

1 Monday, 10 July 2023

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

5 --- Upon commencing at 9.00 a.m.

6 PRESIDING JUDGE SMITH: Madam Court Officer, you may call the  
7 case.

8 THE COURT OFFICER: Good morning, Your Honours. This is case

9 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci,  
10 Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi.

11 PRESIDING JUDGE SMITH: So good morning, everyone. Today we're  
12 going to begin the testimony of Witness 04337.

13 I note that Mr. Thaci, Mr. Veseli, and Mr. Selimi are all  
14 present in court. Mr. Krasniqi is with us by videolink.  
15 Mr. Krasniqi has waived his right to be present and provided a  
16 written consent pursuant to Rule 96(2).

17 Before starting with the testimony, there are a few housekeeping  
18 matters to take care of. First of all, an oral order on the Thaci  
19 Defence urgent request in relation to reserve witnesses.

20 On July 3, 2023, the Thaci Defence filed an urgent request. The  
21 Defence requests that the SPO provide a definitive order of  
22 appearance for the four reserve witnesses identified for the month of  
23 July.

24 It also requests that at the end of any three-week block of  
25 hearings, the calling party provides notification of the reserve

1 witness it intends to call and their definitive order of appearance.

2 On 5 July 2023, the SPO responded in F01644. It submits that  
3 the Defence has the information it needs to prepare for the relevant  
4 reserve witnesses and has failed to demonstrate any prejudice.

5 The Panel recalls that pursuant to paragraph 74, 77, and 80 of  
6 the Order on the Conduct of Proceedings, the SPO shall list the  
7 witnesses in the tentative order in which they are to be called. At  
8 the end of any three-week block of hearings, the party calling  
9 witnesses shall notify the Panel and the other parties and  
10 participants of the witnesses which it intends to call during the  
11 following three-week block of hearings. And it is the duty of the  
12 presenting party to notify the Panel, the other parties, and  
13 participants, and the Registry as soon as possible of any changes in  
14 the order of witnesses.

15 In addition, on 19 June 2023, the Panel ordered the SPO to  
16 provide a list of five backup witnesses in projected order of  
17 appearance.

18 First, the Panel observes that through its notices provided on  
19 21 June and 30 June, the SPO has complied with both the Order on  
20 Conduct of the Proceedings and the Panel's order of 19 June. The  
21 Defence, therefore, possesses all of the information it needs to  
22 prepare for the next 12 witnesses and the identified reserve  
23 witnesses. The Panel is not persuaded that a definitive order of  
24 appearance of the reserve witnesses is necessary for the Defence to  
25 meaningfully prepare for cross-examination.

1           Second, the Panel considers that there must be a degree of  
2 flexibility in the order of appearance of reserve witnesses due to  
3 the nature of such witnesses. Their appearance depends on factors  
4 such as available sitting hours, the witness's availability, and  
5 logistical considerations, which render a definitive order of  
6 appearance difficult to provide.

7           Third of all, the Panel acknowledges that last-minute changes in  
8 the schedule of witnesses will create inconvenience for everyone,  
9 including the Defence. All involved are expected to show a degree of  
10 flexibility to ensure that these proceedings are conducted without  
11 undue delay.

12           Finally, the need to call a reserve witness largely depends on  
13 how direct examination and cross-examination of the non-reserve  
14 witnesses proceeds. In this regard, the Panel emphasises that the  
15 more accurate the time estimates provided by the parties and  
16 participants are, the less likely reserve witnesses will need to be  
17 called. The Panel, therefore, reiterates that any change in  
18 examination or cross-examination estimates shall be brought to the  
19 attention of the Panel and the opposing side as soon as such a  
20 determination is made.

21           For these reasons, the Panel rejects the Defence's request in  
22 F01634.

23           This concludes the first oral order.

24           Now for a clarification in relation to 1D20.

25           On 20 June 2023, the Thaci Defence tendered SITF00032906, which

1 is the last page of a document ranging from ERN SITF00032906 to  
2 SITF00032918. The Panel admitted the document as a whole and  
3 Exhibit 1D20 was assigned to it. And that's at transcript page 5188.

4 The Panel considers that admission of the entire ERN range  
5 provides context to the single page initially tendered for admission  
6 by the Thaci Defence. The Panel also considers the document as a  
7 whole meets the requirements for admission as per Rule 138.

8 The Panel, therefore, clarifies that 1D20 is ERN SITF00032906 to  
9 SITF00032918.

10 This concludes the Panel's third order.

11 Now on Friday, the SPO provided notice of its intent to make a  
12 Rule 154 application in respect of W04746. The SPO invited the  
13 Defence to indicate whether they intend to oppose the application.  
14 That's in correspondence 254.

15 I will give the floor to the Prosecutor to hear the application,  
16 and I will give Victims' Counsel and Defence an opportunity to  
17 respond.

18 Mr. Prosecutor, you may go ahead.

19 MR. PACE: Thank you, Your Honour.

20 As Your Honour mentioned, the SPO notified the Panel, parties,  
21 and participants on 7 July via e-mail that we intend to seek  
22 admission under Rule 154 of certain prior statements and associated  
23 exhibits of Witness 4746, and those statements and exhibits are  
24 indicated in the e-mail that we submitted.

25 It's important to stress that the need for this request arose

1 only following the clear position taken by this witness during the  
2 preparation session on 6 July, which is last week. That session made  
3 it clear that the interest of justice would be best served and the  
4 most efficient use of court time would be best achieved by admitting  
5 the specified evidence of the witness under Rule 154. And that would  
6 be, of course, if the relevant procedural steps under the rule are  
7 satisfied once the witness is in the courtroom. Should the witness's  
8 evidence be so admitted, the SPO, as indicated, would reduce its  
9 examination time from 12 to 6 hours.

10 In our e-mail, we also set out the areas of supplemental  
11 examination, and I won't address them here again unless you need me  
12 to.

13 It's possible the supplemental examination could reduce further  
14 from six hours, but that will depend on how the examination itself  
15 progresses.

16 As we also set out in the e-mail, the statements tendered meet  
17 the requirements of Rule 154 and are appropriate for admission  
18 through it. They're relevant, reliable, and probative.

19 In brief, they address the structure and command of the KLA; the  
20 witness's role as a commander of the KLA Llap operational zone;  
21 interactions with members of the General Staff including the accused;  
22 instructions, directions, and orders given by the General Staff; and  
23 the establishment and maintenance of detention facility in the Llap  
24 operational zone where alleged collaborators and others were  
25 detained.

1           Each of the statements that we seek to admit under Rule 154 were  
2           made either before a court in the context of judicial proceedings in  
3           Kosovo or directly to the SPO, in which case they were audio-video  
4           recorded and are provided in the form of verbatim transcripts. The  
5           time, date, and those present are recorded. The witness was advised  
6           of his rights and he was represented by counsel on each occasion.  
7           All applicable requirements under the KSC framework were fulfilled in  
8           the SPO interviews.

9           As mentioned, during the preparation session last week, the  
10          witness confirmed the statements the SPO seeks to admit after having  
11          been given the opportunity to review them. In relation to the  
12          selected associated exhibits, which we identified in the e-mail, they  
13          are used and explained by the witness in the statements and they form  
14          an integral part of them, which is the test set out in our  
15          jurisprudence. In brief, the documents are primarily KLA documents  
16          directly related to the witness's role and/or his area of  
17          responsibility.

18          Importantly, Your Honour, no prejudice to Defence arises by  
19          granting this application, and that's for the following reasons:

20          First, the Defence has had extensive notice of the testimony of  
21          this witness.

22          Second, the statements in question have all been available to  
23          Defence for a considerable period of time, most were disclosed at the  
24          end of the 2020 or early 2021.

25          Third, the information in the statements would, in any event,

1 have been elicited and confirmed during direct examination. Indeed,  
2 the use of Rule 154 provides the Defence with additional certainty in  
3 advance of the testimony of the scope of the evidence.

4 Fourth, the witness will be present in the courtroom and  
5 available for cross-examination and any questioning by the Panel, of  
6 course. Needless to say, this alone means that granting the request  
7 would not lead to any prejudice by the Defence.

8 Finally, admission will reduce the use of courtroom time, as I  
9 mentioned. And, Your Honours, we're not saying that the application  
10 isn't late, strictly speaking, because we know that the Order on  
11 Conduct of Proceedings sets out that we should make the application  
12 as soon as possible, and there's a certain period of time. And we  
13 know that this is, perhaps, a bit of an unusual circumstance, but as  
14 I mentioned, we are doing this exceptionally in the interest of  
15 justice, and - crucially - there is absolutely no prejudice to the  
16 Defence.

17 Those are our submissions for now. Thank you.

18 PRESIDING JUDGE SMITH: Thank you, Mr. Pace.

19 Mr. Laws, do you wish to weigh in on this issue?

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

21 PRESIDING JUDGE SMITH: All right.

22 Mr. Misetic.

23 MR. MISETIC: Thank you, Mr. President.

24 We do object. First of all, it's five months late. Not only is  
25 it a violation of the Order on the Conduct of Proceedings, but as you

1 will have seen in the e-mail we sent to the Panel this morning, they  
2 were under an oral order to submit their Rule 154 applications with  
3 respect to the first 12 witnesses by early February. So it's five  
4 months late.

5 There is an internal inconsistency in the arguments you just  
6 heard. You're told vaguely that in light of the position the witness  
7 took in the prep session, that somehow this has dramatically altered  
8 the calculus for the SPO such that they now need to move a 154  
9 statement. And then one of the factors that you should consider in  
10 admission is that the witness in the prep session confirmed the  
11 accuracy of what he said in the 154 statement.

