necessary to look very
2 closely at the evidence provided by the Serbian authorities in
3 relation to intercepts but other documents as well. So Your Honours
4 know very well that's the standard that now has to be met. It's one
5 thing to shovel it all in, as the SPO have done. It's another thing
6 altogether to go back and look at whether or not it's actually
7 authenticated, taking into account where it came from, that is a
8 basic criminal principle in relation to the admission, and then the
9 use of that evidence, if it's going to be used at all. We say it
10 can't be. It's got to be taken out of the equation. It amounts to
11 nothing. It hasn't been authenticated. In any event, even if you
12 look at it on its face, it's not corroborated by any other evidence.
13 It just stands there as a pile arriving from Belgrade.

14 Finally, Your Honours, I said under this heading I would touch
15 on Your Honours' interventions.

16 Mr. Emmerson, assisted then by Mr. Andrew Strong, said in his
17 opening speech that Your Honours will wait in vain for the evidence
18 against Mr. Veseli. And that frustrating wait may be what led
19 Your Honours to step into the fray and to question witnesses. Now,
20 it's a matter of record that the Defence objected to that practice.
21 I'm not going to repeat that here today. Not because clarifying
22 questions should not be asked by judges, but because, as we
23 submitted, of the way in which it was done and the impression it
24 created. We submitted it all travelled in one direction in favour of
25 the Prosecution's case. The Prosecution sat back in the comfort that

1 their case could be bolstered. There was - I remember looking across
2 the courtroom - minimum concern on their faces. And, in fact, very
3 little re-examination ever happened. I looked at the latest figures
4 yesterday of all witnesses. The number of minutes spent by the
5 Prosecution in re-examination after Your Honours' questions was
6 18 minutes, and for the, just the Veseli Defence, 14 hours.

7 Now, Your Honours, we could have a very interesting debate about
8 the merging of the common law, adversarial and civil law,
9 inquisitorial systems for the forensic testing of evidence in court,
10 and that will be a debate, I'm sure, that goes on before many courts
11 in the future, but it's not one that we have to go into today.
12 Rather, focusing on where we are for Mr. Veseli in this trial,
13 regardless of those matters, even with the evidence that arose from
14 Your Honours' questions, the SPO did not manage to resurrect its
15 dwindling case.

16 You will note that the SPO have cited to Your Honours' questions
17 extensively in their brief, at least 36 times for Mr. Veseli just in
18 relation to intelligence matters, and there are many more. We invite
19 you to look closely at those cites as none of them amount to any
20 evidence against Mr. Veseli that supports the Prosecution's case.

21 To give just one example, Your Honours, paragraph 517, footnote
22 2130 of the SPO brief, they make the strident claim, they say Veseli
23 had responsibility for and oversaw the KLA intelligence services,
24 which were specifically tasked - in cooperation with the military
25 police - with identifying and taking measures against opponents.

1 This is all opponents. That's what they say. These broad, strong
2 statements. And they footnote to questions asked by the Bench of
3 Mr. Mustafa. This is at T5905, where he was asked questions based on
4 a statement by Mr. Humolli about who was responsible for identifying
5 collaborators and passing on that information.

6 And what he said was:

7 "I know that the intelligence service could never get
8 consolidated.

9 "I don't know [to whom an officer who had information] would
10 have reported with respect to the intelligence sector because it was
11 not functional."

12 So when he was asked about who was responsible for doing this,
13 that's what he said. It wasn't the intelligence sector essentially.
14 It wasn't functioning. Now, Mr. Humolli was one of those witnesses I
15 mentioned earlier who the SPO had a witness statement from. It was
16 used in these questions. But he was never, ever, ever called to give
17 evidence.

18 Now, this evidence clearly doesn't support the SPO's blanket
19 allegation that Mr. Veseli was responsible, with the military police,
20 for identifying and taking measures against all opponents. And the
21 SPO don't cite to the mass of evidence -- where they make this cite,
22 they don't cite to the mass of evidence that Mr. Veseli had no
23 contact with intelligence persons in the zones. They came here to
24 court to say that, that they never reported to him, they never
25 received orders from him. I mean, it's selectivity of footnoting

1 beyond the pale, in our submission.

2 So there's nothing in the evidence elicited through all of the
3 questions which allows any case to be put against my client other
4 than the one that the SPO have tried to put now. The accused cannot
5 be convicted on any case that has not been put by the SPO and of
6 which the Defence have not had notice.

7 The central point we are making, Your Honours, I think it's
8 clear, is that regardless of all of the questions that were asked,
9 nothing comes anywhere near proving to the high criminal standard
10 proof beyond reasonable doubt, and it would be hard to identify a
11 legal maxim more essential to the international sense of justice. It
12 provides the ultimate protection in this case not only to Mr. Veseli
13 but to the Court as well. Indeed, the history of this principle
14 reveals that it was originally concerned in medieval times with
15 protecting judges, jurors, and the court, intending to reassure them
16 that if they were sure to that standard, they could convict without
17 risking their own salvation. Judging was a spiritually dangerous
18 business then and hence the need to get it right to the most
19 scrupulous standard.

20 Now, here the common law and the civil law travel hand in hand,
21 and we don't need to even start embarking upon any of those debates.
22 The maxim of *in dubio pro*, in doubt you must decide for the
23 defendant, which comes from the Roman canon law of continental
24 Europe, is closely linked with the development of the reasonable
25 doubt standard from the English common law. They appear to have

1 their origins in the "safer path" doctrine. Namely, when faced with
2 any doubts, a judge must choose the milder path, it being the path of
3 a safe conscience not to condemn any person while there exists even
4 the minutest possibility of innocence. There can thus be no backlash
5 for taking the safer path of acquittal when the doubts, in our
6 submission, are palpable. That is the only rational path to be
7 followed in Mr. Veseli's case.

8 Those are my four overall points, Your Honours.

9 I will now turn, as I foreshadowed, to look at the Prosecution
10 brief as it was amplified in the oral submissions, in some detail,
11 using some very practical examples to show how they haven't properly
12 sourced the extravagant allegations that they make, and I'll do that
13 in three simple parts with a few examples. I'll look at direct
14 involvement. I said there was a few bits and pieces I was coming
15 back to. I'll tidy those up. Two, then I'll look at JCE, and the
16 paragraphs and cites that they rely on. And then, lastly, very
17 briefly, I will look at alternative forms of liability, including
18 superior responsibility.

19 Direct participation firstly, Your Honours.

20 Any case, however big, can be boiled down to a few pieces of
21 core evidence and arguments that a prosecution in essence rely on,
22 and I suggest it's there in paragraph 515 of the SPO's brief on
23 direct acts, which the SPO heavily rely on. Your Honours may want to
24 turn some of these paragraphs up as I go along. But 515 one feels is
25 the fulcrum of this case for the SPO.

1 In just the next paragraph, 516, after they have in 515 said
2 this is what Mr. Veseli actually was directly involved in, they say
3 this:

4 "This conduct of direct involvement was not accidental or
5 coincidental. These examples of Veseli's personal participation are
6 significant not only in their intentional and manifest contribution
7 to the common criminal purpose but also as revealing," revealing,
8 "Veseli's broader awareness and acceptance of the JCE to which Veseli
9 was a willing participant."

10 So if the direct allegations collapse, which plainly they must
11 do, then we submit the guts of the SPO's case is gone. If Mr. Veseli
12 was not involved in anything criminal, directly so, which is clearly
13 the case, then that plainly undermines a purely circumstantial case
14 about being central to a JCE and having knowledge of crimes. When
15 he's doing his tasks and moving around, meeting persons, as is shown
16 on the evidence, for military purposes, that is all done then without
17 any direct involvement in these acts, which he wasn't involved in,
18 and any criminal activities. So dramatically changes the picture.

19 The SPO rely on these incidents to say that shows his intention
20 to contribute to the JCE, it shows his knowledge of the crimes,
21 ultimately it shows, therefore, his superior responsibility as well.
22 So if you strip that away, then he's participating in all of these
23 activities that are relied on, like allegedly getting RPGs and things
24 like that, without this knowledge, without this participation.

25 So Your Honours should really look at those alleged incidents

1 first, paragraph 515, decide those, we say you have to decide them in
2 our favour, and then you put them out of your mind. Then you start
3 looking at what's left in the circumstantial case.

4 Starting then with 515 -- and I do want to go through this
5 paragraph as one of the examples, but it's more than an example. As
6 I say, it's an absolute central tenet in this case. They start by
7 saying that Mr. Veseli, through the collective decision of the
8 General Staff, appointed Xheme Gashi to head the Drenoc unit. So
9 that's their first example of direct participation.

10 Now, here we're back to this hackneyed claim of collectivity,
11 which is plucked out of the air again. But more than that,
12 Mr. Veseli's alleged involvement is contradicted here by the SPO's
13 own evidence. The SPO relies on the evidence of W4748, who singled
14 out someone from the General Staff who was responsible for this
15 appointment, but it was not Mr. Veseli. That's at T3476 and 3479.
16 So other than the collectivity nonsense, I mean, this allegation
17 totally fails on the SPO's own evidence.

18 Your Honours are going to have to look at each of those
19 footnotes just to show and double-check how that plays out, but it
20 doesn't play favourably for the Prosecution.

21 Now, the second part of 515(a) is the removal of the two that I
22 mentioned yesterday and today. Pure hearsay, uncorroborated. And
23 then we move from there to 515(b), which is the allegation of being
24 present at the transfer and release of W3875. This is the Klecke
25 incident I mentioned yesterday. So I'm not going to repeat myself on

1 those, but I do just want to add to show how stark the contrast is
2 here between the kind of evidence that would be required to
3 corroborate this, which just doesn't exist here.

4 The SPO has not identified in relation to these incidents, as I
5 said yesterday, any consistent pattern or other evidence for
6 Mr. Veseli's allegations of direct participation. The Shala appeal,
7 in our submission, is instructive on the type of evidence that could
8 be sufficient, but which clearly does not exist in Mr. Veseli's case.

9 So this comes from the Appeals Panel in Shala. They made
10 findings that the accused in that case, his intent to murder a victim
11 in the case, which had come from an untested statement, had been
12 corroborated because there was other circumstantial evidence that
13 could be tested that confirmed this, and they go through what this
14 is. They said, namely, direct evidence in court of the accused's
15 involvement in the detention and mistreatment of detainees in the
16 same place at the same time; the accused witnessing violence
17 inflicted on detainees by other JCE members; that he was the first to
18 hit a particular victim, showing his authority to take initiative;
19 and that he continued to participate in mistreatment even after
20 detainees had lost consciousness, thus showing he already possessed
21 the intent to kill. That's at paragraphs 847 to 851, and 502 to 505.

22 Now, there's obviously no such corroborative evidence in respect
23 of the two taken away or the alleged detainee in Klecke for
24 Mr. Veseli, that he was involved in any alleged disappearances or
25 murder or detention. There's simply no pattern or similar such

1 evidence. No history of being engaged in or witnessing violence at
2 all. I mean, the factual scenarios could not be more starkly apart.
3 That's what the Appeals Chamber said would be enough. I mean, we're
4 nowhere even beginning to get near that.

5 Likewise, the Appeals Chamber's finding on the JCE in that case
6 show that each element of the JCE was considered to determine if the
7 untested hearsay was corroborated by other tested evidence, with the
8 Panel noting the live evidence of the accused's involvement in
9 mistreatment, his physical presence in the same place as other JCE
10 members involved in the mistreatment, acting in the same manner at
11 the same time, and the pattern of the apprehension and detention in
12 the same place where the accused had been present and participating
13 in the mistreatment. That's paragraphs 502 and 505 again.

14 So it's not only the direct participation but for the JCE as
15 well. They had to have live evidence showing that the elements of
16 criminality were proven. Or even if they're not criminal acts, if
17 they're going to be relied on in some way, they've got to be proven
18 with evidence that is properly corroborating. Now, there's zero such
19 evidence in Mr. Veseli's case.

20 And it is significant that the Appeals Panel did overturn
21 certain findings on torture in that case against five alleged victims
22 that were based purely on untested hearsay, on the grounds that the
23 pattern or other evidence, even in that case, did not corroborate
24 that these persons were tortured. Rule 140(4)(a) was found to be
25 violated. That's at paragraphs 512 to 551. Now, that did concern

1 the underlying crimes, not the accused's personal involvement, but
2 the principle is exactly the same. The pattern or other evidence
3 must corroborate the personal involvement of the accused in the crime
4 if that's the allegation that's being relied upon. Even if it
5 confirms the underlying crime separately, that does not mean that
6 personal involvement is shown by the pattern evidence. The pattern
7 evidence test has to be trained and focused directly on whether it
8 shows the accused's involvement with the criteria that I mentioned
9 earlier.

10 And importantly for Mr. Veseli's case, the Appeals Panel was
11 very clear that multiple hearsay does not mutually corroborate. In
12 one of the torture allegations, at paragraphs 544 to 551, three
13 hearsay accounts, very similar to what we've got with the two persons
14 being taken away, three hearsay accounts were relied upon, and the
15 Panel said that the conviction based on that evidence violated
16 Rule 140(4)(a). A fourth witness who could testify about the
17 mistreatment generally made it no better, they found, as it did not
18 go to the specific facts alleged in the hearsay.

19 So I've dealt with those two. The rest of it, the odds and
20 ends, we have to go through because they are relied on here, even
21 though they weren't mentioned in the oral submissions, and they're
22 riddled with flaws.

23 So let's look at 515(b) which continues and invokes the cliched
24 association argument again with respect to Witness W4743,
25 Mr. Naser Krasniqi. And they introduce this, the SPO, by citing

1 Mr. Veseli's testimony in 2012 about SHIK. And they say the
2 following there: Mr. Veseli himself declared under oath that he was
3 nominated as head of SHIK at the end of March 1999 and before that
4 the head of G2, that one of the segments of his activity was dealing
5 with Serb collaborators, that he knew 4743 very well, and that 4743
6 was a SHIK member and "one of the best guys coming out from the war."
7 And he was involved, this is 4743, in the detention and mistreatment
8 of opponents.

9 I don't know if this is an attempt at some kind of pattern that
10 the SPO is trying to portray, but it's a forlorn hope, we say. I
11 mean, first of all, Mr. Veseli's testimony that they refer to is all
12 about SHIK after the war, as he describes its development in the
13 period after the war in the second half of 1999 and into 2000 and
14 beyond, until its dissolution in 2008. I mean, Mr. Veseli states in
15 terms: "The capabilities of the SHIK structure at the beginning were
16 very limited in numbers and in training. Only later, perhaps the
17 second part of the year 2000, we had started to establish the basis
18 of the structure and functioned properly in terms of operations."
19 That's P789.

20 Indeed, Mr. Krasniqi gave us this evidence that he was recruited
21 in early 2000, the spring of 2000. And he said in his testimony
22 that's when he received training from friendly international
23 agencies, and that was the first training that he'd got in
24 intelligence, namely in 2000. This is at T24770 to 74.

25 So it's all about after the war. You're going to see this over

1 and over again. What the SPO does is they jump to after the war
2 because they've got nothing in the war, to try and then say, oh,
3 well, that shows what must have been happening in the war. But
4 they've got to prove the link. I mean, it potentially could. But
5 where Mr. Veseli is talking about SHIK developing after the war,
6 that's got nothing to do with what happened in the war. And if after
7 the war they're looking at how are they going to now focus on
8 security issues, ensuring that they get all the information, well,
9 that doesn't mean it was happening in the war. I mean, that's
10 precisely the opposite. They couldn't do that in the war, and then
11 over time they were able to develop it and build it into a proper
12 structure much later, but that's all irrelevant to what was happening
13 at the time. They've got to prove what was happening at the time.

14 Second. The reference to collaborators all concerns SHIK's work
15 after the war. And there's nothing unlawful about having civilian
16 intelligence and addressing all security risks. The SPO neglects to
17 mention that Mr. Veseli made it absolutely clear that there was no
18 case for taking revenge on collaborators. I mean, this was after the
19 war. It's there in the interview, but just completely overlooked by
20 the SPO. And this is at P789, and it's dealt with in our brief in
21 detail from paragraphs 725 onwards.

22 And then, third, for during the war, there's no evidence
23 Mr. Krasniqi had any dealings with Mr. Veseli. So they keep
24 referring to him as a key person that shows what was happening during
25 the war, but there's no evidence that they dealt with each other but

1 for one encounter, which I'll come to, in May 1999, one very brief
2 encounter, but nothing before that. And no evidence from anyone else
3 that they were working together, closely together, linked in any way
4 to the crimes that are alleged against Mr. Krasniqi.

5 The SPO can't say, as they do in footnote 2128, that you - you,
6 Your Honours - can't believe anything Mr. Krasniqi says. They called
7 him and relied on him endlessly in respect to this one encounter.
8 They keep coming back to this one encounter. I mean, it's just
9 another example of the schizophrenic case theory to say: You can't
10 trust anything he says. Ah, but this one encounter, that's very
11 important, we need that, so he's telling the truth about that.

12 Also take note, we ask Your Honours to, that Mr. Krasniqi,
13 although charged by EULEX courts with mistreatment of detainees, was
14 acquitted of all those charges, the case in which the lone
15 witness for the Klecke allegation, W4839, on the other hand, was
16 shown to be a liar again, was found to be a liar. Once again, a
17 contrasting point not highlighted by the SPO.

18 Now, the SPO might say, well, Your Honours, you're not bound by
19 any of that or any of these other previous findings. Okay, but then
20 where is the new breakthrough evidence that has gone beyond those
21 trials that shows that he should be found guilty, or that this lone
22 Witness 4839 is suddenly resurrected as a truthful man? It doesn't
23 exist.

24 And if you say someone is a nice guy some 12 years after the
25 war, how can it possibly mean that you knew them and worked with them

1 during the war? If anything, I mean, this shows just how low the SPO
2 has had to sink, to clutch at things much later to try and fill in
3 the hole for what happened in the war. But this is the core of their
4 case here in paragraph 515. This is where they go full tilt. So you
5 will see them, Your Honours, throwing uncontrollably, hoping for
6 something to affix.

7 And then, lastly, Your Honours, before the break, the other bits
8 and pieces which I mentioned, they are two other allegations made of
9 direct involvement, but it appears now, the SPO didn't say otherwise
10 in their oral submissions, but in their written brief that they've
11 really rode back from saying that Mr. Veseli was directly involved at
12 all. The one was an allegation that he was present in which
13 Uke Bytyqi expressed support for the KLA and knew about an alleged
14 mistreatment, that's not supported by the evidence, and the SPO seem
15 no longer to be asserting Mr. Veseli's knowledge or involvement in
16 that. There's only one reference to him in a footnote in relation to
17 this allegation which doesn't follow through what is there in the
18 indictment, and we deal with that in our brief anyway at paras 544 to
19 548.

20 And two, another scrap that Mr. Veseli ordered the arrest of a
21 person, I won't mention the name because it's protected, but we deal
22 with it at paragraphs 556 to 560 of our brief. This was in June,
23 apparently, 1998. But the SPO have written Mr. Veseli out of this
24 narrative. They now just refer to it as a sort of general
25 General Staff order. They don't mention him specifically in the

1 brief. So it appears a concession has been made. They can't prove
2 it. In any event, there is no evidence of it, as we've set out in
3 our brief, so you could just brush those aside.

