

1 Tuesday, 14 November 2023

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

5 --- Upon commencing at 3.00 p.m.

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

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

11 PRESIDING JUDGE SMITH: Thank you.

12 Today we will start hearing the evidence of Prosecution
13 Witness W04448.

14 I note that Mr. Thaci, Mr. Veseli, and Mr. Selimi are present in
15 the courtroom, while Mr. Krasniqi is attending today's hearing via
16 videolink.

17 I also note that W04448 will testify via video-conference as
18 granted by the Panel in F01851, and that, as you know, today and
19 tomorrow, we will be sitting from 3.00 p.m. to 7.30 p.m. with a
20 30-minute break between 5.00 p.m. and 5.30 p.m.

21 I thank the parties and participants, court officers,
22 stenographers, and interpreters, and security officers for
23 accommodating this altered sitting schedule.

24 We are in open session.

25 Madam Court Officer, please bring in the witness.

1 [The witness entered court via videolink]

2 PRESIDING JUDGE SMITH: Good morning, Witness. Oh, no
3 earphones.

4 Good morning, Witness. Can you hear me?

5 THE COURT OFFICER: [via videolink] Your Honour --

6 THE WITNESS: [via videolink] Good morning. Yes, I hear you.

7 THE COURT OFFICER: [via videolink] Your Honours, just for the
8 record, I can state that in remote location are Witness W04448 and
9 myself, Court Officer.

10 PRESIDING JUDGE SMITH: Thank you very much.

11 Witness, the Court Usher will now provide you with the text of
12 the solemn declaration which you are asked to take pursuant to our
13 Rule 141(2). You may look at the document and then read it aloud.

14 THE WITNESS: [via videolink] I solemnly declare that I will tell
15 the whole truth, and nothing but the truth, and that I will not
16 withhold anything which has come to my knowledge.

17 WITNESS: W04448

18 [The witness appeared via videolink]

19 PRESIDING JUDGE SMITH: Witness, today -- thank you very much.
20 Witness, today we will start your testimony which is expected to last
21 approximately two days.

22 As you may know, the Prosecution will ask you questions first.
23 Once the Prosecution has finished, the Defence has the right to ask
24 questions of you. The Panel may also allow redirect examination if
25 conditions for it are met, and members of the Panel might also have

1 questions for you.

2 Witness, please try to answer the questions clearly with short
3 sentences.

4 If you don't understand a question, feel free to ask counsel to
5 repeat the question, or tell them that you don't understand and they
6 will clarify.

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

9 In the event you are asked by the SPO to attest to some
10 corrections made regarding your statement, you are required to
11 confirm on the record that the written statement, as corrected by the
12 list of corrections, accurately reflects your declaration.

13 Please also speak into the microphone and wait five seconds
14 before answering a question and speak at a slow pace for the
15 interpreters to catch up.

16 During the next days while you are giving evidence in court, you
17 are not allowed to discuss with anyone the content of your testimony
18 outside of the courtroom. If any person asks you questions outside
19 the Court about your testimony, please let us know.

20 Also, please stop talking if I ask you to do so and stop talking
21 if you see me raise my hand. These indications merely mean that I
22 need to give you an instruction.

23 If you feel the need to take breaks, please make an indication
24 and an accommodation will be made.

25 So we will begin with the direct examination of you by the

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1 Prosecution.

2 Mr. Quick, you may begin your questions.

3 MR. QUICK: Thank you, Your Honour.

4 Examination by Mr. Quick:

5 Q. Good morning, Mr. Kabashi. Can you hear me okay?

6 A. Yes.

7 Q. So we have met before, but I will introduce myself again for the
8 record. My name is Nate Quick and I work with the SPO. I will be
9 asking you questions for about one and a half hours today.

10 As I explained during your preparation session a few weeks ago,
11 rather than asking you questions about every relevant issue you may
12 have information about, it may be possible to admit some of your
13 prior statements containing such information into evidence. In order
14 to do so, there are a number of procedural steps to follow which I
15 will turn to after establishing your identity.

16 Witness, what is your name?

17 A. Shefqet Kabashi.

18 Q. And what is your date of birth?

19 A. July 1st, 1976.

20 Q. And your nationality, Mr. Witness?

21 A. Albanian.

22 Q. Witness, do you speak Albanian?

23 A. I do.

24 Q. And you've chosen to testify in English today. Why is that?

25 A. Because from previous statements, there was -- I think there was

1 so many of the misunderstanding when come translating dialect and
2 stuff, so I choose better to -- to speak in English. This way, if
3 anything I won't understand, I'll ask. Otherwise it will be better
4 for the Judges to understand.

5 Q. Understood. Thank you, Witness. Now, because we are both
6 speaking English, both the questions and the answers are going to be
7 in English, it's very important that we both pause after a question
8 and after an answer in order to give the interpreters enough time to
9 catch up with the interpretation. Does that make sense? Is that
10 clear?

11 A. Yes.

12 Q. Thank you, Witness. Witness, do you remember testifying in the
13 Limaj *et al* trial before the ICTY on 11 and 14 March 2005?

14 A. Yes.

15 MR. QUICK: Court Officer, if we could please pull up
16 IT-04-84bis P00119.

17 Q. Mr. Kabashi, are you able to see a document on your screen?

18 A. Yes.

19 Q. And on the first page at the top, do you see the date 11 March
20 2005?

21 A. Yes.

22 Q. And do you see your name at line 15?

23 A. Yes.

24 MR. QUICK: Court Officer, if we can please move to page 66 of
25 that document. The transcript page is 4240.

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1 Q. Mr. Kabashi, do you see the date at the top of this page,
2 14 March 2005?

3 A. Yes.

4 Q. And do you see your name at line 17?

5 A. Yes.

6 Q. Mr. Kabashi, do you recall being given the opportunity to review
7 this testimony when we met in October?

8 A. Yes, I believe so. Yes.

9 Q. And were you given the opportunity to make clarifications and
10 corrections concerning this testimony?

11 A. Yes.

12 Q. And do you recall these clarifications and corrections being
13 included in a note which was read back to you?

14 A. Yes.

15 Q. Mr. Kabashi, do you recall being asked to confirm that the
16 information in this note reflected your account fully and accurately?

17 A. One more time?

18 Q. Sure. Do you recall being asked to confirm that the information
19 in this note reflected your account -- reflected your evidence fully
20 and accurately?

21 A. Yes.

22 Q. Mr. Kabashi, subject to the corrections set out in the note,
23 does your testimony in the Limaj case accurately reflect your
24 evidence and what you would say if you were asked again the same
25 questions in court?

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1 A. One more time?

2 Q. Of course.

3 A. [Indiscernible]

4 Q. Sure.

5 A. Please.

6 Q. Subject to the corrections set out in the note, does your
7 testimony in the Limaj case accurately reflect your evidence and what
8 you would say if you were asked the same questions again in court
9 today?

10 A. I'll answer as much as I can.

11 Q. Thank you, Witness. Let me just repeat the question one more
12 time. So subject to the corrections you made during our preparation
13 session which were set out in the note that was read back to you,
14 does your testimony in the Limaj case accurately reflect your
15 evidence?

16 A. What evidence?

17 Q. Is it an accurate reflection of the evidence you gave in Limaj?

18 A. I gave evidence before [indiscernible] in Limaj's, meaning to
19 the investigators in 2004, and I tell the truth. I never said
20 anything else [indiscernible]. I said the truth.

21 Q. Sure.

22 A. What I am saying is the --

23 Q. If I can interrupt --

24 A. [Overlapping speakers] ...

25 Q. -- Mr. Witness, can you hear me okay? There seems to be a bit

1 of an interference.

2 A. I can hear you. I hear you okay.

3 Q. Yeah. So when you testified in Limaj, did you tell the truth?

4 A. Yes, I did.

5 Q. And if I were to ask you the same questions today that you were
6 asked during your Limaj testimony, would you provide the same
7 answers?

8 A. If it's my will, I won't. If it's without my will, then you can
9 do whatever.

10 Q. I'm not -- I'm not sure I understand that answer. But you have
11 confirmed that what you testified in Limaj was truthful, and my
12 question is whether -- if I asked you the same questions that you
13 were asked in Limaj, whether you would give the same evidence today,
14 give the same truthful evidence today.

15 A. But you're asking me to confirm, but also I confirmed,
16 basically, and -- and told you everything about it and what you
17 [indiscernible] information from first trial, Limaj's, Haradinaj's,
18 and after and after, what happened. So after all this, for me, being
19 here, it makes no sense. And I don't [indiscernible].

20 Q. So let me clarify one more time, Mr. Kabashi.

21 A. Please. [Overlapping speakers] ...

22 Q. Sorry, if I could just interrupt you, sir.

23 MR. KEHOE: Excuse me. Excuse me, Judge. I mean, there is --
24 the witness is speaking and it's not being picked up on the
25 microphone, unfortunately.

1 PRESIDING JUDGE SMITH: Go ahead. Go ahead.

2 MR. QUICK:

3 Q. So, Witness, you confirmed that what you testified in Limaj was
4 truthful; is that right?

5 A. When I gave statements before Limaj's trial supposed -- supposed
6 to be confident, because I give my -- what I think, what I see, what
7 I hear --

8 Q. Sorry, Mr. Kabashi, to interrupt --

9 A. [Overlapping speakers] ...

10 Q. -- that's not my question. My question is --

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 THE WITNESS: [via videolink] [Overlapping speakers] ...

13 PRESIDING JUDGE SMITH: Hold up, Witness, and let Mr. Quick ask
14 the question again, and listen to just the question.

15 MR. QUICK:

16 Q. Mr. Kabashi, you've just confirmed that your testimony in the
17 Limaj case was truthful; is that correct? And my question is only --

18 A. I --

19 Q. -- whether --

20 A. I --

21 Q. -- that's correct.

22 A. I hear your question and I gave answer. But I would like to
23 tell the Judge that where is bringing me this? Like, the Judge knows
24 what I've been through for all these years after my first statement
25 and my evidence that I give. The Judge knows that from there you

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1 guys called the immigration here and told them that I cooperate with
2 terrorism and revoke my papers --

3 Q. Sorry, Mr. Witness --

4 A. [Overlapping speakers] ...

5 Q. Mr. Kabashi --

6 A. Yes?

7 Q. We will move on eventually in the questioning to other topics,
8 and you will -- I will ask you to give an explanation in relation to
9 past proceedings. At the moment, I'm asking you solely in relation
10 to your Limaj testimony. If I asked you the same questions that you
11 were asked in that case today, would you give the same truthful
12 answers? And you have confirmed that those are truthful.

13 MR. KEHOE: Excuse me, Your Honour. I -- I think we have a
14 problem with not allowing the witness to finish. If the witness is
15 not responsive, then it's up to Your Honour --

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 That's not true. He's listening right now, he's finished, and
18 the question's being asked, so we'll move on.

19 THE WITNESS: [via videolink] Well, for you it's easy to say to
20 move on. For me it's not that easy.

21 MR. QUICK:

22 Q. Witness, this part of the examination solely relates to some
23 procedural issues in order --

24 A. Every --

25 Q. -- for us --

1 A. -- part that [indiscernible] and every question, everything
2 relates for 20 years with my life, and you guys did nothing about it.
3 So that's what I want to talk about. The Judge, if he allows me, I
4 will talk to the Judge. Otherwise, I've been nice with you because
5 you know also -- you saw me in interview when you asked me first to
6 give -- you know that I don't want to come here without my -- my
7 will. But at the same time, you guys try to find all kind of ways to
8 bring me here and try to --

9 Q. Mr. Witness?

10 A. -- [Overlapping speakers] ...

11 Q. Mr. Witness?

12 A. [Overlapping speakers] ... the last -- that's why I cannot
13 cooperate with you directly, the Prosecutors, because you guys hurt
14 so many people, including witnesses, and my country altogether.

15 Q. Okay. Mr. Witness, I would appreciate it if you answered
16 directly the questions that are being asked of you. I will give you
17 an opportunity to explain what happened in past proceedings at the
18 appropriate time.

19 Now, Mr. Witness, previously about -- in October when we met for
20 the witness preparation session, you said that you remembered that
21 you were given the opportunity to review your Limaj testimony. You
22 also have now confirmed today that you were given the opportunity to
23 make corrections and clarifications to your Limaj testimony, and this
24 was included in a note that was read back to you.

25 MR. QUICK: Now, Court Officer, if we could please pull up prep

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1 note 1, which is 116141. And if we can go to the second page at
2 paragraph 10. Sorry, the third page.

3 Q. Mr. Witness, the note reads, which you confirmed, it reads:

4 "When asked, W04448," which is your witness code, "stated that
5 he intended to confirm that his Limaj testimony on 11 and 14 March
6 2005, with the above clarifications and corrections, was the truth."

7 And do you confirm the same today?

8 A. Are you asking me?

9 Q. Yes, Mr. Kabashi.

10 A. I said at the beginning, yes.

11 Q. Okay.

12 A. I said everything that I said in my testimonies, meaning what I
13 said, sometime was mistake and tried to relate cases [indiscernible]
14 guys would have, of course is your job. But I said what I said, yes,
15 was true. I never said anything different than truth.

16 Q. Okay. Thank you very much, Mr. Kabashi.

17 MR. QUICK: Your Honours, it is clear that the witness confirms
18 the truthfulness and accuracy of his Limaj testimony. The SPO would,
19 therefore, seek admission of the Limaj testimony under 154 at this
20 time.

21 PRESIDING JUDGE SMITH: And the note?

22 MR. QUICK: And along with the preparation note and the
23 associated exhibits, which I can list.

24 PRESIDING JUDGE SMITH: Objections?

25 MR. KEHOE: Just for the record, Judge, did he attest to the

1 note as well? I might have --

2 PRESIDING JUDGE SMITH: Yes.

3 MR. KEHOE: -- missed that. Then if he did, I have no
4 objection.

5 MR. EMMERSON: I'm adopting a neutral position in relation to
6 this. It's a matter for Your Honours.

7 PRESIDING JUDGE SMITH: Anything?

8 MR. ELLIS: The same, Your Honour.

9 [Trial Panel confers]

10 PRESIDING JUDGE SMITH: All right. The statement IT-04-84bis
11 P00119, plus prep note 1, which is 116141, and the associated
12 exhibits are admitted.

13 MR. QUICK: Sorry, Your Honour, if I could just clarify the ERNs
14 to be admitted. We would also seek, for completeness, the
15 confidential version of the witness's testimony on 14 March 2005,
16 which is IT-03-66 T4240-T4312 unredacted.

17 And we would also seek admission of the audio-video recordings,
18 including the witness's Albanian testimony in the Limaj case. This
19 is IT-03-66, 11 March 2005, Shefqet Kabashi, Parts 1 to 2, which can
20 be public, and IT-03-66 2005-03-14 unredacted, Parts 1 to 2, which
21 are confidential.

22 PRESIDING JUDGE SMITH: Okay. I'll go around again since those
23 weren't mentioned before. Any objection to those?

24 MR. KEHOE: [Microphone not activated]

25 PRESIDING JUDGE SMITH: And, Mr. Emmerson, I assume it's the

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1 same answer.

2 MR. EMMERSON: [Microphone not activated]

3 PRESIDING JUDGE SMITH: No objection.

4 All right. Those documents are also admitted and will be
5 assigned associated numbers.

6 THE COURT OFFICER: Your Honours, if I can. So the first, the
7 Limaj transcript, with IT-04-84bis P00119 will be assigned
8 Exhibit P730.

9 The preparation note under 116141 to 116143 will be assigned
10 P731.

11 The unredacted transcript under IT-03-66 T4240 to T4316
12 unredacted will be P732.

13 And the two videos, as mentioned, IT-03-66 11 March, Parts 1 and
14 2, will be Exhibit 733.1 for Part 1; and P733.2 for Part 2.

15 And then the following ERN, if counsel can repeat it for the
16 other video?

17 MR. QUICK: [Microphone not activated].

18 The other video was IT-03-66 2005-03-14 unredacted, Parts 1 to
19 2.

20 THE COURT OFFICER: And those will be assigned Exhibit P734.1
21 and 734.2. Thank you.

22 And perhaps, Your Honours, I know they're all classified as
23 confidential. Can we clarify their classification?

24 MR. QUICK: So IT-04-84bis P00119 can be public.

25 The IT-03-66, any of those that have "unredacted" in the ERN

1 should be confidential.

2 And then IT-03-66, 11 March 2005, Shefqet Kabashi, Parts 1 to 2
3 can be public.

4 And Preparation Note 1, which is 116141, can also be public.

5 And the associated exhibits can both be public.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 Unless there's an objection, those classifications will be
8 changed to public as listed.

9 You may go ahead, Mr. Quick.

10 MR. QUICK: Thank you, Your Honour.

11 Q. Mr. Kabashi, I had cut you off before when you were trying to
12 provide an explanation. I would now like to discuss a little bit
13 what happened in previous proceedings, including beginning in Limaj
14 and continuing to the present day. Okay?