12 So it's unclear to me what the basis is if they've said -- if he  
13 said in the prep session, "I stand by what I said," then nothing  
14 happened in the prep session that should have surprised them. The  
15 fact that the witness didn't wish to discuss other issues outside the  
16 statement doesn't mean that the statement now needs to be moved into  
17 evidence or that there's a problem, for them, anyway, with what he  
18 would say on direct examination.

19 So we fail to see the logic in what's happening here or why the  
20 statement is being brought forward, and all we've heard again this  
21 morning is: In light of the position that the witness took. Now,  
22 one of the factors that actually should be considered in opposition  
23 to admission is that a prep session is intended to have the witness  
24 go through the statement and make corrections and clarify matters,  
25 and that hasn't happened. So in light of the position that the



1 witness took in the prep session, that's a considerable factor  
2 against admission of a 154 statement that has not been corrected and  
3 has not been adjusted by the witness.

4 Now, that leads to several additional arguments that we've laid  
5 out. First of all, the witness -- this was done in violation of --  
6 in our position, and this is a position we took with respect to the  
7 admission of the statements of the accused, and that is in our filing  
8 of F01474 of 24 April 2023, page 4, footnote 10.

9 This witness was told as a suspect in the interview that he has  
10 an -- if he speaks, he has an obligation to tell the truth or he  
11 could face criminal prosecution for perjury. And it's our position  
12 that that is a violation of Article 125 of the Kosovo Code of  
13 Criminal Procedure which clearly says that the witness should have  
14 been told that because he is a suspect, he is not under oath in  
15 giving a statement and doesn't have to answer any questions that  
16 might implicate him.

17 He was given a contrary instruction. There is no basis in the  
18 law or the rules for the instruction he was given by the SPO, and we  
19 think that that also is a factor that should be considered.

20 There have been books written about Kosovo criminal procedure  
21 and about the fact that how careful a trial panel needs to be with  
22 respect to suspect interviews of people who are suspected of  
23 participating in the same crimes that are charged against the accused  
24 in a case as opposed to a witness statement. A witness is obligated  
25 to tell the truth. A suspect, under Kosovo law, is not obligated to

1 come forward and tell the truth. And as -- I can cite you the  
2 relevant book. But the problem with it is that the suspect may have  
3 a motive to protect himself in a suspect interview. All the more  
4 reason that we should hear this witness's testimony *viva voce*.

5 Third, if we're going to be efficient -- and we don't think that  
6 there's an efficiency argument to be made here. But if we're going  
7 to be efficient, it shouldn't be on witnesses that are high-level  
8 witnesses talking about the acts and conduct of the accused. These  
9 are exactly the type of witnesses we should be taking our time with  
10 in court. And we would submit that efficiency should be made with  
11 respect to, in particular, crime base witnesses, where if we're going  
12 to go by 154, then admit the statements of crime base witnesses via  
13 154 and then don't take six hours on direct examination going over  
14 the same materials that you've just admitted pursuant to 154.

15 But witnesses like this, we should take our time, and it should  
16 be on *viva voce* examination.

17 Finally, we disagree with the efficiency argument because -- and  
18 I have a complete chart here. And this is one of the problems of  
19 getting this application on a Friday afternoon, where this isn't  
20 properly litigated in front of the Panel, which is why, perhaps, the  
21 Panel set the deadline of five months before, so we could properly  
22 air all of these issues. But I've got a chart here of all of the  
23 problems and how this witness was questioned by the SPO: Leading  
24 questions, badgering the witness, misstating what he said and then  
25 putting it back to him as if he had said something and that he was

1 now changing his evidence. I can give you one example of that that  
2 you look for yourselves. Part 4 of his evidence, page 6, line 6,  
3 he's told that he had testified in his interview that he was in  
4 constant contact with the general headquarters. And then when he  
5 pushed back on that, he said: "That's not what you said. You said  
6 you were in constant contact with the general headquarters."

7 And then it goes on. And if you actually look at his evidence,  
8 he never said that he was in constant contact with the general  
9 headquarters. That's just one example.

10 But that's exactly why we were preparing as if all of these  
11 ambiguities would be dealt with on direct. If there's an ambiguity  
12 in how a question is answered or how a question is posed, we could be  
13 here to ask that that be clarified or object to a question that's  
14 leading or badgering. Instead, it appears to us - and we can only  
15 speculate because, again, there hasn't been an actual specific reason  
16 given here - the Prosecution doesn't want to clarify all of those  
17 issues on direct, and so they're putting it on Defence to say, Why  
18 don't you cross-examine and try to clarify what the witness really  
19 meant or where the ambiguities are in the statement.

20 That's not our job. There's their job. There is, again, no  
21 reason why this should have been done on a Friday afternoon before a  
22 witness who potentially could be starting today, and we object. It's  
23 prejudicial.

24 And my final point would be this is not proper under 154 because  
25 to be proper under 154, first and foremost, it had to comply with the

1 Trial Panel's order that this be submitted in early February. It  
2 hasn't. That alone gives the Panel a sufficient legal basis which  
3 they could not -- the SPO cannot object to, to say that the  
4 application should be denied as it's late and there hasn't been a  
5 valid explanation as to why that order should be reconsidered. Thank  
6 you.

7 PRESIDING JUDGE SMITH: Something from the Veseli Defence?

8 MR. STRONG: Yes, just a couple points to echo those comments,  
9 Your Honour.

10 The 154 motion includes multiple statements that have been put  
11 in in their entirety. I believe it's over 300 pages of material.  
12 And that material is not -- is not clear. The witness is led through  
13 evidence that's confusing and it is contradictory, and the result is  
14 that if it's the Defence's responsibility to unpick that, those  
15 knots, it's going to require going back and redesigning a  
16 cross-examination.

17 These crosses are designed with a tremendous amount of  
18 forethought based on the circumstances that are coming, and it will  
19 probably require more time from the Defence perspective. I think  
20 that's in the e-mail that we sent. But as a result, the time savings  
21 are not going to be as great as the Prosecution makes them out. And  
22 we would want to be heard, in the event, because we will be  
23 requesting an adjournment of at least a day to try to organise  
24 ourselves in this event.

25 The second point I want to add is just, to carry on, the fact

1 that this came out of the proofing session. I would like to hear a  
2 little bit more about what specific interests of justice are served  
3 based on the proofing note that we received, because, specifically,  
4 I'd like to see it distinguished from an application to declare this  
5 witness hostile. So, effectively: This witness is not saying what  
6 we want him to say, and so we're going to put in the 154 statement  
7 and go from there. Because it certainly isn't apparent on the face  
8 of the proofing note what interests of justice have changed based on  
9 the fact that this witness doesn't want to talk outside of court.  
10 He's ready to come and answer questions inside of court.

11 Finally, just to echo Mr. Misetic's point. We think that this  
12 SPO statement, in particular, is unique and problematic if it's going  
13 in as a 154 statement. The witness was interviewed as a suspect.  
14 The interview tactics are perfectly appropriate if you're gathering  
15 leads or advancing part of the SPO's case in other -- in many  
16 different ways. But in terms of putting this into evidence, there  
17 are a series of questions - you can look at their face - that would  
18 never be allowed to be led in examination and, we submit, shouldn't  
19 therefore be allowed in through 154.

20 And the reference Mr. Misetic put earlier is a particularly good  
21 example of that, and we'd invite you to review that section. It's  
22 only about a page. And then review the local testimony at  
23 SPOE001193178 at SPOE001193179, to compare what the witness said in  
24 his local testimony and what was put to him and then pushed and then,  
25 effectively, impeached in his SPO interview.

1           So we think that particularly the SPO interview is a uniquely  
2 poor interview to put in through 154.

3           Those are our submissions. Thank you.

4           PRESIDING JUDGE SMITH: Thank you.

5           Mr. Roberts.

6           MR. ROBERTS: Thank you, Your Honour.

7           Obviously, I wish to echo what my colleagues have already said.  
8 I won't repeat that. I think there's only one point I wish to make,  
9 and that's really one of diligence.

10           I think, from the Prosecution's perspective, the interview of  
11 this witness took place over four years ago. I think there is,  
12 obviously, a long intervening time when they could have conducted any  
13 further discussions, further inquiries, and found out whether this  
14 would have affected their choices as to how to lead this witness.  
15 They didn't do so. They waited until three days before he was due to  
16 come -- or four days before he was due to come to testify to suddenly  
17 do -- commit a complete about-face into how they were going to do  
18 this. And I don't think that was accidental, Your Honour.

19           I think it's highly problematic to effectively present you, or  
20 attempt to present you, with a *fait accompli*, and to force you into  
21 calling this witness or permitting the Prosecution to call this  
22 witness as a 154 witness. I think that is a significant, and one  
23 would hesitate to use the word "deliberate," but certainly it is a  
24 highly problematic failure of diligence on behalf of the Prosecution.

25           And I think, as my colleagues have already mentioned, the type

1 of witness and the type of interview that was conducted demonstrates  
2 why we need five months, why we need these applications to be filed a  
3 significant amount of time in advance. It's not simply formalistic.  
4 It's not simply for programming or administrative purposes. It's  
5 because we have the right to make proper substantive submissions on  
6 this interview if they were seeking to tender it through Rule 154,  
7 and the necessary amount of time to do so, and the necessary amount  
8 of time to actually analyse it and for Your Honours to consider it.

9 Forcing it through at the last minute is really not the right  
10 way to do these things at all. Thank you.

11 PRESIDING JUDGE SMITH: Mr. Ellis.

12 MR. ELLIS: Your Honour, we also oppose, in part for the same  
13 reasons already advanced. Clearly this is, as a starting point,  
14 late. Whether one takes that from the specific deadline for the  
15 first 12 witnesses or for the general deadline contained in the Order  
16 on Conduct of Proceedings. On either measure, it is substantially  
17 late.