4 To conclude then on direct participation. The SPO daringly
5 proclaim, in paragraph 516 that I read out to Your Honours, that
6 these allegations of direct involvement show Mr. Veseli's intention
7 and contribution to the JCE and reveal this broader awareness of
8 crime and therefore a willingness to participate in it. I mean, this
9 is a bold-faced statement that is completely unevicenced. A
10 statement easily made, but it does not prove itself no matter how
11 many times you shout it from the rafters.

12 In our submission, Mr. Veseli's alleged direct participation
13 must be struck from the indictment including then, very importantly,
14 how it apparently evinces his intent and knowledge and somehow an
15 acceptance of this JCE. Your Honours must put it out of your minds
16 as not being proven to the criminal standard when you move on to look
17 at the rest of this purely thinly veiled circumstantial case.

18 And if that's an appropriate time, Your Honours, I will then
19 come on to the examples in relation to the JCE after the break.
20 Thank you.

21 PRESIDING JUDGE SMITH: Thank you, Mr. Dixon.

22 Before we break, Judge Mettraux had a clarification request.

23 JUDGE METTRAUX: Thank you, Judge Smith.

24 And that's for the SPO. It's at page 28389 of Monday's
25 submission, line 20. The proposition was made that Lahi Brahimaj was

1 also present at the meeting at the Dukagjini command which adopted
2 rules providing for the execution of collaborators with the enemy.
3 No reference was given. Could we get a reference after the break?

4 MR. HALLING: Yes, Your Honour.

5 PRESIDING JUDGE SMITH: All right. Fine. We'll take the
6 half-hour break at this time. We'll be back at 11.00 to continue
7 with Mr. Dixon's presentation.

8 We're adjourned until 11.00.

9 --- Recess taken at 10.26 a.m.

10 --- On resuming at 11.01 a.m.

11 PRESIDING JUDGE SMITH: All right. Mr. Dixon, if you're ready,
12 you may proceed.

13 MR. DIXON: Thank you, Your Honours.

14 MR. QUICK: Sorry to interrupt, but did you want a response to
15 the clarification?

16 PRESIDING JUDGE SMITH: Oh, yeah. Yes, if you have it.

17 MR. QUICK: Yeah. I'm sorry about that.

18 So in relation to Judge Mettraux's question, I can refer
19 Your Honours to P1598, which are the minutes of the Dukagjin regional
20 staff work meeting on 21 June 1998; Adjudicated Facts 257 to 259,
21 which concern the same meeting and the military police regulations
22 adopted as well as Lahi Brahimaj's attendance; and then the
23 regulations themselves are P908_ET.1 and P927_ET.

24 JUDGE METTRAUX: Thank you.

25 MR. QUICK: I believe that's it.

1 PRESIDING JUDGE SMITH: Thank you, Mr. Quick.

2 All right. Now, Mr. Dixon.

3 MR. ROBERTS: [Microphone not activated].

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MR. ROBERTS: [Microphone not activated].

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 [Trial Panel and Court Officer confers]

8 PRESIDING JUDGE SMITH: We'll step aside for a few minutes while
9 we work on this.

10 --- Break taken at 11.04 a.m.

11 --- On resuming at 11.12 a.m.

12 PRESIDING JUDGE SMITH: All right. Mr. Dixon, we'll try again.
13 You may begin.

14 MR. DIXON: Thank you, Your Honours. I'm going to now move on,
15 as I said, to some examples in relation to the JCE, a purely
16 circumstantial case, with the opening submission that the SPO is
17 truly on the last of its nine lives when it falls back on a purely
18 circumstantial case to support the JCE alleged against my client.

19 It starts with a quite remarkable claim at paragraph 480 of
20 their brief, and they put this up on the screens as well, saying that
21 what my client had said in an interview that was published on
22 9 February 2013 was evidence of the General Staff acting in a
23 collective way. You will recall, Your Honours, they cited to what my
24 client had said in an interview many, many years after the war. This
25 is a media interview, not really under oath, being asked specific

1 questions. But he said, not that there's anything in it:

2 "We did not have separate duties, but all did whatever we could.
3 We were engaged in leadership, logistics, intelligence, because the
4 circumstances were such."

5 Now, if the SPO had just gone on to the next passage in this
6 interview, they would have seen that it is clear Mr. Veseli is
7 talking about an early stage in the conflict, because he goes on to
8 say just in the next paragraph that it was:

9 [As read] "... sometime in May of that year," and he's talking
10 here about the period 1998, so May 1998, "after we had had talks with
11 Agim Ceku, we began to make the KLA structures more professional.
12 And then Ceku - not forgetting the extraordinary role of
13 Bislum Zyrapi who as Chief of Staff managed to structure the army -
14 began to build the specific structures of the KLA based on NATO
15 structures, G1, G2."

16 So he goes on to explain that, yes, in the beginning it was
17 general, chaotic, but then we started, particularly through
18 professional soldiers like Zyrapi arriving, to try and build it up
19 into structures. I mean, that's hardly, on any view, my client
20 saying, "We all acted collectively in everything that we did," and
21 then that means that you can use that to show he was involved in a
22 JCE. I mean, the SPO has to prove that they were working together in
23 a plan to advance a criminal campaign. I mean, my client doesn't say
24 anything about that there. We're just talking about structuring so
25 that there could be more organisation, not collective responsibility.

1 And in that organisation, there would be different roles. And then,
2 by definition, it doesn't mean that if you're in one area, you're
3 going to take responsibility for everything in another area. It is
4 beyond the pale, Your Honours, we submit.

5 I mean, great caution must be given to attaching weight to media
6 interviews. This took place in 2009, years after the war, in any
7 event, when Mr. Veseli is rising to prominence politically, and
8 answering general questions that are then recorded by a journalist.
9 They're not a statement recorded by him and signed.

10 But in any event, there's nothing at all in this evidence. I
11 mean, it's hardly the hatching of a criminal conspiracy. The SPO is
12 only heading downwards, floor by floor, and now are really in the
13 basement when they try and show that this is proof of Mr. Veseli's
14 contribution to a JCE.

15 The acts, including this one, that they say do contribute to
16 that are set out at paragraphs 508 to 527 of their brief, and that
17 harks back to an earlier period in the brief on intelligence,
18 paragraphs 255 to 273. That's really the cluster of the evidence
19 that they present, which Your Honours will have to go through,
20 obviously, and look at the footnotes on that. I'm going to go now to
21 give you a few examples.

22 The paragraph that I referred to earlier on direct
23 responsibility is right in the heart of that, but then you have to
24 look at all of these surrounding paragraphs. But really it amounts
25 to, Your Honours will see, to them repeating over and over again the

1 same thing, in slightly different ways, in the text and the
2 footnotes, but you'll be forgiven for thinking really it is a stuck
3 record.

4 I mean, let's look at paragraph, as an example, 508. They start
5 by saying that one of the circumstances is that Mr. Veseli
6 participated in General Staff meetings where decisions were taken on
7 the organisation of the KLA and appointments made of commanding
8 staff. The footnote is 2083, I referred to it earlier this morning,
9 where they really just refer to two General Staff meetings out of the
10 35 that they have led evidence on. It might be three, but that's it.
11 There's nothing in that evidence at all. There's nothing that shows
12 Mr. Veseli was deciding on appointments of commanding staff. I mean,
13 even if he was, that's not a crime.

14 But then they start to imply the serious criminal intentions on
15 his part in the next sentence in 508:

16 "Veseli ran the apparatus responsible for identifying suspected
17 collaborators, collecting and analysing information about them, and
18 maintaining contacts with intelligence units."

19 Here we have footnotes 2086 to 2088. It comes back to
20 Mr. Veseli's interview from May 2011 clearly referring to SHIK after
21 the war. I mean, the Prosecutor is asking him questions in that
22 interview -- refers to 2000 just above the reference that the SPO
23 give, and then he's asking about SHIK and the departments in SHIK.
24 Mr. Veseli starts talking about the different departments in SHIK.
25 And, of course, at that point in 2000, they were starting to operate,

1 because we were in civilian times and any country is allowed to have
2 an intelligence service. That is not a crime.

3 Mr. Veseli said the same thing in his testimony to the
4 Supreme Court. Following this interview, then there was testimony in
5 the Supreme Court in June 2012, the same the case. Once again, all
6 concerned events after the war. This is P789 that I referred to
7 earlier. And it does not say anything in there about mistreating
8 anyone. If you read it, I mean, there is no stretch of the
9 imagination that would allow such an inference to be drawn. It talks
10 about what intelligence services do - they work with persons and
11 agents close to the other side. Nothing criminal about that. A
12 number of 200 persons that they're working with is identified. I
13 mean, this is precisely the training that Mr. Veseli would have
14 received abroad, and we see it put into practice here after the war
15 in civilian intelligence. There's nothing in that about maintaining
16 contacts with intelligence units during the war. He doesn't say,
17 "Yes, during the war this is the way we were doing it," because they
18 weren't. It just didn't happen. It wasn't able to happen. It
19 happened later after the war.

20 There is also reference to a documentary covering Mr. Veseli
21 coming to The Hague in 2019 for his KSC interview - that's P4212 -
22 which, once again, has absolutely nothing in it about collaborators.
23 I mean, it's a bit of public posturing, coming to The Hague. I mean,
24 it's really stretching it to say this is evidence of Mr. Veseli
25 running the entire apparatus of identifying collaborators throughout

1 the war.

2 The SPO try to suggest that SHIK was really all up and running
3 from April 1999 with Mr. Veseli as its head, even though they also
4 say that, because of UNMIK, the provisional government was not
5 allowed to do anything. I mean, once again this is all based on
6 Mr. Veseli's interviews, which just simply do not show that anything
7 was actually happening in April, May, June, July, August 1999, and
8 there's no evidence brought by the SPO that shows that SHIK was
9 operating then. We don't have to show what was going on; they do.
10 But on what they point to, it all shows, in a general way, that it
11 wasn't until much later, after the war, the latter part of 1999 that
12 things begin to happen. And that accords with the evidence about the
13 very intense and scrambling months of the NATO bombing from late
14 March 1999 up until the end of the war in June 1999, which was
15 naturally the focus of attention. And it's hardly going to be the
16 time that you are embedding your civilian structures when you're
17 focusing on extensive bombing. It was an overwhelming period of time
18 as thousands fled, refugees going all directions. The Serbian forces
19 went all out in a final attempt, making it extremely difficult and
20 dangerous to be organising and moving around.

21 It also accords with the evidence of the very important
22 demilitarisation process that followed in which Mr. Veseli
23 participated, as we have seen, which was a further focus of
24 attention. The provisional government only started becoming active
25 after the war and then in limited ways because of UNMIK. As you

1 heard from many of the international witnesses, it was more for show
2 than anything else. And some of them even said, well, they shouldn't
3 have been doing anything, and as far as I know, they weren't doing
4 anything.

5 The SPO relies heavily on the appointing of persons later, after
6 the war, in SHIK who had been involved before in the war in some way.
7 But that does not show any command over them from the time of the war
8 or knowledge of what they were doing then. The SPO has to prove
9 knowledge at the time. Otherwise, anyone who appoints someone later
10 must be deemed to have known them from before the war. I mean, that
11 must be wrong. It begs the question. You have to show that you knew
12 each other at the time, not later. Or even if you didn't know each
13 other then, you knew about what they were doing then, not what you
14 did later.

15 It was only after the war, as I've stressed, that a civilian
16 intelligence structure, as we've seen on the evidence, limited amount
17 that there is, emerged in reality. It was only then that Mr. Veseli
18 was able to and began to build and then lead such a structure. The
19 evidence shows that during the war it was impossible to, in reality,
20 get it off the ground. The contact and training abroad during the
21 war certainly assisted for what came later.

22 As the SPO acknowledges, after Rambouillet Mr. Veseli left his
23 position as head of G2 military intelligence in the KLA, and that was
24 at the beginning of April 1999 that he became head of the civilian
25 intelligence with the formation of the provisional government, with

1 SHIK being a department in that government. So they acknowledge
2 that. However, what they don't acknowledge is how events then, at
3 that time in April, overtook that entire situation. You had the NATO
4 intervention and the escalation of that over time, particularly as
5 the Serbian forces made greater and greater attempts to resist that,
6 followed by the capitulation and surrender of the Serbian forces, and
7 then the introduction of UNMIK, demilitarisation, various joint
8 structures, you've heard the evidence of that. I mean, it was only
9 after the war that there was any breathing space to look ahead and to
10 start establishing proper structures.

11 Ignoring all of that evidence, however, the SPO take the huge
12 leap in the rest of paragraph -- we're still in paragraph 508, of
13 saying: "From early on, intelligence was essential for the KLA's
14 abilities to carry out operations including against Opponents." So
15 they put intelligence at the heart of it, and my client, as a result.
16 It doesn't matter if it was -- it's an intelligence unit somewhere in
17 a village. They say if it's there in the village, it's Mr. Veseli.
18 And there's a single footnote to support this, that's at 2089, and
19 it's the same old media interview again of Mr. Veseli in 2009 and the
20 same quote that I gave above. Apparently, it covers both
21 collectivity now, but also it covers -- it shows that operations were
22 launched by intelligence against opponents as alleged in the
23 indictment.

24 But Your Honours will note not a single reference, if you go
25 through the interview, not a single reference in that interview to

1 opponents. I mean, it's a complete red herring. I mean, the SPO
2 starts with another part of the interview, but that talks about
3 targets for NATO strikes. I mean, that obviously can't be targeting
4 opponents. And then there's this part that's referred to:

5 "Officially, SHIK was founded at the time of the Provisional
6 Government."

7 "Officially," I'm going to highlight that word. Yes, officially
8 it was done, but did it then actually do anything is the question.

9 "We should know that in all the circumstances we have operated,
10 we needed intelligence, because through intelligence we could carry
11 out our operations and also build our defence."

12 So they seize on that, a general statement about the need for
13 intelligence, to say, well, therefore, throughout the indictment
14 period -- I mean, we're not looking now at when SHIK was established,
15 but throughout the indictment period you must have been coordinating
16 all intelligence. I mean, all that's being said there is that, as
17 happens in any country, intelligence is needed to ensure defence. I
18 mean, to leap to, therefore, that operations were planned against
19 opponents is overreach in the extreme.

20 So first we have guilt by association that I've dealt with, now
21 we have guilt by intelligence. Nothing unlawful about doing
22 intelligence work. Every intelligence agency in the world - FBI,
23 MI5 - sets out through their policy and regulations that it is
24 imperative to gather information on threats to nations.

25 That's just paragraph 508, Your Honours. I mean, you'll see

1 every line that follows, and I'm not going to be able to go through
2 it, has the same reoccurring problems.

3 I've got another example here to show the true bleakness of it,
4 and that's paragraph 510. And I do have some slides just on this
5 paragraph, and only eight of them, to try and liven it up, but also
6 to make the very graphic point that when you look at these paragraphs
7 and go through them footnote by footnote, this is really the exercise
8 practically that has to be done. And I think the slides do show
9 that. And I have to say, thanks to the incredible work of my team,
10 we have about 500 of these slides which show the paragraph then with
11 the footnotes underneath, breaking them down as to why they don't
12 actually support what's in the text. But we're not going to go
13 through all of those. I'm only going to use this one. This is a
14 core one, the crux of both the JCE, that the KLA structures including
15 intelligence were the vehicle, they were some other channel for the
16 JCE, and it's also key for the command case.

17 So this is what they say at 510:

18 "As head of the Intelligence Directorate, Veseli effectively
19 oversaw all intelligence matters in the KLA, in line with the KLA
20 regulations, which made him responsible," this is the criminal
21 aspect, "for organising and directing the work of those subordinate
22 units."

23 Again, they try and scoop up everyone now throughout the
24 country.

25 "He assigned tasks, and he received reports from the zone

1 intelligence units."

2 So that's the allegation. Let's look, then, at what that is
3 based on.

4 Slide 2, please.

5 This is the first footnote, 2099. They say here that Qadraku
6 said in a media interview - media interviews again - in April 2023
7 that Veseli was his boss. So he confirmed that that media interview
8 was accurate. I mean, at least they put the actual interview to him.
9 This is in examination-in-chief. He said: Okay, yes, Veseli was my
10 boss.

11 But the SPO completely ignores what Qadraku said in his
12 evidence, that he never received any orders from Mr. Veseli or
13 reported to him. That's T22709 to 10, and 22715 to 16.

14 I mean, surely those are the key factors that prove oversight.
15 I mean, not him saying in an interview: He's my boss. This is an
16 interview many years later. That's confirmed. I mean, it's just
17 like, okay, let's just grab the easiest thing, pluck it out of the
18 air and use it. But what about his actual evidence which is that
19 when it came to has oversight been proven, he said: No, I never got
20 an order from him. And this is the classic example of the SPO honing
21 in on a slice, just the examination-in-chief, and ignoring all of the
22 cross-examination and Your Honours' questions.

23 If we go then to slide 2, this is the next -- sorry, 3, slide 3,
24 this is the next number they cite. Now, I mean, this is the cover
25 page of that interview I've been talking about that's been recycled

1 over and over again. I mean, they can't mean that that cover page
2 supports their claim, but they might be referring to the whole
3 interview again. So giving them the benefit of the doubt on that,
4 you know, looking through the interview, there's nothing in it that
5 shows oversight of all intelligence matters in the KLA. It does
6 refer to "constant trainings" in August and September 1998, but
7 without any detail at all, and who knows about the dates of that.
8 Doesn't mention at all oversight of intelligence matters.

9 In addition, if these dates are right, this was the time of the
10 Serbian offensives. And importantly, when Zyrapi was asked about
11 this, when he was asked about this training, he could not confirm it.
12 And he said: You have to bear in mind Mr. Veseli was abroad, dealing
13 with matters abroad, and dealing with the FARK agreement. That's
14 what Zyrapi said in September and October 1998.

15 The SPO once again completely omits that. I mean, it's vital
16 that the totality of the evidence is considered. And that's omitted
17 on a colossal scale by the SPO. And they're always very keen to say
18 Your Honours need to look at all of the evidence. At the end of the
19 case, when we've got all of the evidence, you can look at it all and
20 it will all corroborate. How many times have I heard them say you
21 need to look at all of the evidence. That's the only way you could
22 operate in a case like this. But then when it actually comes to
23 having to justify such a serious claim, they don't look at all the
24 evidence. They look at a very narrow selection of it, deliberately
25 so, because if they did, it would completely undermine their claim.

1 Slide 4.

2 Now, these are the regulations. This is another reoccurring
3 theme. A bit of media interviews, a bit of what Mr. Veseli said in
4 interviews many years later about SHIK, then a bit of the
5 regulations. They sprinkle all the stuff together. This one, P83,
6 the internal regulations of the KLA General Staff, Mr. Zyrapi
7 testified about this. Once again, their star witness. They don't
8 come back and cite him here. He said in his evidence, when he was
9 asked by the Bench, in fact, about whether intelligence and the
10 directorate in practice organised and directed the work of
11 subordinate units and observed and monitored combat activity, that's
12 the part that's underlined there, Your Honours, Your Honours asked
13 specifically about that, and he said:

14 "In fact, this was very difficult in practice because its
15 director was not present there for a longer period, and that is why
16 we could not implement this part."