15 Now, it's really, really important that we don't speak over each
16 other. When I try to interrupt you or when I ask you a question,
17 it's important that you stop, that you respond directly to my
18 questions. Otherwise, the record won't be clear. Nobody will hear
19 what you're saying or what I am saying. Is that understood? Yeah?

20 A. Yes.

21 Q. Okay. So, Mr. Kabashi, in Limaj, you testified with protective
22 measures with your identity shielded from the court -- I mean, sorry,
23 from the public. And you explained to the judges in that case that
24 it was very difficult for you to testify and that you had been called
25 a traitor. You also explained, you went on to testify there had been

1 threats to your family.

2 Witness, despite the difficulties you described, why did you
3 testify in Limaj?

4 A. One more time? [Indiscernible] the question? What's the
5 question?

6 Q. So you -- you had testified in Limaj that it was difficult for
7 you to testify because you had been called a traitor and because
8 there had been threats made to your family. Why did you proceed to
9 testify despite these threats and despite accusations that you were a
10 traitor?

11 A. I can start from starting of the KLA, when they start taking
12 actions, and the police -- Serbian police forces and --

13 Q. Mr. Witness, sorry to interrupt. My question is why did you
14 decide to testify in Limaj.

15 A. That's where I was going to. That's where I was going to.

16 Q. Okay. Please --

17 A. Because from [Overlapping speakers] ...

18 Q. -- answer my question.

19 A. Because from 1998, the -- I had orders from my previous
20 commander to kill people and I didn't. And those never stopped even
21 though I was in prison. I knew my -- my life was in danger, but for
22 me it was more important to stop, and I didn't want to give up my
23 rights and the truth. I never want to give up because we didn't need
24 to do those things, meaning kill each other for different beliefs,
25 political reasons. We're Albanians and we don't do this stuff, what

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1 we did in the war and after.

2 Q. Thank you, Witness. Now, when you appeared in the Haradinaj
3 trial in 2007, did you answer questions by the Prosecution?

4 A. [Indiscernible] before, I -- as much as I recall, I answered
5 some questions, but I didn't wanted to because after Limaj's case and
6 then Haradinaj's in 2007 -- I even left a letter in the hotel room
7 trying to explain you have evidence, because apparently nobody would
8 stop those crimes and they were continuing to happen.

9 Q. Okay. Thank you. When you testified in Haradinaj, did you have
10 protective measures?

11 A. No.

12 Q. And why not?

13 A. Because I tried to explain to the court [indiscernible]
14 protective measures means nothing. It was not protective measures.
15 Because organised crimes, what they do if they know somebody is a
16 witness, they know what he knows, especially for someone who was a
17 member in KLA, and if they knew what he -- he's a witness, so they
18 know what he knows and what he talks. Basically you're not having
19 any protective measures in that case.

20 Q. So did you consider the protective measures that you had in
21 Limaj, did you consider them to be effective?

22 A. I considered them useless.

23 Q. And why did you consider them to be useless?

24 A. Just like I said before. If they [indiscernible] --

25 PRESIDING JUDGE SMITH: We're having the --

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1 THE WITNESS: [via videolink] [Indiscernible]

2 PRESIDING JUDGE SMITH: Witness, I don't mean to interrupt you,
3 but we're having trouble hearing you because you're cutting out.

4 Court Officer there on the scene, can the microphones be
5 adjusted in any way to be closer to the witness?

6 Yeah, Witness, we don't want to miss anything that you have to
7 say, but it's cutting out periodically. So try to speak at a steady
8 pace. I'm sure that's why Mr. Kehoe is standing at this point too.

9 MR. KEHOE: [Microphone not activated]

10 THE WITNESS: [via videolink] I think that's what I'm doing.

11 MR. KEHOE: I think that it -- both parties, it comes out
12 discernible -- indiscernible when I think the witness had answered.

13 PRESIDING JUDGE SMITH: So go ahead, Witness. I'm sorry I had
14 to interrupt you, but we wanted to hear what you had to say.

15 THE WITNESS: [via videolink] I think I said it.

16 PRESIDING JUDGE SMITH: Okay. We'll get another question then
17 for you.

18 MR. QUICK:

19 Q. Thank you, Mr. Kabashi. Now, when you appeared in the Haradinaj
20 retrial in 2011, did you answer the prosecutor's questions?

21 A. I didn't wanted to answer, actually. I think you have that
22 information. Meaning, you know if I answered or not or why I didn't
23 answer.

24 Q. And why did you not answer, or why did you give the answers that
25 you did give?

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1 A. Because like I said, since the war, those crimes, they never
2 stopped. And you guys complete -- like, the prosecutor's side did
3 nothing about it. Also, the EULEX, Kosovo Police Service, and
4 everything else, they did not do anything to stop. And I believe
5 that it's like corrupt much as that can be. And I believe that this
6 institution, it's the most corrupted institution ever I witnessed.
7 If I have a right to say. And if I have a right to say what I
8 believe the truth.

9 Q. That's understood, Mr. Kabashi. And that is all that's expected
10 from you here today is to tell the truth.

11 Now, you referred earlier to one --

12 A. Also --

13 Q. Yeah, go ahead, Mr. Kabashi?

14 A. Yeah. Also they try to -- just because I didn't cooperate with
15 them, meaning the way they wanted to, they tried to hurt me here
16 to -- by sending a letter to immigration saying that he is
17 cooperating for terrorism and trying to bomb the offices in Kosovo
18 that -- you know, tribunal offices. So from 2007 to 2009, I had to
19 go and again interview, and my papers got revoked since then. I'm
20 going to the courts. Actually, I have another one coming. And it's
21 all about you guys.

22 Q. Now, Mr. Kabashi, before when I asked you about the reasons that
23 you testified in Limaj, you referred to orders that you had received
24 when you were a member of the KLA.

25 Now, I want to ask you --

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1 A. Yes.

2 Q. I want to ask you some questions about those orders. And I
3 realise it's been a long time since the events. All you're expected
4 to do is testify truthfully and to provide the information that you
5 remember now. Okay?

6 MR. QUICK: And, Your Honour, I actually skipped over the
7 Rule 154 summary. I would propose to read that later, if that's all
8 right.

9 PRESIDING JUDGE SMITH: [Microphone not activated]

10 MR. QUICK: Yeah.

11 Q. Now, Witness, in your Limaj testimony that has now been
12 admitted, you provided evidence of an order you received to kill a
13 person named Rrok Berisha around late September or October 1998. You
14 testified that soon after receiving the order, you went to speak to
15 Rrok Berisha and told him about the order. You testified that after
16 speaking to Rrok Berisha, you did not kill him and instead went home.

17 Now, after you returned home, did you ever speak to Rrok Berisha
18 again about this order?

19 A. After the war only. 2004, 2003 or 2004.

20 Q. Okay. And how many times did you speak to him after the war?

21 A. I don't remember. Many.

22 Q. You spoke to him --

23 A. We had the --

24 Q. -- many times?

25 PRESIDING JUDGE SMITH: [Microphone not activated]

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1 MR. QUICK: Oh, sorry.

2 Q. You spoke to him many times, Mr. Kabashi?

3 A. Yeah.

4 Q. And why did you speak to him?

5 A. One of the reasons that I spoke to him was after the war when
6 they use my name in one of the newspapers called -- I forgot exactly
7 how it was called. I think *Epoka e Re*, something in Albanian, a
8 new -- and Faton Mehmetaj was who was writing against Rrok Berisha,
9 Rrok Berisha was used in *Bota Sot* [indiscernible]. And they used my
10 name for bad. And my -- my -- I couldn't take it anymore. After the
11 war, actually, I decided to start working. I apply for a police
12 officer, and I wanted to just have a normal life and not deal with,
13 but they didn't let me. Even when I went to get the [indiscernible]
14 that I was a KLA member, they refused to give it to me.

15 And then when they use my name for -- meaning that I'm on the
16 opposite side of the war, and I'm basically bad guy from
17 [indiscernible], I decided to write in *Bota Sot*, did that for a week
18 or more than a week, maybe almost every day, like telling everything
19 about it, my family, and also my time in the war and also in prison a
20 little bit.

21 Q. Thank you, Mr. Kabashi. That --

22 A. That's why I met -- that's why I met Rrok Berisha. That was the
23 reason. But other -- other journalists, they -- they will not take
24 the case and they will not write because they are -- they fear for
25 their life.

1 Q. Thank you, Mr. Kabashi. And when you met with Rrok Berisha at
2 this time after the war, what did you discuss?

3 A. We also discussed many things. I don't know what particular --
4 what you want to know.

5 Q. Did Rrok -- you said you had written letters to *Bota Sot*. Did
6 Rrok Berisha ever make any public statements or write any articles
7 relating to you or your experiences during the war?

8 A. What do you mean [indiscernible] just like? One more time,
9 please.

10 Q. Yes. So you had testified about how you received an order to
11 kill Rrok Berisha. Did Rrok Berisha ever make any public statements
12 or write any articles about this after the war?

13 A. He did many times, I believe, in the news first. But the last
14 time he did was before he -- he died, I can say. In his Facebook
15 account he said about it was not just me, they -- they tried again
16 after me to kill him. That's his -- I mean, you can find that too.

17 Q. And do you remember anything else he said in this Facebook
18 account -- in this Facebook post?

19 A. What do you mean? Like?

20 PRESIDING JUDGE SMITH: [Microphone not activated]

21 MR. QUICK:

22 Q. Sorry. Do you remember what he said in the Facebook post in
23 addition to what you just --

24 A. He said it's --

25 Q. -- testified?

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1 A. -- true what he -- about me, he said it's true what Kabashi is
2 saying in -- in the interview I had and --

3 Q. What did he say was true? When he said that, what was he
4 referring to?

5 A. [Indiscernible] 1998 that I went to his house and
6 [indiscernible] I knew -- I knew Rrok Berisha, and I knew also his
7 family, and they've a good Albanian family. I know he -- he had kind
8 of misunderstanding or -- with some of -- sorry? Connection again?

9 Q. Can you hear me okay, Mr. Kabashi?

10 A. Yeah, I hear you.

11 Q. So you also mentioned that Rrok Berisha wrote articles. And I
12 believe you said it was in *Bota Sot*.

13 MR. QUICK: Court Officer, if we can please pull up the document
14 with ERN U009-3209. That's the start of the ERN. And if we can show
15 the page with the ERN U009-3224. I only want the specific page to be
16 shown on the screen, please. It can be public, but the rest of the
17 document should not be shown to the witness or to the public.

18 And for reference, the English translation of the relevant part,
19 which can also be publicly broadcast, can be found on page U009-3225
20 to U009-3226.

21 Q. Now, Mr. Kabashi, can you see a document on your screen?

22 A. Yes, it's not readable though. Just the -- the beginning.

23 MR. QUICK: Court Officer, maybe we can zoom in on the document.

24 Q. So, Witness, in the upper right-hand corner, do you see the date
25 12 December 2005?

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1 A. Yes.

2 Q. And the words next to the date, *Bota Sot*?

3 A. Yes.

4 Q. And what was *Bota Sot*?

5 A. A newspaper.

6 Q. And, Witness, do you see the article on the right-hand side of
7 the page? The title starts "*Ish-'Komandantet'*," and translation
8 "*ex-'commanders'*"?

9 A. Yes.

10 Q. Have you seen this article before?

11 A. I might have. I don't recall.

12 Q. Can you please look at the start of the second column of this
13 article. There's a reference to a man named Pipi.

14 A. Yes.

15 Q. Do you see that?

16 A. Of course.

17 Q. And who is Pipi? If you know.

18 A. Yes. Pipi, it's Alush Agushi, also called Mala. He was also a
19 member of KLA at that time. He joined -- I don't know what time he
20 joined the KLA, but ...

21 Q. Okay. Thank you, Mr. Witness.

22 A. He had a unit there. I served in his unit for some time.

23 Q. Okay. Thank you, Mr. Kabashi. And you did provide evidence
24 about that and about serving in that unit in your Limaj testimony, so
25 I won't cover that again now. But if you can look again at the

1 article, and if you can please skim the column to near the bottom of
2 that first paragraph. And if you can look for the word "*Shulci*." If
3 you can let me know when you find the word "*Shulci*"?

4 A. In the second, yes. Almost at the end?

5 Q. Yes, that's right. Almost at the end of that paragraph in the
6 second column.

7 A. Yes.

8 Q. Now, Mr. Kabashi, if you can read that sentence and the next
9 sentence. And while you do so, I'll read the English translation of
10 the same part so that you'll also hear it. I know you're having
11 trouble reading the Albanian on the screen.

12 MR. QUICK: So the English translation is on page U009-3226, and
13 it's four lines down.

14 Q. "His," and that's referring to the Pipi that we just discussed.

15 "His hatred and his evil mind was shown even on the 26 of
16 September 1998, when he ordered a KLA soldier a/k/a 'Shulc' who
17 served in Jablanica, to murder a deputy of the small valley of Baran
18 and the Chief of the Information of KLA 131st Brigade in Baran, and
19 gave a Croatian 15th. But 'Shulc' didn't accept this order."

20 Mr. Kabashi, who is the person named Shulc in this article?

21 A. That was me.

22 Q. Thank you. Is that a nickname?

23 A. Yes.

24 Q. And who gave Shulc or you the order that's being discussed here?

25 A. I'm sorry, one more time?

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Examination by Mr. Quick

1 Q. And who gave you the order that's being discussed here, the
2 order to kill the Baran --

3 A. The same person --

4 Q. -- valley deputy?

5 A. The same person we talked before.

6 Q. And who is that?

7 A. Alush Agushi.

8 Q. And do you know who the person is that is referred to here as
9 the Baran valley deputy and chief of information of the KLA 131st
10 Brigade? Who is that?

11 A. That's -- it's about [indiscernible] and I -- I kind of know how
12 the things went that time.

13 Q. Sorry, Mr. Kabashi. I think you may have interrupted a bit.
14 Who is it? What's the name of that person who's described as the
15 Baran valley deputy?

16 A. Baran valley deputy was Rrok Berisha. And also he was in charge
17 for giving information to the -- at that time, president of Kosovo in
18 exile, basically Ibrahim Rugova. But Rrok Berisha was in charge
19 for -- for also the civilians to help them and try to -- after some
20 villages [indiscernible] move from the war, try to set them up, give
21 them flour, food, or whatever.

22 Q. Okay. Thank you, Mr. Witness. Now does this part of the
23 article that I just read to you, does it conform with your
24 recollection of the events?

25 A. What do you mean?

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Examination by Mr. Quick

1 Q. Is it accurate that you received an order from Pipi to kill the
2 Baran valley deputy who you've now identified as Rrok Berisha?

3 A. Yes.

4 Q. Thank you.

5 MR. QUICK: Your Honour, I'd ask that this article, along with
6 its English translation, be admitted into evidence. That's U009-3224
7 to U009-3226.

8 MR. EMMERSON: May that be marked for identification rather than
9 admitted. We have objections to the entire document going in. I'll
10 outline them briefly if I may.

11 PRESIDING JUDGE SMITH: [Microphone not activated]

12 MR. EMMERSON: Essentially, insofar as this purports or is
13 suggested to be put forward as corroborating evidence --

14 PRESIDING JUDGE SMITH: Witness, you'll need to take your
15 earphones off for just a moment. We have to discuss something
16 outside of your presence. Can you hear me?

17 MR. EMMERSON: It's not essentially terribly sensitive. But the
18 passage that's just been put to the witness is a record or an extract
19 from the article by Rrok Berisha which refers to this witness telling
20 him of what it is he said he told him. In other words, it's not
21 probative of the underlying allegation. It's probative of the fact
22 that the same source said the same thing to him, and there's no
23 independent material for it. So it's not corroborative of the
24 witness in any technical sense because it's from the same source. It
25 is, if anything, evidence of a contemporary statement, but it's not

1 corroborative.

2 And, secondly, as is always the practice in this court, a
3 document such as this, it is the passages read to the witness and
4 adopted by them that get admitted through the transcript. Not the
5 using one small passage as a Trojan Horse to admit a lot of other
6 untested, untestable material. We need to keep the rules consistent.

7 MR. KEHOE: And my objection, of course, is in foundation. This
8 witness has never seen this article. He doesn't even recall seeing
9 it. The Prosecution shows it to him, and he can't even verify that
10 he saw it.

11 And, again, consistent with what my colleague said, all this is
12 is -- rob -- is an echo chamber, if you will, of comments back and
13 forth.

14 So I would object, most importantly, on foundation, as with most
15 of my arguments, but certainly the echo chamber that Mr. Emmerson
16 raised is significant.

17 MR. EMMERSON: Just to be clear, I'm not actually making a
18 general echo chamber argument, nor am I pursuing the basis of
19 objection that Mr. Kehoe is maintaining all the way through, which I
20 adopt.

21 But the concern here is the established practice when material
22 of this sort is used in this trial is that the extracts put to and
23 adopted by the witness are admitted through solely the fact that they
24 have been put to and adopted by.