18 And that, in itself, is a significant matter because those  
19 deadlines are there for a good reason. The reason is that it allows  
20 the parties to properly litigate the issues that arise from Rule 154,  
21 including in relation to the associated exhibits sought to be  
22 advanced.

23 For the Prosecution to stand up and say there is no prejudice to  
24 the Defence when you told the Defence after 4.00 on a Friday  
25 afternoon that you're changing the nature of testimony for a

1 significant witness coming early in the next week, in my submission,  
2 that simply cannot be accepted. Of course there's prejudice.

3 We've been preparing for weeks, if not months, on the basis that  
4 the witness was coming to give his evidence *viva voce* and that the  
5 written materials would be materials that might be used in the  
6 cross-examination of that witness. We're now told, no, that written  
7 material is going to be the evidence of that witness, and that's now  
8 the target for cross-examination, not the material that you would use  
9 in cross-examination.

10 It forces a shift in the whole approach of the Defence. And to  
11 do that at the last minute, of course it's prejudicial. Happening at  
12 the same time as we're told on Sunday of the some 60 pages of  
13 intercepts that the Prosecution wants to use with this witness. So  
14 we're already playing catch-up here trying to prepare for this  
15 witness on the basis of recently disclosed material. To change the  
16 nature of testimony as well poses a substantial additional burden on  
17 the Defence in a way in which we say is unfair.

18 More than that, Your Honours, Rule 154 is always at Your  
19 Honours' discretion. It's not a right for the Prosecution. It's in  
20 Your Honours' power as a Panel. That calls for a balance between  
21 what is said to be the efficiency saving and other interests such as  
22 the principle of orality and the fairness of proceedings.

23 We don't accept that the efficiency saving is as straightforward  
24 as the six-hour headline figure that the Prosecution puts forward.  
25 That comes at a cost. Part of the cost is admitting 300 pages of



1 confused and, at times, inconsistent material onto the record.  
2 That's 300 pages that the parties and ultimately the Chamber would  
3 have to deal with. The time saved now may well be a time cost later  
4 in dealing with that material.

5 But it's also that the cross-examination estimates have been  
6 prepared on the basis that a structured direct examination would be  
7 carried out which would have gone through the witness's evidence. If  
8 instead the burden is being passed to the Defence to, I think  
9 Mr. Strong used the word "unpick" the inconsistencies, we can do that  
10 but it's going to take more time. So we would immediately be seeking  
11 to increase not only in terms of the preparation time mentioned by  
12 Mr. Strong but the actual estimate for our cross-examination would  
13 increase. So I don't accept a six-hour efficiency saving.

14 But on the other hand, I would still say this is not evidence  
15 suitable for admission pursuant to 154 given its centrality. And  
16 Your Honours recognise that in your first decision on the admission  
17 of Rule 154 evidence, paragraph 28 of filing 1380. Your Honours held  
18 that the importance of the proposed evidence to a party's case is a  
19 factor that the Panel may take into consideration. The Panel may  
20 refuse admission pursuant to 154 of a statement that is central to a  
21 party's case and order that the evidence be heard *viva voce*. And we  
22 would say this is the clearest example of evidence to which that  
23 would apply.

24 In a case in which linkage is plainly a significant issue, here  
25 you have a witness at zone commander level, one of very few at that

1 level on the Prosecution's list of witnesses, someone referred to  
2 some 30 times in the Prosecution's pre-trial brief, someone whose  
3 interviews that the Prosecution seeks to adduce are referred to 30  
4 times in the pre-trial brief. The significance of that evidence is  
5 such that it should, in principle, be heard orally, not through  
6 Rule 154. And when one adds in, first, it's a suspect interview,  
7 second, the nature of that suspect interview, as outlined by my  
8 learned colleagues, we would say that the limited efficiency savings  
9 do not justify the cost in terms of the fairness of proceedings and  
10 the centrality of this evidence.

11 Your Honours, there would be other detailed submissions about  
12 some of the associated exhibits, but I don't think -- perhaps it's  
13 not the time to go into those. We oppose in principle.

14 PRESIDING JUDGE SMITH: Thank you, Mr. Ellis.

15 I will give you the floor, Mr. Pace.

16 I have a question, first of all. I would like you to address  
17 what was it specifically that happened at the proofing session that  
18 suddenly gave rise to this interest of justice application that  
19 you're making.

20 MR. PACE: Thank you, Your Honour.

21 I'll start by saying that everything relevant that happened at  
22 the preparation session is in the preparation session note.  
23 Essentially, and briefly, because it was a bit brief, what happened  
24 was the witness reviewed his material, was given an opportunity to  
25 note whether he had any changes or clarifications or additions. He

1 said there were none, he confirmed their accuracy.

2 When it came to the Prosecution, as we generally do in prep, to  
3 ask further questions, the witness said that he was not ready to talk  
4 about that during the witness preparation session, and then he  
5 actually agreed to answer two simple questions, again reflected in  
6 that note.

7 From our perspective, Your Honour, this indicates that the  
8 witness, for a further occasion, because he has done so before, is  
9 confirming his prior testimony. So the interest of justice here is  
10 tied to our argument on efficiency of proceedings, that there truly  
11 appears to be no purpose to have this witness appear here and go over  
12 the identical information for, perhaps, six hours or so when he has  
13 very, very clearly confirmed that. The interest of justice in this  
14 case, therefore, dictates that that information be admitted.

15 And for -- in relation to the Defence's submissions, I'll first  
16 turn to the argument about the proper or improper nature, allegedly,  
17 of the SPO's interview. And for that, I'll say that Article 125(3)  
18 of the Kosovo Criminal Procedure Code referred to by the Defence  
19 relates to defendants. More importantly, it hasn't been incorporated  
20 or referred to in the KSC Rules of Procedure and Evidence. It does  
21 not apply before the KSC, and you do not need a book to tell you  
22 that.

23 The witness was not under an oath during his SPO interview, so  
24 there would be no violation in that regard even if the rule from the  
25 Kosovo code were to apply, which again it does not.

1 I recall that the witness was represented by counsel during his  
2 interview, and that where a suspect has and is informed of the right  
3 to remain silent and right against self-incrimination, there is  
4 nothing prejudicial in requiring any statement given to be truthful.

5 In any event, as I mentioned multiple times now, the witness  
6 confirmed the statements in preparation and is anticipated to do so  
7 under oath before the Panel should the application be granted.  
8 Indeed, this is a prerequisite for admission. He must attest his  
9 statement is what he said -- he would say if examined.

10 Moreover, while no violation has occurred, if there had been a  
11 violation in terms of the Kosovo code referred to by the Defence, the  
12 relevant inquiry would be under Rule 138, and there has been nothing  
13 here said that would cause substantial doubt under liability of the  
14 evidence we are seeking to tender. Requiring a statement to be  
15 truthful clearly has the opposite effect to that. It enhances its  
16 reliability.

17 As to the argument that additional cross-examination time would  
18 be needed, our position is that, in fact, the advance certainty of  
19 this being a large portion of the witness's evidence should  
20 facilitate Defence cross-examination. And that, Your Honour, perhaps  
21 from all the submissions you heard from the Defence this morning, is  
22 one which, frankly, the SPO fails to understand. We do not  
23 understand how having 300 pages, as they put it, admitted instead of  
24 eliciting some of that information *viva voce* makes it harder for them  
25 to prepare as opposed to more easy. Certainly -- perhaps I'm

1 assuming, but I'll go ahead and assume. When you're preparing a  
2 cross-examination, as Prosecutors we also have to do that, you work  
3 on the basis of the statements of a witness. You have no idea what  
4 the witness is actually going to say in court unless they confirm it,  
5 which is the case here.

6 What we have here is the witness confirmed these 300 pages, as  
7 the Defence put it, so the Defence can fully, if not better, and with  
8 more time, prepare to cross-examine on the issues in that.

9 There is definitely nothing contradictory in our position. You  
10 heard nothing, again, about any actual prejudice to the Defence. The  
11 witness confirmed them. He had no corrections. He specifically  
12 indicated there was nothing to be corrected. The Defence mentioned  
13 quite a few issues that it deems arise from the statements. It is  
14 entirely the role of the Defence to do so.

15 We, of course, will pose additional questions. But if they take  
16 issue with anything in particular in the SPO statement, as has been  
17 highlighted, it is absolutely their prerogative to address those in  
18 cross-examination. It sounds as though the Defence is expecting the  
19 Prosecution to do part of their job. Again, we don't understand that  
20 logic.

21 And as to the allegations in terms of any ambiguity or any --  
22 I'm not -- I don't recall exactly the wording that was used, but  
23 anything untoward, let's say, that was done in the SPO interview,  
24 leading questions or otherwise, the Defence and the Panel have the  
25 verbatim transcript, questions and answers. The SPO interview

1 couldn't be more transparent. They have it all there.

2 The argument as from the Selimi Defence focused on diligence. A  
3 few days before we made this application. We're not hiding from it.  
4 That's obvious. Could we have done it before? Perhaps. But a key  
5 ingredient is missing which is, again, the preparation session. That  
6 does change things. The fact that a witness is coming to you and  
7 saying, "I confirm everything I said but I don't want to answer your  
8 questions," is a relevant change in circumstances. And, again,  
9 because of what I just explained, the fact that the Defence would  
10 have the documents admitted, documents they've had for years to  
11 analyse and to consider, that does not prejudice the Defence's  
12 preparation.

13 We don't think there should be any reason for adjournment. If  
14 there were to be one, it should be considered after admission.