17 I mean, it echos the response that the Bench got from
18 Mr. Mustafa that I mentioned earlier.

19 And then he went on to say:

20 "This was a translation from model documents from Western
21 armies."

22 This is at T18443.

23 I mean, a cut and paste, Your Honours, does not prove that it
24 was actually happening in practice as Mr. Zyrapi explained, and he
25 confirmed that these were aspirational documents for future

1 developments, T18494 to 5. And the SPO seemed in part, on Tuesday,
2 to accept this for the first time -- on Monday, in fact, when
3 Mr. Quick did seem to say there was an aspirational aspect to this.

4 Next slide, please, number 5.

5 This is another regulation that they cite to. I think the part
6 that is underlined is probably the key part that they're wanting to
7 draw our attention to. These are the provisional regulations of
8 reconnaissance and subdetachments in combat. Mr. Zyrapi testified
9 that he'd never seen this regulations before. This is at T18486.

10 I mean, no one has explained where these came from, who prepared
11 them, were they disseminated. In the zones, people said they didn't
12 have these regulations. Were they ever implemented? I mean, did
13 Mr. Veseli have anything to do with this? And you can't just say,
14 well, he must have because he was head of the intelligence. I mean,
15 that is kindergarten prosecution. You have to be able to show that
16 these regulations are linked to him in some meaningful way, certainly
17 if you want to rely on it to prove that this shows that he was in
18 charge of all intelligence units and overseeing a policy of targeting
19 all opponents in Kosovo. You can't just throw it in there and say,
20 well, that shows because it says "intelligence" and no more.

21 But, Your Honours, even if you read the regulations, I mean,
22 there's nothing in here, particularly because they're cut and paste
23 from Western armies, that is criminal. That somehow this means that
24 whoever did this was trying to use these regulations to inspire
25 people to go out and commit crimes. It just doesn't even get off

1 first base.

2 And then slide 6.

3 And remember, Your Honours, the claim here is that Mr. Veseli is
4 responsible for organising and directing the work of all intelligence
5 units. So they say that's because there is evidence that he assigned
6 tasks and received reports. Slide 6 is the first one, assigned
7 tasks. And here they rely on part of the cross-examination of
8 Mr. Qadraku. It's the single request that I referred to a while
9 back. You'll see there the date is 1 April in the third line.
10 That's 1 April 1999. And he said:

11 "It was a chaos. During the night, 4.000 soldiers would enter
12 the area of Klecke and Divjake, and amidst that chaos I did meet
13 [Mr.] Veseli."

14 So that's how he comes across him. Pure chance. And this is
15 where the Prosecution say you can safely find that he assigned tasks.
16 Well, he made a request, this is what Qadraku said:

17 "... so he proposed that I went and visited them to see whether
18 everything was in order. And I carried out that task from the
19 evening until the morning and, in my opinion, successfully."

20 But when he came back, Mr. Veseli wasn't there. He didn't
21 report to him. He didn't say, "I've done this successfully. You
22 need to know it's all happened." I mean, hardly the context of an
23 order, bumping into him, saying "can you do this," he does it.
24 That's the only example they cite in the footnotes. It doesn't
25 extend beyond this one request for assigning tasks to prove, the

1 Prosecution say, beyond reasonable doubt that very strong claim.

2 And as I've noted before, Mr. Qadraku said he did not get
3 orders. So once again, that's not cited here. He did not get orders
4 from Mr. Veseli, and he did not report to him. There was no parallel
5 reporting. And that's the same for all the zones.

6 Slide 7.

7 This is now on receiving reports. The SPO cite to quite a long
8 passage you'll see there. So we've just summarised it. This is a
9 summary of the evidence in chief, only the evidence in chief that is
10 cited to. And you've got here what Naser Krasniqi said about an
11 undetermined date in May. This is the encounter, Your Honours, I
12 said I'd come back to. We had this short conversation, and where he
13 informed Mr. Veseli in general terms about the so-called Krojmir
14 case. This is one in which five military policemen were accused of
15 arbitrary arrests and mistreatment of civilians and isolation of
16 persons in April, so a month earlier.

17 Even in the part that is referred to, Mr. Krasniqi makes it very
18 clear that he never discussed any similar matter with Mr. Veseli.
19 This was the only one where he encountered him and he asked him about
20 this case, and he gave him some general information about it, and
21 then he was gone.

22 They do not, however, cite to the cross-examination here. They
23 once again slice it very neatly out of the total picture, because in
24 the cross-examination, Mr. Krasniqi made it very clear that he had
25 got no orders ever from Mr. Veseli, and they'd never dealt with any

1 cases before. He said Mr. Veseli was not involved in any
2 investigations in the Krojmir case and any of the decisions regarding
3 this case. That's at T24771. The discussion about the case was
4 about a general nature. Mr. Veseli was not involved in the
5 investigation of any other cases or any decisions regarding cases.
6 He was not involved in the decisions to detain any persons at Klecke
7 or release them. And this was the only discussion he had with
8 Mr. Veseli. He never had any similar discussions. He used the word
9 anything formal or anything previously. So no reporting. He'd never
10 received any orders and no reporting to him, and yet that is cited as
11 evidence of receiving reports from intelligence units, this one
12 example of this brief encounter regarding a case that Mr. Veseli was
13 not even involved in and received only general information about.

14 I mean, it's a complete one-off. I mean, in what world is this
15 evidence of receiving reports from all the zones? It's not even
16 about intelligence. It's not reporting in any sense, and the witness
17 said as much in cross-examination. So how can the SPO, with a
18 straight face, make that submission?

19 Well, with a face about to collapse now, in order to try and
20 prop it up - if we can go to the next slide - they go to
21 Witness 4747. And I've just summarised his evidence in very general
22 terms because obviously there [REDACTED] pursuant to In-Court Redaction
Order F3679RED.

23 [REDACTED] pursuant to In-Court Redaction Order F3679RED.

24 [REDACTED] pursuant to In-Court Redaction Order F3679RED.

25 [REDACTED] pursuant to In-Court Redaction Order F3679RED.

1 [REDACTED] pursuant to In-Court Redaction Order F3679RED. connect to the
Krojmir case in
2 any way, totally separate, and they try and use this then to say, oh,
3 well, this claim, you weren't able to cross-examine this witness, but
4 this supports what we are saying.

5 It bears no relation to any of the other evidence in the
6 footnotes at all.

7 As we've explained in our brief, Witness 4747 is a wholly
8 unreliable witness. And it's striking, as we've said, that there are
9 no other witnesses called by the Prosecution live from his zone. He
10 is the only one from that zone. I mean, why is that? Your Honours
11 cannot safely rely on his hearsay, despite the number of times the
12 SPO slip him in as though there's absolutely no predicament at all.
13 So that doesn't help them in any way.

14 And that's it, Your Honour. Those are the footnotes for that
15 particular sentence in paragraph 510. As I say, we've got slides for
16 each and every one of these paragraphs. They number over 500. They
17 all show the same pattern of a lack of evidence, misrepresentation,
18 citing selectively, citing one example to make the broadest of
19 allegations.

20 Now, the SPO might well say when they reply on Wednesday, well,
21 these, these are just examples, Your Honour, we're not going to cite
22 everything there. Well, I mean, are these the best examples that
23 they've got? I mean, surely you'd cite the best ones. I mean, is
24 that as good as it gets? And even if there's something else, well,
25 what do they have in mind? I mean, is it P500? We've heard about

1 that exhibit, where Mr. Qadraku was once again called to give
2 evidence about P500, and he said he sent this to his zone commander,
3 not to the General Staff or Mr. Veseli. And he said very clearly in
4 his evidence he did not know if it was ever sent and received at the
5 General Staff. He always reported through his zone command. And
6 there is no evidence to the contrary. This is at T22714 to 5, and
7 22722 to 28.

8 Zyrapi also testified that P500 never got to the General Staff.
9 The slide can come off now because it doesn't concern P500.
10 So he said it never got there. And that's T18253.

11 And even if Your Honours don't believe any of that. You say,
12 oh, well, you know, they're trying to cover up or whatever. Well,
13 still, the provenance of those documents hasn't been proven. It
14 hasn't been shown that those documents ever arrived at the
15 General Staff, that Mr. Veseli knew anything about them, that there
16 was any parallel reporting. And you can't say if you find that
17 because a witness might have come and not tell the truth about it,
18 that therefore the opposite of what they say has been proven.
19 Because they're lying, therefore, oh, no, no, no, it must be the
20 exact opposite. You can't do that. You could find you can't rely on
21 them, we say you can. But if you find you can't rely on them, you
22 can't then jump to the other conclusion which says, well, then the
23 Prosecution has proved their case because they've proved them to be
24 liars. You have to show on the evidence that it is proven. There
25 has to be other evidence than that the Prosecution brings.

1 But they have relied on these witnesses, you've seen. Qadraku
2 they've relied on to say my client was in charge of all intelligence
3 units. So why suddenly on this part might he not be telling the
4 truth? Just because it doesn't suit their case? I mean, it's that
5 doublespeak that has to be rejected.

6 Thereafter, they could try and say, okay, if P500 is out, what
7 about P709? Mr. Tieger referred to that in his speech. I touched on
8 it as well. This is the "Chief Luli" reference in P709. And also
9 there's another similar document, P186, without that handwritten
10 reference of "Chief Luli" on it from a day before, 18 August, where
11 709 was 19 August, an issue that was explored in evidence but never
12 clarified. The Prosecution have never clarified what is their case
13 on that.

14 Now, Your Honours have Mr. Qadraku's testimony on that, that
15 he'd never seen P709 before, that he had sent P1862, that's the one
16 without the "Chief Luli" written bit on it, to his zone command -
17 once again no parallel reporting - and there is no reason to dispute
18 that. The SPO had the burden to prove it. They have not disproved
19 beyond reasonable doubt that that's not true. And most importantly,
20 whatever view you take of Mr. Qadraku's evidence, the SPO have not
21 established to the criminal standard that P709 is authentic, that it
22 is what it says it is, that it's true, that it was sent and received
23 as well, and by who, or that it had anything to do with Mr. Veseli,
24 that he ever received it or did anything with it in connection with
25 it.

1 I mean, for all we know -- I mean, if it was real, if it was
2 sent to him, he might have got it and said: Oh, this is a mistake.
3 This is not me. I'm not G2 intelligence. Send it to somebody else.

4 We just don't know because it hasn't been explored. It's not
5 for us to have to prove anything. They have to go through each and
6 every possible inference and exclude those that are consistent with
7 innocence. They haven't done that.

8 In any event, the SPO have not proven that it shows that
9 Mr. Veseli, as head of SHIK in August 1999, could deal with any
10 issues of transfers between zones in the KLA to the extent that it
11 was still operating at that point. There's absolutely no other
12 evidence of this that supports that contention. I mean, this is the
13 sole document they might be relying upon to try and show that. Where
14 it gets them, unknown. But there's nothing else which in any way
15 confirms or supports that. It's a single hearsay document that no
16 witness has been called to deal with and authenticate. It is
17 uncorroborated. As I mentioned before, findings of guilt cannot be
18 based on such untested hearsay.

19 The fact that I could ask Mr. Qadraku about the document does
20 not cure the problem. I mean, his evidence, in fact, undercuts
21 entirely the SPO case, whatever that is, and doesn't confirm the
22 truth of its contents, whatever that truth might be. But it doesn't
23 cure the problem that I can't cross-examine the person who is meant
24 to have been involved in this -- meant to have written that, whatever
25 that was referring to, and there's no other evidence that supports

1 it. So how is it proved? It simply isn't.

2 Thus, both of the documents that I've mentioned now that the SPO
3 might say, okay, well, you know, the ones we showed there on the
4 slides, they're just examples.

5 Well, they could have added these in, potentially. They don't
6 get them anywhere. And there are no others. I mean, it's a sorry
7 pattern that continues throughout, including in the same paragraph
8 where we get another distorted example. We're still in paragraph 510
9 now. Another distorted example where they say here:

10 "He cultivated and protected the secrecy that allowed
11 intelligence operations against 'opponents' to function even as
12 public messaging was moderating to avoid external scrutiny."

13 Footnote 2103 is the source for this.

14 Once again, all from Mr. Veseli's testimony in 2011 and 2012
15 when he was asked about SHIK after the war. Nothing to do with what
16 was happening in the war. And the testimony says nothing at all
17 about secrecy in relation to operations against opponents in any
18 event, I mean, during the war or after. It's a gross
19 misrepresentation of this.

20 Mr. Veseli discussed SHIK slowly growing up from July 1999,
21 after the war, into 2000 and beyond. He spoke about archiving in
22 SHIK when SHIK was formed, and how they were assisted by intelligence
23 services from developed countries. These are all the topics that are
24 looked at, and it's clearly all after the war. Not dealing with
25 operations against opponents. And he looked as well at how SHIK

1 members had to take a vow of secrecy and being prevented from
2 disclosing any information, which, as he explicitly explains, not
3 referred to again, he says, well, this is expected in any
4 intelligence organisation anywhere in the world. I mean, it's
5 secrecy because intelligence services ensure that people who work for
6 them don't go around telling everyone what they're doing, and nothing
7 more than that.

8 And the same pattern of recycled single incidents I've
9 mentioned, with a dollop of the media interviews, you sprinkle a bit
10 of unsupported 4747 on top of that, maybe a few pages from a book,
11 and you blow it all way out of proportion. I mean, it just continues
12 throughout, repeated in all of the sections. And citing poor
13 evidence over and over again does not make it better. Yes, as a
14 prosecutor, if you've got good evidence, you keep repeating it to the
15 triers of fact. It has an impact. But this has exactly the
16 opposite. It doesn't get any better. It shows the hole in their
17 case.

18 Your Honours, what I wanted to do now was to go into one or two
19 other examples. I'm nearly finished with my submissions. And I
20 wonder, just as we've been going for an hour - I will certainly
21 finish by 1.00 - whether we could have a break if -- I'm in
22 Your Honours' hands, until 12.15, and then I'll finish the last
23 45 minutes, so that we just --

24 PRESIDING JUDGE SMITH: We can do that.

25 MR. DIXON: -- break up the segments a bit.

1 PRESIDING JUDGE SMITH: Yeah, we can do that. Thank you.

2 We will break for 15 minutes. Then we'll back at 12.15 to
3 finish up Mr. Dixon's presentation.

4 MR. DIXON: Yes, I'm grateful for that, Your Honours.

5 --- Break taken at 11.58 a.m.

6 --- On resuming at 12.15 p.m.

7 PRESIDING JUDGE SMITH: Yes, sir.

8 MR. MISETIC: Mr. President, I rise just to put on the record
9 that the Defence disputes that the citations that were provided to
10 Judge Mettraux support the proposition that was made, and I won't
11 make any further submissions, but --

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MR. MISETIC: Okay. Thank you.

14 PRESIDING JUDGE SMITH: All right, Mr. Dixon.

15 MR. DIXON: Thank you, Your Honours.

16 I do want to give one further example now because it concerns
17 the communiqués, which I know Your Honours will have in mind, and
18 which the SPO's put a lot of emphasis on, and that's at paragraphs
19 520 and 521 of their brief where they make the claim - and I remember
20 when I first read it, I just wrote the words "wow" down in the column
21 next to the paragraph - that my client facilitated the dissemination
22 of KLA statements that formed the backbone of the collaborator
23 policy. He provided the backbone for all of the communiqués and
24 statements. And they go on to say that, in 521, he provided the
25 information that then got in to those communiqués, so it all come

1 from him, when there's not an iota of evidence of that.

2 I mean, they do need to try and link Mr. Veseli to the
3 communiqués in some way because it's the only way of showing any
4 connection to the crimes, but I mean this is truly desperate and it
5 can't be founded.

6 Even the language, the way that they state it shows that. They
7 say Mr. Veseli "received, assessed, and forwarded intelligence [and]
8 informed communiqués to give them practical currency." I mean,
9 they're not identifying what intelligence are we talking about, who
10 did he provide it to. But they're not going so far as to say he
11 participated in drafting and finalising, disseminating them,
12 following them up. I mean, that is absolutely key. If you're going
13 to make this allegation, you've got to have some evidence that he was
14 involved in this in some way. You can't just throw it out there
15 irresponsibly.

16 I mean, they don't actually allege that he drafted it, because
17 there's no evidence of that. But there's also no evidence that he
18 was involved in this in any way whatsoever. I mean, it's guilt by
19 association dressed up in a different way now, saying essentially:
20 You were in the General Staff, you were in the intelligence position,
21 involved in intelligence, and that must therefore mean that anything
22 that discusses intelligence in the communiqués is your
23 responsibility. I mean, it's nothing more than that. I mean, it's
24 prosecution by numbers, 1, 2, 3, tick, do you think we have a case?
25 Absolutely not.

1 The footnotes that are cited this dissemination allegation are
2 11 parts, first of all, of Mr. Nuhi Bytyqi's book, and this is P1264.
3 And if you go to the passages that they refer to, I mean, none of
4 them pertain to a collaborator policy or collaborators in any way,
5 certainly not linking to Mr. Veseli at all. Then they go to that
6 Mr. Veseli and others visited the Kosovo Free Press on 12 May 1999.
7 There's just this one meeting that they cite to, P515, 54. That's
8 it. I mean, even the most zealous of fact-finders could not conclude
9 that this amounts to facilitation on statements of collaborators.
10 Even Cardinal Richelieu could not find a reason to convict on this
11 line alone. You go to one meeting and then you're responsible for
12 all communiqués.

13 And then there's a final one, P515, the translation is at 59,
14 and that is in relation to a Radio Free Kosovo report made June 1999.
15 It's an archived report. No mention of Mr. Veseli at all, if you
16 check the reference provided there.

17 Then with regard to regular communications with General Staff
18 members, including Mr. Thaci, Mr. Veseli received, assessed, and
19 forwarded intelligence - this is what I referred to earlier - that
20 formed then the backbone of these communiqués. I mean, none of the
21 citations provided to support this are made out. I mean, the
22 citations to his relationship with Mr. Thaci discloses nothing
23 nefarious at all. I mean, they allowed to have known each other and
24 worked together and worked together after the war. I mean, otherwise
25 we'd all be in trouble criminally.

1 The claim that Mr. Veseli fed into General Staff communiqués and
2 declarations is critical for the SPO because there's virtually no
3 evidence of any contemporaneous statements by Mr. Veseli. He has
4 things much later but nothing from the time, so they've got to try
5 and weave him into this however they can. And yet, the SPO cite only
6 three pieces of evidence to support it, and this is all pertaining to
7 a single communiqué, none of which discloses any link to Mr. Veseli.

