

1 Tuesday, 11 April 2023

2 [Open session]

3 [The accused entered the courtroom]

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

5 PRESIDING JUDGE SMITH: Good morning, everyone.

6 Madam Court Officer, please call the 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: Today we start the hearing of the  
11 evidence of the Prosecution in this case.

12 During the next two weeks, we hope to hear the evidence of at  
13 least two Prosecution witnesses, 4474 and 2652. The Panel plans to  
14 sit this week from today until Thursday, and then from Monday to  
15 Thursday next week. Any change in the schedule will be duly notified  
16 to the parties.

17 Now, before we bring in the first witness, the Panel will  
18 address a number of matters.

19 First, some general observations. I remind the parties to  
20 comply with the instructions in the Order on the Conduct of the  
21 Proceedings. In addition, the parties are informed that during the  
22 presentation of evidence, parties are expected to use the  
23 presentation queue tool in Legal Workflow when questioning witnesses,  
24 as described in the Order on the Conduct of the Proceedings and the  
25 Panel's order of April 5th, 2023.

1 Evidence shown in the courtroom will not be broadcast publicly  
2 unless the Panel orders otherwise.

3 When referring to any material during questioning of a witness,  
4 the examining party shall identify such material by reference to the  
5 relevant exhibit number if already admitted or an ERN, and shall also  
6 indicate the corresponding page reference in Albanian or English,  
7 depending on the language of the particular material.

8 The parties and participants, with the assistance of CMU, should  
9 keep track of the time used in questioning a witness in this regard.  
10 The Panel notes that a party's time in redirect will be counted  
11 toward their overall time.

12 Finally, I note that on a number of occasions redactions to the  
13 record have been required already. This is not acceptable. The  
14 Panel should not be consistently put in the position of having to  
15 authorise redactions to the record. The Panel reminds the parties  
16 and the participants of their duty to observe, at all times  
17 throughout the presentation of evidence, all protective measures in  
18 place. In particular, the parties and participants shall exclusively  
19 refer to protected witnesses by their pseudonyms; refrain from  
20 mentioning in public session any information which could lead to the  
21 identification of protected witnesses, victims, or their relatives;  
22 be mindful at all times of the way in which questions are asked of  
23 the witness so that no information subject to protective measures is  
24 disclosed; and use gender-neutral language.

25 In addition, the Panel notes that the list of SPO witnesses is

1 currently classified as confidential. Therefore, the fact that an  
2 individual is a prospective SPO witness is confidential, even when  
3 such an individual is not a protected witness.

4 Finally, if ever counsel feels that it is absolutely necessary  
5 to refer to confidential information, please ask to go into private  
6 session.

7 We note or we were advised, Mr. Emmerson, that the Veseli  
8 Defence wishes to issue a matter in private session, and we've been  
9 advised what that is about. And we would suggest that an objection  
10 to a question needs to be addressed at the time of the issuance of  
11 the question, and if private session is necessary, we will honour  
12 that. And we will be aware of the fact that you have an objection to  
13 issue.

14 Anything else to take up at this time?

15 Mr. Misetic.

16 MR. MISETIC: Good morning, Mr. President. Just to introduce  
17 someone who hasn't been with us thus far. To my right is our legal  
18 associate Ms. Fellenza Limani. Thank you.

19 PRESIDING JUDGE SMITH: Thank you very much, Mr. Misetic.

20 Anything else from anybody else before we begin?

21 MR. HALLING: Yes, Your Honour. We have two short matters, and  
22 actually an additional appearance as well. Earl Sullivan appearing  
23 with the SPO today.

24 The first is just actually a correction for the record. For the  
25 preparation note, this is 112720, 112723, the witness's changes in

1 the Albanian transcript are all recorded accurately, but the English  
2 analogues that we added turns out need minor adjustments.

3 So just quickly for the record, paragraph 6 of the preparation  
4 note should read page 14, not 10, for the English transcript; the  
5 second ERN in paragraph 8 should be ET, not AT; and the first ERN in  
6 paragraph 9 should be ET, not AT.

7 As for the request, on Thursday we forwarded a request from the  
8 witness to have certain notes available as a hard-copy reference  
9 during their testimony, and we would request a ruling on that before  
10 the witness is brought in.

11 PRESIDING JUDGE SMITH: Wish to be heard, anybody, on that  
12 request?

13 The notes are okay. No problem with them.

14 MR. HALLING: So that would be -- we have the two sets of  
15 documents, the two sets of notes in this binder here. We can take  
16 out the witness's own notes because that was an alternative request.