15 MR. STRONG: We apologise for the interruption. I think there's  
16 a problem getting the live feed to Mr. Veseli, who can't therefore,  
17 follow the proceedings. And so I think that's what's happening right  
18 now.

19 PRESIDING JUDGE SMITH: Can you hear now, Mr. Veseli?

20 MR. STRONG: I think he may be able to hear but not be able to  
21 see the transcript on the screen.

22 PRESIDING JUDGE SMITH: Ah, okay.

23 MR. STRONG: So I think that's the issue that the Court Officers  
24 are trying to resolve.

25 PRESIDING JUDGE SMITH: Do you want us to proceed or do you want

1 to wait until that is resolved?

2 MR. STRONG: I should like to wait if it's something that can be  
3 easily resolved so that he can understand what's happening. But I'll  
4 look to the Court Officers to see how challenging the problem is.

5 PRESIDING JUDGE SMITH: Well, we want him to be able to read the  
6 transcript as he goes, if necessary.

7 Why don't we step aside to -- oh, go ahead, Mr. Misetic.

8 MR. MISETIC: I'm sorry. To step aside to handle the technical  
9 issue, you mean?

10 PRESIDING JUDGE SMITH: [Microphone not activated]

11 MR. MISETIC: I'm sorry, I think I misunderstood you. I thought  
12 you were going to adjourn to rule, and I wanted to be heard one more  
13 time, but I think it's to fix the technical issue.

14 PRESIDING JUDGE SMITH: [Microphone not activated]

15 MR. MISETIC: All right. Well, I did --

16 PRESIDING JUDGE SMITH: We'll come back to that.

17 MR. MISETIC: Thank you.

18 PRESIDING JUDGE SMITH: First of all, let's just step aside so  
19 they can work on that without us leaning over their shoulder, and  
20 just stay nearby. So we are adjourned for a few minutes.

21 --- Break taken at 9.40 a.m.

22 --- On resuming at 9.45 a.m.

23 PRESIDING JUDGE SMITH: Go ahead and finish up, Mr. Pace.

24 MR. EMMERSON: May I, just before he does, thank the Court on  
25 behalf of --

1           PRESIDING JUDGE SMITH: Just a second.

2           MR. EMMERSON: May I just thank the Court on behalf of  
3 Mr. Veseli for allowing that arrangement to be made so that he can  
4 now follow the proceedings. Much appreciated.

5           PRESIDING JUDGE SMITH: Okay, Mr. Pace.

6           MR. PACE: Thank you, Your Honour.

7           I was addressing the Defence notion of an adjournment being  
8 necessary. We see no reason for that at the moment. And, in any  
9 event, the Panel should hear submissions if the 154 application is  
10 granted and then the evidence is admitted and after the supplemental  
11 examination. At the moment, it's purely speculative as to whether an  
12 adjournment is necessary or not, even though we cannot see any reason  
13 for it based on the reasons given thus far.

14           I would also like to address the Selimi Defence speculating that  
15 the SPO's approach was somehow strategic and intended to force the  
16 Trial Panel, as I understood it, into accepting this application.  
17 That's pure speculation and quite inappropriate to allege without a  
18 basis. I assure you, Your Honours, that the SPO's decision was taken  
19 following the preparation session that I've mentioned, and that the  
20 Rule 154 was not selected earlier for this witness purely because we  
21 didn't, at the time - months ago - expect this to turn out to be the  
22 most efficient use of court time and proceedings.

23           To conclude, Your Honours, the Defence mentioned the Trial Panel  
24 has discretion, and we've heard no reason today why the Trial Panel  
25 should not use that discretion to admit -- to authorise the 154



1 procedure. In particular, with the admission of the statements, the  
2 cross-examination by the Defence, any questions by the Judges, there  
3 can be no doubt that the evidence of this witness will be fully  
4 explored and the interests of justice will be preserved.

5 Those are our submissions.

6 PRESIDING JUDGE SMITH: [Microphone not activated]

7 MR. MISETIC: Thank you, Mr. President. I appreciate the extra  
8 time. I do want to respond.

9 First, you asked a very specific question, which is, I think, at  
10 the heart of this issue, which is what happened in the prep session.

11 Now, the Prosecution has just said that what happened was he  
12 said for a further occasion, because he did so before, he confirmed  
13 the accuracy of the statement. So, in other words, they're telling  
14 you: We knew before the prep session that he would confirm, because  
15 he's confirmed it before, that it was accurate. And then we were  
16 shocked to find out that he did it again on Friday.

17 And this is the significant change of circumstance that now  
18 requires all of this discussion. If I can use an American  
19 expression, it doesn't pass the smell test. There has to be some  
20 other reason that they're doing this at the last minute.

21 And if I can also address, Article 125 does apply here. First  
22 of all, I would argue that the word "defendant" in the English  
23 translation is probably a mistranslation. If you read the context of  
24 it, it talks about it being conducted in an investigation, which  
25 obviously isn't a defendant in an investigation. It's a suspect in

1 an investigation.

2 Secondly, this Court does not have an independent power under  
3 the law to prosecute for perjury. Instead, Article 15 and 16 of the  
4 Law cite back to the Kosovo Criminal Code and authorise the Court to  
5 invoke the Kosovo Criminal Code to prosecute witnesses for perjury,  
6 which means you do have to consider -- and the Kosovo Code of  
7 Criminal Procedure and the Kosovo Criminal Code is the context in  
8 which we assess what is perjury, what do witnesses have to be warned  
9 about. If a witness says something that is untruthful but had a  
10 right not to speak the truth, can it be perjury under the Kosovo  
11 Criminal Code. That's all things that you have to consider in  
12 assessing whether Article 125 applies.

13 We would argue that if you have to look to the Kosovo Criminal  
14 Code to look to what is perjury, then you have to look to Article 125  
15 to see what are the allegations of witnesses and suspects in giving  
16 evidence.

17 Finally, on the issue of prejudice. I don't know how much more  
18 clearly we can say it, but I'm going to try it one more time. There  
19 are so many problems with this suspect interview, so many  
20 ambiguities, so many leading questions that, as was said before by  
21 one of my colleagues, would never have gotten in under direct  
22 examination, that we prepared as if they're going to conduct a  
23 *viva voce* examination. If anything like that happens in *viva voce*,  
24 we object. We trust the Trial Panel will be the gatekeeper on what  
25 does come in and doesn't come in, and we're fine.

1           Instead, the -- actually, what's happening here is burden  
2 shifting, because now what they want to do is have -- admit the whole  
3 thing in and say, "Okay, now, Defence, you go through the 300 pages,  
4 and you challenge exactly every question that you think was  
5 improperly put to the witness." That does take extra time, first, in  
6 preparation and, secondly, extra time in cross-examination to go  
7 through that exercise.

8           That will conclude my submissions, and I appreciate the time.

9           PRESIDING JUDGE SMITH: Thank you.

10          MR. MISETIC: Thank you, Mr. President.

11          MR. EMMERSON: Your Honour, as for the Veseli team the counsel  
12 who will be cross-examining this witness, I probably ought to say  
13 just a couple of words.

14          Certainly, cross-examination has been prepared upon the basis  
15 that there will be evidence-in-chief upon which to cross-examine. It  
16 seems, from what's being suggested, is that now it will be counsel  
17 for Mr. Thaci who is required -- expected by the Prosecution to  
18 conduct the examination-in-chief, and I am to examine in chief and  
19 then cross-examine the witness.

20          The reason for the rules that we have, in particular the rules  
21 on the timely identification of 154 witnesses, exists for the purpose  
22 of the good order and the administration of justice. This is,  
23 obviously, a very considerable departure which, if allowed in this  
24 instance, it's difficult to see what the point of the orders was in  
25 the first place, and how the Prosecution is proposing that order of

1 the proceedings can be maintained if they're able to stand up on the  
2 Monday for a witness giving evidence on the Tuesday and radically  
3 change -- seek to radically change the entire basis on which they're  
4 examining.

5 The thing that I find most troubling, listening to Mr. Pace's  
6 response, is that he said to you a moment ago that the only thing  
7 that happened during the proofing session was that the witness  
8 refused to answer any questions beyond confirming the statements. He  
9 refused to answer any questions except two. And Mr. Pace has no  
10 reason to believe that that would be any different if he were called  
11 into court.

12 In other words, the contemplation of the Prosecution is that the  
13 witness will react in court in the way he reacted in proofing session  
14 when asked by the Prosecution. But that simply isn't right because  
15 paragraph 6 of the proofing note says, in terms, that he is ready to  
16 answer the Prosecution's questions in court but not in a proofing  
17 session.

18 And with the greatest of respect, there is no basis whatsoever  
19 for the entire application in those circumstances because it may be  
20 that the Prosecution hasn't the full picture of what the witness  
21 might be going to say in answer to particular questions. That is not  
22 the basis for applying for a tactical advantage, the consequence of  
23 which is to radically alter the basis of the proceedings being  
24 conducted.

25 In paragraph 11 of the Order on Conduct of Proceedings, the

1 Trial Chamber counselled strongly against sharp practice. This  
2 change of tactic is not based on an unforeseen fact. Nobody can  
3 sensibly think that. This change of tactic is based on a change of  
4 Prosecution tactic. They wish to gain a tactical advantage, as they  
5 see it, so that they don't have to ask the witness questions in chief  
6 and we do.

7 Now, with the greatest of respect, that is nonsense on stilts  
8 and upturns the entire fundamental basis for these proceedings, and,  
9 as we would submit, it would be -- it's not a question of discretion.  
10 It would be entirely wrong to allow this application or to give it  
11 further air time.