8 They cite, and this is in the footnotes to paragraph 5212,
9 communiqué 80, that's P1752, which was issued in June of 1999 when
10 Mr. Veseli was not in G2 any longer. And the document refers to
11 information received by the Drenica operative zone intelligence -
12 that's all it says, zone intelligence - pertaining to an attack on
13 perceived collaborators. There's no evidence at all that Mr. Veseli
14 had anything to do with this communiqué. He was no longer part of G2
15 then. The fact that it was issued and mentions zone intelligence
16 cannot prove beyond reasonable doubt that Mr. Veseli has anything to
17 do with it.

18 So, of course, the SPO are aware they've got to go a little bit
19 further, and they cite then to two witness statements of
20 Witness 4324, and this is P2868 and 2869, this is in footnote 2150,
21 in which that witness identifies those who perpetrated this attack
22 referred to in the communiqué, and he names one of the assailants as
23 Sabit Geci. Now, this is not the JCE Sabit Geci but a relative of
24 his. That's made very clear in the witness statements that the SPO
25 have cited to.

1 The SPO had, in fact, foreshadowed this in their
2 cross-examination of their witness, an international witness who came
3 here, at T27137, when they asked this witness about this communiqué.
4 You may recall it, Your Honour. And it was Mr. Halling then that
5 listed -- saying for those in the courtroom, he has a whole lot of
6 evidence, and he listed a whole lot of P numbers, including these.
7 And I remember, what's going on here, why is he doing that? Well,
8 now I understand it, because he's trying to say that we have a
9 Sabit Geci here, he is not the Sabit Geci in the JCE but one of his
10 relatives.

11 So even though they can't show the JCE Geci is linked to my
12 client, they're now trying to say one of his relatives was involved
13 in this and somehow Mr. Veseli is linked that way. But we're even
14 further removed now from the person who's charged in the JCE. I
15 mean, has the second Geci now somehow become a tool as well? But
16 without showing any link at all. I mean, it's jaw-dropping.

17 And let's not forget that this is all being used to prove that
18 Mr. Veseli was the backbone of the communiqués and their
19 dissemination, and all I can say is wow again.

20 A final example, as it is so mind-bending and, once again,
21 illustrative of the problem, is paragraph 523 where it is alleged
22 that Mr. Veseli coordinated with Muse Jashari, the commander of the
23 Pashtrik zone, who was involved in crimes, and coordinated with other
24 JCE tools, like Brahimaj, Limaj, Geci. So the association theme
25 again.

1 Now, this is the first time that they've actually highlighted
2 that Mr. Veseli was somehow linked to Mr. Jashari here. They're
3 putting their case in this way, but they've never ever explained that
4 before. I mean, it's a very late addition, but it's one that still
5 doesn't get them anywhere. When you look at the evidence that the
6 SPO claims support all of this, I mean, it's hearsay gibberish. They
7 talk about this at footnote 2157. And the only line that they use to
8 say that my client coordinated with Mr. Jashari, who was involved in
9 crimes, and therefore is guilty of all of his crimes, is a 2001
10 interview, and that's at P00413 where, when he's asked about how the
11 zone was created, he says that he worked with -- and he mentions a
12 number of people in a general way, he mentions Mr. Veseli, and he
13 said that he met him previously as well. I mean, a general reference
14 to him. And no discussion about the actual formation of the zone,
15 what they were doing, how they could possibly be involved in any
16 crimes together. And most importantly, he was never called to
17 testify. I mean, if he is such an important person in establishing
18 the JCE, why wasn't he called to testify?

19 I mean, it's again a sole, untested piece of hearsay evidence
20 which has not been corroborated. No one else has talked about this.
21 I mean, it wasn't even admitted for this purpose, if you go back and
22 look at when it was admitted at T8347, but is now suddenly being
23 relied on for a host of points because the SPO realises they need to
24 throw all of these strings of mud.

25 It's now cited 13 times for this kind of proposition.

1 The SPO has not cited to any support for the interview, not that
2 it even amounts to anything, possibly except P1281. They do cite
3 that. It's a wedding video, Your Honours will recall seeing it,
4 showing Mr. Veseli sitting next to, but not talking to,
5 Mr. Muse Jashari. And that's cited at para 788. So if you sit next
6 to someone at a wedding who refers to an interview much later in a
7 general way, you are then responsible for all the crimes that it's
8 alleged he committed. I mean, this is a dire strait of SPO
9 reasoning. I mean, there are now no more floors below the basement
10 to descend to.

11 The same is true of the other links to the JCE members that are
12 named there. You check the footnotes. None of them allow for any
13 inference to be drawn that he was working with them in a criminal way
14 and that he is responsible, therefore, for all of their crimes, even
15 if he saw them occasionally here or there during the war.

16 Your Honours, to conclude on the JCE examples, the SPO, in our
17 submission, is dragging us into a Lord of the Flies type of chaos
18 where the rules of criminal responsibility simply go out the window,
19 any association will do, stretching inferences beyond recognition,
20 and as a result, plainly failing to show that the inferences the SPO
21 seek to draw are the ones that are consistent with guilt to meet the
22 very high criminal standard. There are clearly countless reasonable
23 inferences that can be drawn that are consistent with innocence.
24 There is no proof of guilt through this purely thinly veiled
25 circumstantial case. It must be rejected.

1 The last section, a short one, that I'm going to deal with is
2 other forms of liability, both looking at the position we take and
3 some examples.

4 As we've set out in our final brief, superior responsibility
5 does not even get off the ground. The effective control high
6 threshold is the only gateway through which this could possibly
7 happen. Without any JCE, as we've shown, without any command
8 structure for intelligence, that gateway remains completely shut for
9 the SPO.

10 We see here in this section in the brief a new level of just
11 tarring everyone with the same brush. The allegations are not even
12 individualised. If you go through it, Your Honours, you'll see that
13 Mr. Veseli is not actually mentioned once by name. It is just
14 everyone together is responsible. And it clearly doesn't meet the
15 requirement to set out how the very narrow elements of superior
16 responsibility in aiding and abetting have been met. On countless
17 occasions when just the word "accused" is used, it's used
18 generically. You check the footnotes, no reference at all to
19 Mr. Veseli. It's very prominent in this section, but it reoccurs
20 throughout the brief as well.

21 Just one further authority that I wanted to highlight here. The
22 Tokyo Trial, going back to the Second World War, a very important bit
23 of dicta, we say, even though it came from a long time ago. But if
24 Your Honours had in mind, well, I mean, really, shouldn't people be
25 leaving an organisation if they find out something about it, even if

1 that's shown, should they resign? Well, the Tokyo Trial said very
2 clearly that it was not necessary to resign if working in a
3 department even if you had knowledge of prisoners being ill-treated.
4 I'm not saying that's the case here at all, it hasn't been shown.
5 But they were looking at that scenario there according to that
6 factual case.

7 The prosecution -- this is the judges from the Tokyo Trial said
8 the prosecution has to show that their functions included the
9 administration of the system to protect prisoners, and that they had
10 knowledge or should have had knowledge of crimes and did nothing
11 effective to prevent that within the powers within that system.

12 And that's at pages 31 to 32 of the judgment of the
13 International Military Tribunal for the Far East.

14 So it shows how tightly knit those narrow requirements are and
15 how they have to be established. So we're not talking about general
16 negligence liability but individual criminal responsibility. You
17 actually have to show that you're in the system that is there to
18 administer prisoners, irrespective of that being an international
19 armed conflict or an internal one, and that within that system you
20 had knowledge and were able to take steps within your powers to
21 prevent such crimes. There's no evidence of any such system
22 structure that Mr. Veseli was involved in. It wasn't there for the
23 JCE. It doesn't suddenly appear for superior responsibility.

24 There's also just one other legal point to highlight and that's
25 JCE III at paragraph 605 of the SPO brief. The SPO say the accused -

1 this is their heading - strove to take control of Kosovo despite
2 knowing that achieving this goal may result in the commission of
3 crimes charged. It seems to have been stated rather broadly. It
4 might not be exactly what they were intending, but it is very
5 important to emphasise that for JCE III you have to have entered into
6 JCE I. You need to show that there is a common purpose to commit a
7 crime as the first step. That common purpose must exist. It can't
8 just be a case that all crimes were merely foreseeable. You have to
9 get through the hurdle first of showing that you were involved in a
10 common purpose to commit particular crimes, which, as I have shown,
11 hasn't been done for Mr. Veseli, and then thereafter there could be
12 foreseeability. But it can't all be generally foreseeable or
13 generally you heard about things. Some of the crimes must have been
14 intended, and you have to be linked to that intention through your
15 own participation and actions.

16 We've set this out in our brief at paragraphs 650 to 653.

17 So if the SPO tries to start arguing that, well, just
18 foreseeability is generally enough, that's wrong as a matter of law.

19 Your Honours, in conclusion, we had to wait until Mr. Laws'
20 submissions on Tuesday for the voice of reason through a recognition
21 that a war of liberation can be fought with the overwhelming number
22 of the KLA members doing so in perfectly good faith, and that some
23 crimes can also be committed, which, as he stressed, must be
24 acknowledged and for which there unquestionably must be justice.

25 The 155 victims in this case and others who suffered deserve

1 nothing less than their peace and justice. Our common humanity
2 desires that as we would want for us and our families if we had been
3 harmed in the same way. However, it is a fool's errand for the SPO
4 to pursue persons like Mr. Veseli, vainly hoping that that will bring
5 closure.

6 I mean, we can see the SPO's thought bubble in this case, that
7 we can't bring this JCE without an intelligence component,
8 particularly as some of those who committed crimes on the ground
9 claimed to be intelligence or secret police or secret whatever, some
10 similar formulation. How could intelligence at the General Staff be
11 left out, they must have been thinking. I mean, it's a classic let's
12 find guilt in any six lines of an honest man.

13 In doing so, the SPO cast aside the legitimate work undertaken
14 by Mr. Veseli in the KLA, they have overlooked the example he set
15 throughout the war to promote the KLA abroad, and then, supported by
16 the international community, unite the people of Kosovo, and to
17 achieve a peace deal, which has been resoundingly praised as one of
18 the most successful transitions to peace and an admirable example of
19 a national and international partnership achieving in unison an
20 enduring outcome. That is a most laudable platform to achieve
21 justice, far advanced than most of the conflict-ridden regions of the
22 world today.

23 Justice is the constant that allots to every person, to every
24 victim their due. The victims deserve their due as does Mr. Veseli
25 deserve his due, deserve what is proper and fair. He must be

1 acquitted on all charges. To do otherwise would be a grave
2 injustice.

3 Thank you, Your Honours.

4 PRESIDING JUDGE SMITH: Thank you, Mr. Dixon.

5 I think we'll just break for lunch so that you can start fresh
6 at 2.30 as planned --

7 MR. ROBERTS: Thank you, Your Honour.

8 PRESIDING JUDGE SMITH: -- with the Selimi Defence, and so we
9 will be adjourned until 2.30.

10 --- Luncheon recess taken at 12.39 p.m.

11 --- On resuming at 2.30 p.m.

12 PRESIDING JUDGE SMITH: All right. We're ready for the
13 Selimi Defence final statements.

14 Mr. Roberts, you have the floor.

15 MR. ROBERTS: Thank you, Your Honours. And good afternoon to
16 you and to everyone else in and around the courtroom.

17 It's my honour and privilege to commence the final submissions
18 on behalf of my client, Mr. Selimi, almost three years after I
19 presented opening statements in April 2023. Since that date,
20 Mr. Selimi has sat patiently and respectfully throughout this trial,
21 attending every hearing, either in person or remotely, and you'll
22 hear from Mr. Selimi next week.

23 Mr. Selimi is wholly innocent of each and every crime in the
24 indictment. As the Defence has demonstrated at length in its
25 380-page final trial brief, the SPO has simply failed to meet its

1 burden to prove any of these alleged crimes beyond reasonable doubt.
2 That's it. That's our case in a nutshell. The Defence bears no
3 burden to disprove the Prosecution's allegations. By simply making
4 allegations against Mr. Selimi, the SPO cannot shift that
5 responsibility onto the Defence. It has to produce relevant,
6 consistent, and probative evidence, and reliable witness testimony to
7 prove these allegations beyond reasonable doubt. On every single
8 front throughout this trial it has failed to do so.

9 Now, I will share the time allotted to the Selimi Defence with
10 Mr. Tully, to my right Mr. Mair, and Ms. Sheremeti. I expect to
11 speak for the rest of this afternoon, about two hours, before my
12 colleagues take over tomorrow morning, and then I will come back at
13 the end briefly to sum up. Throughout these submissions, we'll seek
14 to reply both to the SPO final brief, the written brief, its oral
15 submissions, and then also to elucidate some parts of our own final
16 brief.

17 But unlike the Prosecution - and I will say this very clearly -
18 we have nothing to hide as to the content and nature of our case.
19 Through these submissions, we intend to be as open and transparent as
20 we can be. We will not hide behind meaningless and ambiguous
21 phrases, which permeate the entire final brief of the Prosecution.
22 We will address the evidence that's been tendered in this case, and
23 we will examine what it actually proves rather than what the
24 Prosecution wishes it proved. We will do so openly to assist
25 Your Honours in adjudicating the various allegations against

1 Mr. Selimi.

2 Now, Your Honours have already benefitted from extensive
3 submissions from counsel for Mr. Thaci and for Mr. Veseli. And we
4 adopt and endorse those submissions to the extent they're relevant
5 for Mr. Selimi and do not intend to repeat or reiterate them. We
6 also stand fully by our written factual and legal submissions in the
7 final brief but also across the entire three-year trial, in
8 particular, on a substantive level, the legal challenge to the
9 existence, nature, and scope of JCE liability as well as the direct
10 challenge in our brief to JCE III for special intent crimes.

11 Today, I'm going to address JCE in all its aspects against
12 Mr. Selimi and divide it into three separate aspects.

13 So first is the JCE as a whole, its nature, its members, and its
14 objective. Secondly is Mr. Selimi's alleged contribution to that
15 JCE, both direct and structural, including those allegations where he
16 allegedly has personally participated in incidents or crimes. And,
17 finally, Mr. Selimi's alleged intent.

18 But before I enter into those substantive issues, I just want to
19 address one procedural question, and that's a central question that
20 does affect a significant amount of the Prosecution final brief and
21 final arguments, and that's the reliance on Mr. Selimi's SPO
22 interview and other interviews that he's given before Kosovo courts,
23 before the ICTY, or also to the media.

24 Now, obviously, you heard from counsel for Mr. Thaci the number
25 of times that they estimated his interview was relied on by the

1 Prosecution. We consider that it was relied on 326 times in the SPO
2 brief, and in many of those times it is the sole source relied upon
3 by the Prosecution, including in material facts against Mr. Selimi
4 and supposedly against his co-accused. I will not detail all of
5 these specific references, but there are extensive numbers throughout
6 the brief.

7 Now as clearly set out by the Appeals Panel, these statements,
8 interviews, and transcripts of Mr. Selimi cannot be attributed
9 significant weight without corroboration to determine an allegation
10 beyond reasonable doubt. This is a crucial consideration for the
11 Trial Panel when assessing the evidence in front of them.

12 Now, no Defence witnesses were called by the Selimi Defence, and
13 Mr. Selimi exercised his right not to testify. As a consequence,
14 before this Court, none of the words that were supposedly spoken by
15 Mr. Selimi in any of his SPO interviews or his previous interviews
16 were tested, contextualised, or verified by him. He didn't correct
17 or clarify or amend any of these interviews relied upon by the
18 Prosecution, as opposed to the many SPO witnesses who poured over
19 their previous statements, often with the assistance of counsel, and
20 who often provided substantive and wide-ranging corrections or
21 amendments to them, often with little explanation for the reasons
22 behind these changes. Mr. Selimi never had to take an oath before
23 Your Honours to attest to the accuracy of the evidence he gave to the
24 SPO.

25 As the Panel is well aware, the heightened review and scrutiny

1 imposed on witnesses who appear to testify before the KSC seeks to
2 ensure that any errors in previous statements can be corrected. And
3 as a consequence of this, any errors, omissions, exaggerations,
4 erroneous opinions, or oversights in prior interviews of Mr. Selimi
5 in his SPO interviews or other interviews or testimony in prior
6 proceedings were neither corrected nor clarified. Given that he was
7 being asked about events that occurred at least 20 years before,
8 previously, with little context or background, and answered these
9 questions without notes or even reference to source materials, it's
10 unsurprising that there would be certain errors in them.

11 Now, the Prosecutor stated on Tuesday that:

12 "You rarely see a final brief more dismissive of what their ...
13 client said than that of the Selimi Defence."

14 That's transcript page 28515. That may be correct. Yet
15 Mr. Selimi is not facing charges for being an unreliable narrator, or
16 even for failing to remember events that occurred so far in the past.
17 Mistakes, errors, or omissions in his recollection all could, and
18 possibly do, undermine the reliability and weight of his evidence.
19 Now, as ever, the Panel must be fully aware of all of these factors
20 as well as the severe limitation imposed by the Appeals Panel when
21 assessing the weight to be given to his evidence.

22 Now, with that procedural issue addressed, I'd like to move now
23 into the substance of addressing the joint criminal enterprise
24 charged by the Prosecution in this case.

25 And I want to say very clearly at the outset, there was no JCE

1 and there was no joint criminal enterprise involving Mr. Selimi and
2 his co-accused at any stage in the indictment period. That is, has
3 been, and remains the primary position of the Defence. In the
4 absence of a joint criminal enterprise, there can be no liability for
5 Mr. Selimi for committing crimes through this mode of liability.

6 And we say that for various reasons but principally that the
7 SPO's case on joint criminal enterprise is deficient in logic, it is
8 deficient in evidence, and this permeates every aspects of the JCE.
9 And I will divide up the joint criminal enterprise by these different
10 aspects as I go, starting with the objective of the JCE.

11 Now, Your Honours are fully aware of the JCE as pleaded in the
12 indictment. In paragraph 32, that between at least March 1998 and
13 September 1999, the accused and other members of the joint criminal
14 enterprise shared the common purpose to gain and exercise control
15 over all of Kosovo by means including unlawfully intimidating,
16 mistreating, committing violence against and removing those deemed to
17 be opponents.

18 Now, as we repeatedly raised in our preliminary litigation, and
19 in our opening statement, in and of itself, this purpose to gain and
20 exercise control over Kosovo is not inherently criminal. Far from
21 it. It's the only way to stop the brutal and systemic oppression of
22 the Albanian population of Kosovo by Milosevic's violent forces.

23 Now, in these circumstances, where the objective of the JCE is
24 not inherently criminal, such as would be the case for a joint
25 criminal enterprise to commit murder or torture, the Defence has

1 challenged whether JCE liability can even properly arise. We
2 highlighted this in paragraphs 567 and 568 of our final trial brief.

3 Now, while some courts have allowed for criminal liability where
4 the JCE simply contemplates crimes within the statute as a means of
5 achieving this objective, we say that this impermissibly expands the
6 form of liability created by the Tadic appeals chamber.

7 Now, when we raised this before in previous litigation, it was
8 held that the legal definition of the common purpose and requirements
9 of a JCE with a criminal purpose were issues to be addressed at
10 trial. So we say that the form of the SPO's pleading in this case
11 and the way this case is presented is a central and live issue for
12 adjudication by Your Honours.