25 Now here -- that's one point. Stands independently. Why should

1 it be that for this witness it's different than from any other
2 witness that Your Honours have ruled on? Which is that it's the
3 extract from a piece of evidence that becomes evidence. Suddenly
4 it's just a different approach by counsel, as far as I can tell,
5 because previous counsel took the opposite approach.

6 But more importantly, this isn't corroboration.

7 MR. QUICK: Just briefly, Your Honour. Just most of these
8 arguments go to the ultimate probative value. The article's source,
9 author, and date are clearly identified on the face of the document.
10 The witness has knowledge of it and has commented on its comments --

11 MR. EMMERSON: On one [Overlapping speakers] ...

12 MR. QUICK: Its contents are clearly relevant. And the whole
13 page should be admitted, even though the SPO only intends to rely on
14 the portion of the document that has been translated, since the page
15 as a whole goes to its authenticity, reliability, and probative
16 value. Thank you.

17 [Trial Panel confers]

18 PRESIDING JUDGE SMITH: The entire article, ERN U009-3224
19 through U009-3226 is admitted.

20 MR. EMMERSON: Your Honour, may I just ask for a short
21 two-sentence clarificatory ruling on why this is different from all
22 of the other witnesses in the approach Your Honours have endorsed in
23 all other witnesses, please?

24 PRESIDING JUDGE SMITH: It is a clear statement. It is made --
25 this gentleman has recognised it. It is dated. It is authentic. It

1 comes from a recognised source. He has recognised that he made these
2 statements. And it's admissible. It's admissible under --

3 MR. EMMERSON: Well, just to be --

4 PRESIDING JUDGE SMITH: -- 138.

5 MR. EMMERSON: I hope there's no factual misunderstanding here.
6 This witness has been taken to three lines --

7 PRESIDING JUDGE SMITH: This is not an argument. I already
8 entered it. I already ruled on it.

9 MR. EMMERSON: Very well.

10 PRESIDING JUDGE SMITH: Go ahead, Mr. Quick.

11 Oh, I'm sorry. You have to assign a number.

12 THE COURT OFFICER: Your Honours, the article with ERN U009-3224
13 to U009-3226 will be assigned Exhibit P735.

14 Should it be classified as public or confidential?

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 Thank you.

17 MR. QUICK: Sorry, it can be public.

18 PRESIDING JUDGE SMITH: It will be reclassified as public if
19 there's no objection.

20 MR. QUICK: Sorry, just to clarify. Just the one page that's
21 admitted can be public. The remainder remains confidential.

22 PRESIDING JUDGE SMITH: Go ahead.

23 MR. QUICK: I believe the witness needs to put his headphones
24 back on.

25 PRESIDING JUDGE SMITH: Oh, I'm sorry.

Witness: W04448 (Open Session)

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Examination by Mr. Quick

1 MR. QUICK: That's okay.

2 PRESIDING JUDGE SMITH: Thank you, Witness. We will proceed
3 now.

4 MR. QUICK:

5 Q. Now, Mr. Kabashi, we just discussed the order that you received
6 from Alush Agushi to kill Rrok Berisha. Did you ever receive similar
7 orders from Alush Agushi?

8 A. Yes, I had another one, Fadil Gashi.

9 Q. You just said Fadil Gashi. Did this order concern anybody else?

10 A. What do you mean?

11 Q. Was the order just for Fadil Gashi or was --

12 A. Was Fadil -- was Fadil -- was -- I'm sorry. It was Fadil Gashi
13 and Dine Berisha.

14 Q. Okay. Thank you, Mr. Witness.

15 A. Yeah.

16 Q. Did you receive this order before or after you received the
17 order for Rrok Berisha?

18 A. It was before.

19 Q. And where did you receive this order?

20 A. What do you mean "where"? Like?

21 Q. So the order that you just said you received in relation to
22 Fadil Gashi and Dine Berisha, where were you when you received this
23 order?

24 A. I was on the road going actually from Jabllanice with some of my
25 close relatives and member -- members of KLA. We've been going

1 towards village called Volljake. We wanted to go there for some -- I
2 have some relatives in [indiscernible]. They're from that place and
3 --

4 MR. QUICK: Sorry, Your Honour.

5 PRESIDING JUDGE SMITH: Can you ask him to repeat that.

6 THE WITNESS: [via videolink] -- I met Alush Agushi by the --

7 MR. QUICK:

8 Q. Mr. Kabashi, sorry to interrupt, but you are breaking up again.
9 If possible, can you start again, and we'll see if the connection is
10 better.

11 A. Yes, I met -- I said I got the order from Alush Agushi. That
12 day I was going from Jabllanice to the village called Volljake, and
13 where the river is [indiscernible] the water there was --

14 Q. I apologise.

15 A. [Overlapping speakers] ...

16 Q. I'm sorry to interrupt, Mr. Witness.

17 A. [Overlapping speakers] ...

18 Q. Sorry to interrupt, and I know we're speaking over each other.
19 I just want to make sure that this evidence is being captured, and
20 there was another interruption in the videolink stream. If you
21 can --

22 PRESIDING JUDGE SMITH: Just a second.

23 MR. QUICK: Yes.

24 PRESIDING JUDGE SMITH: Witness, try to stay steady while you're
25 testifying instead of moving your head around. I think that might

Examination by Mr. Quick

1 have something to do with the break up. So I realise that's going to
2 be maybe uncomfortable for you, but try to just look straight ahead
3 when you're testifying.

4 MR. QUICK:

5 Q. So the last thing that we have clearly on the record,
6 Mr. Kabashi is:

7 "I said I got the order from Alush Agushi. That day, I was
8 going from Jabllanice to the village called" Volljake I believe is
9 the correct village.

10 A. Yes.

11 Q. Can you continue from there?

12 A. Yes, he was -- he was coming toward Jabllanice and we met over
13 there by -- and usually when somebody gets to the water, other side
14 has to wait, you know, some place to pass it. So I was waiting, and
15 then he saw me, recognised me, and I saw them too. I saw him. So I
16 get out of the car. We talked about it, and he told me that they
17 just had some problems with Fadil Gashi and he's the one who's
18 basically going against KLA and he's not obeying orders, whatever
19 stuff, and that he has to be taken care of.

20 Q. Okay. And what did you mean taken -- that he had to be taken
21 care of, what did you understand that to mean?

22 A. He has to be eliminated, basically.

23 Q. Okay. And you said you saw Alush Agushi at this crossing by the
24 river. Was Alush Agushi with anyone? Was anyone else with him?

25 A. Yes, there was two cars, as I recall now. I -- I believe there

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1 are two cars coming at that time.

2 Q. Okay. And who was in the cars? Did you see anyone in addition
3 to Alush Agushi?

4 A. I saw Binak Gashi, that I -- I -- he's also from that area.
5 And -- I don't know, other people.

6 Q. Okay. Anybody else that you recognised?

7 A. Not there. Not there. Not that I remember, actually.

8 Q. Okay. Thank you, Mr. Kabashi. And what was Alush Agushi
9 wearing when you saw him?

10 A. I do not [indiscernible]. I think he had a uniform. I really
11 don't remember.

12 Q. And was --

13 A. A uniform.

14 Q. Yeah. And was he armed?

15 A. I -- usually everybody was armed at that time.

16 Q. And the same for Binak Gashi?

17 A. Yes.

18 Q. Okay. Mr. Witness, did you know Binak Gashi at the time that
19 you saw him?

20 A. I believe that, yes, and I'm going to give a reason why.
21 Because his appearance and his size was a little heavy. And also
22 that before this happened I was going past through his place
23 [indiscernible] village, so we were going for the weapons to Albania
24 and he was there. So I think I knew him before. I'm not
25 100 per cent sure, but ...

1 Q. Okay. Mr. Witness, there was a slight breakup. You said: "I
2 was going past through his place," and then on the transcript it's
3 indiscernible. What village did you say that the record didn't pick
4 up?

5 A. The place where he was basically [indiscernible], it's called --
6 the village is Sferke. And it's a school there. That's where the
7 KLA were stationed --

8 Q. Okay. Mr. --

9 A. -- at that time. So --

10 Q. Understood. And when did you pass through this village, Sferke?

11 A. By the dates, I -- I do not remember --

12 Q. Was it after you were in the Berisha mountains?

13 A. -- exactly when. Actually, yes, because when we went to Berisha
14 mountains, I went with Mala's unit. And I don't know exactly, we
15 stayed a week or two. And the way back, we were come to Jabllanice
16 because Jabllanice was in -- under attack too. We stopped in Sferke.
17 And then that's where I met with Leopardi, one of my previous
18 commanders, and he said that he had a word from Drenica, from the
19 main base, that he needs to go to Albania for weapons, and, "Come
20 quick, we are under attack over there too and we didn't have much
21 ammunition and stuff." So he asked me to join him since I had some
22 experience, previous experience, and it was very dangerous to go. We
23 had to drive with the cars in areas where it was controlled by Serbs.
24 So I think it hundred per cent was after I came from Berisha
25 mountains.

1 Q. Okay. Understood. So it was during this trip to Sferke that
2 you met -- that you met Binak Gashi. Am I correct?

3 A. Yes.

4 Q. Yeah. And at that time, did you also know who Fadil Gashi was?

5 A. Not much. I knew about his family. Not personally. Not much.

6 Q. At the time, did you know where Fadil Gashi was from?

7 A. Yes.

8 Q. And how about Dine Berisha? Did you know him at the time you
9 received this order?

10 A. Yeah. Yes.

11 Q. Okay. Now going back to what we were just discussing. So when
12 you saw Alush Agushi and Binak Gashi at the crossing by the river,
13 what specifically did Alush Agushi tell you?

14 A. I just said it before. I cannot remember word for word.

15 Q. Before you had said that he told you to take care of Fadil
16 Gashi; is that right?

17 A. Yes.

18 Q. And did he tell you anything else?

19 A. Just -- I don't remember. But we all talked.

20 Q. Was anyone else present when Alush Agushi told you to take care
21 of Fadil Gashi?

22 A. No, my cousin [indiscernible]. One of my cousins.

23 Q. One of your cousins was present when --

24 A. [Overlapping speakers] ...

25 Q. Sorry, go ahead.

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1 A. No -- he was present, much as I remember.

2 Q. And after he gave you the order, what did Alush Agushi do?

3 A. He went on his way. I went on my way.

4 Q. And after he left, did you inform the other people that were
5 with you?

6 A. I tried to send the word to both [indiscernible]. I tried to
7 send the word to Fadil Gashi and Dine Berisha.

8 Q. And how did you do that?

9 A. With Dine Berisha, I had one of my relatives that was his,
10 basically, same last name, same village.

11 Q. Okay. And how did -- how did you intend a message to be sent to
12 them?

13 A. In that time when these things start happening, basically in
14 general nobody liked it because it was not something that we should
15 do. And I tried to -- to do my best to stop, and also I tried to
16 save. So I tried to send him a word through my cousin saying be
17 careful.

18 Q. Okay. So when you were stopped -- when you stopped at this
19 crossing by the river and spoke to Alush Agushi, your cousin was with
20 you. Who else was with you?

21 A. I had two of my cousins with me in the car.

22 Q. You had two cousins. And anybody else?

23 A. I do not remember how many. I know my first cousin that he --
24 usually we were in the war together. We joined basically together.
25 He was with me most of the time.

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1 Q. Okay. And you just --

2 A. The other ones [indiscernible] and I tried to help him out. We
3 used to go together and ...

4 Q. And you just testified that one of -- that you sent one of these
5 cousins to give a warning to Fadil Gashi. Do you know if he actually
6 carried out that message, if he delivered that message?

7 MR. KEHOE: Excuse me, we'd just like to inquire --

8 THE WITNESS: [via videolink] Actually I give him [Overlapping
9 speakers] ...

10 MR. KEHOE: Excuse me -- excuse me, Witness.

11 PRESIDING JUDGE SMITH: Witness.

12 MR. KEHOE: There's some lack of clarity as to who got the
13 message, Fadil Gashi or Dine Berisha?

14 PRESIDING JUDGE SMITH: Sustained.

15 THE WITNESS: [via videolink] Dine Berisha.

16 MR. QUICK:

17 Q. You just said Dine Berisha. Is that the person who you intended
18 to receive the message?

19 A. Yes.

20 Q. And did he actually receive the message?

21 A. As much as I -- I know, I believe so because also he left Kosovo
22 right after and tried to -- he went to Austria, I believe, right
23 after.

24 Q. Okay. And after you left -- after you left the crossing, after
25 you spoke to Alush Agushi, where did you go?

1 A. Actually, I went to my cousin's, like I said, in Volljake, and
2 then I don't remember [indiscernible] same day. I do not remember.

3 Q. Okay. And then after you went to Volljake to your cousin's, did
4 you go anywhere else?

5 A. Like I said, I don't remember. I usually go back to Jabllanice
6 or I used to go Drenica for weapons and stuff. I do not remember
7 that day where I went.

8 Q. Okay. And do you remember when you went to Jabllanice next?
9 You said you usually went to Jabllanice after.

10 A. I just gave you that answer. I don't remember. I -- maybe that
11 day I went back.

12 Q. Okay. So --

13 A. I went back -- it could be ...

14 Q. Okay. So soon after is what I'm interpreting --

15 A. Yes.

16 Q. -- your evidence to be. Okay.

17 A. Yes.

18 Q. And when you returned to Jabllanice, what did you see there?

19 A. What do you mean by that?

20 Q. When you went back to Jabllanice, where did you go in the
21 village?

22 A. In the base where I used to go all the time.

23 Q. And this base was the KLA base?

24 A. Yes.

25 Q. And when you arrived at this base, who did you see or what did

1 you see?

2 A. We had this discussion with -- before also. And how you ask and
3 who did you see, what did you see, the same day or not, I cannot
4 recall that I see the same day. This is what other -- other
5 prosecutors did and other -- other investigators, trying to relate
6 things to another, another. Like I see now you're trying to relate
7 it to who I see that day after I come back to Jabllanice.

8 Q. So, Witness, I'm not trying to make any relation. I'm trying to
9 ask you --

10 A. Yes, you are.

11 Q. -- when you returned -- when you returned to Jabllanice and you
12 went to the KLA base there in the village, who or what did you see?
13 Whether it was the --

14 A. First time I said --

15 Q. -- the same day or another day.

16 A. It can be same day, because I -- Jabllanice was my -- my place.
17 Meaning, Jabllanice was the -- the place where I joined the KLA and
18 that's where I joined the unit. And then if we go some other places
19 to help or do something, then I will come back. So now did I come
20 back that day or not? I don't know. I just keep telling you. Did I
21 see anybody? If you want to, like, ask me, like, direct question, it
22 would be better. For anything. It doesn't matter. You, Judge, or
23 the other side. I will answer truthfully to direct questions.

24 Q. Understood, Mr. Kabashi. Did you see anybody at Jabllanice at
25 the KLA base when you went there?

1 A. I saw a lot of people in Jabllanice at KLA base. Like, a lot.

2 Q. Okay. And after -- the first time you went to Jabllanice after
3 you received this order from Alush Agushi, who did you see at the KLA
4 base in Jabllanice village?

5 A. I don't remember. If you can help me out what you wanted to
6 know, please.

7 Q. We talked before about Alush Agushi. Did you see him at the KLA
8 base in Jabllanice village?

9 A. Yes.

10 Q. And did you see anybody else that you remember?

11 A. People who I remember?

12 Q. Yes, that's right.

13 A. I saw a lot of people.

14 Q. And did you recognise any of these people? For example, in
15 addition to Alush Agushi, we also spoke about Binak Gashi. Did you
16 see him at the KLA base in Jabllanice after you returned?

17 A. I do not remember that Binak Gashi was back when I came back. I
18 do not recall that. He might have been, might not.

19 Q. Okay. At the time that you returned to Jabllanice and to the
20 KLA base in the village, what uniform were you wearing?

21 A. After I went for weapons from Sferke that I mentioned before, I
22 had -- I had a black uniform that was given to me from Leopardi, so I
23 used to use that a lot. Basically, probably I had that one.

24 Q. And did you have a conversation about this black uniform with
25 anyone when you returned to Jabllanice at the KLA base?

1 A. Yes.

2 Q. And who is the person you had that conversation with?

3 A. Was Rexhep Selimi. He was with other people in Jabllanice.
4 Meaning in the front yard of the base. He knew the uniform, the
5 uniform that belongs to Black Tigers, the unit that was made in
6 Drenica. And he said to me that that uniform belongs to, you know,
7 somebody else, and he said, "I'm going to collect him." Then when I
8 told him who I am and who gave it to me, he said, "Oh, I understand.
9 And I know." Basically.