12 PRESIDING JUDGE SMITH: I'll consider this matter fully  
13 submitted. No further replies are required. We'll rule on it as  
14 quickly as possible.

15 So now we'll proceed with the testimony of W04337. Before  
16 bringing the witness in, I note that the SPO provided a proposed  
17 summary of the witness's 154 statement on 30 June to be read in open  
18 session.

19 I take it there are no objections from the Defence to the  
20 proposed summary. Am I correct in that?

21 MR. MISETIC: Yes, no objection.

22 MS. O'REILLY: No objections from us either.

23 MR. ROBERTS: No objections to the summary, Your Honour. But  
24 while I'm here, I would just like to flag up that I do have  
25 objections to parts of the preparation note provided by the

1 Prosecution. And as they will seek to tender it into evidence, or  
2 lead that evidence, I just wish to flag up my objections to that now  
3 as to whether that can be addressed before the witness comes in.

4 PRESIDING JUDGE SMITH: Well, let's hold back on those for the  
5 time being and let's try to get started with this witness. He's been  
6 waiting long enough.

7 So the Panel has reviewed also the proposed summary, and we find  
8 that the summary furthers the public's understanding of today's  
9 proceedings. Therefore, once the Rule 154 statements have been  
10 admitted, the Panel authorises the SPO to read the proposed summary  
11 in public session.

12 So we can bring the witness in, Madam Usher. We'll stay in open  
13 session until he has been sworn in.

14 Mr. Pace, do you intend to begin in open session?

15 MR. PACE: I will do a very brief introduction in open session,  
16 but then I would need to confirm identity which would require, quite  
17 soon, to move into private session.

18 PRESIDING JUDGE SMITH: Are we going to have any in open  
19 session?

20 MR. PACE: Your Honour, I'm going to try my best to at least do  
21 the Rule 154 procedure in open session.

22 PRESIDING JUDGE SMITH: Okay. All right.

23 [The witness entered court]

24 PRESIDING JUDGE SMITH: Good morning, Witness.

25 THE WITNESS: [Interpretation] Good morning, Your Honour.

1           PRESIDING JUDGE SMITH: Are you hearing me okay, or the  
2 translator?

3           THE WITNESS: [Interpretation] Yes, I do, Your Honour.

4           PRESIDING JUDGE SMITH: All right.

5           The Court Usher will provide you with the text of a solemn  
6 declaration which you are asked to take pursuant to Rule 141(2) of  
7 our rules.

8           So please stand up and please read aloud the statement.

9           THE WITNESS: [Interpretation] Solemn declaration subject to  
10 Rule 141(2). Conscious of the significance of my testimony and my  
11 legal responsibility, I solemnly declare that I will tell the truth,  
12 the whole truth, and nothing but the truth, and that I shall not  
13 withhold anything which has come to my knowledge. Thank you.

14                           WITNESS: W04337

15                           [Witness answered through interpreter]

16           PRESIDING JUDGE SMITH: [Microphone not activated]

17           THE WITNESS: [Interpretation] Is there another one?

18           PRESIDING JUDGE SMITH: [Microphone not activated]

19           Do you understand it?

20           THE WITNESS: [Interpretation] Yes, Your Honour.

21           PRESIDING JUDGE SMITH: Do you accept it?

22           THE WITNESS: [Interpretation] Absolutely, yes.

23           PRESIDING JUDGE SMITH: Thank you. You may be seated now.

24           Witness, we are ready to begin your testimony. And as you know,  
25 the Prosecution will ask you questions first. And once they are

1 finished, the Defence has the right to ask you questions, and the  
2 members of the Panel, my colleagues here on the Bench, also may ask  
3 you questions.

4 The Prosecution estimates three hours for their questions. At  
5 the moment, the Defence estimates that it will need six and a half  
6 hours. As regards each estimate, we hope that the counsel will be  
7 judicious in their use of the time. The Panel may allow a redirect  
8 examination if conditions for it are met. Overall, your testimony  
9 will likely take up two to two and a half days.

10 Witness, please try to answer the questions clearly with short  
11 sentences. If you don't understand a question, feel free to ask the  
12 counsel to repeat it or tell them that you don't understand and they  
13 will clarify. Also, please try to indicate the basis of your  
14 knowledge of facts and circumstances that you will be asked about.

15 In the event you are asked by the SPO to attest to some  
16 corrections made regarding your statements, you are reminded to  
17 confirm on the record that the written statement, as corrected by the  
18 list of corrections, accurately reflects your declaration.

19 I remind you also to speak into the microphone and to wait five  
20 seconds before answering a question and speak at a slow pace so that  
21 the interpreters can catch up to you.

22 While you are giving evidence in this court, you are not allowed  
23 to discuss with anyone the content of your testimony outside of the  
24 courtroom. If any person asks you questions outside this court about  
25 your testimony, please let us know immediately.



Examination by Mr. Pace

1 THE WITNESS: [Interpretation] Thank you.

2 PRESIDING JUDGE SMITH: Mr. Pace, you have the floor.

3 MR. PACE: Thank you, Your Honour.

4 Examination by Mr. Pace:

5 Q. Good morning, Witness. We've met before. I'll introduce myself  
6 again. I'm James Pace, a Prosecutor with the SPO. And as His Honour  
7 mentioned, I'll be asking you some questions for the next few hours.

8 Before I ask the Presiding Judge to move into private session to  
9 obtain some information on your identity, I will note that, as I have  
10 explained to you in our preparation session last week, rather than  
11 asking you questions about every relevant issue you may have  
12 information about, it may be possible to admit some of your prior  
13 statements containing such information into evidence. And to do  
14 that, there are a number of procedural steps to follow, which I will  
15 turn to after establishing your identity.

16 MR. PACE: And, Your Honour, for that reason, establishing the  
17 identity, I ask to move into private session, please.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 Madam Court Officer, please take us to private session.

20 [Private session]

21 [Private session text removed]

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Witness: W04337 (Private Session)

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Examination by Mr. Pace

1 [Private session text removed]

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1 [Private session text removed]

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4 [Open session]

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

6 PRESIDING JUDGE SMITH: [Microphone not activated]

7 MR. PACE: Thank you.

8 Q. Witness, once again, now we are in open session, so the public  
9 can hear what we are saying.

10 MR. PACE: And, Court Officer, I'm going to ask you to call up a  
11 number of documents. None of them are for public broadcast.

12 The first one I'd like show the witness is SITF00371832 to  
13 00371861. And the page is 371841. Thank you. If we can scroll down  
14 just a little bit, please. Perfect. Thank you.

15 Q. Witness, do you recognise your signature on this page?

16 A. Yes, honourable counsel. Yes.

17 MR. PACE: Court Officer, from the same document, could we  
18 please go to page 371844. Thank you.

19 Q. Witness, do you recognise your signature on this page?

20 A. Yes.

21 MR. PACE: I'd like to go to the next document, SITF00371132 to  
22 SITF00371135. And the page is 371133. Thank you.

23 Q. Witness, do you recognise your signature on this page?

24 A. Yes, Mr. Prosecutor.

25 MR. PACE: On to another document, SITF00371128 to SITF00371131.

1 And the page is 371129, please. Thank you.

2 Q. Witness, do you recognise your signature on this page?

3 A. Yes, honourable Mr. Prosecutor.

4 MR. PACE: Court Officer, I'd like to go to SITF00368586 to  
5 00368609. And the first page is sufficient.

6 Q. Witness, do you recall testifying in the case referred to on the  
7 page that you can see on your screen on that date and on other dates?

8 A. Yes, I do.

9 MR. PACE: And, Your Honour, with your leave, I won't take the  
10 witness to every single date. I just showed one as an example and  
11 then I'll move on to one more date before I ask further questions.

12 I'd like to turn to SITF00367735 to 00367763. And the first  
13 page for this item is also the correct one.

14 Q. And, Witness, the same question as before. Do you recall  
15 testifying in the case referred to on the document on your screen on  
16 the date indicated here and on other dates?

17 A. Yes, Mr. Prosecutor, I do.

18 Q. Just two more documents, I believe. Three.

19 MR. PACE: Court Officer, can we please go to 043618-TR-AT  
20 Part 1 Revised, the first page. Thank you.

21 Q. Witness, this document refers to a meeting with the SPO in 2017.  
22 Do you recall that meeting?

23 A. Yes, Mr. Prosecutor, I do.

24 MR. PACE: Court Officer, could we please go to 043612 to  
25 043617. The first page, please. Thank you.

1 Q. This, Witness, also refers to a meeting with the SPO in 2017.

2 MR. PACE: I'll ask the Court Officer to turn to the last page  
3 of this document, please. Thank you.

4 Q. And, Witness, do you recognise your signature on this page?

5 A. Yes, Mr. Prosecutor, I do.

6 MR. PACE: That document can go off the screen. Thank you.

7 Q. Witness, do you recall being provided with an opportunity to  
8 provide clarifications in relation to the documents I showed you here  
9 and other documents last week?

10 A. Yes, Mr. Prosecutor, I do.

11 Q. Do you recall that you made a number of clarifications to these  
12 prior statements?

13 A. Yes, Mr. Prosecutor. Yes.

14 Q. Do you recall that these clarifications and some corrections and  
15 additions were included in a note which was read back to you?

16 A. Yes, sir.

17 Q. And subject to the corrections in this note, is the information  
18 provided in the documents I referred you to today, and those covering  
19 other dates in which you provided evidence, accurate and truthful to  
20 the best of your knowledge and belief?

21 A. Yes, Mr. Prosecutor. Everything is accurate.

22 Q. And subject to the corrections that you gave, do the documents I  
23 referred you to today, and those covering other dates in which you  
24 provided evidence, accurately reflect what you would say if you were  
25 examined about the events recorded therein?