13 Now, finally, in the final brief at paragraph 7, and also in the
14 opening [sic] statement at page 28362, the Prosecution stated that
15 JCE members, in order to achieve the alleged goal of gaining and
16 exercising control over all of Kosovo, committed crimes against their
17 perceived opponents.

18 Now, this formulation appears to recognise that the commission
19 of crimes must have been the principal way in which the common plan
20 was implemented. It was not merely an incidental occurrence.

21 THE INTERPRETER: The interpreters kindly ask the speaker to
22 slow down, please.

23 MR. ROBERTS: I'm impressed I managed to get 13 minutes in,
24 Your Honour.

25 My apologies to the interpreters. I will try and slow down.

1 Sorry, I'm just going to go back to where I was.

2 The commission of crimes must have been the principal way in
3 which the common plan was implemented. They cannot merely be
4 incidental to the common plan. This is how the SPO's case must now
5 be understood. It is not enough for the SPO to simply bring evidence
6 of a non-criminal purpose, in this case to gain and exercise control
7 over all of Kosovo, if that did not necessarily encompass and was not
8 necessarily achieved by crimes and the crimes set out in paragraph 32
9 of the indictment.

10 And we say that is how you, Your Honours, have to assess the
11 JCE. You have to be confident that it was agreed that the objective
12 would principally be carried out by those crimes listed, not that
13 they were merely incidental to its execution.

14 Now on the issue of the non-criminal objective at the heart of
15 the Prosecution's case. The theory of the Prosecution appears to be
16 that the driving force for the accused, including Mr. Selimi, was not
17 therefore the liberation of oppressed people within his country, but
18 merely the selfish pursuit of power.

19 Now, if this theory is to be believed, and this is the theory
20 which goes to the heart of the Prosecution's case, Mr. Selimi and his
21 co-accused not only managed to pull the wool over Adem Jashari's
22 eyes, but also managed to manipulate or dupe the many thousands of
23 volunteers who risked and, on many occasions, gave their lives
24 fighting for the KLA. We say the Prosecution's theory is thus as
25 offensive as it is unsubstantiated.

1 Now, in relation to the purpose or purposes behind the JCE. We
2 heard from the Prosecution on Monday about additional purposes
3 alongside that which is pleaded in the indictment. And they stated
4 that:

5 "... a KLA objective of achieving independence in Kosovo in no
6 way negates the objective on the part of the JCE members to gain and
7 exercise control in the manner charged. Indeed, rather than being a
8 counter-indicator, logic dictates that independence would [have to
9 be] a prerequisite for them to [have fully obtained] such control."

10 And it's a matter of "common sense and established
11 jurisprudence," according to the Prosecution, "that a person can have
12 multiple simultaneous objectives," and then made reference to Radovan
13 Karadzic's -- the finding in the case of Radovan Karadzic that he had
14 participated in four separate JCEs.

15 Now, it's wholly unclear on this point if the Prosecution is
16 alleging that independence is therefore a separate purpose that's
17 running alongside the alleged purpose at the heart of the JCE in this
18 case. Is this an objective or purpose of these accused or just other
19 accused alongside these? Was this independence also sought to be
20 achieved by unlawful means, or was this merely to be achieved by
21 lawful means? If there's a lawful objective that operates alongside
22 the SPO's alleged common criminal plan, the SPO has not explained how
23 you - how Your Honours - are supposed to determine which actions were
24 directed towards this common plan and which actions were not directed
25 towards it.

1 In many ways, the Prosecution's submissions on this motive, this
2 purpose, raises many more questions than it answers.

3 In relation to Mr. Selimi directly and individually, the
4 evidence does not support a finding that he in any way agreed to gain
5 and exercise control over all of Kosovo.

6 Now, despite, as you're aware, being involved in fighting for
7 many years before the indictment period as part of clandestine
8 guerrilla forces, his motivations were not personal power. His
9 motivations were simply the liberation of his people. And that, I
10 would suggest to you, is demonstrated by his own actions after the
11 indictment period and during the indictment period as well.

12 He never actively sought to be appointed to positions of
13 authority. No evidence suggests that he sought to be appointed
14 either as inspector general or minister of public order. When the
15 PGoK ceased functioning at the end of 1999, he didn't seek political
16 power. He became a commander in the defence academy and a commander
17 of training in the TMK. He didn't enter Parliament until a decade
18 after the war had finished. These facts are not consistent with the
19 blind and unending pursuit of power that the Prosecution appears to
20 attribute to him.

21 I'd like to move now to the members or the alleged members of
22 the joint criminal enterprise. And the Prosecution told us clearly
23 on Monday "conviction and sentence are not sought against the
24 General Staff nor against the KLA. Equally, no conviction is sought
25 and no sentence can be imposed on the sole basis of being a member of

1 the General Staff or of the KLA."

2 We, much like, I believe, the Thaci Defence, agree
3 wholeheartedly with these fine words. Yet this is exactly what the
4 SPO is seeking to do through this case by relying on generic and
5 speculative assertions in relation to both the General Staff and the
6 KLA as a whole to compensate for the evidentiary gaps in its case.

7 Now, as we highlighted at paragraph 573 of our brief:

8 "Persons with a common objective are not necessarily members of
9 a JCE. It is the interaction or cooperation among persons - their
10 joint action - which makes these persons a group. Joint action among
11 members of the joint criminal enterprise must be proven."

12 So it's not enough for the SPO to show that Mr. Selimi and other
13 alleged JCE members had a common objective. They must prove that
14 these individuals acted jointly in furtherance of this objective.
15 But the SPO has replaced this requirement of joint action with one of
16 collective responsibility. Although they sound similar, the
17 differences could not be more stark.

18 Now, to overcome the absence of evidence of specific discussion
19 or agreement to any particular policy, the SPO relies on the default
20 position throughout its brief of collective agreement, collective
21 decision-making, or collective deliberation. Now, this is
22 encapsulated in paragraph 64 of the Prosecution final brief where the
23 SPO asserts that "members of the KLA leadership and command structure
24 have confirmed that the General Staff gave orders to kill and detain
25 collaborators. Deputy Commander W04401, for example, confirmed that

1 - while there were not written documents for specific cases - there
2 was a collective decision of the General Staff authorising further
3 measures for collaborators."

4 As I mentioned, the SPO makes multiple other allegations of the
5 General Staff "having met and coordinated frequently as part of a
6 collective decision-making process" - that's paragraph 103 - or
7 having "collective deliberation." There are multiple other
8 references to collective decisions within the General Staff.

9 Now, notwithstanding the Defence's multiple challenges to
10 whether these assertions accurately reflected the witness's evidence
11 upon which they're based, they also highlight the extent to which the
12 Prosecution cannot demonstrate Mr. Selimi's individual agreement to
13 the alleged underlying criminal purpose. It does not -- reference to
14 collective decision-making, collective deliberation doesn't prove
15 Mr. Selimi individually agreed with such policies, and the SPO has
16 completely failed to individualise the allegations against him.

17 Now, on Tuesday, the Prosecution tacitly accepted this gap in
18 his case, claiming:

19 "This isn't guilt by association. This is guilt by purposive
20 affiliation."

21 That's transcript page 28529 to 28530.

22 Now, I have to commend the Prosecution on making an absence of
23 evidence appear as a legal concept in their favour. The concept of
24 purposive affiliation is nothing more than the tacit acceptance by
25 the Prosecution in the flaw in the heart of its case. It cannot and

1 has not individualised the actions of Mr. Selimi or any of the
2 accused. This is demonstrated in at least three different ways.

3 First, the communiqués which are extensively relied upon by the
4 Prosecution. No testable and reliable evidence has been provided as
5 to who wrote them. No General Staff member confirmed that there was
6 a discussion of such communiqués. No meeting notes of General Staff
7 meetings refer to any such discussions. There is simply no basis to
8 attribute responsibility to all of the accused for these communiqués.

9 Secondly, meetings that supposedly took place within the
10 General Staff or between the General Staff and zone commanders.
11 There are huge gaps as to who attended which of these meetings and
12 when and where or how information was shared from those meetings.

13 Third, orders issued by the General Staff to demonstrate the
14 General Staff's perceived attitude towards collaborators. There's no
15 evidence that Mr. Selimi was aware of, involved in, or even
16 supportive of these supposed orders. That Mr. Selimi was so involved
17 simply because of his position on the General Staff or presence in
18 Kosovo at the time is nothing more than an assumption by the
19 Prosecution.

20 The Prosecution at paragraph 110 alleges that 29 meetings of the
21 General Staff occurred over the indictment period. Yet, the
22 existence of most of these meetings are noted simply by a tangential
23 reference in a witness statement or another document. Even where
24 some record of what was said in a General Staff does exist, this is
25 often no more than an unattributed, handwritten note of bullet

1 points, without any information on attendees or who had said what or
2 who had agreed to what. For a vast number of these meetings, no
3 records exist at all.

4 And as a consequence, Your Honours cannot be sure in any way
5 what Mr. Selimi did or did not agree to as part of the General Staff,
6 what he was supportive of or not supportive of as a part of that
7 body. Nor can you be confident of what he was aware of because of
8 supposed reporting to the General Staff as a whole. Your Honours
9 heard many, many times throughout the trial reference to the
10 General Staff as a whole, "I told the General Staff," "this
11 information was sent to the General Staff." This is such a generic
12 allegation that the Prosecution relies on to attribute responsibility
13 to everybody within that organisation.

14 Generic references to reporting from the zones, be they military
15 police, intelligence, any KLA personnel, simply do not demonstrate
16 that specific information was provided to any individual alleged JCE
17 member, and certainly not to Mr. Selimi.

18 Now, in relation to the actual individuals that the Prosecution
19 does allege to be members of the joint criminal enterprise, these are
20 listed as Azem Sylja, Fatmir Limaj, Lahi Brahimaj, Sylejman Selimi,
21 Rrustem Mustafa, Shukri Buja, Latif Gashi, and Sabit Geci. That's
22 paragraph 35 of the indictment.

23 Now, the SPO seeks to rely on supposed political and ideological
24 affiliations between these individuals which occurred before the
25 indictment period, including Mr. Selimi, in particular that he was a

1 member of the LPK and, as a consequence, had these links with the
2 accused and other members through this body. Now, the Defence has
3 addressed this in detail at paragraphs 307 and 310 of its brief. But
4 no other real connections between Mr. Selimi and either Mr. Krasniqi
5 or Mr. Veseli before the indictment period were established.

6 So instead of evidence of these relationships and this agreement
7 between different members of the alleged JCE, the Prosecution relies
8 on irrelevant considerations which post-date the alleged formation of
9 the agreement and even the indictment period itself. For example,
10 the Prosecution relies on Mr. Limaj, Mr. Sylaj, and Mr. Selimi joining
11 the initiatory council of the PDK in October 1999, after the
12 indictment period, which is wholly irrelevant to the question of
13 whether there was a prior agreement between them to form a JCE.

14 Mr. Selimi's connection with other non-accused alleged JCE
15 members also appears to be based entirely on incidental personal
16 interactions rather than any proof of an alleged agreement between
17 them.

18 For example, all of the accused are alleged to have stayed at
19 Lahi Brahimaj's house. This was in Jablanica before the indictment
20 period. Mr. Selimi is alleged to have had a relationship or to be
21 close to Sabit Geci because apparently he left from Sabit Geci's
22 house when he went to make a speech for the first public appearance
23 of the KLA.

24 The SPO even throws in Mr. Lushtaku as well, arguing on Monday
25 that he was an old comrade of Mr. Selimi. And the same applies to

1 Remi, who is alleged to be a close associate of Mr. Selimi and
2 Adem Jashari -- sorry, who was with Mr. Selimi and Adem Jashari
3 before the fatal assault on the Jashari compound.

4 The SPO's desperation to show or to demonstrate some link
5 between these individuals, these alleged JCE members, is epitomised
6 by these irrelevant factors. Passing through Mr. Geci's house or
7 Mr. Brahimaj's house, with no evidence of any role, discussion, or
8 agreement that they may have had as a consequence of this interaction
9 is not evidence worthy of its name.

10 Now, most notably, the Prosecution refers to Fatmir Limaj living
11 together with Mr. Selimi as somehow suggesting some relationship
12 between them that forms, apparently, the basis for the agreement
13 underlying the criminal plan. And this was, I think, repeated by the
14 Prosecution on Monday during its oral submissions.

15 Now, there are many allegations against Mr. Limaj in the final
16 brief of the Prosecution, and Mr. Limaj is not an accused here and is
17 unable to defend himself against these allegations. But it's
18 difficult, seeing the scope and nature of these allegations, to avoid
19 the conclusion that Mr. Selimi is often nothing more than a proxy for
20 Mr. Limaj. Allegations which are principally directed towards him
21 are transferred to Mr. Selimi in his absence simply because of
22 Mr. Selimi's personal relationship with Mr. Limaj. That is entirely
23 improper.

24 And, finally, in terms of names of alleged JCE members, the name
25 that hovers over the entire case or the entire JCE that must be

1 spoken about at this stage is that of Adem Jashari, whose shadow
2 cannot but fall over this entire case. Mr. Jashari is mentioned as
3 being involved in fighting around Prekaz in early March 1998 by the
4 Prosecution - that's in their brief, paragraph 1033 - despite
5 obviously downplaying the cold-blooded massacre of his entire family.
6 He's also mentioned at various other times in connection with the
7 accused, such as meeting Mr. Thaci and Mr. Veseli in 1992, that's
8 paragraph 788, or being introduced to Mr. Selimi by Sylejman Selimi
9 in 1994, and also -- sorry, that's paragraph 98, and also around
10 4 March 1998 meeting Mr. Selimi, Sabit Geci, Sylejman Selimi, Remi,
11 and Rrahman Rama to discuss KLA expansion and improve weaponry.

12 Now, the implicit conclusion that is being drawn by the SPO from
13 these assertions is that these connections between the accused and
14 Mr. Jashari were somehow relevant to the SPO's case on JCE. This, I
15 would suggest, is because the SPO considers that Mr. Jashari was an
16 unnamed alleged JCE member. No other reason can justify such
17 reference to him. It's an inescapable consequence of the breadth of
18 the JCE that's pled by the Prosecution, which sweeps up everybody and
19 every senior KLA member in its wake, even Mr. Jashari.

20 But even now, I have little doubt that the Prosecution would
21 refuse to answer a straight question if you ask them was Mr. Jashari
22 part of the JCE that you alleged. If it was really their case that
23 he was, they should own it transparently and openly. But like much
24 of their case, Your Honours, they hope that you will gloss over these
25 difficult questions. You must not allow them to do so.

1 I'd like to now address the issue of opponents or alleged
2 opponents as set out in the Prosecution indictment.

3 And, first, in relation to the definition of "collaborators." A
4 starting point in relation to collaborators must be that individuals
5 who are perceived to be on one side of a party to a conflict but in
6 reality are assisting the other side can be a legitimate cause of
7 concern. I also wish to highlight that, as recognised by the
8 Prosecution, detention may be lawful and legitimate where there are
9 reasonable grounds to believe that security concerns make it
10 "absolutely necessary," in reference to the Appeals Panel in Shala,
11 that there must be "serious and legitimate reasons 'to think that the
12 person concerned, by his activities, knowledge, or qualifications,
13 represents a real threat to [the detaining power's] present or future
14 security.'"

15 Now, undoubtedly there are different interpretations,
16 significant -- sorry, there are significantly different
17 interpretations of what constituted a collaborator amongst SPO
18 witnesses and amongst the evidence in this case. And the absence of
19 an agreed definition was raised by both the Prosecution and Defence
20 in final submissions.

21 The SPO's case is essentially that no formal definition of
22 "collaborator" was ever provided by the General Staff as a deliberate
23 choice of the JCE members within it because this allowed JCE members
24 to target more individuals as collaborators. This is my
25 understanding, at least, of the Prosecution case.

1 Yet there's no evidence that the accused actually sought to
2 deliberately abstain from defining collaborators because they sought
3 a wider definition. This is, like much of the Prosecution's case,
4 mere conjecture. No meeting notes, no witness evidence supports such
5 an avoidance of giving this definition.

6 Indeed, evidence that there was no written definition of
7 collaborators by the members of the General Staff does not constitute
8 or even suggest a deliberate refusal to do so.

9 Moreover, in relation to Mr. Selimi, the evidence suggests that
10 his understanding of what constituted a collaborator was also
11 narrowly defined, and this is, I'd like to demonstrate, by two
12 allegations in the Prosecution's brief, both that he defined
13 "collaborators" narrowly himself and wanted that to be followed.

14 Now, first, in relation to an individual detained in Likoc in
15 August 1998. Now, this has been addressed at length in the Defence
16 final brief in relation to his detention. Now, while the Defence
17 contests Mr. Selimi's identification in this interrogation, the
18 Prosecution's case is that in Mr. Selimi's presence a detainee was
19 questioned about his alleged collaboration with Serbian officials.
20 And the evidence is that this individual, identified as Mr. Selimi,
21 then advised the individual who was interrogating him to let him go
22 after he was interrogated. The individual ignored this request. So
23 Mr. Selimi, even after hearing that this person was supposedly a
24 collaborator, suggested to the individual interrogating him to let
25 him go. He didn't believe he was anything like it. So even on the

1 Prosecution's case, Mr. Selimi didn't consider this individual as a
2 collaborator and didn't want measures taken against him.

3 Second, in relation to an individual in the Llap zone. Now, the
4 Prosecution alleges in paragraph 857 of its brief that Remi
5 authorised the arrest of this individual as an alleged Serb
6 collaborator who was detained in Bajgore. As the SPO then asserted,
7 this individual, who had connections to the General Staff, was
8 subsequently released from detention after the General Staff
9 intervened and remained under Remi's supervision.

10 Now, while again the Defence contests that Mr. Selimi knew that
11 this individual was actually arrested and detained by the Llap
12 command, even though he was a former member of the Serbian police,
13 Mr. Selimi, on the Prosecution's case, wanted him to be able to fight
14 for the KLA. This, again, undermines any wide definition of
15 collaborator attributed to Mr. Selimi.

16 No other interaction with an alleged collaborator who was
17 subject to detention was alleged by the Prosecution against
18 Mr. Selimi. Now, while there is another allegation in relation to an
19 incident in Klecke in April 1999, which I'll get to later, this is
20 strongly contested by the Defence as set out in the Defence brief.
21 But even on the Prosecution's case, this individual was not a
22 collaborator, but was a member of the KLA who was detained for
23 disciplinary offences. As a consequence, he is not therefore a
24 collaborator on their case. And the SPO has not adduced evidence
25 that Mr. Selimi thus had a wide interpretation of collaborator or

1 even sought for such a wide interpretation to be implemented by
2 others within the KLA.

3 As for the second category of opponents, the Prosecution's case
4 on this is very weak, confused, and contradictory as best
5 demonstrated by the evidence in relation to the LDK. Now, we know
6 there's not one definitive LDK viewpoint on the aims and means of the
7 KLA. Now, while there was traditionally a policy of non-violence,
8 the LDK was a large tent encompassing a variety of viewpoints. And,
9 indeed, as explained by various Prosecution witnesses, many LDK
10 members became members of the KLA. In fact, being an LDK member was
11 not a bar to admission.