10 Q. Okay. Thank you, Mr. Kabashi. At the --

11 A. [Overlapping speakers] ... that day.

12 Q. Sorry, Mr. Kabashi.

13 A. [Overlapping speakers] ... asked me that.

14 Q. I didn't hear that last part. If you can repeat it.

15 A. I said, yes, I met Rexhep Selimi that day. That was the
16 conversation about the black uniform.

17 Q. Okay. Thank you, Mr. Kabashi. At the time did you know
18 Rexhep Selimi?

19 A. We knew him like a number Ten. But also one other time. I
20 don't know it was before this -- I believe it was before this we were
21 just talking. We had a ride when we were going from Drenica with a
22 lot of people for weapons for Albania, so I join him in the car and
23 we went to Jabllanice together.

24 Q. Thank you, Mr. Witness. Now at Jabllanice, you've now said that
25 you saw Alush Agushi, you saw Dine Berisha, you saw Rexhep Selimi.

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Examination by Mr. Quick

1 Did you see anybody else that you recognised?

2 A. I didn't mention Dine Berisha.

3 Q. Sorry. Binak Gashi. That's my mistake. Binak Gashi, Alush
4 Agushi, and Rexhep Selimi?

5 A. Binak Gashi, I said I saw him by the river. I do not recall I
6 saw him back to Jabllanice. I remember I saw Rexhep Selimi, we had a
7 conversation. I remember it was other people with him too at
8 Jabllanice, but I did not know them.

9 Q. Okay. Thank you, Mr. Witness. Now, did you ever carry out the
10 order to kill Fadil Gashi?

11 A. No, I did not.

12 Q. And why not?

13 A. Like I said before, for me, being raised like Albanian, we don't
14 do that. We don't kill each other for different beliefs. And with
15 no court order, no justice, just kill him because he thinks
16 different. And that's what it about at that time. That's what was
17 about it.

18 Q. Okay. Mr. --

19 A. People were getting killed just because they think different.

20 Q. And, Mr. Kabashi, did you carry out the order to kill Dine
21 Berisha?

22 A. No.

23 Q. And for the same reasons?

24 A. Of course.

25 Q. And after, did you ever talk with Alush Agushi about -- again

1 about the order?

2 A. I remember I -- I had another conversation about it because,
3 much as I recall, right after I got the order was that road that
4 connects Jabllanice, yeah, where I was serving, and then where Fadil
5 Gashi lives. It's a road that goes from the city of Kline to
6 Gjakove. It's -- it was that time under our control, but after
7 offensive, Serbs took it. It was right after. So much as I
8 remember, again, my reason was, like, I cannot go in that area for
9 now because it's, you know, dangerous and we'll see. So ...

10 Q. And you provided this reason to Alush Agushi?

11 A. Yeah, that was my ...

12 Q. Okay. Mr. Kabashi, afterwards, did you tell anyone else about
13 the order you received to kill Fadil Gashi and Dine Berisha?

14 A. After when?

15 Q. So after you received the order, in addition to the people we've
16 already discussed, did you tell anybody else about the order to kill
17 Fadil Gashi and Dine Berisha?

18 A. Now at the time, I -- that -- I do remember after the Rrok
19 Berisha's order that I had, I tried to find out that where those are
20 coming from and why. So I talk to them about it with my uncle that I
21 believed and basically I grew up with him, and he knows -- he had
22 experience in life, and he knows things, he knows people around
23 there, my family mostly. But he was more the one who knew things and
24 helped me out through -- when I had some problems or when I needed to
25 make some right decision.

1 So I -- yes, I spoke to him after I had the order for Rrok
2 Berisha, and we decided to send a letter to Ramush Haradinaj and find
3 out from him if he knows about those things. He didn't give us any
4 answer. He said that he has no knowledge, he knows nothing about it,
5 and he asked me to go back to Jabllanice, join the army again,
6 because you guys are the best fighters I ever had. At that time, we
7 were like four of my family.

8 So -- but in the meantime, there was another thing that happened
9 right after Rrok Berisha's, that Zekeria Cana was given an order to
10 be killed. And my neighbours that -- he joined the KLA after me, he
11 had that order with his unit, that was Togeri's unit, and they did
12 not do it because they know who was Zekeria Cana. And basically in
13 Albanian or in Kosovo, he was a -- one of the, I can say patriotic.
14 He was doing his movements and trying to do a lot of good things --
15 against Serbs, and get Albanians together to forgive, you know.
16 Helping each other. He was the one basically very known
17 [indiscernible] for us.

18 So they could not carry the order, and they decide to move to
19 another village from Jabllanice and send people around -- Ramush, try
20 to talk -- Haradinaj, try to talk to him, talk it through why this is
21 happening. They did not, basically, have the right answer, and the
22 whole unit kind of split. Some of them, they returned back to
23 Jabllanice. Because when they didn't carry the order, Togeri was
24 asking them who was the one who, you know, said no to kill him. They
25 took his car.

1 Q. Okay. Thank you, Mr. Kabashi. Now, you said you were told
2 about this incident involving Zekeria Cana by a neighbour.

3 A. Yes.

4 Q. Who was that neighbour?

5 A. Xhevdet Kelmendi. And also he asked uncle go to Prishtine and
6 talk to Zekeria Cana. We've been trying to go through Adem Demaci.
7 It was a very bad time from Peje to go to Prishtine. At that time it
8 was a suicide mission, basically. It was very hard because you have
9 to go through that area where Serbs controlled it. He wanted to go.
10 My uncle took the risk and went -- went there and talk to Zekeria
11 Cana, explain everything. And my problem that I had -- he had this
12 problem, a lot of things that we knew that what's going on, and tried
13 to make basically -- because that time Adem Demaci was kind of
14 political voice for KLA or a speaker or -- I don't know how to call
15 it. So we were trying to reach out higher ranks to people and find
16 out why the killings are happening between us.

17 Q. Okay. Thank you, Mr. Kabashi. Now when did Xhevdet Kelmendi
18 tell you and your uncle about this incident involving Zekeria Cana?

19 A. In October 1998. It's when I came. When I moved from
20 Jabllanice and when I had the order -- I believe it was October.
21 October.

22 Q. And you --

23 A. October. I believe it was October or end of September when we
24 had the order for Rrok Berisha, so that was the first time actually I
25 told my two cousins [indiscernible] between us. And Jaha, the older

1 one, he did not be happy. I said it's true and it's not
2 [indiscernible] and I also said what we're hearing. And also was --
3 that time was Sabri Hamiti was shot to his apartment in Prishtine, so
4 it's kind of like same day or maybe day after I had the order for
5 Rrok Berisha.

6 And he said, "I knew that it's coming from here and it's from
7 [indiscernible]." He said I'll -- tonight, because we're not with
8 each other. If I -- what they're doing. It's -- he could not
9 believe it either. Like -- because also other things we -- we --
10 Ramush was our idol before that. And when those things happened and
11 he gave us no answer about those killings, and I tried to --

12 Q. Okay. Thank you, Mr. --

13 A. [Overlapping speakers] ...

14 Q. Thank you, Mr. Kabashi. Sorry to interrupt. Now, I'm having
15 trouble telling when Xhevdet Kelmendi actually told you about the
16 Zekeria Cana thing. I see October 1998. Was it after you left the
17 KLA and went home?

18 A. I -- I didn't leave the KLA. I left Jabllanice to go home and
19 try to -- to take the -- when I went home, and Xhevdet was my
20 neighbour, one night saw us outside in our -- I can say in our yard.
21 Behind our house is like a hill, and he lives right on other side.
22 So when he saw us from afar, and he start coming close, come close to
23 our land, he said, "I thought saw you guys, and I didn't believe it."
24 And then also we -- I was happy I saw him. So then he explained to
25 us problem he had, too. He came to my house, and we tried to -- like

1 I said before, we sent our uncle to Prishtine. He was trying to
2 solve these problems.

3 And then we kind of see it then that we should not go back to
4 Jabllanice. We'd been preparing [indiscernible] go to Albania,
5 because we heard that another units are getting together for a fight,
6 and that was before we got arrested from Serbs.

7 Q. Thank you, Mr. Kabashi. What unit was Xhevdet Kelmendi in?

8 A. Togeri's unit.

9 Q. Do you know what that unit was called?

10 A. I think it was called Black Eagles. [Indiscernible].

11 Q. Thank you. And where was it based, if you know?

12 A. At that time, it was in Jabllanice because after the offensive
13 in Dukagjini area, so it -- almost everybody was in Jabllanice at
14 that time. [Indiscernible] soldiers that are -- after some of them
15 that came back trying to gather together again after the offensive.

16 Q. Okay. Thank you, Mr. Kabashi. Now, I want to return to the
17 order that you received to kill Fadil Gashi and Dine Berisha. Did
18 you ever tell the ICTY about this order?

19 A. What do you mean by?

20 Q. When you gave statements to the ICTY, did you tell them about
21 the order you received to kill Fadil Gashi and Dine Berisha?

22 A. Of course I did.

23 Q. Okay. And did you ever make any other statements, including in
24 public, about this order?

25 A. I did.

1 Q. And when was that?

2 A. In public, I made it -- I believe it was in 2019, the last time
3 I was in Kosovo.

4 Q. Okay. And do you remember where you gave this interview? What
5 was the station?

6 A. I interviewed on T7 station, whatever. T7 they called.

7 Q. Okay. And why did you --

8 A. [Indiscernible].

9 Q. Okay. And why did you make a public statement about this event
10 at this time?

11 A. Well, we have a word that they say in Albanian, [Albanian
12 spoken]. It's a word. So to separate things. Because also from the
13 war and after it needs to be known who was killing and it needs to be
14 known in public too. People need to know that they used the KLA to
15 do bad things. They used the name of the KLA. The KLA was not used
16 for anybody. The KLA was for the people. Not for names. Not for
17 mythology, for myths. Not for commanders.

18 Q. Okay. Mr. Kabashi, did you ever discuss this matter with Fadil
19 Gashi?

20 A. I had a discussion once after I went in a studio, because I
21 heard he made some statements so -- if Alush Agushi did that, gave
22 that order, he owns me, whatever. I went and then meet him, because
23 also we knew him. My uncle used to -- was friend with his brother,
24 actually. So Fadil Gashi was LDK. It's a party, political party
25 that was brought up by 1988, 1989, from Rugova. He was leader for

1 Kline city at that time. And we knew him. We knew his family. I
2 used to work there.

3 So I -- I feel bad if something will happen, even though it's
4 Alush Agushi or whatever who it is. So I told him that, "I hear you
5 made a statement." This much. "If needed to go in court, I will
6 come and testify. No problem." I will -- or even in, you know,
7 like, old tradition, Albanian tradition, I will say the truth. But I
8 said I don't like if I heard somebody will get killed because of what
9 I said.

10 He agreed with me in those conversations. He said, "So you
11 should contact me." He said, oh, I didn't have a phone number or
12 nothing. But, anyway, long story short. After that, he made a
13 statement saying that, "I don't believe Kabashi or -- or Alush
14 Agushi, either/or." And for a split second, my mind went --

15 Q. Mr. Kabashi?

16 A. [Overlapping speakers] ... yeah.

17 Q. Sorry to interrupt. Have you ever reported the incident to the
18 Kosovo authorities?

19 A. Which incident?

20 Q. The order you received to kill Fadil Gashi.

21 A. No, I don't think so. I mean, when I gave the statement before
22 the ICTY in 2004, it was a police, it was EULEX, it was everybody.
23 They knew I said that to them. Kind of like I told the truth.
24 Meaning, I did. Why I did.

25 Q. Thank you, Mr. Kabashi. Now, you've testified that Alush Agushi

1 gave you orders to kill Rrok Berisha, Fadil Gashi, and Dine Berisha.

2 Do you know why he would choose you to carry out these orders?

3 A. When I joined -- when I joined the KLA, like other -- other
4 people in Kosovo that was frustrated from the Serbian regime, I've
5 been beaten from Serbs before, very young, and even high school, from
6 their -- and when I joined, I volunteer. I wanted to fight for real.
7 I really didn't know what the fight is or anything, but I wanted to
8 fight, and that's what I did.

9 So when sometime needed to go for weapons and needed people who
10 had more courage or more -- I don't know how to explain. I'm not
11 going to say that I was the best. I used to go. And also one point
12 when Alush Agushi told me that some weapons from Drenica or -- been
13 around my house or my neighbourhood and nobody can take it to bring
14 it there, so he gave me -- he said, "Can you do it? But you have to
15 make sure they don't get caught." So I got my family and two of my
16 friends that they are in KLA already, so we went and sent the weapons
17 in Drenica.

18 So I think after all the experience and stuff I had and fight
19 also in Suka, we call it Suka e Cermjanit, it's a hill between where
20 we used to have a fight with Serbs, meaning fight line. I had
21 experience there, too, and other places. So I think -- I was very
22 close to him too, even when he made me to -- when he was not there,
23 he was leaving me in charge for his unit. He believed in me, and
24 also he thought that I would carry orders with no problem.

25 Q. Okay.

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1 A. But I never believed that he will give me such an order.

2 Q. Thank you, Mr. Witness. I have had only two brief topics to
3 complete, and I would be done before the break.

4 MR. QUICK: And then with Your Honours' leave, I can read the
5 Rule 154 summary or not.

6 PRESIDING JUDGE SMITH: [Microphone not activated]

7 MR. QUICK: It's up to you.

8 PRESIDING JUDGE SMITH: [Microphone not activated]

9 You're about ten minutes over at this point, but it was slow
10 starting. So go ahead.

11 MR. QUICK: Okay. Okay. Thank you, Your Honour.

12 Q. So, Witness, in your -- so we're moving on to a different topic
13 entirely other than the orders.

14 Witness, in your Limaj testimony that has now been admitted, you
15 were questioned in detail about events in spring 1998 at Jabllanice.
16 We won't cover those today. But there is one additional incident I
17 wanted to ask you about. It involves certain sisters from Terpeze.
18 You discuss this incident with Celiku at Klecke, and you testified
19 about this in your Limaj testimony.

20 I'll read part of your testimony, and then I have some questions
21 about the incident, which I'll ask in private session to protect the
22 privacy while being in security of third parties.

23 MR. QUICK: So the excerpt that I will read is from IT-04-84bis
24 P00119, page 4233, lines 14 to 17.

25 Q. And your answer is:

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1 [Private session text removed]

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1 [Private session text removed]

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Examination by Mr. Quick

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8 [Open session]

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

10 PRESIDING JUDGE SMITH: All right.

11 Mr. Kehoe, we'll finish the statement, then we'll break for the
12 break, and then we'll come back and you can begin your
13 cross-examination at that point.

14 MR. KEHOE: That's fine, Your Honour.

15 PRESIDING JUDGE SMITH: All right.

16 MR. QUICK: Thank you, Your Honour.

17 The witness's Rule 154 statement is comprised of his testimony
18 and *Limaj et al.* before the ICTY on 11 and 14 March 2005.

19 Around 9 April 1998, the witness went to Jabllanice to join the
20 KLA because he wanted to fight for his people. He was not permitted
21 to join immediately. The witness believed the KLA first checked a
22 volunteer's background to verify they were not collaborators with the
23 enemy.

24 After going to Albania to collect arms and taking part in
25 fighting in Cermjan, the witness again asked to join the KLA in

1 Jabllanice. Lahi Brahimaj agreed, gave the witness a weapon, and
2 took him to the barracks situated in a compound at the end of the
3 village. Lahi Brahimaj, also known as Magjupi, was the most senior
4 commander in Jabllanice.

5 The witness was first part of a unit based in the Jabllanice
6 barracks compound. By July 1998, he had joined Unit 192, or Mala's
7 unit, under the command of Alush Agushi, also known as Mala. With
8 Unit 192, the witness was deployed to various locations, including
9 the Berisha mountains in late July 1998. They were to assist the
10 forces of Fatmir Limaj, also known as Celiku.

11 When Jabllanice was under attack, the witness and his unit were
12 called back. Between April and July 1998, the witness saw and
13 learned of persons including alleged spies and collaborators detained
14 at the Jabllanice compound. At Jabllanice, detainees, including Jah
15 Bushati, Skender Kuci, and Pal Krasniqi, were mistreated by, among
16 others, Idriz Balaj, also known as Toger, and Lahi Brahimaj.

17 Around October 1998, Alush Agushi gave the witness an order to
18 kill Rrok Berisha who was an LDK activist. When asked, Agushi
19 explained to the witness that Rrok Berisha was responsible for the
20 offensive in Lugu i Baranit.

21 The witness did not carry out the order. He informed Rrok
22 Berisha of the order and then went home.

23 In December 1998, Serbian police arrested the witness. He was
24 detained by the Serbian authorities for more than three years at
25 prisons in Peje, Dubrava, Lipjan, and finally Nis. While in prison,

1 he was mistreated and frequently beaten.

2 While giving his 2005 testimony in the Limaj case, the witness
3 explained that he asked for protective measures because he had been
4 called a traitor and his family members had been threatened.

5 Q. Mr. Kabashi, that completes my direct examination. Thank you
6 very much for coming today, and I also apologise for the practical
7 difficulties that resulted in the delay to your testimony. It's much
8 appreciated. Thank you.