17 PRESIDING JUDGE SMITH: Yes, we don't want the witness's own  
18 notes, have the actual notes, and I will instruct her on that when  
19 she comes in the room.

20 Go ahead, Mr. Misetic.

21 MR. MISETIC: Mr. President, I apologise, I did not hear you ask  
22 for our opinions on the notes. We did have an objection to the  
23 notes. We don't want to set a precedent here, and we believe it's  
24 not consistent with the Order on the Conduct of Proceedings.

25 Paragraph 120 of the Order of Conduct of Proceedings talks about use

1 of prior statements. We think notes are analogous to prior  
2 statements. And they can be used to refresh the memory only where  
3 it's been shown that the witness needs refreshing of the memory. And  
4 on that basis, unless there is an explanation or a basis that's being  
5 put forward as to why this particular witness needs notes or witness  
6 statements, et cetera, to accompany her in her testimony, we would  
7 say that we would like to stick with the rule as drafted and then not  
8 deviate from that absence I'm showing that there is a need for it.

9 PRESIDING JUDGE SMITH: When she asks the Court if she has  
10 permission to refer to her notes, that will be granted to her.

11 MR. MISETIC: If that's the case, then, yes, but we would  
12 actually like to see if she has an independent recollection of  
13 something.

14 PRESIDING JUDGE SMITH: She can stop. She can stop. She  
15 doesn't have to use that term. If she says, "I need to look at my  
16 notes," I can understand that.

17 MR. MISETIC: Okay. But just as long as she's not, you know --

18 PRESIDING JUDGE SMITH: I understand.

19 MR. MISETIC: -- reading. Thank you.

20 PRESIDING JUDGE SMITH: Your witnesses will be granted the same  
21 opportunity. I can assure you of that.

22 MR. HALLING: Thank you, Your Honour. I don't know if the  
23 Defence wants to inspect the binder as it is, but we're available to  
24 give it to the Court Usher [Overlapping speakers] ...

25 PRESIDING JUDGE SMITH: I will leave that between the Defence

1 and the Prosecution. If you want to look at it, it's open, and we  
2 expect you to do so if you wish.

3 All right. We are ready to begin the evidence stage of this  
4 trial.

5 Madam Court Usher, please bring the witness in.

6 [The witness entered court]

7 PRESIDING JUDGE SMITH: Witness, you may take a seat. For the  
8 time being, just be seated. Tell me when you are ready.

9 Today we will start your testimony, which is expected to last  
10 approximately four days. As you may know, the Prosecution will be  
11 asking you questions first. And once they are done, the Defence has  
12 the right to cross-examine you. Members of the Panel might also ask  
13 questions of you.

14 The Prosecution estimate for your examination is 3.5 hours. The  
15 Defence estimates it will need 14 hours. As regards each estimate,  
16 we hope that counsel will be judicious in their use of time. The  
17 Panel may allow redirect examination if the conditions for that are  
18 met.

19 Please try to answer the questions clearly with short sentences.  
20 If you don't understand a question, feel free to ask counsel to  
21 repeat the question or tell them that you don't understand and they  
22 will do their best to clarify.

23 Also, please try to indicate the basis of your knowledge of  
24 facts and circumstances that you will be asked about.

25 In the event that you are asked by the SPO to attest to some

1 corrections made regarding your statements, you are reminded to  
2 confirm on the record that the written statement, as corrected by the  
3 list of corrections, accurately reflects your declaration.

4 Please also speak into the microphone and wait five seconds  
5 before answering a question and speak at a slow pace so that the  
6 interpreters can catch up.

7 During the next days while you are giving evidence in this  
8 court, you are not allowed to discuss with anyone the content of your  
9 testimony. If any person asks you questions outside this court about  
10 your testimony, please let us know.

11 The Panel understands that the SPO has hard copies of 067221  
12 through 067266, redacted, and 066676 through 066696, redacted, too,  
13 for your reference during your testimony. If you wish to consult  
14 these documents to refresh your memory, please notify the Panel  
15 before doing so, and only do so in the event that you need to make  
16 that reference because you can't recall. Do you understand that?

17 THE WITNESS: [Interpretation] The last one, the last one, to  
18 bring to your attention on the documents? I wasn't entirely clear  
19 about it, no.

20 PRESIDING JUDGE SMITH: Yes. You will be given a booklet with  
21 your notes in it, with the notes in it. You may refer to that when  
22 the Court gives you permission. Do you understand?