12 By the time of the indictment period, many LDK members believed
13 that it was necessary to take arms to achieve their aims as well.
14 And even members of the government-in-exile were reconciled to the
15 need for armed force to be used to achieve their own liberation.
16 That was the reason behind the Oslo talks in May 1998 and the
17 eventual agreement that was signed by the end of the year. There was
18 not a particular viewpoint against the aims and means of the KLA.

19 And I wish to move to the implementation of the common plan or
20 the alleged implementation of the common plan according to the
21 Prosecution.

22 Now, the Prosecution's case on this is that this common plan was
23 implemented largely through orders and communiqués. I know it was
24 also alleged that it was implemented through regulations, but this
25 has already been addressed. Now, while the Defence has already set

1 out in detail the absence of Mr. Selimi's role in creating or
2 preparing any of these types of documents, the evidence on the
3 documents themselves does not support the existence of a common plan
4 to unlawfully target opponents.

5 Now, the primary argument of the Prosecution set out in
6 paragraph 67 of its brief is that communiqués served a dual purpose.
7 They constituted both instructions that were disseminated to zone
8 commanders to target collaborators and warnings to potential or
9 actual opponents. Yet, neither of these purposes is supported by
10 logic or the Prosecution's evidence.

11 In relation to the argument that they constituted instructions,
12 this is also alleged in paragraph 358 of the Prosecution brief in
13 relation to the Llap zone, where it alleges that "the Llap Zone
14 Command treated General Staff communiqués as directing and
15 authorising the treatment of collaborators and those perceived as
16 obstructing the work of the KLA."

17 Now, this argument derives entirely from the evidence of 4746,
18 whose evidence on this part of the case is wholly unconvincing. He
19 does not specify - this witness, 4746 - which specific communiqués
20 instructed him to take measures against opponents, which makes it
21 impossible to verify whether they actually did. Now, he refers to
22 Communiqués 53 and 54 as potentially the basis in his SPO interview.
23 Yet, Communiqué 53 states that punitive actions are being taken
24 against collaborationist elements by the General Staff, and
25 Communiqué 54 provides that those who conduct special warfare "will

1 be treated in accordance with the laws in wartime circumstances."

2 At its very highest, this can be said to inform anyone reading
3 the communiqués of measures that the General Staff would be taking in
4 accordance with the laws in wartime circumstances in relation to
5 collaborators. It cannot constitute an authorisation, either
6 explicit or implicit, that such measures can be taken by the zones or
7 below. Nor did this witness even specify the measures that he
8 considered these communiqués authorised him to take. He didn't
9 specify that they authorised him to arrest or detain collaborators,
10 or explain how that was the case.

11 Further, and I believe this was already mentioned by counsel for
12 Mr. Thaci, such detentions had already been undertaken in Bare and
13 Bajgore, according to the Prosecution's own case, since 2 August
14 1998, well before these communiqués were actually issued. And this
15 is confirmed by P167, which is a decision on the release from one of
16 the individuals detained in August and September in the Llap zone,
17 which doesn't make any reference to General Staff communiqués at all.

18 Furthermore, as a question of logic, if the SPO's theory is
19 correct, and the communiqués were openly instructing those at the
20 zone level to carry out crimes against opponents, why did the zone
21 commanders thus not carry out such acts openly and inform the
22 General Staff members accordingly? Why was 1D29 issued to take
23 measures against the potential for such crimes if these crimes
24 against alleged collaborators were so intended by General Staff
25 members as a whole? Why did zone commanders make efforts to hide

1 these detentions or acts of mistreatments from members of the
2 General Staff?

3 This absence of logic or absence of coherence within the
4 Prosecution theory is startling.

5 Other zone commanders or members of the General Staff who
6 testified as SPO witnesses also didn't confirm this theory or this
7 interpretation by 4746. 4401, for example, was asked about this and
8 explained that it was nothing more than a personal interpretation by
9 him of the communiqués, again without specifically identifying any
10 communiqué which set out a purported instruction.

11 There is also another fundamental logical incoherence between
12 the reliance upon General Staff communiqués as the basis for
13 instructions to zone commanders and specific orders that were issued
14 by the KLA General Staff. If communiqués so clearly and
15 unequivocally and directly instructed the zone commanders to detain
16 collaborators, why would you need to issue orders later on as well?
17 Why was P168 issued on 2 December? The reality is that communiqués
18 made no such authorisation, and it was entirely unreasonable to
19 suggest that they did.

20 As for the second part of the Prosecution's case on communiqués,
21 namely that communiqués celebrated the deaths of collaborators as
22 warnings to everyone else, again, the communiqués do not support this
23 interpretation. Now, this is raised at various different times
24 throughout the Prosecution brief, but it's most summed up in final
25 brief paragraph 60 in relation to Communiqué No. 28.

1 Now, at the outset, Communiqué 28 is from January 1997, before
2 Mr. Selimi or any of the accused were General Staff members.

3 But if warnings to collaborators were one of the central
4 purposes behind the communiqués, they would have to have sufficient
5 credibility. A reader would have to believe that the actions
6 described in them had actually been carried out. Yet, the
7 Prosecution brought no evidence that this was the case.

8 Furthermore, the Prosecution has not listed as a victim within
9 the indictment any individual who was actually mentioned in a
10 General Staff communiqué as being a collaborator and against whom
11 measures had already been taken by the General Staff. This
12 reinforces that the names that were set out in communiqués were
13 largely, if not predominantly, propaganda.

14 Now, on Monday, the SPO challenged the dismissal of communiqués
15 as propaganda because they had listed examples of actions taken
16 against collaborators in paragraphs 1473 and following of the
17 Prosecution brief. Now, that's correct to the extent that they
18 repeated the names that were listed in those communiqués, but doesn't
19 demonstrate that they actually tendered evidence to suggest that
20 those events had taken place as described in the communiqués.

21 Now, conversely, if victims listed in the indictment were within
22 the group of opponents, and measures taken against them were intended
23 to be warnings to collaborators, they would have been specifically
24 mentioned in the communiqués as having been killed because of their
25 collaboration. It's the only way in which such warnings would have

1 effectively functioned.

2 Sorry, I'll just move on.

3 So, finally, just on this point, the Defence notes Communiqué 59
4 and the evidence of 4401 on this topic.

5 Now, neither of these two pieces of evidence undermines the
6 contention that communiqués didn't form the core of the JCE as the
7 SPO alleged.

8 4401 did testify that communiqués served as a warning but were
9 mostly propaganda. Now, in the same vein as his evidence in relation
10 to the instructive nature of communiqués, no specific communiqués are
11 referred to and no specific basis for this contention was provided.

12 The Prosecution also relies in paragraph 322 of its brief on
13 Communiqué 59, purportedly in support of its general theory regarding
14 the purpose of collaborators. Now, in particular, the SPO alleges
15 that a year after Communiqué 59 was published, after the war had
16 ended, and after the indictment period, Mr. Selimi continued to
17 publicly further the narrative of Gani Geci being a traitor and
18 having killed Abedin Rexha on behalf of FARK, with full knowledge not
19 only of the falsity of that information, but also of the danger that
20 it posed for Mr. Geci and his family.

21 Now, this is a particular case. While evidence on the
22 authorship of the communiqué was limited and is addressed in
23 paragraph 612 and 615 of the Defence final brief, Gani Geci was being
24 held directly responsible in Communiqué 59 for the death of a KLA
25 commander, Abedin Rexha. The communiqué doesn't state that measures

1 had been taken against Mr. Geci, or would be, or nor does it instruct
2 others to do so.

3 When Mr. Selimi spoke about this incident a year later, there
4 was information that Mr. Geci was responsible for Mr. Rexha's death.
5 Mr. Selimi in this article states that Rexha's murder was described
6 in Communiqué 59. The communiqué clearly states that he was murdered
7 by Gani Geci. He then repeated the allegation that Mr. Geci killed
8 Mr. Rexha.

9 No reference is made in that interview to Mr. Geci leading Serb
10 forces or being a branded collaborationist. Indeed, Mr. Selimi
11 merely asks rhetorically whether the question was politically
12 motivated and recalls the need to analyse who killed him and why.

13 Now, the issue before Your Honours is not whether Gani Geci
14 killed Abedin Rexha, or even whether Mr. Selimi was correct to accuse
15 him of doing so a year later on 30 October 1999. What matters is
16 whether this communiqué is consistent with and demonstrative of the
17 SPO's theories that communiqués were used to target opponents.
18 Mr. Geci was not targeted by this communiqué because he was an LDK
19 member but because it was reasonably believed he had killed a KLA
20 commander. This is a wholly different reason which falls outside the
21 common purpose.

22 And secondly, the SPO also claims that the General Staff issued
23 orders and regulations which either "facilitated or were specifically
24 directed towards implementation of the common purpose." Yet, a
25 proper review of those documents demonstrates that such orders were

1 directed towards the lawful organisation of unstructured units and
2 further implementation of the rule of law, rather than the criminal
3 purpose alleged by the Prosecution.

4 Now, the SPO claims that the General Staff issued orders for the
5 creation of military police units and relies on different versions of
6 an order - an unsigned order - purportedly issued on 2 July 1998 by
7 the General Staff for the military police to stop suspicious persons.
8 It's P3675 and 3674. Now, these documents weren't shown to anyone.
9 They were tendered from the bar table with no witness commenting or
10 contextualising them. No reference is made to opponents or even
11 which individuals this order allegedly authorised the military police
12 to detain.

13 Similarly, in the order itself, the assertion that these orders
14 included the establishment of detention facilities and the detention
15 of collaborators, again, no written orders were specified by the
16 Prosecution, and only the vague and unsubstantiated evidence of SPO
17 Witnesses 4746 and 4752 was relied upon.

18 In any event, orders to establish the military police, detention
19 facilities or even detain collaborators cannot be considered to
20 necessarily facilitate or be directed towards the alleged criminal
21 purpose. Military police units undertook various acts for the
22 functioning of the KLA that had nothing to do with detaining
23 suspicious people.

24 Now, similarly, given the Prosecution's stated acceptance that
25 detention is not inherently unlawful and the lawfulness of taking

1 measures against purported collaborators, the mere creation of
2 detention facilities doesn't by definition contribute towards a
3 criminal purpose. And in this regard, the Prosecution relies on
4 three separate orders: P741.3, P168, and P1017.

5 Yet, it's unclear from the Prosecution's case whether these
6 three orders are supposedly indicative of the common purpose being
7 ordered by the General Staff or, on the contrary, that the
8 General Staff was concerned about abuses being committed at the lower
9 level and thus was taking measures to stop these crimes, as appears
10 from the face of these documents. Again, these contradictions go to
11 the heart of the incoherence of the Prosecution's case.

12 So, therefore, the 28 November 1998 order issued by Zyrapi
13 orders that commanders are due to "increase checks," and the
14 "improper behaviour towards the civilian population is to be
15 prevented in all KLA units." They are consistent with the
16 General Staff taking measures contrary to the implementation or the
17 alleged implementation of the JCE.

18 P168, the second order specifically relied on, relates to a very
19 specific threat posed by individuals who were armed as local police
20 within the Serb forces in Gjakove. Now, while the SPO alleges that
21 local police members were not part of the Serbian armed forces in
22 Prosecution brief 297, paragraph 297, there is evidence that such
23 individuals were directly armed and equipped by such forces as
24 confirmed by the very witness relied upon by the SPO. These were not
25 friendly, unarmed community policemen as the Prosecution suggests,

1 but well-armed, well-equipped individuals fighting against the KLA.

2 And the last document, P1017, was admitted through W4576 based
3 on what can only be described as a convoluted process of displaying
4 the document and suggesting to the witness that it was similar to a
5 document in his book, a proposition that the witness was loathe to
6 confirm. While Your Honours did finally admit the document into
7 evidence, it did so with the following caveat, and that's transcript
8 page 12700:

9 "The Court will admit the document, but it has very hazy
10 evidential value. The weight will have to be determined later on,
11 and it's possible that it does not receive very much weight."

12 As the SPO has not sought to contextualise this document with
13 any witness, and specifically did not show it to 4752, no weight can
14 reasonably be given to it by the Panel.

15 Your Honours, coming to the end of the first half of my
16 presentation, the SPO's case on joint criminal enterprise is
17 illogical, incoherent, and unsupported. Despite the Prosecutor's
18 fine words, it is based on guilt by association, collective
19 General Staff responsibility, unsupported and speculative opinions of
20 witnesses, unattributable public statements, and insinuations which
21 do nothing to mask its inherent inadequacies.

22 And I will move on after the break to Mr. Selimi's alleged role
23 within this JCE. Thank you.

24 PRESIDING JUDGE SMITH: Thank you.

25 We'll be adjourned until 3.45.

1 --- Break taken at 3.30 p.m.

2 --- On resuming at 3.45 p.m.

3 PRESIDING JUDGE SMITH: All right. Mr. Roberts, when you're
4 ready, you may proceed.

5 MR. ROBERTS: Thank you, Your Honour. I hope to complete the
6 rest of my presentation this afternoon. I may need to beg
7 Your Honour's indulgence for an extra five to seven minutes at the
8 end if I get close to finishing, but I'll inform you accordingly.

9 PRESIDING JUDGE SMITH: Just keep us advised.

10 MR. ROBERTS: Thank you, Your Honour.

11 Now, as I said, I'm moving on to Mr. Selimi's alleged
12 contribution to the JCE.

13 Now, as was held in paragraph 110 of the Confirmation Decision,
14 that's F26:

15 "The perpetrator's contribution to the JCE need not be, as a
16 matter of law, necessary or substantial, but it should at least be a
17 significant contribution to the crimes for which he or she is found
18 responsible."

19 This has been explicitly accepted by the SPO during the prep
20 conference on 15 February 2023, it's transcript page 1964, and
21 reflects findings in the Mladic Rule 98 bis decision and Krajisnik
22 appeals judgment.

23 This is not mere window dressing or an inconvenience that can be
24 dismissed, but a central requirement for proving contribution to a
25 joint criminal enterprise. None of the supposed contributions by

1 Mr. Selimi to the alleged JCE pass this stringent test.

2 Now, at the outset, some of the alleged contributions have no
3 link whatsoever to crimes. For example, the Prosecution alleges that
4 Mr. Selimi was involved in organising weapons transports,
5 paragraph 187; delineating zone boundaries, paragraphs 213 or 370;
6 reinforcing existing units, paragraph 390; or authorising
7 disbursements of funds, paragraph 206.

8 The Prosecution has done nothing, either orally or in writing,
9 to demonstrate how these contributions significantly contributed to
10 crimes in the indictment. None of the contributions or none of those
11 examples are criminal or even tangentially directed towards crimes.
12 They amount to nothing more than the general functioning of a nascent
13 army.

14 To ground liability on such actions removes any meaningful
15 difference between culpable and non-culpable conduct. Similar
16 contributions were carried out by tens or hundreds or sometimes
17 thousands of KLA members. Were they all making significant
18 contributions to a JCE? I think not.

19 Now, the SPO's case in relation to Mr. Selimi and his alleged
20 contribution is set out in paragraphs 528 to 543 of the SPO final
21 trial brief, and I'll try and address each of these allegations in
22 turn so that Your Honours are left in no doubt that no such
23 contribution existed.

24 So, firstly, paragraphs 528 to 532, formulating, implementing
25 plans, policies, rules, structure, and reporting. Now, in these

1 paragraphs the Prosecution appears to rely extensively on
2 Mr. Selimi's alleged position of hierarchy, in and of itself, as
3 something -- or somehow contributing to the commission of crimes in
4 the indictment. Now, we say this is manifestly insufficient. As
5 recognised by the ICC Pre-Trial Chamber in Mbarushimana, albeit
6 applying a different form of liability under Article 25(3)(d) of the
7 ICC Statute:

8 "The evidence submitted by the Prosecution is insufficient to
9 substantiate the finding to the threshold of substantial grounds to
10 believe that the suspect's role as a leader of the FDLR qualifies as
11 a significant contribution to the commission of crimes by the FDLR."

12 Now, I note that the SPO sought to dismiss the relevance of this
13 case on Tuesday based on the different modes of liability, but the
14 central principle that it holds is valid. A position of authority,
15 in and of itself, does not amount to a significant contribution to
16 crimes. The Prosecution has done nothing to dispel this underlying
17 reasoning.

18 So in that regard, the SPO's claims regarding the appointment
19 and authority of Mr. Selimi as inspector general are wholly
20 unconvincing. And although the Defence dedicated a substantial part
21 of its own brief on this aspect, 102 paragraphs by my count, from
22 paragraphs 349 to 451, I wish to address a few small aspects of the
23 SPO's submissions.

24 First, the SPO claims that at least by July 1998, Selimi had
25 been appointed as inspector general, yet relies on evidence in

1 support which lacks any temporal specification or which otherwise
2 highlights the existence of multiple conflicting accounts on this
3 point. The SPO has not identified any particular document or witness
4 statement which removes these ambiguities. And given the absence of
5 documentary evidence as to Mr. Selimi's appointment to this position,
6 or even witness evidence which states how and when this appointment
7 occurred, the Panel cannot be satisfied with any confidence as to
8 when it did so.

9 Now, second, in terms of his actual authority in this position,
10 the Prosecution asserts in its brief that in his capacity as
11 inspector general, Mr. Selimi was "on the level" of the general
12 commander, reporting directly to him and, in his absence, the
13 deputy commander. That's paragraph 106 of the Prosecution brief.

14 Now, as with so much of the SPO case, this allegation is
15 insinuated rather than stated clearly and unequivocally. Is it now
16 the Prosecution's case that Mr. Selimi is actually on the same level
17 as the general commander of the KLA, with the same duties and
18 responsibilities, as a kind of alternate KLA commander? Is that what
19 we're supposed to understand from the final brief?

20 And this appears to be the case because paragraph 529 says that:

21 "As the general inspector, Selimi was above the directorates at
22 the level of the general commander."

23 Yet, at no point in the SPO's case has the SPO formally alleged,
24 let alone proven, that the inspector general was at that level and
25 had that authority. It was not made in the SPO pre-trial brief,

1 where the SPO simply alleged that the general inspector reported to
2 the general commander, with no allegation that he was on the level of
3 the general commander. This was despite the fact that the evidence
4 derives from 4752 and Mr. Thaci and a purported organigramme, all of
5 which was in the SPO's possession when they filed their pre-trial
6 brief.

7 No witness gave live evidence during trial on this point.
8 Mr. Thaci's ambiguous evidence during his SPO interview, which the
9 SPO did not seek to clarify, cannot be relied upon as Mr. Selimi
10 couldn't test it through cross-examination, and it was not suggested
11 to any SPO witnesses who could have provided evidence on this issue,
12 such as 4401, 4752, or 4290.