1 A. Yes, Mr. Prosecutor.

2 MR. PACE: Your Honour, I'd like to seek admission of the prior  
3 statements. The relevant ERNs are set out in the SPO's 4 July 2023  
4 e-mail. They are also set out in F01262 Annex 6, the annex to our  
5 Rule 154 motion. But as noted via e-mail, two of those statements we  
6 no longer seek to admit, and from that annex they're items 2 and 3.

7 PRESIDING JUDGE SMITH: [Microphone not activated]

8 MR. MISETIC: No objection.

9 PRESIDING JUDGE SMITH: [Microphone not activated]

10 MS. O'REILLY: No objection, Your Honour.

11 MR. ROBERTS: No objection to the statements as they are, but,  
12 obviously, with the reference to the objection to the preparation  
13 note, which I believe counsel is about to seek to tender in a minute,  
14 Your Honour.

15 PRESIDING JUDGE SMITH: [Microphone not activated]

16 MR. ELLIS: No objection, Your Honour.

17 PRESIDING JUDGE SMITH: Those numbered exhibits will be  
18 admitted.

19 And now, Mr. Pace, you may continue.

20 MR. PACE: Thank you. I also seek admission of what is termed  
21 Preparation Note 1 and which the witness -- which was mentioned to  
22 the witness. And that is now, I believe, in the presentation queue.  
23 It's item 114125 to 114141.

24 PRESIDING JUDGE SMITH: [Microphone not activated]

25 MR. ROBERTS: Thank you, Your Honour.

1 Can we do this outside the presence of the witness or at least  
2 with the witness's headphones off? Whichever is easier.

3 PRESIDING JUDGE SMITH: Probably easier to take him out of the  
4 room, Madam Usher, for just a few minutes.

5 Witness, you'll have to step out of the room for just a few  
6 minutes.

7 [The witness stands down]

8 PRESIDING JUDGE SMITH: Go ahead.

9 MR. ROBERTS: Thank you, Your Honour. And I note we're in  
10 public session for the moment, so I won't refer to the content of the  
11 paragraphs which I object to at the moment, but obviously that may  
12 need to be referred to, if necessary.

13 There are two paragraphs in this, I think, 17-page, quite long,  
14 preparation note. So that's paragraphs 58 and 64.

15 PRESIDING JUDGE SMITH: [Microphone not activated]

16 MR. ROBERTS: Which we submit go beyond the nature of clarifying  
17 previous statements and actually provide additional information and  
18 additional allegations both directly and indirectly against  
19 Mr. Selimi and should not, by definition, be included as a  
20 preparation note which seeks to clarify pre-existing Rule 154  
21 statements.

22 Neither of these paragraphs were set out -- or included, sorry,  
23 within the previous statements that the Prosecution has sought to  
24 tender. And, as a consequence, we object on the basis that they  
25 shouldn't be tendered as an addendum to the Rule 154 statements.

1           PRESIDING JUDGE SMITH: And the same as to both paragraphs?

2           MR. ROBERTS: The same as to both paragraphs. We also have an  
3 additional objection in relation to paragraph 64 in the sense that we  
4 also object to the fact that no notice was provided of this at all,  
5 and so, therefore, would submit that the Prosecution should be  
6 prohibited from leading this information in chief.

7           So for paragraph 58, we suggest that it should not form part of  
8 the preparation note but should be allowed to be led orally with the  
9 witness in examination-in-chief.

10           Paragraph 64 is a brand new allegation which we've not had time  
11 to investigate, we've not had time to take proper instructions on as  
12 this was provided to us late on Saturday afternoon, and, most  
13 importantly, wasn't foreshadowed in the pre-trial brief in the  
14 Rule 95(4) summary for this witness or in other form that would allow  
15 us to be on notice that this forms part of the Prosecution case.

16           So if the Prosecution seeks to rely on it, we would suggest that  
17 they should be prohibited from leading that information both in the  
18 preparation note and *viva voce* with this witness.

19           PRESIDING JUDGE SMITH: Thank you.

20           Do you wish to respond?

21           MR. ROBERTS: Thank you, Your Honour.

22           MR. PACE: Thank you, Your Honour.

23           I'll first refer to paragraph 96 of the Order on Conduct of  
24 Proceedings, which makes it clear that our disclosure obligations in  
25 relation to the preparation note, that note can contain



1 "clarifications, changes or corrections made by the witness" to prior  
2 statements, "and any new information obtained from the witness."

3 Further down in that paragraph, it says:

4 "The Party may ... tender the witness's statement and the note  
5 of corrections for admission ..."

6 Now, that's what the Order on Conduct of Proceedings says,  
7 Your Honour. I acknowledge that, after the Defence raised the issue,  
8 we have been proceeding by splitting up, so to say, the preparation  
9 note. And we have been disclosing for 154 witnesses Preparation Note  
10 1, which contains clarifications to the tendered 154 statement and  
11 further questioning related to the matters in that statement; and  
12 Preparation Note 2, which addresses other matters.

13 I'll take the two paragraphs referred to by counsel one at a  
14 time, and I'm not sure if Your Honours have had time to closely look  
15 at the paragraphs. But if we can look at paragraph 58 -- and perhaps  
16 it's easiest if we call it up on the screen.

17 The ERN would be 114125-114141. Again, this is not to be  
18 publicly broadcast. And because we're in open session, I won't get  
19 into details.

20 Apologies, Court Officer, page 12, paragraph 58. Thank you.

21 PRESIDING JUDGE SMITH: [Microphone not activated]

22 MR. PACE: Yes, correct. The first one, paragraph 58. That's  
23 now on your screens, Your Honour. As I said, we're in open session,  
24 so I won't get into details. But Your Honours will see, very  
25 clearly, that the information in that paragraph is drawing

1 specifically from two excerpts of the witness's prior statement which  
2 have now been admitted under Rule 154, and this is a very by-the-book  
3 clarification that is given.

4 The witness, as reflected in the note, is reflected to two  
5 specific excerpts, and he provides a clarification on them. There is  
6 nothing in here that can be really termed additional information as  
7 such. To the extent it is additional, it is very closely related to  
8 the matter addressed in those paragraphs.

9 If Your Honours want me to go into more detail, we would have to  
10 go into private session, and I could read to you the two specific  
11 excerpts put to the witness. But I'll tell you now, before we do  
12 that, unless you do want to do that, that, again, these are two  
13 specific excerpts. The questions relate directly to them, and the  
14 clarifications are relevant and arise from those excerpts.

15 Now, if we could turn to paragraph 64, which is the second  
16 paragraph challenged, and that is on page 14.

17 To contextualise what is in this paragraph, Your Honours would  
18 also have to read what is in paragraph 63. Of course, you could do  
19 so at a later stage or now, as you prefer. But I will say that, once  
20 again, the witness was talking about a particular incident. As he  
21 was talking about that incident from his prior statements, he  
22 provided more information, as counsel said, about Rexhep Selimi, and  
23 that information is linked to the incident he was discussing.

24 So while the incident he addresses is not in his prior  
25 statements, it's related through a clarification he gives. This

1 paragraph, perhaps we could see how this could be different to the  
2 one before. The one before is very strictly a clarification. And in  
3 this one, it's additional information provided by the witness *sua*  
4 *sponte*, prompted, we understand, from his discussion and  
5 clarification we asked.

6 As to the allegation of no notice being provided, I believe Your  
7 Honours have already dismissed prior applications in this regard. I  
8 will say that, regardless of the fact that this allegation is not  
9 specifically in the indictment or pre-trial brief, the witness  
10 volunteered this information. It is clearly relevant concerning the  
11 conduct of one of the accused. The Defence has not and, in our  
12 submission, cannot establish prejudice from this very limited  
13 incident relating to one of the accused.

14 The relevance of the incident - again, we're in open session, I  
15 won't get into it too much - is very plainly clear on the paragraph  
16 itself. It goes to the accused's authority. I can just say that  
17 much. And because it is relevant and there is no prejudice, the  
18 Defence is not prejudiced by admission of this paragraph.

19 If the Judges -- if Your Honours were to rule that this  
20 paragraph 64 is not admissible as part of the note, I could elicit it  
21 in private session with the witness *viva voce*. It will not take me  
22 long. Frankly speaking, I don't really see the need to do that given  
23 that the information is here, it's confirmed by the witness, it was  
24 read back to him, and he said it was accurate. And, of course, as  
25 Your Honours know, the Defence can cross-examine about this incident

1 as much as they would like to. Then we will do, of course, as Your  
2 Honours rule.

3 But just to summarise, Your Honours, nothing we have done  
4 violates the Order on Conduct of Proceedings. As pertains to the  
5 agreement with the Defence that we would divide the notes into two  
6 based on the understanding that the Defence would not object when  
7 there are clarifications, that is not necessarily binding. Paragraph  
8 58 is, extremely clearly, a very by-the-book clarification of a prior  
9 statement, not dissimilar to any of the other information in this  
10 note. And paragraph 64 is highly relevant and once again related to  
11 information in the note and in the prior statement.

12 Those are our submissions.

13 MR. ROBERTS: Very briefly, Your Honour. I think Prosecution  
14 counsel managed to contradict themselves three or four times in the  
15 last two minutes then by saying simultaneously that it was a very  
16 limited incident but yet it was very relevant simultaneously. It is  
17 either one or the other. It is either not very important and,  
18 therefore, the Prosecution, therefore, doesn't need to rely on it;  
19 or, it is very relevant, and it should have been provided notice to  
20 us in the Rule 95(4) Rule summary or in any other format.