9 PRESIDING JUDGE SMITH: [Microphone not activated]

10 Mr. Kabashi, we will take a half-hour break now for you to get a
11 little rest, and then we will come back and have two more hours. So
12 we are adjourned. We will be adjourned until 5.30.

13 THE WITNESS: Okay.

14 PRESIDING JUDGE SMITH: Madam Usher, you may escort the witness
15 out.

16 [The witness stands down via videolink]

17 PRESIDING JUDGE SMITH: And we are adjourned until 5.30.

18 --- Recess taken at 4.53 p.m.

19 --- On resuming at 5.30 p.m.

20 PRESIDING JUDGE SMITH: Madam Court Officer, you can bring the
21 witness to the table.

22 MR. QUICK: Your Honour, just while the witness is being brought
23 in, I noted that there are some statements of protected witnesses in
24 the presentation queues for the Defence. I just wanted to remind
25 everyone about the order on 12 May 2023 about using evidence of

1 protected witnesses, and that the first step should be not to
2 identify the witness. If it's necessary to show the transcript, to
3 do it in a way that doesn't identify it as an SPO transcript, and,
4 finally, to apply to the Panel, essentially, for a variation if
5 necessary. Thank you.

6 PRESIDING JUDGE SMITH: [Microphone not activated]

7 [Trial Panel and Court Officer confers]

8 PRESIDING JUDGE SMITH: Nothing ever goes exactly as we hope.
9 There's been an emergency, not involving our people, but there's been
10 an emergency in the building where they are, and they had to evacuate
11 the building. So we are going to be on hold for just a bit until we
12 figure out what's going on. Thank you, everyone, for your patience,
13 and hopefully this gets resolved quickly.

14 Be at ease. We'll leave the room. [Microphone not activated].

15 --- Break taken at 5.32 p.m.

16 --- On resuming at 5.45 p.m.

17 [The witness takes the stand via videolink]

18 PRESIDING JUDGE SMITH: Thank you for your patience, Witness.

19 Can you hear okay? Can you hear okay?

20 THE WITNESS: [via videolink] I said yes.

21 PRESIDING JUDGE SMITH: Okay. We will begin with the
22 cross-examination by -- first with the Thaci Defence.

23 Go ahead, Mr. Kehoe.

24 MR. KEHOE: Thank you, Your Honour.

25 Cross-examination by Mr. Kehoe:

1 Q. Good afternoon, Mr. Kabashi. My name is Gregory Kehoe and I
2 represent President Thaci. I just want to ask you a few clarifying
3 issues, if I may.

4 As a person, you know, we speak quickly sometimes, but if you
5 don't understand anything I say or any question, would you --

6 A. [Overlapping speakers] ...

7 Q. -- please let me know, and we'll clarify that for you. Okay?

8 A. I cannot hear anything.

9 Q. Okay.

10 A. Right now, yes.

11 Q. Can you hear -- you can hear now?

12 A. Yeah, I hear you now.

13 Q. Okay. I was just saying that when we're discussing anything, if
14 you don't understand my question or my question is not clear, just
15 let me know and I'll clarify it.

16 And we happen to interrupt you, as we're both English speakers
17 here, please tell me you haven't finished because I don't want to cut
18 off anything you say. Okay? Now I apologise ahead of time if I do
19 it, but please bear with me. Okay?

20 A. Okay.

21 Q. So we some -- during the summary that was given by the
22 SPO Prosecutor about you coming into the KLA on 9 April, and I take
23 it you had no military experience and were 21 years of age; right?

24 A. Yes, I was 21.

25 Q. And at that point, you were sent -- you had -- even before you

1 were in the KLA, you had gone down to Albania to get weapons; right?

2 A. It's the same time.

3 Q. Okay.

4 A. Basically that's when I went.

5 Q. And, I mean, you even went to Albania before you were in the
6 KLA, and you even insisted to go to the front and fight before you
7 were in the KLA, didn't you?

8 A. Yeah.

9 Q. And you had no experience in shooting. They taught you how to
10 shoot?

11 A. When we went first to Albania, we got some training.

12 Q. And with regard to after you joined the KLA -- and I will ask
13 you the -- this is from your ICTY statement. We're talking about the
14 structure in the Dukagjin zone when you were there. The Dukagjin
15 area. And you said that, and this is at U16-2361 to 2399, paragraph
16 65. You said -- you're talking about the structure there, you said:

17 "It was not -- it was not exactly the type of strict vertical
18 military structure. There were some soldiers who would report
19 directly to Lahi Brahimaj, others to Alush Agushi and some others to
20 Ramush Haradinaj who was the Over-all-Commander-in-Chief of the
21 Dukagjini zone."

22 Is that how it was, sir? That people were reporting to
23 different commanders?

24 A. Yes, it was basically and -- building, building progress of KLA,
25 I can say. And there are a lot of loopholes, of course. And a lot

1 of people also take advantages for their own things.

2 Q. And there were no --

3 A. That was another thing to mention.

4 Q. Well, we'll get to that in a second. But there were no brigades
5 either, right, and no procedures?

6 A. Yeah. There was no brigades at that time.

7 Q. And in many cases, no one was answering to anyone else, were
8 they?

9 A. Not quite no one answer to no one. Not like that. But, like I
10 said, was a building, so kind of like -- if you want to ask me a
11 direct question, I will answer better, I think.

12 Q. Well, I mean I --

13 A. Like what you mean by that.

14 Q. I think you're talking about -- throughout all of this, that
15 people were engaging their own personal needs and purposes and using
16 the KLA as a cover, weren't they?

17 A. I'm sorry, one more time?

18 Q. People were acting in their own personal -- for their own
19 personal purposes and their own personal needs, and they were using
20 the KLA as a cover, weren't they?

21 A. Yes, I believe so.

22 Q. Okay. We'll get back to that in a little bit. And, by the way,
23 just to get this out of the way, you mentioned on direct something
24 about the LDK. Your father was a member of the LDK; right?

25 A. What do you mean by that?

1 Q. Well, was he -- was he a supporter of President Rugova at the
2 time?

3 A. At what time?

4 Q. Well, at any time.

5 A. But since 1988, 1989, basically I can say 95 per cent or 98
6 per cent of Kosovo Albanians were with the Rugova idea. And after
7 him meaning they were listening to him, and that was the thing that
8 pull us together for -- for trying to get liberated from Serbs,
9 basically.

10 Q. I --

11 A. Trying to find alternatives and everything.

12 Q. And your -- so was your family a supporter of Rugova?

13 A. Like I said, yes. Everybody, not just my family.

14 Q. And that didn't prevent you from being taken into the KLA, did
15 it?

16 A. I'm sorry. One more time.

17 Q. That didn't prevent you from joining the KLA?

18 A. Of course not.

19 Q. Now, I'm going to ask you a couple of questions, and bear with
20 me a little bit because I have to ask these questions given how the
21 SPO has presented your evidence. And the way your evidence has been
22 presented, it is that you went -- you testified in the Limaj case you
23 say is the truth. Your sworn testimony in the Limaj case. Is that
24 right?

25 A. I said that what I gave information and what I said, it's the

1 truth. Yeah, what -- basically, all of it.

2 Q. And I understand you have your own reasons for this, but you
3 understand that you said something different in the Haradinaj case,
4 didn't you?

5 A. Can you help me out what you're talking exactly?

6 Q. Well, I mean in what we just heard from the SPO were about
7 prisons in Jabllanice that you testified to in Limaj, and then in the
8 Haradinaj case that you said that there were no prisons in -- under
9 oath, there were no prisons in Jabllanice, and that you didn't see
10 any prisons. And I refer you to at IT-04-84bis TR32 to T419, page
11 344, 23 to 25, and then in the same bis, which is T332 to T419, page
12 345, 7 to 12.

13 So would I be accurate to saying that what you said in the Limaj
14 case -- and I'm just trying to get this straight. What you said
15 under oath in the Limaj case you say is true, but what you said under
16 oath in the Haradinaj case was not true? Do I have that straight?

17 A. What I said today, much as I recall right now, I said today what
18 I gave a statement and what I said is true. But then also how the --
19 meaning investigators or, in this case, the Prosecutor, said it in
20 English, Albanian, that was another problem that could be. But I --
21 I never accepted there was a prison, and I said that in Haradinaj's
22 case. There was no prison. Basically, there was no prison.

23 Q. And --

24 A. There was no detention centre to say, okay, this part was
25 prisoners, this part was soldiers, or any case like that.

1 Q. And you also told the court that you didn't see any prisoners
2 there; is that true?

3 A. I'm sorry?

4 Q. You also told the court under oath in the Haradinaj case that
5 you didn't see any prisoners there.

6 A. Because at that time I didn't wanted to cooperate with the
7 court.

8 Q. Okay. I understand. But -- so when you told them -- when you
9 didn't want to cooperate with the court, and you told them that --

10 A. With the prosecutor, basically.

11 Q. I'm sorry. I mean, I understand. I'm just trying to get this
12 straight. But when you told the court in the Haradinaj case under
13 oath that there were no prisoners, that wasn't true; right?

14 A. One more time?

15 Q. Well, you told us you didn't want to cooperate with the court in
16 the Haradinaj case.

17 A. Yeah.

18 Q. So when you told the court under oath, "I didn't see any
19 prisoners there," "there" being Jabllanice, that wasn't true?

20 A. Because if you use the word "prison," you know what prison is.
21 Jabllanice didn't have that kind of prison, so basically I didn't see
22 any prisoner. If you look at it right. It was open doors. They
23 could walk anywhere they wanted to.

24 Q. I understand.

25 A. I hope so.

1 Q. No. Any time you don't think I understand, please let me know.

2 Okay?

3 And ultimately, in the Haradinaj case, you refused to testify
4 and you were held in contempt; right?

5 A. Yes.

6 Q. And one of the reasons that you were upset with the prosecutor
7 was that they didn't interview a gentleman by the name of Afrim
8 Morina; is that right?

9 A. Yes.

10 Q. Well, you now know that they did, in fact -- the ICTY did, in
11 fact, interview Afrim Morina, didn't they?

12 A. I don't know they did or they did not. But I don't think they
13 did that time.

14 Q. Well, you talked to Mr. Morina a few months ago in 2023. Did he
15 tell you then that they had -- ICTY --

16 A. I --

17 Q. -- had interviewed him?

18 A. Okay. I did not ask Afrim Morina anything about it.

19 Q. Okay.

20 A. Yeah. And I can tell you this much. Afrim Morina was
21 stopped -- like, he -- he tried to join the KLA and -- together with
22 Idriz Gucati. When I joined the KLA in Jabllanice, they are there
23 and they're mistreated. They are beaten when I saw them.

24 Q. So I'm --

25 A. They can say -- they can say different. Like, for instance,

1 Fadil Gashi can say, "I don't believe this or that," but Afrim Morina
2 was beaten, and Idriz Gucati was beaten. Both came to join the KLA
3 just like me.

4 Q. And if Afrim Morina told the ICTY he hadn't been beaten, you're
5 saying --

6 A. I --

7 Q. Excuse me --

8 A. I just said that before. He doesn't want to testify. He
9 doesn't trust the ICTY. He doesn't trust the system, just like I
10 don't.

11 Q. Okay. So if Afrim Morina told the ICTY --

12 A. Yeah.

13 Q. -- he had never been beaten --

14 A. Yes.

15 Q. -- you're saying that that would not be true?

16 A. He can say whatever he want.

17 Q. But in refusing to testify in the Haradinaj case, you maintain
18 that -- well, I'll read this to you. In your T7 interview in 2019,
19 you said:

20 "If it weren't for me, Ramush Haradinaj would have been
21 sentenced regardless of whether or not -- whether he committed the
22 crime or not. I am the main" --

23 A. Not whether he committed the crime or not, but --

24 Q. Excuse me, excuse me, I want to say -- let me finish.

25 A. No, I didn't say that.

1 Q. Let me finish. This is your taped statement.

2 A. Sure.

3 Q. "I am the main protagonist who saved him. The purpose was to
4 not be found guilty."

5 So did you tell the interviewer in T17 that you were the reason
6 why Ramush Haradinaj was --

7 A. I did.

8 Q. What's that?

9 A. I did. And I will tell you the reason why. I tell you right
10 now. The reason why is because prosecutors, since the very first --
11 in the beginning I gave a statement. For me, it was to stop the
12 crimes. Like I said today, I said it all the time, the reason was
13 because innocent people was getting killed, Albanian people were
14 getting killed, since the war and after it never stopped.

15 The reason I said because prosecutors didn't care for that. The
16 EULEX didn't care. To me, nobody cared. What they wanted to do is
17 bring Haradinaj for a name, and it was a prime minister. They could
18 took him before he became a prime minister. Same thing they did now
19 with Mr. Thaci, they could took him before, but they took him when he
20 was the president. And this tells me that this is all politicians
21 and stuff. And because they had -- they had evidence even that
22 time -- for instance, they could ask Afrim Morina and try to, you
23 know, find out -- and also they can ask Alush Agushi and try out --
24 try to why those things happened. But they want to put the names in
25 court and make things even in Yugoslavia, like previous Yugoslavia.

1 Like, okay, you did -- Serbian did crimes, Croatians, now Albanians
2 too.

3 And that's why I don't want -- I didn't wanted to cooperate with
4 them, and that's why I -- I went against them, because they always
5 trying to -- to -- to go after the names, not what really truly what
6 happened.

7 Q. And when you say --

8 A. For instance -- for instance -- I'm sorry, but I -- I -- for
9 instance, what had to do with Alush Agushi and Rrok Berisha and with
10 me in this case, in my knowledge had nothing to do with Ramush
11 Haradinaj.

12 Q. And you maintain that --

13 A. In my experience -- my experience from the war, my experience
14 from the KLA, even before KLA, it's -- those things don't relate the
15 way they put it together.

16 Q. And you --

17 A. That was the reason I -- I -- I didn't wanted to cooperate with
18 them and I didn't wanted to -- because I seen it, what it's going to.

19 Q. And you likewise told the T17 people that the only reason that
20 they went after Haradinaj was because he was a commander; is that
21 right?

22 A. Yes, yes.

23 Q. And based on your knowledge, Haradinaj -- everything you've
24 talked about in the -- in the Dukagjin zone that the Prosecutor put
25 you through, you have no indication that Haradinaj was either

1 involved or knew about any of that, do you?

2 A. I cannot say he knew or he don't. What I can say is when I ask
3 him for -- for his -- to help me out in a case I had what had to do
4 with -- with Alush Agushi and Rrok Berisha, he -- he didn't give me
5 the right answer to give me welcome back to the KLA basically. And
6 the same thing he did with Xhevdet Kelmendi and his unit.

7 So I will take him meaning, like, if you're a commander, you
8 have responsibilities for your soldiers.

9 Q. But, you know, told you --

10 A. But I don't think he did that in a right way. That's all I can
11 tell you.

12 Q. Okay. And what he did say to you at the time when you raised
13 the issue was that he had no knowledge about it; right?

14 A. Yes, yes.

15 Q. Okay.

16 A. I said that before.

17 Q. Now, as we -- and we'll get back to that in a moment. And when
18 we talked about, you know, the issues that -- what came up with the
19 Fadil Gashi matter, and all of these matters are -- involve the
20 Dukagjin zone; right?

21 A. Yeah.

22 Q. Okay.

23 A. Most of it.

24 Q. Okay. And, you know, you went on TV to start -- in 2019, I
25 think you told the Prosecutor, was the first time you talked about

1 the Fadil Gashi issue, is that right, publicly?

2 A. Publicly, yeah.

3 Q. And that had been preceded by, I guess, your arrest at a
4 demonstration and your arrest for a weapon. That all preceded --

5 A. I --

6 Q. That all preceded --

7 A. I got --

8 Q. That all preceded this?

9 A. Yeah, I got arrested for a demonstration. I just asked to have
10 a word because right there I was the one who -- who experienced that
11 massacre in Dubrava, and the people who were representing --
12 representing me and my friends, I didn't have -- I didn't like it the
13 way they did it for, like, 20 years now. So my frustration was I
14 wanted to say that -- something. They didn't give me a chance even.
15 They arrest me and then they put like I had a weapon.

16 And also today as we speak, I have a warrant arrest from
17 Interpol in Europe for carrying a weapon with no license. It never
18 happened before Kosovo to -- to put warrant for somebody just for a,
19 you know, weapon. It was not a thing. But they did it.

20 Q. Well, we'll get back to that in a second. But that is --

21 A. Sure.

22 Q. That was all -- happened prior to you going on to give this
23 interview publicly about the Fadil Gashi -- the order to kill Fadil
24 Gashi and Dine Berisha; right?

25 A. Yes.

1 Q. Now, let's just -- let's look at that. So we are -- there is a
2 meeting by the side of the road, a chance meeting by the side of the
3 road. And Alush Agushi gets out of the car, and he tells you about
4 this kill order to kill both Dine Berisha and Fadil Gashi; right?