13 The evidence of 4752 - this is P1355.7, page 23 - when he was
14 asked about the role and responsibilities of inspector general, is as
15 follows:

16 "... inspector wasn't on the same level, it wasn't equal to the
17 other directorates. Wasn't. But it was on the level of the general
18 commander. Which means that he received instructions from the
19 general commander in terms of the inspections [that] he would carry
20 out the tasks that he was assigned by him."

21 So 4752's evidence on this point is not what the SPO implies.
22 Being "on the level of the general commander" meant simply that he
23 received instructions from him. It doesn't mean that his authority
24 in that position was comparable to that of the overall commander as
25 the SPO suggests.

1 The remaining substance of 4752's evidence, as well as the
2 evidence of various other witnesses and exhibits, also confirms that
3 the inspector general was not above the directorates, but, on the
4 contrary, had a significantly lesser role and authority. For
5 example, the inspector general's role was novel and unclear both to
6 him and to those with whom he interacted; paragraphs 363 to 371 of
7 our brief. He had no staff, subordinates, or reporting; paragraphs
8 410 to 420. He had no authority over specific units; 421 to 429. He
9 was not even invited to General Staff meetings when they invited only
10 the directors of directorates; paragraph 380.

11 Even in relation to the instructions that he received from the
12 overall commander, 4752 confirmed that Syla, Azem Syla was out of
13 Kosovo for a significant period, and it would have been difficult for
14 Selimi to have reported to him during this time. Nor did he ever see
15 a report exchanged between Syla and Mr. Selimi, nor was there
16 evidence of any intercepted communication between them. There is no
17 allegation by the SPO that any of the intercepts may provide evidence
18 of this relationship.

19 The lack of a defined role, and certainly not one that places
20 the inspector general above the other directorates, is also
21 exemplified by the various versions of disciplinary regulations which
22 simply fail to even mention the position of inspector general.

23 For example, P715 is clear that the inspector general has no
24 authority in disciplinary matters. This was confirmed by 4769 and
25 4752 in relation to these regulations. And all one needs to do to

1 confirm this is look at paragraph 125 of the Prosecution's brief,
2 when it states that General Staff directorate heads and deputies,
3 when leading GS inspection and monitoring teams, could issue
4 warnings, discharge orders, and impose disciplinary confinement. The
5 chief of the General Staff, commander of the KLA, commander of public
6 order, and commander of the intelligence service, and the commander's
7 deputies could all issue disciplinary measures provided in the
8 regulations.

9 There is no mention of the inspector general.

10 The Prosecution cannot in good faith simultaneously rely on this
11 statement and not take from it the inevitable consequence that the
12 inspector general had no formal authority to take such measures,
13 which completely undermines the SPO's assertion in court on Monday
14 that as inspector general, Selimi's function was operational,
15 supervisory, and disciplinary. Indeed, the one document which
16 purported to list his responsibilities, or a concept for his
17 responsibilities, which was referred to by the Prosecution, that's
18 3D27, doesn't even refer to such disciplinary activities either.

19 The Prosecution has pointed to no formal KLA document, no order,
20 no regulation that supports its blanket assertion as to Mr. Selimi's
21 authority.

22 Instead, the SPO seems to rely almost exclusively on P3749,
23 which is an undated, handwritten drawing purporting to represent the
24 General Staff's structure at some point in its existence.

25 This handwritten scrawl is neither official nor dated. There's

1 no evidence on who prepared it, when, and for what purpose. The fact
2 it was found at Mr. Selimi's house doesn't provide any clarity on
3 these issues. Its admission through the bar table at the very end of
4 the Prosecution's case, without any contextualisation from any
5 Prosecution witness, deprives it of any weight.

6 In terms of the document itself, the SPO has not presented any
7 evidence that a structure of the inspectorate comprising inspectors,
8 deputy inspectors, and subordinates was ever established. Indeed,
9 the consistent evidence of Prosecution witnesses was that it was not.
10 Other unexplained factors like the red ink which seeks to form some
11 structure around the alleged inspectorate, which may or may not have
12 been produced at the same time and by the same person as the original
13 document, further reduce any reasonable reliance that can be made,
14 placed on this document.

15 Even the content of the document itself doesn't support the
16 assertion that the inspector general was on the level of the general
17 commander. At most, it posits the inspectorate as subordinate to the
18 deputy commander and somehow parallel to the military court. It
19 posits Mr. Selimi as nothing more as an assistant to the commander
20 rather than endowing him with any substantive control.

21 Later in this point, the SPO also implausibly claims that the
22 inspector general was a higher rank than the chief of the operational
23 directorate. Now, in addition to 4752's evidence, which has been
24 addressed already, this is apparently based on Mr. Selimi's prior
25 statements where he confirms that he originally held the role of

1 chief of the operational directorate and after this the inspector
2 general. Yet at no stage does he even suggest that the inspector
3 general was superior to the chief of the operational directorate, and
4 no other Prosecution evidence supports such a theory.

5 The Prosecution's blanket assertions regarding the role and
6 authority of the inspector general are not built on solid,
7 well-constructed evidential foundations. They're built on desperate
8 assertions, on untested scrawls, and comments which the SPO
9 misrepresents in order to buttress its flailing case. They do
10 nothing more than highlight the absence of clear, concrete, and
11 reliable evidence on this issue.

12 Secondly, paragraphs 533 and 534, participation in crimes or
13 facilitating or encouraging crimes in furtherance of the common
14 purpose.

15 Now, in both the Prosecution's final brief and over oral
16 submissions, the Prosecution cursorily and superficially addressed
17 the individual allegations against Mr. Selimi. Now, the Defence, by
18 contrast, assessed and addressed these in detail over parts V.D.1-8
19 of the Defence final trial brief, and there's little more that needs
20 to be said. I will, however, address in relation to each one of them
21 a couple of minor points.

22 Now, first, in relation to an allegation involving Mr. Selimi
23 stopping a man in a village in June 1998 and purportedly intimidating
24 him, the limited relevance or probative value of this assertion is
25 demonstrated by the lack of prominence given to it by the

1 Prosecution. The same vague assertion regarding Mr. Selimi is cited
2 in paragraphs 81 and 663, without any direct allegation or evidence
3 against Mr. Selimi regarding what was actually said by him to
4 supposedly intimidate this individual.

5 We addressed this allegation in paragraphs 653 to 678. It's
6 principally based on the evidence of one witness who fabricated
7 evidence implicating Mr. Selimi and other individuals in earlier
8 events in April 1998 and whose evidence largely comprises untestable
9 and uncorroborated hearsay from a deceased individual which he also
10 never mentioned in previous statements. His explanation of how he
11 claimed to identify Mr. Selimi is wholly unbelievable, while the
12 description of Mr. Selimi and its circumstances raises multiple
13 elements of an unreliable and unsafe identification.

14 Second, in relation to the allegations set out at paragraph 41
15 of the indictment relating to the alleged crimes in Drenoc against
16 two opponents in June 1998. Now, as we set out in paragraphs 680 to
17 682 of the Defence final brief, the allegation of Mr. Selimi's
18 presence in that allegation is not one of participation as set out
19 and accepted in filing F3607 at paragraph 38. The Prosecution's
20 belated attempt to involve Mr. Selimi as an active participant in
21 this event - and I'm referring here to paragraphs 82, 534, and 767
22 and 768 of the Prosecution final brief - is as unsubstantiated as it
23 is procedurally improper. As is the Prosecution's claim that
24 Mr. Selimi's SPO statement on this issue was reliable as it
25 implicated him and was thus against his own interest, as no such

1 implication was made. As for the Prosecution's vague and
2 unreferenced oral assertion that this argument "is illogical and
3 unfounded," that's transcript page 28451, without any further
4 explanation or substantiation, this is wholly meaningless.

5 As the Defence has set out in its brief, none of the accounts
6 provided in relation to this incident are reliable. They are
7 impacted by the interference in the investigation by outside
8 individuals which have compromised the reliability and credibility of
9 the evidence produced.

10 Third, in relation to Mr. Selimi's alleged presence in the
11 vicinity in the aftermath of fighting in Rahovec in July 1998.
12 Again, addressed in paragraph 782 to 816 of the Defence brief, all
13 the evidence suggests this was not an attack on Rahovec initiated by
14 the General Staff, but instigated instead by local units of their own
15 volition. Mr. Selimi was not present at the outbreak of fighting.
16 He arrived later with 4752 with whom he remained on the front lines
17 in the face of the VJ counterattack. His subsequent involvement in
18 defensive actions to repel these attacks and swift departure to
19 Llapushnik demonstrates the absence of any knowledge or role he had
20 in relation to any individuals who were supposedly detained by local
21 units in the context of this fighting. Neither the available
22 documentary evidence - that's P1329, P67, or P643 - nor limited
23 witness evidence on this proves any role for Mr. Selimi whatsoever.

24 Fourth, in relation to allegations against Mr. Selimi for being
25 present during an interrogation of an opponent in Likoc in August

1 1998, these are addressed at paragraphs 743 to 766 of the Defence
2 final brief. I've already referred to it earlier. They're based on
3 the entirely unreliable evidence of one witness, who sought for the
4 first time before this Panel to also implicate Mr. Selimi in his
5 beating, an allegation that he had never made before despite multiple
6 prior opportunities to do so. The lure of financial compensation,
7 which the witness admitted being interested in to the SPO, strongly
8 appeared to be enough for this witness to lie to the Panel. Now,
9 while the SPO, quite rightly, has not relied on this new and wholly
10 fabricated part of his evidence, it's been unable to draw the logical
11 consequence of this non-reliance, namely that the credibility of that
12 witness is so low that it cannot be relied upon at all.

13 Unsurprisingly, in its brief or orally, the SPO makes no reference to
14 any of these issues, instead simply asserting Mr. Selimi's presence
15 during that incident. The SPO does not even refer to the request
16 that this individual be released or that any mistreatment of that
17 individual only occurred after the individual that was identified as
18 Mr. Selimi was present.

19 Fifth, in relation to the alleged intimidation of LDK-affiliated
20 units in the Dukagjin zone in early September 1998 as alleged in
21 paragraph 45 of the indictment, the Defence has extensively addressed
22 these allegations in paragraphs 817 to 881 of the Defence final
23 brief. The actions of Mr. Selimi were limited but justified in the
24 prevailing context at the time.

25 However, I would just like to recall the SPO's further

1 insinuation of involvement by Mr. Selimi in an alleged plot to kill
2 individuals repeated in paragraphs 339 of the SPO final trial brief.
3 This appears to be an allegation based on the evidence of W04448 and
4 epitomises the calibre -- or lack of calibre and lack of credibility
5 of Prosecution witnesses. 4448 had an extensive history of refusing
6 to answer questions and manipulating the SPO when it suited him, as
7 it had done prior prosecutorial authorities. His evidence before
8 this Panel was no different. Convincing a desperate Prosecutor to
9 write to US immigration authorities to assure them of the importance
10 of his testimony appeared to be far easier for this witness than
11 fulfilling his basic obligation to tell the truth before the Court.
12 One witness to whom his evidence related had a 0 per cent confidence
13 in the veracity of his evidence. Your Honours should have no more
14 than that.

15 Sixth. Now, in relation to the allegation at paragraph 46 of
16 the indictment relating to the alleged participation of Mr. Selimi in
17 the arrest, detention, and intimidation of members of a parliamentary
18 delegation in Qirez. We fully agree with the Prosecution that the
19 Panel must consider all evidence in its totality when addressing this
20 allegation. That's transcript page, from the Prosecution's
21 submissions on Monday, 28438. Yet when doing this, the Panel must
22 take into account the inherent contradictions between the witnesses'
23 accounts on this issue, which the SPO has done nothing to reconcile,
24 irrespective of which account the SPO relies on. This is amply
25 addressed by the Defence in paragraphs 882 to 922 of the Defence

1 final brief.

2 But what is also noted, however, in the Prosecution final brief,
3 is the extent to which the SPO has resiled from the initial
4 allegations against Mr. Selimi in relation to this incident. Out of
5 the four allegations that originally appeared therein against
6 Mr. Selimi, only one barely remains, and even that is not supported
7 by any evidence approaching the necessary level.

8 Seventh, in relation to the arrest, detention, and proceedings
9 against Blerim Kuqi as set out in paragraphs 502 and 503 of the
10 Prosecution pre-trial brief, there is no direct allegation or
11 evidence of involvement by Mr. Selimi for these actions. As
12 explained in detail in paragraphs 1009 to 1049 of the Defence final
13 brief, the evidence on this issue is vague and limited. No
14 suggestions of Mr. Selimi's involvement in the decision-making or
15 implementation of these actions has been demonstrated. In any event,
16 the individual purported victim of that allegation is not, we say, an
17 opponent within the SPO's definition as set out in paragraph 32.

18 The same applies to the eighth allegation against Mr. Selimi as
19 set out in paragraph 49 of indictment in relation to an incident in
20 April 1999 in Klecke. This incident was repeatedly referred to by
21 the Prosecution and also by Victims' Counsel on 2 [sic] February.

22 Now, at the outset, I just want to note that, like all
23 allegations in the indictment, Mr. Selimi is not charged with
24 physically committing any crime in relation to this incident. That
25 was clearly notified by them and referred to in the Defence final

1 brief.

2 In any event, the uncorroborated and fabricated identification
3 of Mr. Selimi, along with a wholly invented story of how the witness
4 concerned previously claimed to have met him in order to be able to
5 subsequently identify him, is wholly unreliable. The Prosecution has
6 done nothing, either orally or in writing, to dispel any of the
7 legitimate criticisms about this identification, and has merely
8 restated its contention as if none of those exist.

9 Your Honours will recall that witness's fantastical and
10 convenient description of Mr. Selimi appearing under a moonlit sky a
11 few weeks before the incident concerned. Such a patently fabricated
12 explanation should prevent the Panel from relying on a single word of
13 his testimony.

14 But even if the Panel does consider that this evidence was
15 somehow given honestly, the many crucial and fatal issues undermining
16 his claimed identification of Mr. Selimi, wholly ignored also by the
17 Prosecution in writing and orally, were extensively set out in
18 paragraphs 934 to 977 of the final trial brief. This identification
19 is fundamentally unreliable.

20 Ninth, in relation to Ymer Xhafiqi, the SPO relied upon the
21 testimony of W3724 who was informed by a person associated with
22 Mr. Selimi's nickname of Ten that Xhafiqi was under the control of a
23 "higher formation." And this witness was one of two witnesses to
24 testify before the Court regarding Selimi's knowledge of this
25 abduction. That's a reference to transcript page 28415, the

1 Prosecution's submissions on Monday.

2 However, what the Prosecution failed to relate was that this
3 witness did not make the association himself but was told it by a
4 colleague who didn't testify, and 3724 himself had no knowledge of
5 what "Ten" was as he candidly admitted to the Panel.

6 As for the other witness euphemistically referred to by the
7 Prosecution as testifying regarding Mr. Selimi's knowledge of this
8 abduction, this unreliable identification, which was again challenged
9 in detail by the Defence, didn't confirm that the individual
10 identified as Selimi actually had any knowledge of that detention,
11 simply that he had been asked about it.

12 And finally, there are two other allegations which the
13 Prosecution should not be maintaining but still surreptitiously
14 appears to be doing so. One relates to an allegation that
15 Mr. Selimi threatened a journalist and human rights activist in
16 October 1998 in Jabllanice as set out in paragraph 47 of the
17 indictment. This was based on evidence of one witness whose evidence
18 was admitted pursuant to Rule 155, without the evidence specifically
19 relating to Mr. Selimi, because, in the words of the Trial Panel, the
20 allegation was and would be uncorroborated. It was given by a
21 witness whom the accused, Mr. Selimi, would not be able to
22 cross-examine and challenge in respect of these assertions, and was
23 not given under oath. As such, it was excluded as causing undue
24 prejudice outweighing the probative value of that part of the
25 witness's evidence. And for the record, that's decision F1603,

1 paragraphs 193 and 197. And the Prosecution was ordered to prepare
2 and tender a version of that document redacting the impugned section.

3 The Prosecution explicitly withdrew this allegation from the
4 indictment in filing F3155, but yet, in paragraph 3455 of the final
5 brief, it alleges that:

6 "Members of the General Staff were also directly implicated in
7 the targeting of Opponents in the Dukagjin Zone. In late October
8 1998, [an Opponent], was escorted to the Jabllanice headquarters,
9 where he was interrogated by a man who identified himself as, and
10 Sokol Dobruna confirmed was, a General Staff member."

11 This assertion is based on three paragraphs of the witness
12 statement which the SPO did not redact. These other paragraphs
13 continue indirectly to implicate Mr. Selimi to the incident in
14 contravention both of the Trial Panel's order and their own notice.
15 We say it's wholly improper for the SPO to continue to rely on these
16 allegations and to seek to implicate both Mr. Selimi individually and
17 the General Staff as a whole in relation to this incident.

18 And, finally, in relation to individual allegations. The SPO
19 also alleges the involvement of Mr. Selimi in relation to an
20 individual called Sami Duga at paragraph 1005 of the SPO final trial
21 brief. He's not mentioned at all in the pre-trial brief. There is
22 an allegation in paragraph 513 of the pre-trial brief which relies
23 exclusively on the evidence of 4839 in relation to an alleged order
24 from Mr. Selimi regarding an individual from Duga village, but this
25 was later withdrawn. Yes, the order was later withdrawn.

1 And, again, when Your Honours admitted 4839's testimony or
2 evidence in decision F2013, you noted this wasn't contained in the
3 indictment, nor that the individual was, in fact, killed, but
4 considered this evidence would be relevant. And, again, you excluded
5 it due to the undue prejudice it would cause. However, the
6 Prosecution appear to have resurrected this allegation in
7 paragraph 1005 of the Prosecution final trial brief in a different
8 form, potentially in relation to a different Duga. Either way, this
9 allegation should not have been led against Mr. Selimi.

10 Third, the failure to prevent, investigate, or punish. So this
11 is paragraphs 535 and 536 of the Prosecution final trial brief.

12 Now, this is essentially an aspect of superior responsibility
13 that has been re-packaged as an alleged significant contribution to
14 the JCE. Mr. Selimi did not have subordinates. He did not have the
15 authority to release detainees. The perception of Mr. Selimi's
16 authority by 4743, in relation to one specific case relating to four
17 military police members who were not charged with any underlying
18 crimes in the indictment, is vastly different to his actual authority
19 and irrelevant to the allegations in the indictment.

20 Other aspects of his alleged knowledge of crimes through media
21 broadcasts were addressed extensively by the Defence in
22 paragraphs 1131 to 1153 of the final brief.

23 Fourth, dissemination of information to promote the common
24 purpose and engender fear, distrust, and hatred, Prosecution final
25 brief paragraph 537. Now, this allegation for disseminating

1 information is notable limited even within the limited scope of the
2 Prosecution's allegations as a whole.

3 First, the Prosecution relies on Mr. Selimi's role at the
4 initial appearance of the KLA in November 1997, well before the
5 indictment period. Now, while I'll address the content of this later
6 in relation to Mr. Selimi's intent, the fact that it was made over
7 five months before any crimes were committed pursuant to the alleged
8 common plan during the indictment period means it cannot have
9 constituted such a significant contribution. No link has been
10 demonstrated by the SPO between that speech and specific crimes they
11 allege in the indictment.