21 The reality is we received this information very late. We have  
22 not been able to investigate it at all. If the Prosecution considers  
23 it to be relevant, then they should have included it well before and  
24 should have elicited that information from their witness well before.

25 The problem we have, Your Honour, is that the Prosecution seems

1 to be attempting to add in information in proofing notes -- in the  
2 preparation note that is not a correction. This is not a correction  
3 in paragraph 64, and certainly the names set out in paragraph 58 on  
4 the register are not corrections to previous statements. Corrections  
5 are when there is a typo. A correction is when there is a mistake in  
6 the transcript. That is the understanding of what a correction to a  
7 previous statement is. This is additional information. There is no  
8 way it should have been included within this preparation note.

9 And the process we have at the moment is we have a 154 statement  
10 admitted several weeks or months before, and then we have, right at  
11 the last minute, additional information that is thrown in and that we  
12 have no time to prepare for. So I maintain my submissions in full.  
13 The reality is that, at most, the information in paragraph 58 can be  
14 led orally, but paragraph 64 we strongly oppose to being led at all.

15 Thank you, Your Honour.

16 PRESIDING JUDGE SMITH: Judge Mettraux had a question for  
17 somebody.

18 JUDGE METTRAUX: Thank you, Judge Smith.

19 And the question is for you, Mr. Pace, on paragraph 64, and the  
20 objection taken by the Selimi Defence about notice.

21 What I want to be clear about is whether you, the Prosecution,  
22 would seek to rely on this would-be evidence as part of your case  
23 against Mr. Selimi. In other words, the events that are being  
24 described in there, would that be your position, that you should be  
25 permitted to rely upon it to establish your case against Mr. Selimi?

1 And if the answer to that question is yes, where do you say is the  
2 notice of that particular incident given to the Defence so that they  
3 could prepare for it? As I understand the complaint to be that they  
4 had no prior notice of that incident.

5 MR. PACE: Thank you, Your Honour.

6 The SPO also didn't have notice of this incident. This was  
7 offered by the witness. It's not unusual. This is in a preparation  
8 session. It's not unusual in the courtroom when you ask the witness  
9 a question and he provides a detail about an incident which is of  
10 relevance.

11 Yes, we would rely on this as part of our case. And the notice  
12 to the Defence is the modes of liability through which Rexhep Selimi  
13 has been charged. This information goes to his authority, for  
14 example, so, of course, we should be permitted to rely on it.

15 As such, if it is authorised, which, again, the authorisation of  
16 either admitting this in the note or eliciting it *viva voce*, would be  
17 in line with previous rulings by this Panel, if I'm not mistaken,  
18 that would not prejudice the Defence. The Defence can seek  
19 instructions today, tomorrow, from Mr. Selimi if they like. They can  
20 investigate this incident as much as they would like, and they could  
21 even call evidence to the contrary. So the issue would be one of  
22 prejudice, which we don't see any arising at the moment.

23 I'll just conclude by saying that, of course, when the witness  
24 offers information, we cannot censor him when it is relevant  
25 information. He offered this, we reported it, it is relevant, it

1 should be admitted. The procedure then is what the Defence needs to  
2 do with that. And we are, of course, not suggesting they cannot  
3 question him about it, they for sure can, and they cannot investigate  
4 it, of course they can.

5 But, yes, Your Honour, this is clearly relevant, and nothing  
6 prejudicial about it would occur if the note were to be admitted as  
7 is or if we were to elicit it in the courtroom. Thank you.

8 JUDGE METTRAUX: But the complaint, as I understand it,  
9 Mr. Pace, from Mr. Roberts is that there seems to be a bit of abuse,  
10 if I may put it that way, between what is the Preparation Note 1 and  
11 Preparation Note 2. Preparation Note 2 being new information,  
12 preparation 1 being clarifications and corrections and the like.  
13 What do you say to that? Why isn't paragraph 64 in Preparation Note  
14 2?

15 MR. PACE: Thank you, Your Honour. I'll note, just for clarity,  
16 that we do have a Preparation Note 2 for this witness which contains  
17 quite a bit of information which we see as distinct and not related  
18 to his Rule 154 statements. So as you will probably here shortly,  
19 much of the information from Preparation Note 2 I will be seeking to  
20 elicit *viva voce*. At least the relevant part of it.

21 So we are proceeding in a manner. We are using our discretion.  
22 Once again, let's go back to the Order on Conduct of Proceedings  
23 which clearly says:

24 "... and any new information obtained from the witness."

25 And then proceeds to say that that note can be admitted. So we

1 are definitely not departing from there. The Defence is now alleging  
2 an abuse and has kind of suggested we have done that before. This is  
3 the first at least I am hearing about any abuse in terms of what goes  
4 into a note or does not. And we say that, on this occasion, the  
5 information is properly in this preparation note, in particular  
6 because the witness offered it when he was talking about an incident  
7 in his Rule 154 statement.

8 So focusing on paragraph 64, Your Honours, of course, if, in  
9 your discretion, you deem that this would be, A, both more  
10 appropriate for Preparation Note 2, and, B, improper to admit under  
11 154, I would be happy to elicit it *viva voce*. Thank you.

12 [Trial Panel confers]

13 PRESIDING JUDGE SMITH: All right. To give us an opportunity to  
14 discuss it among ourselves we will -- first of all, let me ask if  
15 anybody else has anything to object to on that.

16 MR. MISETIC: Nothing.

17 PRESIDING JUDGE SMITH: On the notes? Anything?

18 MR. MISETIC: Nothing to add.

19 MS. O'REILLY: Nothing, Your Honour.

20 PRESIDING JUDGE SMITH: And we've got yours, Mr. Ellis.

21 MR. ELLIS: Nothing further, Your Honour.

22 PRESIDING JUDGE SMITH: All right. What we'll do is we'll wait  
23 until the break so we can discuss it alone.

24 Mr. Pace, just avoid those two paragraphs for the time being,  
25 and we will get to it as soon as possible at 11.00.



1 So you may bring the witness back in.

2 [The witness takes the stand]

3 PRESIDING JUDGE SMITH: All right. Mr. Pace, you may continue.

4 MR. PACE: Thank you, Your Honour.

5 Since the prior statements have been admitted and the summary is  
6 the summary of the prior statements, I will now read the summary in  
7 open session.

8 The evidence provided by W04337 in the prior statements admitted  
9 by the Trial Panel includes the following.

10 W04337 is an ethnic Kosovo Albanian who, in 1998, worked as a  
11 farmer. In mid-August 1998, he was taken from his home by KLA  
12 soldiers and detained for about a month. He was questioned by KLA  
13 members including about his collaboration with Serbia, verbally  
14 abused, and threatened. He was mistreated and beaten multiple times  
15 by KLA members.

16 He also observed other detainees being beaten and in a weakened  
17 condition.

18 During his detention, W04337 was kept in a room without a  
19 mattress and was not provided with sufficient food. There was a lack  
20 of medical assistance. The injuries W04337 suffered as a result of  
21 his mistreatment and the beatings have had a long-lasting negative  
22 impact on his health and well-being.

23 And, Your Honour, I ask to move into private session for my  
24 first set of supplemental questioning.

25 PRESIDING JUDGE SMITH: We will go into private session,

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1 Madam Court Officer.

2 For purposes of the protection of the identity. Is that it,

3 Mr. Pace?

4 MR. PACE: Correct, Your Honour. Thank you.

5 PRESIDING JUDGE SMITH: Of this witness. Thank you.

6 [Private session]

7 [Private session text removed]

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Examination by Mr. Pace

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15 [Open session]

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

17 PRESIDING JUDGE SMITH: All right. We'll take our morning  
18 break. We will see you back here at 11.30.

19 We are adjourned.

20 --- Recess taken at 11.02 a.m.

21 --- On resuming at 11.37 a.m.

22 PRESIDING JUDGE SMITH: While in open session, the Panel will  
23 rule on the Selimi Defence objection to the admission of paragraphs  
24 58 and 64 of Preparation Note 1 of Witness W04337.

25 The Selimi Defence objects to the admission of these paragraphs

1 pursuant to Rule 154 on the basis that it constitutes substantive  
2 addition rather than clarification of a previous statement. And in  
3 relation to paragraph 64, the Selimi Defence adds that it did not  
4 receive adequate notice of the relevance of the claimed incident from  
5 the SPO.

6 The SPO submits that the preparation note is in compliance with  
7 the Panel's Order on the Conduct of Proceedings and constitutes valid  
8 clarifications of earlier statements of the witness so that they can  
9 be admitted pursuant to Rule 154.

10 The Panel rules as follows. Paragraph 58 constitutes  
11 clarification of earlier information provided by the witness and of  
12 which the Defence had notice. The fact that the witness added  
13 details to his earlier accounts does not exclude the proposed  
14 evidence from the realm of permissible clarification.

15 For that reason, paragraph 58 can be admitted together with the  
16 rest of the preparation note pursuant to Rule 154, subject to the  
17 below on paragraph 64.

18 Regarding paragraph 64, the Panel agrees with the Defence that  
19 the incident recounted therein constitutes new information not  
20 already in the possession of the Defence. The Panel also accepts  
21 that the incident described therein is not expressly charged in the  
22 indictment, does not feature explicitly in the SPO pre-trial brief,  
23 and did not feature in earlier statements of W04337.

24 On this basis, the Panel concludes that Mr. Selimi is not  
25 charged specifically with the incident described in paragraph 64.

1 The evidence would, therefore, not be admissible for such purpose.

2 At the same time, it constitutes evidence of a fact that is  
3 validly pleaded in the indictment; namely, that Mr. Selimi should be  
4 held responsible as a superior for the crimes charged in the  
5 indictment. While none of the individuals mentioned in that  
6 paragraph are alleged to have committed crimes for which the accused  
7 could be held responsible, it could constitute evidence relevant to  
8 establishing Mr. Selimi's authority *de jure* or *de facto*.