5 A. Yeah.

6 Q. And you then, obviously, didn't execute that order; correct?

7 A. Yes.

8 Q. And with regard to the two people involved, you never went and
9 told Fadil Gashi anything about that, did you?

10 A. What do you mean by that?

11 Q. Well, you didn't go to his house and say -- you told us that --
12 that unlike Rrok Berisha, you didn't go to Fadil Gashi's house to
13 say, "Look, I have been given an order to kill you." You didn't do
14 that, did you?

15 A. No, I did not.

16 Q. Okay. And no one in your family did that either, did they?

17 A. We did tell Dine Berisha that he should warn also. We told
18 through one of my cousins.

19 Q. Well, let's stay with Dine Berisha. Dine Berisha, you told,
20 that he was in danger. You never told him that there was a kill
21 order out for him, did you?

22 A. What do you mean by that, "kill order" and "danger"? It's kind
23 of the same if you look at it the right way.

24 Q. Well, this is a comment that you made to the SPO in proofing
25 note 2, paragraph 49:

1 "[You do] not remember if you told him," your neighbour, "that
2 he received an order to kill Dine Berisha."

3 What you did say was that you told your neighbour to tell Dine
4 Berisha to be careful and that he was in danger. Is that right?

5 A. Okay. In that time -- you have to experience the time or know
6 more about it and then to ask this kind of question, because it was
7 not that simple. Here in court it's easy. You guys have time. You
8 get paid. All of you. In that time, it was different. Life and
9 taking your life in a split-second. And it was very dangerous times.
10 And what I said was the truth.

11 Now, did I say "you're in danger" or did I say "I have an
12 order"? I didn't say "I have an order to kill," no. I sent my
13 cousin, "Please try to warn him," and that was not easy to do because
14 let's say if you send a warning to somebody that you're in danger of
15 your life and that spills out, like it did with Rrok Berisha, then
16 you're in danger. And you probably know that better than I do.

17 Q. Sir, I'm just -- just trying to clarify some of the things that
18 you had --

19 A. Well, you're not trying to clarify. Basically, you're trying to
20 mix them up more. Not clarifying.

21 Q. And --

22 A. You are perfectly clear what I say.

23 Q. Okay.

24 A. I believe so.

25 Q. And if you believe that I have got something incorrect, please,

1 Mr. Kabashi, we will give you the opportunity to clarify that.

2 A. You do that on purpose to try to -- just me direct questions and
3 I tell the truth. I do not tell -- and I'm -- I'm only here for --
4 for -- for the truth.

5 Q. Okay, sir. Now, you maintain that you told the SPO back in 2004
6 that you explained to them about the Fadil Gashi -- ICTY, excuse me.
7 Explained to them about the -- the ICTY, that you had told them in
8 2004 about the kill order on Fadil Gashi. Do you recall saying that?

9 A. I'm sorry, one more time?

10 Q. Well, let me cut to the chase. I put to you that you had two
11 statements to the ICTY, one in 2004, one in 2007, and you never told
12 the ICTY in those statements that you had received a kill order from
13 Alush Agushi to kill Fadil Gashi -- excuse me, from Alush to kill
14 Fadil Gashi. You never -- you never said that to them, did you?

15 A. In 2007, I -- I left the court. In 2004, I don't recall they
16 asked me about that. But when I gave my statement before that, I
17 told the truth. Now, whatever was written on paper one way or
18 another, it's a totally different story.

19 Q. Okay, sir. I put to you this, that in the two statements that
20 you gave to the ICTY, there's nothing in those statements about a
21 kill order for Fadil Gashi.

22 A. Okay.

23 Q. Okay. And you obviously signed those documents; right?

24 A. Mm-hmm.

25 Q. Those statements?

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1 A. Okay.

2 Q. Okay. And you signed them after you had reviewed them with
3 nothing in either one of them about Fadil Gashi.

4 A. Okay.

5 Q. Okay. Well, let me just move on. So there's nothing --

6 A. Sure.

7 Q. -- in your 2004 ICTY statement, there's nothing in your 2007
8 ICTY statement. You don't mention this kill order in either the
9 Limaj case or the Haradinaj case; right?

10 A. Okay.

11 Q. And at the end of the day, nothing happens to Fadil Gashi;
12 right?

13 A. Okay.

14 Q. That's true, isn't it?

15 A. He's still alive.

16 Q. He's still alive. And --

17 A. [Indiscernible].

18 Q. -- you have the Rrok Berisha situation that you went to Rrok
19 Berisha and you saw Rrok Berisha and told him about -- with the kill
20 order; right?

21 A. Yes.

22 Q. And he told you that he had gone to the Jabllanice headquarters
23 to find out what the story was, didn't he?

24 A. I -- yeah, I'm going to explain that, because you told him, he
25 told you, it's kind of, like, not bringing us anywhere, and I would

1 like to explain. You said before so -- when it comes to Rrok
2 Berisha, it's a -- it's a little bit different.

3 Me, I -- I wanted to stop, I wanted to stop the killings. I
4 wanted to stop the problems we had inside. And I was not -- I could
5 not kill anybody like that in cold blood. So Rrok Berisha, at that
6 time, he was also a deputy of -- meaning of LDK, and also he was in
7 charge from -- from Tahir Zemaj, that was also a commander of KLA for
8 Baroni area or Lugu i Baranit, how you call.

9 And also Tahir Zemaj had a deal with Ramush Haradinaj how to
10 operate and they were cooperating together. They were working
11 together. So it was that time when they had a deal and things were
12 getting -- things were, like, getting better for us, like a -- like
13 an army or like the KLA, and I was happy about it.

14 So when I had an order for Rrok Berisha, I wanted to try and
15 find a way, any possible way to reach to higher commands, and I said
16 that before, so we can stop the crimes. We can stop the killings and
17 also find out where they are coming from. That was -- that was -- so
18 with Rrok Berisha, we had a long conversation. Like, why this is
19 happening, where it can be coming from, what problem he had with who.

20 Rrok Berisha ...

21 Q. Sir, suffice it to say at this point, we have Fadil Gashi, Dine
22 Berisha, and Rrok Berisha, and none of the three of these -- nothing
23 happening to any -- any of the three of them, did they?

24 A. No.

25 Q. And the person who gave you this order was Agushi; right?

1 A. Mm-hmm.

2 Q. And after -- you refused to do this. To your knowledge, Agushi
3 didn't give this contract out to anybody else, did they?

4 A. I don't know about that.

5 Q. Well, to your knowledge did they?

6 A. I -- like I said, to my knowledge, I don't know if he gave order
7 to anybody else or not.

8 Q. And you talked a bit in direct examination about another
9 individual by the name of -- is it -- correct me if I'm wrong,
10 Zekeria Cana, that Xhevdet Kelmendi told you that there was a kill
11 order out to him; right?

12 A. Yeah.

13 Q. And nothing happened to him either; right?

14 A. No. That day, like I said, and I explained that before, the
15 soldiers who took the order from -- from Togeri, they did not. They
16 did not execute the order. And that's why actually after Togeri
17 questioned them, this is, like, what Xhevdeti told me clearly, they
18 left that unit. They went to another village over there. They tried
19 to contact Ramushi, they tried to explain, they tried -- whatever
20 they tried, he told me, he told you, this and that, but that was the
21 truth.

22 And actually one of the villagers there, when he was passing by
23 with a car, he was from the village of Bardhaniq, took Zekeria Cana
24 in his own car and told him, "Professor, come," those are the words
25 from Zekeria Cana, told him and drove him away from the place where

1 he was stopped and took his car from him.

2 Q. But, sir, all of these orders come from Alush Agushi and nobody
3 else; right?

4 A. This with Zekeria Cana was not from Alush Agushi.

5 Q. [Indiscernible]. The other three we're talking about came from
6 Alush Agushi; right?

7 A. Mm-hmm.

8 Q. And let me ask you this. You told -- in one of your interviews,
9 and this your YouTube interviews, and this is what we touched on
10 before:

11 "Many criminals who also hidden under other names are also many
12 things they have done. People have done for their own personal needs
13 or their own personal purposes have tried to hide behind the KLA."

14 You continue:

15 "Crimes have been committed, and not in KLA's name, they have
16 been committed for people's personal needs and then they have been
17 covered up under the KLA name."

18 Do you remember saying that, sir?

19 A. Where is that?

20 Q. That is in an interview that you -- was published on, believe it
21 or not, YouTube, that you gave, and it looks like you gave it on 25
22 May 2022.

23 A. In where?

24 Q. It was on YouTube, sir. It was a taped conversation on YouTube.

25 MR. QUICK: Maybe counsel could give the actual source.

1 MR. KEHOE: 106 --

2 MR. QUICK: It was published on YouTube, but it was to a --

3 MR. KEHOE: That's okay.

4 THE WITNESS: [via videolink] I'm asking for the source, not
5 YouTube. I don't remember. And if it's --

6 MR. KEHOE: 106975-01-TR-ET, page 3. My understanding is that
7 it comes from Top Channel.

8 Q. And this is the transcript in both Albanian and English. And at
9 the top of the page, you say:

10 "Many criminals who" --

11 I'm sure you can read it.

12 "... who also have hidden under other names or also many things
13 they have done, people have done for their own personal needs or
14 their own personal purposes, have tried to hide behind the KLA."

15 And you go on to say:

16 "Crimes have been committed, not in the KLA's name, they have
17 been committed for people's personal needs and ... they have been
18 covered up under the KLA name."

19 A. Yes.

20 Q. Did you say that, sir? Did you say that?

21 A. I -- I -- I'm trying to understand the whole thing, but it's
22 making no sense. But it is -- I wanted to see that --

23 Q. Okay.

24 A. -- before I admit everything. Because I believe I put in
25 Albanian, and some words can be -- can be different. But most of

1 what you're saying is -- it's -- it's true. They -- they did that.

2 Q. And --

3 A. I believe like that.

4 Q. And people were committing crimes were their own personal
5 reasons and their own personal needs as you say here; right?

6 A. Yeah, has -- those kind of things happened too. That we know.

7 Q. And we know that you were given an order by Alush Agushi to kill
8 three people. He individually gave you that order. You didn't carry
9 it out. Those people continued to live.

10 A. Yes.

11 Q. And when you asked -- excuse me. And when you asked Haradinaj
12 about the kill order of Rrok Berisha, he said he had no knowledge
13 about this; right?

14 A. Okay.

15 Q. So my question to you is: Was Alush Agushi giving you these
16 orders for his own personal needs?

17 A. You should ask him.

18 Q. Well, after -- after you refused the order, an order didn't come
19 back down from Haradinaj telling you to go out and kill these people,
20 did it?

21 A. I'm sorry?

22 Q. Well, after you refused or didn't kill these people, and I'm
23 talking about Fadil Gashi, Dine Berisha, and Rrok Berisha, when you
24 got the order to kill those three people and didn't do it, you didn't
25 get an order from somebody else like Haradinaj, the operative zone

1 commander, telling you to go out and do it, did you?

2 A. No, I did not.

3 Q. And as a matter of fact, with -- when it comes to somebody like
4 Rrok Berisha, he was on very good terms with Ramush Haradinaj, wasn't
5 he?

6 A. Yes, as you said.

7 Q. Okay. And so throughout all of this, and -- nobody giving you
8 any -- excuse me. There were no negative consequences to you when
9 you refused to execute these orders. Wasn't it clear to you at this
10 point that this was a personal endeavour Alush Agushi?

11 A. I could not say that. I think Alush Agushi had reasons -- his
12 own reason in his connections that he had, and he has still today.
13 And if you allow me to explain, I would like to explain a little bit
14 how I feel about this.

15 When -- like I said before, from 1988, 1989, Rugova started his
16 political party trying to find the [indiscernible], like ways to
17 bring people together and get freedom from Serbia or from Yugoslavia
18 that were actually start going down at that time, and we know what
19 happened.

20 Now, we had -- we had groups, we had people that never stopped
21 trying to -- even in a -- in a way with their weapons or by
22 getting -- getting together like guerillas and try to get together
23 more and more people so to fight against -- against Serbs. For us in
24 that time, I'm -- I'm talking about what -- what I hear and what
25 Rugova was trying to -- to do is -- was not good time to start a war

1 against Serbia in 1990s in the beginning because they were very
2 powerful. We did not have power. And 1997 also, in Albania, was
3 like a civil war between politicians inside of Albania. So we didn't
4 really have much support from them like a country either. Was not
5 strong in that -- in that, like -- how to say it? Like a government.
6 Didn't have a strong government.

7 So in 1998 when guerillas groups, Albanian groups, and KLA,
8 after it became the KLA, they start to -- to shoot Serbian forces or
9 police stations or -- Rugova made one statement. Rugova made one
10 statement saying that can be frustrated groups and also can be -- can
11 be Serbia trying to put something. So saying that is because, like I
12 said before, 99 per cent I can say was -- everybody was, like, you
13 know, with Rugova on that path for the freedom.

14 When the KLA come up from the frustration and all these,
15 everybody wanted to join KLA, meaning the young generations like me,
16 and that's what we did. So it became right away very big thing. But
17 also people that I mentioned, like you're asking me questions before,
18 they used that opportunity inside of the KLA to say, okay, Rugova,
19 it's a betrayer, all these kind of things.

20 For instance, Alush Agushi, if he would go in somebody's home
21 and find Ibrahim Rugova's picture, he will break it down and break it
22 and say this guy, whatever, meaning like -- to me, it was a -- they
23 were trying to get in power, so they used -- they used the KLA for
24 their own power, for their own purposes. They tried to.

25 The KLA was, you know, a people's army. It was Kosovo's army

1 that a lot of people joined to fight. They wanted to have an army
2 that does right things. And a lot of people who actually created
3 KLA, they're not between us anymore. And then other people, to me,
4 if I said with one word, it's like hijacking the plane. That's how
5 they did it. They hijacked the KLA and then they used it for their
6 own purposes.

7 Q. Let me break in here because -- in the interests of time, if I
8 may. I mean, the bottom line is with all of these people, and we're
9 talking about Alush Agushi, Toger, you know, Xhevdet Kelmendi, all of
10 these people are in the Dukagjin operative zone and under the command
11 of Ramush Haradinaj; right?

12 A. Yes.

13 Q. And consistent with acting in personal revenge, you were
14 asking -- well, you had noted for us what you thought people were
15 doing for personal revenge. And when you're talking about the
16 sisters that came from Terpeze, you --

17 A. Yeah.

18 Q. -- likewise told the ICTY that in discussions with one of those
19 sisters:

20 "She told me that our problems started because a brother of her
21 uncle's wife asked for her hand before the war and she had refused.
22 When the war started, this man became a KLA soldier and he started
23 harassing her and her sisters."

24 Do you recall saying that? And that's at the --

25 A. Yes, that's what she said to me.

1 Q. Okay. So the --

2 A. Actually, this is -- when I asked her why you think they would
3 question you and why you think, if you have not, why -- she said the
4 only thing could be is this. That because he said to her, "I'm going
5 to make your life miserable."

6 Q. So, again, Mr. Kabashi, we have --

7 A. Yeah.

8 Q. -- another crime that -- consistent with your comment, that was
9 committed not in the KLA's name but committed for someone's personal
10 needs and covered up with the KLA name. Is that --

11 A. If you -- if you -- if we're talking from the beginning,
12 actually, this is a perfect example what I said before.

13 Q. So we agree that this is --

14 A. Yes.

15 Q. -- somebody --

16 A. In this case, yes.

17 Q. -- committing a personal crime and using the KLA as a cover?

18 A. Yes.

19 Q. Let me ask you a question. And I just -- I was a little
20 confused about what you said at the outset when you were giving your
21 statement about the difficulties you had with the court and the
22 prosecutors, and I'm not sure exactly. And you noted, and this is at
23 page 19, line 5 of today, and you said:

24 "Just because I didn't cooperate with them, meaning the way they
25 wanted to, they tried to hurt me here by sending a letter to

1 immigration saying that he is cooperating for terrorism and trying to
2 bomb the offices in Brussels ..."

3 What you are talking about there, sir?

4 A. Not Brussels, in Prishtine, in Kosovo.

5 Q. Oh, you're noted Brussels. So you're saying Prishtine? That
6 should have been Prishtine as opposed to the Brussels?

7 A. Yeah, it was Prishtine.

8 Q. Okay. So, I mean, who are you talking about there, sir? Who is
9 sending a letter to immigration that you are cooperating with
10 terrorism --

11 A. Who --

12 Q. -- and trying to bomb the --

13 A. Who sent --

14 Q. -- offices in Prishtine?

15 A. Who sent exactly the letter, I don't know. But when I got --
16 and this is the thing that -- and if anybody is interested to find
17 out, they can find out through the immigration in the US. When I
18 came here in 2005 --

19 Q. Let me clarify something for you right there.

20 A. Sure, sure.

21 Q. The immigration files in the United States are closed files, so
22 go from there.

23 A. Yes, they're closed files. But if something has to do with the
24 Court, they will help you out. And you can find that, right?