12 Similarly, the SPO's assertion that "Mr. Selimi took part in
13 communications governance during the war to ensure that the
14 General Staff's official public statements would be perceived as
15 authoritative," that's a quote from the Prosecution brief, is as
16 meaningless as it is unsupported. The evidence relied upon is the
17 relatively uncontroversial statement by 4410 that when he met
18 Mr. Selimi, he commented that he was happy the witness had gone to
19 see the war, but had some remarks concerning the way that Albanian
20 Television was informing about the war because the reporting was not
21 the real reflection of the situation there.

22 4410 never explained how this relatively benign comment, which
23 he agreed with, constituted Mr. Selimi ensuring that the
24 General Staff's official statements were authoritative.

25 Any request for a realistic and objective assessment of the

1 conflict from those who actually visited the war zone is entirely
2 contrary to the SPO's suggestion that Mr. Selimi was seeking to
3 control the messaging or to put out a specific position.

4 Five, appointing, promoting, approving appointments and
5 promotions. Now, the Defence has addressed the role of Mr. Selimi
6 and the General Staff in appointments of military police in various
7 aspects of the Defence final brief at paragraphs 237 to 276. The
8 vast majority of appointments were actually carried out by the
9 relevant zone commander, with no role or implication of Mr. Selimi or
10 any members of the General Staff.

11 But there are two aspects which merit some brief further
12 comments.

13 First is the personnel council and personnel directorate. Now,
14 the Prosecution appears now to be placing weight upon the fact that
15 the inspector general had a role in relation to the personnel
16 directorate, claiming that, at the General Staff level, the personnel
17 directorate cooperated with the inspector general. That's paragraph
18 177 of the final brief.

19 But yet again, the Prosecution overstates this evidence, in this
20 case, an interview of Adem Grabovci, who actually states that the
21 closest cooperation was with other directorates and, on occasion,
22 with the inspector general. Again, this untested individual --
23 evidence from an individual who was not called as a witness should be
24 ignored by the Panel.

25 The SPO also alleges that Mr. Selimi was a member of the

1 personnel council. That's paragraphs 178, 538, and 539 of the
2 Prosecution brief. Allegedly responsible for examining a proposal
3 for appointment, including from the zones, which would be discussed
4 by the General Staff. This assertion rests on two handwritten notes,
5 both referring to the establishment of various committees.

6 Mr. Selimi's name only features on the undated note as a member of
7 the personnel council. The other document, P1109, does not list him
8 as a member of the personnel council. Although it was shown to some
9 witnesses, none of them noted Mr. Selimi's absence from this list or
10 otherwise corrected the document to include him.

11 Indeed, the evidence as to whether the personnel council even
12 existed and functioned is also extremely limited, as explained by
13 counsel for Mr. Thaci yesterday.

14 Now, a subsequent allegation relating to the meeting on
15 12 February 1999, where the Prosecution alleges that it was decided
16 to replace Commander Drini as Pashtrik zone commander, has little to
17 do with the personnel council. 4752's speculation that it would have
18 been the personnel council that provided the reasons for the proposed
19 replacement is not based on his own knowledge.

20 The allegation that Mr. Selimi was supposedly leading the
21 debates at the meeting which led to that is based on one witness's
22 account who could not explain why a separate individual who was also
23 present at the same meeting gave such a different account of this
24 meeting to the Prosecution, and explained that neither Mr. Selimi nor
25 members of the General Staff were present or even recalled the

1 witness involved, 4739, having such a public argument with the
2 General Staff members as he had claimed.

3 The Defence has addressed in detail the replacement of
4 Commander Drini in paragraphs 446 to 451 of its final brief.

5 The Prosecution's attempt in oral submissions on Tuesday to
6 contrast the replacement of Commander Drini and the promotion of
7 Sylejman Selimi is similarly misplaced. The SPO failed to produce
8 evidence that Mr. Selimi was actually responsible in any way for
9 either action. However the Prosecution portrays Sylejman Selimi's
10 election as KLA commander and replacement of Azem Sylja, there is no
11 proof this was engineered or implemented by Rexhep Selimi. Like much
12 of the Prosecution's case, this is merely rumour and insinuation
13 rather than being based on concrete evidence.

14 The SPO also claims that Mr. Selimi was part of a limited group
15 controlling appointments, where he ensured that those proven to be
16 reliable implementers of the common purpose received appointments or
17 promotions. Yet, this grand statement is predicated on three
18 appointments by Mr. Selimi: In relation to Faton Mehmetaj, that's
19 P1947; Kadri Kastrati, P1392; and another individual, P920.

20 Now, despite Kastrati being mentioned by the Prosecution in its
21 final brief, there is no allegation, let alone proof, that this
22 appointment -- sorry, he is not directly implicated in any alleged
23 crimes. There is thus no allegation or proof that the appointment of
24 him served in any way to implement the common purpose.

25 While Mr. Mehmetaj is allegedly implicated in crimes according

1 to the Prosecution brief, his formal appointment by Mr. Selimi was in
2 the context of attempts to resolve the situation involving
3 Mr. Tahir Zemaj in August 1998. Mehmetaj's appointment by Mr. Selimi
4 occurred after he had also been fulfilling a very similar role within
5 the Dukagjin zone, where he had been appointed by Mr. Haradinaj.

6 P920, relating to a member of FARK, was issued on the same day
7 as the appointment of Mr. Mehmetaj. How the SPO can reasonably claim
8 that this appointment through 920 was also part of a common plan to
9 install Mr. Selimi's loyal individuals to implement the common plan
10 beggars belief.

11 Now, while Mr. Selimi may have wished to exaggerate his role by
12 stating that he personally signed the appointments of the zone
13 commanders of Dukagjin, Shala, and Llap - that's P774 - no witness or
14 documentary evidence to support that allegation has been produced,
15 and nor did the SPO even ask 4746, who would have been in a position
16 to confirm it.

17 So, finally, two appointments and their alleged reporting
18 relationships just require a further brief comment.

19 In paragraph 503 of the final brief, the Prosecution alleges
20 that Mr. Selimi assigned Nexhmi Krasniqi to the command in Prizren
21 after Nexhmi had overseen prior detentions and abuses in cooperation
22 with Selimi. However, the only appointment in which Mr. Selimi is
23 even alleged to have been involved concerning Krasniqi's role as the
24 Pashtrik operational zone military police commander, which occurred
25 in February 1999, was extensively addressed and rebutted in

1 paragraphs 247 and 254 to 255 of the Defence final brief.

2 In relation to this later allegation when Mr. Selimi was
3 minister of public order, this was based on the evidence of 4738 in
4 the Prosecution pre-trial brief, which was not ultimately admitted
5 into evidence. Despite the lack of any remaining evidentiary basis,
6 the SPO, however, continues to maintain this allegation and bridge
7 the evidentiary gap with speculation.

8 And finally on this issue of appointments, paragraph 1278 of the
9 final Prosecution trial brief claims that as the commander of the Eye
10 of the Eagle Unit and deputy commander of the Pashtrik zone military
11 police, Nezir Kryeziu reported to the Pashtrik zone command and the
12 General Staff, including Mr. Selimi.

13 Now, while the Defence addressed and disproved any assertion of
14 control over the Eye of the Eagle Unit by Mr. Selimi in its final
15 trial pre-trial brief at paragraphs 423 to 429, the desperate nature
16 of this allegation epitomises the desire of the SPO to show some link
17 between Mr. Selimi and those who were allegedly responsible for
18 crimes in the indictment. There is none.

19 Sixth, providing, arranging, or facilitating political,
20 logistical, military or financial support. This is paragraph 540 of
21 the Prosecution final trial brief.

22 Now, this is, again, the Prosecution relying on normal military
23 tasks as a significant contribution to crimes pursuant to a JCE,
24 which I've already addressed earlier. Simply put, they're seeking to
25 find a significant contribution for Mr. Selimi simply by him being a

1 soldier. This is inherently impermissible.

2 However, in paragraph 233 of its final trial brief, the
3 Prosecution also, seemingly for the first time, sought to ascribe a
4 political role to Mr. Selimi as well that's set out neither in the
5 pre-trial brief or supported by evidence.

6 Although the Prosecution appears to accept that Mr. Selimi was
7 not part of the political directorate, it does allege that in May
8 1998, he represented the General Staff in meetings with LKCK
9 representatives where an agreement incorporating such LKCK forces
10 into the KLA was reached, which the SPO characterises as Selimi's
11 foray into political matters.

12 Yet Mr. Selimi's meetings with the LKCK centred exclusively on
13 military matters. Indeed, in the interview relied upon by the
14 Prosecution on this issue, he makes it clear that the outcome of
15 these meetings was the signing of a Military Technical Agreement.
16 Now, despite the LKCK wanting there to be an agreement on both
17 military and political issues, Mr. Selimi clarifies that only a
18 military agreement was made as he refused to speak about the
19 political aspect because that was not his responsibility. That's
20 P1949 and repeated in his *Zeri* interview at P4200.

21 The Prosecution similarly contends that Mr. Selimi's
22 participating in talks with the government-in-exile's minister of
23 defence and prime minister in July 1998 befits his foray into
24 political activities, again relying on Mr. Selimi's own evidence.
25 Yet, the rest of his explanation of that meeting is wholly ignored by

1 the Prosecution. He didn't convene the discussion, was not in charge
2 of it, and actually sought to return to fighting back in Kosovo as
3 soon as was feasible.

4 Given the absence of any political meetings after that point,
5 the SPO's assertion that he exercised a political role is entirely
6 untenable.

7 As for the remaining allegations in paragraph 540, again, they
8 amount to Mr. Selimi's lawful and legitimate contribution to a war of
9 liberation rather than any contribution to the commission of crimes.
10 Allegations such as travelling regularly across KLA zones or
11 facilitating operational planning or logistics. In other words,
12 Mr. Selimi was being a soldier. His contribution to the JCE was his
13 contribution to the KLA.

14 A more obvious example of seeking to penalise the mere act of
15 fighting is difficult to imagine. At no point in any of these
16 allegations does the SPO explain how Mr. Selimi travelling across
17 zones actually contributed to the commission of crimes.

18 Similarly, the allegation that Mr. Selimi "ensured that JCE
19 members and tools had the resources required to fulfil the common
20 purpose," without specifying which members or tools this is intended
21 to refer to or what resources he's intended to have provided.

22 Now, you would have thought that the evidence would have come
23 from footnotes which lists the supposed evidence in support of this
24 allegation, but none have a direct reference to Mr. Selimi.

25 And I would very much echo the comments of counsel for Mr. Thaci

1 and counsel for Mr. Veseli in relation to the necessity of digging
2 down into the footnotes in the Prosecution final brief. It is
3 replete with anodyne phrases that then are unsupported wholly by the
4 supposed evidence that is cited.

5 These unsupported assertions within the Prosecution final brief
6 cannot be unintentional. They must be aware that the evidence
7 doesn't support the existence of a significant contribution by
8 Mr. Selimi to the crimes alleged in the indictment. Yet, it does
9 appear to hope that by burying Your Honours in footnotes, this will
10 compensate for the lack of credible and reliable evidence.

11 Now, the final allegation of Mr. Selimi's supposed contribution
12 to the JCE was coordinating and liaising between JCE members and
13 tools. This is paragraphs 541 and 543.

14 Now, while the SPO overstates the importance, nature, and
15 frequency of any inspections based on the evidence given in this
16 case, it also failed to explain how any inspections carried out by
17 Mr. Selimi actually contributed to the commission of crimes. This
18 omission is fatal to their case.

19 Indeed, one aspect of the Prosecution case on this final
20 allegation is that because Mr. Selimi was respected and trusted by
21 individuals, this meant he therefore could act as a conduit between
22 General Staff policy and the field. This is set out in
23 paragraph 541. Again, this is based more on hope and speculation
24 than evidence.

25 Mr. Selimi's positive relationships on the ground with KLA

1 soldiers, symptomatic of how he conducted himself and the fact that
2 he was willing and ready to put his life in danger and fight on the
3 front lines with those individuals, has nothing to do with the
4 alleged JCE attack on opponents. As 4752 testified in the precise
5 extract relied upon by the Prosecution, he didn't have any problems
6 with the zone commanders because he was accompanied by Mr. Selimi,
7 not when Mr. Zyrapri was doing anything nefarious, but when he was
8 trying to establish defence lines because of the impending Serb
9 offensive.

10 At no stage did the Prosecution take the time to explain what
11 the link was between those travels or inspections or good relations
12 with KLA soldiers on the ground and how that contributed to crimes
13 underpinning the alleged JCE. Indeed, it is only the last two
14 paragraphs of the entire section addressing Mr. Selimi's
15 responsibility that the Prosecution makes two allegations concerning
16 a concept upon which its case appears to rest.

17 In paragraph 542, the Prosecution alleges that as a member of
18 the General Staff Mr. Selimi formalised command structures,
19 delineated the boundaries of operational zones, carrying the
20 General Staff line on hierarchy, discipline - this is the relevant
21 part - and the targeting of special warfare actors. In the
22 subsequent paragraphs, Mr. Selimi, in relation to alleged visits to
23 Shala and Llap zones, is alleged to have conveyed guidance on
24 identifying and addressing special warfare, explicitly linking
25 political opponents to that category and instructing local structures

1 accordingly.

2 Now, special war is a concept that's been referred to multiple
3 times throughout this trial by the SPO as if the mere mention of this
4 term itself is so criminal that nothing more needs to be adduced to
5 explain what it means and how it implicates the accused. Yet, the
6 repeated use of this term fails to either define it with sufficient
7 clarity, or that this concept was shared by Mr. Selimi and the other
8 accused, or was symptomatic of a common plan against opponents.

9 In paragraph 52 of its final brief, in reference to special
10 warfare, the SPO asserts that this phrase "encompassed any type of
11 political discourse, or stance, perceived as undermining support for
12 the KLA," including "criticism of the KLA and its operations, which
13 was cast as 'misinformation' and 'propaganda,' as well as the
14 expression of views considered as 'pacifist' or 'defeatist'."

15 And the following paragraph, 53, proceeds to allege that it
16 included "any 'speculation related to the formation of
17 Institutions'."

18 Essentially, on the SPO's own case, this phrase was thus so
19 vague, it essentially encapsulated any and all viewpoints which could
20 be interpreted as different from those of the KLA.

21 Its ubiquitousness meant that this term essentially ceased to
22 have any real meaning. It was not a secret criminal phrase, as the
23 SPO insinuates, intended to describe through coded language a
24 specific agreement to target opponents. Instead, it amounted to
25 shorthand for any number of different topics. Any passing reference

1 to this concept without information or explanation as to its meaning,
2 purpose, and what it specifically related to in those circumstances
3 is evidentially meaningless.

4 Your Honours, I think I have about seven minutes left. So with
5 your indulgence -- thank you very much.

6 PRESIDING JUDGE SMITH: Go ahead.

7 MR. ROBERTS: Thank you, Your Honours.

8 I would just like to move now to the issue of intent. And this
9 is where I will end my submissions today before my colleagues take
10 over in the morning.

11 And when I say "the issue of intent," I mean the lack of proof
12 that Mr. Selimi had any intent to commit the crimes charged in the
13 indictment or to participate in the common plan involving their
14 commission as alleged by the Prosecution.

15 Now, the Prosecution's generic assertions that the accused's
16 roles in the formulation, implementation, and enforcement of the
17 common purpose directly demonstrates their intent to participate in
18 it and to commit the charged crimes have already been discussed in
19 detail, as have the SPO's reliance on the existence of the alleged
20 common plan and the alleged significant contribution of each of the
21 accused to it, including Mr. Selimi's alleged involvement in the
22 incident in Klecke.

23 Now, without evidence that any of Mr. Selimi's actions amounted
24 to anything close to significant contributions to a JCE, no reliance
25 can also be placed on them to somehow discern intent on his behalf.

1 Instead, the Prosecution relies seemingly on three separate
2 uncorroborated allegations -- or two separate uncorroborated
3 allegations to demonstrate his supposed intent behind the JCE.

4 First, one uncorroborated and very convenient allegation of a
5 supposed threat by Mr. Selimi to an individual - I believe this is in
6 relation to a transcript dated 26 June 2024 - which was relayed by a
7 discredited and wholly biased witness who falsely blamed Mr. Selimi
8 for the death of his relative. The Defence contests whether that was
9 ever said, and no weight can be given to that evidence by the Panel.

10 Nor can any weight be given to an alleged threat by Mr. Selimi
11 to Commander Drini, allegedly overheard by a witness whose
12 identification of Mr. Selimi was, again, deeply flawed, especially
13 when the Prosecution neglected to call as a witness the actual person
14 to whom this threat was supposedly made despite originally listing
15 him on their witness list.

16 Two uncorroborated, unbelievable, and fabricated instances do
17 not demonstrate intent on Mr. Selimi's behalf.

18 Instead, all that the Prosecution has to supposedly establish
19 Mr. Selimi's intent for the JCE is the speech that he gave at the
20 KLA's first public appearance in November 1997, which is specifically
21 relied upon in paragraph 573 of the SPO final trial brief.

22 How ironic it is that of all the words spoken before, during,
23 and after the indictment period, of all the allegations made against
24 the accused, and the reasons why this tribunal needed to be created,
25 the well-known speech at the funeral of the murdered teacher

1 Halil Geci that galvanised support for the KLA and introduced the KLA
2 to the public for the first time is where the SPO's case against
3 Mr. Selimi ultimately rests.

4 Now, while the Defence has already addressed in the final trial
5 brief the circumstances through which that speech was written, it
6 does not refer to any of the FARK, the LDK, or Bukoshi's government
7 being collaborators. As a classic piece of propaganda befitting its
8 purpose in the circumstances of the time, it highlights unspecified
9 actions that have been taken against collaborators and
10 collaborationists and legitimately criticises those who believe that
11 war was not the correct policy to pursue.

12 This is not emblematic or demonstrative of intent by Mr. Selimi
13 that crimes be committed against opponents. It was intended and
14 directed to inspire resistance. It was intended to show that only
15 through fighting back against those forces who had killed, raped, and
16 tortured the Albanians of Kosovo would liberation be achieved. Its
17 success can only be judged by those hundreds and thousands who
18 volunteered to fight for the KLA in the weeks and months that
19 followed.

20 Your Honours, thank you very much for your attention. This
21 comes to the end of my submissions, and I'll pass over to my
22 colleagues in the morning.

23 PRESIDING JUDGE SMITH: Thank you very much.

24 Just for some guidance. Tomorrow, we will probably finish with
25 your colleagues' portion by noon.

1 For the Krasniqi Defence's information, we will probably break
2 for lunch right then at 12.00, go until 1.30 with the lunch break,
3 and then start up. And then you would have the rest of the afternoon
4 and would nearly be finished in that time period, but we'll have
5 Monday as well for you to finish up in. So that will be the plan for
6 tomorrow, and we'll outline it in more detail in the morning.

7 Anything else?

8 We're adjourned until 9.00 a.m. tomorrow.

9 --- Whereupon the hearing adjourned at 4.48 p.m.

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