9 The Panel is, therefore, prepared to allow the SPO to lead this  
10 evidence for this limited purpose.

11 At the same time, this proposed evidence is new evidence of  
12 which the Defence had no prior notice. Therefore, it should have  
13 appeared in Preparation Note 2 and as such will not be admitted in  
14 writing pursuant to Rule 154. If the SPO wishes to elicit it, it  
15 will have to do so orally with the witness.

16 Should the Selimi Defence obtain relevant information in respect  
17 of this matter during investigation, it can seek permission to  
18 re-call the witness for limited questioning.

19 This concludes the Panel's oral order.

20 So you may bring the witness in, Madam Court Usher.

21 [The witness takes the stand]

22 PRESIDING JUDGE SMITH: Are you ready, Witness?

23 THE WITNESS: [Interpretation] Yes, Your Honour.

24 PRESIDING JUDGE SMITH: Thank you.

25 Mr. Pace, you have the floor. I remind you we are now in public

1 session.

2 MR. PACE: Thank you, Your Honour. And I ask to move to private  
3 session. I'll be continuing the line of questioning in relation to  
4 the document we were looking at before. And the reason remains the  
5 same. It is so as not to identify the witness.

6 PRESIDING JUDGE SMITH: For those reasons, the Court will move  
7 into private session.

8 [Private session]

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Examination by Mr. Pace

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Witness: W04337 (Private Session)

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Examination by Mr. Pace

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Witness: W04337 (Private Session)

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Examination by Mr. Pace

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Examination by Mr. Pace

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Examination by Mr. Pace

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Examination by Mr. Pace

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Examination by Mr. Pace

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Examination by Mr. Pace

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Examination by Mr. Pace

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18 [Open session]

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

20 PRESIDING JUDGE SMITH: Thank you.

21 Go ahead, Mr. Pace.

22 MR. PACE: Thank you, Your Honour.

23 PRESIDING JUDGE SMITH: You've got about five minutes.

24 MR. PACE: Noted, Your Honour.

25 Q. Witness, in private session we talked about your detention. We

1 won't say where. Could you tell us whether, during or after that  
2 detention, any KLA member ever provided you with an opportunity to  
3 challenge that detention?

4 A. Never.

5 Q. During or after that detention, did any KLA member ever provide  
6 you with any evidence of any alleged wrong-doing you committed  
7 leading to that detention?

8 A. No, never. They never gave me any documents, any evidence.

9 Q. During or after that detention, did any KLA member ever accuse  
10 you of any specific crime that you allegedly committed?

11 A. No, never.

12 Q. During or after that detention, did any KLA member ever charge  
13 you in relation to any specific crime you committed?

14 A. No, sir. I never owed anything to anybody.

15 Q. And just to be clear here, I mean charge. Did they ever accuse  
16 you formally of any crime you committed?

17 A. No. After *[REDACTED] Pursuant to In-Court Redaction Order F1663RED*.  
18 I don't remember to have been mistreated. The  
19 answer is no.

20 Q. Witness, I just remind you we're in open session. No need to  
21 mention that. Don't worry about it. We will take care of it.

22 You mentioned your detention. Could you tell us if any KLA  
23 member, during or after that detention, ever sentenced you to any  
24 specific punishment?

25 A. No, never. No. Afterwards, no.

Q. And to your knowledge, has any KLA member been investigated by

1 the KLA in relation to your detention and mistreatment?

2 A. Not one but many. Many have been imprisoned. We are in front  
3 of justice. *[REDACTED] Pusuant to In-Court Redaction Order F1663RED.*

4 Q. I'll stop you there, Witness. To your knowledge, did any KLA  
5 member ever investigate what happened to you? A KLA member conduct  
6 an investigation into what happened to you.

7 A. No. What could the KLA investigate? No.

8 Q. And finally, for now, to your knowledge, did the KLA ever punish  
9 any KLA member for what happened to you? Did the KLA punish.

10 A. There was a KLA member in prison with me. Are you asking me  
11 after the war, Mr. Prosecutor?

12 Q. I'll clarify, Witness. During or after the war, did you hear of  
13 the KLA ever investigating or charging or punishing a KLA member for  
14 what they did to you or not?

15 A. Yes. During the war, there were some who were with LDK. And  
16 *[REDACTED] Pusuant to Post Court Redaction Order F1707*, he was with me in  
prison. I remember now, there was

17 *[REDACTED] Pusuant to In-Court Redaction Order F1663RED.*, a wounded  
soldier --

18 Q. Witness, I'll stop you here.

19 MR. PACE: Your Honour, it seems this would be best done in  
20 private session, and we'll do it after the break, where I will have a  
21 maximum of five or ten minutes to complete my direct examination.

22 PRESIDING JUDGE SMITH: Thank you, Mr. Pace.

23 Witness, you will be excused for an hour and a half for lunch.

24 We will be back here at 2.30. Remember not to talk to anybody

25 outside of the courtroom about your testimony.

1 THE WITNESS: [Interpretation] Thank you for your advice.

2 [The witness stands down]

3 PRESIDING JUDGE SMITH: [Microphone not activated]

4 --- Luncheon recess taken at 1.02 p.m.

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

6 PRESIDING JUDGE SMITH: First of all, on a couple of pending  
7 matters.

8 The Panel will admit two pages of the ERN number 098615 through  
9 098616. Just the first two pages that were referred to. We will  
10 also admit the Communiqué No. 35. Those two both meeting the minimum  
11 requirements of Rule 138.

12 The Panel will also rule on the SPO's application to admit the  
13 evidence of W04746 pursuant to Rule 154.

14 The submissions were heard from the parties on this matter  
15 earlier today. In support of its application, the SPO referred,  
16 *inter alia*, to W04746's refusal to answer additional questions during  
17 the proofing session, the fact that such a course would result in  
18 time saving and would not prejudice the Defence. The SPO also  
19 submits that all conditions and requirements of Rule 154 would be met  
20 in this case.

21 The Defence indicated its objection to the SPO application,  
22 pointing, in particular, to the belated and last-minute nature of the  
23 application and the prejudice to its preparation that such a change  
24 of approach would cause.

25 The Panel rules as follows. First, the SPO has failed to



1 provide adequate reasons constituting good cause for failing to  
2 comply with the 7 February deadline set by the Panel for Rule 154  
3 applications in relation to the first 12 witnesses. That's from  
4 transcript January 18, page 1902.

5 Second, the Panel agrees with the Defence that a belated change  
6 in the manner of presentation of W04746's evidence would cause  
7 prejudice to the defendant.

8 Third, in light of the importance of the proposed evidence, the  
9 Panel considers that reasons would have to be particularly compelling  
10 to justify this witness's evidence in chief to be admitted in  
11 writing. No such reasons have been shown in this case.

12 For these reasons, the Panel rejects the SPO's application to  
13 have the evidence of W04746 admitted pursuant to Rule 154.

14 That ends that oral order.

15 Madam Usher, you may bring the witness in.

16 MR. PACE: Your Honour, while that happens, just to clarify  
17 something in relation to the first item admitted -- sorry,  
18 Court Officer.

19 Just to clarify the pages we showed to the witness, which, I  
20 understand, are the ones you admitted, were 098615 and then 098619.

21 PRESIDING JUDGE SMITH: Oh, 19, I'm sorry. I'm sorry. My  
22 mistake. So, Court Officer, you will make that correction and then  
23 assign P numbers to them.

24 Yes.

25 MS. O'REILLY: Your Honour, at page 95, line 1, just before

1 the -- we took our lunch, the name "Veseli" appears on the  
2 transcript. I don't think that could be right, so I wonder if we  
3 could get a clarification of who the witness was referring to when he  
4 comes back in.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 I said either Mr. Pace can or you can on cross-examination.

7 THE COURT OFFICER: Your Honours, if I could assign numbers,  
8 please.

9 098615 and 098619 will receive Exhibit P220.

10 And Communiqué 35, which had ERN IT-04-84 P00948, and the  
11 translation, IT-04-84 P00948.E, will receive Exhibit P221.

12 PRESIDING JUDGE SMITH: [Microphone not activated]

13 [The witness takes the stand]

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 Can you hear okay, Witness?

16 THE WITNESS: [Interpretation] Yes, yes.

17 PRESIDING JUDGE SMITH: All right. The Prosecution has some  
18 more questions for you, so they will begin now.

19 Go ahead, Mr. Pace. Are we staying in public session?

20 MR. PACE: [Microphone not activated].

21 With your leave, Your Honour, we'll move into private session  
22 for the last few questions. It should be, like I said earlier, five  
23 to ten minutes. The reason being the protection of this witness's  
24 identity.

25 PRESIDING JUDGE SMITH: Thank you for that reason. The Court

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1 will go into private session.

2 Court Officer.

3 [Private session]

4 [Private session text removed]

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Cross-examination by Mr. Roberts

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Cross-examination by Mr. Roberts

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Cross-examination by Mr. Roberts

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Cross-examination by Mr. Roberts

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18 [Open session]

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

20 PRESIDING JUDGE SMITH: Madam Usher, you may escort the witness  
21 out of the courtroom.

22 Thank you for being with us today. Remember not to speak with  
23 anybody about your testimony.

24 THE WITNESS: [Interpretation] Thank you. Respect to you all.  
25 Have a good day.

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[The witness stands down]

PRESIDING JUDGE SMITH: We are adjourned until 9.00 tomorrow.

--- Whereupon the hearing adjourned at 4.02 p.m.