

1 Wednesday, 10 May 2023

2 [Open session]

3 [The accused entered the courtroom]

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

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

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

10 PRESIDING JUDGE SMITH: Thank you.

11 Today we will start hearing the evidence of Prosecution
12 Witness 4748. Before we start, there are a few preliminary matters
13 to address briefly.

14 First, it was brought to the Panel's attention that the record
15 needs to be corrected regarding Exhibit 1D5.

16 Madam Court Officer, please go ahead.

17 THE COURT OFFICER: Yes, thank you, Your Honour. On 12 April
18 2023, the document with ERN SPOE00213583 to SPOE00213586 was assigned
19 Exhibit 1D5. The transcript reference is page 2619, line 10, to
20 2620, line 3; and 2620, line 24.

21 Later on, on 19 April 2023, the same exhibit number, 1D5, was
22 assigned to ERN DHT00146. The transcript reference for this is 3252,
23 lines 14 to 15.

24 In order to correct this duplication of numbering, and following
25 consultation with the Panel, CMU assigned Exhibit 1D12 to document

1 with ERN DHT00146, while the document with SPOE00213583 to
2 SPOE00213586 remains as Exhibit 1D5.

3 Thank you, Your Honour, for the opportunity to correct the
4 record.

5 PRESIDING JUDGE SMITH: Thank you, Madam Court Officer.

6 Next, the Panel will issue an oral order in relation to a
7 request made by the Selimi Defence during the hearing of 19 April
8 2023.

9 During the testimony of Witness 2652, counsel for Mr. Selimi
10 raised an objection to the testimony allegedly linking Mr. Selimi to
11 a certain incident. This was at page 3230 in the official
12 transcript.

13 The basis for counsel's objection was that the proposed evidence
14 of this witness in respect of this particular incident was excluded
15 by the oral order of the Panel on 17 April 2023.

16 At the conclusion of the 19 April 2023 hearing, counsel for
17 Mr. Selimi sought to exclude the part of the record at page 3230 of
18 the official transcript just before he raised the objection. The
19 Panel has considered this request and finds there is no legal basis
20 foreseen in the law or the rules that would allow the Panel to strike
21 from the record certain passages with which the parties take issue.

22 In any case, the evidence having already been led, it will be
23 given the weight, if any, that is appropriate and in a manner
24 consistent with the Panel's 17 April ruling. Therefore, the request
25 from the counsel for Selimi is rejected. And this concludes the oral

1 order.

2 Next, the Panel has a question for the SPO in relation to its
3 filing F01351, that is the Prosecution Motion for Admission of
4 Accused Statements.

5 Among the various records you seek to tender is one SPO
6 interview of Mr. Thaci from January 20, 2020. In relation to this
7 interview, the SPO seeks to tender what is referred to as Exhibit 14.
8 It is referred to in Part 7 of the transcript, page 10 of that part.
9 The Panel is uncertain which proposed exhibit this refers to.

10 Could the SPO, therefore, please clarify this by the close of
11 business today by notifying the Panel as well as the Defence and
12 Counsel for Victims.

13 And if any of the Defence team feels the need to make further
14 submissions once this document is identified by you, we will
15 entertain any such request at that time.

16 Finally, just an advance notice of the change in the October
17 schedule. We will not be in court on the first week of October.
18 That's 2, 3, 4, and 5 of October, as it is impossible under the
19 circumstances.

20 Instead, we will be in session the week before that, September
21 25, 26, and 27. We wanted to give you as much advance notice as
22 possible so you could make arrangements accordingly.

23 Now let us proceed with the testimony of Witness 4748. And I do
24 note that the accused are all present in court today.

25 And, Mr. Kehoe, you've asked the floor.

1 MR. KEHOE: Yes, Your Honours. Two matters, one in open session
2 and one in private session, if I may. Just introducing two people --
3 two individuals to the court, as Lirim Greicevci and Jordan Behlman
4 will be joining us today.