25 Q. So tell me what you're talking about here. That's --

1 A. What I'm talking about here. In 2005, I got asylum approved.

2 And in 2007 --

3 MR. QUICK: Sorry, maybe we could --

4 A. -- after --

5 MR. QUICK: Sorry to interrupt. But maybe we could do any
6 discussion concerning the witness's immigration status and pending
7 legal proceedings in private session.

8 PRESIDING JUDGE SMITH: Agreed. Agreed. Into private session,
9 please.

10 THE WITNESS: [via videolink] Can I continue now?

11 MR. KEHOE: In a second. We'll let you know.

12 [Private session]

13 [Private session text removed]

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Cross-examination by Mr. Kehoe

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Witness: W04448 (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04448 (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04448 (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04448 (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04448 (Private Session)

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Cross-examination by Mr. Kehoe

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22 [Open session]

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

24 PRESIDING JUDGE SMITH: Mr. Emmerson, are you going to ask any
25 questions?

Witness: W04448 (Open Session)
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1 MR. EMMERSON: Your Honour, I have no questions on behalf of
2 Mr. Veseli.

3 PRESIDING JUDGE SMITH: Thank you very much.

4 All right, Mr. Roberts. When you're ready.

5 MR. ROBERTS: Thank you, Your Honour.

6 Cross-examination by Mr. Roberts:

7 Q. Good morning, Mr. Kabashi. I hope you can hear me.

8 A. Good morning.

9 Q. I'm sorry, I didn't get translation of your response.

10 A. I said good morning.

11 Q. Now, obviously, as the Presiding Judge has already indicated,
12 we're both speaking English, so please take your time in responding
13 to my questions. And similarly, as Mr. Kehoe had said, if anything
14 is not clear, please don't hesitate to ask me to rephrase or to
15 repeat my question.

16 A. Okay.

17 Q. My name is Geoff Roberts. I am counsel for Mr. Selimi, and I
18 should have questions which we may finish this evening, otherwise
19 we'll finish tomorrow morning.

20 So if I can start off just by going over some of your experience
21 as a KLA soldier. Now, it's correct that you attempted to join the
22 KLA in the middle of April 1998; is that correct?

23 A. I believe in -- yeah, beginning. Middle. Sometime.

24 Q. And you were based there until end of May, and that's when you
25 joined Alush Agushi's unit in June 1998; is that correct?

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1 A. It could be.

2 Q. Sorry, Witness. Do you mind just pausing for three or four
3 seconds after the end of my questions? I know you understand them,
4 but just to make the transcript easier, that would be better.

5 Now, where were you based when you were part of Alush Agushi's
6 unit?

7 A. What do you mean by that?

8 Q. Where was --

9 A. I'm trying to --

10 Q. -- your unit based? Where did you sleep?

11 A. In the beginning when I joined the KLA or when I joined Alush
12 Agushi's unit?

13 Q. The question was where were you based when you part of Alush
14 Agushi's units. So that was from June 1998 onwards, I believe.

15 A. In Jabllanice. But I do not recall I joined his unit in June.
16 Like, I -- it could be.

17 Q. Do you think it's earlier than that or do you think it's later
18 than that?

19 A. No, it can be later. Not earlier. But I think it was June and
20 then -- it could be June, yeah.

21 Q. And when you say you were based in Jabllanice, was that all the
22 time, or did you move into different locations?

23 A. No, in different locations because we'd been also in a fight
24 with his unit.

25 Q. Sorry, in a fight with whose unit?

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1 A. Alush Agushi's unit. We'd been in a -- one in Rasat e
2 Rahovecit, the rocks of Rahovecit.

3 Q. And when was that?

4 A. By the date, I cannot recall right now. There was one the Serbs
5 took an offensive in Llapushnik area and also from Rahovecit, coming
6 towards Malisheve, after that area was controlled by us. Could be
7 July end or it could be -- not -- not sure.

8 Q. Okay. But your unit was primarily operating in the Dukagjin
9 zone. That's correct, isn't it?

10 A. Yes.

11 Q. And did you conduct operations outside that zone, apart from the
12 ones you've mentioned?

13 A. Yeah, one time when we went to Berisha mountains. That was when
14 we operated, like, Agushi, I mean, his unit. I explained that today
15 earlier, I believe.

16 Q. And I think you told my colleague Mr. Kehoe that Alush Agushi
17 reported to Mr. Haradinaj?

18 A. I don't recall I said he reported to Haradinaj.

19 Q. What was the relationship between the two?

20 A. I do not know much. It was okay. Like ...

21 Q. And what was the role of Mala's unit at the time?

22 A. What do you mean, "the role"?

23 Q. What was the function of Mala's unit, of Alush Agushi's unit?

24 A. I don't get it. Who was the role? Like?

25 Q. Was it --

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1 A. You mean what? Uh-huh.

2 Q. Was it a support unit or was it a different type of unit? What
3 was its function?

4 A. Yeah, it was -- when I -- basically, I can say, if I'm not
5 mistaken, Alush Agushi had his own people from his own village and
6 his own area that sometime they used to come also and fight and --
7 because I remember in the beginning I saw one of his guys in a fight
8 over Jabllanice. This is early when I joined. But then they used to
9 come and go and get weapons. And then in one point I remember we
10 sent weapons -- actually, I did, to his village. And then in the
11 time when his village was surrounded by Serb police forces, I was in
12 Albania at that time.

13 Now, I -- I went so many times to Albania, I don't remember was
14 it June or July when happened this. So when they came back --
15 because they burned the whole village. When they came back to
16 Jabllanice, they were sent -- stationed there, then when I really
17 joined his unit. And our -- basically, our job was to send us, like,
18 helping some -- you know, where is -- like, somewhere where they're
19 under attack. Like, more like to help the other units, kind of.
20 That's what we all did.

21 Q. So you were assistance. You were providing assistance. But was
22 it done in quite an informal way? How did you find out that other
23 units needed assistance?

24 A. For instance, I -- I can use one example. When we were to
25 Malisheve coming back from Rahovecit, the rocks, or how to call it,

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1 and we went together in one trailer, tractor trailer. So we were
2 supposed to go to help because after Llapushnik was attacked, they
3 were saying that Klecke will be attacked soon, where was the --
4 another, you know, base of KLA.

5 So we were sent there to try to help them when they attack. We
6 stayed there for, like, a few weeks maybe, and we didn't -- we didn't
7 have any fight. We just did routine checkpoints and, you know,
8 the -- where we had our -- our -- how you call it? Our stations like
9 where we watch for enemy coming. I don't know how to explain in
10 English right now. But we didn't have any fight that time.

11 Q. [Microphone not activated]

12 A. I cannot hear anything.

13 Q. Apologies. I turned my microphone off. I think you confirmed
14 to my colleague, Mr. Kehoe, there was no brigades or any other
15 structure of that type at this stage. We're talking June, July 1998.

16 A. The brigades are in process at that time. I don't remember
17 exactly what time it was. Meaning, if you look at probably they have
18 in records where -- when the brigade was created in Jabllanice. I
19 was there at one time -- I was coming actually from Albania and then
20 happened to be there, so we joined the brigade. It's called Myrte
21 Zeneli and I forgot the number.

22 Q. In your ICTY witness statement in 2007, you --

23 MR. ROBERTS: And we can put this actually up on the screen. So
24 that's U016-2361 to U016-2399.

25 Q. And this is just your comment about the General Staff. And I

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1 will just read it now just to save time, but we can put it up if you
2 want to. You stated:

3 "As far as I understood it, the General Staff was not well
4 organised when I was in Jablanica."

5 And I'd just like you to confirm that understanding. That's
6 correct, isn't it? As far as you were concerned --

7 A. Yes.

8 Q. -- when you were in Jabllanice?

9 A. Yes.

10 Q. And how late did that continue in your mind? When you said you
11 are in Jabllanice, are you talking up until August, September,
12 October, or later, of 1998?

13 A. Well, we're talking in the beginning and then later date -- like
14 I said -- or, like, they start to organise little by little. But
15 when the Serbs attack or like they have the offensive -- the
16 offensive -- offensives, like the August one, they used the call it
17 the August offensive, and also September, you -- again, you will be
18 splitting and you will be all over. So to regroup was not that easy,
19 and that's what I meant by --

20 MR. ROBERTS: And just for the record, that's paragraph 70 of
21 that statement.

22 Q. And just to understand your evidence, you're saying so that's
23 from your understanding of how things were in the field; is that
24 fair? That there was a lack of --

25 A. [Overlapping speakers] ...

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1 Q. -- organisation above? I'm just trying to interpret your
2 evidence or understand your evidence.

3 A. What do you mean, "lack of organisation"?

4 Q. Well, you told the ICTY that the General Staff was not well
5 organised when you were in Jabllanice. I was just trying to
6 understand why you made that statement from your experience, having
7 discussed your earlier activities as part of Mr. Agushi's unit.

8 A. I do not recall that. I don't know what you are attempting or
9 what is the question about it.

10 Q. Well, I'll just try and phrase it a different way. In your ICTY
11 statement in 2007 --

12 A. Mm-hmm.

13 Q. -- you discussed the General Staff. Now, just to be clear, is
14 that the General Staff of the KLA or is that another general staff
15 that you're referring to?

16 A. General Staff of KLA, I remember one time when they came from --
17 from General Staff from Drenica. I think it was Rexhep Selimi there.

18 Q. But --

19 A. And --

20 Q. -- just to be clear, in your statement when you are referring to
21 the General Staff at that stage, that's what you mean, the KLA
22 General Staff. And when you say they're not very organised, that's
23 what I was trying to understand the basis of that comment.

24 A. Very well organised. You can be in here, in an area, and very
25 well organised and -- and General Staff. So I was talking about the

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1 area where we worked, where we -- it's two different things.

2 Q. So are you saying that in the area where you worked, the
3 General Staff was not very organised?

4 A. Yes, basically. We were trying to. But like I said before, and
5 you can see I signed it, but how they mixed up and put it together
6 was --

7 Q. I understand.

8 A. -- was never, like, right, and you could not do anything about
9 it.

10 Q. Thank you. Now, just moving on to another topic. And this is
11 about the status of people who may or may not have been detained in
12 Jabllanice in May and June 1998. And you obviously gave evidence to
13 the Limaj trial chamber about that issue. Do you recall that?

14 A. Yes.

15 Q. And I think you told my colleague earlier today that there were
16 no prisons in Jabllanice because there was -- sorry, there was no
17 prison in Jabllanice because the doors were open and --

18 A. Yeah, I said that.

19 Q. -- that no one was detained; is that correct?

20 A. Yeah, I said that. There was no prison.

21 Q. So when people were kept there, they were able to move around
22 within the location that they were kept?

23 A. Yes.

24 Q. And where was this?

25 A. What do you mean by that?

1 Q. Where were they kept? You said they were able to move and there
2 were doors open. Where are you talking about?

3 A. That place where we stayed. The same place where we stayed.

4 Q. And what place is that? Can you tell us what exactly you're
5 talking about? Which place did you stay in?

6 A. It was a -- like a house. Basically. And almost in a -- in
7 a -- end of the village going towards Bardhaniq and -- was a house.
8 I don't know how to explain that.

9 Q. Okay. And this was, obviously, as you said, where some soldiers
10 were based, and that included yourself when you --

11 A. Yes.

12 Q. -- refer to being based --

13 A. That was --

14 Q. -- based in Jabllanice?

15 A. That was mainly -- that was more like a -- a base for the
16 soldiers, yes.

17 Q. And were there civilians around there as well?

18 A. Not much in there, no.

19 Q. But was it fair to say that at the time civilians could enter?
20 Anyone could enter or leave?

21 A. Not -- not really. From the village, maybe some of the
22 villagers could come in, but, no, they wouldn't come. Unless, like,
23 you know somebody, of course they will.

24 Q. And at the time there was a shortage of uniforms, I believe, is
25 that right, in and amongst and around Jabllanice?

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1 A. Mm-hmm.

2 Q. I'm sorry, was that a "yes"?

3 A. Yes, what you're trying to say --

4 Q. Thank you.

5 A. -- shortage, yeah, there was a shortage.

6 Q. And so not everyone -- even if you were a KLA soldier, you
7 wouldn't necessarily be in uniform?

8 A. In there, most likely the soldiers had some uniforms.

9 Q. But not all of them?

10 A. The soldier soldiers who were in the base. The soldier
11 soldier because -- how to explain? Like, people who, let's say, came
12 from other areas to join the KLA in Jabllanice, and they recruited,
13 like, a soldier. We would go to the base, and then you will have
14 uniform in -- at least you will have some -- something that, you
15 know, looks like uniform, and you will have the KLA sign and emblem
16 here and, you know, weapon. You will see that it's a soldier. I
17 don't know what you're referring or what you're trying to. If you
18 can please be more specific --

19 Q. Certainly.

20 A. -- what you're trying to ask me.

21 Q. The insignia itself, that didn't come in until later. That's
22 correct, isn't it?

23 A. I'm sorry?

24 Q. The insignia on uniforms, the KLA insignia, that didn't come in
25 until later; is that correct?

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1 A. We had insignia in that time. We had emblems at that time.

2 Q. Right from the beginning? From April?

3 A. Yes, we had. When I got there, yes, we had.

4 Q. But not all soldiers had that insignia, I presume?

5 A. No, no, not all soldiers. Yeah, you can say that.

6 Q. And I think you also said that when people arrived, they would
7 go to the base and they wouldn't always be given a uniform
8 straightaway. Is that right or have I misunderstood?

9 A. If they have uniforms, they will give it. If they don't, they
10 won't. So ...

11 Q. So they could be a serving member of the KLA but not actually be
12 given a uniform as yet?

13 A. They could. It was possible.

14 Q. And how many people were there at the -- at this location, the
15 barracks, I think you called it, in Jabllanice?

16 A. Like soldiers from -- coming from other areas, like I said
17 before, 15, 20, 10, 30, depends.

18 Q. So the --

19 A. At night-time we sleep less and at day-time was more because,
20 you know, they come from around and there was not much place to sleep
21 in there.

22 Q. And I think you mentioned in previous testimony that it was a
23 place that people would pass through on their way to Albania --

24 A. Yes.

25 Q. -- to go and collect weapons.

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1 A. Yes.

2 Q. And you yourself went multiple times, I think, to Albania to go
3 and collect weapons at the time.

4 A. Yes.

5 Q. And I think the first time you went to Albania to get weapons,
6 you said you were in a group of about a hundred soldiers; is that
7 correct?

8 A. No, I -- more than a hundred.

9 Q. More than a --

10 A. More than a hundred.

11 Q. -- hundred?

12 A. Lot more than a hundred, yes.

13 Q. So there would be lots of these individuals passing through
14 Jabllanice at these different times?

15 A. Yes, but in barracks the -- where we stayed, there only was a
16 soldier. And then, let's say, they trained, they sent them other
17 places. Or some, they stayed there, they come back.

18 Q. And just to move on to the location of the KLA HQ in the area.
19 Was there? Is this in the same place as the barracks or was this
20 some place else?

21 A. No, I cannot say tell it was the same place in barracks. Lahi
22 Brahimaj had his own house in the middle of the village where --
23 probably where they used to go to the headquarter or his friends from
24 previous when they fight guerillas together and stuff.

25 Q. And how far --

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1 A. -- like, for instance --

2 Q. Sorry, please continue. I interrupted you.

3 A. I ended.

4 Q. And how far away was that from the barracks, Lahi Brahimaj's
5 house?

6 A. Maybe a mile. I'm not quite sure.

7 Q. A mile. So a kilometre and a half?

8 A. A kilometre, kilometre and a half. Maybe a little less. It's
9 kind of like his house was more like inside of the village, and the
10 other one we stayed was like kind of far away from.

11 Q. Right. So if someone was visiting Mr. Brahimaj's house they
12 wouldn't know what was happening within the barracks?

13 A. Of course they won't know. They could know or they could not.

14 Q. But they're separate locations. They wouldn't be able to see
15 directly --

16 A. Of course, they're separate locations.

17 PRESIDING JUDGE SMITH: Excuse me. We just lost our feed again.

18 MR. ROBERTS: Hopefully that wasn't my fault for once.

19 [Technical difficulties]

20 PRESIDING JUDGE SMITH: I believe it's coming back on.

21 MR. ROBERTS: Apologies, Your Honour. If you just bear with me
22 while my computer restarts, just so I can follow the transcript as
23 well.

24 Q. Apologies, Witness. My computer is just restarting. I may have
25 to continue sooner rather than later because it seems to be taking a

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1 while to restart. But I would certainly prefer to have a transcript
2 in front of me. I think it would assist.

3 PRESIDING JUDGE SMITH: We have the same issue.

4 We have to -- even once it comes back on, the court reporter has
5 to make sure he's up to date on the transcript as well, and so we
6 will take about a five to ten-minute break to allow that, and we'll
7 come back to your cross-examination.

8 MR. ROBERTS: Thank you, Your Honour.

9 [The witness stands down via videolink]

10 --- Break taken at 7.00 p.m.

11 --- On resuming at 7.14 p.m.