23 THE WITNESS: [Interpretation] Yes.

24 PRESIDING JUDGE SMITH: If you feel the need to take breaks,  
25 please make an indication and accommodation will be made.

1           You may do the solemn declaration at this time. Please read  
2           that aloud and indicate your consent.

3           THE WITNESS: [Interpretation] Conscious of the significance of  
4           my testimony and my legal responsibility, I solemnly declare that I  
5           will tell the truth, the whole truth, and nothing but the truth, and  
6           that I shall not withhold anything which has come to my knowledge.

7                                 WITNESS: W04474

8                                 [Witness answered through interpreter]

9           PRESIDING JUDGE SMITH: Thank you, Witness. You may be seated.

10           Mr. Prosecutor, I understand this is our first 154 witness, so  
11           you will ensure the proper attestation is made pursuant to this rule,  
12           and you may begin.

13           MR. HALLING: Thank you, Your Honour. We're going to ask a  
14           short background questions before getting to the Rule 154 criteria.  
15           And for that purpose, we would request private session.

16           PRESIDING JUDGE SMITH: Go ahead.

17                                 [Private session]

18                                 [Private session text removed]

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Examination by Mr. Halling

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Examination by Mr. Halling

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Witness: W04474 (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 PRESIDING JUDGE SMITH: Thank you.

18 You may proceed.

19 MR. HALLING: Yes.

20 Q. And, Witness, just as a reminder, in public session, the public  
21 can hear what we are saying, so please don't say any information that  
22 would identify yourself.

23 Have you been previously interviewed by the Prosecution of this  
24 Court?

25 A. Yes, in Prishtine.

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1 Q. On two occasions; yes?

2 A. That's right.

3 MR. HALLING: We would ask the Court Officer to pull up the  
4 following document on the screen: 067219-TR-AT Part 1, page 1, and  
5 this is not to be broadcast.

6 Q. Now, Witness, looking at that page on the screen, is that your  
7 first interview with the SPO?

8 A. Yes.

9 MR. HALLING: And now if the Court Officer could pull up  
10 068736-TR-AT Part 1, page 1. Again, not to be broadcast.

11 Q. Witness, looking at the screen again, is this your second SPO  
12 interview?

13 A. Yes.

14 Q. Have you recently had an opportunity to refamiliarise yourself  
15 with the contents of these two interviews?

16 A. Yes, I think so.

17 Q. In your preparation session last week, you indicated a list of  
18 changes that needed to be made to these interviews; yes?

19 A. Yes.

20 Q. Were these changes reflected in a note that was read back to  
21 you?

22 A. They were not substantial to the testimony on *[REDACTED] Pursuant  
to In-Court Redaction Order F1444RED.*

23 *[REDACTED] Pursuant to In-Court Redaction Order F1444RED.* These were  
issues of translation or amelioration of the

24 Albanian language that had nothing to do with the substance of the  
25 testimony in this case.

1 Q. Yes, but can you confirm that what was read back to you in the  
2 note reflected your changes fully and accurately?

3 A. Yes.

4 Q. Subject to the information provided in that preparation note, do  
5 your first and second interview transcripts accurately reflect what  
6 you said and what you would say if asked again in court today?

7 A. Can you please clarify?

8 Q. Subject to the changes that you indicated to the two interview  
9 transcripts, do those two interview transcripts accurately reflect  
10 what you said and what you would say if asked those same questions  
11 again in court today?

12 A. Yes.

13 MR. HALLING: Your Honours, we would submit at this point that  
14 that fulfils the Rule 154 criteria. In accordance with decision  
15 F1380, the SPO hereby tenders all parts of the first SPO interview  
16 and second SPO interview along with the preparation note. Again,  
17 that's ERN 112720-112723.

18 We would further tender the associated exhibits to these  
19 interviews as identified in Decision F1380. And, specifically, for  
20 the record, that would be the pages of 067221-067266 minus the range  
21 067243-067249.

22 In so tendering, and perhaps this can just be simply understood  
23 going forward when submitting items in court, unless otherwise  
24 indicated, when we tender items, we are always seeking to admit the  
25 latest revised translation of those items, the version with the

1 fewest redactions applied when disclosed to the Defence, and in both  
2 English and Albanian whenever both languages are available. And our  
3 presentation queue readily identifies the exact versions of those  
4 documents that we would seek admission for.