5 PRESIDING JUDGE SMITH: Thank you. As soon as we're in private
6 session, we will take up your other motion.

7 MR. KEHOE: Yes, Your Honour.

8 PRESIDING JUDGE SMITH: Mr. Halling, do you intend to begin in
9 open session, in public session?

10 MR. HALLING: We'll begin in private session, Your Honour.

11 PRESIDING JUDGE SMITH: All right. So if the Court Officer will
12 please take us into private session prior to bringing the witness in,
13 and this to protect the identity of the witness and others.

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Procedural Matters

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

Page 3428

Examination by Mr. Halling

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Witness: W04748 (Private Session)

Page 3429

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

Page 3431

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

Page 3435

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Witness: W04748 (Private Session)

Page 3436

Examination by Mr. Halling

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Witness: W04748 (Private Session)

Page 3437

Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

Page 3439

Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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5 [Open session]

6 THE COURT OFFICER: Your Honours, we are now in public session.

7 PRESIDING JUDGE SMITH: We will adjourn until 11.30. Thank you.

8 [The witness stands down]

9 --- Recess taken at 10.59 a.m.

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

11 PRESIDING JUDGE SMITH: I understand the SPO has a correction.

12 Is that correct?

13 MR. HALLING: We can specify that in private session. The only
14 thing that we had for open session is the answer to Your Honours'
15 question from this morning about Exhibit 14.

16 PRESIDING JUDGE SMITH: Yes.

17 MR. HALLING: We can put that on the record now. This item from
18 the 20 January 2020 interview is item 1.2 in F01351/A01, so it's in
19 the annex to the motion specified by the Panel. The ERN of the item
20 is 071794 to 071839. And Exhibit 14 within that range is at page
21 071838. Thank you.

22 PRESIDING JUDGE SMITH: Thank you.

23 Just to briefly -- oh, go ahead, Mr. Ellis.

24 MR. ELLIS: I'm sorry, Your Honour. I had a separate issue. I
25 just wanted to check, Your Honour. The extension that was granted

1 earlier in relation to the videolink response, does that apply to all
2 Defence teams?

3 PRESIDING JUDGE SMITH: Yes, it will. All Defence teams will
4 have the same.

5 Discussing the motion earlier this morning, Mr. Kehoe, that you
6 made concerning time with your client -- you don't need to stand. We
7 did some checking just now. And you will be granted an hour today,
8 all of you, an hour today with your client during the noon hour, give
9 them a half hour to eat and then you'll have an hour to spend with
10 them. You will be available. You may request time out at the prison
11 additionally any time through the Registry and they will be glad to
12 accommodate you. You also have Zoom opportunities with your client
13 at the prison if you don't want to physically be there. There are
14 opportunities available to you that we hope you will partake of
15 between now and Friday at least.

16 This only affects your -- probably is only going to affect your
17 cross-examination at this point.

18 MR. KEHOE: Yes, Judge. My client has asked me again could we
19 talk about this on Friday. We need to consult on many of the issues
20 that are in here. And I understand the time concerns, Judge. It's
21 just these are very -- as you know, Judge, are very serious matters
22 and serious allegations that we need to spend time, more than just an
23 hour, frankly --

24 PRESIDING JUDGE SMITH: Well, I'm telling you there is a lot
25 more than an hour available.

1 MR. KEHOE: What I ask, Judge, is that, you know, I have this
2 information, then to the extent that I need to do additional
3 investigation, I need some lead time to try to be able to do that
4 before I begin this cross-examination.

5 PRESIDING JUDGE SMITH: Okay. Well, we'll see. As I said, feel
6 free to avail yourself of the additional times that are available.
7 The Registry is more than happy to comply with your reasonable
8 requests.

9 MR. KEHOE: Thank you, Your Honour.

10 PRESIDING JUDGE SMITH: Are we going to stay in private session,
11 Mr. Halling?

12 MR. HALLING: Yes, Your Honour.

13 PRESIDING JUDGE SMITH: All right.

14 You can bring us into private session, please.

15 [Private session]

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Witness: W04748 (Private Session)

Page 3448

Examination by Mr. Halling

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

Page 3455

Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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25 [Open session]

1 THE COURT OFFICER: Your Honours, we are in public session.

2 PRESIDING JUDGE SMITH: So we will continue at 2.30. Thank you
3 for your attendance this morning.

4 --- Luncheon recess taken at 1.01 p.m.