12 PRESIDING JUDGE SMITH: Madam Court Officer, you can bring in
13 the witness.

14 [The witness takes the stand via videolink]

15 PRESIDING JUDGE SMITH: We're sorry for all the inconvenience
16 and delays, Witness. But you are quite a few thousand miles away
17 from us.

18 THE WITNESS: [via videolink] Yes.

19 PRESIDING JUDGE SMITH: All right, Mr. Roberts.

20 THE WITNESS: [via videolink] I understand.

21 PRESIDING JUDGE SMITH: We'll give you the rest of the
22 15 minutes, anyway.

23 MR. ROBERTS: Thank you, Your Honour.

24 PRESIDING JUDGE SMITH: [Microphone not activated] ... do have to
25 finish right at 7.30.

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1 MR. ROBERTS: Understood, Your Honour. Hopefully I will finish
2 finish the vast majority. I just may have a little bit left over for
3 tomorrow morning.

4 Q. Hello again, Witness. I just wanted to move on now to the order
5 from Mr. Agushi to kill Fadil Gashi that you've testified about
6 earlier today.

7 A. Okay.

8 Q. Now, just to be clear, your evidence, that this order was given
9 by Mr. Agushi when he came out of a car when he was travelling to
10 Jabllanice?

11 A. Yes.

12 Q. And you were in a car as well?

13 A. Yes.

14 Q. And where were you travelling to? Were you travelling in the
15 same direction or you were travelling to Volljake?

16 A. Opposite direction.

17 Q. And he didn't know you were travelling along this road? You
18 didn't have a pre-arranged meeting?

19 A. No.

20 Q. So it was just by chance that he saw you and saw your car
21 travelling in the opposite direction?

22 A. Well, like I said before, when you pass that water, you have to
23 stop, either one way or another you have to stop. So I stopped.

24 And, like, when you see people you know, usually at that time you say
25 hi or you talk or -- it's normal. So we talked about it. He put me

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1 to the side and told me about it and --

2 Q. Understood.

3 A. -- I don't know how many times do I have to explain that.

4 Q. No, it was more the fact that you didn't have an arrangement to
5 meet --

6 A. No, we did not.

7 Q. -- at that location. It was by chance that you saw each other
8 on the side of the road --

9 A. Yes.

10 Q. -- stopping as you describe. And this was, I think you told the
11 SPO in your preparation session that you weren't sure when you
12 received this instruction from Mr. Agushi; is that correct?

13 A. I said where?

14 Q. So you weren't sure when you received it, when this meeting took
15 place.

16 A. For the specific order? For the specific --

17 Q. Yes.

18 A. -- thing?

19 Q. This meeting with Mr. Agushi, you weren't sure when that
20 occurred?

21 A. By -- I do remember it was there. I don't think this I wasn't
22 sure ever.

23 Q. No, sorry, that's the location. I'm not disputing that you said
24 where it was. The question is you told the SPO -- and maybe I'll
25 just read it out from the preparation note. That might be easier.

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1 If I can find it. Okay.

2 The Prosecution, when they conducted a preparation session with
3 you obviously took notes on information you gave them. And in
4 paragraph 49 of that document stated that:

5 "W04448 is unsure about when exactly he received the order to
6 kill Fadil Gashi."

7 So does that accurately record what you told the Prosecution,
8 that you don't know when this order was given?

9 A. When I said that -- when was that that I said the Prosecution
10 that?

11 Q. That was on 9 October 2023. This was during your preparation
12 session with Mr. Quick, I believe. The Prosecution counsel.

13 A. It could -- it could be a mistake or I could not remember that
14 moment, but this is what happened.

15 Q. I'm merely trying to work out when you say it occurred. The
16 date, the month. You don't know which month it occurred in.

17 A. That's what we had the issue, that I didn't know exactly the
18 date. But not the place. I never had the issue with the place.

19 Q. No, I'm just trying to work out the date. And it was
20 obviously --

21 A. Yeah, the dates I'm not sure.

22 Q. It was before -- in your evidence, before you were given the
23 order to kill Rrok Berisha as well, wasn't it?

24 A. For sure.

25 Q. And you'd never -- excuse me. You'd never received an order of

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1 this type before, had you?

2 A. Before when?

3 Q. Before this meeting with Mr. Agushi when you were given the
4 order to kill Mr. Gashi?

5 A. Yeah, I didn't have any order before that.

6 Q. So he randomly stops you on the side of the road and has a
7 discussion with you and then tells you that you --

8 A. No, that's not -- that's not randomly, because we knew each
9 other.

10 Q. But you didn't have an arrangement to meet him, did you, so it
11 was random that you met him --

12 A. No, but he was --

13 Q. -- on that place and at that time?

14 A. Yeah, but I was -- in that time, I was basically -- I had very
15 close relationship when it comes to soldiers in Jabllanice with
16 everybody, not just Agushi. With Lahi and everybody. Meaning, I was
17 in good relationship. And it was not just randomly he picked me up
18 and do this. I was the one who also got orders from him for other
19 stuff, to bring weapons to places and other things.

20 Q. Understood.

21 A. It was not just --

22 Q. But that's quite a different --

23 A. Just like that.

24 Q. -- type of order, isn't it? That's not an order to pick
25 up weapons --

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1 A. I mean, I explain -- I explained that before, too, sir. I
2 explained that before too, so I don't understand your meaning of the
3 question. If you can be more specific, it will be perfectly fine for
4 everybody.

5 Q. Certainly. Well, you've already told us you don't know if it
6 was the same day or the next day that you -- actually, I'll rephrase
7 the question. You went on to Volljake then with your cousins, I
8 believe?

9 A. Yes.

10 Q. And you've already told us you don't know if it was the same day
11 or the next day that you ended up at Jabllanice?

12 A. Yeah, I cannot say 100 per cent.

13 Q. And that's when you saw, I believe, Mr. Selimi and Mr. Agushi in
14 the Jabllanice barracks with lots of other people there, I believe;
15 is that right?

16 A. Yes.

17 Q. And I think you mentioned that Mr. Selimi asked you about your
18 uniform.

19 A. Yes.

20 Q. And was he just curious about your uniform as to why you were
21 wearing it? How did that conversation come about?

22 A. Because when I went to the barracks, I -- when I went through
23 the, you know, gates, small gates, when I went there and I talked to
24 my friends, colleagues, whoever, soldiers and stuff, and I said hi to
25 them, whatever who's there. It's a tradition in Albanian to -- to

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1 say hi to -- when you see people. And he mentioned first of all that
2 uniform. He said, "Where you get it from?" I explained. I -- I
3 cannot explain word for word what happened. It's like --

4 Q. Of course.

5 A. What you guys are trying here, it's funny. But I told him that
6 I got it from Leopardi. And he said those uniforms belong to the,
7 you know, Black Tigers, a new unit that was formed in Drenica. And
8 he said I will, you know -- he was collecting, I think. That's what
9 I think. He gets some because some were -- and another
10 [indiscernible] whatever. So he said, oh, I -- I -- basically he
11 remembered probably Leopardi told him that he gave it to me, he
12 remembered, and he said, "Yeah, I understand."

13 Q. And that was --

14 A. So there's was not -- not much about it. Like --

15 Q. Yeah, that was the end of conversation, wasn't it? He --

16 A. Yeah.

17 Q. Once you told him that Mr. Agushi had given you the uniform?

18 A. No, no, Leopardi. Not Mr. Agushi, no.

19 Q. Sorry, Leopardi. Then he understood that and that was the end
20 of the conversation.

21 A. Kind of, yes.

22 Q. And he didn't know you, did he, before this conversation? To
23 your knowledge.

24 A. To my knowledge, if there was this before we went to Albania
25 with the weapons that I mentioned before, it could be he knew me

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1 because like I said, we had a trip almost from Malisheve to
2 Jabllanice in the same car. I don't know if this was before or
3 after. So he might knew me from that time or not. So it makes no
4 difference to me either way. It's not ...

5 Q. Okay. And just in relation to this allegation -- and I know my
6 colleague Mr. Kehoe mentioned this earlier about when you first
7 mentioned this order to kill Mr. Gashi.

8 If I can just take you to Preparation Note 2. And I'll put it
9 on the screen for you so you can see exactly what was said.

10 MR. ROBERTS: And so that's 116144 at 116152. So this is in
11 English. It will be on the screen.

12 THE WITNESS: [via videolink] Okay.

13 MR. ROBERTS:

14 Q. If you could just let me know when you see that appear. It will
15 probably take a few seconds.

16 A. Okay. What is it about?

17 Q. If you just wait, there's a document going up. So this is a
18 record of information that you provided to the Prosecution during
19 your preparation session which was on 9 October. So that's about six
20 weeks ago now.

21 A. Okay.

22 MR. ROBERTS: And if we go to paragraph 54, which is at page
23 116152.

24 Q. And you very clearly say that, don't you, that you were asked
25 why you had not previously reported the Fadil Gashi order.

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1 "W04448 explained that he had informed the ICTY in 2004, when he
2 gave his first statement."

3 Do you see that written there?

4 A. Yeah, I -- I -- actually you just put it on the screen right
5 now.

6 Q. Please take your time.

7 A. Okay. What is it about?

8 Q. Do you recall telling the Prosecution that during your
9 preparation session?

10 A. When?

11 Q. On 9 October 2023. So five, six weeks ago when you had the
12 preparation session for your testimony --

13 A. I --

14 Q. -- here --

15 A. -- I -- I think we -- yeah, we talked about it.

16 Q. And you told the Prosecution that you had not previously
17 reported it -- or were asked why you hadn't previously reported it
18 and said very clearly that you had told the ICTY in 2004.

19 A. Yeah, I said I told the investigators from ICTY in 2004.

20 Q. And these were the investigators that took your signed
21 statements in 2004.

22 A. They did.

23 Q. And you took two statements in 2004 and another one in 2007, I
24 believe.

25 A. Yeah.

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1 Q. The first two were for the Limaj trial and the third was for the
2 Haradinaj trial?

3 A. Okay.

4 Q. And you obviously in one of those statements, and correct me if
5 I'm wrong, did mention the Rrok Berisha incident, order, didn't you?
6 So you told the ICTY investigators about the Rrok Berisha incident,
7 and that was included in your statement?

8 A. It was included in my statement?

9 Q. That's my understanding. Did you --

10 A. Okay.

11 Q. But there's no mention whatsoever in any of those statements
12 about the Fadil Gashi order, is there?

13 A. Okay. What -- what -- what's the question?

14 Q. Well, the question is does that surprise you if you told ICTY
15 investigators of this incident, and it's, by your own admission,
16 obviously quite a serious one, why did you not notice that it was not
17 included in your statement when you signed it?

18 A. Because those investigators from previous -- like I said, it
19 doesn't surprise me anything anymore. So ...

20 Q. But you didn't mention it in 2011 in your testimony either. You
21 didn't actually mention it until 2019. That's correct, isn't it,
22 that your television interview in 2019 was the first time that you
23 mentioned it publicly or that there's any record of you having
24 mentioned it?

25 A. No, I -- like I said, I mentioned to investigators in 2004.

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1 Q. But there's no record at all in the intervening 20 years between
2 1998 and --

3 MR. QUICK: Objection, asked and answered by two different
4 Defence teams actually.

5 MR. ROBERTS: Well, he can just very clearly clarify that --

6 PRESIDING JUDGE SMITH: Overruled --

7 MR. ROBERTS: -- there's no written record of him having
8 mentioned this at any stage.

9 PRESIDING JUDGE SMITH: Excuse me, let me rule on this.

10 Overruled. You may continue the question.

11 MR. ROBERTS: Apologies, Your Honour.

12 Q. There is no written record of that at all over the last
13 20 years, is there?

14 A. I -- okay. So where is -- what is the point of you like -- what
15 you're trying to make a point, so I can help you?

16 Q. I'm just asking a question. There is no written record --

17 A. I -- okay. You said would it surprise you [Overlapping
18 speakers] ...

19 Q. -- of this alleged order over the course of those 20 years --

20 A. [Overlapping speakers] ... make --

21 Q. -- is there, Witness?

22 A. -- make no sense. I would like to have a question. Ask me a
23 question.

24 Q. I've asked you the same question three times now, Witness.

25 There is no written record, is there, over those 20 years --

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1 MR. QUICK: Objection, it's also not a question that the witness
2 can answer.

3 PRESIDING JUDGE SMITH: Overruled.

4 THE WITNESS: [via videolink] Exactly. It's not a question.
5 What you're asking is not a question. Why is not in this, why is not
6 in that. Ask me a question. What do you want to know?

7 MR. ROBERTS:

8 Q. I've asked you a question three times, Witness, and the
9 Presiding Judge --

10 A. What was the question?

11 Q. -- has authorised the question. So I'll say it one last time --

12 A. What's the question?

13 Q. -- and then I think we'll end for the day.

14 A. What's the question?

15 Q. There is no written record, is there, to your knowledge, of the
16 Fadil Gashi order in those 20 years between 1998 and 2019 when you
17 mentioned in it in a television interview? That's my question.

18 A. Okay. So if there's not a written record, what's that supposed
19 to mean? Is not or it is. Makes no difference. So if there's not,
20 there's not, so what --

21 Q. So that's a yes, you agree with me there is no written record.

22 A. If it's not, I agree with you it's not.

23 MR. ROBERTS: Thank you, Your Honour. I think it's a good time
24 now to end for the day.

25 THE WITNESS: [via videolink] So what's the point?

1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 We're going to waste quite a few hours, it looks like.

3 MR. KEHOE: Your Honour, the difficulty is moving from witness
4 to witness is --

5 PRESIDING JUDGE SMITH: I understand.

6 MR. KEHOE: -- not an easy thing to do.

7 PRESIDING JUDGE SMITH: I understand it's not a perfect
8 situation.

9 MR. KEHOE: Well --

10 PRESIDING JUDGE SMITH: I'm just trying to use the time that we
11 have. Anyway, I understand your position.

12 Mr. Emmerson.

13 MR. EMMERSON: If asked to choose between a 2.00 and 3.00 start
14 and -- for Mr. Halitjaha, I would prefer to stick with the 3.00
15 start, if that's acceptable to Your Honours.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 How do you feel about the concept of trying to do both tomorrow?

18 MR. EMMERSON: Well, obviously, I've so far indicated no
19 questions for this witness. So unless something comes up at a later
20 stage, it doesn't present a conflict for me. I'm ready to continue
21 with my cross-examination.

22 PRESIDING JUDGE SMITH: Mr. Roberts.

23 Mr. Ellis.

24 MR. ELLIS: Your Honour, to the extent it's helpful, my time
25 estimate is half an hour for this witness. Although, I think it's

1 fair to say from the answers so far, that it's a little unpredictable
2 how long things may take with this particular individual.

3 I would also flag up that there may well, I imagine, be
4 questions from the Bench, and it may well be that there are further
5 questions following that.

6 So my concern would be if we -- I understood that this witness
7 has to be finished by 7.30 tomorrow, so there's no possibility of
8 bringing him back on Thursday if we were to overrun. If you see what
9 I mean. So my concern would be if we start this gentleman at 5.30
10 and go to 7.30, 7.30 is, I understand, a hard stop. So if we go
11 beyond that, we've got an issue.

12 [Trial Panel confers]

13 PRESIDING JUDGE SMITH: [Microphone not activated]

14 MR. ROBERTS: I would merely second what Mr. Ellis said. I also
15 have conducted, and I'm sure other counsel have as well, based -- our
16 cross-examination based on the questions asked from the Prosecution.

17 Obviously, if there are Judges' questions, that may well alter,
18 and I may well have additional time. At the moment, I think I will
19 be very little time, but maybe up to 15 minutes in the morning. That
20 will be something that requires a bit of reflection overnight.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 I understand that. I'm not trying to tie you down. But we were
23 just thinking about some way to use the time we are given.

24 MR. QUICK: Your Honour --

25 MR. EMMERSON: Might there be a possibility of just finishing

1 with this witness at 3.00, and then if there's time to be used up
2 after that, we could ask Mr. Halitjaha back. But I don't know if
3 that's entirely --

4 PRESIDING JUDGE SMITH: That was my next question. So I think
5 is that a better opportunity for you to finish with this witness
6 first and then do Mr. Halitjaha? Will that cause a problem?

7 MR. EMMERSON: Well, that certainly would avoid the risk of
8 running into a hard stop and not having --

9 PRESIDING JUDGE SMITH: Yeah, and I don't know how much more
10 time you have with him.

11 MR. EMMERSON: Well, I indicated to Your Honour yesterday --
12 yes, yesterday. I assume another two and a half hours. I may be
13 able to cut that down, but it won't be a lot less.

14 PRESIDING JUDGE SMITH: All right. That's helpful.

15 Let's do it that way. Everybody all right with that? We will
16 continue with this witness then at 3.00 tomorrow, and followed by
17 Mr. Halitjaha to -- as much as we can do in the allotted time.

18 So thank you for your comments and cooperation.

19 We stand adjourned until 3.00 tomorrow.

20 --- Whereupon the hearing adjourned at 7.35 p.m.

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