5 PRESIDING JUDGE SMITH: Any objection?

6 MR. MISETIC: Mr. President, we have no additional objections  
7 other than the ones we've already submitted to the Court in writing.

8 PRESIDING JUDGE SMITH: Veseli Defence.

9 Nothing from Selimi.

10 Nothing from Krasniqi.

11 All right. Those ERN numbers are admitted with the associated  
12 exhibits as indicated and the notes of correction.

13 Anything further?

14 MR. HALLING: Just a question in relation to the last thing that  
15 the Court said. The conduct of proceedings requires that preparation  
16 note to contain new information identified in the course of the  
17 preparation session. This note has that at paragraphs 18 to 21.

18 We just want to confirm that that part of the preparation note  
19 as well is admitted pursuant to Rule 154 in addition to the interview  
20 transcripts.

21 PRESIDING JUDGE SMITH: 18 through 21 is admitted as associated.

22 MR. HALLING: Thank you, Your Honour.

23 PRESIDING JUDGE SMITH: And we will need to have those assigned  
24 an exhibit number.

25 Yes, Mr. Emmerson.

1 MR. EMMERSON: I'm just rising at this stage to make the point  
2 that the issue that I proposed to raise this morning relates to the  
3 first of the two additional matters raised in that letter. So it  
4 hasn't been adduced as such. The covering memo has been adduced but  
5 the document itself has not, the underlying document. When it is,  
6 that is the point at which I understood that the Court considered I  
7 should take the objection.

8 MR. HALLING: Your Honours, the question about the document in  
9 question is coming much later in the examination. So if you are  
10 waiting until the moment to object, it would come later.

11 PRESIDING JUDGE SMITH: [Microphone not activated]

12 Thank you, Mr. Emmerson.

13 MR. ROBERTS: Sorry, Your Honour. Just some clarification, if I  
14 may. Just so I understand it, is the Prosecution seeking to adduce  
15 paragraphs 18 to 21 of the preparation note as a supplement to this  
16 witness's Rule 154 statement and that it becomes part of the 154  
17 statement?

18 We have no objections to the correction to the previous part of  
19 the statement, but I just want to be sure what the status of these  
20 additional paragraphs is before taking a definitive position. Thank  
21 you.

22 MR. HALLING: Mr. Roberts just asked a variation of the same  
23 question that I asked. So Your Honours said that those paragraphs  
24 are admitted as well, and so our understanding is that they are part  
25 of the Rule 154 statement.



1           PRESIDING JUDGE SMITH: Yes.

2           MR. ROBERTS: Your Honour, well, in that case, I'm not quite  
3           sure how this works. A 154 statement addition can be submitted six  
4           weeks after the application or eight weeks after the application for  
5           a Rule 154 statement. It's a little bit of a strange process. By  
6           this definition, any witness providing any new information at  
7           potentially the last minute, obviously, the Prosecution, I believe,  
8           sent this on Thursday or Friday, I'm sure Mr. Halling will correct me  
9           if I'm wrong, but by that process, they could admit additional  
10          information under Rule 154 effectively by circumventing the rules.

11          PRESIDING JUDGE SMITH: I took it by your being quiet that you  
12          have no objection to this process, but now you do?

13          MR. ROBERTS: I apologise, Your Honour. I was possibly a little  
14          bit late. Maybe it's a bit early for me in the morning. But, yes, I  
15          was just trying to work out the precise process by which they're  
16          seeking to admit this. But that's -- I was trying to understand  
17          exactly what they were seeking to do. But, yes, I do oppose the  
18          admission, not just on this note but all future notes, when additions  
19          are made to all Rule 154 statements that are not forming part of the  
20          additional application under 154.

21          PRESIDING JUDGE SMITH: 18 through 21 are clarifications, are  
22          they not?

23          MR. HALLING: We've identified them as new information provided  
24          in the course of the preparation session. So if they are admitted  
25          pursuant to Rule 154, we will ask fewer questions because we won't

1 need to. This is the question before the Court.

2 PRESIDING JUDGE SMITH: Well, there now is an objection to  
3 filing that, which I did not know about. So we will let you ask the  
4 additional questions on 18 to 21.

5 MR. HALLING: Okay. So is it our understanding then that those  
6 paragraphs are not currently admitted?

7 PRESIDING JUDGE SMITH: At this time.

8 MR. HALLING: Okay.

9 With that resolved, unless there's anything else, as forecast in  
10 our e-mails to the parties, participants, and Trial Panel, this  
11 witness is going to require private session for basically the  
12 duration of the direct examination in order to cover the supplemental  
13 matters.