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

6 PRESIDING JUDGE SMITH: Before we begin, the Panel will address
7 the two exhibits marked for identification this morning, P67 and P68.

8 Having considered the parties' oral submissions, the Panel finds
9 that, for the purpose of deciding on the admission of these items,
10 relevance has been established and *prima facie* authenticity and
11 probative value demonstrated in accordance with Rule 138 of the
12 rules. There is no indication that their probative value would be
13 outweighed by any potential prejudicial effect.

14 With respect, the Defence's arguments regarding the authorship
15 of these items, the Panel considers this to be an issue pertaining to
16 weight, if any, to be attached to this evidence, not to its
17 admission. The Defence will have an opportunity to challenge any
18 information contained in the admitted exhibits via cross-examination
19 of this witness and/or future witnesses.

20 In addition, and contrary to the Krasniqi Defence submissions,
21 this does not amount to applying a worst evidence rule. It only
22 means that the SPO is only required to meet the relevant *prima facie*
23 standard of Rule 138, at which point it can choose to tender or not
24 an exhibit. It does not have to await another witness who might be
25 able to give more or even better evidence in respect of a proposed

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1 exhibit.

2 Therefore, pursuant to Article 40(6)(h) of the Law and Rule
3 138(1) of the rules, P67 and P68 and their respective English
4 translations are admitted.

5 We will now go back into private session.

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Examination by Mr. Halling

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Examination by Mr. Halling

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Examination by Mr. Halling

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Examination by Mr. Halling

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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Witness: W04748 (Private Session)

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Witness: W04748 (Private Session)

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Examination by Mr. Halling

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15 [Open session]

16 THE COURT OFFICER: Your Honours, we are now in public session.

17 [The witness stands down]

18 PRESIDING JUDGE SMITH: All right. We are now in public
19 session.

20 Yes, Mr. Ellis.

21 MR. ELLIS: Yes, Your Honour. There was one thing I wanted to
22 raise in the time remaining just briefly. It relates to the
23 procedure for the witness preparation notes.

24 What we've received in relation to this witness is two separate
25 documents about ten pages each. One being corrections and

1 alterations to previous interviews or statements, and the other being
2 new material. Those are currently provided to the Defence in English
3 only, and that's a particular disadvantage for us and our case
4 because Mr. Krasniqi doesn't read English.

5 It would be of great assistance, particularly when we're trying
6 to take instructions on these matters with limited time, if they're
7 available in Albanian so that he can at least read them. And I would
8 have thought particularly where at least part of the -- at least one
9 of the two documents prepared is expressly corrections to a previous
10 statement, and statements are, of course, required to be made
11 available in a language that the accused can read, so that would be
12 the basis for the request.

13 PRESIDING JUDGE SMITH: I understand your request. We will look
14 into it and try to give you an answer on that tomorrow.

15 MR. HALLING: Your Honour, could we be heard on that?

16 PRESIDING JUDGE SMITH: Sure.

17 MR. HALLING: Thank you.

18 As we've said in our comments on the draft Order on the Conduct
19 of Proceedings, it is impracticable for us to be able to make
20 translations on the timelines set out for witness preparation. That
21 is why we do a readback for the witness.

22 So this is not something that we have to give, and it's
23 perfectly in conformity with Your Honours' directions. These are not
24 statements that are disclosable under Rule 102(1)(b), they are
25 governed by the Conduct of Proceedings decision. So we don't believe

1 we have an obligation to translate them, either.

2 We would suggest that the Defence arrange a readback of the
3 statement for their client. This is exactly how we got the witness
4 who's testifying now to confirm the accuracy of the contents.

5 MR. ELLIS: Well, Your Honour, the timeline for the witness
6 preparation sessions in your conduct order is as soon as possible and
7 not later than 24 hours before testimony. It doesn't mean the
8 Prosecution have to do it just 24 hours before testimony.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 We are adjourned until 9.00 a.m. tomorrow. Thank you.

11 --- Whereupon the hearing adjourned at 4.01 p.m.

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