14 PRESIDING JUDGE SMITH: [Microphone not activated]

15 Please go into private session to protect confidential  
16 information.

17 [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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Examination by Mr. Halling

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13 [Open session]

14 --- On resuming at 11.32 a.m.

15 PRESIDING JUDGE SMITH: So we are in public session at this  
16 time.

17 Do you intend to go back to private session?

18 MR. HALLING: Yes, Your Honour. And we need the witness as  
19 well.

20 PRESIDING JUDGE SMITH: And you may bring in the witness now.

21 [The witness takes the stand]

22 PRESIDING JUDGE SMITH: Please be seated.

23 And now, Madam Court Officer, if we could go into private  
24 session.

25 [Private session]

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Examination by Mr. Halling

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Witness: W04474 (Private Session)

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Examination by Mr. Halling

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Witness: W04474 (Private Session)

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Examination by Mr. Halling

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Witness: W04474 (Private Session)

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Witness: W04474 (Private Session)

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Witness: W04474 (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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Witness: W04474 (Private Session)

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Examination by Mr. Halling

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Examination by Mr. Halling

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Witness: W04474 (Private Session)

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Examination by Mr. Halling

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17 [Open session]

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

19 PRESIDING JUDGE SMITH: You're still on your feet. Nothing to  
20 add?

21 Just a couple of notes.

22 The Veseli Defence has not released your queue yet. Will that  
23 be done right away?

24 MR. EMMERSON: Yes, it has been released. There was a technical  
25 problem, but it has been released already.

1           PRESIDING JUDGE SMITH: Thank you.

2           We will adjourn until 2.30.

3           Mr. Halling, before we break, would you go over the 154  
4 admission this morning just to make sure we have it correct because  
5 of my mixup with the extra paragraphs?

6           MR. HALLING: So I can read the ERNs into the record again. Is  
7 that what you would like?

8           PRESIDING JUDGE SMITH: Please, please.

9           MR. HALLING: Yes. So the first SPO interview is 067219-TR, and  
10 that is in five parts, English and Albanian. The second SPO  
11 interview is 068736-TR in four parts, English and Albanian. The  
12 preparation note, which is 112720-112723, admitted on the  
13 understanding that the changes to the first two interview transcripts  
14 are understood as part of the Rule 154 statement but that the new  
15 information is not admitted. And, finally, for the associated  
16 exhibits, there's a variety of translations in the English, but the  
17 easiest way to describe it is from all pages 067221-067266, those  
18 pages are all associated exhibits identified in the Rule 154  
19 decision, except for 067243-067249.

20           PRESIDING JUDGE SMITH: Do we have that all, then, on the  
21 record?

22           Any issue with the Defence on that admission now that it's been  
23 restated?

24           MR. MISETIC: No, Mr. President.

25           PRESIDING JUDGE SMITH: All right.

Witness: W04474 (Private Session)

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Cross-examination by Mr. Misetić

1 No from the Veseli Defence.

2 MR. EMMERSON: No.

3 PRESIDING JUDGE SMITH: Mr. Roberts.

4 MR. ROBERTS: No, Your Honour.

5 PRESIDING JUDGE SMITH: All right.

6 Ms. Alagendra.

7 MS. ALAGENDRA: No, Your Honour.

8 PRESIDING JUDGE SMITH: All right. So that will be the  
9 admission for the 154 for this witness. And an exhibit number will  
10 be assigned, and we will advise you of that number as soon as that  
11 has been done.

12 That's all for now. We'll see you at 2.30.

13 --- Luncheon recess taken at 1.09 p.m.

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

15 PRESIDING JUDGE SMITH: You can bring the witness in, please.

16 [The witness takes the stand]

17 PRESIDING JUDGE SMITH: All right.

18 Witness, are you ready?

19 THE WITNESS: [Interpretation] Yes.

20 PRESIDING JUDGE SMITH: We'll go back into private session.

21 [Private session]

22 [Private session text removed]

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Witness: W04474 (Private Session)

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Cross-examination by Mr. Miletic

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Cross-examination by Mr. Miletic

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Cross-examination by Mr. Miletic

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Cross-examination by Mr. Miletic

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1 [Open session]

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

3 PRESIDING JUDGE SMITH: All right. Anything from anybody right  
4 now? Otherwise, we'll be back here tomorrow morning at 9.00 a.m.

5 Thank you for your attention today.

6 We're adjourned.

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

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